

Gig Harbor City Council Meeting

**April 12, 2004
7:00 p.m.**



"THE MARITIME CITY"

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
April 12, 2004 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of March 22, 2004.
2. Correspondence / Proclamations: a) Proclamation – Earth Week. b) Proclamation – Records and Information Management Month. c) Letter- County Councilmember Terry Lee.
3. Wastewater Treatment Plant Fencing – Contract Authorization.
4. Appointment to Gig Harbor Arts Commission.
5. Maritime Pier Preliminary Design Services – Consultant Services Contract.
6. Pavement Markings Contract Authorization.
7. Gig Harbor Comprehensive Plan Update – Consultant Services Contract.
8. Stinson Avenue Pedestrian Street Improvement Project – Survey Contract.
9. 45th Avenue Pedestrian Improvement – Survey Contract.
10. El Jireh Short Plat Sanitary Sewer Easement Agreement – Carlsen.
11. El Jireh Short Plat Sanitary Sewer Easement Agreement – Butler.
12. El Jireh Short Plat Sanitary Sewer Easement Agreement – Hazen.
13. Resolution No. 622 – Maintenance Contract for Civic Center HVAC and Control System.
14. On-Call Development Review Professional Services.
15. Liquor License Application: Thai Hut.
16. Change of Location for Liquor License: The Keeping Room, Candles & Wine Etc.
17. Liquor License Renewals: Albertson's, Inc.; Anthony's at Gig Harbor; QFC #886; Tanglewood Grill; and Bistro Stasuma.
18. Approval of Payment of Bills for April 12, 2004.
Checks #42864 through #43036 in the amount of \$452,151.83.
19. Approval of Payroll for the month of March.
Checks #3098 through #3138 direct deposit entries in the amount of \$235,028.74.

OLD BUSINESS:

1. Resolution – Community Center Maintenance and Operations Support.
2. City Prosecutor Contract.
3. Design Manual Update.

NEW BUSINESS:

1. Introduction of Ordinance – School Impact Fees and Interlocal Agreement.
2. Wastewater Treatment Plant Controls Update – Consultant Services Contract.
3. Civic Center ADA Access.
4. First Reading of Ordinance Redefining Allowable Siding Materials.
5. Official Ballot for Pierce Transit Board of Commissioners.
6. Official Ballot for Zoo/Trek Authority Board.

STAFF REPORT:

1. GHPD – March Stats.
2. Community Development - Annual Water Capacity Report.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT: Gig Harbor Peninsula Community Center.

ANNOUNCEMENT OF OTHER MEETINGS:

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF MARCH 22, 2004, 2004

PRESENT: Councilmembers Young, Franich, Conan, Dick, Picinich, Ruffo and Mayor Wilbert. Councilmember Ekberg was not present.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATION: Mayor Wilbert introduced Mr. Lind Simonsen, Public Relations Officer for Pierce Transit. Mr. Simonsen thanked the Mayor and Council for the opportunity to present the new 30 foot, compressed natural gas bus at its very first public showing. He explained that Pierce Transit had been challenged to provide a smaller bus for smaller communities. He described the buses and the route it will take, adding that he hopes that he hopes that people will chose to ride the newly design bus.

PUBLIC HEARING: NW Gig Harbor Employment Center Annexation.

Mayor Wilbert opened the public hearing at 7:08. John Vodopich, Community Development Director, presented information on this proposed annexation area of approximately 226 acres located west of highway 16 and south of the Washington Correctional Center for Women.

There were no comments, and the Mayor closed the public hearing at 7:09 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of March 8, 2004.
2. Correspondence / Proclamations: Proclamation – Building Safety Week.
3. Appointment / Re-appointments to the Gig Harbor Arts Commission.
4. Gig Harbor Arts Commission – Grant Awards.
5. Banking Services Contract.
6. Employment Contract – Prosecuting Attorney.
7. Sister City Activity – Takuma, Japan.
8. 2003 Boating Safety Program Agreement.
9. Liquor License Application: The Green Turtle.
10. Liquor License Renewals: GH Farmers Market Assoc. – Bonneville Gardens; GH Farmer's Market Assoc. – Hunt Street.
11. Special Events Liquor License: Harbor Heights PTA.
12. Approval of Payment of Bills for March 22, 2004.
Checks #42731 through #42863 in the amount of \$299,570.09.

Mayor Wilbert said that she had been requested to table number six of the Consent Agenda, Employment Contract – Prosecuting Attorney.

MOTION: Move to approve the Consent Agenda as amended to remove item number six.
Ruffo / Picinich – unanimously approved.

OLD BUSINESS:

1. Resolution – Community Center Maintenance and Operations Support. Mark Hoppen, City Administrator, explained that this resolution set the direction for the city to expend \$150,000 per year for five years for maintenance and operation for a community center. He gave a background of the project, explaining some of the steps that would be required of the Boys and Girls Club in order to bring the project to completion. The resolution itself does not commit the funds, but it outlines the process for Pierce County and the Boys and Girls Club to request the money if the required Interlocal Agreements are approved.

Mayor Wilbert thanked Mr. Hoppen for coordinating this effort.

Mark VanDuker – 8819 71st Ave NW. Mr. VanDuker explained that he takes tennis lessons at the Key Peninsula Civic Center, and would like to have some place closer to avoid the long drive. He also spoke in favor of such amenities as a game arcade, indoor basketball courts for games, dances, and other performances, as well as an indoor ice rink for a place for him and his friends to go. Mr. VanDuker explained that people who skate would add to the revenue through lessons and team skating. Parents could drop off their kids and then shop at the local stores. Finally, he explained that he is a boy scout in Troop 44, and offered assistance for service projects to do landscaping or to install a flag pole.

Carl Retting – 3410 61st Ave NW. Mr. Retting said that he is very active as a volunteer around Gig Harbor, one of which is AARP. He explained that for many years AARP has been trying to get a senior facility. He said that this looks like a fine project and hopes that it comes to fruition.

Len McAdams – 4310 Foxglove Drive NW. Mr. McAdams spoke on behalf of the Gig Harbor Lions Club and the AARP. He explained that he began working with the Mayor and others four years ago to provide a Senior Center. This group visited several facilities, one of which was a joint facility in Sweethome, Oregon. They were impressed with the overall activity, and brought back architectural drawings. He described the joint junior/senior facility and how it serves the needs of both groups without duplication of structures. He urged the City of Gig Harbor to support this activity.

Tracy Cutler – 7811 71st Ave NW. Ms. Cutler explained that she came from Texas, where they have community centers. She said that she was surprised to find that there wasn't such a facility in Gig Harbor. She described some of the activities that occur in these Texas community centers, stressing the importance of such centers and how it relates to juvenile crime rates. She suggested contacting Mayor William Tate in Grapevine, Texas, to obtain more information on the community centers in his town. She then offered to do any research that would be helpful.

Councilmember Young said that he feels that this is a very worthwhile project, as he too comes from a town that had a Boys & Girls Club and Community Center. He explained that the Council is constrained by laws to make sure that it is done properly and that before the city commits to the funding for five years, he would like clear goals and mechanisms, and the assurance that the funds would be available. He added that both he and Councilmember Ekberg, who could not attend the meeting, would like to table action on this item until the next meeting to address some of the questions that he had.

Councilmember Picinich asked if the commitment of \$150,000 would be extended past the five year term. Mark Hoppen said that he did not foresee that happening.

Councilmember Ruffo asked for clarification on the status of the Interlocal agreements. Mr. Hoppen explained that Pierce County had not yet addressed the construction of the building, and would also have to work toward an Interlocal where they would act as the fiscal agent. He continued to explain that the resolution only outlines the process to be able to share with Pierce County. Councilmember Ruffo said that he too is very much in favor of the project, but agreed that more information would be helpful.

MOTION: Move to table action on this resolution.
Young / Ruffo – unanimously approved.

2. Resolution – Accepting Employment Center Annexation Petition. John Vodopich explained that he had nothing to add what was discussed in the public hearing and recommended approval of the resolution as presented.

MOTION: Move to adopt Resolution No. 621.
Young / Picinich – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Animals and Beekeeping in Residential Zones. John Vodopich presented information on this ordinance adding new sections to Chapter 17 of the Zoning Code relating to the keeping of animals and beekeeping within the city limits. He stressed that it was important to note that the ordinance is not retroactive, and therefore, those who already have animals or bees would not fall under the purview of the ordinance, but they would become non-conforming uses of the land. He continued to explain that the proposed ordinance had been reviewed by the Planning Commission and a copy of the report is included in the packet.

Councilmember Ruffo asked how many homeowners would be grandfathered. Mr. Vodopich explained that there are only 2-3 that he is aware, and any future annexations would also be grandfathered.

Councilmember Young asked for clarification on how this came back with the addition of the other animals and a zoning change rather than a life-safety issue. Jennifer Sitts, Associate Planner, explained that the addition of the other animals was because the

zoning code has no regulations for animals. It seemed prudent to look at other types of animals that are typically regulated by counties and cities.

Carol Morris, City Attorney, addressed the question of how other animal nuisances are handled. She explained that the city has nuisance regulations and that you can also handle nuisances through state law. She continued to explain that by regulating in the land use code you are describing the manner in which animals can be kept in the city. You are also limiting the keeping of animals in the city. If they do become a nuisance, you can regulate them under the nuisance code. If you want to prohibit them altogether, this can be done through the nuisance code by developing the findings on why that is regulated, such as exotic animals. There are two different ways to regulate animals in the city; one, you can allow people to keep them and describe the conditions in which they are allowed; the second, you wait until there is a problem, then address the problem.

Councilmember Franich asked Ms. Sitts which cities were used as examples to determine the one-acre size. Ms. Sitts said that there had been general research on codes from Pierce County, City of Tacoma, Bellingham, and Bellevue. The one acre lot was chosen by the Planning Commission as the best option to prohibit bees altogether, when it was determined that no evidence or case law existed to justify outright prohibition. The one-acre requirement for livestock is also a common in Pierce County urban areas.

Margot Ulsh – 7401 Pioneer Way. Ms. Ulsh explained that the rooster, chickens, Guinea hens, and ducks are pets. She described the way that she and her husband interact with these birds. She said that she doesn't believe that they are a problem and in fact, a couple times a week we have Grandparents bringing children over to visit the birds. She asked why this regulation is coming about now. She voiced her concerns that they would be limited to only four birds if they are not grandfathered. She said that she loves the size of their flock and their ability to keep down the bugs.

Councilmembers asked John Vodopich if any complaints had been received about the flock. Mr. Vodopich said that the only complaint was a result of the bees, due to the neighbor being deathly allergic to the bee stings. Ms. Sitts added that there have been swarms of bees in their yard.

David Ewert – 3614 44th St. Ct. NW. Mr. Ewert explained that he wished that the animal portion would be separated from the ordinance, since he started this several years ago when he came to a Council Meeting asking that something be done about the raising of bees. Mr. Ewert explained that he is allergic to bees and that having beehives next to his property is unnecessary. He added that those that are allergic know that an incidental bee sting is a hazard that they are alert to, however, beekeeping in an urban environment magnifies the hazards.

Mr. Ewert said that he lives on a ¼ acre lot in the Heronwood/Quail Run Addition. He said that his neighbor sent a letter in January that states that he is not in the business of

bee keeping any longer; the several hives are a hobby to pollinate his garden. Mr. Ewert stated that a quarter acre lot does not need one beehive, which contains 50,000 bees, let alone the two hives that appeared in February. He added that seven more hives are against the house ready to move out; many more than are needed to pollinate a garden when a bee can fly five miles.

Mr. Ewert continued to explain that the bees swarmed three times in his yard last year. He stressed that bees do kill you, and that it's unnecessary to have them in the city no matter what the size of the lot. He said that supposedly the city has to grandfather the use in, but that he didn't see the sense in that. He said that his neighbor has had up to sixteen bee hives, and his property line to the hive is a short distance.

Mr. Ewert then referred the 8/13/03 article in the Gateway when Daniel Rush, 40 years old, died as a result of bee stings. He continued to describe what happens when the bees swarm. He said that they can't hear, and they have to sit in their house and wait until they gather around the queen and hopefully the beekeeper comes to get rid of them. Whether or not the neighbor is raising bees, the point is there is no place in Gig Harbor for a quarter acre lot to raise bees. He finalized by saying that hopefully, the city will do away with beehives because it is a serious thing and not necessary.

Councilmember Ruffo commented that the grandfathering clause in this ordinance would not do Mr. Ewert any good. Councilmember Dick explained that staff had a difficult time finding case law to warrant limiting beekeeping. He asked Mr. Ewert if he was aware of any such evidence that could help staff.

Mr. Ewert responded that he didn't know the advantage of having bees in the city limits. He explained that he comes from Kansas, where bees were brought in for the alfalfa fields and apple orchards, but they were trucked in. He offered to keep trying to find more information.

Councilmember Ruffo asked staff if it is necessary to have an all-encompassing ordinance if bees are the only problem, and if it would be appropriate to address just the bees. Ms. Morris responded yes.

Councilmember Dick asked because it is a danger, if it would be possible to regulate bees under the nuisance statute, as such things as dynamite and nuclear power are regulated. Ms. Morris said yes. She then introduced Jennifer Sitts to describe how the draft ordinance came about.

Ms. Sitts explained that she had hoped that there would be studies on kept bees verses wild bees, or existing cities that prohibit beekeeping, in order to provide the necessary evidence. She said that she had done quite a bit of research with the state and cooperative extensions, and found nothing. She said that they did not address the nuisance issue of kept honey bees compared to bees in general nature as they relate to health concerns. She said that Tacoma and Pierce County regulate bees through a

nuisance ordinance, dealing with the maintenance of hives, re-queening, and defining of bee nuisance as one that is causing a public safety or health issue to neighboring lots.

Ms. Sitts said that the Planning Commission is urging Council to update Title 6 to deal with these nuisances beyond the at large issues, as it is outside the purvey of the Planning Commission to make that change and to look at language related to that.

Councilmember Dick asked if this is something that the staff will be doing. Ms. Sitts said that yes, with direction, staff could develop language.

Marilyn Owel – 6844 Main Sail Lane. Ms. Owel explained that she knows Dave Ewert, and knows that he has the medical records to document his allergy. She said that she would like to see the bee ordinance strengthened. She continued to explain that she has researched bees, stressing that when bees swarm, they are hard to contain. Bees are sensitive to the environment and can be set off by such vibrational noises such as lawnmowers. She added that beekeeping seems to be a hobby that is incompatible with residential living, adding that living next to a bee colony is an overwhelming, pervasive hazard.

Ms. Owel further shared that beekeeping can be defined. She said that Sacramento County has beekeeping regulations that are quite stringent and that recognized the public health and life safety issues. She stated that we do have a precedence that illustrates that this is a health and life safety issue and further discussed some of the behaviors of bees. She stressed that there is no room on a ¼ acre lot for this type of activity, adding that that allergy or not, a swarm can kill a small child. The danger is not just for people with allergies.

Councilmember Picinich said that he would like to see a strong ordinance to control the bees and that he would like to take out the portion regulating animals. He agreed that ¼ acre is not enough for this dangerous hobby. He shared that his Dad also was allergic to bee stings. He said that he would like to see staff go back and separate the two, and treat the bees as a public health and safety issue.

Councilmember Ruffo said that he is interested in looking at the bee issue but not the animal control. He suggested instructing staff to redo the ordinance.

Carol Morris explained that the last time that the Ewert's came to Council, Marilyn Owel offered the Bellevue Ordinance as a model. She said that she would be happy to look at the Sacramento County ordinance and to bring back another draft.

Councilmember Young asked for clarification on why the zoning code was being used to regulate the bees. Ms. Morris explained that the intent was to make beekeeping a non-conforming use to phase out the existence and to regulate additional uses.

Councilmember Dick explained that the city regulates many nuisances in which the concern is defined in the code, which is not uncommon when it is a health/safety issue.

He added that you shouldn't have to wait until someone dies before declaring something a nuisance. He said that he would prefer to address this as a nuisance issue rather than a zoning issue. Ms. Morris reinforced that the city could regulate this as a nuisance as a life and health safety issue.

Councilmember Franich asked if Mr. Ewert's problem had been addressed through the nuisance portion of the code. Ms. Morris explained that staff had been directed to use the Bellevue ordinance as a model, which uses zoning regulations. She repeated that the city could go forward with a nuisance approach. Jennifer Sitts explained that the current nuisance law doesn't have any reference to insects.

Councilmember Franich agreed that he too would like to review this ordinance as two separate issues. He said that it was a fine line between allowing a property owner to keep bees if he acts responsibly, and the dangerous situation for Mr. Ewert, even if the property owner is acting in a responsible manner. Councilmember Franich said that he also would like to see animals and bees separated in the ordinance.

Councilmember Ruffo asked if the goal is elimination of bees in the city limits or to regulate them as a nuisance on a case by case basis. Councilmember Franich responded that the one-acre limitation is a method to eliminate beekeeping.

The Mayor said that she believes that you need to get rid of the bees altogether within the city and supports bringing back the bee issue separated from the others.

Councilmember Franich asked Jennifer Sitts if she had any information on other types of bees, as his neighbor has bees that live in wood but don't sting. She did not, and he offered to bring back more information because he would like to see this type of bee excluded from the ordinance.

Councilmember Dick said that he didn't mind looking at this as a zoning issue, but that the city should consider the nuisance piece. The others agreed that any exotic animal issue could be brought up at a later date.

MOTION: Move to instruct staff to come back at the April 26th Council meeting with a proposed ordinance that addresses bees as a nuisance and another that addresses bees through zoning to let Council debate the issue. In addition, staff is to remove livestock from the ordinance.
Ruffo / Picinich ~ unanimously approved.

2. Adam Tallman Park Asphalt Pathway Project – Contract Authorization. John Vodopich explained that a new memo had been give to Council with the scope of services attached. Using the city's Small Works Roster, three contractors had been identified with the lowest bid coming from Puget Paving and Construction to perform the work.

MOTION: Move to authorize the award and execution of the contract for the Adam Tallman Park Pathway with Puget Paving and Construction in an amount not to exceed thirty-eight thousand, seven hundred forty two dollars and sixteen cents.
Ruffo / Picinich – unanimously approved.

STAFF REPORTS:

1. Community Development – Building Size Ordinance Public Notification. John Vodopich said that he prepared a revised staff report related to the building size analysis public hearing on April 26th. He explained that the public hearing notification postcards will be mailed out seven to ten days prior to the hearing to all city residents and business owners. Councilmember Franich requested that they be mailed out sooner.
2. GHPD – February Stats. No verbal report given.

PUBLIC COMMENT:

Mildred Ewert – 3614 44th St. Ct. NW. Ms. Ewert said that they have been working on this issue (bees) for approximately three years and has lived in the harbor for five years. She wanted to let Council know that she looks out her kitchen window every day at the beehives. She explained that she and David have been married for 37 years and she doesn't want to lose him, but that she lives with this every day. Her daughter is also allergic, but she does not yet know about the grandsons. When they come over to play in the yard, she is on alert. The bees come down her chimney and they have found the fireplace full of dead bees. She said that they sift through the windowsills of the house and she kills them in the bathroom. On Easter two years ago, when they sat down for dinner, there was a bee, so they couldn't go ahead until the bee was killed. She added that she wishes that the beehives were in the county on five to ten acres. She said that she talked to Mrs. Rush, who lost her son last summer and whose family members are all Gig Harbor people. She said that she doesn't want her husband to be the next statistic.

Ms. Ewert continued to explain that when the bees swarm, it is like a freight train for hours, and as big as the petition behind the Councilmembers. The bees hang in masses off her fence, and it takes days to get rid of them. She said she remembers the article in the Gateway of the swarm under the umbrella downtown, which is a hazard to visitors. The bees do kill; they are angry, they are deadly when swarming. She concluded that she wants to keep her husband and family, as they love it here, and are dedicated to this community. She said that she appreciates the opportunity to speak.

The Mayor asked if the bees are still in the hives. Ms. Ewert said that since January, the neighbor has moved the hives out on a dolly, and another seven have been stacked ready to go in piles. At one time they had Aspen Surveying survey their property, and there were 16 boxes on their property line. Now the four to five boxes are twenty feet from the line. She said that whether the bees are in there or not, there is no doubt in

her mind that they will be, stressing that there are up to 50,000 bees in one box. She said that she is grateful for whatever the city can do, because they only have twenty minutes to get to the Emergency Room, adding that they have been at this a long time.

Wes Ulsh – 7401 Pioneer Way. Mr. Ulsh said that his chickens are Aracondas, which lay eggs that are very low in cholesterol, and saves him money buying them from the health store. He explained that he will make improvements to the pen so that it doesn't look so bad just as soon as he is up and around.

COUNCIL COMMENTS / MAYOR'S REPORT: None.

ANNOUNCEMENT OF OTHER MEETINGS: None.

MOTION: Move to adjourn at 8:18 p.m.
Franich / Ruffo - unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 21.

Gretchen Wilbert, Mayor

Molly Towslee, City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

To establish the 4th week in April of each year as "Earth Week" in Gig harbor in celebration of the gifts humanity receives from a healthy urban forest.

WHEREAS, trees provide oxygen necessary for life on earth, and

WHEREAS, one acre of forest absorbs six tons of carbon dioxide and produces four tons of oxygen per year, enough for 18 people, and

WHEREAS, trees absorb and store carbon dioxide which helps control global warming, and

WHEREAS, trees and their roots help prevent erosion, landslides and absorb storm water runoff, and

WHEREAS, trees replenish our topsoil with nutrients necessary for native plants to flourish, and

WHEREAS, trees provide habitat for wildlife and filter groundwater to keep our streams clean, and

WHEREAS, our urban forest is the very signature of our livable community, and

WHEREAS, an Arbor Day celebration will encourage the planting of trees, and

WHEREAS, the forests provide the lungs of the planet, sanctuary for the soul and an economic engine,

NOW THEREFORE, I, Gretchen Wilbert, Mayor of Gig Harbor, declare the week of April 19th through 25th as

EARTH WEEK

In honor of the establishment of the Gig Harbor/Key Peninsula Arbor Day Foundation and designating Saturday, April 24, 2004 as Gig Harbor's Annual Arbor Day celebration.

Gretchen A. Wilbert, Mayor

Date

"Planting hope and trees!"



Gig Harbor City Hall and Civic Center

The community is invited to the 4th annual
GIG HARBOR/KEY PENINSULA

Arbor Day Celebration!

Saturday, April 24th from 1 – 4 p.m.
Civic Center at 3510 Grandview St.

- FREE ADMISSION and trees for all who drop by
- Prizes for student poster, & poetry contests awarded
- Environmental and art booths
- 2004 Good Steward Award presented
- Tree planting at City Hall
- Children's activities
- Live music
- Raffle drawings throughout the afternoon

Sponsored by the Gig Harbor/Key Peninsula Arbor Day Foundation

WebPage: www.gigharborarbor.com
Phone 253-858-8797

Email address: arbor@gigharborarbor.com
fax 253-943-5397

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, the management of records and information is critical to every business, organization and government agency in facing the complexities of competition, customer service and globalization; and

WHEREAS, technologies for storing information are expanding the amounts of information that can be acquired, with increased longevity; and

WHEREAS, the need to use information to create value and plan strategically is a driving force in today's world; and

WHEREAS, control of records and information is necessary for reduction of risk and liability as well as for compliance with global standards; and

WHEREAS, the citizens of the City of Gig Harbor should recognize the important service performed by records and information professionals.

NOW, THEREFORE, I, Gretchen Wilbert, Mayor of the City of Gig Harbor, do hereby declare April, 2004 as,

NATIONAL RECORDS AND INFORMATION MANAGEMENT MONTH

in the City of Gig Harbor, and I encourage all citizens to recognize this event.

Gretchen A. Wilbert, Mayor

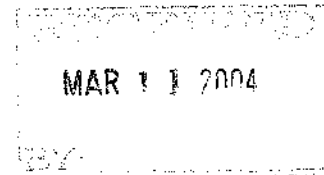
Date



Puget Sound Chapter - ARMA International

P.O. Box 1842 • Tacoma, Washington 98401-1842

Gretchen Wilbert, Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335



Re: Records and Information Management Month 2004

Dear City Mayor,

The month of April is recognized as Records and Information Management Month (RIMM). A celebration appreciating the importance of records and information management began in 1995 by ARMA International, the Association of Information Management Professionals, a professional, not-for-profit organization whose primary purpose is education in the field of records and information management. ARMA has 140 chapters in the U.S. and Canada and 34 nations around the world. Whether or not you have employees who are members of ARMA International, all companies, government agencies and organizations are encouraged to participate in Records and Information Management Month.

As a member of the Puget Sound Chapter of ARMA Board of Directors, I would like to request a proclamation from your office. Your participation in RIMM is very important not only to us, but also to the entire Records and Information Management Profession. We will be celebrating RIMM at our next chapter meeting on **April 14, 2004** and we would like to invite you to join us. Our program that evening is titled, "*You've got a Lawsuit: Recent Cases on Electronic Records, Instant Messaging and Other Pitfalls of Document Management in the Information Age*", which will be presented by Daniel Montopoli, Attorney at Law.

I have attached a sample proclamation to assist you in recognizing this profession. If you would like any additional information on Records and Information Management Month or would be interested in attending our celebration, please feel free to contact me. I am looking forward to being able to include your proclamation on our list of participants. In the event you or a representative from your office is unable to attend, please forward your proclamation to the address listed above, **no later than April 12, 2004.**

Sincerely,

A handwritten signature in cursive script that reads "K. Coffel".

Kimberlee Coffel, RIMM Chairperson
Puget Sound Chapter Director
(253) 924-3432





Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046
Tacoma, Washington 98402-2176
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1-800-992-2456
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TERRY LEE
Councilmember, District No. 7

MAR 26 2004

March 24, 2004

The Honorable Gretchen Wilbert
Mayor of the City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Dear Mayor Wilbert:

Thank you for your kind hospitality in providing your City Council Chambers for our in-district meeting last night. We were pleased with the participation from the community and consider the Civic Center to be a welcoming and inviting facility.

The City of Gig Harbor has shown its willingness to partner with the County in many ways, including making the Civic Center available for use by the Tacoma Narrows Airport Advisory Commission while we work through issues important to citizens of the peninsula. We appreciate that spirit and hope to continue partnering with you.

Thanks again, Gretchen!

Sincerely,

Terry Lee
Councilmember, District 7





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WASTEWATER TREATMENT PLANT FENCING
- CONTRACT AUTHORIZATION
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

Over the last several months, the Wastewater Treatment Plant vehicles located within the fenced area have been broken into and tools and equipment have been stolen. Additional fencing and barb wire installation will reduce future entries onto the property. Potential contractors were contacted in accordance with the City's Small Works Roster process (Resolution No. 592). Three contractors responded with the following price quotations:

Viking Fence Co.	\$2,957.15
Quality Fence Builders, Inc	\$3,899.15
Harbor Fence	\$8,411.84

Based on the price quotations received, the lowest price quotation was from Viking Fence Company in the amount of Two Thousand Nine Hundred Fifty-seven dollars and Fifteen cents (\$2,957.15), including state sales tax.

It is anticipated that the work will be completed within eight weeks after contract authorization.

FISCAL CONSIDERATIONS

This is an unbudgeted improvement, however sufficient funds are available with the Sewer Operating budget.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for the Wastewater Treatment Plant Fencing to Viking Fence Company as the lowest responsible respondent, for their bid quotation amount of Two Thousand Nine Hundred Fifty-seven dollars and Fifteen cents (\$2,957.15).

AGREEMENT FOR CONSTRUCTION SERVICES
VIKING FENCE COMPANY

THIS AGREEMENT, is made this _____ day of _____, 200_____, by and between the City of Gig Harbor (hereinafter the "City"), and Viking Fence Company, a Washington corporation, located and doing business at 3015 State Highway 3, Bremerton, Washington 98312, (hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work and agrees to perform such work under the terms set forth in this Agreement; and

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.155(3);

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

I. Description of Work. The Contractor shall perform all work as described below, which is attached hereto and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all materials and labor necessary to install fencing at the City of Gig Harbor Wastewater Treatment Plant. The Contractor shall not perform any additional services without the express permission of the City.

II. Payment.

A. The City shall pay the Contractor the total sum of Two Thousand Nine Hundred Fifty-seven dollars and Fifteen cents (\$2,957.15), including Washington State sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for these tasks, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed change order.

B. After completion of the work, the City shall pay the full amount of an invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Contractor of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs hereunder.

IV. Duration of Work. The City and the Contractor agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before May 15, 2004. The indemnification provisions of Section IX shall survive expiration of this Agreement.

V. Prevailing Wages. Wages paid by the Contractor shall be not less than the prevailing rate of wage in the same trade or occupation in Pierce County as determined by the industrial statistician of the State Department of Labor and Industries and effective as of the date of this contract.

Before any payment can be made, the Contractor and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages" to the City, which has been approved by the State Department of Labor and Industries. Each voucher claim (invoice) submitted by the Contractor for payment of work shall have an "Affidavit of Wages Paid", which states that the prevailing wages have been paid in accordance with the pre-filed "Statement(s) of Intent to Pay Prevailing Wages".

VI. Waiver of Performance Bond and Retainage: Limited Public Works Process. As allowed in RCW 39.04.155(3) for limited public works projects, the City has waived the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW for the work described in Exhibit A.

VII. Termination.

A. Termination Upon City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon five (5) days written notice to the Contractor.

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in Exhibit A, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

C. Excusable Delays. This Agreement shall not be terminated for the Contractor's inability to perform the work due to adverse weather conditions, holidays or mechanical failures which affect routine scheduling of work. The Contractor shall otherwise perform the work at appropriately spaced intervals on an as-needed basis.

D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for services satisfactorily performed by the Contractor to the effective date of termination, as described in a final invoice to the City.

VIII. Discrimination. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, the Contractor, its subcontractors or any person acting on behalf of the Contractor shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap, discriminate against

any person who is qualified and available to perform the work to which the employment relates.

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

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

X. Insurance.

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

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

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

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

D. The City of Gig Harbor shall be named as an additional insured on the Contractor's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City

reserves the right to receive a certified and complete copy of all of the Contractor's insurance policies.

- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.
- F. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Contractor's coverage.

The Contractor shall procure and maintain for the duration of this Agreement, comprehensive general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Contractor. The Contractor shall maintain limits on such insurance in the above specified amounts: The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, officers, employees, agents, volunteers or representatives.

The Contractor agrees to provide the City with certificates of insurance evidencing the required coverage before the Contractor begins work under this Agreement. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The City reserves the right to require complete, certified copies of all required insurance policies at all times.

XI. Entire Agreement. The written provisions and terms of this Agreement, together with all exhibits attached hereto, all bids specifications and bid documents shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

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

XIII. Work Performed at the Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Contractor's own risk, and the

Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Contractor for use in connection with the work.

XIV. Warranties. The Contractor hereby warrants that it is fully licensed, bonded and insured to do business in the State of Washington as a general contractor. Viking Fence Company will warranty the labor and installation of materials for a one (1) year warranty period.

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

XVI. Assignment. Any assignment of this Agreement by the Contractor without the written consent of the City shall be void.

XVII. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

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

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

If any dispute arises between the City and the Contractor under any of the provisions of this Agreement which cannot be resolved by the City's determination in a reasonable time, or if the Contractor does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party shall be reimbursed by the other party for its costs, expenses, and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

VIKING FENCE COMPANY

THE CITY OF GIG HARBOR

By: [Signature]
Its Secretary

By: _____
Its Mayor

Notices should be sent to:

<p>Viking Fence Company Attn: John Rosebeary 3015 State Highway 3 Bremerton, Washington (800) 280-7918</p>	<p>City of Gig Harbor Attn: David Brereton Director of Operations 3510 Grandview Street Gig Harbor, Washington 98335 (253) 851-6170</p>
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Approved as to form:

By: _____
City Attorney

Attest:

By: _____
Molly M. Towslee, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

DATED: _____

Notary Public in and for the
State of Washington,
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

Notary Public in and for the
State of Washington,
Residing at: _____
My appointment expires: _____

Licensed and Bonded

EXHIBIT A



DATE: 3/29/04

Purchase Order No. _____ Estimator/Salesman _____

TO: VIKING FENCE COMPANY
 Address: 3015 State Hwy. 3, Bremerton, WA 98312
 Telephone: (360) 373-7918 or (360) 779-5978
 Toll Free: 1-800-280-7918
 FAX: (360) 377-0011

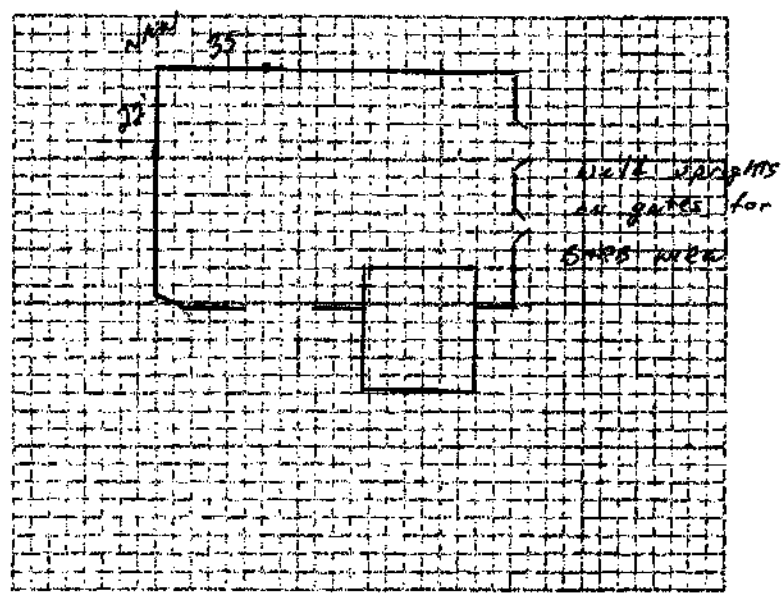
FROM: Sonya City
 Address: _____
 Telephone: 253-851-6170 Fax: 253-853-7597

- COMMERCIAL
- RESIDENTIAL
- STEEL FENCE
- WOOD FENCE
- Specifications
- Fence Height 7 Ft.
- Wire Height 6 Ft.
- Wire Mesh 2 In.
- Wire Gage 9
- Line Post 1 3/8 O.D.
- Corner Post 2 3/4 O.D.
- End Post _____ O.D.
- Set In 2 1/2 In. Conc.
- Drive Gate Post _____ O.D.
- Walk Gate Post _____ O.D.
- Top Rail 1 3/8 O.D.
- Barb Wire _____
- Est. Arms _____
- Posts Spaced a Maximum of 10 Ft. on Center.
- Barbs Up _____ Down _____
- Follow Ground _____
- Level _____
- Owner to Stake out _____
- Gates D.D. _____
- _____
- _____
- _____
- Gates, Walk _____
- _____
- Tension Wire Yes No

Property: Owner or Rent
 _____, hereby requests that Viking Fence Company furnish material and labor, and install complete, subject to approval of this order by the sales manager at Viking Fence Company, the following:

57' at 6' high chain link with
3 strands of BARS NICK
576' Remove & Replace BARS
NICK & install RAZOR RIBBON 2728⁰⁰
8.4 sales tax 229.15

TERMS Due on completion TOTAL \$ 2957.15



CAUTION!
 Customer Responsibility
 CALL UNDERGROUND
 UTILITY: 1-800-424-5556
 FILE NO. _____

Acceptance of the above order by the sales manager of Viking Fence Company upon the terms and conditions stated herein is final. Any change in the purchase price and any change order affecting work to be done must be in writing, signed by the purchaser and accepted by the sales manager. Viking Fence Company shall not be responsible for damage to underground utilities not pointed out in the diagram by the purchaser. Purchaser shall be responsible for correctly establishing all lot and fence lines. Cancellation of this purchase order shall subject purchaser to a ten percent (10%) service charge for processing of the purchase order. Unless otherwise agreed above, terms shall be net within 30 days, service charge at one and a half percent (1 1/2%) per month thereafter on any unpaid balance. In the event it becomes necessary to employ an attorney to enforce the rights of any party to this purchase order, or any modification hereof, the prevailing party shall be entitled to recover his costs of suit and costs of public officials, together with a reasonable attorney fee of not less than one-third (1/3) of the value of any recovery. The parties further agree that, in addition to any other rights that the seller may have, and without prejudice to the same, that seller may claim a lien in the premises upon which the material and supplies are to be installed, for said materials and supplies, and that purchaser waives notice of same.

Accepted _____ Date of order _____
 By _____ Date _____
 Sales Manager Purchaser's Signature

Please sign and return white copy. **Thank You!**



'THE MARITIME CITY'

ADMINISTRATION

TO: CITY COUNCILMEMBERS AND MARK HOPPEN
FROM: MAYOR GRETCHEN WILBERT *GW*
SUBJECT: APPOINTMENT TO GIG HARBOR ART COMMISSION
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

Guy Hoppen offered to serve another term if no one who lives or works within the city submits a letter of interest. We have since received a letter from Renee Crist, owner of Photo Pro, who is interested in serving on the Commission.

RECOMMENDATION

City Council approve the appointment of Renee Crist to serve a three-year term on the Gig Harbor Arts Commission.

RECEIVED
MAR 26 2004



6876 Kimball Drive, Gig Harbor WA 98335

March 26, 2004

Mayor Gretchen Wilbert
City Of Gig Harbor
3510 Grandview Drive
Gig Harbor, WA 98335

Dear Mayor Wilbert,

I understand there is an opening on the board of the Gig Harbor Arts Commission for a three year term. I would like to present myself for consideration for this position.

I have been a resident of Gig Harbor since 1979 and I have owned and operated Photo Pro Film and Digital Imaging Center and Photo Pro Portrait Studio which are both located within the city limits of Gig Harbor since 1985. I have been very involved with the community and am currently a member of local organizations such as the Peninsula Art League, Peninsula Historical Society, Gig Harbor Chamber of Commerce and the Professional Photographers of Washington.

If appointed, I will be able to begin my term in office in May of 2004.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Renee Crist".

Renee Crist

www.photoproimaging.com





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
SUBJECT: COMMUNITY DEVELOPMENT DIRECTOR
MARITIME PIER DESIGN SERVICES
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

A budgeted objective for 2004 includes the conceptual design of a maritime pier for grant application purposes that would be flexible enough for multiple locations and uses.

After reviewing the Consultant Services Roster, the architecture firm of Makers Architecture and Urban Design was selected as the most qualified to perform the work. Their selection was based on their understanding of the project, familiarity with the area, and similar design work.

POLICY CONSIDERATIONS

Makers Architecture and Urban Design is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This work was anticipated in the adopted 2004 Budget and is within the 2004 Parks budgeted allocation of \$30,000, objective #15.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Makers Architecture and Urban Design for conceptual design work in the amount not to exceed Twelve Thousand Thirty dollars and no cents (\$12,030.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
MAKERS ARCHITECTURE AND URBAN DESIGN**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Makers Architecture and Urban Design, a corporation organized under the laws of the State of Washington located and doing business at 1425 Fourth Avenue, Suite 901, Seattle, Washington 98101 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the preliminary conceptual design and construction costs for the Maritime Pier and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 31, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twelve Thousand Thirty dollars and no cents for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement.

PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the

Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the

completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT:
Makers Architecture and Urban Design
ATTN: Gerald Hansmire, Partner
1425 Fourth Avenue, Suite 901
Seattle, WA 98101
(206) 652-5080

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

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 200_____.

CONSULTANT
By: 
Its Principal *Partner*

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Makers Architecture and Urban Design
ATTN: Gerald Hansmire, Partner
1425 Fourth Avenue, Suite 901
Seattle, WA 98101
(206) 652-5080

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

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney

STATE OF WASHINGTON)
COUNTY OF KING) ss.

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

Dated: 4/7/04

Sandra L Spurlock
Sandra L Spurlock
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at:

SEATTLE
My Commission expires: 7/8/04



STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Make (māk) vb 1 to bring into being by shaping or altering 2 to form in the mind, a judgment or plan 3 to put together by combining parts 4 to build, construct, formulate, devise, create 5 to prepare for use; arrange 6 to cause to happen

RECEIVED

APR 01 2004

CITY OF GIG HARBOR
PUBLIC WORKS DEPT

March 31, 2004

Mr. David Brereton
Director of Operations
Gig Harbor Public Works Operations
3510 Grandview Street
Gig Harbor, WA 98335

Re: Gig Harbor Public Pier

Dear David:

Thank you for having Eric and me down to discuss the public pier project. It should be fairly easy to get you a preliminary concept plan and some expected construction prices to use in your grant applications and funding search. Our approach would be to keep the initial work preliminary and focused on the pier's visual concept and projected order-of-magnitude construction cost. We would also provide some observations on the type of permitting issues the pier's development might expect to encounter. Any new over-water construction on Puget Sound will face considerable review and permitting time and possible mitigation costs if sensitive habitat or eelgrass are present in the tidelands. These costs are difficult to define on a preliminary basis, but we can make some allowances based on other, similar projects.

I propose the following scope of work:

1. **Schematic Site Plan.** MAKERS would prepare a schematic site plan for the project area (upland and in-water project elements). The scale would be approximately 1"=50' or 1"=30', depending on project size. The drawing would be prepared to fit a 24"x36" sheet. The final product would be a scaled, colored site plan for presentation. We would also have the drawing scanned to disk so you could print color versions to any size you wish.

Budget:

Prepare site drawing	\$3,500
Color drawing	400
Scan to disk	80
	<hr/>
	\$3,980

901
1425 Fourth Avenue
Seattle, Washington 98101

phone/ 206.652.5080

fax/ 206.652.5079

e-mail/ makers@makersarch.com

2. **Preliminary Order-of-Magnitude Cost Estimate.** MAKERS would prepare a preliminary order-of-magnitude cost estimate outlining the project's major components and providing an expected cost for each (i.e., floats, piling, handrails, fixtures, etc.). These costs would be included for both in-water and upland components.

Budget:

Prepare MAKERS' cost projection	\$1,100
Engineer review and input on technical issues	1,600
	<hr/>
	\$2,700

3. **Section/Elevation Drawing.** MAKERS would prepare a section/elevation drawing that would show the pier in side view, with water depth and other features called out. The final product would be a colored presentation drawing to support the plan drawing, and both could be color scanned to disk so you could print color copies at various sizes.

Budget:

Prepare section drawing	\$850
Color section drawing	400
Scan with plan drawing	0
	<hr/>
	\$1,250

4. **Short Written Project Description.** This document would include a description of the project, its components, and their function and purpose within the project.

Budget:

Prepare written report (3 to 5 pages)	\$750
	<hr/>
	\$750

5. **Public Meetings.** MAKERS would prepare presentation materials for and attend two public meetings.

Budget:

Prepare for public meetings	\$420
Prepare and mount meeting displays, large site plan, and section drawing for use at both meetings	560
Attend two public meetings (at \$560 each)	1,120
	<hr/>
	\$2,100

Mr. David Brereton
March 31, 2004
Page 3

6. **MAKERS/City Meetings.** The following meetings are proposed:

Budget:

One kick-off meeting at the City offices to review the scope of work, gather information, see the site, and discuss the schematic approach	\$750
One progress meeting to review the product and incorporate last comments	500
	<hr/>
	\$1,250

Total Budget	\$12,030
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Please let me know if my work outline and budget are similar to what you are thinking. We would enjoy helping out on your project.

Sincerely,



Gerald Hansmire
Partner

04gig_itr.doc

Billing Rates for 2004

Billing Rates:

* Eric Anderson.....	\$125 per hour
Julie Bassuk.....	\$90 per hour
Bob Bengford.....	\$90 per hour
* Gerald Hansmire.....	\$145 per hour
Stefani Lakey.....	\$125 per hour
John Owen.....	\$125 per hour
Junko Anazawa.....	\$57 per hour
Jessica Clarke.....	\$65 per hour
Janis Ford.....	\$62 per hour
Melissa Guilbeau.....	\$50 per hour
Brent Huizingh.....	\$70 per hour
Thanasorn Kamolratanayothin.....	\$73 per hour
* BJ Montoya.....	\$60 per hour
Pietro Potesta.....	\$65 per hour

Firmwide Average:

Based on percent billable – \$88 per hour

For simplified budgeting comparison – \$85 per hour

Multipliers:

General Multiplier Based on Year 2003 Budget (66% staff direct time;
55% partner direct time):

Wages	1.00
Overhead	1.86
	<hr/>
	2.86
Profit (10%)	0.29
	<hr/>
	3.15
Mark-up on subconsultants and expenses	10%

Navy and Coast Guard Multiplier (contract rates):

Wages (per contract projections)	1.00
Overhead (Navy)	1.71
	<hr/>
	2.71
Profit (10%)	0.27
	<hr/>
	2.98

Reimbursables:

Reproduction

(a)	8-1/2" x 11"	each	.10
(b)	11" x 17"	each	.20
(c)	Plot, Bond (14" x 20")	each	3.09
(d)	Plot, Bond (28" x 40")	each	9.00
(e)	Plot, Mylar (14" x 20")	each	4.50
(f)	Plot, Mylar (28" x 40")	each	14.00
(g)	Blackline Prints (14" x 20")	each	2.00
(h)	Blackline Prints (28" x 40")	each	4.00
(i)	Laser Color Copy (Canon) (8-1/2" x 11")	each	1.10
(j)	Laser Color Copy (Canon) (11" x 17")	each	2.50
(k)	Xerox on Velum (24" x 36")	each	7.50
(l)	Laser Plot on Vellum (AutoCAD) (24" x 36")	each	10.80
(m)	Field Photos, 36-Roll Film and Develop Prints (5" x 7")	each	20.50
(n)	Field Photos, 36-Roll Film and Develop Prints (5" x 7") and CD	each	27.00
(o)	Digital Camera Print	each	3.30



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STREET PAVEMENT MARKINGS - CONTRACT AUTHORIZATION
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

The 2004 budget provides for pavement marking on the City's arterial streets. Potential contractors were contacted in accordance with the City's Small Works Roster Process (Resolution No. 592). Two contractors responded with the following price quotation proposals:

Apply-A-Line, Inc.	\$ 21,829.75
Stripe Rite, Inc.	\$ 21,926.97

Based on the price quotation proposals received, the lowest price quotation received was from Apply-A-Line, Inc. in the amount of Twenty-one Thousand Eight Hundred Twenty-nine dollars and Seventy-Five cents (\$21,829.75).

It is anticipated that the work will be completed within two weeks after contract award, weather permitting.

FISCAL CONSIDERATIONS

This work was anticipated in the adopted 2004 Budget, and is within the 2004 Street Operating budgeted allocation of \$30,000, objective 8.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for Pavement Markings on City Streets 2004 to Apply-A-Line, Inc., as the lowest responsible respondent, for their price quotation proposal amount of Twenty-one Thousand Eight Hundred Twenty-nine dollars and Seventy-Five cents (\$21,829.75).

CITY OF GIG HARBOR
PAVEMENT MARKINGS ON CITY STREETS SPRING 2004
CONTRACT

THIS AGREEMENT, made and entered into in duplicate, this ____ day of _____, 2004, by and between the City of Gig Harbor, a Non-Charter Code City in the State of Washington, hereinafter called the "City", and Apply-A-Line, Inc., hereinafter called the "Contractor".

WITNESSETH:

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

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools and equipment necessary to complete the pavement markings on City streets, and shall perform any changes in the work, all in full compliance with the contract documents entitled "Pavement Markings on City Streets" which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Price Quotation Proposal," the approximate sum of Twenty-One Thousand Eight Hundred Twenty-Nine dollars and Seventy-Five cents (\$21,829.75), subject to the actual quantity of work performed, at the time and in the manner, subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.
2. Work shall commence and contract time shall begin on the first working day following the tenth (10th) calendar day after the date the City executes the Contract, or the date specified in the Notice to Proceed issued by the City's Public Works Director, whichever is later. All physical contract work shall be completed within fifteen (15)-working days.
3. The Contractor agrees to pay the City the sum of \$218.00 per day for each and every day said work remains uncompleted after expiration of the specified time, as liquidated damages.
4. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
5. The term "Contract Documents" shall mean and refer to the following: "Request for Price Quotation Proposals," "Price Quotation Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Payment Bond," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2000 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) Supplement to Division 1.
6. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.


7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this contract to be executed the day and year first herein above written:

CITY of GIG HARBOR:

CONTRACTOR:

Gretchen A. Wilbert, Mayor
City of Gig Harbor



Print Name: Terry Buol
Print Title: Vice President

ATTEST:

City Clerk

APPROVED FOR FORM:

City Attorney



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: COMPREHENSIVE PLAN UPDATE
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

A 2004 Planning Budget Objective called for an update of the 1994 Comprehensive Plan:

Update Comprehensive Plan. Complete comprehensive plan updates to include revised, annotated format: revise and update as required by State statute (RCW 36.70A.130 (4) (a). \$60,000 December

The State statute requires that we take action to review and, if needed, revise the comprehensive plan and development regulations to ensure that the plan and regulations comply with the requirements of the Growth Management Act on or before December 1, 2004.

Staff prepared and issued an RFP for this project on January 12, 2004. The RFP was posted on the City website; published in the Peninsula Gateway and The Daily Journal of Commerce; and directly sent to consultants with expertise in this area. The submission deadline was January 30, 2004; nine (9) proposals were received.

The members of the Community Development Committee (Council Members Dick, Franich, & Young) met on February 27, 2004 with staff to review the nine (9) proposals for consultant services that were received for the update of the 1994 Comprehensive Plan. After review of all nine submittals, the Committee members decided to meet with the top two firms, Huckell/Weinman Associates and AHBL, Inc. to better understand each firm's knowledge of the Growth Management Act, further clarify the process to be followed, and identify the scope of services to be provided. The Committee met with these two firms on March 5, 2004. At the conclusion of this meeting, the Committee selected AHBL Inc. as the best able to perform the task.

The standard consultant services contract is being utilized for this project.

RECOMMENDATION

I recommend that Council approve a consultant services contract with AHBL Inc. for the Comprehensive Plan Update in an amount not to exceed sixty thousand dollars (\$60,000.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
AHBL, Inc.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc., a corporation organized under the laws of the State of Washington, located and doing business 2215 N. 30th St., Suite 300, Tacoma, Washington, 98403 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the update of the Comprehensive Plan and GMA related development regulations, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 2, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on a fee for each task, not to exceed sixty-thousand dollars (\$60,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. . The parties agree that the work described in **Exhibit A** shall be completed by December 1, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

E. It is the intent of this contract for the Consultant's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT
Michael Kattermann, AICP
Associate, AHBL, Inc.
316 Occidental Ave S., Suite 320
Seattle, WA 98104
(206) 267- 2425
(206) 267-2429 Fax
mkattermann@ahbl.com

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170
(253) 853-7597 Fax
vodopichj@lcityofgigharbor.net

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this 2nd day of April, 2004

CONSULTANT

CITY OF GIG HARBOR

By: Paul B McCormick
Paul B. McCormick, Principal

By: _____
Mayor

Notices to be sent to:
Michael Kattermann, AICP
Associate
AHBL, Inc
316 Occidental Ave S., Suite 320
Seattle, WA 98104
(206) 267-2425
(206) 267-2429 Fax
mkattermann@ahbl.com

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-62170
(253) 853-7597 Fax
vodopichj@cityofgigharbor.net

APPROVED AS TO FORM:

City Attorney

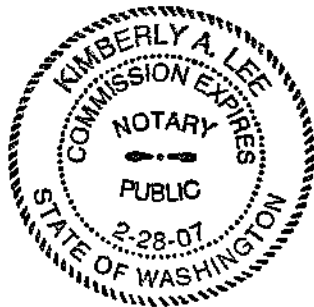
ATTEST:

City Clerk

STATE OF WASHINGTON)
)
COUNTY OF Pierce) ss.

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

Dated: April 2, 2004



Kimberly A. Lee

Kimberly A. Lee

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:
2215 N. 30th Tacoma, WA 98403

My Commission expires: 2/28/07

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____

RECEIVED

APR 06 2004

CITY OF GIG HARBOR
OPERATIONS & ENGINEERING

EXHIBIT A



April 2, 2004

Mr. John Vodopich, AICP
Director, Community Development Department
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335-1214

Civil Engineers

Structural Engineers

Landscape Architect

Community Planners

Land Surveyors

Neighbors

Project: Gig Harbor Comprehensive Plan Update; Our File No. 204129.30
Subject: Proposal for Land Use Planning Services

Dear John:

AHBL is pleased to submit this proposal to assist the City of Gig Harbor with the update of its Comprehensive Plan and related development regulations. This scope describes the tasks to be carried out by AHBL staff and our subconsultants, Adolfson and Associated Earth Sciences (AES) in the first phase of the project. At the end of the first phase, we will develop a scope for the remainder of the project based on the results of the analyses conducted up to that point.

Our scope of services for Phase I is listed below:

1. Conduct a review and analysis of the most recently amended Comprehensive Plan for consistency with GMA, pertinent hearings board decisions, Pierce County countywide policies and internal to the document.
2. Conduct a review and analysis of the zoning, subdivision, environment, and administration sections of the City's development code for consistency with GMA and the City's Comprehensive Plan.
3. Review literature on best available science (BAS) and existing inventory information relevant to Gig Harbor. Prepare a brief technical memorandum summarizing the information for critical areas. This task will be carried out by staff from Adolfson and AES.
4. Review critical areas ordinances for consistency with BAS cited in technical report. This task will be carried out by staff from Adolfson and AES.

TACOMA
2215 North 30th Street
Suite 300
Tacoma, WA 98403-3350
253.383.2422 TEL
253.383.2572 FAX

RECEIVED

APR 06 2004

**CITY OF GIG HARBOR
OPERATIONS & ENGINEERING**



5. Convene one meeting with appropriate City staff and consultant team members to initiate the project. This scope allows 8 hours.
6. We estimate that there will be some reimbursable expenses (e.g. mileage, reprographics) related to the meetings and preparation of the draft and final plans in the amount of \$200.

Billing Summary - Phase I:

<u>Item</u>	<u>Description</u>	<u>Task No.</u>	<u>Amount</u>
Item 1-2	Gap Analyses on Comp Plan & Dev Code	T-00	\$4,000
Item 3-4	BAS inventory & CAO review	T-31	6,900
Items 5	Team meeting (8 hours)	T-32	900
Item 6	Reimbursable expenses	T-33	<u>200</u>
Phase I Total			\$12,000
Phase II total			<u>\$48,000</u>
GRAND TOTAL			\$60,000

The specific scope for Phase II will be developed upon completion of Phase I. In general, Phase II will consist of developing a set of recommended amendments to the City's Comprehensive Plan, Development Regulations, and Critical Areas Ordinance based on the analyses in Phase I. The scope for Phase II will also reflect the remaining budget of \$48,000 for this project.

Some of the tasks listed are influenced by factors outside of our control. Based on our experience, we have estimated the number of hours required to complete these tasks. During the course of the project, if it is determined that more hours are required to complete any of these tasks, due to circumstances outside of our control, we will notify you immediately. We will not perform additional work until we have your written authorization. The task numbers on the invoice will correlate with this proposal. With the exception of miscellaneous expenses, tasks will be billed as they are completed for the total task amount as a lump sum fee.

If you find this proposal acceptable, please let me know and we will execute the City's contract. Our receipt of the signed contract from you will be our notification to proceed.

Mr. John Vodopich
April 2, 2004
Page 3

RECEIVED

APR 06 2004

CITY OF GIG HARBOR
OPERATIONS & ENGINEERING



Thank you again for this opportunity to assist you with this project. If you have any questions, please call me at 253-383-2422.

Sincerely

Michael D. Kattermann, AICP
Associate

MDK/lak

c: Len Zickler, AHBL
Wayne Carlson, AHBL
Brad Medrud, AHBL
Teresa Vanderburg, Adolfsen and Associates, Inc.
Jon Sondergaard, Associated Earth Sciences, Inc.
AHBL Accounting

129pro040402.doc

EXHIBIT B



SCHEDULE OF CHARGES AND COMPENSATION

Principal.....	145.00/Hour
Associate Principal.....	135.00/Hour
St. Project Manager.....	120.00/Hour
Project Manager.....	110.00/Hour
Chief of Parties.....	110.00/Hour
Project Engineer 5.....	105.00/Hour
Planner 5.....	100.00/Hour
Landscape Architect 2.....	90.00/Hour
Project Engineer 4.....	90.00/Hour
Planner 4.....	85.00/Hour
Survey Technician.....	85.00/Hour
Engineer Technician 3.....	85.00/Hour
Project Engineer 3.....	80.00/Hour
Party Chief.....	80.00/Hour
Landscape Architect 1.....	75.00/Hour
Planner 3.....	75.00/Hour
Landscape Designer 3.....	75.00/Hour
Project Engineer 2.....	70.00/Hour
CAD Operator 3.....	70.00/Hour
Engineering Technician 2.....	70.00/Hour
Project Engineer 1.....	65.00/Hour
Planner 2.....	65.00/Hour
CAD Operator 2.....	65.00/Hour
Project Expeditor.....	65.00/Hour
Landscape Designer 2.....	60.00/Hour
Engineering Technician 1.....	60.00/Hour
CAD Operator 1.....	55.00/Hour
Planner 1.....	55.00/Hour
Landscape Designer 1.....	55.00/Hour
Chainperson.....	50.00/Hour
Clerical.....	50.00/Hour
Survey Crew.....	130.00/Hour
I.T. Systems Manager.....	135.00/Hour
I.T. Systems Engineer.....	110.00/Hour
I.T. Technician.....	90.00/Hour
Outside Consultants.....	Separate Fee Proposal
Geotechnical Engineers.....	Separate Fee Proposal
Environmental Consultants.....	Separate Fee Proposal

The Schedule of Charges and Compensation is subject to change.

Charges are made for technical typing, as in the preparation of reports and for technical clerical services directly related to projects. Direct charges are not made for general secretarial services, office management, accounting or maintenance.



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: STINSON AVENUE PEDESTRIAN IMPROVEMENT PROJECT
RIGHT-OF-WAY AND TOPOGRAPHIC SURVEY
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

A budgeted objective for 2004 includes the design/construction of phase 1 of the Stinson Avenue Pedestrian Improvement Project for a new curb, gutter sidewalk and street lights on the east side of Stinson Avenue, north of Rosedale Street.

After reviewing the Consultant Services Roster, the survey firm of Aspen Land Surveying LLC was selected as the most qualified to perform the work. This selection was based on their understanding of the project, familiarity with the area, experience, and outstanding past performance with the City of Gig Harbor.

POLICY CONSIDERATIONS

Aspen Land Surveying LLC is able to meet all of the City's standard insurance provisions for professional services contracts

FISCAL CONSIDERATIONS

This work was anticipated in the adopted 2004 Budget and is within the 2004 Street budgeted allocation of \$100,000, objective #17

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Aspen Land Surveying LLC for survey work in the amount not to exceed Five Thousand Five Hundred dollars and zero cents (\$5,500.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ASPEN LAND SURVEYING LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Aspen Land Surveying LLC, a limited liability company, organized under the laws of the State of Washington located and doing business at 12904-A Purdy Drive NW, Gig Harbor, Washington 98332 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the survey work for the 45th Street Pedestrian Improvements and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 6, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Five Thousand Five Hundred dollars and no cents (\$5,500.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by May 28, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

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

INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of

Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:
Aspen Land Surveying LLC
ATTN: Michael Helms
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

XVII. Assignment

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

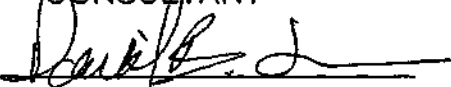
XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this
_____ day of _____, 200_____.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Aspen Land Surveying LLC
ATTN: Michael Helms
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: APRIL 7, 2004



Nancy A Foster
NANCY A. FOSTER
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

GIG HARBOR, PIERCE COUNTY
My Commission expires: 6-15-05

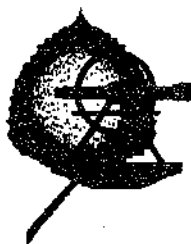
STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____



Aspen Land Surveying LLC
12904-A Purdy Drive NW
Gig Harbor, WA 98332

(253) 857-4265

FAX: (253) 857-9265

mike@aspenland.com

EXHIBIT A SCOPE OF SERVICES

April 6, 2004

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

ATTN: Mr. David Brereton, Director of Operations

Via Fax: 853-7597

RE: Topographic Survey of the "Right of Way" along 45th Street Court N.W. within the City Limits of Gig Harbor

Dear Mr. Brereton:

Per the recent e-mail dated April 06, 2004 detailing the required scope of work, for a topographic survey of 45th Street Court from and including the intersection at Point Fosdick and 45th Street Court easterly to the Cul-de-sac of 45th Street Court N.W. We appreciate the opportunity to submit an up-graded proposal.

ASSUMPTIONS

This proposal is based on the assumption that a utility locating service will be contacted by us for coordination and the cost billed to you separately.

SCOPE OF WORK

We will conduct a survey of the "Right of Way" along 45th Street Court N.W., including intersections, to include items detailed in the e-mail and the following services:

1. TIE TO CONTROLLING MONUMENTS. We will find the controlling horizontal & vertical survey monuments upon which the "Right of Way" is based, and run a traverse from those monuments to the site for control and establishing benchmarks.
2. BOUNDARY CALCULATION. We will determine the precise location of "Right of Way" boundary, based on legal description, and the controlling monumentation.
3. TOPOGRAPHIC SURVEY. We will conduct a topographic survey of the "Right of Way", and outside of the "Right of Way" a minimum of 15 feet and prepare a map showing the "Right of Way" boundary, roadway, visible utilities, underground utilities (delineated by others), significant improvements, signage, traffic control and contours at two-foot intervals. The map will be drawn to a suitable scale, and will be delivered on electronic media in AutoCAD format, as well as hard copy.

EXHIBIT B
SCHEDULE OF RATES AND
ESTIMATED HOURS

City of Gig Harbor
Mr. David Brereton
Director of Operations
April 6, 2004
Page 2 of 2

RE: 45th Street Court N.W. TOPO

SCHEDULE

We estimate that the survey will be completed within 45 days after receipt of Notice to Proceed.

FEES

The services described above will be provided for a fixed fee of \$5,500, due upon completion of the survey. Interest will accrue on any overdue balance at the rate of 1½% per month.

This proposal is valid for ninety (90) days after issue date.

ACCEPTANCE

If this proposal meets with your approval, please sign in the space provided below and return a copy, as indication of your acceptance and Notice to Proceed with the survey.

Please call me if you have any questions or concerns regarding this proposal.

Sincerely,

Aspen Land Surveying LLC

This proposal is hereby accepted as described above.



Michael Ray Helms
Estimator

_____ Date

Please make your check payable to Temple Unlimited, whom we have contracted to manage our accounts.

CITY OF GIG HARBOR

SCOPE OF WORK SURVEY AND BASE MAPPING

45TH STREET COURT N.W.

ESTABLISH SURVEY CONTROL

- Research and obtain monument records, right-of-way plans, utility as-builts, and other pertinent records from the City and Pierce County.
- Verify survey control monumentation to establish centerline and abutting public and private roads that intersect this road.
- Establish the road centerline and the right-of-way widths for the public roads throughout the limits of the project using Assessor-Treasurer maps, and other information available to the public.
- Establish vertical control for the project using published Pierce County or City of Gig Harbor benchmarks. Additional temporary benchmarks will be set within the project limits for future construction purposes.

FIELD SURVEY WORK

- Provide horizontal control throughout the length of the project and tie into existing survey control monuments in the vicinity of the project.
- Provide vertical control throughout the length of the project and establish temporary benchmarks for future use during the construction phase of the project.
- Record sufficient ground elevation shots throughout the project to establish project contour lines and spot elevations of road centerline, edge of pavement, road intersections, road and driveway approaches, and other break points and vertical features at a minimum of 50-foot roadway stations with a vertical accuracy of plus or minus .02-feet on hard surfaces.
- Locate all above ground structures, retaining walls, man-made objects, signs, and similar features, and identify them on the topographic base mapping.
- Locate and identify storm drainage and sanitary sewer structures, pipes, control devices and similar features.
- Survey and record as best as possible utilities identified by the utility locate service in plan view only.
- Locate appurtenances within the road right-of-way including mail boxes, signs, traffic control devices, and similar features.

BASE MAPPING

- Process field data, create break lines, and establish sheet format.
- Prepare base maps at a scale of 1" = 20'. Roadway stationing will start at 10+00 at the intersection of 45th Street Court N.W. / Pt. Fosdick and will increase to east to the

end of the project. North will be towards the top of the sheet. Benchmark information will be noted along with the applicable datum. Basis of bearing information and survey control information will be described and noted.

- Produce drawings and contours. Paving or other hard surface elevations shall be to the nearest 0.02 feet with elevations of other surfaces shown to the nearest 0.10 feet.
- Base maps will include the right-of-way line and topographic features as noted above.
- Produce planimetric work and lines. Base maps will include the right-of-way line and topographic features as noted above.
- The base maps will be delivered to the City in electronic point file format with descriptions using AutoCAD 2002 and Auto Desk Civil. The 3-D TIN shall be included in the base drawing and will be in a format compatible with Auto Desk Civil. Layering and symbols will conform to basic APWA format or convention.
- Plan sheet format and layout as provided by the City will be used. Plan sheet size will be 22" by 34". The City will provide Aspen their standard sheet layout in electronic format.
- The base maps will be put into sheet format suitable for future road improvement design work with the top half of the sheet showing the plan view and the bottom half reserved for the profile view. An existing road centerline profile will be developed. Station breaks at even roadway stations will be developed for each sheet.
- A hard copy of the base maps will be provided to the City that have been stamped and signed by a Professional Land Surveyor.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: 45TH STREET PEDESTRAIN IMPROVEMENTS
RIGHT OF WAY AND TOPOGRAPHIC SURVEY
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

A budgeted objective for 2004 includes the design/construction of the 45th Street Pedestrian Improvements for a new curb, gutter and sidewalk along 45th Street.

After reviewing the Consultant Services Roster, the survey firm of Aspen Land Surveying LLC was selected as the most qualified to perform the work. This selection was based on their understanding of the project, familiarity with the area, experience, and outstanding past performance with the City of Gig Harbor.

POLICY CONSIDERATIONS

Aspen Land Surveying LLC is able to meet all of the City's standard insurance provisions for professional services contracts

FISCAL CONSIDERATIONS

This work was anticipated in the adopted 2004 Budget and is within the 2004 Street budgeted allocation of \$50,000, objective #14.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Aspen Land Surveying LLC for survey work in the amount not to exceed Five Thousand Five Hundred dollars and zero cents (\$5,500.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ASPEN LAND SURVEYING LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Aspen Land Surveying LLC, a limited liability company, organized under the laws of the State of Washington located and doing business at 12904-A Purdy Drive NW, Gig Harbor, Washington 98332 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the survey work for the Stinson Avenue Pedestrian Improvement Project and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 6, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Five Thousand Five Hundred dollars and no cents (\$5,500.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by May 28, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

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

INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of

Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:
Aspen Land Surveying LLC
ATTN: Michael Helms
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 200__.

CONSULTANT
By: *David B. J.*
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Aspen Land Surveying LLC
ATTN: Michael Helms
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: APRIL 7, 2004



Nancy A Foster

NANCY A. FOSTER
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

GIG HARBOR, PIERCE COUNTY

My Commission expires: 6/15/05

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____



Aspen Land Surveying LLC
12904-A Purdy Drive NW
Gig Harbor, WA 98332

(253) 857-4265

FAX: (253) 857-9265

mike@aspenland.com

**EXHIBIT A
SCOPE OF SERVICES**

April 6, 2004

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

ATTN: Mr. David Brereton, Director of Operations

Via Fax: 853-7597

RE: Topographic Survey of the "Right of Way" along a Portion of Stinson Avenue within the City Limits of Gig Harbor

Dear Mr. Brereton:

Per the recent e-mail dated April 06, 2004 detailing the required scope of work, for a topographic survey of Stinson Avenue between Harborview Drive and Rosedale Street N.W. including intersections. We appreciate the opportunity to submit an up-graded proposal.

ASSUMPTIONS

This proposal is based on the assumption that a utility locating service will be contacted by us for coordination and the cost billed to you separately.

SCOPE OF WORK

We will conduct a survey of the "Right of Way" along Stinson Avenue between Harborview Drive and Rosedale Street N.W. including intersections to include items detailed in the e-mail and the following services:

1. **TIE TO CONTROLLING HORIZONTAL & VERTICAL MONUMENTS.** We will find the controlling horizontal & vertical survey monuments upon which the "Right of Way" is based, and run a traverse from those monuments to the site for control and establishing benchmarks.
2. **BOUNDARY CALCULATION.** We will determine the precise location of "Right of Way" boundary, based on legal description, and the controlling monumentation.
3. **TOPOGRAPHIC SURVEY.** We will conduct a topographic survey of the "Right of Way", and outside of the "Right of Way" a minimum of 15 feet and prepare a map showing the "Right of Way" boundary, roadway, visible utilities, underground utilities (delineated by others), significant improvements, signage, traffic control and contours at two-foot intervals. The map will be drawn to a suitable scale, and will be delivered on electronic media in AutoCAD format, as well as hard copy.

EXHIBIT B
SCHEDULE OF RATES AND
ESTIMATED HOURS

City of Gig Harbor
Mr. David Brereton
Director of Operations
April 6, 2004
Page 2 of 2

RE: Stinson Avenue TOPO

SCHEDULE

We estimate that the survey will be completed within 45 days after receipt of Notice to Proceed.

FEES

The services described above will be provided for a fixed fee of \$5,500, due upon completion of the survey. Interest will accrue on any overdue balance at the rate of 1½% per month.

This proposal is valid for ninety (90) days after issue date.

ACCEPTANCE

If this proposal meets with your approval, please sign in the space provided below and return a copy, as indication of your acceptance and Notice to Proceed with the survey.

Please call me if you have any questions or concerns regarding this proposal.

Sincerely,

Aspen Land Surveying LLC

This proposal is hereby accepted as described above.



Michael Ray Helms
Estimator

_____ Date

Please make your check payable to **Temple Unlimited**, whom we have contracted to manage our accounts.

CITY OF GIG HARBOR

SCOPE OF WORK SURVEY AND BASE MAPPING

STINSON AVENUE

ESTABLISH SURVEY CONTROL

- Research and obtain monument records, right-of-way plans, utility as-builts, and other pertinent records from the City and Pierce County.
- Verify survey control monumentation to establish centerline and abutting public and private roads that intersect this road.
- Establish the road centerline and the right-of-way widths for the public roads throughout the limits of the project using Assessor-Treasurer maps, and other information available to the public.
- Establish vertical control for the project using published Pierce County or City of Gig Harbor benchmarks. Additional temporary benchmarks will be set within the project limits for future construction purposes.

FIELD SURVEY WORK

- Provide horizontal control throughout the length of the project and tie into existing survey control monuments in the vicinity of the project.
- Provide vertical control throughout the length of the project and establish temporary benchmarks for future use during the construction phase of the project.
- Record sufficient ground elevation shots throughout the project to establish project contour lines and spot elevations of road centerline, edge of pavement, road intersections, road and driveway approaches, and other break points and vertical features at a minimum of 50-foot roadway stations with a vertical accuracy of plus or minus .02-feet on hard surfaces.
- Locate all above ground structures, retaining walls, man-made objects, signs, and similar features, and identify them on the topographic base mapping.
- Locate and identify storm drainage and sanitary sewer structures, pipes, control devices and similar features.
- Survey and record as best as possible utilities identified by the utility locate service in plan view only.
- Locate appurtenances within the road right-of-way including mail boxes, signs, traffic control devices, and similar features.

BASE MAPPING

- Process field data, create break lines, and establish sheet format.
- Prepare base maps at a scale of 1" = 20'. Roadway stationing will start at 10+00 at the intersection of Stinson / Harborview and will increase to east to the end of the

project. North will be towards the top of the sheet. Benchmark information will be noted along with the applicable datum. Basis of bearing information and survey control information will be described and noted.

- Produce drawings and contours. Paving or other hard surface elevations shall be to the nearest 0.02 feet with elevations of other surfaces shown to the nearest 0.10 feet.
- Base maps will include the right-of-way line and topographic features as noted above.
- Produce planimetric work and lines. Base maps will include the right-of-way line and topographic features as noted above.
- The base maps will be delivered to the City in electronic point file format with descriptions using AutoCAD 2002 and Auto Desk Civil. The 3-D TIN shall be included in the base drawing and will be in a format compatible with Auto Desk Civil. Layering and symbols will conform to basic APWA format or convention.
- Plan sheet format and layout as provided by the City will be used. Plan sheet size will be 22" by 34". The City will provide Aspen their standard sheet layout in electronic format.
- The base maps will be put into sheet format suitable for future road improvement design work with the top half of the sheet showing the plan view and the bottom half reserved for the profile view. An existing road centerline profile will be developed. Station breaks at even roadway stations will be developed for each sheet.
- A hard copy of the base maps will be provided to the City that have been stamped and signed by a Professional Land Surveyor.



'THE MARITIME CITY'

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
RE: SANITARY SEWER EASEMENT AGREEMENT
- EL JIREH SHORT PLAT, RUSS AND NORMA CARLSEN
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

As part of the El Jireh short plat, a private development project, a new gravity sewer main is to be installed on a private road. In order for the city to have access and the ability to maintain this city utility, an easement has been granted for the utility crossing and access for maintenance purposes. The easement shall be approximately 15 feet wide and 764.46 feet long (see attached exhibit).

The city's standard easement agreement has been drafted and approved by Carol Morris, City Attorney.

City Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

No funds will be expended for the acquisition of the described easement.

RECOMMENDATION

I recommend that City Council approve this agreement.

AFTER RECORDING, RETURN TO:

**The City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: Russell and Norma Carlsen (Trustees for the Carlsen Trust)

Grantee: City of Gig Harbor

Legal Description: A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East W.M., 7.5 feet on either side of the centerline document.

The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 0221088001

Reference No. of Documents Assigned or Released: N/A

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Russell and Norma Carlsen, husband and wife, Trustees for the Carlsen Trust, as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as 2809 65th Street Court NW, Gig Harbor, Washington 98335, and legally described as follows (the "Property" herein):

Section 08 Township 21 Range 02 Quarter 43: L1 OF SHORT PLAT 75-356 OUT OF 4-105 SEG1-1582 TP (DCWJES9-10-82)

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a sanitary sewer system.

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a sanitary sewer system, which easement (the "Easement" herein) is legally described as follows:

See Exhibit A, attached hereto

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this ____ day of _____, 200__.

CITY OF GIG HARBOR

By: _____
Its Mayor

OWNERS:

Russell Carlsen
Print Name: RUSSELL CARLSEN
Trustee for the Carlsen Trust

Norma Carlsen
Print Name: Norma Carlsen
Trustee for the Carlsen Trust

APPROVED AS TO FORM:

City Attorney

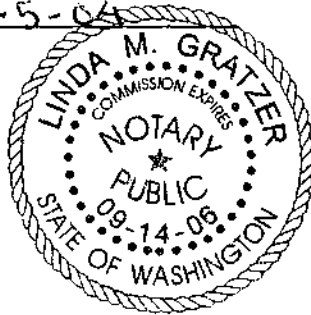
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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

Dated: 4-5-06



NOTARY PUBLIC, State of Washington,
residing at: Lakewood
My Commission expires: 09-14-08

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, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ 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: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____

Exhibit "A"

A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M.; 7.5 feet on either side of the centerline described as follows:

Commencing at the South Quarter-Corner of said Section 8; thence S 88°48'46" E along the Section Line, 650.00 feet; thence N 2°27'47" E, 30.01 feet to the north margin of 64th Street NW and the True Point of Beginning; thence N 2°27'47" E, 304.78 feet; thence N 1°50' 58" E, 199.68 feet; thence N 4°21'00" E, 260.00 feet to the terminus of said centerline.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
RE: SANITARY SEWER EASEMENT AGREEMENT
- EL JIREH SHORT PLAT, PAUL BUTLER
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

As part of the El Jireh short plat, a private development project, a new gravity sewer main is to be installed on a private road. In order for the city to have access and the ability to maintain this city utility, an easement has been granted for the utility crossing and access for maintenance purposes. The easement shall be approximately 15 feet wide and 764.46 feet long (see attached exhibit).

The city's standard easement agreement has been drafted and approved by Carol Morris, City Attorney.

City Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

No funds will be expended for the acquisition of the described easement.

RECOMMENDATION

I recommend that City Council approve this agreement.

AFTER RECORDING, RETURN TO:

**The City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: BUTLER, PAUL

Grantee: City of Gig Harbor

Legal Description: A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., 7.5 feet on either side of the centerline. The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 0221088004

Reference No. of Documents Assigned or Released: _____

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and Paul Butler ~~for an~~
a single man ~~organized under the laws of the State of Washington~~, as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as 2808/2810 165th ST CT NW, Gig Harbor, Washington 98335, and legally described as follows (the "Property" herein):

Section 08 Township 21 Range 02 Quarter 43 : L 4 OF SHORT PLAT 75-356 OUT OF 4-105
SEG I-1582 TP (DCWJES9-17-82)

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a Sanitary Sewer System;

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a Sanitary Sewer System, which easement (the "Easement" herein) is legally described as follows:

see "Exhibit A"

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

9. **Easement Binding on Successors and Assigns.** This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

Dated this ____ day of _____, 200__.

CITY OF GIG HARBOR

By: _____
Its Mayor

OWNERS:

Print Name: Paul W. Butler

Print Name: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
)
COUNTY OF Pierce) ss.

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

Dated: 3/29/04

PAMALA K. PETERSON
Notary Public
STATE OF WASHINGTON
My Commission Expires 6/19/04

NOTARY PUBLIC, State of Washington,
residing at: Gig Harbor
My Commission expires: 6/19/04

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, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ 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: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____

Exhibit "A"

A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M.; 7.5 feet on either side of the centerline described as follows:

Commencing at the South Quarter-Corner of said Section 8; thence S 88°48'46" E along the Section Line, 650.00 feet; thence N 2°27'47" E, 30.01 feet to the north margin of 64th Street NW and the True Point of Beginning; thence N 2°27'47" E, 304.78 feet; thence N 1°50' 58" E, 199.68 feet; thence N 4°21'00" E, 260.00 feet to the terminus of said centerline.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
RE: SANITARY SEWER EASEMENT AGREEMENT
- EL JIREH SHORT PLAT, JOE AND LINDA HAZEN
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

As part of the El Jireh short plat, a private development project, a new gravity sewer main is to be installed on a private road. In order for the city to have access and the ability to maintain this city utility, an easement has been granted for the utility crossing and access for maintenance purposes. The easement shall be approximately 15 feet wide and 764.46 feet long (see attached exhibit).

The city's standard easement agreement has been drafted and approved by Carol Morris, City Attorney.

City Council approval of the easement agreement is being requested.

FISCAL CONSIDERATIONS

No funds will be expended for the acquisition of the described easement.

RECOMMENDATION

I recommend that City Council approve this agreement.

AFTER RECORDING, RETURN TO:

**The City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335**

Document Title: **EASEMENT AGREEMENT**

Grantor: HARZEN, JOE E. and LINDA M.

Grantee: City of Gig Harbor

Legal Description: A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M.; 7.5 feet on either side of the centerline
The complete legal description may be found on page 7 of the document.

Property Tax Parcel No.: 0221084080

Reference No. of Documents Assigned or Released: _____

EASEMENT AGREEMENT

THIS INSTRUMENT, executed this date by and between the City of Gig Harbor, a Washington municipal corporation (the "City" herein), and JOE E. and LIADAM. HAZEN, ^{father} husband and wife organized under the laws of the State of Washington], as the owners of the within-described property (the "Owners" herein):

WITNESSETH:

WHEREAS, Owners own a fee simple and/or have a substantial beneficial interest in the following real property, commonly known as 2811 64th ST NW, Gig Harbor, Washington 98 335, and legally described as follows (the "Property" herein): Section 08 Township 21 Range 02 Quarter 43: COM SW COR LOT 5 THE ALG S LI OF SD LOT 40 RODS TO POB TH N 305 FT TH W PAR TO S LI OF SD LOT 230 FT TH S 305 FT TO S LI OF SD LOT THE 230 FT TO POB EXC S 30 FT THEREOF EXC E 30 FT THEREOF

WHEREAS, the City desires an easement for the purpose of monitoring, inspecting, maintaining, operating, improving, repairing, constructing, and reconstructing a Sanitary sewer system;

NOW, THEREFORE, the parties hereto agree as follows:

In consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, Owners hereby convey and warrant to the City, a perpetual, nonexclusive easement, under, over, through and across the Property, for the purposes of monitoring, inspecting, maintaining, improving, repairing, constructing, and reconstructing a Sanitary sewer system, which easement (the "Easement" herein) is legally described as follows:

see "Exhibit A"

This Easement is subject to and conditioned upon the following terms and covenants, which both parties promise to faithfully and fully observe and perform:

1. **Responsibility to Repair Damage.** The City shall, upon completion of any work within the Property covered by the easement, restore the surface of the Easement, and any improvements on the Property not owned by the City, disturbed, damaged or destroyed during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. However, the City shall not be required to restore any such improvements installed and/or constructed on the Easement by the Owners subsequent to execution of this Easement Agreement, and as otherwise provided in paragraph "2" below.

2. **Limitations on Owners.** The Owners shall retain the right to use the surface of the Easement. However, the Owners shall not directly or indirectly have the right to:

- A. Erect or install, or cause to be erected or installed, any buildings, structures, pavement, or facilities within the Easement; or

- B. Plant, or cause to be planted, any additional trees, shrubs, or vegetation with deep root patterns which may cause damage to or interfere with the drainage system located within the Easement; or
- C. Develop, landscape, or beautify, or cause to be developed, landscaped, or beautified, the Easement area in any way that would unreasonably increase the costs to the City of restoring the Easement or restoring any Owner-caused or Owner authorized improvements therein; or
- D. Grant any additional or subsequent easement inconsistent with the rights of the City as granted herein. The City shall make the final determination whether any proposed subsequent easement is inconsistent with the City's Easement.

3. **Notice of Entry.** The Owners, their successors and assigns, shall allow access to the Easement by the City, without the City having to give prior notice of its intent to access the Easement.

4. **Indemnification, Hold Harmless.** The Owners hereby release, covenant not to bring suit and agree to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person arising out of or in connection with this Easement, except for injuries or damages caused by the sole negligence of the City.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owners and the City, its officers, officials, employees, agents and representatives, the Owners' liability hereunder shall be only to the extent of the Owners' negligence.

The provisions of this section shall survive the termination of this Easement.

5. **Dispute Resolution and Attorneys Fees.** If any dispute arises between the Owners and the City under any of the provisions of this Easement which cannot be resolved by agreement of the parties, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party of any such litigation shall be entitled to recover its reasonable attorneys' fees and costs, including any expert witness fees.

6. **Waiver.** No waiver by either party of any term or condition of this Easement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Easement.

7. **Merger.** This Easement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Easement and no prior agreements shall be effective for any purpose.

8. **Severability.** If any of the provisions contained in this Easement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

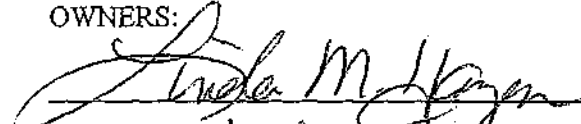
9. Easement Binding on Successors and Assigns. This instrument shall be recorded in the records of the Pierce County Auditor at the expense of the Owners and shall inure to the benefit of and be binding upon the Owners, its legal representatives, assigns, heirs and all owners of an after-acquired interest in the Property, and their successors and assigns.

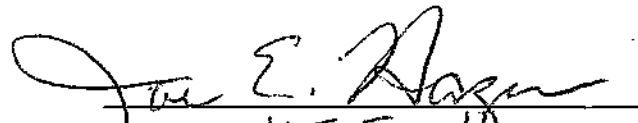
Dated this 29 day of March, 2004.

CITY OF GIG HARBOR

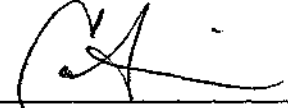
By: _____
Its Mayor

OWNERS:


Print Name: Linda M. Hazen

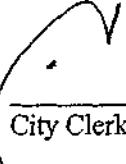

Print Name: JOE E. HAZEN

APPROVED AS TO FORM:



City Attorney

ATTEST:

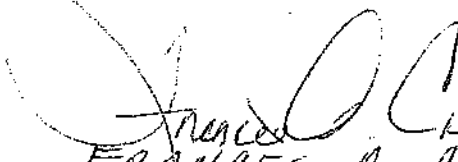


City Clerk

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

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

Dated: 3.29.04


FRANCES A. CRELIER
NOTARY PUBLIC, State of Washington;
residing at: Pert Orchard
My Commission expires: 8.29.04

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, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ 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: _____

NOTARY PUBLIC, State of Washington,
residing at: _____
My Commission expires: _____

Exhibit "A"

A 15-foot-wide easement in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M.; 7.5 feet on either side of the centerline described as follows:

Commencing at the South Quarter-Corner of said Section 8; thence S 88°48'46" E along the Section Line, 650.00 feet; thence N 2°27'47" E, 30.01 feet to the north margin of 64th Street NW and the True Point of Beginning; thence N 2°27'47" E, 304.78 feet; thence N 1°50' 58' E, 199.68 feet; thence N 4°21'00" E, 260.00 feet to the terminus of said centerline.



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION - CIVIC CENTER HVAC SUPPORT SERVICES
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

An Alerton control system was installed in the Gig Harbor Civic Center for the heating and ventilation system (HVAC). Annual support services are necessary to ensure that the system is properly maintained and operates as designed. ATS Automation, Inc. is the only company in Western Washington that provides service for the Alerton system. As such, a formal resolution declaring these services a sole source provider and waiving the competitive negotiation requirements is necessary to enter into a support service contract with ATS Automation, Inc.

The City Attorney has reviewed and approved the resolution.

FISCAL IMPACTS

Adequate funds existing in the 2004 Building fund to cover this expenditure of Two Thousand Eight Hundred Fifty dollars and no cents (\$2,850.00).

RECOMMENDATION

I recommend that Council approve the resolution as presented.

RESOLUTION NO. 622

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DECLARING THE SUPPORT SERVICES CONTRACT FOR THE HVAC AND CONTROL SYSTEM FOR THE GIG HARBOR CIVIC CENTER TO BE LIMITED TO A SOLE SOURCE, AND WAIVING COMPETITIVE NEGOTIATION REQUIREMENTS FOR SUCH PURCHASE.

WHEREAS, the City has installed an Alerton control system in the Gig Harbor Civic Center; and

WHEREAS, the Alerton control system provides control of the building's HVAC and control system; and

WHEREAS, ATS Automation, Inc. has provided the City with an annual contract for Support Services, System Performance Services, Central Equipment Performance Verification and Alerton Technology updates, in the amount of Two Thousand Eight Hundred Fifty dollars and no cents; (\$2,850) for a one year period, and

WHEREAS, City staff contacted Alerton and was directed to the Alerton website and it was determined that ATS Automation Inc. is the only company in Western Washington that is approved by Alerton to provide service for their equipment, and

WHEREAS, the City Council may waive the requirements of advertisement, proposal evaluation, and competitive negotiation of these support services pursuant to RCW 39.04.280 if the City Council declares that the proposed contract is clearly and legitimately limited to a single source or supply, and recites why this situation exists;
NOW, THEREFORE,

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

Section 1. The City Council declares that the contracting of support services as set forth in the attached ATS Automation, Inc. Consultant Services Contract is clearly and legitimately limited to a single source or supply. Therefore, the City Council waives all competitive negotiation requirements for this sole source contract.

RESOLVED this ____th day of April, 2004.

APPROVED:

MAYOR GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL:

RESOLUTION NO.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ATS AUTOMATION, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and ATS Automation Inc., a corporation organized under the laws of the State of Washington located and doing business at 450 Shattuck Avenue South, Renton, Washington 98055 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in maintaining the HVAC and control system for the Gig Harbor Civic Center and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated February 2, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant not to exceed Two Thousand Eight Hundred Fifty dollars and no cents (\$2,850.00) as provided in **Exhibit B**, based on quarterly invoicing, for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by April 15, 2005; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE

THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability

policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

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

CONSULTANT:
Steve Temme, System Sales Engineer
ATS Automation, Inc.
450 Shattuck Avenue South
Renton, Washington 98055
(425) 251-0949

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or

the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

7th IN WITNESS WHEREOF, the parties have executed this Agreement on this 7 day of APRIL, 2004.

CONSULTANT
By: [Signature] CEO
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
Steve Temme, Systems Sale Engineer
ATS Automation, Inc.
450 Shattuck Avenue South
Renton, Washington 98055
(425) 251-0949

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253)851-6170

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
COUNTY OF Washington) ss.

I certify that I know or have satisfactory evidence that Brian Allen is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the 7th of April to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/7/04



Nicole Stanley
Nicole Stanley
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at:

Benton

My Commission expires: 11/21/04

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____



Exhibit A – Scope of Work

Customer: Gig Harbor Civic Center

ATS project # 1101069

Date: 2-2-04

ATS Customer Support Agreement (CSA) Overview

As your Alerton control system has been uniquely designed & installed to meet the mechanical system design perimeters and performance criteria, we have developed this support agreement to meet your current level of system knowledge and desired support. In order to maintain & maximize your building's HVAC and control system investment, we will perform the following list of customer support services. Following the system services listing is a detailed description of each sub-section of customer support that we will perform during the course of this agreement.

ATS Building Control System Services:

1. ATS Customer Support Organization

- Account Management & Dedicated Service Team
- Service Log
- Documentation of All Services Provided
- Discounted Material & Labor Rates

2. Emergency Response Services

- On-line Response (Telephone or System Direct Connect)
- On-site Response

3. System Performance Services: On-Line & On-site

- Troubleshooting and Diagnostics
- Building Control System Database Protection
- Alerton Building Control System Analysis
- DDC Data Communication Performance Optimization
- Documentation Updates

4. Central Equipment Performance Verification

- Seasonal Start-up and Verification
- Air Handler Performance Verification

5. Alerton Technology Updates

- Alerton Software Modifications

6. Customer Training

- *On-site Informal Operator Training/Software Consultation*
- *Option(s): Formal Classroom Alerton Factory Certified Training*



ATS Customer Support Agreement – Detailed Descriptions

1. **ATS Customer Support Organization** (included with all service plans)

- **Account Manager** - A dedicated Account Manager will be responsible for your total service satisfaction. Your Account Manager will provide the designated services, monitor equipment performance, track equipment service history, and consult with you to meet your objectives.
- **Dedicated Service Team** - Our Service Team knows Alerton systems. All of our service technicians are factory trained on Alerton equipment, and are specialists in maintaining and troubleshooting your system.
- **System and Service Log** - ATS will provide you with a log for documentation of concerns, system problems, and other related items requiring our attention. Each scheduled service visit shall begin with a review of the log.
- **Documentation** - All service visits will be documented by a work order detailing the service performed, materials used, and hours spent. A copy of the work order is given to you at the time of service.
- **Price Advantage- Discounted Labor and Material** - As a Support Agreement Customer, you will receive a discount off the normal labor and material prices. You will receive approximately a 17% discount on labor and an additional 10% discount on material. For any components listed in the Alerton Controls Price List your multiplier will be (.45) times the List Price.

2004 Hourly Labor Rates: (Prices subject to change)

	Normal Hours	Normal Hours	Overtime Hours	Overtime Hours
	Standard or "Non-Support Agreement" customer	Preferred or "Support Agreement" customer	Standard or "Non-Support Agreement" customer	Preferred or "Support Agreement" customer"
Service Engineer	\$ 115.00	\$ 95.00	\$ 145.00	\$ 135.00
Account Manager	\$ 115.00	\$ 95.00	\$ 145.00	\$ 135.00

Normal Hours: Monday-Friday, 8am – 5pm

Overtime Hours: Monday-Friday 5pm-8am, Saturday, Sunday, Holidays

2. *Emergency Response Services*



On-line Emergency Response - To quickly respond to emergency service requests and to reduce the costs and disruptions of downtime we will use our Direct Connect technology and/or the telephone as our first action to a request for emergency response.

- We will furnish and install the necessary service equipment to enable us to remotely direct connect to your Alerton HVAC Control System, through a dedicated telephone line that will be provided and maintained by the owner.
- Emergencies will be determined mutual agreement between by your staff and ATS.

Standard Online Response Hours (included with all Customer Support Agreements)
Monday through Friday; 8:00 AM to 5:00PM, excluding holidays

Premium Online Response Hours – 24 hours/day, 7 days/week, including holidays

On-Site Emergency Response - If during our On-line Emergency response we are unable to resolve the situation we will dispatch a Service Engineer to your facility. Non-emergency calls, as determined by your staff and ATS will be incorporated into the next scheduled service call.

Standard On-site Response (included with all Customer Support Agreements)
We will be on site by the end of the next business day; Monday through Friday; 8:00 AM to 5:00PM, excluding holidays

Premium On-site Response – We will be on site within four (4) hours; 24 hours/day, 7 days/week, including holidays

Note #1: Our first action to a request for emergency response will be to attempt to resolve the situation on-line via direct-connect modem. There may be a one (1) hour minimum charged for each on-line service. If on-line diagnosis determines a site visit is required to complete troubleshooting and problem resolution procedures, we will be on-site based on the level of Emergency On-site Response selected (described above).

Note #2: Use of on-line and/or on-site emergency service will be billed at the applicable time & material rates. The labor and material rates for 2004 are listed in the ATS Customer Support Organization section, and are subject to change.

**** Total Emergency Support Hours = 4 Hours per year**

3. System Performance Services: On-Line & On-site

Troubleshooting and Diagnostics (*Direct-Connect or via Telephone*).

We will provide troubleshooting and diagnostics via telephone or modem. We will furnish, and install the necessary equipment to enable our local office to remotely log-on to your system via regular voice grade dial up phone line. We sign-on to your system as a first step in responding to a request or inquiry. Our service department will try to fix the problem or at a minimum scope the problem down to a specific item or group of items. Your account manager or a service engineer operations will contact you when the sign-on is completed and conclusions have been reached.

Building Control System Database Protection- *Alerton Workstation Database and Graphics backups* safeguard your HVAC Control System's vital databases of business information from unforeseen and costly catastrophic events (lightning strike, electrical power surge, flood, physical damage, etc.). We will back-up your HVAC Control System database, software and graphics a minimum of **two (2) time(s) per year**, and provide safe storage of this critical business information. Should a catastrophic event occur, we will respond onsite to reload the databases and system files from our stored backup copy and to ensure proper operation and performance. *The costs to reload the databases and system file will be at the preferred material and labor rate stated below.*

Alerton Building Control System Analysis - Your DDC control system is a very dynamic and interactive system. As such its operations, graphics and programming intentionally and unintentionally change over time. With *Control System Analysis*, we will analyze the current status of your system's operations, graphics, & programming and compare them to the current As-Built documentation and prior status report. We will then meet with you to discuss the system changes encountered and how these effect the operation of your Alerton building control system.

DDC Data Communication Performance Analysis - In order for the all HVAC equipment in you facility to work seamlessly and quickly together you must know that the DDC data communication network is fully operational and its performance is optimal. We will analyze the physical condition of your DDC data network and the performance of the data communications. We will then meet with you to discuss the network condition & performance and make recommendations for improvement.

Documentation Updates – As your building is modified for changes in use, the Alerton control system may be modified as well. We will provide updated workstation graphics and hard copy AS-Built documentation to match control system modifications.

**** System Performance Hours = 4 Hours per year**

4. Central Equipment Performance Verification

Seasonal Performance Verification

Using the Alerton software tools, we will conduct a seasonal start-up and visual performance review of the HVAC air handling systems.



- This service will be delivered two (2) times per year, Spring & Fall.
- Spring start-up focus: Cooling system software control loops, outside and mixed air dampers, direct expansion system, control system temperature sensors, and temperature alarms.
- Fall start-up focus: Heating system software control loops: outside and mixed air dampers, gas heating system, control system temperature sensors, any freeze-protection sensors and temperature alarms.

Air Handler (Multi-Zone Unit) Performance Verification

Using the Alerton software tools, we will analyze the performance of your HVAC air handling systems.



- This service will be delivered in methods. A system re-commission and an annual review of (1) unit – owner determined.
- System Re-commission: We will perform a complete visual and software system check-out on each Multi-Zone unit. We will verify all damper actuators (economizer, relief, and zone), as well as the zone tagging to the actual zone served. We will verify each zone temperature sensor location and operation. We will investigate system operational issues and develop a complete report for owner review.
- Annual review: We will revisit (1) Multi-Zone unit per year and perform a system re-commission as described above. This annual review will be rotated between all units, with the owner selecting the most troublesome unit each year.

**** Equipment Verification Support Hours - 8 Hours per year**

Note: Year #1 includes complete re-commission of all (5) Multi-Zone units. In subsequent years, ATS will re-commission (1) owner- determined Multi-Zone unit.

5. Technology Updates



Periodically, Alerton releases workstation (Envision) and global controller (BTI) software modifications or "patches" which will correct operational code issues, improve system security, or increase the processing speed of your control system. ATS will provide these updates as they become available, always keeping your system state-of-the-art. When Alerton releases new workstation software platforms or platform enhancements, ATS will offer you the opportunity to review your system status & new software benefits.

**** Technology Updates are included in support agreement**

6. Customer Training

On Site Training/Operator Coaching. Through our individualized *On-site Operator Training*, we will introduce, review and reinforce the Alerton control system operation, leading to greater utilization of HVAC Control System applications implemented in your facility. We will provide (2) sessions of (4) hours each per year of coaching for your facility staff, Monday through Friday 8:00 a.m. to 5:00 p.m. During the training sessions, we can address logbook issues, assist your operators in becoming more self sufficient, and tailor HVAC Control System applications to the needs of your facility and to your operators' specific job responsibilities.

**** On-site Training Support Hours - 4 Hours per year**



Factory Certified Classroom Training- As an option, we can provide you classroom-format, factory-certified training courses. The training classes are conducted at the Alerton Corporate training facility in Redmond, Washington on various dates during the course of the calendar year. These training courses are developed and tailored for Alerton system operators at all skill levels. The courses offer the system operators to learn how to optimize their individual systems while interacting with other system operator with similar skill levels from across the country.

**** Factory Training Support Hours – see option #1**

<input type="checkbox"/>	Multi-Zone Unit re-commission
<input checked="" type="checkbox"/>	System Training- On-site
<input type="checkbox"/>	System Training- Factory

Other Services(included)

<input checked="" type="checkbox"/>	Technology Upgrades
<input checked="" type="checkbox"/>	Support Services
<input type="checkbox"/>	Parts Coverage



Exhibit B – Schedule of Rates

Attn: George Williams

Date: February 2, 2004

Owner: Gig Harbor Civic Center
Item: 1 Year Service Support Agreement
Proposal: ATS will provide services and material as defined in the included material.

Proposal Amounts: Amounts shown below are Annual totals, with quarterly billing. Taxes & Bonds excluded. Year 2004 \$ 2,850 Beginning Feb. 15, 2004

Remarks: Owner chosen to exclude the following items: Flex Hours Support, Onsite emergency inventory

Owner's Responsibility: Maintain existing phone line utilized for Alerton Control System remote access.

If a contract will be issued for this support agreement, please reference this proposal name in the contract documents OR simply sign the proposal below authorizing us to proceed. The Terms and Conditions of Sale shown on the attached are a part hereof.

Proposal Accepted: ATS Automation, Inc. is authorized to proceed with the work as proposed.

Proposal Submitted: ATS Automation, Inc.

Purchaser By Title Date

Seller By Steve Temme Title Systems Sales Engineer Date December 10, 2003



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ON-CALL DEVELOPMENT REVIEW PROFESSIONAL SERVICES
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

On-call development review assistance services are required to assist city staff in reviewing development projects or other work submitted to the city for review and approval on a variety of engineering projects and tasks. The city's consultants will provide professional engineering services on an "on-call" basis as requested by the city for various projects and tasks. This service will be utilized at the request of private developers and applicants should they request to have their civil project plan review expedited. The city would manage the applicant's request, have the applicant deposit monies into an escrow account in the amount equal to the plan review estimate prepared by the consultant, and reimburse the city's consultant for services rendered from the monies in the escrow account.

The city placed a Request For Engineering Services advertisement in the Peninsula Gateway newspaper. In response to the advertisement, the city received eight letters of interest from various engineering consultants. An internal city selection committee reviewed all the letters of interest and supporting documentation and determined the following three consultants to be the most qualified to perform the work.

- David Evans and Associates, Inc.
- Hammond Collier Wade Livingstone
- HDR Engineering, Inc.

Upon Council approval, the city will execute contracts with all three consultants. As requests for project reviews are received from the city, the city would disperse to each consultant on a rotational basis.

FISCAL CONSIDERATIONS

Private development monies will fund this Consultant Services Agreement and will not impact the 2004 Budget.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract for On-Call Development Review Professional Services between the City of Gig Harbor and David Evans and Associates, Inc. The contracts for Hammond Collier Wade Livingstone and HDR Engineering, Inc. will be presented to Council at the next regular meeting.

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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 3700 Pacific Hwy. East, Suite 311, Tacoma, Washington 98424 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design/programming of the review of private development applications in the City and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 7, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Fifteen Thousand dollars and no cents (\$15,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this

Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. The Consultant shall utilize the following procedure when determining the costs associated with any particular development or project permit application. First, the Consultant shall review the application and provide the City with a written cost estimate for the review of the application. The City will then ask the applicant to place the amount of money equal to the Consultant's cost estimate in an escrow account set up by the City Finance Director or in a bank (which escrow account shall be established by a written agreement between the bank, City and applicant, using a form approved by the City Attorney). The Consultant shall issue monthly invoices to the City showing the amount of time spent on each application being reviewed by the Consultant, and the associated costs. The Consultant shall provide separate written notice to the City Engineer if the Consultant's original cost estimate will be exceeded, together with an explanation for the additional costs. All such written notices of any increases in the amount of the original cost estimate shall be provided to the City at least five working days before the Consultant sends its finished review of the application to the City. The Consultant's notice of an increase in the amount of the estimate shall be provided by the City to the applicant, together with a letter informing the applicant that continued processing of the application is contingent upon the deposit of this newly estimated amount into the escrow account within two working days after receipt of the notice. If the applicant does not immediately deposit the newly estimated amount into the escrow account, the City will notify the Consultant, and the Consultant will stop work on the application. If the newly estimated amount is deposited into the escrow account, the City will notify the Consultant to continue with its work on the application. When the Consultant has finished review of the application, the City Engineer shall perform the final review and will be responsible for issuance of the final decision. If the money in the escrow account is sufficient to cover the cost of the Consultant's review, the money will be released to the City. If, after the City's final decision is issued, the money in the escrow account is more than the cost of the Consultant's review, the applicant will receive a refund for the overage and the remainder will be released to the City. If, after the City's final decision is issued, the money in the escrow account is equal to the last written cost estimate provided by the Consultant to the City for review of the application, neither the City nor the applicant will be responsible to pay any additional sums to the Consultant.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to

control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

The work performed by the Consultant shall be reviewed by the City Engineer. The Consultant shall have no authority to issue any permits, approvals or to make any final decisions on any development or project permit applications, which authority shall be reserved to City employees.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by July 31, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT:
David Evans and Associates, Inc.
ATTN: Randy Anderson, P.E.
3700 Pacific Hwy. East, Suite 311
Tacoma, Washington 98424
(253) 922-9780

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

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph

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

XIX. Conflicts of Interest

The City acknowledges that the Consultant is engaged in a separate practice, performing the type of work that is the subject of this Agreement for other clients. However, a conflict of interest may arise if the Consultant is asked to perform under this Agreement by reviewing applications for existing or former clients. The Consultant shall notify the City Engineer if the Consultant receives an application to review for an existing and/or former client of the Consultant. The Consultant further acknowledges that RCW 58.17.160 provides that: "No engineer who is connected in any way with the subdividing and platting of the land for which subdivision approval is sought, shall examine and approve such plats on behalf of any city, town or county." The Consultant agrees that if it is connected in any way with the subdividing and platting of any land, that it shall not accept review of any subdivision application and shall immediately notify the City of such conflict.

XX. Integration

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this day of _____, 200__

CONSULTANT

CITY OF GIG HARBOR

By: Randy Anderson

By: _____

Its Principal
SR. ASSOCIATE
DAVID EVANS AND ASSOCIATES, INC.

Mayor

Notices to be sent to:

David Evans and Associates, Inc
ATTN: Randy Anderson, P.E.
3700 Pacific Hwy. East, Suite 311
Tacoma, Washington 98424
(253) 922-9780

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

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

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

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____

CITY OF GIG HARBOR
ON-CALL REVIEW SERVICES

EXHIBIT A

SCOPE OF SERVICES

David Evans and Associates, Inc. (DEA) is pleased to provide this Scope of Services to the City of Gig Harbor (City) for on-call review services. This work would assist the City in reviewing development projects or other work submitted to the City for review and approval. DEA would provide general civil engineering services to City or perform other work as requested by the City.

Elements of review work would include but would not be limited to grading, access, storm drainage and storm drainage reports, traffic reports and studies, traffic signal systems, frontage improvements, road construction plans, environmental review, sanitary sewer systems, water supply systems, fire flow systems, erosion and sedimentation control plans, and similar work.

Work would be done on a time and expense basis as per the rate sheet attached as Exhibit B. Labor rates for classifications not included on the rate sheet would be charged at their standard hourly billing rates.

WORK SCOPE AND METHODOLOGY

Work under this agreement would be done at the direction of the City. DEA would review submittals or other projects on behalf of the City. Review work and comments would be done in accordance with city codes, regulations, policies, or other applicable design standards or criteria. Unless directed otherwise DEA would generally proceed as follows:

- Meet with the City to receive the project and discuss any particular city concerns or issues and establish a general review schedule and review process;
- Meet with the project proponent or proponent's engineer if so requested prior to starting the review work;
- Field visit the site;
- Meet with the City, the project proponent, or the proponent's engineer after the review is completed if requested to do so by the city;
- Submit the reviewed plans, documents, or reports to the City Engineer; and
- Re-review the corrected plans, documents, or reports after the corrections revisions have been made by the proponent's engineer.

Additional work scope may include collecting and incorporating review comments from other city departments such as parks, maintenance or planning and coordinating their review comments with DEA's review comments.

SERVICES OR MATERIALS PROVIDED BY THE CITY

- One set of the plans, reports, or documents to be reviewed;
- All conditions of approvals or other requirements that have been imposed on the project by the City or other applicable agency;
- Copies of the latest city codes, regulations, development standards and criteria that are applicable to the review process; and
- Maps, plans, or other data that may impact or be pertinent to the review of the project.

REIMBURSABLES

- Fees for reprographics and postage
- Mileage

PROJECT SCHEDULE

The time to review a project will be dependent on the scope of the review to be done, and the size and complexity of the project. DEA and the City will negotiate a review scope of work and review turnaround time for each project. After a scope of work and length of review time is agreed upon between DEA and the City, DEA will begin its review work within three working days thereafter.

GIGHARBORNCALL-1
4/8/2004

DAVID EVANS AND ASSOCIATES, INC.
 3700 PACIFIC HIGHWAY EAST, SUITE 311
 TACOMA, WA. 98424
 253-922-9780

CITY OF GIG HARBOR
 ON-CALL REVIEW SERVICES
 EXHIBIT B
 SCHEDULE OF RATES AND ESTIMATED HOURS

		Proj. Mgr.	Sr. Scientist	Field Scientist	Sr. Planner	Designer	Clerical	Subtask	Expenses	Total
		\$ 140.00	\$ 99.00	\$ 53.00	\$ 105.00	\$ 81.38	\$ 43.50	Total		
	ON CALL REVIEW WORK WILL BE DONE ON A TIME AND									
Project Management	EXPENSE BASIS. LABOR RATES NOT ON THIS RATE									
	SHEET WILL BE CHARGED AT THEIR STANDARD									
	HOURLY BILLING RATE.									
	EXPENSES--POSTAGE, MILEAGE, AND SIMILAR DIRECT									
Expenses	EXPENSES									



NOTICE OF LIQUOR LICENSE APPLICATION

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

TO: CITY OF GIG HARBOR
RE: NEW APPLICATION

DATE: 3/18/04

UBI: 602-351-314-001-0001

License: 078469 - 1J County: 27
Tradenname: THAI HUT THAI & ASIAN CUISINE
Loc Addr: 4116 HARBORVIEW DR
GIG HARBOR WA 98332-1080
Mail Addr: 1107 S 84TH ST
TACOMA WA 98444-4427
Phone No.: 253-475-4889 ANON LHAMNGAM

APPLICANTS:
THAI HUT INC.
JATHONG, ALONGKORN 1969-06-11
LHAMNGAM, ANUN 1957-02-05
WOEISAN, THAVARACH 1965-07-09



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

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

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

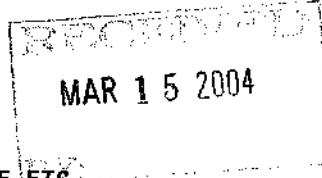
DATE SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 3/12/04

TO: CITY OF GIG HARBOR



RE: CHANGE OF LOCATION APPLICATION
from THE KEEPING ROOM, CANDLES & WINE ETC.
3306 HARBORVIEW DR
GIG HARBOR WA 98332-2126

APPLICANTS:
THE CAPTAIN'S MATE, INC.

License: 083190 - 1J County: 27
UBI: 601-493-563-001-0004
Tradename: THE KEEPING ROOM, CANDLES & WINE
New Loc: 7811 PIONEER WAY
GIG HARBOR WA 98335

GAIR, LINDA HULTNER
1944-11-28
GAIR, BRUCE OTTO
1927-08-12

Phone No.: 253-858-9170 LINDA GAIR

Privileges Applied For:
BEER/WINE SPECIALTY SHOP

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20040731

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 ALBERTSON'S, INC.	ALBERTSON'S #406 1133 NW 51ST AVE GIG HARBOR WA 98332 0000	083474	GROCERY STORE - BEER/WINE
2 MAD ANTHONY'S INCORPORATED	ANTHONY'S AT GIG HARBOR 8827 N HARBORVIEW DR GIG HARBOR WA 98335 0000	351502	SPIRITS/BR/WN REST LOUNGE + OFF PREMISES-PRIVATE LABEL WINE
3 QUALITY FOOD CENTERS, INC.	QUALITY FOOD CENTER/QFC #886 3110 JUDSON AVE GIG HARBOR WA 98335 0000	362719	GROCERY STORE - BEER/WINE
4 HINDQUARTER II, INC.	TANGLEWOOD GRILL 3222 56TH ST GIG HARBOR WA 98335 1359	082991	SPIRITS/BR/WN REST LOUNGE -
5 JAPANESE CREATIVE CUISINE, INC	BISTRO SATSUMA 5315 PT FOSDICK NW GIG HARBOR WA 98335 1720	077012	BEER/WINE REST - BEER/WINE



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: RESOLUTION - COMMUNITY CENTER M&O SUPPORT
DATE: MARCH 16, 2004

INFORMATION/BACKGROUND

At the request of Mayor Wilbert, the attached resolution is forwarded for your consideration. The resolution outlines a two-step process for development of partial maintenance and operations support for the proposed Gig Harbor Peninsula Community Center located on six acres of Pierce County property next to the Gig Harbor High School track. The first step requires Pierce County, the property lessor, to approve a construction agreement with the Boys and Girls Clubs of South Puget Sound, the property lessee, for the construction of a Community Center as described in the November, 2003, conceptual design study by Thomas Cook Reed Reinvald titled *Gig Harbor Peninsula Community Center*. The second step requires Pierce County and the City of Gig Harbor to develop an interlocal agreement to guarantee fiscal and management supervision to coordinate the distribution and utilization of \$150,000 per year for a five-year period for the purposes of maintenance and operations of the Community Center.

POLICY CONSIDERATIONS

The proposed facility is located within the Peninsula Recreation Center identified in the City of Gig Harbor *Park, Recreation and Open Space Plan* (p. 218). Notably, page 205 of the plan states:

Neighborhood playgrounds and competitive athletic facilities may be sited as independent properties or portions of other sites that include trail corridors, resource activities, *multi-use indoor centers*, or other public facilities. Where practical, neighborhood playgrounds may be co-located with elementary and intermediate schools, and competitive athletic facilities with middle and high schools.

The *Park, Recreation and Open Space Plan* indicates that both teen center facilities and senior center facilities are within the upper quartile of facility needs as identified by City of Gig Harbor citizens (p.253). Moreover, of 50 surveyed programming possibilities, teen and senior programs are the top two recreational *program* priorities identified by city citizens (p. 252). Joint ventures with non-profit entities to achieve facility and program parks objectives are viewed positively by the public (p. 258).

FINANCIAL CONSIDERATIONS

The commitment of \$150,000 per year for five years is contingent on the development and approval of an agreement as described in the resolution.

RECOMMENDATION

I recommend approval of the resolution as proposed.

CITY OF GIG HARBOR
RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, SUPPORTING DEVELOPMENT OF A
COMMUNITY CENTER THAT INCLUDES FACILITIES
SUPPORTING THE SOCIAL AND RECREATIONAL HEALTH
AND WELFARE OF SENIORS, ADULTS AND YOUTH.**

WHEREAS, the City of Gig Harbor supports development of the Peninsula Recreation Center as identified in the 2003 adopted *City of Gig Harbor Parks, Recreation and Open Space Plan*; and

WHEREAS, Pierce County and the Boys and Girls Club of South Puget Sound have entered a 50-year lease agreement with two renewable 25 year terms on March 19, 2003, for the provision of property to construct a facility for the purposes of a Boys and Girls Club facility, a Senior Center, and other community-oriented uses and activities; and

WHEREAS, under the lease agreement Pierce County will not be responsible for costs related to construction or maintenance and operations of the facility; and

WHEREAS, cooperation between the City of Gig Harbor and Pierce County and the Boys and Girls Club of South Puget Sound is necessary to facilitate completion of the Gig Harbor Peninsula Community Center within the Peninsula Recreation Center that will house social and recreational programs, including Senior Center programs, Boys and Girls Club programs, and local, not-for-profit social and recreational programs; and

WHEREAS, the proposed improvement will in part benefit the recreational and social interests of city residents; and so therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AS FOLLOWS:

Section 1. Five-Year Operations and Maintenance. The Mayor is authorized and directed to present for approval by the City of Gig Harbor City Council an interlocal agreement with Pierce County for the purpose of operations and maintenance of a proposed Gig Harbor Peninsula Community Center facility in a total amount not to exceed \$150,000 per year for a period not to exceed five (5) years, commencing upon the operation of the completed and publicly available facility. This interlocal agreement shall express maintenance and

P.2 Community Center Resolution No. _____

operations commitments, as well as recreational and social program commitments for the five-year period of the agreement.

Section 2. Agreement for Construction of Gig Harbor Community Center. Attached as an exhibit to the interlocal operations and maintenance agreement referenced above in Section 1 for the Gig Harbor Community Center, the Mayor is also directed to present to the City of Gig Harbor City Council an agreement between the Boys and Girls Clubs of South Puget Sound and Pierce County that provides for the location of a Gig Harbor Community Center, for the lay-out of the building schematic, for the construction cost estimate, and for recreational and social programs, all of which are consistent with such concepts as outlined in the November, 2003, conceptual design study by Thomas Cook Reed Reinvald titled *Gig Harbor Peninsula Community Center*.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR
this 22nd day of March, 2004.**

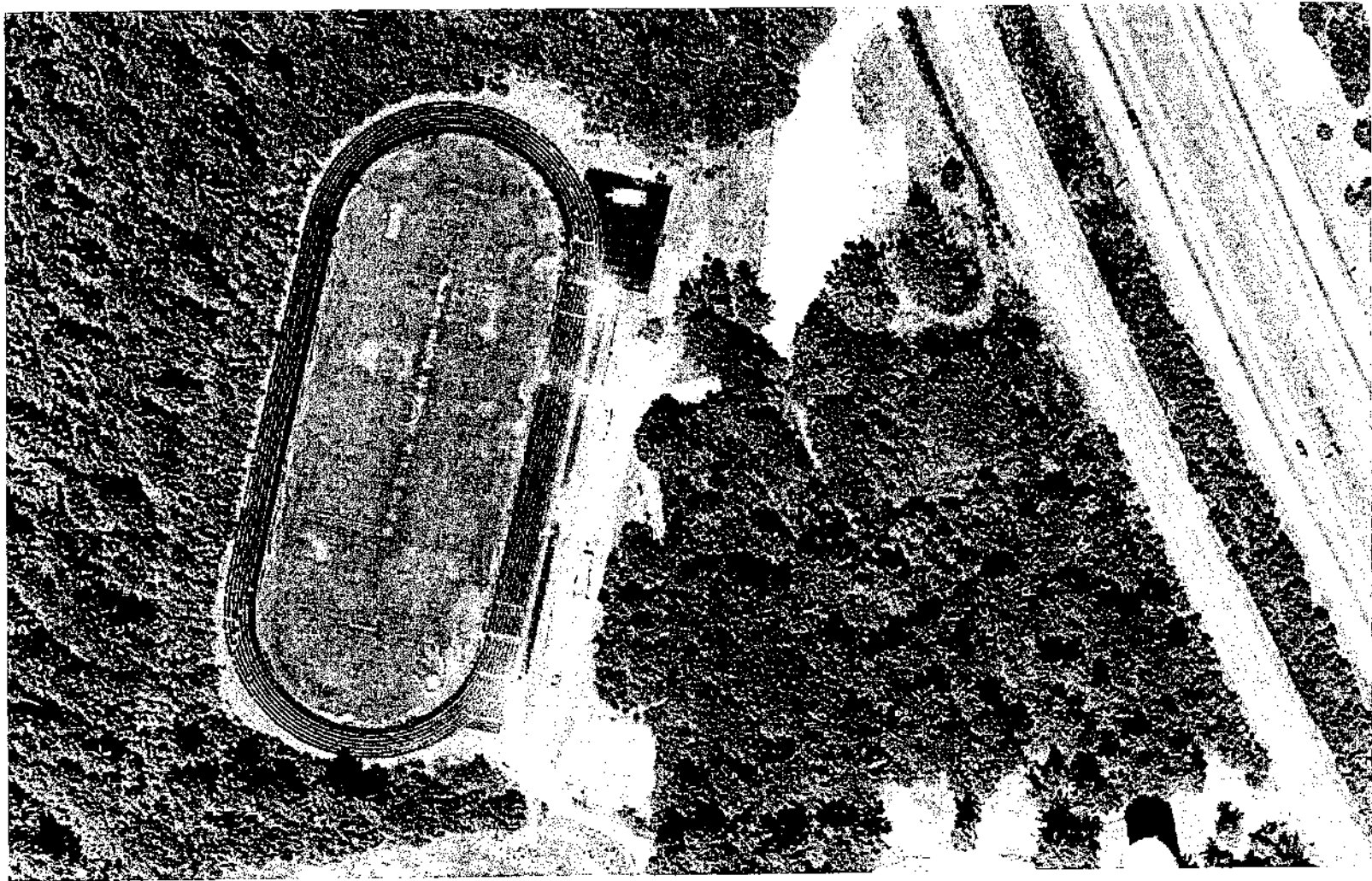
APPROVED:

GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 3/22/04
PASSED BY THE CITY COUNCIL: 3/22/04
RESOLUTION NO.



GIG HARBOR / PENINSULA COMMUNITY CENTER



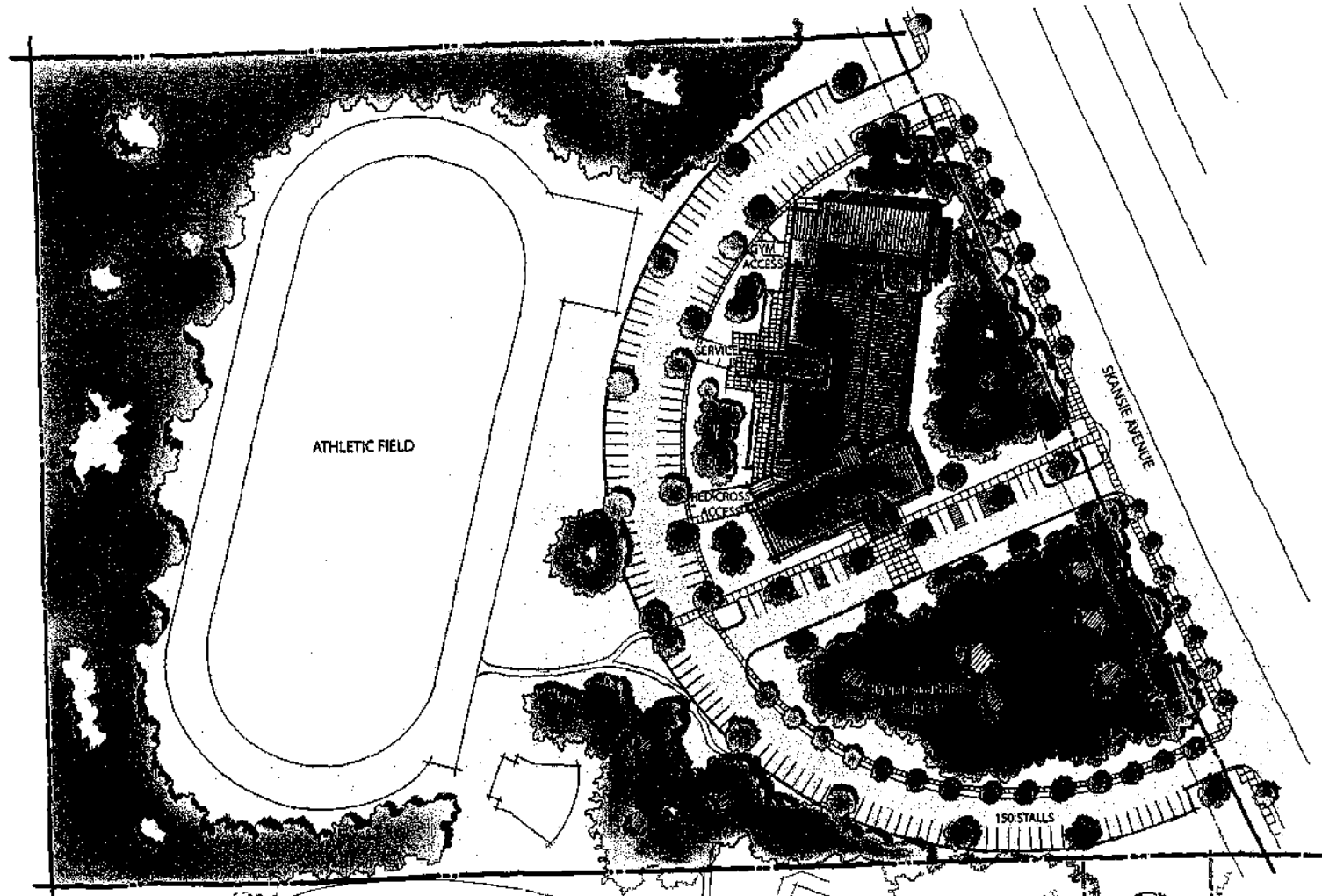
BOYS & GIRLS CLUBS
OF PIERCE COUNTY

BOYS AND GIRLS CLUB
PENINSULA ATHLETIC ASSOCIATION
RED CROSS
SENIOR CENTER
PIERCE COUNTY PARKS & RECREATION
CITY OF GIG HARBOR
PENINSULA SCHOOL DISTRICT

0 30' 60' 90'



THOMAS DICK REEL, 2011



GIG HARBOR / PENINSULA COMMUNITY CENTER

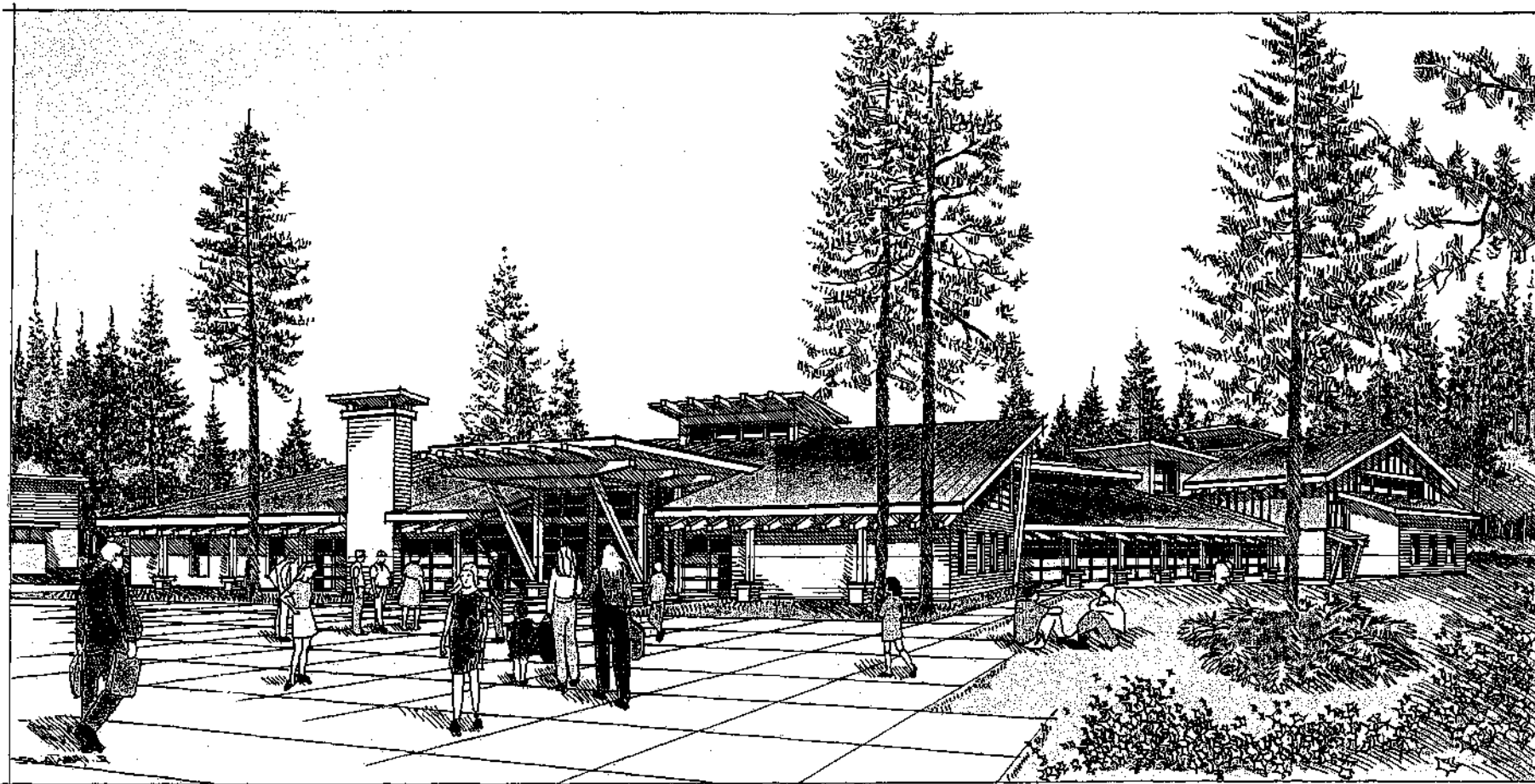


BOYS & GIRLS CLUBS
OF PIERCE COUNTY

BOYS AND GIRLS CLUB
PENINSULA ATHLETIC ASSOCIATION
RED CROSS
SENIOR CENTER
PIERCE COUNTY PARKS & RECREATION
CITY OF GIG HARBOR
PENINSULA SCHOOL DISTRICT

0 30 60 90





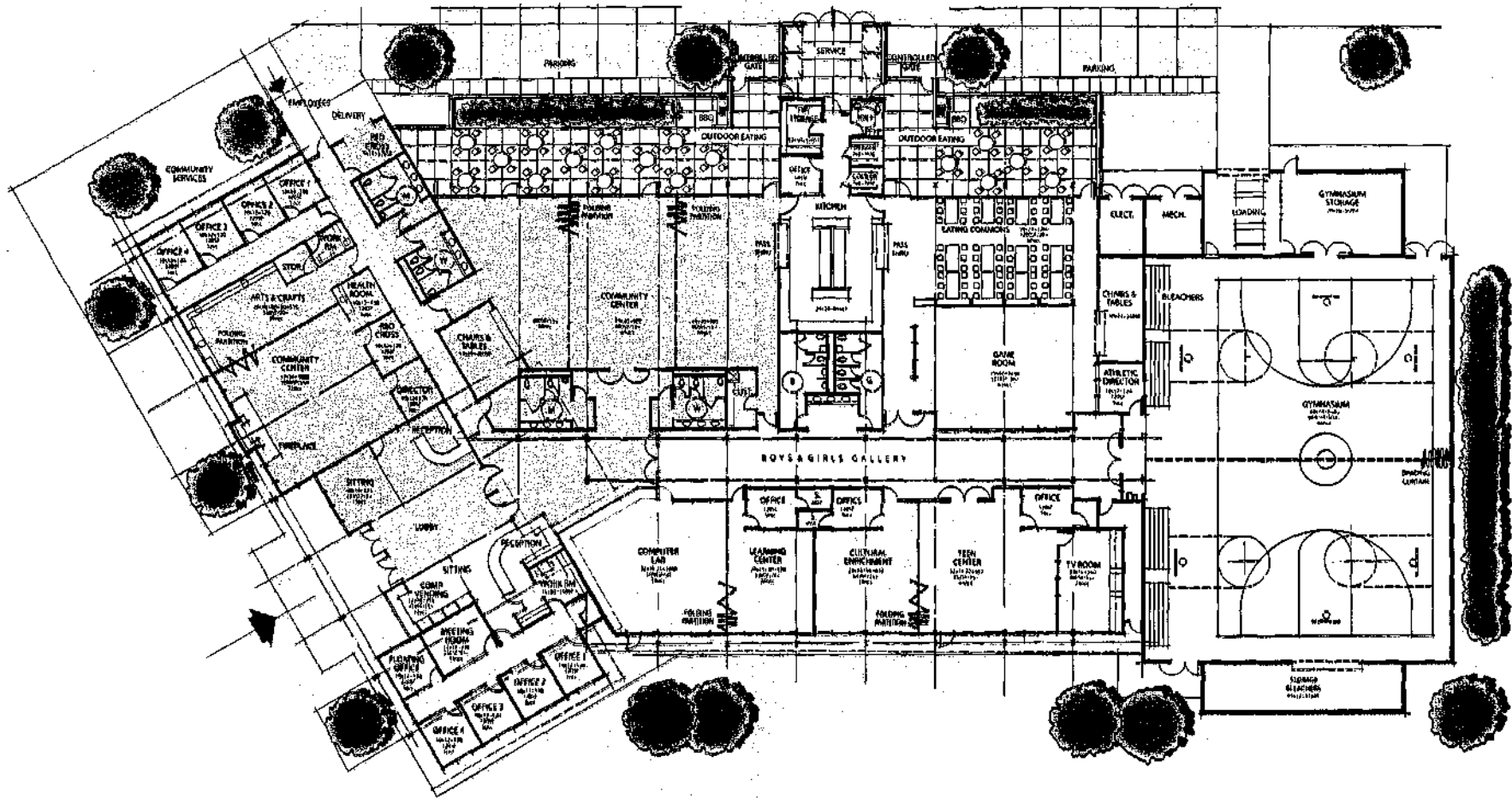
GIG HARBOR / PENINSULA COMMUNITY CENTER



BOYS & GIRLS CLUBS
OF PIERCE COUNTY

BOYS & GIRLS CLUB
PENINSULA ATHLETIC ASSOCIATION
RED CROSS
SENIOR CENTER
PIERCE COUNTY PARKS & RECREATION
CITY OF GIG HARBOR
SEMINOLE SCHOOL DISTRICT



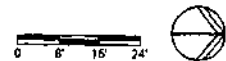


GIG HARBOR / PENINSULA COMMUNITY CENTER

BOYS & GIRLS CLUB
PENINSULA ATHLETIC ASSOCIATION
RED CROSS
SENIOR CENTER
PIERCE COUNTY PARKS & RECREATION
CITY OF GIG HARBOR
PENINSULA PUBLIC SCHOOL DISTRICT



BOYS & GIRLS CLUBS
OF PIERCE COUNTY



THOMAS J. DE JONG, ARCHITECT

Estimate Totals

Labor	561,340	11,912.730	hrs
Material	487,663		
Subcontract	3,410,225		
Equipment	82,454	6,887.540	hrs
Other	<u>61,188</u>		
	4,602,870	4,602,870	
Contingency Percentage	368,230	8.000 %	
Builders Risk (Combustible)	22,263	3.750 \$ /	
Overhead & Profit	312,085	6.250 %	
B&O Taxes, General Insurance	<u>106,109</u>	2.000 %	
	808,687	5,411,557	
Performance Bond	<u>45,121</u>		
	45,121	5,456,678	
State Sales Tax	480,188	8.800 %	
	Total	5,936,866	

LEASE AGREEMENT

THIS LEASE is made between Pierce County, a political subdivision of the State of Washington, and a municipal corporation, (hereinafter designated "Lessor") and the Boys and Club of South Puget Sound, Washington, (hereinafter designated "Lessee").

RECITALS:

1. Description of Parties.

The Lessor. The Lessor is Pierce County, a political subdivision and a municipal corporation of the State of Washington.

The Lessee. The Lessee is the Boys and Girls Club of South Puget Sound, Washington, a non-profit corporation.

2. General Purpose of Lease. The Lessee shall use and occupy said property as described in Exhibit "A" attached hereto for the sole and exclusive purpose of constructing and maintaining a Boys and Girls Club facility, which will include a youth facility targeting children and youth in kindergarten through the 8th grade, together with floor space for a Senior Center, and other community-oriented uses and activities. Paved parking areas and driveways shall also exist on the premises. The general purpose of the lease is for the construction, operation and maintenance of a Boys and Girls Club Youth Facility together with a Senior Center, open to the public at large on a specified schedule. The Boys and Girls Club, together with Lessees, shall be financially self-sustaining, based on external funding and user charges.
3. Lease Premises. This lease shall be for that certain parcel of real property whose legal description is attached hereto and incorporated by reference herein as Exhibit "A", which is the remainder portion "New Parcel B". The lease premises are wholly located within Pierce County.
4. Lease Term. This lease shall be for the term of fifty (50) years and shall expire on December 31, 2053. This lease shall be renewable at the option of the Lessor for two (2) consecutive twenty five year terms.
5. Lease Charges. This lease shall be for the annual rent of \$10.00. Lessee shall pay labor, operations and capital requirements as set forth hereinafter in this lease. A significant consideration of this lease is that the Boys and Girls Club and its sub-lessees shall offer activities to the public at large on a scheduled basis, that shall relieve the burden on the lessor, Pierce County, to provide similar amenities and activities to the public at large.

6. Lease Concept. The lessee operates Boys and Girls Clubs within Pierce County, Washington. The general concept of this leasehold is that the lessee shall perform private fund raising for the costs for design and construction of the Boys and Girls Club, to include space for a Boys and Girls Club, together with a Senior Center, and related facilities and parking. Lessor shall retain ownership of the land on which the premises are located, subject to the use rights of the lessee. It is not anticipated that any public funds shall be provided for either capital or operations and maintenance of the structures and improvements to be located on the leased premises. It is anticipated that the leased premises shall be open to the public at large, for the use of a Boys and Girls Club, involving a kindergarten through 8th grade population, together with a Senior Center, targeting a retired and senior population. It is anticipated that the lessee shall be permitted to offer interior floor space to sublease tenants, which shall consist of community services for the public at large.
7. No Discrimination Based Upon Ethnicity, Race, Religion, or Ethnic Origin. The lessee and its sub-lessees, shall comply with all statutes and regulations of the United States, the State of Washington, and the County of Pierce concerning discrimination based on race, ethnicity, or religion. Provided, that lessee's activities are targeted at a youth population of kindergarten through 8th grade, together with the Senior Center, for senior citizens of Pierce County. Provided also that lessee be and is allowed to offer office space to any religious body for community meetings on a non-preferential basis.
8. Construction. Lessee has a project plan of developing the leased site with a structure for the use of the Boys and Girls Club, together with a Senior Center Facility, including cooking facilities, and parking. Design approval of proposed structures shall be vested in the lessor, Pierce County. The site design, site plan, structures, site parking, paved areas, storm drainage, and all utilities, including architecture, soils and geotechnical, and engineering shall require the written approval of the Lessor. Project design and approvals shall be at the sole expense of the Lessee. All permits including environmental review and site plan review, building, and code approvals shall be undertaken at the sole expense of the Lessee, including permitting, variances if applicable, attorney fees and court proceedings, as applicable. Future structural remodeling, additions, remodels or reductions to the approved structures including parking shall require the written approval of the Lessor.
9. Building. Design and Construction of the Site Improvements shall take place no later than 5 years from the date of this lease. Lessee shall notify Lessor of the dates of construction no later than one year prior to construction.
10. Capital Funding. It is understood and agreed that the Lessee shall develop its capital funding for the design, permitting and construction of its proposed improvements no less than 3 years from the date of this lease. In the event that the Lessee is not able to raise

sufficient capital to develop the site in accordance with its master plan within said period of time, then this lease shall be terminated by the Lessor upon one year written notice to the Lessee.

11. Construction Costs. It is understood and agreed that lessee shall bear all costs of construction, including architecture, engineering, permit review, filling and grading, and structural work. Lessee shall not look to lessor for any contribution for either capital costs or operation and maintenance, provided that if lessor installs a private road or utilities to reserved parcels of land that lie generally to the west of the leased premises, lessor shall pay for the cost of capital and operations and maintenance of said paved private road and/or utilities.
12. Reserved Right of Access. Lessor shall reserve a right of access to retained parcels of land that generally lie to the west of the leased premises, consisting of a right of way for ingress and egress, together with underground or above-ground utilities, including but not limited to sewer, water, electricity, cable, fiber optic, and natural gas. The legal description of the reserved right of way for ingress, egress, and all utilities will be described during the site design process. Construction of a paved driveway, along with suitable parking, shall be the sole responsibility of the Lessee.
13. Lessee Responsible for Assessments and Charges. The Lessee shall be responsible and shall timely pay all Storm Drainage and Surface Water Management Utility charges, LID and ULID assessments and charges, if any, sewer, water, solid waste collection, electricity, natural gas, telephone and cable charges and fees. The lessee shall pay the same in a timely fashion and permit no such assessments, charges or fees to become a lien on the property.
14. Leasehold Personnel Costs. Lessee shall be solely responsible for all Boys and Girls Club personnel, janitorial, maintenance, construction and reconstruction costs. Employees and/or volunteers or contractors, subcontractors, or employees of contractors and subcontractors of the Lessee shall have no right to employment from the Lessor, whether wages, fringe benefits, retirement, or right to employment. Lessor shall have no privity in contract with employees or staff of the Lessee. Lessor shall have no financial obligation to the lessee for labor expenses of the Lessee.
15. Defense and Indemnity. Lessee agrees to defend, indemnify and save harmless the Lessor, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the Lessor, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Lessee, its successors or assigns, or its

agents servants or employees, the Lessor, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the Lessor, its appointed or elected officials or employees. It is further provided that no liability shall attach to the Lessor by reason of entering into this agreement, except as expressly provided herein.

16. Assignments, Subcontracting and Subleasing. No portion of this lease agreement may be assigned, subcontracted or subleased without the written permission of lessor. No subleases will be approved without the written approval of the lessor. Sub-leases shall be for the function of recreational, athletic, cultural and artistic activities on a primary basis. It is not anticipated that interior floor space shall be open to for-profit enterprises, excepting for providers of the above-described services.
17. Assignments and Subleases. This Lease shall permit subleases only of floor space internal to buildings of the Lessee, and only for the general purposes of the Lessee. Exterior areas shall not be subleased.
18. Parking. The Lessee agrees to construct 100-plus automobile parking stalls in its parking area at the time of its site development. Lessor and Lessee agree that sufficient automobile stalls shall be available to the Peninsula School District, its students, teachers, guests and other invitees, for scheduled athletic events on the premises of the adjacent Gig Harbor High School and leased premises of the School District. Availability of parking stalls shall exist during scheduled events. It is understood and agreed that School District athletics shall generate pedestrian traffic. Pedestrians shall be permitted to access School District property and School District leased properties lying generally to the west of the Boys and Girls Club leased premises. It is understood and agreed that the Lessor and the School District or their assigns shall have driveway access from Skansie Drive to tracts of real property to the west of the property subject to this lease on a routine basis. The number of parking stalls shall not be reduced without the written permission of the Lessor.
19. Insurance and Certificate.
 - A. The Lessee shall at its own expense, procure and maintain for the term of this agreement, and thereafter until any Lessee owned improvements are removed from the Property, a comprehensive general form of insurance covering liability, including, but not limited to, Public Liability, Personal Injury, and Property Damage, in the amount of \$1,000,000.00 per occurrence and \$ 3,000,000.00 in the aggregate. Such insurance shall contain no exclusion with respect to property of Lessor in the care, custody or control of Lessee. All insurance shall be placed with insurance companies licensed to do business in the State of Washington, suitable to the Risk Management and Insurance Department of the Lessor. Lessee shall provide, and resubmit to Lessor, on an annual basis, a current Certificate of

Insurance evidencing such insurance, attention to the Lessor's point of contact. Each policy shall provide that it shall not be canceled or materially changed unless written notice of cancellation or change shall have been mailed by the insurance company to Lessor at the address designated herein. Lessor shall be named as an additional insured party covered by the policy.

- B. The furnishing of insurance required by this section shall in no way limit or diminish the liability or responsibility of the Lessee as provided under any section of this Lease.
20. Acts of Bankruptcy or Insolvency. In the event that the Lessee shall commit acts of bankruptcy or insolvency, then this lease shall be terminated immediately. This lease shall be terminated if Lessee fails and omits to bring current all expenses of capital construction, operation and maintenance. Lessee shall not permit the property to become liened, and shall cure all liens upon written demand from the Lessor. Further disposal of the property in the event of an insolvency or bankruptcy will be determined by deed reversionary clauses or contract clauses that determine the disposal of the real property in such instance and/or through court proceedings. Lessor shall not be responsible for the capital charges or operating expenses of Lessee, and Lessee shall have no recourse to the Lessor for funding or guarantees for all or any capital improvements or operating expenses of the lessee.
21. Operations and Maintenance. Lessor shall not be financially responsible for operations and maintenance costs of the Boys and Girls Club Buildings. Lessee shall hold Lessor harmless from all and any operations and maintenance costs, and taxes of the Lessee and its sublessees and assigns.
22. Capital Contributions. Lessor shall not be financially responsible for any capital contributions, assessments or reassessments of lessee for the capital requirements of the lessee. Lessee shall hold Lessor harmless from all and any capital contributions or assessments for the construction and reconstruction of the Boys and Girls Club Buildings.
23. Right of Entry of Lessor. Lessor, its officials, employees, agents, contractors, subcontractors and employees thereof shall have right of entry for fire, safety, building, structural and sanitation inspections. Right of entry shall take place upon 24 hours telephoned notice, except for regular inspections by the applicable fire marshal or building inspector which shall take place without notice. In the event of an emergency, right of entry is also permitted to the Lessor and its employees and contractors without notice to the Lessor, and to law enforcement, fire personnel and emergency medical technicians, nurses and physicians. Emergencies include but are not limited to fires, floods, power outages and medical emergencies.

STATE OF WASHINGTON)
)ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that GARY IVINS signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it be the free and voluntary act of such party for the uses and purposes named in the instrument.

DATED this 19th day of MARCH, 2003.



Julia A. Puckett
Printed Name: JULIA A. PUCKETT
NOTARY PUBLIC in and for the State
of Washington.
My appointment expires: 11/28/03

Approved as to content:

Jan Wolcott
Jan Wolcott, Director
Pierce County Parks & Recreation

Approved as to content:

Mike Panagiotu
Mike Panagiotu, Risk Manager
Pierce County Risk Management

Approved as to form:

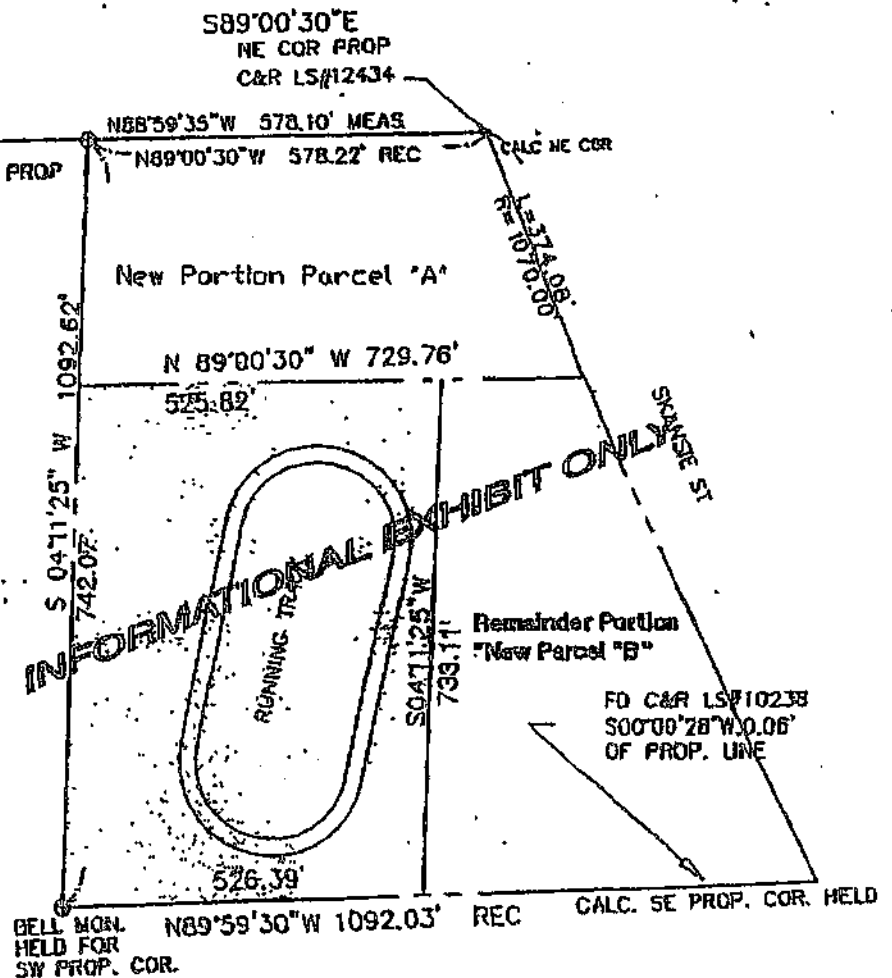
Lloyd P. Fetterly
Lloyd P. Fetterly
Deputy Prosecuting Attorney
03.25.2003
(boys club.doc)

This is only an informational exhibit showing the described easement area. This diagram is not a survey nor should it be included with any filed legal documentation. For additional survey information contact Les Olson at #3216 or Mark Holden at #3221

Revised Legal Description for that portion of "Parcel B" deeded to the school, eliminating approx. 0.98 ac from the n.w. portion of said parcel "B":

A portion of the "New Parcel B" as show on sheet 3 of 3 of the Boundary Line Adjustment on file in the Pierce County Auditor's office under AFN 9902095002, and all within the Southwest quarter of Section 6, Township 21 North, Range 2 East of the WM in Pierce County Washington, and further described as follows:

Commencing at the southwest corner of the Southwest quarter of Section 6, Township 21 North, Range 2 East, Willamette Meridian, Pierce County, Washington; thence South 89°59'30" East 670.00 feet on the south line of said subdivision; thence North 01°49'17" East 1530.77 feet to a point 605.00 feet east of the west line of said subdivision, said point being THE TRUE POINT OF BEGINNING of this description; thence along the west line of the original Parcel "B" and parallel with the west line of said subdivision North 04°11'25" East 742.07 feet to the north line of said parcel "B"; thence along said north line South 89°00'30" East 525.82 feet; thence parallel with the west line of said parcel "B" South 04°11'25" West 733.11 feet to the south line of said parcel; thence along said south line North 89°59'30" West 526.39 feet to THE POINT OF BEGINNING



PIERCE COUNTY
CONTRACT SIGNATURE PAGE

Contract #03-14926

IN WITNESS WHEREOF, the parties have executed this Agreement this 11th day of April, 2003.

PIERCE COUNTY:

LEASEE:

By [Signature] 03-28-2003
Deputy Prosecuting Attorney Date
Approved as to form only

See attached
Leasee Signature Date

By _____
Risk Management Date

By [Signature] 4-9
Budget & Finance Date

Boys & Girls Clubs of South Puget Sound
Current President: Gary J Yazwa

Approved: _____
By [Signature] 3-21-03
Department Director Date
(less than \$250,000)

Address: 1501 Pacific Ave #301
Tacoma WA 98402-3313
Phone: 253-572-8440
Fax: 253-572-8449

current contact person: Julia Puckett, ext. 13

or
By [Signature] 4/10/03
Pierce County Executive Date
(>\$250,000 or more)

AGORD CERTIFICATE OF LIABILITY INSURANCE

CSR #
SBOYC-1

DATE (MM/DD/YYYY)
04/01/03

AGORD
 Carlsson, Carlson & Kessel, Inc.
 21 70th Ave W Ste B
 University Place WA 98466-7664
 Phone: 253-865-3500 Fax: 253-865-7209

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
 Boys & Girls Clubs of Pierce
 Boys & Girls Club of Westland
 Boys & Girls Clubs of South
 Puget Sound
 1501 Pacific Ave #301
 Tacoma WA 98402

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: First National	
INSURER B: Safeco Insurance	
INSURER C: Safeco Insurance	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CB7782085	12/20/02	12/20/03	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$200,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMPROP AGG \$2,000,000
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BA7782085 12/20/02 12/20/03 COMBINED SINGLE LIMIT (EA ACCIDENT) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
C	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLES <input checked="" type="checkbox"/> RETENTION \$10,000	UL7782085	12/20/02	12/20/03	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Crime	CB7782085	12/20/02	12/20/03	Employee Dishonesty \$150,000

RISK MANAGEMENT INSURANCE
 Approved _____
 Date 4/3/03

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Pierce County Parks & Recreation is named as Additional Insured.

CERTIFICATE HOLDER

PARKREC
 Pierce Cnty Parks & Recreation
 FAX 253-592-7461
 Attn: Jan Wolcott
 9112 Lakewood Dr
 Lakewood WA 98499

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER PLACED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE: Mark D. Hanks



GIG HARBOR
"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MHA*
SUBJECT: CITY PROSECUTOR CONTRACT
DATE: APRIL 2, 2004

INFORMATION/BACKGROUND

The attached contract renews Brenda Bono for the year 2004-2005 as City Prosecutor. The Court Administrator reports a professional working relationship between the City Prosecutor and the Municipal Court. Prosecutor Bono has 14 years legal experience and has six years of judicial experience. Contract rates are increased at the request of the City Prosecutor by 13.8% from the 2003 contract. This increase is due to the prosecutor's perception of competitive salary comparison and to the \$2000 cost of a \$1,000,000 malpractice insurance policy. No compensation increase was granted in 2003.

POLICY CONSIDERATIONS

In the unlikely but potentially expensive event that the city brings a suit and then subsequently receives a judgment against the City Prosecutor, malpractice insurance would be a practical necessity. The City Attorney recommends this coverage, and recommends that the city require malpractice insurance for any attorney contracting with the city to perform legal services. Similarly, the city's insurance pool also recommends that malpractice and/or professional liability insurance be a requirement of the city's professional services contracts.

Some courts that have similar activity to Gig Harbor Municipal Court include Sumner, Fife, Port Orchard, Lakewood, SeaTac, and Lake Forest Park. A comparison to Gig Harbor follows:

<u>City/Status</u>	<u>Weekly In-Court Hours</u>	<u>Compensation per month</u>	<u>Benefits</u>
Sumner/employee	6	\$7408	unknown
Fife/contract	14	\$6700	2 wks paid vacation
Port Orchard/contract	13	\$4255	no benefits
Lakewood/employee	15 per employee	\$5126	full benefits
SeaTac/employee	20	\$5202	full benefits
Lake Forest Park/contract	16	\$5665	no benefits
Gig Harbor/contract	14	\$5416	no benefits
Gig Harbor (proposed contract)		\$6166	

Considering the cost of benefits, Gig Harbor's proposed contract is more cost efficient than Sumner, Fife, Lakewood, and SeaTac, and less cost efficient than Port Orchard

and Lake Forest Park. Gig Harbor Municipal Court expects to expand into a third day of court within the year, although this is not a certainty.

FISCAL CONSIDERATIONS

In 2000, the city contracted with Brenda Bono for \$50,000 per year, in lieu of the Mann/Johnson flat fee proposal of \$72,000. Previous Mann/Johnson yearly billings ranged from near \$60,000 to almost \$70,000. At that time, in-court hours averaged about 8-10 hours per week.

An entry-level Pierce County Criminal Deputy Prosecutor (typically 3-4 years experience) makes just less than \$55,000 per year for a 40-hour workweek. It should be possible, if the City Council so chooses, to implement a position with full benefits, *within the current 2004 prosecutor budget*, for an in-house position of City Prosecutor with a 40-hour workweek. A new hiree might have a training curve that would initially utilize surplus hours. Any surplus hours would eventually be available for additional work, and should prove effective over time both in terms of cost and quality of prosecution.

RECOMMENDATION

Staff recommends that the City Council motion to authorize the Mayor to sign the attached contract for prosecutor services for 2004-2005 or, in the alternative, direct staff to make the necessary preparations to hire a full-time City Prosecutor.

**CITY PROSECUTOR
AGREEMENT FOR SERVICES**

THE PARTIES:

The parties to this Agreement are as follows: **Brenda M. Bono**, hereinafter referred to as "Attorney"; and THE, CITY OF GIG HARBOR, hereinafter referred to as "City".

PURPOSE:

The purpose of this Agreement is to set forth the terms of the Agreement between the parties whereby the City agrees to hire Attorney for the City of Gig Harbor and Attorney agrees to provide legal services for the city relative to prosecuting of cases and other related matters.

CONSIDERATION:

The consideration for this Agreement consists of the mutual covenants and conditions contained herein and the mutual legal benefits and detriments arising from this Agreement.

THE AGREEMENT:

The parties hereto agree as follows:

1. **Duties.** Attorney or her associate shall at all times faithfully, industriously, and to the best of her/their ability and experience, perform all of the duties that may be required of her/them pursuant to the express and implicit terms of this Agreement and pursuant to the rules of professional ethics.
2. **Discrimination.** Attorney agrees not to discriminate against any person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, or physical, mental or sensory handicap, except where a bona fide occupational qualification exists.
3. **Reimbursement.** The City shall retain Attorney for the following works and shall reimburse the Attorney at the following rates.
 - a. Preparation and appearances for cases assigned to Attorney by the City in any Court, including without limitation, the Gig Harbor Municipal Court, Pierce County Superior Court and the Appellate Courts of the State of Washington.

- b. The City shall pay or reimburse Attorney for all Court costs, long distance telephone charges and postage. Attorney shall not be paid for travel time or clerical time involved in the performance her duties. Attorney shall be provided office space at the sole convenience of the city.
- c. The City shall pay to attorney the yearly amount of \$72,000 in monthly installments as invoiced by attorney. Any and all time spent in preparation for or appearances related to Appellate Courts other than Superior Court shall be compensated to attorney by the City at an hourly rate of not more than \$125.00 per hour.
4. Coverage Attorney. It is agreed and understood that it is the responsibility of the Attorney to be present at all Court hearings for which she has contracted to render services on behalf of the City. It is understood that the Attorney has other employment and that she is not precluded from other employment so long as there is no interference with the performance of her duties as set forth herein. The Attorney shall compensate such counsel obtained to pro tem for the Attorney in such instances. Should she be unable to perform her duties for any reason, including illness, the Attorney shall provide for full coverage of all duties to be performed under this Agreement by an attorney duly licensed in the State of Washington. The Coverage Attorney shall be approved in advance by the City and shall provide proof of malpractice coverage and be duly sworn to perform the duties of prosecutor. Such Coverage Attorney shall be compensated by the Attorney and the Attorney, Coverage Attorney and all agents and employees of the Attorney shall be independent contractors. The Attorney promises to hold harmless and indemnify the City from all employee-related costs, fees, benefits, wages and/or taxes of any kind or nature, and any and all fees for services and costs related to the services of the Coverage Attorney.
5. Subcontracting or Assignment. Attorney may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City.
6. Required Notices. The City shall be responsible for the provision to defendants of all required notices to assure their appearance in Court.
7. Insurance. The Attorney shall provide proof of professional liability insurance with at least a \$1,000,000 malpractice coverage limit by attaching a certificate of coverage at the time this contract is signed and shall maintain such insurance at all times that this contract is in effect.
8. Hold Harmless. Attorney agrees to indemnify, hold harmless and defend the City, its elected and appointed officials, employees and agents from and against any and all claims, judgments, or awards of damages, arising out of or resulting from the acts, errors or omissions of Attorney. The City agrees to indemnify, hold harmless, and defend Attorney from and against any and all claims, judgments or awards of

damages, arising out of or resulting from the acts, errors or omissions of the city, its elected and appointed officials, employees and agents.

9. Independent Contractor. The Attorney is and shall be at all times during the term of this Agreement an independent contractor and shall indemnify and hold harmless the City from all costs associated with the wages and benefits of the Attorney's employees or of a Coverage Attorney engaged pursuant to this Agreement.
10. Rules of Professional Conduct. All services provided by Attorney under this Agreement will be performed in accordance with the Rules of Professional Conduct for attorneys established by the Washington Supreme Court.
11. Work of Other Clients. Attorney may provide services for clients other than the city during the term of this Agreement, but will not do so where the same may constitute a conflict of interest unless the City, after full disclosure of the potential or actual conflict, consents in writing to the representation. Any potential conflicts shall be handled in accordance with the Rules of Professional Conduct referred to above.
12. Termination. This Agreement is a contract for the provision of professional services by the attorney to the City, and as such, the City as the client reserves the right to terminate the agreement without cause and without notice at any time. The attorney may, for any reason, terminate this Agreement, but in order to provide reasonable transition to other counsel and in fulfillment of the attorney's ethical obligation to the City as her client, promises she will provide sixty (60) days written notice to the City. The attorney shall also immediately notify the client in the event that the attorney's license to practice law in the state of Washington is revoked or suspended, in which case this Agreement shall be at an end.
13. Complete Agreement. This contract contains the complete agreement concerning the employment arrangement between the parties herein and shall, as of the effective date hereof, supersede all other agreements between the parties.
14. Waiver or Modification. No waiver or modification of this Agreement shall be valid unless in writing and duly executed by the party to be charged therein.

No evidence of any waiver or modification shall be offered or received in evidence of any proceeding, arbitration or litigation between the parties arising out of or affecting this Agreement or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing duly executed by the parties. The parties further agree that the provisions of this section may not be waived except as herein set forth.

15. The term of this Agreement shall be one (1) year, commencing on the 1st day of March, 2004, and terminating on the 28th day of February, 2005, subject, however, to prior termination as provided hereinabove, or upon agreement of the parties.

DATED this ____ day of ____ April, 2004.

CITY OF GIG HARBOR:

Gretchen A. Wilbert, Mayor

ATTEST:

Molly M. Towslee, City Clerk

ATTORNEY:

Brenda M. Bono



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEVE OSGUTHORPE, AICP *S.O.*
PLANNING & BUILDING MANAGER
SUBJECT: DESIGN MANUAL UPDATE
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

As the Council is aware, the design manual update has been in process for some time now. Pat Iolavera began working with the DRB to amend the Design Manual over three years ago, but her departure left the process temporarily on hold. Nonetheless, significant effort was put forward by Paul Kadzik and Lita Dawn Stanton in developing a new format of the Design Manual to make it more user-friendly and to improve its graphic appeal. (Ms. Stanton has been working under contract with the City for her graphic and formatting work on the Manual). Current staff has been working with the DRB on the draft and format developed by Mr. Kadzik and Ms. Stanton

The design manual update has been a rather lengthy process for three reasons: First, the reformatting resulted in an almost entire rewrite of the Manual, which prompted detailed review of all existing standards. Second, a detailed review prompted discussion (and sometimes debate) over the very philosophy behind existing standards; And third, once the philosophical discussion had occurred and agreement reached, it sometimes occurred that individuals who were not involved in the initial discussion of an item (e.g., a newly appointed member on the DRB, or a member absent at a given worksession) wished to go back and address issues that they did not have a chance to discuss in the first place.

In spite of these challenges, the DRB has done an admirable job in sorting out issues and developing a draft that the staff believes is now basically without technical error, that is descriptive, and that addresses in a positive and resourceful way the problems experienced with the current Design Manual. The staff thinks that it is now time to have the DRB members finish up any fine tuning they find necessary and forward the document to the Planning Commission to begin the public review process.

RECOMMENDATION:

To facilitate a timely completion of the document, the staff recommends that the Council direct the staff and DRB to complete the Design Manual update according to the following schedule:

1. DRB will complete its review of proposed changes by no later than April 15, 2004, which is a scheduled all-day worksession.
2. By April 16, 2004, Issue a SEPA threshold determination on the draft document that results from the April 15th worksession and send said document to the State to begin required 60-day review period. (This submittal date will be required to meet both SEPA and GMA notice requirements pursuant to WAC 197-11-232, which defines the Integrated SEPA/GMA Notice process).
3. DRB will hold final discussion and make any final changes during two additional evening worksessions, which will be held on May 13 and May 27. During the Final worksession on the 26th the DRB will make a final recommendation to the Planning Commission and City Council on their final draft document.
4. The document will be scheduled for a worksession with the Planning Commission on June 3rd and June 17th and for a public hearing on July 1st.
5. The Planning Commission will hold a final worksession and formulate a recommendation to the Council on July 15th.
6. The Document will be presented to the City Council for first reading of the ordinance on August 9th with second reading and final adoption anticipated on August 23rd.



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: SCHOOL IMPACT FEE ORDINANCE AND INTERLOCAL AGREEMENT
DATE: APRIL 2, 2004

INFORMATION/BACKGROUND

In 1999, in order to ensure that adequate transportation and parks facilities could be provided at established levels of service to serve new growth and development, the City Council adopted an ordinance to establish transportation and park impact fees. This ordinance is currently consistent with recently updated city comprehensive plans for transportation and parks, and creates the means to ensure that new development bears a proportionate share of the capital costs of off-site parks and transportation facilities. Also, this ordinance ensures that the city will pay its fair share of these capital costs, and provides for the equitable collection of these fees.

The current ordinance, however, does not collect school impact fees and the attached revisions to the ordinance propose to facilitate collection of such fees. The fee schedule attached to the ordinance is based on the Peninsula School District's fee proposal that the district considers consistent with its capital facility plan and growth projection needs. The proposed fees are identical in fee schedule to fees currently collected in Pierce County (see Appendix 'A').

POLICY CONSIDERATIONS

School impact fees will provide mitigation for the effects of new residential growth and attendant school capacity needs.

FISCAL CONSIDERATIONS

At \$1711 per single family dwelling unit and \$901 per multi-family dwelling unit, the proposed fee schedule meets 27.2% and 28.8% of the Peninsula School District's unfunded capital facility growth need, as expressed in Pierce County's adopted school impact fee schedule (see Exhibit "B" to Ordinance 2003-126s, attached). The \$1711 and \$901 fee levels are equal to the currently adopted Pierce County fee levels.

RECOMMENDATION

Staff recommends that this ordinance be adopted as presented *after* the Peninsula School District School Board approves the attached interlocal agreement, and after the City Council approves the interlocal agreement, conducts a public hearing on the ordinance, and holds two readings of the ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S IMPACT FEE REGULATIONS TO ALLOW FOR THE IMPOSITION OF SCHOOL IMPACT FEES BY THE CITY ON DEVELOPMENT, THE COLLECTION, MANAGEMENT, USE AND APPEAL OF SUCH FEES, ALL OF WHICH WILL BECOME OPERATIVE AT THE TIME THE CITY COUNCIL ADOPTS A FEE SCHEDULE FOR SCHOOL IMPACT FEES, ADDING NEW DEFINITIONS FOR "SCHOOL FACILITIES," "SCHOOL DISTRICT," "SCHOOL DISTRICT SERVICE AREA," AND "SUPERINTENDENT," AMENDING THE IMPACT FEE CHAPTER TO ELIMINATE ANY VESTING OF IMPACT FEES; PURSUANT TO A RECENT COURT DECISION, MAKING OTHER MINOR CHANGES TO CORRECT TYPOGRAPHICAL ERRORS; AMENDING GIG HARBOR CODE SECTIONS 19.14.010; 19.12.010; 19.12.050, 19.12.070, 19.12.080, 19.12.090, 19.12.100, 19.12.110, 19.12.120, 19.12.130, 19.12.140, 19.12.150, 19.12.170.

WHEREAS, the City has adopted impact fees for parks and transportation facilities in chapter 19.12 of the Gig Harbor Municipal Code; and

WHEREAS, the City has the authority to adopt impact fees to address the impact on school facilities caused by new development, pursuant to RCW 82.02.050 through 82.02.100; and

WHEREAS, the City's SEPA Responsible Official issued a determination that the adoption of this ordinance is exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of _____. Now, Therefore,

February 24, March 19, 2004

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

Section 1. Section 19.14.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.14.010 Definitions. The following words and terms shall have the following meanings for the purpose of chapter 19.10 and 19.12, the concurrency and impact fee chapters, ordinance, unless the context clearly appears otherwise. Terms otherwise not defined herein shall be given the meaning set forth in RCW 82.02.090, or given their usual and customary meaning:

* * *

()¹ "School facilities" means capital facilities owned or operated by the Peninsula School District.

() "School District" means the Peninsula School District.

() "School District service area" means the boundaries of the Peninsula School District.

() "Superintendent" means the School District Superintendent or his/her designee.

* * *

Section 2. Section 19.12.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.010. Authority and purpose.

A. This chapter is enacted pursuant to the City's police powers, the Growth Management Act as codified in chapter 36.70A RCW, the impact fee statutes as codified in RCW 82.02.050 through 82.02.100, ~~chapter 82.02 of the Revised Code of Washington (RCW)~~ chapter 58.17 RCW relating to platting and subdivisions, and the State Environmental Policy

¹ The definitions *herein* will be re-numbered by the City's code reviser.

Act (SEPA), chapter 43.21C RCW.

B. The purpose of this chapter is to:

1. Develop a program consistent with the Gig Harbor parks, open space and recreation plan, six year road plan and the City's comprehensive plan (parks and transportation elements), and capital improvement plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the City. With regard to school facilities, to develop a program for joint public and private financing of school facilities consistent with the capital improvement plan of the School District, as such public facilities are necessitated in whole or in part by development in the City;

2. Ensure adequate levels of service in public facilities within the city and School District;

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

4. Ensure that the city pays its fair share of the capital costs of parks and transportation facilities necessitated by public use of the parks and roadway system, and ensure that the School District pays its fair share of the capital costs of school facilities; and

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

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

Section 3. Section 19.12.050 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.050 Imposition of Impact Fees.

A. The City ~~approving authority~~ is hereby authorized to impose impact fees on new development.

B. Impact fees may be required pursuant to the impact fee schedule adopted through the process described herein, or mitigation may be provided through: (1) the purchase, installation and/or improvement of park, school and transportation facilities pursuant to GHMC 19.12.080(C); or (2) the dedication of land pursuant to GHMC 19.12.080(C).

C. Impact fees:

1. Shall only be imposed for park, school and transportation facilities that are reasonably related to ~~the impacts of new development~~;²
2. Shall not exceed a proportionate share of the costs of park, school and transportation facilities that are reasonably related to new development;
3. Shall be used for park, school and transportation facilities that will reasonably benefit the new development;
4. Shall not be used to correct existing deficiencies;
5. Shall not be imposed to mitigate the same off-site park, school and transportation facility impacts that are being mitigated pursuant to any other law;
6. Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an agreement to collect such fees has been executed between the state/county and the city;
7. Shall not be collected for improvements to park and transportation facilities in other municipalities unless the affected municipality requests such improvement that such impact fees be collected on behalf of the affected municipality, and an interlocal agreement has been executed between the city and the affected municipality for the collection of such fees.
8. Shall not be collected for any development approved prior to the date of adoption of the ordinance codified in this chapter unless changes or modifications in the development requiring city approval are subsequently proposed which result in greater direct impacts on park, school and transportation facilities than were considered when the development was first approved;
9. Shall be collected only once for each development, unless changes or modifications to the development are proposed which result in greater direct impacts on park, school and/or transportation facilities than were considered when the development was first permitted;
10. May be imposed for system improvement costs previously incurred by the city, to the extent that new growth and development will be served by previously constructed improvements, and provided, that such fee shall not be imposed to make up for any system improvement deficiencies; and
11. Shall only be imposed for park and school facilities on residential development.

² Change made to more closely resemble RCW 82.02.050(3)(a).

⁴ NOTE: There is no Appendix D. The impact fee schedule for school impact fees must be adopted by ordinance before the City can collect school impact fees.

Section 4. Section 19.12.070 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.070 Fee schedules and establishment of service area.

A. Impact fee schedules setting forth the amount of the impact fees to be paid by developers are listed in Appendix B for roads and Appendix C for parks, and Appendix D for schools, attached to the ordinance codified in this chapter and incorporated herein by this reference.⁴

B. For the purpose of this chapter, the entire city shall be considered one service area.

Section 5. Section 19.12.080 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.080 Calculation of Impact Fees.

A. The Director shall calculate the impact fees set forth in Appendices B and C, more specifically described in the Gig Harbor six-year road plan and the parks, open space and recreation plan. The Superintendent shall calculate the school impact fees set forth in Appendix D. The City Council shall have the final decision on the calculation of the impact fees to be imposed under this Chapter as set forth in Appendices B and C. These calculations shall:

1. ~~Determines~~ the standard fee for similar types of development, which shall be reasonably related to each development's proportionate share of the cost of the projects described in Appendix A, and for parks shall be calculated as set forth in Appendix C, and for schools shall be as provided in the School District's capital facilities plan;
2. Reduces the proportionate share by applying the benefit factors described in this section. ;

B. In calculating proportionate share, the following factors will be considered: ~~director shall:~~

1. Identify all park, school and transportation facilities that will be impacted by users from each development;
2. Identify when the capacity of a park, school or transportation facility has been fully utilized;
3. Update the data as often as practicable, but at least annually;
4. Estimate the cost of constructing the projects in Appendix A for roads as of the time they are placed on the list, and the cost of maintaining the City's level of park service as shown on Appendix ~~D- C~~, C,

and the costs relating to the construction of new schools facilities in Appendix D, and then update the costs estimates at least annually, considering the:

- a. Availability of other means of funding park, school and transportation facilities;
 - b. Cost of existing park, school and transportation facility improvements;
 - c. Methods by which park, school and transportation facility improvements were financed;
5. Update the fee collected against a project which has already been completed, through an advancement of city or School District funds, at a rate, determined annually, which is equivalent to the City or School District's return on investments.

C. The director or, in the case of school impact fees, the Superintendent, shall reduce the calculated proportionate share for a particular development by giving credit for the following benefit factors:

1. The purchase, installation and/or improvement of park, school and transportation facilities, if;
 - a. The facilities are located on land owned by the city, Pierce County, the a School District or a special district; and
 - b. A designated public owner is responsible for permanent, continuing maintenance and operation of the facilities; and
 - c. The Director or Superintendent, determines that the facilities correspond to the type(s) of park, school and transportation facilities being impacted by the development as determined pursuant to this chapter; and
 - d. The Director determines, after consultation with the county, School District or special purpose district, as applicable, and an analysis of supply and demand data, the parks, open space and recreation plan, the six year road plan and any applicable Pierce County park and transportation plan, that the proposed park and transportation facility improvements better meet the city's need for park and transportation facilities than would payment of funds to mitigate the park and transportation impacts of the development.
2. The credit against the impact fee shall be equal to the fair market value of the purchase, installation and/or improvement.
3. Any applicable benefit factors, as described in RCW 82.02.060, that are demonstrated by the applicant not to have been included in the calculation of the impact fee.
4. A developer of a planned residential development or mobile home park may receive credit only for park, school and transportation facilities provided in addition to those normally required

under SEPA for such developments pursuant to chapter 18.04 GHMC.

5. When the Director or Superintendent has agreed to a developer's proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park, school and/or transportation facilities, the developer shall prepare and submit a facility improvement plan to the Director and, if applicable, to the Superintendent for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.

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

a. The land should result in an integral element of the Gig Harbor park/road system;

b. The land is suitable for future park, school and/or transportation facilities;

c. The land is of an appropriate size and of an acceptable configuration;

d. The land has public access via a public street or an easement of an equivalent width and accessibility;

e. The land is located in or near areas designated by the city, ~~school district~~ or county on land use plans for park, trail or recreation purposes; or, in the case of schools, is appropriately located for school facilities;

f. The land provides linkage between Pierce County and/or other publicly owned recreation or transportation properties;

g. The land has been surveyed or adequately marked with survey monuments, or otherwise readily distinguishable from adjacent privately owned property;

h. The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage, erosion or flooding problems which the Director or Superintendent determines would cause inordinate demands on public resources for maintenance and operation;

i. The land has no known safety hazards;

j. The developer is able to provide documentation, as nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title; and

k. The developer is able to provide and fund a long-term method, acceptable to the Director or Superintendent, for the management and maintenance of the land, if applicable.

7. The amount of credit determined pursuant to this subsection shall be credited proportionately among all of the units in the

development, and the impact fee for which each unit for which a permit or approval is applied shall be reduced accordingly.

8. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development.

9. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related facilities identified by the Director as increasing transportation system capacity.

Section 6. Section 19.12.090 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.090 Variation from impact fee schedule.

If a developer submits information demonstrating a significant difference between the age, social activity or interest characteristics of the population of a proposed subdivision or development and the data used to calculate the impact fee schedule, the Director or Superintendent may allow a special calculation of the impact fee requirements for the subdivision or development to be prepared by the developer's consultant, at the developer's cost; provided, however, that the Director or Superintendent shall have prior approval of the qualifications and methodology of the developer's consultant in making such calculation, and any time period mandated by statute or ordinance for the approving authority's decision on the subdivision or development shall not include the time spent in preparing the special calculation. Whether the Director or Superintendent accepts the data provided by the special calculation shall be at the discretion of the Director's or Superintendent or the School District's discretion.

Section 7. Section 19.12.100 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.100 Payment of fees.

A. All developers shall pay an impact fee in accordance with the provisions of this chapter which shall be calculated by the City at the time that the building permit is ready for issuance.

B. The impact fee shall be recalculated if the development is

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modified or conditioned in such a way as to alter park, school or transportation impacts for the development.

C. A developer may obtain a preliminary determination of the impact fee before submitting an application for the development permit by providing the Director or Superintendent with the information needed for processing. However, because impact fees are not subject to the vested rights doctrine, the fee actually paid by the developer will be the impact fee in effect at the time of building permit issuance, regardless of any preliminary determination.

Section 8. Section 19.12.110 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.110 Time of payment of impact fees.

A. Payment of any required impact fees ~~calculated as set forth in GHMC 19.12.100~~ shall be made prior to the issuance of a building permit.

B. Impact fees may be paid under protest in order to obtain the necessary permits/approvals until an appeal of the fee amount is finally resolved.

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

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

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

Section 9. Section 19.12.120 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.120 Project List.

A. The Director shall annually review the city's parks, open space and recreation plan, the six year parks improvement plan, the six year road plan and the projects listed in Appendices A and B and shall:

1. Identify each project in the comprehensive plan that is growth-related and the proportion of each such project that is growth-related;
2. Forecast the total money available from taxes and other public sources for park and transportation improvements for the next six years;
3. Update the population, building activity and demand and supply data for park and transportation facilities and the impact fee schedule for the next six-year period;
4. Calculate the amount of impact fees already paid;
5. Identify those comprehensive plan projects that have been or are being built but whose performance capacity has not been fully utilized;

B. The Director shall use this information to prepare an annual draft amendment to the fee schedule in Appendices A and ~~D-C~~, which shall comprise:

1. The projects ~~in~~ on the comprehensive plan that are growth related and that should be funded with forecast public moneys and the impact fees already paid; and
2. The projects already built or funded pursuant to this chapter whose performance capacity has not been fully utilized.

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

D. Once a project is placed on Appendix A, or if the City amends its level of park service in Appendix ~~D-C~~ a fee shall be imposed on every development ~~that impacts the project~~ until the project is removed from the list by one of the following means:

1. The council by ordinance removes the project from Appendix A and/or ~~D-C~~, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to the park and transportation impacts of development that have paid an impact fee; provided that a refund shall not be necessary if the council transfers the fees to the budget of another project that the council determines will mitigate essentially the same park and transportation impacts; or

2. The capacity created by the project has been fully utilized, in which case the director shall remove the project from the

February 24, March 19, 2004

project list.

E. The School District shall annually review and update its capital facilities portion of the City's comprehensive plan and submit such updated plan to the City by April 1st July 1st of each year. The School District's updated capital facilities plan shall identify projects that are growth-related, include the amount of school impact fees paid, and may include a proposed school impact fee schedule adjustment.

Section 10. Section 19.12.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.130 Funding of projects.

A. An impact fee trust and agency fund is hereby created for parks, schools and transportation fees. The School District shall be responsible for the creation of its own impact fee fund,⁵ and shall be solely responsible for the deposit of fees in such fund, and the use/refund of such fees. The Director shall be the manager of the City's fund. The City shall place park, school and transportation impact fees in appropriate deposit accounts within the impact fee fund.

B. The parks, school and transportation impact fees paid to the City shall be held and disbursed as follows:

1. The fees collected for each project shall be placed in a deposit account within the impact fee fund, with the exception of the school impact fees, which shall be transmitted to the School District;

2. When the council appropriates capital improvement project (CIP) funds for a park or transportation project on the project list, the park or transportation fees held in the impact fee fund shall be transferred to the CIP fund. The non-impact fee moneys appropriated for the project shall comprise both the public share of the project cost and an advancement of that portion of the private share that has not yet been collected in park or transportation impact fees;

3. The first money spent by the director on a project after a council appropriation shall be deemed to be the fees from the impact fee fund;

4. Fees collected after a project has been fully funded by means of one or more council appropriations shall constitute reimbursement to the city or School District of the funds advanced for the private share of the project. The public monies made available by such reimbursement shall be used to pay the public share of other projects.

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

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

D. Impact fees shall be expended or encumbered for a permissible use

⁵ School District impact fees are not deposited into a separate fund, but rather are placed in a designated account within the capital projects fund.

for six years after receipt, unless there exists an extraordinary or compelling reason for fees to be held longer than six years. The Director may recommend to the Council that the City hold park or transportation fees beyond six years in cases where extraordinary or compelling reasons exist. Such reasons shall be identified in written findings by the Council.

E. The School District and the Director shall prepare an annual report on the impact fee accounts showing the source and amount of all monies collected, earned or received and projects that were financed in whole or in part by impact fees.

Section 11. Section 19.12.140 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.140 Use and disposition of dedicated land.

All land dedicated or conveyed pursuant to this chapter shall be set aside for development of park, school, and transportation facilities. The city and Pierce County, and any school district or special purpose district to which land is dedicated or conveyed pursuant to this chapter shall make every effort to use, develop and maintain land dedicated or conveyed for park, school, and transportation facilities. In the event that use of any such dedicated land is determined by the director, Superintendent, or Pierce County, ~~any school district or special purpose district~~ to be infeasible for development of park, school, and transportation facilities, the dedicated land may be sold or traded for another parcel of land ~~in the city, subject to the requirements of state law and city ordinances~~. The proceeds from such a sale shall be used to acquire land or develop park, school, and transportation facilities ~~in the city~~.⁶

Section 12. Section 19.12.150 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.150 Refunds.

A. A developer may request and shall receive a refund from either the City (for parks and transportation impact fees) or the School District (for school impact fees) when the developer does not proceed with the development activity for which impact fees were paid, and the developer shows that no impact has resulted.

⁶ Deleted limitation because the School District extends beyond City boundaries.

B. In the event that impact fees ~~are must be~~ refunded for any reason, they shall be refunded by the City with respect to park and transportation fees and the School District with respect to school impact fees, and such fees shall be returned with interest earned to the owners as they appear of record with the Pierce County Assessor at the time of the refund.

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

Section 13. Section 19.12.170 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.170 Appeals.

A. Decision on Impact Fee. by Director. The director shall issue a written decision on the parks and/or transportation impact fee amount as described in this chapter. The Superintendent shall issue a written decision on the school impact fee amount as described in this chapter.

B. Reconsideration by Superintendent.

1. In order to request reconsideration of the Superintendent's decision, the developer shall make a written request to the Superintendent for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request and shall be filed with the Superintendent within fifteen (15) days after the Superintendent's decision on the school impact fees.

2. The Superintendent shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The Superintendent shall issue a written decision on reconsideration within 30

working days of the Superintendent's receipt of the request for reconsideration or the meeting with the developer, whichever is later.

C. Reconsideration by Director.

1. In order to appeal request reconsideration of the Director's decision, the developer shall make a written request to the Director for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request, and shall be filed with the Director within 15 days after issuance of the Director's decision on the impact fees.

2. The Director shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The director shall issue a written decision on reconsideration within 10 working days of the director's receipt of the request for reconsideration or the meeting with the developer, whichever is later.

D. Appeal of Decision on Reconsideration to Hearing Examiner. A developer may appeal the amount of the impact fee established in the director's decision on reconsideration of the Director or Superintendent to the hearing examiner, who shall conduct a public hearing on the appeal. In the case of school impact fees, the School District shall provide for a hearing examiner to hear the appeal.

1. An appeal of the impact fee ~~as established by the director's decision on reconsideration~~ after reconsideration may be filed without appealing the underlying permit. This procedure is exempt from the project permit processing requirements in Chapters 19.01-19.06, pursuant to RCW 36.70B.140. If the developer files an appeal of the underlying permit and the impact fee, the City may consolidate the appeals. ~~The appeals shall be consolidated.~~

2. The developer shall bear the burden of proving:
a. That the Director or Superintendent committed error in calculating the developer's proportionate share, as determined by an individual fee calculation, or, if relevant, as set forth in the impact fee schedule, or in granting credit for the benefit factors; or
b. That the Director or Superintendent based his determination upon incorrect data.

3. An appeal of the decision of the Director or Superintendent on reconsideration must be filed with the City planning department within 14 calendar days of issuance of that decision.

E. Appeals of Hearing Examiner's Decision. ~~Appeals from the decision of the hearing examiner shall be to the City council, pursuant to the provisions of 19.06 GHMC.~~ Appeals from the decision of the School District Hearing Examiner or the City Hearing Examiner shall be to superior court as provided in ch. 36.70C RCW.

February 24, March 19, 2004

Section 14. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 15. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this __th day of _____, 2004__.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

February 24, March 19, 2004

By: _____
CAROL A. MORRIS

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

EXHIBIT 'D'

City of Gig Harbor
School Impact Fee Schedule

Single Family Dwelling:	\$1,711.00
Multi-Family Dwelling:	\$ 901.00 x number of units

TABLE 4A-1

Given the following variables:

A = Full cost fee for site acquisition costs = A1+A2+A3

A1 = Elementary School site cost per student x the student factor

A2 = Middle School site cost per student x the student factor

A3 = High School site cost per student x the student factor

B = Full cost fee for school construction = B1+B2+B3

B1 = Elementary School construction cost per student x the student factor

B2 = Middle School construction cost per student x the student factor

B3 = High school construction cost per student x the student factor

C = Full cost fee for temporary facilities construction = C1+C2+C3

C1 = Elementary School temporary facility cost per student x the student factor

C2 = Middle School temporary facility cost per student x the student factor

C3 = High School temporary facility cost per student x the student factor

D = State Match Credit = D1+D2+D3

D1 = Cost Index x SPI square footage per student for elementary school x state match % x student factor

D2 = Cost Index x SPI square footage per student for middle school x state match % x student factor

D3 = Cost Index x SPI square footage per student for high school x state match % x student factor

TC = Tax payment credit = the net present value of the Average Assessed Value for the Dwelling Unit type in the School District,

$$\frac{< (1+i)^n >-1}{i (1+i)^n}$$

x the current School District capital property tax levy rate, i (1+i)ⁿ, where

i = the current interest rate for outstanding bond issues

n = the number of years left before the bond or capital levy is retired, up to a maximum of ten years.

FC = Facilities Credit = the per-dwelling-unit value of any site or facilities provided directly by the development.

$$FC = \frac{\text{Value of fee payer's contribution}}{\text{number of dwelling units in the development}}$$

Then the Unfunded Need (UN):

$$UN = A+B+C-D-TC-FC$$

The Fee Obligation:

Total Unfunded Need x 50% = Fee Calculation

The Fee Obligation is the lesser of the Fee Calculations or the Maximum Fee Obligation in this Chapter.

WHERE:

- A. "Capacity" means the number of students a School District's facilities can accommodate district-wide at each grade span, based on the District's adopted level of service.
- B. "Classrooms" means educational facilities of the District required to house students for its basic educational program. The classrooms are those facilities the District determines are necessary to serve its student population. Specialized facilities identified by the District, including but not limited to gymnasiums, cafeterias, libraries, administrative offices, special education classrooms not suitable for general use because of design or equipment needs, and child day care centers, shall not be counted as classrooms.
- C. "Construction Cost Per Student" means the estimated cost of construction of a permanent school facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span and taking into account the requirements of students with special needs. A District shall establish construction costs based upon the District's experience with comparable projects, adjusted for inflation, or the cost of similar projects in other districts.
- D. "Cost Index" means the area cost allowance for school construction determined under WAC 180-27-060.
- E. "Facilities Credit" means the value of any site, school facilities, or monetary compensation the District has agreed to accept as an off-set against a school impact fee from a fee payer regarding the development activity.
- F. "Grade Span" means the categories into which a District groups its grades of students; i.e., elementary, middle or junior high school, and high school.
- G. "Level of Service (for schools)" means the standard adopted by each District that identifies the program year, the class size by grade span, and taking into account the requirements of students with special needs, the number of classrooms presently available of facilities the District believes will best serve its student population, the student population for new school facilities per grade span, and other factors as identified by the School District. Unless a

District adopts by board resolution a standard of service that specifically deems all or any portion of its relocatable facilities to be permanent facilities, a District's standard of service shall not include any classrooms or other educational facilities housed in relocatable facilities or in transitional facilities. Except as otherwise defined by the school board pursuant to a board resolution, transitional facilities shall mean those facilities, including relocatable facilities or leased space, that are used to cover the time required for the construction of permanent facilities called for in the Capital Facilities Plan.

- H. "Permanent Facilities" means facilities of the District with a fixed foundation that are not relocatable facilities.
- I. "Relocatable or Temporary Facilities" means any factory built structure, transportable in one or more sections that is designed to be used as an education space and is needed to prevent the over-building of school facilities, to meet the needs of service areas within a District, or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent school facilities.
- J. "Relocatable or Temporary Facilities Cost Per Student" means the estimated cost of purchasing and siting a relocatable facility in the District for the grade span of school to be provided, as a function of the District's design standard per grade span and taking into account the requirements of students with special needs.
- K. "Site Cost Per Student" means the estimated cost of a site in the District for the grade span of school to be provided as a function of the District's design standard per grade span and taking into account the requirements of students with special needs. A District shall determine site costs based on past experience or the acquisition costs for similar sites in comparable School Districts.
- L. "SPI Square Footage Per Student" means the space allocations per grade span determined by WAC 180-27-035. State Board of Education.
- M. "State Matching Credit" means the calculation set forth in Attachment A of the District's Boeckh Index times SPI square footage per student per grade span times state match percentage times applicable student factor.
- N. "State Match Percentage" means the percentage of school construction costs for which a District is eligible to receive state funding pursuant to RCW 28A.525.166 and the rules of the
- O. "State Matching Credit" means the calculation set forth in Attachment A of the District's Boeckh Index times SPI square footage per student per grade span times state match percentage times applicable student factor.
- P. "Student Factor" means the number derived by a School District to describe how many students of each grade span are expected to be generated by development activity. Student factors shall be based on District records of average actual student generated rates for new developments constructed over a period of not more than five years prior to the date of the fee calculation; provided that, if such information is not available in the District or if there are no developments in the District similar to that being proposed, the

District may use data from districts with similar demographics, or, if no other data sources are reasonably available, county-wide averages.

Student factors shall be separately determined for single family dwelling units and dwelling units within multi-family residences. For purposes of this Chapter, mobile homes shall be considered single family residences.

- Q. "Tax Payment Credit or 'TC'" means the calculation set forth in Attachment A of the District's average real property tax determined value for single family dwelling units or multi-family dwelling units times the District's capital property tax rate as adjusted by the current interest rate for any bonds being retired by a capital tax and the number of years each capital levy tax shall be imposed, up to ten years. The District's capital tax rate consists of authorized tax levies to retire bonded indebtedness incurred for School District capital purposes under Chapter 28A.530 RCW and school facility levies for construction, remodeling, and modernization under RCW 84.52.053.

SUMMARY OF ORDINANCE NO. ____

of the City of Gig Harbor, Washington

On _____, 200__, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S IMPACT FEE REGULATIONS TO ALLOW FOR THE IMPOSITION OF SCHOOL IMPACT FEES BY THE CITY ON DEVELOPMENT, THE COLLECTION, MANAGEMENT, USE AND APPEAL OF SUCH FEES, ALL OF WHICH WILL BECOME OPERATIVE AT THE TIME THE CITY COUNCIL ADOPTS A FEE SCHEDULE FOR SCHOOL IMPACT FEES, ADDING A NEW DEFINITIONS FOR "SCHOOL FACILITIES," "SCHOOL DISTRICT," SCHOOL DISTRICT SERVICE AREA," AND "SUPERINTENDENT," AMENDING THE IMPACT FEE CHAPTER TO ELIMINATE ANY VESTING OF IMPACT FEES; PURSUANT TO A RECENT COURT DECISION, MAKING OTHER MINOR CHANGES TO CORRECT TYPOGRAPHICAL ERRORS; AMENDING GIG HARBOR CODE SECTIONS 19.14.010; 19.12.010; 19.12.050, 19.12.070, 19.12.080, 19.12.090, 19.12.100, 19.12.110, 19.12.120, 19.12.130, 19.12.140, 19.12.150, 19.12.170.

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

APPROVED by the City Council at their meeting of _____,
2004.

MOLLY TOWSLEE, CITY CLERK

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF GIG HARBOR AND PENINSULA SCHOOL DISTRICT**

THIS AGREEMENT is entered into this ___ day of _____, 200_, by and between the City of Gig Harbor (the "City" hereinafter) and the Peninsula School District #401 (the "District" hereinafter).

WHEREAS, the Washington State Legislature passed the Growth Management Act, chapter 36.70A RCW, including RCW 82.02.050 through 82.02.100 (the "Authorizing Statutes" hereinafter), which authorize the imposition of impact fees on development activity as part of the financing for public facilities, which financing must provide for a balance between impact fees and other sources of public funds; and

WHEREAS, these Authorizing Statutes allow collection and expenditure of impact fees only for public facilities which are addressed by a capital facilities element of a comprehensive land use plan adopted under the Growth Management Act; and

WHEREAS, the District has prepared and adopted a capital facilities plan, and authorization to collect and expend fees is contingent upon the City's adoption of the District's Capital Facilities Plan (CFP) as part of the City's Comprehensive Plan (RCW 36.70A.070) and on the Plan's adherence with the authorizing statutes; and

WHEREAS, as a prerequisite to the City's adoption of an ordinance describing the features of the school impact fee program, allowing the District to receive and expend school impact fees in conformance with the Authorizing Statutes, the City and District desire to enter into an interlocal agreement; and

WHEREAS, this interlocal agreement will set forth the duties and responsibilities of the parties with regard to implementation of the school impact fee program, as well as indemnification responsibilities for any legal challenges to the program;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

I. Responsibilities of the District.

The District, by and through its officials, officers, employees, agents and representatives, agrees to the following, if the City adopts a school impact fee ordinance:

A. Adopt a capital facilities plan, which meets the requirements of the Authorizing Statutes;

B. Submit information to the City to support the adoption of a school impact fee ordinance in the City for the imposition of school impact fees, including the District's capital facilities plan, a proposed impact fee schedule, and any other information required by the City's ordinance.

C. Annually submit to the City a six-year capital facilities plan or an update of the previously adopted plan, together with an impact fee schedule, which meets the requirements of the Authorizing Statutes and the school impact fee ordinance, on or before ~~April 4st~~ July 1st of each year. This shall include a list of all capital facilities funded or constructed by the District with school impact fees collected in the previous year(s) from any other city or Pierce County.

D. Handle all requests for consideration or appeals of the school impact fees or dedication in lieu of fee payment from initiation to final decision. The District's decision on reconsideration and/or appeal shall be final. The District shall be responsible for defending the school impact fee and/or the District's responsibilities as set forth herein regardless of whether an appeal of the school impact fee is filed with an appeal of the underlying permit or not. The details of the District's responsibility to defend and indemnify the City as set forth in Section IV below.

E. Establish and maintain school impact fee accounts, as required by RCW 82.02.070, as it now exists or may hereafter be amended.

F. Preparation of a report to the City to allow the City to meet the requirements of RCW 82.02.070(1) and submit such report to the City on or before July 1st of each year, showing the source and amount of all monies collected, earned or received and system improvements that were financed in whole or in part by impact fees.

G. Properly expend impact fees, as required by RCW 82.02.050(4) and 82.02.070(2), as these statutes now exist or may hereafter be amended.

H. Encumber or expend impact fees as required by RCW 82.02.070(3) and where the District has extraordinary and compelling reasons for noncompliance with this statute, the District shall identify such reasons in written findings delivered to the City Council.

I. Notification of property owners of refunds under RCW 82.02.080 and the processing and payment of any refunds, together with any interest which may be due.

J. Review of all covenants and declaration of restrictions for form, as these documents are required by the school impact fee ordinance to maintain exceptions from payment of impact fees. In the event that such covenants and/or declarations of restrictions are violated, the District will have the responsibility for enforcement of same.

K. Maintain all accounts and records necessary to ensure compliance with this Agreement, the school impact fee ordinance, the Authorizing Statutes and all other applicable law.

II. Responsibilities of the City.

The City, by and through its officials, officers, employees, agents and representatives, agrees to the following, in the event the City adopts a school impact fee ordinance:

A. Be responsible for the following aspects of the impact fee program:

1. Consideration of a school impact fee ordinance for adoption, which ordinance shall be reviewed and approved by the District;
2. ~~If a school impact fee ordinance is adopted, a school impact fee schedule shall also be adopted,~~ Preparation of a school impact fee schedule to be adopted with the school impact fee ordinance, based on information submitted by the District, and prepared by the District in compliance with the Authorizing Statutes and all other applicable law.
3. Review of annually updated information from the District relating to the school impact fee schedule, and adoption of a new school impact fee schedule based on information submitted by the District and prepared by the District under the Authorizing Statutes and all other applicable law.
4. The determination, pursuant to the school impact fee ordinance, whether or not residential activity in the City is exempt from payment of school impact fees.
5. The receipt of fees from the applicant.
6. The transmittal of the applicant's fees to the District.
7. Timely notification and tender to the District of a judicial appeal of the school impact fees, as provided in Section IV herein.

B. Establish and maintain school impact fee accounts pursuant to RCW 82.02.070 (as the same now exists or may hereafter be amended), so that impact fees can be transferred to the District on a monthly basis.

C. Develop a report on the school impact fee account as required by RCW 82.02.0701(1), from a review of the District's report required by RCW 82.02.050(4) (as these statutes now exist or may hereafter be amended), detailing the fees received and the system improvements financed in whole or in part by the fees.

III. Audit.

A. The District's records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit, by the City or other appropriate state agency.

B. The District agrees to cooperate with any monitoring or evaluation activities conducted by the City that pertain to the subject of this Agreement. The District agrees to allow the City or appropriate state agencies and/or any of their employees, agents or representatives, to have full access to and the right to examine, audit, make excerpts or transcripts, during normal business hours, all of the District's records with respect to all matters covered by this Agreement. The City shall provide seven (7) days' advance notice to the District of fiscal audits to be conducted.

IV. Indemnification and Hold Harmless.

A. The District is a separate municipal corporation, with the authority to adopt its capital facilities plan and to spend the school impact fees collected from the City from property owners/developers in the City. The District acknowledges that because the District gathers, collects, creates and interprets the data used to develop its capital facilities plan, that the District, not the City, is in the best position to ensure that its capital facilities plan conforms to the Authorizing Statutes and all other applicable law. The District further acknowledges that because the District will make its own discretionary decisions about how to spend the school impact fees from the City, that the District, not the City, is in the best position to ensure that its related actions conform to the Authorizing Statutes and all other applicable law. With this in mind, the parties have agreed to indemnify the other as follows:

1. The District shall, at its own cost and expense, protect, defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all costs, claims, judgments or awards of damages, including attorneys' fees and expert witness fees, arising out of or in any way resulting from the acts or omissions of the District, its officers, employees or agents, relating to the District's implementation of the school impact fee program, performance of the duties set forth in Section I of this Agreement, or compliance with the school impact fee ordinance, the Authorizing Statutes or applicable law, all as may be amended from time to time. This indemnification by the District of the City shall include, but is not be limited to:

2. The District's responsibility to refund any fees with interest, which are determined by a court of competent jurisdiction to have been improperly paid, regardless of whether the City erroneously imposed and collected the school impact fee amount;

3. The District's agreement not to impose any liability on the City for the City's failure to collect the proper fee amount or any fee from an applicant conducting a development activity, provided that the City shall make reasonable attempts to collect such fee.

B. The District shall, at its own cost and expense, protect, defend, indemnify and hold harmless the City, its officers, officials, employees and agents, from any and all costs, claims, judgments or awards of damages, including attorneys' fees and expert witness fees, resulting from any challenge to the constitutionality or legality of the school impact fee ordinance or the fee schedule or determination for any individual permit application. Once the District assumes defense of any appeal relating to the school impact fee ordinance, fee schedule or individual determination, the District shall not be responsible to reimburse the City for any of the City's attorneys' fees or litigation costs incurred thereafter.

C. The District further agrees that the District shall, at its own cost and expense, defend, indemnify and hold harmless the City, its officers, officials, employees, and agents from any and all costs, claims, judgments or awards of damages, including attorneys' fees or expert witness fees arising out of or in any way resulting from the District's failure to refund impact fees, or interest on such impact fees, including but not limited to a determination that impact fees from development activity that was not completed are not refundable because the funds were expended or encumbered by the District, whether or not the District's determination was made in good faith; provided, however, that once the District assumes defense of any such claim or action, the District shall not be responsible to reimburse the City for any of the City's attorneys' fees or litigation costs incurred thereafter.

D. The City shall, at its own cost and expense, protect, defend, indemnify and hold harmless the District, its officers, employees, or agents from any and all costs, claims, judgments, awards, attorneys' fees or expert witness fees arising out of or in any way resulting from the acts or omissions of the City, its officers, officials or employees relating to the performance of the City's responsibilities as set forth in Section II of this Agreement. The City's decision to adopt a school impact ordinance using the information provided by the District (initially or annually) shall not be the basis for City liability, and the parties agree that if the City relies upon the information provided by the District (initially or annually) in the adoption of a school impact fee ordinance or any subsequent fee schedule, the City shall not be required to defend any appeal or challenge to the District's information, data, use of school impact fees, calculation of fees or decisions on

reconsideration/appeal. Once the City assumes defense of any claim or action, the City shall not be responsible to reimburse the District for any of the District's attorneys' fees or litigation cost incurred hereunder.

E. The duties of the parties to each other under this Section IV shall not be diminished or extinguished by the prior termination of this Agreement, pursuant to Section V.

V. Effective Date and Termination.

A. The District's authorization to receive impact fees under this Agreement may be terminated without cause by the City, in whole or in part, at any time, but only upon the repeal or invalidation of the school impact fee ordinance (or any fee schedules adopted hereunder). All other obligations under this Agreement shall remain in effect until both of the following conditions have been satisfied:

1. The City or the District provides written notice that this Agreement is being terminated;
2. The District no longer retains unexpended or unencumbered impact fees and interest earned thereon.

The obligations under Section IV, Indemnification, shall be continuing and shall not be diminished or extinguished by the termination of this Agreement.

B. The District shall have the duty to ensure that upon termination of this Agreement, any remaining expended or unencumbered impact fees and interest earned thereon are either properly expended or refunded pursuant to chapter 82.02 RCW.

C. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or by law that either party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other party.

VI. Modification.

No changes or modifications to this Agreement shall be valid or binding upon either party unless such changes or modifications are in writing and executed by both parties.

VII. Integration.

This Agreement, together with the school impact fee ordinance and any definitions adopted by the City to implement the ordinance, contains all of the terms and conditions agreed upon by the parties. No other understandings, oral

or otherwise, regarding the subject matter of this Agreement shall be deemed to bind either party.

VIII. Severability.

In the event that any term or condition of this Agreement or the school impact fee ordinance, or application of either to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

IX. Rights of Other Parties.

It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and conveys no right to any other party.

X. Disputes.

Jurisdiction of any dispute arising under this Agreement shall be in Pierce County Superior Court, or the U.S. District Court, Western District of Washington, and the substantially prevailing party shall be entitled to recover its costs and reasonable attorneys' fees and expert witness fees.

XI. Governing Law and Filing.

This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. The laws of the State of Washington shall govern the validity and performance of this Agreement. This Agreement shall become effective upon occurrence of the following:

A. Approval of the Agreement by the official action of the governing bodies of each of the parties hereto;

B. Execution of the Agreement by the duly authorized representative of each of the parties hereto;

C. The filing of a copy of this Agreement with the following public officials:

1. The City Clerk of the City of Gig Harbor;
2. The Secretary of the Board of Directors of the Peninsula School District;
3. The Pierce County Auditor.

XII. Administration.

A. The City's representative for purposes of administering this Agreement is the City Administrator.

B. The District's representative for purposes of administering this Agreement is the Superintendent.

XIII. Waiver.

Waiver of any default in the performance of this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the year and date set forth below:

The City of Gig Harbor

Peninsula School District #401

By _____
Its Mayor

By _____
Its _____

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Carol A. Morris, City Attorney



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WASTEWATER TREATMENT PLANT CONTROLS UPGRADE
CONSULTANT SERVICES CONTRACT
DATE: APRIL 12, 2004

INTRODUCTION/BACKGROUND

The Wastewater Treatment Plant automation equipment to control and monitor plant and lift station operations is obsolete. Last year we upgraded the communication system to the Supervisory Control and Data Acquisition (SCADA) system's main plant control panel and removed the automation equipment that was installed during the 1987 plant upgrade. At this time, it is imperative we replace the lift station and communication telemetry responsible for controlling all the upper plant functions. This equipment is extremely susceptible to failure during a brown-out or power spike. The replacement parts are no longer available and it is impossible to find qualified vendors, having the expertise, to repair these units. This routine maintenance work consists of upgrading the communication system from the lift stations by removing the automation equipment while upgrading the SCADA system's main control panel. This upgrade will have a side benefit. We will be able to increase the Programmable Logic Controller (PLC) capacity, and connect into the new ethernet communication line after construction of Lift Station # 2A.

After reviewing the Consultant Services Roster, the firm of Advanced Industrial Automation was selected as the most qualified to perform the work. Their selection was based on their understanding of the work and extensive specialized experience.

Council approval of the Consultant Services Contract is being requested.

POLICY CONSIDERATIONS

Advanced Industrial Automation meets all of the City's standard insurance provisions for this contract.

FISCAL CONSIDERATIONS

There are sufficient funds for this work in the 2004 Sewer fund.

RECOMMENDATION

I recommend that the Council authorize execution of the Consultant Services Contract with Advanced Industrial Automation for consulting services related to the plant controls upgrade in an amount not to exceed six thousand seven hundred twenty-two dollars and fifty cents (\$6,722.50).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ADVANCED INDUSTRIAL AUTOMATION**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Advanced Industrial Automation, a corporation organized under the laws of the State of Washington located and doing business at 25212 38th Court NE, Sammamish, Washington 98074-5480 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in communication system upgrades to the Wastewater Treatment Plant SCADA system main control panel and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated June 15, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Six Thousand Seven Hundred Twenty-Two Dollars and Fifty Cents (\$6,722.50) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for

Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by May 15, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S

WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

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

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

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

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

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

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability

policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items

of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the

date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:
Jon P. Mathison, P.E.
Advanced Industrial Automation
2521 238th Court NE
Sammamish, Washington 98074-5480
(425) 836-3386

David Brereton
Director of Operations
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2004.

CONSULTANT
By: Jon Mathison
Its Principal

CITY OF GIG HARBOR

By: _____
Mayor

Notices to be sent to:
CONSULTANT:
Jon P. Mathison, P.E.
Advanced Industrial Automation
2521 238th Court NE
Sammamish, Washington 98074-5480
(425) 836-3386

David Brereton
Director of Operations
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253)851-6170

APPROVED AS TO FORM:

City Attorney

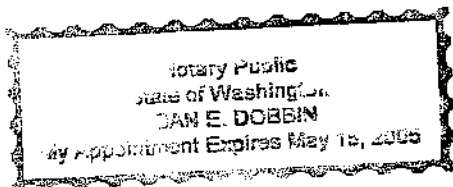
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

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

Dated: 3-2-04



Joan E. Dobbin
Joan E. Dobbin
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Redmond

My Commission expires: 5/15/05

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____



The following is proposed by AIA:

1. Provide a new 8-port switch. This will
 - a. Provide sufficient ports for the new pump station and provide spares for future expansion.
 - b. Reduce the network traffic enabling future expansion.
2. Install the new switch and the existing media converter inside the MCP. This will provide added protection to the network components. Note the junction-box shall remain in its present location as a pull box.
3. Power the switch and the media converter from a UPS protected source. This will correct the problem of network outages when the power goes out.
4. Ensure sufficient Ethernet ports for the Pump Station 2 media converter and future additions.

Deconstruct Rack 2 and the telemetry rack

Currently, rack 2 communicates signals from the telemetry system, as well as a handful of other points, to the PLC. The city is updating the telemetry system and this system shall no longer be needed. The majority of the points are for the telemetry system so rack 2 and the telemetry system may be removed once the replacement system is working correctly. This will provide additional room in the crowded MCP for future expansion and upgrades. This will also provide spare IO for the other TI 500 rack (Rack 3), as the IO used in these racks is obsolete and increasingly difficult to locate and expensive. The following is proposed by AIA:

1. Disconnect all Rack 2 non-telemetry points then reconnect these points to Rack 0.
2. Configure the PLC to use the new Rack 0 locations for these non-telemetry points.
3. Disconnect Rack 2 electrical connections from the telemetry system.
4. Disconnect the telemetry system from the MCP
5. Remove Rack 2 and the telemetry rack.
6. Remove the wires used by rack 2 and the telemetry rack to reduce the number of wires in the system.

This estimate is based on taking actions that will result in the loss of electrical signals to and from the PLC. This is only advisable following the implementation of a replacement telemetry system so there is no net loss of information. Attachment 1 and 2 detail the inputs and outputs that are currently in Rack 2 and the action that will be taken for each point. This list should be carefully reviewed to ensure that no points slated for disconnection are required by the city.

Conclusion

AIA is exceptionally well suited to provide excellent service to the City of Gig Harbor. This quote is based on our discussions regarding the modernization of the Gig Harbor WWTP SCADA system and industrial network and may be modified as conditions warrant. Please do not hesitate to contact me if there are any problems, different



alternatives you wish to pursue, or modification you would like to make. I will contact you to discuss this estimate.

Thank you,

Jon P. Mathison, P.E.
Advanced Industrial Automation
2521 238th Court NE
Sammamish WA 98074-5480
Phone: 425-836-3386
Mobile: 425-444-4751
jon@advancedia.com
www.advancedia.com



Attachment 1: Rack 2 inputs

Address	Description	Description 2	Action
X153	PTSILENCE		Rewire and program
X154	LAMP TEST		Rewire and program
X155	PSXXPMP1RUN		Disconnect
X156	PSXXPMP2RUN		Disconnect
X157	PSXXPMP3RUN		Disconnect
X158	PSXXPMP1CAL		Disconnect
X159	PSXXPMP2CAL		Disconnect
X160	PSXXPMP3CAL		Disconnect
X161	PSXXGENRUN		Disconnect
X162	PSXXTELFAIL		Disconnect
X163	PSXXHIGHWWL		Disconnect
X164	PSXXLOWETWL		Disconnect
X165	PSXXWETDRYW		Disconnect
X166	PSXXINTRUSN		Disconnect
X167	PSXXOVRFLOW		Disconnect
X168	PSXXGENFAIL		Disconnect
X169	PSXXOPRTRBL		Disconnect
X170	PSXXPWRFAIL		Disconnect
X171	PSXXFUTALM		Disconnect
X172	PS03	SELECT	Disconnect
X173	PS04	SELECT	Disconnect
X174	PS08	SELECT	Disconnect
X175	PS01	SELECT	Disconnect
X176	PS02	SELECT	Disconnect
X177	PS05	SELECT	Disconnect
X178	PS06	SELECT	Disconnect
X179	PS07	SELECT	Disconnect
X180	PS09	SELECT	Disconnect
X181	PS10	SELECT	Disconnect
X182	PS11	SELECT	Disconnect
X183	PS12	SELECT	Disconnect
X184	PS13	SELECT	Disconnect
X185	PS14	SELECT	Disconnect
X186	PS15	SELECT	Disconnect

End Attachment 1



Y261	PS02STNALRM	Disconnect
Y262	PS02PMP1RUN	Disconnect
Y263	PS02PMP2RUN	Disconnect
Y264	PS02GENRRUN	Disconnect
Y265	PS05STNALRM	Disconnect
Y266	PS05PMP1RUN	Disconnect
Y267	PS05PMP2RUN	Disconnect
Y268	PS05GENRRUN	Disconnect
Y269	PS06STNALRM	Disconnect
Y270	PS06PMP1RUN	Disconnect
Y271	PS06PMP2RUN	Disconnect
Y272	PS06GENRRUN	Disconnect
Y273	PS07STNALRM	Disconnect
Y274	PS07PMP1RUN	Disconnect
Y275	PS07PMP2RUN	Disconnect
Y276	PS07GENRRUN	Disconnect
Y277	PS09STNALRM	Disconnect
Y278	PS09PMP1RUN	Disconnect
Y279	PS09PMP2RUN	Disconnect
Y280	PS09PMP3RUN	Disconnect
Y281	PS10STNALRM	Disconnect
Y282	PS10PMP1RUN	Disconnect
Y283	PS10PMP2RUN	Disconnect
Y284	PS10GENRRUN	Disconnect
Y285	PS11STNALRM	Disconnect
Y286	PS11PMP1RUN	Disconnect
Y287	PS11PMP2RUN	Disconnect
Y288	PS11GENRRUN	Disconnect
Y289	PS12STNALRM	Disconnect
Y290	PS12PMP1RUN	Disconnect
Y291	PS12PMP2RUN	Disconnect
Y292	PS12GENRRUN	Disconnect
Y293	PS13STNALRM	Disconnect
Y294	PS13PMP1RUN	Disconnect
Y295	PS13PMP2RUN	Disconnect
Y296	PS13GENRRUN	Disconnect
Y297	PS14STNALRM	Disconnect
Y298	PS14PMP1RUN	Disconnect
Y299	PS14PMP2RUN	Disconnect
Y300	PS14GENRRUN	Disconnect
Y301	PS15STNALRM	Disconnect
Y302	PS15PMP1RUN	Disconnect
Y303	PS15PMP2RUN	Disconnect
Y304	PS15GENRRUN	Disconnect

End Attachment 2

Attachment 2: Rack 2 outputs

Address	Description	Description 2	Action
Y217	ALARM	CALL	Rewire and program
Y218	PS01TELCALL		Disconnect
Y219	PS02TELCALL		Disconnect
Y220	PS03TELCALL		Disconnect
Y221	PS04TELCALL		Disconnect
Y222	PS05TELCALL		Disconnect
Y223	PS06TELCALL		Disconnect
Y224	PS07TELCALL		Disconnect
Y225	PS08TELCALL		Disconnect
Y226	PS09TELCALL		Disconnect
Y227	PS10TELCALL		Disconnect
Y228	PS11TELCALL		Disconnect
Y229	PS12TELCALL		Disconnect
Y230	PS13TELCALL		Disconnect
Y231	PS14TELCALF		Disconnect
Y232	PS15TELCALF		Disconnect
Y233	PS03STNALRM		Disconnect
Y234	PS03PMP1RUN		Disconnect
Y235	PS03PMP2RUN		Disconnect
Y236	PS03PMP3RUN		Disconnect
Y237	PS04STNARLM		Disconnect
Y238	PS04PMP1RUN		Disconnect
Y239	PS04PMP2RUN		Disconnect
Y240	PS04GENRRUN		Disconnect
Y241	PS08STNALRM		Disconnect
Y242	PS08PMP1RUN		Disconnect
Y243	PS08PMP2RUN		Disconnect
Y244	PS08GENRRUN		Disconnect
Y245	COMMONPMP1	FAIL	Disconnect
Y246	COMPMP2FAIL		Disconnect
Y247	COMPMP3FAIL		Disconnect
Y248	COMTELCFAIL		Disconnect
Y249	COMHIWETWEL		Disconnect
Y250	COMLOWETWEL		Disconnect
Y251	COMH2DRYWEL		Disconnect
Y252	COMINTRUDER		Disconnect
Y253	COMOVERFLOW		Disconnect
Y254	COMGENSFAIL		Disconnect
Y255	COMOPERTRBL		Disconnect
Y256	COMPOWRFAIL		Disconnect
Y257	PS01STNALRM		Disconnect
Y258	PS01PMP1RUN		Disconnect
Y259	PS01PMP2RUN		Disconnect
Y260	PS01GENRRUN		Disconnect

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



February 24, 2004

Gerald Erb, WWTP Supervisor
Public Works Department
3105 Judson Street
Gig Harbor WA 98335

Thank you for the opportunity to provide an estimate of the labor and material required to provide communication system upgrades to the SCADA system Main Control Panel (MCP) and deconstruct Rack 2 TI 500 IO and the telemetry rack. Advanced Industrial Automation (AIA) is pleased to provide you the following estimates.

ESTIMATE OF LABOR AND MATERIAL

Item	Description	Engineer Labor	Electrician Labor	Materials	Total
1	Communication upgrade: Provide and Install Ethernet switch in MCP. Rewire network fiber, copper, and electrical cables to new switch.	\$1,754	\$734	\$517.50	\$3005.50
2	Deconstruct Rack 2 and the telemetry system: Rewire specified IO, pull out abandoned wire, and test.	\$2,388	\$1,214	\$115	\$3,717

Item 1: Communication upgrade

Currently a non-switched¹ 4-Port hub is mounted on the wall next to the MCP and operator workstation. A fiber-copper media converter for Pump Station 3 is mounted in a junction-box above the hub outside of the MCP. The power for the hub is from the junction box, the door of the junction box must be left open for the hub power cord. This power is NOT from a UPS so that, although the PLC and Human-Machine Interface (HMI) PC are on a UPS, when the power goes out all SCADA network communications fails. The city will soon be adding Pump Station 2, which will add another fiber optic cable, media converter, and require an Ethernet port.

¹ A hub broadcasts all messages to all ports whereas a switch broadcasts messages only to the ports for which the message is addressed. This cuts the network traffic exponentially. Additionally, switches have the ability to store information and, hence, service ports at different speeds. For example, a network with a hub connected to 10 mbps and 100 mbps devices will broadcast all messages at 10 mbps (the slowest speed) whereas a switch allows the 10 mbps devices to transmit and receive at the slower rate as well as allow the 100 mbps devices to transmit and receive at the higher rate. This is very important when the majority of devices are fast Ethernet (100 mbps) yet there are a few nodes that are slow.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CIVIC CENTER ADA ACCESS
- CONTRACT AUTHORIZATION
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

The Gig Harbor Civic Center does not have push button power door operators on the main entrance doors. The ADA suggests, but does not require that such devices be installed. With the increased usage of the facility, an ADA push button power door operator at the rear entrance is desirable.

Staff reviewed the small works roster and identified four contractors who performed this type of work. All four were contacted and only one, Cascade Door Services, Inc. choose to submit a bid.

FISCAL CONSIDERATIONS

There are sufficient funds for this work in the 2004 General Fund Building Department.

RECOMMENDATION

I recommended that Council authorize the award and execution of a contract with Cascade Door Services, Inc. for the installation of an ADA access door at the Gig Harbor Civic Center in an amount not to exceed five thousand six hundred ninety-eight dollars and forty-five cents (\$5,698.45).

**AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN GIG HARBOR AND CASCADE DOOR SERVICES, INC.**

THIS AGREEMENT, is made this _____ day of _____, 200____, by and between the City of Gig Harbor (hereinafter the "City"), and Cascade Door Service, Inc. a Washington corporation, located and doing business at 1907 96th Avenue Court East, Edgewood, Washington 98371, (hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work and agrees to perform such work under the terms set forth in this Agreement; and

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.155(3);

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

I. Description of Work. The Contractor shall perform all work as described below, which is attached hereto and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all materials and labor necessary to supply and install (1) one circuit in conduit for A/C unit and connect circuit in Police Department to emergency panel, inclusive of electrical permit fees. The Contractor shall not perform any additional services without the express permission of the City.

II. Payment.

A. The City shall pay the Contractor the total sum of Five thousand six hundred ninety-eight dollars and forty-five cents (\$5,698.45), including Washington State sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for these tasks, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed change order.

B. After completion of the work, the City shall pay the full amount of an invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Contractor of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

representatives or subcontractors of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs hereunder.

IV. Duration of Work. The City and the Contractor agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before May 15, 2004. The indemnification provisions of Section IX shall survive expiration of this Agreement.

V. Prevailing Wages. Wages paid by the Contractor shall be not less than the prevailing rate of wage in the same trade or occupation in Pierce County as determined by the industrial statistician of the State Department of Labor and Industries and effective as of the date of this contract.

Before any payment can be made, the Contractor and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages" to the City, which has been approved by the State Department of Labor and Industries. Each voucher claim (invoice) submitted by the Contractor for payment of work shall have an "Affidavit of Wages Paid", which states that the prevailing wages have been paid in accordance with the pre-filed "Statement(s) of Intent to Pay Prevailing Wages".

VI. Waiver of Performance Bond and Retainage: Limited Public Works Process. As allowed in RCW 39.04.155(3) for limited public works projects, the City has waived the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW for the work described in Exhibit A.

VII. Termination.

A. Termination Upon City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon five (5) days written notice to the Contractor.

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in Exhibit A, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

C. Excusable Delays. This Agreement shall not be terminated for the Contractor's inability to perform the work due to adverse weather conditions, holidays or mechanical failures which affect routine scheduling of work. The Contractor shall otherwise perform the work at appropriately spaced intervals on an as-needed basis.

D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for services satisfactorily performed by the Contractor to the effective date of termination, as described in a final invoice to the City.

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

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

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

X. Insurance.

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

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

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

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

- D. The City of Gig Harbor shall be named as an additional insured on the Contractor's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Contractor's insurance policies.
- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.
- F. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Contractor's coverage.

The Contractor shall procure and maintain for the duration of this Agreement, comprehensive general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Contractor. The Contractor shall maintain limits on such insurance in the above specified amounts: The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, officers, employees, agents, volunteers or representatives.

The Contractor agrees to provide the City with certificates of insurance evidencing the required coverage before the Contractor begins work under this Agreement. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The City reserves the right to require complete, certified copies of all required insurance policies at all times.

XI. Entire Agreement. The written provisions and terms of this Agreement, together with all exhibits attached hereto, all bids specifications and bid documents shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

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

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

XIV. Warranties. The Contractor hereby warrants that it is fully licensed, bonded and insured to do business in the State of Washington as a general contractor. Cascade Door Services, Inc. will warranty the labor and installation of materials for a one (1) year warranty period.

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

XVI. Assignment. Any assignment of this Agreement by the Contractor without the written consent of the City shall be void.

XVII. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

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

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

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

other party for its costs, expenses, and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CASCADE DOOR SERVICE, INC.

THE CITY OF GIG HARBOR

By: W. Barnard
Its PRESIDENT

By: _____
Its Mayor

Notices should be sent to:

Cascade Door Services, Inc.
Attn: Wayne Barnard, Principal
1907 96th Avenue Court East
Edgewood, Washington 98371
(253) 927-1517

City of Gig Harbor
Attn: John P. Vodopich, AICP
Community Development Director
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

Approved as to form:

By: _____
City Attorney

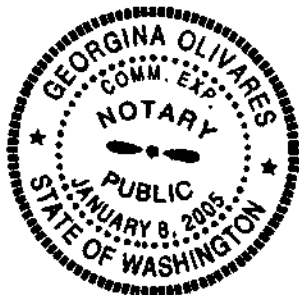
Attest:

By: _____
Molly M. Towslee, City Clerk

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

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

DATED: 3.17.2004



GEORGINA OLIVARES

Georgina Olivares

Notary Public in and for the
State of Washington,

Residing at Bellevue

My appointment expires: January 8, 2005

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

Notary Public in and for the
State of Washington,
Residing at: _____
My appointment expires: _____

EXHIBIT A

Cascade Door Service, Inc.
 10214 64th Ave Ct E
 Puyallup, WA 98373
 Phone: (253) 445-DOOR(3667)
 Fax: (253) 445-9772
 Lic# CASCADS972PP

Estimate

Date	Estimate No.
1/20/2004	40105

Contact: Dick J. Bower

clowery4@yahoo.com

Refer No. Per George

Customer Name/Address

Terms Net 10

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

Phone # 253-851-6137 Fax # 253-858-6408

Project: 042001 - ADA Access

Description	Qty	Rate	Extended
Power Operator - Tan finish	1	2,950.40	2,950.40T
Actuator Kit w/ Bollard Kit	1	372.80	372.80T
Bollard Post	1	450.24	450.24T
Single Receiver	1	168.96	168.96T
Surface Mount RF actuator	1	348.48	348.48T
Electrical Service (for 120V from within 15 ft.)	1	276.00	276.00T
Set Concrete for posts	1	207.00	207.00T
Install power operators and related activators	1	483.00	483.00T

If Power is not accessible within 15 feet, an additional charge will apply.
 Does not include moving existing keypad access devices
 Site will be clean when completed (minor painting may be required)

Estimate Total	\$5,256.88
Sales Tax (8.4%)	\$441.58

Total Including Sales Tax: \$5,698.46

Thank You

Signature 
 Cascade Door Service, Inc.

Estimate is valid for 60 days from date of issue.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: FIRST READING OF ORDINANCE –REDEFINE ALLOWABLE SIDING MATERIALS
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

Attached for the Council's consideration is a draft ordinance amending and redefining existing language of the City's design manual pertaining to allowable siding materials. The proposal will amend Requirement #1 on page 71 and Requirement #1 on page 95 of the City's design manual. (The language is almost the same on both pages). The proposal will eliminate reference to "traditional" siding materials and provide a more specific definition of acceptable siding materials.

These changes are being processed separate from the general Design Manual update because they pertain to language that has been problematic. The existing regulations on siding materials have been interpreted in multiple ways, have been difficult for some individuals to understand, and have in fact led to a lawsuit against the City. The proposed changes are intended to meet the intent of existing regulations on siding materials and to avoid any future misunderstanding over these requirements. A copy of a draft ordinance on the proposed amendments is attached for your review.

Prior to adoption of the City's Design Manual, the City addressed design solely through the site plan review process. Elevation drawings showing the building's architectural style were required as part of a complete site plan application. These were reviewed and approved by the City Council. One of the items that the Council would often address was the use of sheet (panel) siding such as T1-11 and the Council would typically encourage applicant's not to use this type of material. It was with this in mind that various types of panelized siding were specifically listed as *discouraged* siding materials in the later-adopted Design Manual. The current list of discouraged materials therefore includes corrugated metal panels, sheet siding such as T1-11, concrete panels, and spandrel glass (typically reflective glass like that used on the 4700 Medical Building on Pt. Fosdick Drive).

Problems with the existing language have, in part, centered on the use of the term "traditional" siding materials. While the manual specifically states brick, stone and wood are acceptable traditional siding materials, the DRB has nonetheless been requested to approve other types of materials that applicants believe are also traditional, such as

stucco or corrugated metal panels. While these may be "traditional" in the sense that they have a long history of use, and while the Design Manual requires use of traditional materials, the Design Manual makes it clear that *some* traditional materials are generally not acceptable because they do not possess the texture of natural products, nor convey the pattern and character of the smaller hand-placed siding materials, such as brick, stone, or lap siding (referred to as "human handicraft" in the siding material sections of the Design Manual).

To avoid any further confusion on the siding material issue, the proposed ordinance would eliminate references to "traditional" materials in the general siding requirements, and instead state that "siding materials shall . . . convey the same visual qualities as wood, brick, stone, stacked masonry or (in limited application) stucco." The proposed changes would also eliminate language describing the desired visual qualities of siding material and instead provide a specific list of acceptable materials. Finally, the proposed changes would eliminate references to "discouraged" siding materials and instead list materials that would be outright prohibited, with stated exceptions.

A public hearing on the proposed amendments was held before the Planning Commission on March 18, 2004. Three individuals testified, including Wade Perrow, Chuck Hunter, and Lita Dawn Stanton. Mr. Perrow submitted his own proposed language, which City Attorney Carol Morris determined would violate due process of law because the terms proposed in Mr. Perrow's suggested language (e.g., "provide interest," be "appropriately scaled," or "compliment,") were the very types of terms that were the focus of the lawsuit against the City of Issaquah. (*Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993)). She stated that the terms were not ascertainable standards that would allow for uniform enforcement.

All three individuals who testified expressed concern over the listing of "prohibited" materials, believing that no materials should be listed as outright prohibited. In response to public testimony, the planning commission voted to forward to the Council a recommendation to adopt the proposed language, provided that the list of prohibited materials be deleted and incorporated into the list of administratively approvable accent siding materials. A copy of the planning commission minutes of the public hearing is attached.

POLICY CONSIDERATIONS

Applicable land use policies and codes are as follows:

A. Comprehensive Plan: The City's design manual was adopted to implement the goals and policies of the Design Element of the City's Comprehensive Plan. Page 22 – 24 of the Design Element address general building design policies. These policies emphasize maintaining a small town scale and form for structures, and encourage structures that define and respect the human scale. Page 24 – 25 include policies pertaining to waterfront design and state that building materials should be limited to those characteristic of Gig Harbor's historic structures. Page 24 - 28 include policies on

development in the historic district and state that the City's design regulations should specify building forms, styles, and motifs appropriate for Gig Harbor's historic areas.

B. Gig Harbor Municipal Code: The City's design standards and procedures for design review are contained in GHMC Chapter 17.98 – Design Standards and Review. Section 17.98.020 adopts by reference the City's Design Manual.

C. Design Manual: Siding and trim materials are regulated on pages 71 and 95 of the City's Design Manual. Page 71 includes general regulations applicable to all commercial and multi-family development, and Page 95 includes regulations pertaining to the City's historic district. While there are marked differences between general regulations and regulations in the historic district, the siding and trim material requirements are the same in both sections, except that the list of prohibited materials in both sections are slightly different. The historic district section includes spandrel glass in the list of prohibited materials, whereas the general section includes concrete panels. The staff believes that this was an error in the original manual, and that the two lists were intended to be identical.

The Design Manual includes both general requirements and specific performance standards for every regulated item. The general requirements state the intent of the specific performance standards. If an applicant wishes to receive approval by the staff, they may comply with the specific performance standards. If they don't comply with the specific standards but believe they meet the intent as stated under the general requirements, they may request Design Review Board consideration of their proposal.

The general requirements for siding materials emphasize the use of traditional building materials such as brick, stone or wood due to their texture and visual quality which conveys the notion of "human handicraft". To achieve that intent, the specific standards require finish materials that are individually characterized by texture, grain, or color variation, and which are small enough so that their collective application provides interest and texture to building facades and which reflects human handicraft. Additionally, the specific standards discourage use of large sheet-type siding materials including corrugated metal panels, T1-11 and concrete panels, stating that these materials may only be considered by the DRB.

ENVIRONMENTAL ANALYSIS

The SEPA Responsible Official has determined that there are no significant environmental impacts associated with this proposal. Accordingly, a DNS (Determination of Non-significant) was issued on January 21, 2004.

The deadline for appealing the determination was April 5, 2004. No appeals have been filed and, to date, no public comments have been submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission.

FISCAL IMPACTS

The proposed amendments are for clarification purposes only. There will be no impact on administrative costs beyond those that might occur under existing standards.

RECOMMENDATION

The staff believes that the language in the attached draft ordinance would provide the clarity necessary to ensure due process for each applicant and allow fair and equitable enforcement. The changes also retain the intent of existing language regarding panel and sheet-type siding, except instead of discouraging them, it prohibits them. The changes proposed by the planning commission would also provide the necessary specificity to ensure fair and equitable enforcement, but they are a departure from the intent of the existing language. If the Council is interested in pursuing the Planning Commission's recommended changes, the staff can incorporate them into a revised draft ordinance and bring it back to Council for a public hearing and first reading. Otherwise, the staff will be recommending approval of the attached draft ordinance at the second reading on April 26, 2004.

Attachments:

Draft Ordinance
Planning Commission Minutes of March 18, 2004

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S DESIGN MANUAL TO REDEFINE ALLOWABLE SIDING MATERIALS AS DEFINED ON PAGES 71 AND 95 OF THE CITY'S DESIGN MANUAL.

WHEREAS, the City of Gig Harbor adopted a design manual under Ordinance 735 for purposes of regulating building and site design in the City of Gig Harbor in order to implement the goals and polices of the Design Element of the City's Comprehensive Plan; and

WHEREAS, Requirement #1 on page 71 of the Design Manual and Requirement #1 on page 95 of the Design Manual both limit siding materials to those that "assimilate traditional building materials" and also list specific siding materials that are discouraged ; and

WHEREAS, some siding materials that are either listed as discouraged siding materials, or which do not meet the specific requirements for siding materials as stated under both requirements, have been interpreted by some members of the public to be "traditional" siding materials; and

WHEREAS, the City's Design Manual does not otherwise define "traditional" siding materials, and

WHEREAS, the City desires to redefine allowable siding materials to meet the intent of existing regulations on siding materials and to avoid any future misunderstanding over these requirements, and

WHEREAS, the City's SEPA Responsible Official issued a determination of Non-significance for the proposed text amendments on January 21, 2004 pursuant to WAC 197-11-350; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Trade and Community Development on January 22, 2004, pursuant to RCW 36.70A.106; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on March 18, 2004, and made a recommendation of approval to the City Council, with the condition that the list of specified prohibited siding materials be moved from a prohibited list of materials into a list of administratively approvable accent siding materials; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of _____, 2004; Now, Therefore,

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

Section 1. Requirement #1 and its associated heading on page 71 of the Design Manual as adopted under Ordinance 735, and as adopted by reference under GHMC Section 17.98.020, is hereby amended to read as follows:

Siding and Trim:

~~Traditional building Siding~~ materials such as brick, stone or wood reflect human handicraft and provide texture to building exteriors. Materials for new construction and remodeling should convey similar visual qualities.

- ~~1. Use materials which assimilate traditional building materials. Finish materials must individually be characterized by texture, grain, or color variation. Individual components shall be small enough so that their collective application provides interest and texture to building facades and reflects human handicraft. Non-traditional materials shall be used sparingly unless they can be shown to have similar visual qualities of traditional materials or contribute to overall design character.~~

~~Discourage siding materials: The following materials must received DRB approval~~

- ~~i. Corrugated metal panels~~
- ~~ii. Sheet siding (e.g., T1-11)~~
- ~~iii. Concrete panels~~

- 1. Use siding materials that convey the same visual qualities as wood, brick, stone, stacked masonry or (in limited application) stucco.**

Siding materials are limited to horizontal lap siding (of any lap design) made of wood or cement-like materials; shingles made of cedar or of cement-like materials; board and batten (or panels with similarly spaced battens); brick; stone (real or cultured); non-scored split-faced block (CMU); stucco on single-family homes. Stucco, tile, terra-cotta, concrete, and smooth-faced or scored concrete block may be used as accent materials on non-residential projects – not to exceed 20% of any given façade. Standing seam metal siding with separately attached battens (with proportions similar to board and batten siding) may be used in gables only.

Prohibited siding materials: Spandrel glass, sheet siding (e.g., T1-11) unless used with battens to create a board and batten appearance, corrugated metal panels.

Section 2. Requirement #1 and its associated heading on page 95 of the Design Manual as adopted under Ordinance 735, and as adopted by reference under GHMC Section 17.98.020, is hereby amended to read as follows:

Siding and Trim:

Traditional building Siding materials such as brick, stone or wood reflect human handicraft and provide texture to building exteriors. Materials for new construction and remodeling should convey similar visual qualities.

- ~~1. Use materials which assimilate traditional building materials. Finish materials must individually be characterized by texture, grain, or color variation. Individual components shall be small enough so that their collective application provides interest and texture to building facades and reflects human handicraft. Non-traditional materials shall be used sparingly unless they can be shown to have similar visual qualities of traditional materials or contribute to overall design character.~~

~~Discourage siding materials: The following materials must received DRB approval~~

- ~~i. Corrugated metal panels~~
- ~~ii. Sheet siding (e.g., T1-11)~~
- ~~iii. Spandrel glass~~

- 1. Use siding materials that convey the same visual qualities as wood, brick, stone, stacked masonry or (in limited application) stucco.**

Siding materials are limited to horizontal lap siding (of any lap design) made of wood or cement-like materials; shingles made of cedar or of cement-like materials; board and batten (or panels with similarly spaced battens); brick; stone (real or cultured); non-scored split-faced block (CMU); stucco on single-family homes. Stucco, tile, terra-cotta, concrete, and smooth-faced or scored concrete block may be used as accent materials on non-residential projects – not to exceed 20% of any given façade. Standing seam metal siding with separately attached battens (with proportions similar to board and batten siding) may be used in gables only.

Prohibited siding materials: Spandrel glass, sheet siding (e.g., T1-11) unless used with battens to create a board and batten appearance, corrugated metal panels.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2004.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

**City of Gig Harbor Planning Commission
Minutes of Public Hearing and Work Study Session
Thursday, March 18, 2004
Gig Harbor Civic Center**

PRESENT: Commissioners Carol Johnson, Kathy Franklin, Bruce Gair, Dick Allen, Scott Wagner and Chairman Paul Kadzik. Staff present: Steve Osguthorpe and Diane Gagnon.

CALL TO ORDER: 7:00 p.m.

APPROVAL OF MINUTES:

Commissioner Allen asked that this item be moved to the end of the agenda to give everyone more time to read the minutes.

The Chairman opened the public hearing at 7:02.

PUBLIC HEARING

Proposed amendment to the Design Manual pages 71 and 95 – Allowable Siding Materials (ZONE 04-01). – Planning Manager Steve Osguthorpe outlined the proposed changes and stated that this amendment was being proposed to redefine siding materials on existing buildings. Mr. Osguthorpe further stated that the Planning Commission had discussed this issue at the work-study session on February 19, 2004 and that those comments had been incorporated into the ordinance before the commission tonight. He then read an e-mail from Commissioner Theresa Malich in support of the changes as proposed by staff as Ms. Malich was unable to attend this meeting.

Wade Perrow, 9119 N Harborview Drive, Gig Harbor WA 98332 – Mr. Perrow stated that he wanted to remind the Planning Commission that it is their responsibility to determine the destiny of the city and read from the goals in the front of the Design Manual. He then said that if the Planning Commission accepts what is presented today, an applicant would have to prove to staff that their proposal is as good or better than what could be approved by strict application of the standards. Mr. Perrow asked that the Planning Commission not prohibit anything as the basis of the Design Manual is to promote diversity and creativity. He proposed that the word traditional be removed and nothing further be done until the manual is re-written and concluded that each size and type of building deserves different regulations.

Chuck Hunter, 8829 Franklin Ave., Gig Harbor WA 98332 – Mr. Hunter began by stating that he was speaking as a private citizen, not as a member of the Design Review Board. He first asked that the Planning Commission not prohibit any kind of siding materials. He then read from page 4 of the Design Manual which states that the Design Review Board option encourages a creative approach to design. Mr. Hunter went on to say that the scale and application of a material is what is important and that not every façade needs to be an architectural wonder. He then pointed out that the ordinance

was silent on concrete panel buildings and he felt that there is a place for concrete panel buildings. He said that he felt Design Review should be more neighborhood specific and sited several locations around the city where metal and/or stucco had been used that he thought looked good.

Lita Dawn Stanton, 111 Raft Island, Gig Harbor WA 98332 – Ms. Stanton stated that she was speaking as a private citizen and not as a member of the Design Review Board. She read the Design Review Goals from page 2 of the Design Manual. Ms. Stanton then distributed a picture of a metal building that she felt exhibited good design and asked that commission to consider that perhaps scale is the issue. She pointed out that the Design Manual does not have an industrial section and that these issues need to be addressed on a case by case and neighborhood by neighborhood basis. Ms. Stanton expressed concern for prohibiting materials when there may be others that we haven't thought of.

There being no further testimony Chairman Paul Kadzik closed the Public Hearing at 7:42 pm.

Chairman Kadzik asked staff if the ordinance was silent on concrete panels.

Planning Manager Steve Osguthorpe read from the section of the ordinance which addresses concrete and stated that a project would have to go before the Design Review Board for the use of concrete panels.

Chairman Kadzik noted that the industrial application of metal siding is an issue that comes up frequently and asked how staff was proposing to handle this.

Mr. Osguthorpe stated that industrial buildings would have to meet the same design standards on the prominent façade and further stated that a definition of industrial buildings was being written for the Design Manual update that would be presented to the DRB for consideration. With a definition in place, he stated that it would be easy for the DRB to go through the entire design manual and identify specific sections that would not apply to industrial buildings.

Discussion followed on the use of the word "prohibited" and what other words could be used and adequately defined and enforced. Commissioner Wagner asked if a particular material is prohibited can the Design Review still allow the use of it and Planning Manager Osguthorpe replied that the Design Review Board would have to adopt findings to support the recommendation which could be difficult.

Commission Gair pointed out that Design Review is a creative process and not formula driven and that he felt the Planning Commission would be tying the Design Review Boards hands by prohibiting certain materials without considering a neighborhood by neighborhood concept.

Chairman Kadzik stated that although there is not a specific neighborhood section in the Design Manual, these are the types of things that are taken into considering when the Design Review Board looks at a project and that is why he felt that these materials

should not be prohibited but used in limited applications.

Commissioner Johnson asked staff if a limited use of these materials would give the Design Review Board enough muscle when there is an over use and still avoid legal complications by providing a formula for developers to adhere to if they did not want to go to the Design Review Board.

Mr. Osguthorpe answered that an applicant needs to know what is required and if the Design Review Board were arbitrary in their decisions then there would be a problem.

Commissioner Wagner voiced his concern with prohibiting materials and thereby creativity. He then cited several locations in the city where these materials had been used tastefully and stated that he felt more consideration needed to be given to the list of materials before voting on this issue. Additionally he stated that the way the "not to exceed 20%" section is written it appears that someone could apply 20% of each of these materials and it should be rewritten to allow a total of 20%.

Chairman Kadzik stated that he felt that the wording was clear and that putting the siding materials in the "not to exceed 20%" section rather than making them prohibited doesn't make it any easier for an applicant who does not want to go to the Design Review Board but still leaves that option. He also stated that he thought that it wouldn't be a problem to allow any of the discouraged materials, including spandrel glass, so long as it did not exceed the 20%. Planning Manager Osguthorpe indicated that it would be easy to make that change in the ordinance.

Planning Manager Steve Osguthorpe explained the format of the Design Manual emphasizing that this just changes this one item. He further stated that under the current legal climate for design review (e.g., Anderson vs. Issaquah) the City must provide specific standards that don't leave developers guessing as to whether their proposal will be approved or not. He stated that the only reason we can provide a more discretionary standard is because we offer this dual process.

Commissioner Allen agreed with the suggestion to remove the prohibited siding materials and stated that he felt that there were areas where this type of siding would be appropriate.

MOTION: Move to recommend approval of the ordinance amending pages 71 and 95 of the Design Manual with the elimination of the prohibited materials section, including those materials in the 20% allowable section.

Franklin/Gair –

Commissioner Wagner voiced his concern with moving too quickly on this issue without considering allowing some of these materials in a larger application, perhaps 30%. He noted that there are applications which would not be visible and should therefore be allowed beyond the 20% limit.

Mr. Osguthorpe reminded the Planning Commission that this would only apply to

prominent façades (those facades visible from a public way). He noted that facades that were not defined as prominent would not be considered in the 20% calculation.

RESTATED MOTION: Move to recommend approval of the ordinance amending pages 71 and 95 of the Design Manual with the elimination of the prohibited materials section, including those materials in the 20% allowable section.

Franklin/Gair – Five commissioners voted in favor, Commissioner Wagner voted against.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of February 19, 2004
Johnson/Kadzik – unanimously approved

NEXT REGULAR MEETING:

April 1st, 2004 at 6pm – Work Study Session

ADJOURN:

MOTION: Move to adjourn at 8:30 p.m.
Johnson/Allen – unanimously approved

CD recorder utilized:
Disc #1 Track 1
Disc #2 Track 1



ADMINISTRATION

TO: CITY COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT *GW*
SUBJECT: PIERCE TRANSIT BOARD OF COMMISSIONERS
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

Pierce Transit is requesting our consideration for representation on their Board of Commissioners to fill an at-large position. This position is established to specifically represent the viewpoint of the thirteen small cities and towns in Pierce County.

Four nominations are before you: Neil Johnson, City of Bonney Lake, Barry Johnson, City of Fife, Stanley Holland, City of Orting, and Dave Enslow, City of Sumner. A bio is available on one of the members, Neil Johnson of Bonney Lake.

RECOMMENDATION

A motion to cast your vote on one of the four nominees is requested.

MAR 26 2004

March 26, 2004

Gretchen Wilbert, Mayor
Gig Harbor City Council
3105 Judson Street
Gig Harbor, WA 98335

Dear Mayor Wilbert:

Recently, you were sent a letter from Pierce Transit requesting your Council's nomination of a representative to fill the at-large position elected by the 14 small cities and towns within Pierce Transit's boundary.

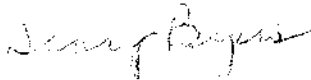
Nominations received as of the March 24, 2004, deadline were:

Neil Johnson, City of Bonney Lake
Barry Johnson, City of Fife
Stanley Holland, City of Orting
Dave Enslow, City of Summer

At your next council meeting, please select one nominee from those provided. A certified copy of the council resolution or motion must accompany the enclosed ballot. Please forward the ballot and appropriate verification to me on or before **5 p.m. on May 1, 2004.**

If you have any questions, please call me at 581-8012.

Sincerely,



Sandy Byers, CMC
Clerk of the Board

Enclosure

cc: Pierce Transit Board of Commissioners
Don S. Monroe, Chief Executive Officer
Gig Harbor City Clerk



OFFICIAL BALLOT

Candidates: Neil Johnson, City of Bonney Lake
Barry Johnson, City of Fife
Stanley Holland, City of Orting
Dave Enslow, City of Sumner

The city/town of _____ wishes to cast its vote
for Councilmember/Mayor _____
of the City of _____ to serve as a member
of the Board of Commissioners for Pierce Transit for a three-year term, May 1, 2004, to
April 30, 2007, representing the fourteen small cities and towns within Pierce Transit's
boundary.

Date: _____ By: _____
Title: _____

This form must be accompanied by a certified copy of the council resolution or motion. Ballots must be
received by Pierce Transit's Clerk of the Board by 5 p.m., May 1, 2004.



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Bonney Lake - At Large 1

Councilmember



Neil Johnson

Term Ends: 2005

Email: councilmemberjohnson@ci.bonney-lake.wa.us

Phone: (253) 209-8850

Fax: (253) 862-7860

Address: 20825 Hwy 410E, #300 Bonney Lake, WA 98390

Previous Public Office: None

Residency in Bonney Lake: 13 years

Occupation: Sr. Account Executive, CDS Publications (printing & marketing)

Committee: Bonney Lake Days, Vision/Image Committee, Public Safety Committee

Affiliations/Associations: WSSA (Washington State Soccer Association)

Family: MaryAnn (wife), Rendi (daughter)

Hobbies: Fitness Training, Coaching Youth Athletics, Golf, Motorcycle and Mountain Bike riding.

Councilmember - Ward 1 | Councilmember - Ward 2 | Councilmember - Ward 3 | Councilmember - Ward 4 | Councilmember - Ward 5 | Councilmember - At Large 1 | Councilmember - At Large 2

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Legislative Informa:

Hours of Op 8:30 a.m. - 5:0

Location 19306 Bonney Blvd. Bonney Lake, 98390-8850

Mailing Addr P.O. Box 7381 Bonney Lake, 98390-0944

Phone (253) 862-860

FAX (253) 862-850

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"THE MARITIME CITY"

ADMINISTRATION

TO: CITY COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT *Gretchen Wilbert*
SUBJECT: POSITION 2 OF THE ZOO/TREK AUTHORITY BOARD
DATE: APRIL 12, 2004

INFORMATION/BACKGROUND

Pierce County Regional Council is requesting our consideration for representation on the Zoo/Trek Authority Board. This position is established to specifically represent the viewpoint of the thirteen small cities and towns in Pierce County.

Three nominations are before you: Cheryle Noble, City of Bonney Lake, Michael Deckert, City of Edgewood, and Mark Evers, City of Sumner. A bio is available on two of the members, Cheryl Noble and Michael Deckert.

RECOMMENDATION

A motion to cast your vote on one of the three nominees is requested.

**Pierce County Regional Council
2401 South 35th Street, Room 228
Tacoma, Washington 98409
(253) 798-3726**

March 23, 2004

Dear Mayors/City Managers:

Recently, you were sent a letter from the Pierce County Regional Council requesting your Council's nomination of representatives to fill Position 2 of the Zoo/Trek Authority Board. This representative is elected by the 22 small cities and towns within Pierce County Regional Council's boundary.

Nominations received as of the March 19, 2004 deadline were:

Position Two

Cheryle Noble, City of Bonney Lake

Michael Deckert, City of Edgewood

Mark Evers, City of Sumner

At your next council meeting, please select one nominee for Position 2 from those provided. **A certified copy of the council resolution or motion must accompany the enclosed ballot.** Please forward the ballot and appropriate verification to Paula Manning, Pierce County Regional Council Clerk, on or before **5:00 p.m., April 23, 2004.** The ballot and appropriate verification can be returned by fax to (253)798-3680 or by mail to the address above.

If you have any questions, please call me at 253-798-3726.

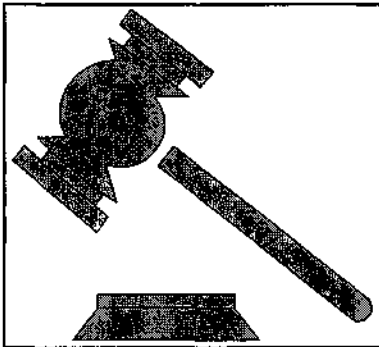
Sincerely,



Paula Manning
Clerk, Pierce County Regional Council

Enclosure

cc: Mike Lonergan, Chair, Pierce County Regional Council



**ZOO/TREK AUTHORITY BOARD
OFFICIAL BALLOT**

Position Two

Cheryle Noble, City of Bonney Lake
Michael Deckert, City of Edgewood
Mark Evers, City of Sumner

The city/town of _____ wishes to cast its vote
for _____ of the City of
_____ for Position Two, to serve as
a member of the Zoo/Trek Authority Board for a three-year term, representing the 22
small cities and towns within the Pierce County Regional Council boundary.

Date: _____

By: _____

Title: _____

This form must be accompanied by a certified copy of the council resolution or motion.
Ballots must be received by Pierce County Regional Council Clerk by **5 p.m., April 23,
2004.**



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Bonney Lake - Ward 3

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Councilmember



Cheryl Noble

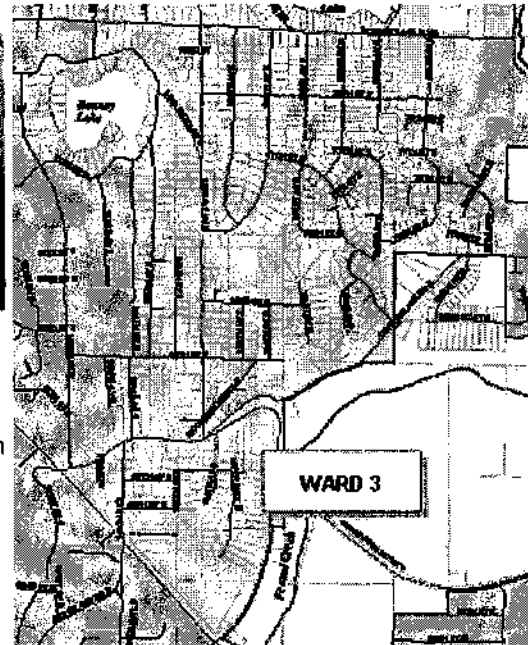
Term Ends: 12/31/2007

Email: noble61@msn.com

Phone: (253) 863-2160

Fax:

Home Address:



Legend: - Ward 3

[Click Here To Download The Ward 3 Map](#)
(PDF Format - 261 KB)

[Click Here To View Council Ward Map For The Entire City](#) (PDF Format - 696 KB)

Previous Public Office: Councilmember At Large #2, City of Bonney Lake

Residency in Bonney Lake: 11 Years

Occupation: long time volunteer with various non-profits

Committee: Community Development Committee

Affiliations/Associations: Volunteer with the Pierce County Juvenile Court; Alliance Against Domestic Violence (AADV); Past President of the Board of Directors, of the Washington State Chapter of the National Neurofibromatosis Foundation.

Family: Jim (Husband); Jason (Son); Chelsea (Daughter)

Hobbies: Gardening & Reading

Legislat Info

Hours of
8:30 a.m. -

Location
19306 Bor
Blvd.
Bonney La
98390-885

Mailing A
P.O. Box 7
Bonney La
98390-094

Phone
(253) 862-

FAX
(253) 862-

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MICHAEL G. DECKERT, POSITION ONE
City of Edgewood City Councilmember
8518 20th Street East, Edgewood, WA 98371
(253) 922-3952

By now, most cities within the Zoo Trek Authority (ZTA) boundary should have received the ballot for the ZTA Board Position Two opening. The Edgewood City Council has nominated Councilmember Michael Deckert for this open position on the Board. We felt it would be helpful to provide some background information about Councilmember Deckert to help you become acquainted with him and aid your Council in considering him for this position.

Michael possesses a Bachelor's of Science Degree in Water Resources, received in 1987, from the University of Wisconsin-Steven's Point. He is an Edgewood small business owner, a substitute teacher and a professional chemist. He currently serves as the Chair of the City's Public Services Committee and a member of the City's Land Use and Economic Development Committee. He also served as a volunteer with the Edgewood Fire Department from 1993-1999.

If you have any questions or wish to speak with Michael directly, he can be contacted at the above address and telephone number.



Thank you for your kind consideration!



GIG HARBOR
"THE MARITIME CITY"

POLICE DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: WILLIAM COLBERG, LIEUTENANT
SUBJECT: MARCH INFORMATION FROM PD
DATE: April 9, 2004

The March 2004 activity statistics are attached for your review. Also, up to date activities within the department.

On April 7, 2004, Officer Michael Cabacungan started his employment as a lateral police officer. Officer Cabacungan is a retired Navy Chief, who spent his past two years as a Los Angeles Police Officer. With the employment of Officer Cabacungan, this will bring the police department's operations division to full staffing.

The Reserve Police Officers volunteered a total of 204.25 hours during the month of February. The majority of this time was spent as a second officer in a patrol vehicle.

The yearly patrol boat maintenance has been completed. Officer's Douglas and Garcia will be participating in Marine Services Training this month.

The bicycle patrol officers will shortly commence an emphasis in the business districts, Cushman Trail and the skateboard park.



GIG HARBOR

"THE MARITIME CITY"

POLICE DEPARTMENT

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

MAR 2004

	<u>MAR</u> <u>2004</u>	<u>YTD</u> <u>2004</u>	<u>YTD</u> <u>2003</u>	<u>% chg</u>
CALLS FOR SERVICE	428	1248	1404	-11%
CRIMINAL TRAFFIC	9	26	29	-10%
TRAFFIC INFRACTIONS	76	215	209	3%
DUI ARRESTS	4	13	12	8%
FELONY ARRESTS	19	53	16	231%
MISDEMEANOR ARRESTS	23	81	51	59%
WARRANT ARRESTS	7	15	10	50%
CASE REPORTS	126	370	312	19%
REPORTABLE VEHICLE ACCIDENTS	24	68	40	70%
SECONDARY OFFICER ASSIST	48	143	210	-32%



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ANNUAL WATER CAPACITY AVAILABILITY REPORT
DATE: APRIL 12, 2004

ISSUES/FISCAL IMPACT

We are required to provide an annual water capacity report as identified in our Water Concurrence Ordinance #907, evaluating reserved and available ERU's (Equivalent Residential Units).

Our water certificate status for 2003 was 1,364 acre-feet per year which equals 444,459,400 gallons per year or 3,877 ERU's.

On January 1, 2003 the City had a balance of 185,858 gallons or 591 ERU's available. At the end of 2003 we had issued 4,176 gpd (gallons per day) or 37 ERU's for the year, leaving the City with a balance of 207,344 gpd or 660 ERUs. There is an increase in ERU's available from last year due to conservation and leak detection.

We pumped per well last year the following:

Well #2 – 51,665,108 gallons
Well #3 – 100,453,408 gallons
Well #4 – 22,747,428 gallons
Well #5 – 115,242,864 gallons
Well #6 – Not running this year
Well #8 – 4,570,616 gallons

Grand Total of 294,679,424 gallons.

Our ERU status to January 1, 2004, 592 ERU's available.



"THE MARITIME CITY"

ADMINISTRATION

MAYOR'S REPORT

TO: Council Members

RE: Gig Harbor Peninsula Community Center

DATE: April 6, 2004

For the past 14 years citizens of Gig Harbor have been begging the city, county and school district to provide space for recreation and socialization activities and services for people of all ages.

Finally, the door of opportunity is open to continue a partnership with government agencies and non-profit organizations to provide these needed and requested community services for City and County residents.

It isn't often a service organization is ready and willing to step forward and lead the way to raise ten to twelve million dollars from the community to build a Community Center.

Gary Yazwa, Executive Director of the South Sound Boys and Girls Club, has initiated communication with grant fund donors who are willing to provide the funds to build the Gig Harbor Peninsula Community Center. This can happen if the City will provide \$150,000 per year for five years toward the maintenance and operation of the G.H.P.C.C. **once it is built.**

With the passage of this Resolution, **the partnership of community and government agencies** will continue to be ongoing with Pierce County Executive John Ladenburg, Pierce County Council Member Terry Lee, Jan Wolcott of Pierce County Parks and Recreation, Peninsula School District's Marcia Harris and Peninsula Recreation Director Jeremy Bubnick .

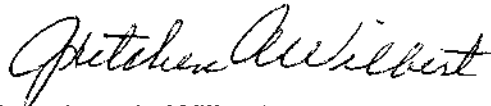
I have confidence Mark Hoppen will pull together the available pieces of community and agency funding as requested by council members for your review.

Also included for your review are the comments received from the citizens requesting the city's support for a community center that would provide space for

the Red Cross Senior Meal Site and activities Monday – Friday from 10:00am and until 2:00pm. Boys and Girls Club activities could be scheduled daily from 2:30 until early evening.

Support for this Resolution by the City Council is essential if we are to move forward with this partnership. Our support is the signal for Gary Yazwa to continue with his fund raising for our Gig Harbor Peninsula Community Center. It will not happen without Council's "yes" vote.

Thank you for your consideration.



Gretchen A. Wilbert
Mayor

These comments have come to me from the public in support of the Resolution.

- Support the Resolution to provide money in future budgets to partner with the Pierce County Parks and Recreation, as well as with the Peninsula School District, as in the past.
- Support the Boys and Girls Club. They are willing to go ask citizens to donate funds to build us a Community Center. They cannot do it without the City and Community's support.
- Giving kids a place to go after school costs a lot less than dealing with juvenile crime. Remann Hall & Drugs.
- Kids can join the Boys and Girls Club in Tacoma for \$15 a year in annual dues. The kids earn the money. When they spend their own money for **membership, they feel good about belonging.** They don't trash the facility. In fact, quite the opposite happens. They make sure no one else does graffiti or damage to their clubhouse.
- The Boys and Girls Club provides excellent mentors consisting of adults and students who are there to answer questions and guide activity.
- The Key Peninsula and Longbranch each have Community Centers. We can too, with your support.
- The location, I understand, would be just north of the Henderson Bay High School. It's perfectly situated on the bus route and is very easy to find.
- Raising funds for Boys and Girls Club activity in a Community Center does not compete with the YMCA efforts to raise funds for their facility, as some have suggested. The YMCA serves a different population. The YMCA provides for a monthly membership for families that helps pay for their maintenance and operation. We need both in our community. I hope the city will provide their share.
- We'll keep providing sales tax by shopping in the city. That's what I call a real partnership. Please help fund the operation of the new Community Center.

The City will be able to provide recreation and social activities for citizens of all ages.

- Citizens are living longer and need our help.
- Recreation and social activities for all, means healthy citizens.
- Ask – Could the gymnasium accommodate roller-skating? Roller blades? I hope so.
- The Growth Management Act requests cities provide services to a growing population and encourage that element of society to move into cities nearer those services.

The Community Center Gymnasium would provide space on evenings and weekends for scheduled community events.

- Popular music
- Music of 60's, 70's and 80's for moms and dads – kids could come, too
- Local student musicians could provide the music for Fri or Sat night dances
- Western line dancing
- Peninsula Youth Orchestra concerts
- Community Chorus would have a place to perform

The Computer Lab in the Community Center would provide.....

- Opportunity for intergenerational activity, such as youth teaching seniors and vice versa

Continue partnership with the School District, Pierce County Parks and the City, by providing:

- Ball fields
- Lighting of the fields
- Scheduling of outdoor recreational programs – PAA, soccer league, etc. by providing an office for Peninsula Recreation Program Director, Jeremy Bubnick within the community center
- Consider the P.R.P. Director to be the manager of the Community Center