

Gig Harbor City Council Meeting

**September 22, 2003
7:00 p.m.**



"THE MARITIME CITY"

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
September 22, 2003 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

SWEARING IN CEREMONY: Reserve Officer Christopher Langhelm.

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 September 8, 2003.
2. Short Term Use Agreement – Bremerton Motorsports Park.
3. Postage Meter Agreement.
4. Garage Door Openers at City Shop – Contract Authorization.
5. WWTP Plant Upgrades – Amendment No. 1.
6. West Side Park Survey.
7. Parcel Acquisition.
8. Grandview Forest Park Tank Repainting Project.
9. Wilkinson Farm Park Survey.
10. Franklin / Prentice Street Improvement Project – Amendment No. 1.
11. Special Occasion Liquor License Approval – St. Nicholas Knights of Columbus.
12. Approval of Payment of Bills for September 22, 2003.
Checks #41147 through #41292 in the amount of \$257,722.00.

OLD BUSINESS:

1. Second Reading of Ordinance – Utility Rate Reduction for Low Income Seniors.

NEW BUSINESS:

1. Skansie Net Shed, House and Garage Painting Project.
2. Olympic / Hollycroft Feasibility Study.
3. Resolution – Rust Street Vacation.
4. First Reading of Ordinance – Latecomer Agreements.
5. Dedication of Trail – Plat of Mallards' Landing.

STAFF REPORT:

GHPD – August Stats.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

Budget Worksessions: November 3rd and 4th, 6:30 p.m.

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF SEPTEMBER 8, 2003

PRESENT: Councilmembers Ekberg, Young, Franich, Owel, Dick, Picinich, and Mayor Wilbert. Councilmember Ruffo was absent.

CALL TO ORDER: 7:01 p.m.

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 August 25, 2003.
2. Correspondence / Proclamations:
 - a. Letter from the Dept. of Transportation.
 - b. Letter from Washington Finance Officers Association.
3. Rental Agreement for Firearms Range Use – City of Bremerton.
4. Renewal of Copier Maintenance Agreements.
5. Grandview Forest Park Tank Repainting Project – Bid Award.
6. Approval of Payment of Bills for August 29, 2003.
Checks #40947 through #41095 in the amount of \$220,166.00.
7. Approval of Payment of Bills for September 8, 2003.
Checks #41096 through #41146 in the amount of \$108,934.84.
8. Approval of Payroll for the month of August.
Checks #2737 through #2806 and direct deposits in the amount of:
\$253,850.51.

John Vodopich asked that agenda item number 5, Grandview Forest Park Tank Repainting Project, be taken off the Consent Agenda due to bonding issues.

MOTION: Move to approve the consent agenda with the removal of the Grandview Forest Park Tank Repainting Project.
Picinich / Young – unanimously approved.

OLD BUSINESS:

1. Continuation of Second Reading of Ordinance – Amending Design Review Procedures – GHMC 17.98. Steve Osguthorpe, Planning / Building Manager, presented this second reading of an ordinance that amends the procedures for the design review process. He gave a brief history of the ordinance and answered questions regarding the changes.

Councilmember Franich said that he believes that the Design Review Board should be making the decisions rather than the Hearing Examiner and said that he would be voting against the amendments.

Carol Morris, City Attorney, explained that she drafted the ordinance with the intention of keeping the Design Review Board and City Council out of jeopardy of suit.

MOTION: Move to adopt Ordinance No. 940 as presented.
Ruffo / Picinich – six voted in favor. Councilmember Franich voted no.

2. Hazen Annexation (03-02) Setting Date for Public Hearing. John Vodopich, Community Development Director, explained that the next step in the annexation process was for Council to set a date for the public hearing.

Elaine Wagner – 1710 Harmon. Ms. Wagner spoke in favor of the annexation and asked for clarification for why the difference in road widths in the proposed annexation area. John Vodopich explained that this is a private easement and suggested that she contact to the Pierce County Assessor to view the plat maps.

MOTION: Move to set the public hearing date of October 13, 2003 for the consideration of the resolution for the Hazen Annexation.
Picinich / Ruffo - unanimously approved.

NEW BUSINESS:

1. Northwest Gig Harbor Employment Center Annexation (ANX 03-04) – Meeting with Initiators. John Vodopich presented this request for annexation of approximately 226 acres of property, explaining that this proposal was in process 2001 when the State Supreme Court invalidated the petition method for annexations. He addressed questions on the proposed zoning, city services, and the approval by Pierce County Boundary Review Board.

MOTION: Move to accept the notice on intent to commence annexation with the revised legal description and further authorize the circulation of a petition to annex the subject property contingent upon the required conditions.
Ruffo / Dick – unanimously approved.

2. Canterwood Division 12 Sewer Request. John Vodopich presented this request for 71 ERUs of sewer and Step System Agreement for an area included in ULID No. 3. He requested two separate motions to adopt the Utility Extension Agreement and a Step System Management Agreement.

MOTION: Move to approve the Utility Extension.
Ruffo / Picinich – unanimously approved.

MOTION: Move to approve the Step System Management Agreement with Canterwood Division 12.
Picinich / Ruffo – unanimously approved.

3. First Reading of Ordinance – Utility Rate Reduction for Low Income Seniors. David Rodenbach, Finance Director, presented this two-part ordinance designed to allow a rate reduction for qualified low-income seniors, and establishes an average payment plan.

Staff answered questions regarding income levels and how the calculation was formulated. Council asked about the reason for two different classes of low-income citizens. Carol explained this was drafted this way to allow more flexibility. Council requested that the ordinance be amended to only have one category, low-income seniors. They also requested a breakdown on age and low-income percentages in the area. This will return at the next meeting for a second reading.

STAFF REPORTS:

GHPD – July Stats. No verbal report given.

PUBLIC COMMENT:

Doug Tenzler – Gig Harbor Sportsman's Club. Mr. Tenzler read a prepared statement asking for Council consideration to exempt the club from the requirements in Ordinance No. 926 until they can relocate to a new location in approximately one and one-half years. He began to discuss litigation efforts and was asked by city attorney, Carol Morris, to confine his comments to the request for Council consideration and not to refer to litigation.

Mr. Tenzler continued, and requested an time extension for compliance with the ordinance. Councilmember Ruffo recommended that the club advise their attorney to contact the city attorney to discuss these issues.

Joe Wilcheck, President and CEO of Franciscan Health System. Mr. Wilcheck explained that he was present with Dr. Michael Newcomb, Senior Vice-president of Medical Affairs, and Laurie Nichols, Senior Vice-president for Strategic Planning, to give an update on the efforts to build a community hospital in Gig Harbor. He said the decision to build here is based on the need to improve the health care for the residents of the south sound and gave an overview of the studies that led to the decision to go forward.

Dr. Michael Newcomb. Dr. Newcomb explained that the Greater Peninsula is the second largest population base in the state without critical care facility. He stressed that in any emergency, time is critical, and a new hospital would have a 24-hour emergency department to provide critical life-saving services.

Laurie Nichols. Ms. Nichols discussed the criteria that led to the selection for the site in the Gig Harbor North area. She explained that the location is central to both Gig Harbor and south Kitsap County residents and allows for a 50-year growth plan. She discussed access, financial concerns, and the proximity to residential and commercial areas. Mr. Wilcheck addressed the concerns about the choice of location and water availability.

He explained that they have considered the Point Fosdick site, but they couldn't make the investment in this area. He said that this community is large enough to support two medical centers. He added that they do plan on placing a kidney dialysis facility in the Point Fosdick area.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert reminded everyone of the upcoming second anniversary of the 9-11 tragedy.

Councilmember Dick stressed that he relies upon the accuracy of the information that he is given by staff when amendments are made. He asked that this effort remain consistent. Steve Osguthorpe explained that we would be obtaining the code in electronic format and that would help to eliminate discrepancies.

Councilmember Owel said that she and Steve Osguthorpe were planning on attending a hearing in Olympia on gambling zoning on September 19th. She offered to bring back a report with the results of the hearing.

ANNOUNCEMENT OF OTHER MEETINGS:

Council Retreat – Monday, September 15th at the Gig Harbor Civic Center – 12:00 p.m. until 5:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session for approximately five minutes at 8:32 p.m. for the purpose of discussion pending litigation.

Franich / Owel - unanimously approved.

MOTION: Move to return to regular session at 8:38 p.m.

Ekberg / Ruffo – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 8:38 p.m.

Ekberg / Franich – unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 11
Disc #2 Track 1

Gretchen Wilbert, Mayor

Molly Towslee, City Clerk



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER *MB*
**SUBJECT: SHORT TERM USE AGREEMENT WITH BREMERTON MOTOR
SPORTS PARK**
DATE: SEPTEMBER 17, 2003

INFORMATION/BACKGROUND

The police department requires all line officers to attend in-service training in an Emergency Vehicle Operator's Course (EVOC) on a regular basis. In order to conduct this training, we require a large paved area where it is safe to operate vehicles at high rates of speed. The Bremerton Motor Sports Park rents a portion of the Bremerton Airport to police agencies for this purpose. In order to use the space, we must enter into a short-term use agreement with the Bremerton Motor Sports Park

Our legal counsel has reviewed the attached Short Term Use Agreement between the City and the Bremerton Motor Sports Park.

FISCAL IMPACTS

There is a use fee of \$250.00 per day to use the Bremerton facility. We will use the space for one day. This training was anticipated and funded within the 2003 budget.

RECOMMENDATION

I recommend that Council authorize the Mayor to execute the attached Short Term Use Agreement that will allow the police department to perform EVOC training scheduled for November, 2002

Bremerton Motorsports Park
SHORT TERM USE AGREEMENT
2003

IT IS HEREBY understood that this Use Agreement made this 16th day of September, 2003, by and between **Bremerton Motorsports Park**, a Washington Not for Profit corp., hereinafter referred to as "BMP", and **City of Gig Harbor**, a Washington municipal corporation, whose address is **3510 Grandview St. Gig Harbor WA 98335**, hereinafter referred to as "User".

WHEREAS, the City is required to train its police personnel in emergency vehicle safety techniques, and

WHEREAS, BMP controls property that it is willing to make available to the City on October 14, 2003 for purposes of emergency vehicle safety training, under the terms of this Short Term Use Agreement.

NOW, THEREFORE, BMP and the City, for an in consideration of the mutual agreements, covenants and promises set forth herein, agree as follows:

SECTION 1. USE: BMP hereby agrees to permit the User to utilize INACTIVE RUNWAY 16/34 at the Port of Bremerton's, Bremerton National Airport facility AKA "Bremerton Raceway" for the purpose of holding the User's **Emergency Vehicle Operators Course**, and for no other use. BMP understands that the User will be the sole occupant of the property on October 14, 2003 for this purpose. User shall be responsible for correction of any and all property damage which would occur as a result of User's activity on October 14, 2003. User acknowledges that they have viewed the facilities and accept them in their current condition as appropriate for their intended use with no further modifications by BMP. The User agrees to assume full responsibility for the conduct of all User persons involved in the User's Emergency Vehicle Operator's Course use of the premises. **Should the pavement of the use area require any markings related to User's activity, User agrees to use marking material that is not of a permanent nature, i.e. chalk.**

SECTION 2. TERM: The term of this agreement shall be October 14, 2003, a term of one (1) day. **SECTION 3. ASSIGNMENT:** This agreement is not assignable or transferable in any fashion.

SECTION 4. RENT: The User agrees to pay BMP five (5) days in advance, a minimum of \$250.00 per day of use. A late fee of one percent (1%) per month, minimum \$3.00 will be assessed on all accounts not paid in advance.

SECTION 5. RISK OF LOSS: The User assumes all risks, including but not limited to, loss of or damage to equipment or property of the User or of the User participants in the Emergency Vehicle Operator's Course, or equipment or property used or stored on the premises under the terms of this agreement.

SECTION 6. SECURITY: Security of User's or invitees' property shall be the sole responsibility

of the User. User shall prevent any user participants in the Emergency Vehicle Operator's Course from traversing or accessing any and all parts of the Port of Bremerton, Bremerton National Airport facility, except those areas open to the public and that area designated herein for User's purpose, and specified ingress and egress thereto.

SECTION 7. INSURANCE: The User shall secure comprehensive general liability insurance (Form CG-001) for property damage and bodily injury at the premises in an amount of not less than \$1 million per occurrence and \$2 million aggregate. In addition, User shall keep and maintain in full force and effect during the term of this agreement fire and extended coverage insurance on all fixed improvements located or situated on or in the Premises to the full insurable value thereof. Proceeds from such insurance shall be used to restore the Premises. User shall provide the BMP with a certificate of insurance, naming BMP, Bremerton Raceway and the Port of Bremerton as an additional insureds (CG 2010 [form B]) and the premises, Bremerton Raceway, and Bremerton National Airport shall be listed as a covered site on all coverage. No occupancy or use permitted under the terms of this agreement shall commence until such evidence of insurance is presented to and approved by BMP.

SECTION 8. INDEMNIFICATION: The User shall release, indemnify, defend and hold BMP, its officers, officials, employees and representatives harmless from and against all losses and claims, demands, payments, suits, action, recoveries and judgments of every nature and description brought or recovered against BMP arising out of the actions of the User, its officers, officials or employees while conducting the Emergency Vehicle Operator's Course upon Port property, and for any expense incurred by BMP in connection therewith, including reasonable attorneys fees and costs attributable thereto.

In those situations in which a court of competent jurisdiction finds that BMP and the User are concurrently negligent, the indemnification contained in this agreement shall only be effective to the extent of the User's negligence. Furthermore, the indemnification contained in this agreement shall only be effective for the losses, claims, demands, payments, suits, action, recoveries and judgments arising out of the Emergency Vehicle Operator's Course conducted on October 14, 2003.

SECTION 9. COMPLIANCE WITH LAWS AND REGULATIONS: Users of the Bremerton National Airport facility under the terms of this agreement are subject to the rules and regulations of the Federal Aviation Administration, its agents, and/or inspectors, and all applicable Port, state, county, or federal laws, including but not limited to, those laws related to the use, handling, and disposal of oil and petroleum products. The use of the premises provided herein shall at all times be subject to suspension or cancellation for emergency air traffic situations or requirements at the sole discretion of the Port of Bremerton.

SECTION 10. CANCELLATION: This agreement is subject to immediate termination with or without cause by BMP. No written notice is required. If BMP exercises this cancellation provision after it has collected the rent from the User, BMP shall refund the rent within twenty (20) days after cancellation.

Signed this _____ day of _____.

USER:

Bremerton Motorsports Park

By: _____
Mayor Gretchen Wilbert

By: _____
Chairman Ken Mahan

ATTEST:

By: _____
City Clerk

The City of Gig Harbor
3510 Grandview Street
Gig Harbor WA 98335
253/851-8136

253/851-2399 fax



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MOLLY TOWSLEE, CITY CLERK
SUBJECT: POSTAGE METER AGREEMENT
DATE: SEPTEMBER 17, 2003

INFORMATION/BACKGROUND

The current postage meter is reaching the point that it is no longer serviceable. In addition, the U.S. Postal Service will be requiring digital metering in the next few years. The cost of continued maintenance and upkeep on the current equipment will continue to increase as will meter rental, meter resets, and scale rate updates. We currently are not using the GSA contract and subsequent discounts.

FISCAL IMPACTS

The new agreement will utilize GSA contract pricing, with a slight increase from what we are currently paying for the existing system.

RECOMMENDATION

To authorize the Mayor to sign the agreement for an upgraded, digital postage system.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: GARAGE DOOR OPENERS AT SHOP
CONTRACT AUTHORIZATION
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

The 2003 budget provides for the purchase and installation of electric garage door openers at the Shop. Four 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:

Overhead Door Co. of Tacoma	\$ 7,503.45
A-1 Door Service	\$ 7,801.33
Kitsap Garage Door Co.	\$ 12,142.97

Based on the price quotations received, the lowest price quotation was from Overhead Door in the amount of seven thousand five hundred three dollars and forty-five cents (\$7,503.45) including state sales tax.

FISCAL CONSIDERATIONS

This work is within the \$50,000 that was anticipated in the adopted 2003 Budget, identified under the Street Operating Fund, Objective No. 10 for Shop Improvements.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for the shop garage door openers to Overhead Door Co. of Tacoma as the lowest responsible respondent, for their bid quotation amount of seven thousand five hundred three dollars and forty-five cents (\$7,503.45).

**AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN CITY OF GIG HARBOR
AND OVERHEAD DOOR CO. OF TACOMA**

THIS AGREEMENT, is made this _____ day of _____, 200____, by and between the City of Gig Harbor (hereinafter the "City"), and OVERHEAD DOOR CO. OF TACOMA, a Washington corporation, located and doing business at 4802 Center Street, Tacoma, Washington 98409, (hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work described in Exhibit A and the Contractor 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 in Exhibit A, 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 four garage door openers and modify two garage doors at the City Shop. 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 seven thousand five hundred three dollars and forty-five cents (\$7,503.45), including sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the tasks described in Exhibit A, 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 November 3, 2003. 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's Contract Compliance Division, 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. Overhead Door Co. of Tacoma 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.

METROPOLITAN COATINGS LLC

By: Mark Susselle
Its MANAGING MEMBER

THE CITY OF GIG HARBOR

By: _____
Its Mayor

Notices should be sent to:

Metropolitan Coatings LLC
Attn: Mark Schlatter
2015 70th Avenue West
University Place, Washington 98466
(253) 564-9066

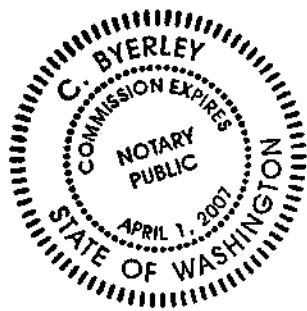
City of Gig Harbor
Attn: David Brereton
Director of Operations
3510 Grandview Street
Gig Harbor, Washington 98335

Approved as to form:

By: _____
City Attorney

Attest:

By: _____
Molly M. Towslee, City Clerk



STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Mario Scusselle 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 Managing Member of Metropolitan Coatings LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/15/03

C. Byerley
Notary Public in and for the
State of Washington,
Residing at 801 S. Howard
My appointment expires: 4/1/07

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

I certify that I know or have satisfactory evidence that Gretchen 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 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



12196

Overhead Door Co. Of Tacoma
Div. of VanCourt & Matthew, Inc.
 4802 Center St. • Tacoma, Washington 98409
 Phone (253) 564-7756 • Fax (253) 564-3549

Bill to: City of Gig Harbor
3510 Grandview Street
Gig Harbor WA 98335

Job Address 5116 89th St NW
Gig Harbor

Telephone: Work _____
 Home _____
 Mobile Fax 851-5408

Cross Street _____ Map Pg _____
 Contact _____ Phone _____

DATE	DELIVERY DATE	VIA	CUSTOMER NO.	SALESMAN	TERMS	<input type="checkbox"/> QUOTE	<input type="checkbox"/> ORDER
8/22/03		Install		Rebb	Net 30 Days		
QUANTITY	DESCRIPTION					UNIT PRICE	AMOUNT
2	Convert 16'x12' To High Lift Aprox 6' of Lift Clearance					1241.00	2482.00
4	1/2 Hp 115 Volt Jack shaft motors					785.00	3140.00
							5622.00
*	To Add for Reversing Edges (Electron)					325.00 each x 4 =	1300.00
5622.00 + 1300.00 6922.00 x 0.4% 581.45 <i>shop</i> TOTAL \$ 7503.45							

Accepted _____ Date _____

STORM & SECURITY DOORS
 (253) 564-7756

OVERHEAD GARAGE DOORS - AUTOMATIC OPENERS
 1-800-400-7756 OR (253) 564-7756

yes I am Contact Person



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WASTEWATER TREATMENT PLANT UPGRADES
PRELIMINARY DESIGN SERVICES-COSMOPOLITAN ENGINEERING
CONSULTANT SERVICES CONTRACT, AMENDMENT NO. 1
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

An identified Sewer Objective in the 2003 budget is to begin the design for the future Wastewater Treatment Plant (WWTP) upgrades. On July 8, 2002, Council approved a Consultant Services Contract, in the amount of \$56,300, with Cosmopolitan Engineering Group to evaluate the existing plant processes and plant components and develop alternatives to meet long-range future treatment plant needs and provide a higher plant operating efficiency. A final engineering report was completed summarizing the recommended alternatives.

This scope of services to be provided under this amendment includes the design of various interim WWTP upgrades improvements to the headworks, plant flow control, and modifications to the digester basins.

The Consultant Services Contract is the standard city form approved by the City Attorney.

FISCAL CONSIDERATIONS

This work was anticipated in the approved 2003 budget. The contract amount is less than the budgeted allocation of \$365,000, as identified in the Sewer Capital Construction Fund, Objective No. 8. Council approval of this amendment will revise the contract amount to be \$77,492.91.

RECOMMENDATION

I recommend that the Council authorize the execution of the Consultant Services Contract, Amendment No. 1, with Cosmopolitan Engineering Group in the total amount not-to-exceed twenty one thousand one hundred ninety-two dollars and ninety-one cents (\$21,192.91).

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

THIS AMENDMENT is made to the AGREEMENT, dated July 8, 2002, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group, a corporation organized under the laws of the State of Washington, located and doing business at 117 South Eighth Street, Tacoma, Washington 98402 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design of the Wastewater Treatment Plant Upgrades, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on July 8, 2002 (hereinafter the "Agreement"); and

WHEREAS, the existing Agreement requires the parties to execute an amendment to the Agreement in order to modify the scope of work to be performed by the Consultant, or to exceed the amount of compensation paid by the City;

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

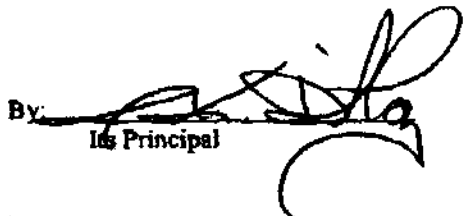
Section 1. Amendment to Scope of Work. Section I of the Agreement is amended to require the Consultant to perform all work described in **Exhibit A – Scope of Services**, attached to this Amendment, which Exhibit is incorporated herein as if fully set forth.

Section 2. Amendment to Compensation. Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A** to the Amendment in the amount of: twenty-one thousand one hundred ninety-two dollars and ninety-one cents (\$21,192.91). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

Section 3. Effectiveness of all Remaining Terms of Agreement. All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as if fully set forth, and become a part of the documents constituting the contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2003.

THE CITY OF GIG HARBOR

By: 
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT:
COSMOPOLITAN ENGINEERING GROUP.
Attn: Jim D'Abov, P.E.
117 South Eighth Street
Tacoma, Washington 98402
(253) 272-7220

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 _____ Inc., 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: _____

EXHIBIT A

September 9, 2003

Mr. Steven Misiurak, P.E.
City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 98335

RE: Proposal for Civil Engineering Services on 2003 WWTP Projects

Dear Steve:

The following constitutes the requested fee proposal for the above referenced project. The proposal has been broken down as requested into the required design components.

Scope of Services:

The scope of services covered in this proposal includes the design of WWTP upgrades, including improvements to the existing headworks (fine screens), improvements to flow control through the plant (distribution box), and modifications to the existing Digester Basins/Piping (select demolition).

Fee Proposal:

Fine Screens:

Jim D'Aboy - 5 hrs. @ \$134.58/hr	\$672.90
Chuck Hoffman - 4 hrs. @ \$90.87/hr	\$363.48
Jeff Fontana - 8 hrs. @ \$52.50/hr	\$420.00
Sub-Consultant - H.R. Esvelt Engineering (inc. 10% mark-up)	<u>\$5,500.00</u>
Sub-total - Fine Screens	\$6,956.38

Distribution Box:

Jim D'Aboy - 13 hrs. @ \$134.58/hr	\$1,749.54
Chuck Hoffman - 4 hrs. @ \$90.87/hr	\$363.48
Jeff Fontana - 10 hrs. @ \$52.50/hr	\$525.00
Sub-Consultant - H.R. Esvelt Engineering (inc. 10% mark-up)	<u>\$6,600.00</u>
Sub-total - Distribution Box	\$9,238.02

Select Demolition:

Jim D'Aboy - 9.5 hrs. @ \$134.58/hr	\$1,278.51
Jeff Fontana - 8 hrs. @ \$52.50/hr	\$420.00
Sub-Consultant - H.R. Esvelt Engineering (inc. 10% mark-up)	<u>\$3,300.00</u>
Sub-total - Demolition	\$4,998.51

Total	\$21,192.91
-------	-------------

EXHIBIT A

The costs listed above include all plan and specification preparation through approval by the City of Gig Harbor. The costs also include Department of Ecology reporting, if required.

As a part of this proposal, we will provide five (5) sets of permit documents and ten (10) sets of construction documents. We will also provide one (1) set of reproducible after City of Gig Harbor approval for construction. Additional requested sets of documents prior to project approval will be billed at cost plus ten (10) percent.

If you have any questions, please don't hesitate to contact me. We are ready to start this project at your direction.

Very truly yours,

COSMOPOLITAN ENGINEERING GROUP, INC.

James K. D'Aboy
President
JKD/jlc



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WESTSIDE PARK PROJECT
SURVEY SERVICES - CONSULTANT SERVICES CONTRACT
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

A budgeted objective for 2003 was to identify a passive and active recreational park site on the west. A potential site has been identified but requires a survey to locate boundaries of the lot lines, corners and possible wetlands necessary to prepare a Wetlands Delineation Report.

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 is an unbudgeted objective utilizing existing funds in the Park Department. This contract may require a future budget amendment if funds are depleted by the end of the fiscal year.

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 eight thousand six hundred dollars and zero cents (\$8,600.00).

**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 corporation organized under the laws of the State of Washington, located and doing business 12904-A Purdy Drive Northwest, Gig Harbor, Washington 98332 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in surveying of the Westside Park 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 September 17, 2003, 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 eight thousand six hundred dollars and no cents (\$8,600.00) 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 – Scope of Work**. 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 November 3, 2003; 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 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 Director of Operations and the City shall determine the term or provision's true intent or meaning. The 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 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
Mike Helms
Aspen Land Surveying LLC
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this 17TH day of SEPTEMBER, 2003.

CONSULTANT
By: David B. Helms
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

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

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

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



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

(253) 857-4265

FAX: (253) 857-9265

mike@aspenland.com

P R O P O S A L

September 17, 2003

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

ATTN: Mr. David Brereton
Director of Operations

Via E-mail & Hard copy by mail
E-mail: breretond@cityofgigharbor.net

RE: Survey of Pierce County Parcel No. 022117-304-7 & 022117-304-9
Westside Park

Dear Mr. Brereton:

Thank you for your recent inquiry regarding a survey of the property off of Olympic Drive & 38th Ave N.W. in Gig Harbor. We appreciate the opportunity to submit this proposal.

SCOPE OF WORK

We will conduct a survey of your property to include the following services:

1. **TIE TO CONTROLLING MONUMENTS.** We will find the original survey monuments upon which the property boundary is based, and run a traverse from those monuments to the property.
2. **BOUNDARY CALCULATION.** We will determine the precise location of the property boundary, based on legal description, and the controlling monumentation.
3. **LOT CORNER STAKING.** We will recover the original markers or set permanent, official survey monuments (5/8" re-bar with plastic caps) at all lot corners. In cases where the actual property corners are inaccessible, a reference monument will be set on the property line.
4. **ADDITIONAL LINE STAKING.** We will stake additional points along longer property lines at intervals of approximately 150 feet, to facilitate delineation of the boundary.
5. **WETLANDS & CREEK SURVEY.** We will map the existing wetland, as delineated in the field by others and the creek within the site and tributaries.
6. **STAKING OF WETLAND BUFFER AND SIGN PLACEMENT.** After Pierce County has reviewed the wetland report, and established the buffer width, we will stake the buffer and erect signs as required by Pierce County.

Exhibit A – Scope of Work

City of Gig Harbor
Mr. David Brereton
Director of Operations
September 17, 2003
Page 2 of 2

7. RECORD OF SURVEY MAP. We will prepare a Record of Survey Map, showing the property boundary, monumentation, and any significant improvements or encroachments. The survey will be filed with the Pierce County Auditor, and a copy of the recorded document will be delivered to you.

SCHEDULE

We estimate that the survey will be completed within 30 days after receipt of Notice to Proceed.

FEES

The services described above will be provided for a fixed fee of \$8,600, which will be 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 forward a purchase order as indication of your acceptance and Notice to Proceed with the project.

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

Aspen Land Surveying LLC



Michael R. Helms
Estimator

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



'THE MARITIME CITY'

3510 GRANDVIEW STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136 • WWW.CITYOFGIGHARBOR.NET

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: PARCEL ACQUISITION
DATE: SEPTEMBER 17, 2003

INFORMATION/BACKGROUND

City acquisition of the attached parcel will cost \$17,000, and will be closed at First American Title on September 23, 2003, subsequent to a Council approval of the purchase and sale agreement. A copy of the environmental conclusion on the Phase I assessment is also attached.

RECOMMENDATION

I recommend approval of the purchase and sale document as attached.

Form No. 34
Amendment to P & S
Page 1 of 1

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ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated 4/3/03, 2003
between City of Gig Harbor ("Buyer") 2
and NW Medical Trans ("Seller") 3
concerning: PN# 0222322080 xxx Crescent Valley Dr. ("the Property"). 4

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

City of Gig Harbor's Offer extended
until NW Medical Board meets and offer
can be presented.

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 25

AGENT (COMPANY) Shorewood 26
BY Jean Gazabat 27

Initials: BUYER [Signature] Date: _____ SELLER: _____ Date: _____
BUYER: _____ Date: _____ SELLER: _____ Date: _____ 29

Pamela Birkstad - Gig Harbor Property

From: Pamela Birkstad
To: gazabat@aol.com
Date: 6/20/03 12:24PM
Subject: Gig Harbor Property

Dear Jean:

At long last, our Board of Directors met yesterday and approved the sale of the properties in Gig Harbor, at NO LESS than the highest bids we've received. If possible, we'd like you to make a counter-offer on at least the Drummond Drive property. We've listed that at \$17,000 and the offer from the neighbors came in at only \$10,000. Do you think they'd be willing to go a bit higher - perhaps split the difference? Please counter and see what they say.

*M. III
6/25/03*

We can go ahead and move forward on the \$17,000 offer from the City of Gig Harbor on the Crescent Valley piece, since it's above our asking price.

Jean, thank you so much for your patience in this long process. We appreciate you and your support.

Please let me know if you have questions or need more information. Please also send any documents for signature directly to me.

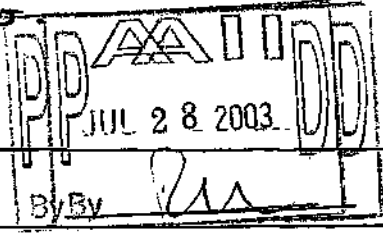
Thanks again.

Pamela S. Birkstad, CPA
Vice President, Finance and Information Services
Northwest Medical Teams Int'l
(503) 624-1000

*① Mike E. Hagan City Administrator
6/25/03
City of Gig Harbor*

VACANT LAND REAL ESTATE PURCHASE AND SALE AGREEMENT
SPECIFIC TERMS

1. Date: 4/2, 2003 MLS No.: 23040400
2. Buyer: City of Gig Harbor
3. Seller: NW Medical
4. Property: Tax Parcel Nos.: 0222322080 (Puget County)
Street Address: xxx Crescent Valley Dr NW Washington 98352
Legal Description: TO BE ADDED BY TITLE CO



5. Purchase Price: \$1,700.00
6. Earnest Money: (To be held by Selling Broker Closing Agent)
Personal Check: \$1000.00 ✓
Note: Due upon acceptance
Other (): _____
7. Default: (check only one) Forfeiture of Earnest Money Seller's Election of Remedies
8. Title Insurance Company: First American Title
9. Closing Agent: a qualified closing agent of Buyer's choice First American Title
10. Closing Date: MAY 25th
11. Possession Date: on Closing _____ calendar days after Closing _____
12. Offer Expiration Date: April 8/2003
13. Counteroffer Expiration Date: _____
14. Addenda: 1

15. Agency Disclosure: Selling Licensee represents Buyer Seller both parties neither party
Listing Agent represents Seller both parties
16. Subdivision: The Property is subdivided must be subdivided on or before _____
 is not legally required to be subdivided
17. Feasibility Contingency Expiration Date: _____ days after mutual acceptance May 15/03

M. E. [Signature] 4-2-03
Buyer's Signature Date
Buyer's Signature Date
Buyer's Address
City, State, Zip
Phone Fax
Buyer's E-mail Address
Shorewood
Selling Broker MLS Office No.
JEAN GAZAVAT
Selling Licensee (Print)
851-9945, 253-858-2576
Phone Fax

[Signature]
Seller's Signature Date
Seller's Signature Date
Seller's Address
City, State, Zip
Phone Fax
Seller's E-mail Address
Shorewood R.E
Listing Broker MLS Office No.
JEAN GAZAVAT
Listing Agent (Print)
Phone Fax

WALLS Form 25
Vacant Land Purchase & Sale
Revised 04/01
Page 2 of 4

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Andy Biggler

**VACANT LAND REAL ESTATE PURCHASE AND SALE AGREEMENT
GENERAL TERMS**

(continued)

- a. **Purchase Price.** Buyer agrees to pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds or gifts, except to the extent otherwise specified in this Agreement. 1-4
- b. **Earnest Money.** Buyer agrees to deliver the Earnest Money within 2 days after mutual acceptance of this Agreement. Selling Licensee will deposit any check to be held by Selling Broker as Earnest Money within 3 days after receipt or mutual acceptance, whichever occurs later. If the Earnest Money is held by Selling Broker and is over \$10,000.00 it shall be deposited into an interest bearing trust account in Selling Broker's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer agrees to reimburse Selling Broker for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Selling Broker is over \$10,000.00 Buyer has the option to require Selling Broker to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Selling Broker must deposit the Earnest Money or the Earnest Money is \$10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Selling Broker may transfer the Earnest Money to Closing Agent. Buyer agrees to pay financing and purchase costs incurred by Buyer. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Selling Broker or Closing Agent may deduct and pay them therefrom. 5-17
- c. **Condition of Title.** Buyer and Seller authorize Selling Licensee, Listing Agent or Closing Agent to insert, attach or correct the Legal Description of the Property. Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Monetary encumbrances not assumed by Buyer shall be paid by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. If the Property has been short platted, the Short Plat number is in the Legal Description. 18-26
- d. **Title Insurance.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for a standard form owner's policy of title insurance, with homeowner's additional protection and inflation protection endorsements if available at no additional cost, from the Title Insurance Company. The Title Insurance Company is to send a copy of the preliminary commitment to both Listing Agent and Selling Licensee. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in said standard form and Special Exceptions consistent with the Condition of Title herein provided. If title cannot be made so insurable prior to the Closing Date, then as Buyer's sole and exclusive remedy, the Earnest Money shall, unless Buyer elects to waive such defects or encumbrances, be refunded to the Buyer, less any unpaid costs described in this Agreement, and this Agreement shall thereupon be terminated. Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title. 27-36
- e. **Closing.** This sale shall be closed by the Closing Agent on the Closing Date. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, or legal holiday. 37-40
- f. **Possession.** Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller agrees to maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is entitled to possession. 41-42
- g. **Closing Costs and Prorations.** Seller and Buyer shall each pay one-half of the escrow fee. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer agrees to pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay them at Closing from money due, or to be paid by, Seller. 43-47

Initials: BUYER: *MS* DATE: 4/2/03 SELLER: *[Signature]* DATE: _____ 48
 BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 49

Jean Gazabat
Jean Coig Harbor.

01 03 11:10a

NWMLS Form 25
Vacant Land Purchase & Sale
Revised 8/01
Page 3 of 4

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VACANT LAND REAL ESTATE PURCHASE AND SALE AGREEMENT
GENERAL TERMS
(continued)

- h. **Sale Information.** The Listing Agent or Selling Licensee are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all lenders, financial institutions, Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Agent and/or Selling Licensee, on request, any and all information and copies of documents concerning the status, progress and final disposition of financing, appraisal, Closing, title condition, and any other matter concerning this sale, including buyer's credit report. In addition, Buyer shall provide any additional consent or authorization necessary to permit Buyer's lender or financing institution to provide information concerning the status, progress and final disposition of financing to the Listing Agent and/or Selling Licensee. 50-58
- i. **FIRPTA - Tax Withholding at Closing.** The Closing Agent is instructed to prepare a certification (NWMLS Form 22E or equivalent) that Seller is not a "foreign person" within the meaning of the Foreign Investment In Real Property Tax Act. Seller agrees to sign this certification. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service. 59-62
- j. **Notices.** Unless otherwise specified in this Agreement, any notice required or permitted in, or related to, this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed given only when the notice is received by Seller, by Listing Agent or at the licensed office of Listing Agent. Notices to Buyer must be signed by at least one Seller and shall be deemed given only when the notice is received by Buyer, by Selling Licensee or at the licensed office of Selling Licensee. Receipt by Selling Licensee of a Real Property Transfer Disclosure Statement, Public Offering Statement and/or Resale Certificate shall be deemed receipt by Buyer. Selling Licensee and Listing Agent have no responsibility to advise of receipt of a notice beyond either phoning the party or causing a copy of the notice to be delivered to the party's address shown on this Agreement. Buyer and Seller must keep Selling Licensee and Listing Agent advised of their whereabouts in order to receive prompt notification of receipt of a notice. 63-70
- k. **Computation of Time.** Unless otherwise specified in this Agreement, any period of time stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. If the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less shall not include Saturdays, Sundays or legal holidays. Time is of the essence of this Agreement. 73-78
- l. **Facsimile or E-mail Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document. E-mail transmission of any document or notice shall not be effective unless the parties to this Agreement otherwise agree in writing. 79-82
- m. **Integration.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. 83-85
- n. **Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein. 86-87
- o. **Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply: 88-89
 - i. **Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure. 90-91
 - ii. **Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity. 92-95

Initials: BUYER: X MSA DATE: 4/2/03 SELLER: (Signature) DATE: _____ 96
 BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 97

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Vacant Land Purchase & Sale
Revised 8/01
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VACANT LAND REAL ESTATE PURCHASE AND SALE AGREEMENT
GENERAL TERMS
(continued)

- p. **Attorneys' Fees.** If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. 98
99
- q. **Offer.** Buyer agrees to purchase the Property under the terms and conditions of this Agreement. Seller shall have until 9:00 p.m. on the Offer Expiration Date to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by Buyer, by Selling Licensee or at the licensed office of Selling Licensee. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer. 100
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- r. **Counteroffer.** Seller agrees to sell the Property under the terms and conditions of this Agreement. If Seller makes a counteroffer, Buyer shall have until 9:00 p.m. on the Counteroffer Expiration Date to accept the counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by Seller, by Listing Agent or at the licensed office of Listing Agent. If the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer. If no expiration date is specified for a future counteroffer, the counteroffer shall expire at 9:00 p.m. on the second day after the counteroffer is signed by the last party making the counteroffer, unless sooner withdrawn. 104
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- s. **Agency Disclosure.** Selling Broker represents the same party that Selling Licensee represents. Listing Broker represents the same party that the Listing Agent represents. If Selling Licensee and Listing Agent are different salespersons affiliated with the same Broker, then both Buyer and Seller confirm their consent to that Broker representing both parties as a dual agent. If Selling Licensee and Listing Agent are the same salesperson representing both parties then both Buyer and Seller confirm their consent to that salesperson and his/her Broker representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency." 111
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- t. **Commission.** Seller and Buyer agree to pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Broker's commission shall be apportioned between Listing Broker and Selling Broker as specified in the listing. Seller and Buyer hereby consent to Listing Broker or Selling Broker receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Broker and Selling Broker, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Broker(s). In any action by Listing or Selling Broker to enforce this paragraph, the prevailing party is entitled to court costs and reasonable attorneys' fees. 117
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- u. **Feasibility Contingency.** It is the Buyer's responsibility to verify before the Feasibility Contingency Expiration Date identified in Specific Term No. 17 whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this. BUYER SHOULD NOT RELY ON ANY ORAL STATEMENTS concerning this made by the Seller, Listing Agent or Selling Licensee. Buyer should inquire at the city or county, and water, sewer or other special districts in which the Property is located. Buyer's inquiry should include, but not be limited to: building or development moratoriums applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where buildings may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school, fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. 124
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134

If the Buyer does not give notice to the contrary on or before the Feasibility Contingency Expiration Date identified in Specific Term No. 17, it shall be conclusively deemed that Buyer is satisfied as to development and/or construction feasibility and cost. If Buyer gives notice, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer, less any unpaid costs. 135
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137
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- v. **Subdivision.** If the Property must be subdivided, Seller represents that there has been preliminary plat approval for the Property and this Agreement is conditioned on the recording of the final plat containing the Property on or before the date specified in Specific Term 16. If the final plat is not recorded by such date, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer. 139
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Initials: BUYER MB DATE: 4/2/03 SELLER (Signature) DATE: _____ 143
 BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 144

Form No. 34
Addendum/Amendment to P & S
31-596
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(A)

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated 4/2, 2003
between City of Gig Harbor ("Buyer")
and NW Medical ("Seller")
concerning: xxx Crescent Valley Dr NW ("the Property").

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

1. Buyer's offer is subject appraised for value satisfactory to buyer (City Council approval required). (May 15, 2003)

2. Buyer's offer is subject to environmental assessment satisfactory to buyer (City Council approval). (May 15, 2003)

3) Buyer's offer is subject to approval of City Attorney and City Council. (May 15, 2003)

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.

AGENT (COMPANY)

BY:

Initials: BUYER: [Signature] Date: 4-2-03 SELLER: [Signature] Date: _____
BUYER: _____ Date: _____ SELLER: _____ Date: _____

1.0 EXECUTIVE SUMMARY

Site Location - The subject site is generally located in the Northwest Quarter of the Northwest Quarter of Section 32, Township 22 N, Range 02E, W.M. According to the Pierce County Assessor-Treasurer, the site has been assigned an address of Crescent Valley Drive NW and tax parcel account number 0222322080.

Site Description - This site consists of approximately 3.85 acres of vacant, unimproved land. The site lies in an area that is rural residential.

Current Ownership - Current tax title ownership is held by Northwest Medical Team.

Current and Historical Uses - Historical records to include Sanborn Fire Insurance Maps, Polk's City Directories, and aerial photographs were researched. City directories were available from 1980 to 2001. Since directories were unable to reflect the subject to 1940, this resulted in a data failure. Sanborn Fire Insurance maps were unable to reflect the site, resulting in a data failure. Aerial photos reviewed at Aerolist, Inc. in Renton, Washington were available to reflect the subject between 1991 and 2000, also resulting in a data failure. Based on the data available as well as personal observations by the Project Manager over the past approximately 50 years, the subject and surrounding properties have been historically rural, undeveloped or large lot single-family dwellings. It is our professional opinion that commercial or industrial activities that may have impacted the subject with environmental concerns were not present on this property.

Physical Characteristics - The subject is situated at its eastern boundary, at Crescent Valley Drive, at approximately 60 feet above mean sea level. The topography rises to the west gaining to approximately 210 feet at the subject's western boundary. To the east, across Crescent Valley Drive, the topography rises to the east. Surface gradient at the subject appears to be east, towards Crescent Creek. The soils in this area have been classified as Harstine gravelly sandy loam. This soil is described as having a slow infiltration rate and is moderately well drained. These soils may have a layer of low hydraulic conductivity. The depth to the shallow water table is estimated at three to six feet below the ground surface. Based on available information the near surface ground water gradient at this site can be assumed to flow east.

Regulated Businesses/Properties & Environmental Liens - Agency records researched up to a one-mile radius from the subject do not indicate any businesses or properties with registered conditions.

Site Reconnaissance - The site is located on the west side of Crescent Valley Drive, generally between 108th and 112th Streets Northwest. Crescent Creek is located at near the eastern boundary, adjacent to Crescent Valley Drive. The property is heavily vegetated and access to most areas was not possible. There were no recognized environmental conditions observed on the subject.

Conclusions - We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527-00 of parcel number 0222322080 in Gig Harbor, Pierce County, Washington. Any exceptions to, or deletions from, this practice are described in Section 2.4 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with this property.

2001-02-15-5002

221.42

2-034

332.03

SP 79-477

6-041

REQUIRETSY
TITLE COMPANY

This map is supplied solely for the purpose of
locating the grantee and the Com-
pany assumes no liability for errors or omissions
in grant fees and locations.

6-042

6-043

6-044

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2-080

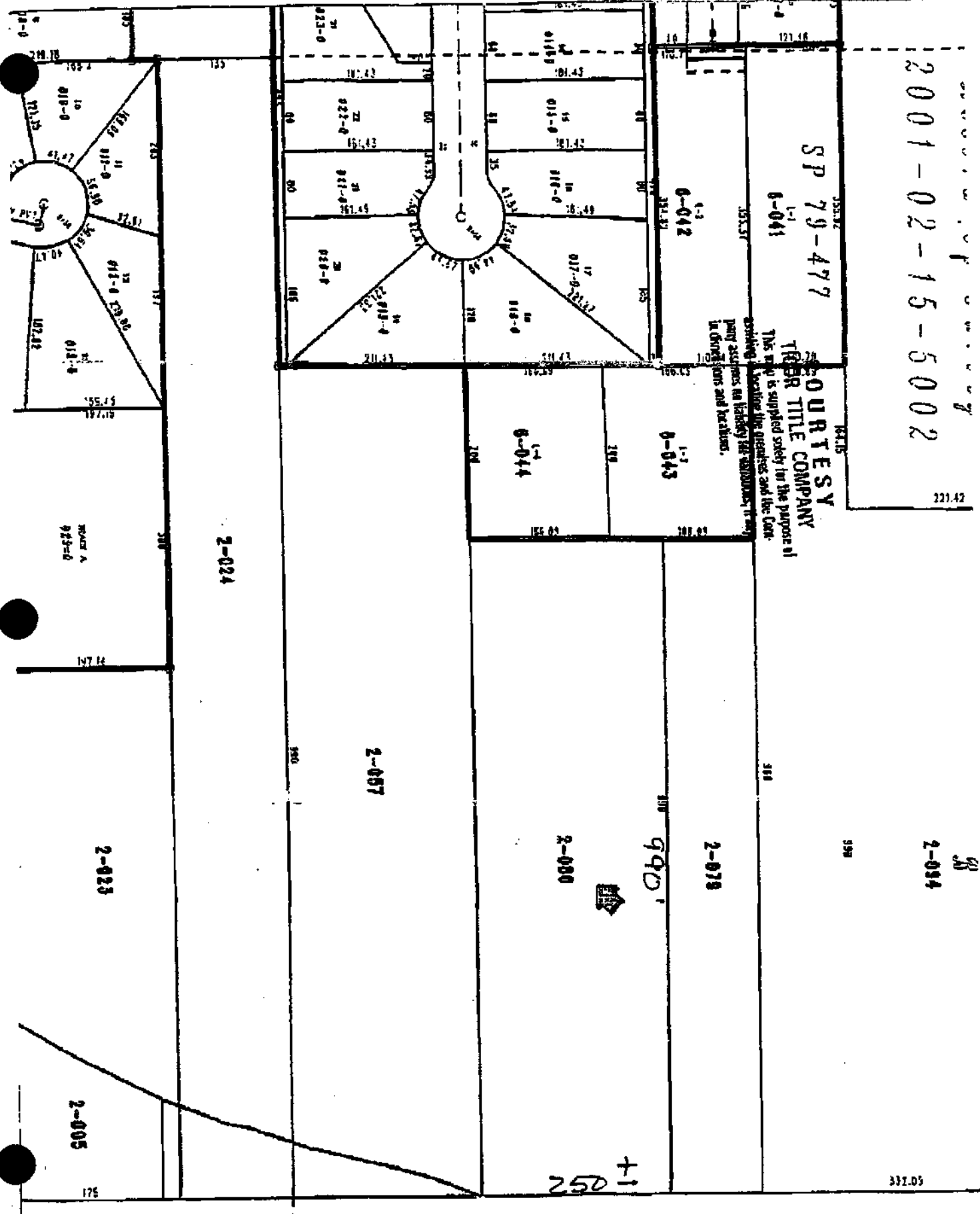
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2-087

2-024

2-023

2-005





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: GRANDVIEW FOREST PARK TANK REPAINTING PROJECT
BID AWARD
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

An identified water operating objective in the 2003 budget is for the interior sand blasting, exterior pressure washing, and complete tank repainting of the City's two Grandview Forest Park steel water tanks.

The City recently contacted 10 steel tank painting contractors from the Small Works Roster and requested price quotations for the above-mentioned work. Two proposals were received by the city.

<u>Vendors</u>	<u>Total (including retail sales tax)</u>
Western Industrial, Inc.	\$126,773.80
Mason Coatings	\$103,272.68

The apparent low respondent is Mason Coatings. The bid proposals provided a cost breakdown to repaint each tank. Since the bids exceed the allocated budget of \$71,500, it is recommended that Council approve award of the contract to Mason Coatings to repaint the most deteriorated tank at this time, in the amount of forty three thousand three hundred twenty-seven dollars and eighteen cents (\$43,327.18) including retail sales tax.

ISSUES/FISCAL IMPACT

Sufficient funds are available in the Water Operating Fund, Objective No. 9 (budgeted allocation of \$71,500) to cover the cost of this project.

RECOMMENDATION

I recommend that Council authorize the award and execution of the contract for the Grandview Forest Park Tank Repainting to Mason Coatings in the amount of fifty five thousand three hundred dollars and thirty-two cents (\$43,327.18) including retail sales tax.

GRANDVIEW FOREST PARK RESERVOIR TANK REPAINTING PROJECT

CONTRACT

THIS AGREEMENT, made and entered into, this ____ day of _____, 2003, by and between the City of Gig Harbor, a Charter Code city in the State of Washington, hereinafter called the "City", and Mason Coatings, 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 interior sand blasting, exterior pressure washing, and complete tank repainting of the City's 250,000-gallon Grandview Forest Park steel water tank A and shall perform any changes in the work, all in full compliance with the contract documents entitled "Grandview Forest Park Reservoir Tank Repainting Project," 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 "Quotation Proposal," the sum forty-three thousand three hundred twenty-seven dollars and eighteen cents (\$43,327.18), subject to the provisions of the Contract Documents and the Standard Specifications for the Grandview Forest Park Reservoir Tank Repainting.
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 Engineer, whichever is later. All physical contract work shall be completed within thirty (30) working days.
3. The Contractor agrees to pay the City the sum of \$216.64 per day for each and every day all 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: "Quotation Proposal," "Specifications," "Contract," "Performance Bond," "Maintenance 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 "2002 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) Supplement to Division 1, and the American Water Works Association (AWWA) "Standard for Painting Steel Water-Storage Tanks", D102-97.

CONTRACT: Grandview Forest Park Reservoir Tank Repainting Project

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

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

CITY of GIG HARBOR:

CONTRACTOR:

Gretchen A. Wilbert, Mayor
City of Gig Harbor

Sal Valona
Sign above

Date: _____

Print Name: SAL VALONA

Print Title: Superintendent

Date: Sept. 4, 03

ATTEST:

City Clerk

APPROVED FOR FORM:

City Attorney



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WILKINSON FARM PARK
SURVEY SERVICES - CONSULTANT SERVICES CONTRACT
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

A staff recommendation was to survey the Wilkinson Farm Park property to identify property corners and lot lines. This survey will provide data needed for a consultant to provide a future long-term plan for the site.

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 2003 Budget and is within the 2003 Parks budgeted allocation of \$50,000, Objective No.1.

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 four thousand one hundred dollars and zero cents (\$4,100.00).

**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 corporation organized under the laws of the State of Washington, located and doing business 12904-A Purdy Drive NW, Gig Harbor, Washington 98332 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in surveying of the Wilkinson Farm Park 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 September 17, 2003, 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 four thousand one hundred dollars and no cents (\$4,100.00) 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 – Scope of Work**. 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 November 3, 2003; 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 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 Director of Operations and the City shall determine the term or provision's true intent or meaning. The 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 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
Mike Helms
Aspen Land Surveying LLC
12904-A Purdy Drive NW
Gig Harbor, WA 98332
(253) 857-4265

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

Sep 17 03 10:24a

City of Gig Harbor

253 853 7597

p.8

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 17TH day of SEPTEMBER, 2003.

CONSULTANT
By: David B. [Signature]
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

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

David Brereton
Director of Operations
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 _____ Inc., 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: _____

Exhibit A – Scope of Work



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

(253) 857-4265

FAX: (253) 857-9265

mike@aspenland.com

PROPOSAL

September 17, 2003

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

ATTN: Mr. David Brereton
Director of Operations

Via E-mail & Hard copy by mail
E-mail: breretond@cityofgigharbor.net

RE: Survey of Pierce County Parcel No. 022107-100-9 & 022107-106-7

Dear Mr. Brereton:

Thank you for your recent inquiry regarding a survey of the property known as "The Wilkenson Farm" located at 4118 Rosedale St. N.W. in Gig Harbor. We appreciate the opportunity to submit this proposal.

SCOPE OF WORK

We will conduct a survey of your property to include the following services:

1. TIE TO CONTROLLING MONUMENTS. We will find the original survey monuments upon which the property boundary is based, and run a traverse from those monuments to the property.
2. BOUNDARY CALCULATION. We will determine the precise location of the property boundary, based on legal description, and the controlling monumentation.
3. LOT CORNER STAKING. We will recover the original markers or set permanent, official survey monuments (5/8" re-bar with plastic caps) at all lot corners. In cases where the actual property corners are inaccessible, a reference monument will be set on the property line.
4. ADDITIONAL LINE STAKING. We will stake additional points along longer property lines at intervals of approximately 200 feet, to facilitate delineation of the boundary.
5. RECORD OF SURVEY MAP. We will prepare a Record of Survey Map, showing the property boundary, monumentation, and any significant improvements or encroachments. The survey will be filed with the Pierce County Auditor, and a copy of the recorded document will be delivered to you.

SCHEDULE

We estimate that the survey will be completed within 30 days after receipt of Notice to Proceed.

Exhibit A – Scope of Work

City of Gig Harbor
Mr. David Brereton
Director of Operations
September 17, 2003
Page 2 of 2

FEEs

The services described above will be provided for a fixed fee of \$4,100, which will be 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 forward a purchase order as indication of your acceptance and Notice to Proceed with the project.

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

Aspen Land Surveying LLC



Michael R. Helms
Estimator

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



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CONSULTANT SERVICES CONTRACT AMENDMENT NO. 1
FRANKLIN/PRENTICE STREET IMPROVEMENTS CSP-0204
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

On August 27, 2002, the City Council approved a consultant services contract for the final design for the above-mentioned project to the engineering firm of The Shea Group, a Parametrix Company, in the amount of \$79,171.99.

This Amendment provides for additional topographic survey and design services to incorporate the recently constructed Harbor Ridge Middle School frontage improvements along Prentice Avenue. This work is required in order to bring the plans, specifications, and estimate to final completion.

Supplemental Topographic Survey	\$5,000.00
Additional Design Changes	<u>\$1,700.00</u>
TOTAL	\$6,700.00

Council approval is requested to execute a contract amendment to the engineering services contract with The Shea Group, a Parametrix Company in the amount of \$6,700.00.

FISCAL CONSIDERATIONS

The consultant services contract with The Shea Group for engineering services is currently in the amount of \$79,171.99. Sufficient funds are available within the Street Operating Fund Objective No. 1 to fund this amendment. A transfer of \$140,000 from the 2002 budget was carried over to the 2003 budget for this project. The Amendment revises the project total to \$85,871.99.

RECOMMENDATION

I recommend that the Council authorize execution of Amendment No. 1 to the consultant services contract for additional final design services between the City of Gig Harbor and The Shea Group, a Parametrix Company, in the not-to-exceed amount of six thousand seven hundred dollars and zero cents (\$6,700.00).

**AMENDMENT TO CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
THE SHEA GROUP, A PARAMETRIX COMPANY**

THIS AMENDMENT is made to the AGREEMENT, dated August 27, 2002, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and The Shea Group, a Parametrix Company, a corporation organized under the laws of the State of Washington, located and doing business at 8830 Tallon Lane, Suite B, Lacey, Washington 98516 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the supplemental survey of Franklin/Prentice Street Improvement Project and desires that the Consultant perform the services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on August 27, 2002 (hereinafter the "Agreement"); and

WHEREAS, the existing Agreement requires the parties to execute an amendment to the Agreement in order to modify the scope of work to be performed by the Consultant, or to exceed the amount of compensation paid by the City;

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

Section 1. Amendment to Scope of Work. Section I of the Agreement is amended to require the Consultant to perform all work described in **Exhibit A – Scope of Work**, attached to this Amendment, which Exhibit is incorporated herein as if fully set forth.

Section 2. Amendment to Compensation. Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A** to the Amendment in the amount of: six thousand seven hundred dollars and zero cents (\$6,700.00). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.

Section 3. Amendment to 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, 2003; provided however, that additional time shall be granted by the City for excusable days or extra work.

Section 4. Effectiveness of all Remaining Terms of Agreement. All of the remaining terms and conditions of the Agreement between the parties shall be in effect and be fully enforceable by the parties. The Agreement shall be incorporated herein as if fully set forth, and become a part of the documents constituting the contract between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2003.

THE CITY OF GIG HARBOR

By: 
its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
Parametrix
Attn: Perry Shea, P.E.
8830 Tallon Lane, Suite B
Lacey, Washington 98516
(360) 459-3609

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 _____ Inc., 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: _____

Parametrix

ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

8830 TALLON LANE, SUITE B
LACEY, WASHINGTON 98516-6641
T. 360 . 459 . 3609 F. 360 . 459 . 0154
www.parametrix.com

September 15, 2003
PMX# 244-2750-008

Steve Misiurak, PE
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Re: Franklin Avenue and Prentice Avenue
Supplemental Topographic Survey

Dear Steve:

Per our last meeting, we are providing the City with a fee estimate for supplemental topographic survey work to locate all improvements recently installed by the school along Prentice Avenue. In addition to the survey work, we are providing an estimate for design services required to incorporate the school improvements into our plan set. The supplemental tasks and associated fees are described below:

Supplemental Topographic Survey

- Conduct field survey of new improvements installed by school along the north side of Prentice Avenue. Locate new curb & gutter, sidewalk, and ditch. Obtain as-built grades of new intersection on the north side of Prentice/Fuller (main school entrance).
- Locate new curb and sidewalk installed by City on Burnham Drive, at the northeast intersection of Burnham/Prentice.
- Locate catch basin on east side of Burnham Drive, just south of Prentice (alternate storm connection point). Obtain rim and invert elevations.
- Locate sidewalk and ramp at the northwest corner of Franklin/Fuller, for tie-in of new sidewalk.
- Incorporate all supplemental survey data into existing base map.

Estimated fee for Supplemental Topographic Survey: **\$5,000**

Additional Design Services

- Incorporate new school frontage improvements into the drawings. Modify plan and profile designs based on as-built information.

Estimated fee for Additional Design Services: **\$1,700**

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
1025 E Union - P O Box 43075
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

September 5, 2003

SPECIAL OCCASION # 090826



KNIGHTS OF COLUMBUS
3510 ROSEDALE ST NW
GIG HARBOR WA 98335

DATE: OCTOBER 26, 2003

TIME: 2 PM TO 7 PM

PLACE: ST. NICHOLAS CHURCH, 3510 ROSEDALE ST NW, GIG HARBOR

CONTACT: JEROME DOLNEY 253-851-3298

SPECIAL OCCASION LICENSES

- * License to sell beer on a specified date for consumption at specific place.
- * License to sell wine on a specific date for consumption at a specific place.
- * Beer/Wine in unopened bottle or package in limited quantity for off premises consumption.
- * Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES__ NO__
2. Do you approve of location? YES__ NO__
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES__ NO__

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>	
LAW ENFORCEMENT	_____	YES__ NO__
HEALTH & SANITATION	_____	YES__ NO__
FIRE, BUILDING, ZONING	_____	YES__ NO__
OTHER:	_____	YES__ NO__

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

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



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: SEPTEMBER 12, 2003
SUBJECT: SECOND READING OF ORDINANCE PROVIDING A UTILITY RATE REDUCTION FOR LOW INCOME SENIORS AND ESTABLISHING AN AVERAGE PAYMENT PLAN.

INTRODUCTION

This is an ordinance that provides water and sewer bill payment relief to qualified low-income senior citizens and establishes an average payment plan.

BACKGROUND

The rate reduction portion of this ordinance applies to qualified low-income senior citizen water and/or sewer customers. In order to qualify, the utility customer must:

- Be aged 62 years or older
- Be a current water or sewer customer
- Have the account in his/her name
- Be the head of the household and have a monthly household income from all sources that is not more than the amounts listed in the ordinance.

The Average Payment Plan is a budget plan to help customers level out their utility bills throughout the year. This plan is available to residential customers only. The residence needs to have a 12 month continuous billing history in order to participate in the program.

FINANCIAL

The initial proposed qualifying income amounts in the ordinance are also the same amounts used by Peninsula Light to qualify low-income seniors for their discount program. The qualifying incomes are calculated using the federal poverty level as a base and may be reevaluated periodically.

The application packet will be similar to that used by Peninsula Light – see attached. City utility customers that qualify for Peninsula Light's program will qualify for the city program. In order to ease the administrative burden, we plan to accept customers on the basis of their qualification for the Peninsula Light program.

Using the income thresholds provided in this ordinance, approximately 2 percent of Peninsula Light's customers qualify for this program (Peninsula Light's program is only for seniors). We anticipate our experience to be similar.

RECOMMENDATION

Staff recommends adoption of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO WATER AND SEWER RATES, ESTABLISHING A PROGRAM FOR A REDUCTION IN UTILITY RATES AND A WAIVER/DELAY OF COLLECTION OF WATER AND SEWER HOOK-UP FEES FOR LOW-INCOME SENIORS; ESTABLISHING AN AVERAGE PAYMENT PLAN FOR WATER AND SEWER BILLS; AND ADDING NEW SECTIONS 13.04.013 AND 13.04.014 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor has statutory authority to provide utility services at reduced rates for low-income senior citizens (RCW 74.38.070); and

WHEREAS, the City also has statutory authority to waive or delay collection of connection fees for low-income persons or a class of low-income persons (RCW 35.92.380); and

WHEREAS, the City SEPA Responsible Official determined that this ordinance was categorically exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the Average Payment Plan is a budget plan to help our residential customers level out their utility bills throughout the year; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of September 8, 2003; Now, Therefore,

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

Section 1. A new Section 13.04.013 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

13.04.013 Low-Income Utility Rate Reduction and Connection Fee Waiver/Delay.

A. Definitions. For the purposes of this section, the following definitions shall apply:

1. "Low-income Senior Citizen" means a person aged 62 years or older (if married, either spouse may fit this definition) who:

- a. is a Gig Harbor water or sewer customer and has an account in his/her name;
- b. is the head of the household;
- c. has a monthly gross household income from all sources that is not more than:

<u>Household Size</u>	<u>Monthly Income*</u>	<u>Annual Income</u>
1	\$ 1,384	\$16,608
2	\$ 1,866	\$22,395
3	\$ 1,348	\$28,572
4	\$ 2,828	\$34,936
5	\$ 3,309	\$39,708

*Subject to change annually.

B. Rate Reduction. A Low-Income Senior Citizen may pay a rate equal to fifty (50) percent of the applicable water and/or sewer rate established by the City in GHMC Section 13.04.010 and 13.32.010, or any amendments thereto.

C. Waiver/Delay of Connection Fees. A Low-Income Senior Citizen may request a waiver of a connection fee to his or her property in the amount of fifty (50) percent of the applicable water and/or sewer connection fee established in GHMC Section 13.04.080 and 13.32.060, or any amendments thereto. A Low-Income Senior Citizen may request a delay in the City's collection of the connection fee, as reduced by this subsection, for a period of five (5) years, as long as the eligibility requirements of this section are satisfied for each year.

D. Eligibility Requirements. In order to obtain a rate reduction and/or waiver/delay of connection fees, a Low-Income Senior Citizen shall:

- 1. file an affidavit with the Finance Department on an annual basis, and submit documentation requested by the Finance

Department verifying that he/she is eligible to receive the benefits of this section; and

2. in the affidavit, provide the City with an unqualified promise to inform the City of any changes in the his/her financial condition that would disqualify him/her from the benefits of this section.

Section 2. A new Section 13.04.014 is hereby added to the Gig Harbor

Municipal Code, to read as follows:

13.04.014 Average Payment Plan. The average payment plan is available to residential customers only. It allows residential customers to level out their utility bills throughout the year.

A. Customers eligible. A residential customer is eligible for the residential payment plan if:

1. There has been a twelve month consecutive history of the customer making payments of the utility bill to the City for the subject property; and

2. The request for billing to begin on the average payment plan has been made when the balance in the Water and Sewer account is zero.

B. Method of Calculation. The City shall recalculate the payment every four months, and the residential customer will be billed the average amount for that four month period. This means that the monthly payment (after the preceding four month period) may still go up and down, depending on actual water/sewer use.

C. Advance Calculation of Payment. The residential customer may request that the City calculate the average payment plan monthly amount before the customer signs up for the service.

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 _____, 2003.

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: _____

**PENINSULA LIGHT COMPANY
APPLICATION FOR
SENIOR CITIZEN RATE DISCOUNT**

1. Applicants must be a customer of Peninsula Light Company with an established account in his/her name during the previous six months.
2. Applicant must be 62 years of age or older.
3. Applicant must complete the income worksheet.
4. Applicant must reapply annually in the month of April to ensure they continue to meet the program criteria.
5. Must be a permanent, year-round resident in Peninsula Light Company service territory, as opposed to a seasonal, part-time, or vacation resident. To qualify as a permanent resident, you must reside at the service address for a minimum of 300 days per year and receive mail locally all year.
6. Only the applicant's primary meter will qualify for the discount. Pump services and rental houses shown in the applicant's name do not qualify.

I swear, under the penalties of either civil or criminal perjury, that I have READ, UNDERSTAND AND MEET ALL OF THE ABOVE CRITERIA. I understand that if at any future date I no longer meet the criteria, it is my obligation to let Peninsula Light Company know. I consent and agree that Peninsula Light Company may verify and confirm the above if deemed necessary. The Social Security Administration and the Internal Revenue Service are authorized to release any income information from their files.

Name (print) _____ Drivers License No. _____

Address _____ Phone No. _____

City, Zip _____ PLC Customer No. _____

Age _____ Date of Birth _____ Social Security No. _____

Signature: _____ Date _____

Age or identification confirmed by Peninsula Light Company:

Peninsula Light Company Employee

Senior Citizens Discount Annual Income Worksheet

Annual income must include all individuals who live in residence.

- 1. Number in household _____
- 2. Salary and Wages \$ _____
- 3. Unemployment Compensation _____
- 4. Welfare Benefits _____
- 5. Industrial Injury Benefits _____
- 6. Social Security Benefits _____
- 7. Gifts, Grants, and Contributions _____
- 8. Interest (all sources) _____
- 9. Dividends _____
- 10. Pensions and Annuities _____
- 11. Retirement Benefits _____
- 12. Capital Gains _____
- 13. Depreciation _____
- 14. Deductible Losses _____
- 15. *TOTAL ANNUAL DISPOSABLE INCOME \$ _____

2001-2002 INCOME GUIDELINES

Family Size	Monthly	Annually
1	\$1,384	\$16,608
2	\$1,866	\$22,392
3	\$2,348	\$28,572
4	\$2,828	\$34,936
5	\$3,309	\$39,708
6	\$3,791	\$45,492

*TOTAL ANNUAL DISPOSABLE INCOME means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1980, plus all of the following items to the extent they are not included in or have been deducted from gross income: capital gains, amounts deducted for loss, amounts deducted for depreciation, pension and annuity receipts, military pay and benefits, veterans benefits, federal social security act and railroad benefits, dividend receipts, and interest received on state and municipal bonds.

In addition to meeting the income guidelines on the previous page, the applicants **MUST** submit copies of the following:

- Social Security Card
- Proof of age
- Copy of previous years Federal Tax Return (if filed)
- Past three (3) months income verification

Social Security Card:

We must have a copy of the Social Security card or other official document showing the social security number (not hand printed) for all individuals who live within the household.

Proof of Age:

Either a current driver's license, birth certificate, social security statement, etc. must be shown for the individual applying.

Federal Tax Return:

A copy of the previous year's Federal Tax Return is required. In the event a Federal Tax Return was not filed due to income received, then three consecutive month's bank statements are required.

Income verification:

Verification of all income received over the past three months is required. (Copies of retirement statement, social security payment, medical coupons, or any source of income received over the previous three months. For example, if you are applying during the month of December, copies of income are needed for September, October, and November.)

If you have any questions, please contact our Customer Service Department at (253) 857-1510.

PENINSULA LIGHT COMPANY
SENIOR OR DISABLED DISCOUNT RENEWAL FORM
PO BOX 78, GIG HARBOR, WA. 98335
857-5950

PROGRAM YEAR: ~~2002~~

Customer # _____

Name: _____	_____	_____
Head of Household	Social Security #	
_____	_____	_____
Telephone #	Date of Birth	
_____	_____	_____
Secondary Name	Social Security #	
	_____	_____
	Date of Birth	
_____	_____	_____
Address	City	Zip

Number of People in your Household _____

Number of People over age 62 _____

Total Monthly Income of your Household \$ _____

I certify that the information I have provided on this application is accurate to the best of my knowledge. If I have provided inaccurate information on this application, which results in my receiving assistance for which I am not eligible, I will be required to repay Peninsula Light Company the cost of the rate discount/weatherization.

Applicant's Signature

Date



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SKANSIE NET SHED, HOUSE AND GARAGE PAINTING PROJECT
CONTRACT AUTHORIZATION
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

A staff recommendation was to repaint the net shed and buildings on the Skansie property matching the existing colors of Williamsberg Blue on the net shed and Rainier White on the house and garage.

Four potential contractors were contacted in accordance with the City's Small Works Roster process (Resolution No. 592). Two contractors responded with the following price quotations:

Metropolitan Coatings LLC	\$ 14,677.36
The Painters, Inc.	\$ 34,996.94

Based on the price quotations received, the lowest price quotation was from Metropolitan Coatings LLC in the amount of fourteen thousand six hundred seventy-seven dollars and thirty-six cents (\$14,677.36) including state sales tax.

FISCAL CONSIDERATIONS

This is an unbudgeted objective utilizing existing funds in the Park Department. This contract may require a future budget amendment if funds are depleted by the end of the fiscal year.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for the Skansie net shed, house, and garage painting to Metropolitan Coatings LLC as the lowest responsible respondent, for their bid quotation amount of fourteen thousand six hundred seventy-seven dollars and thirty-six cents (\$14,677.36).

**AGREEMENT FOR CONSTRUCTION SERVICES
BETWEEN CITY OF GIG HARBOR
AND METROPOLITAN COATINGS LLC**

THIS AGREEMENT, is made this _____ day of _____, 200____, by and between the City of Gig Harbor (hereinafter the "City"), and METROPOLITAN COATINGS LLC, a Washington corporation, located and doing business at 2015 70TH Ave. West, University Place, Washington 98466, (hereinafter "Contractor").

WHEREAS, the City desires to hire the Contractor to perform the work described in Exhibit A and the Contractor 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 in Exhibit A, 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 repaint the Skansie net shed, house and garage. 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 fourteen thousand six hundred seventy-seven dollars and thirty-six cents (\$14,677.36), including sales tax, for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the tasks described in Exhibit A, 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 October 31, 2003. 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's Contract Compliance Division, 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. Metropolitan Coatings LLC 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.

METROPOLITAN COATINGS LLC

THE CITY OF GIG HARBOR

By: Mark Susselle
Its MANAGING MEMBER

By: _____
Its Mayor

Notices should be sent to:

Metropolitan Coatings LLC
Attn: Mark Schlatter
2015 70th Avenue West
University Place, Washington 98466
(253) 564-9066

City of Gig Harbor
Attn: David Brereton
Director of Operations
3510 Grandview Street
Gig Harbor, Washington 98335

Approved as to form:

By: _____
City Attorney

Attest:

By: _____
Molly M. Towslee, City Clerk



STATE OF WASHINGTON)
COUNTY OF Pierce) ss.)

I certify that I know or have satisfactory evidence that Marin Scusselle 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 Managing Member of Metropolitan Coatings LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/15/03

C. Byerley
Notary Public in and for the
State of Washington,
Residing at 801 S. Howard
My appointment expires: 4/1/07

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

I certify that I know or have satisfactory evidence that Gretchen 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 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: _____



Metropolitan Coatings LLC
2015 70th ave West
University Place, Wa 98466
Phone (253) 564-9066
Fax (253) 564-9723

Proposal: Skansie Net Shed, House & Garage Re-painting Project

Bid date: 9/8/03

Time: 4:00 pm

Scope: Painting

Proposal Amount: \$ 13,540.00
Sales Tax: \$ 1,137.36
Total Bid: \$ 14,677.36

Inclusions: Exterior painting as per requirements & specifications.

Exclusions: none

Estimator: Mark Schlatter



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: OLYMPIC DRIVE/HOLLYCROFT ROUNDABOUT FEASIBILITY STUDY
CONSULTANT SERVICES CONTRACT
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

A **non budgeted** street objective for 2003 includes completion of a feasibility study for construction of a roundabout at the intersection of Hollycroft and Olympic Drive.

City staff was requested by the Public Works Committee to investigate the options available to improve this intersection. Consultant services are required to perform a feasibility study to investigate opportunities available to correct geometric deficiencies at this intersection. After reviewing the Consultant Services Roster, and after several interviews, the consulting firm of Skillings-Connolly, Inc., was selected as the most qualified firm to perform the work. Their selection was based on their design experience and examples of completed modern day roundabouts, familiarity with the area, and ability to complete the work within the project schedule.

Authorization is requested to execute a Consultant Services Contract in the not-to-exceed amount of seventeen thousand nine hundred fifty-eight dollars and fifty-one cents (\$17,958.51) with Skillings-Connolly, Inc. for an intersection feasibility study.

FISCAL CONSIDERATIONS

The project was not identified in the 2003 Street Operating Fund. However, sufficient funds are available and within the \$175,000 allowable for Objective No. 2, to fund this feasibility study.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Skillings-Connolly, Inc., for an intersection feasibility study in the amount not to exceed (\$17,958.51).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
SKILLINGS-CONNOLLY, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Skillings-Connolly, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 5016 Lacey Boulevard SE, Lacey, Washington 98503 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the feasibility study for a roundabout at the intersection of Hollycroft and Olympic Drive 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 July 8, 2003 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 seventeen thousand nine hundred fifty-eight dollars and fifty-one cents (\$17,958.51) 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 – Cost Estimate**. 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, 2003; 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 and the City shall determine the term or provision's true intent or meaning. The City Engineer 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'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:

Sep 15 03 09:09a

City of Gig Harbor

253 853 7597

p. 9

CONSULTANT
Steve Thomas, P.E.
Skillings-Connolly, Inc.
PO Box 5080
Lacey, Washington 98509-5080
(360) 491-3399

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 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:
CONSULTANT
Steve Thomas, P.E.
Skillings-Connolly, Inc.
PO Box 5080
Lacey, Washington 98509-5080
(360) 491-3399

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 _____ Inc., 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: _____

Exhibit A--Scope of Work
Olympic Drive and Hollycroft Street Feasibility Study
for
City of Gig Harbor, WA

The City of Gig Harbor wishes to study the feasibility of intersection treatments at the intersection of Olympic Drive and Hollycroft Street just north of the Olympic Interchange on State Route 16. This scope assumes that the City of Gig Harbor will provide ADT counts, turning movement counts for A.M and P.M. peak hours, truck percentages and accident data. If counts are not available Skillings-Connolly, Inc. can complete counts necessary for the feasibility study or subcontract with a Traffic Counting business. This scope assumes that the City will provide aerial photogrammetry files with 2-foot contours. If aerial photogrammetry files with 2-foot contours are not available Skillings-Connolly, Inc. can prepare a supplement to complete a survey on Hollycroft from Soundview Drive to just east of Olympic Drive, and on Olympic drive from just south of Olympic Drive to just north of Hollycroft Street.

Task 110 Project Administration

This task covers Project Management responsibility including but not limited to billings reviews, tracking hours charged and overall quality control.

Task 120 Studies and Reports

This task includes performing traffic counts. A sub-consultant will be retained to conduct a 7 day tube count which will identify volumes, peak hours and truck percentage. Turning movements at the three affected intersections will be counted by hand for the AM and PM peak hours. This task includes time spent coordinating and analyzing traffic count data and any accident data from the City. The Consultant understands that the City has a conceptual roundabout design at Olympic Drive and Hollycroft. The City will provide the conceptual design to the Consultant for review. The Consultant will modify and add detail to the conceptual design or develop a new conceptual design to obtain an acceptable level of service.

Task 130 Alternate Development

This task is for developing alternatives to improve the intersection of Hollycroft Street and Olympic Drive. This task assumes no more than two alternatives:

Roundabout
Reconfigured Signal

With each alternative the Consultant shall consider redistribution of traffic from the possible street closure of the section of Olympic Drive between the bicycle trail and Hollycroft Street. The performance of each alternative will be reported based on Level of Service. For the Reconfigured Signal Alternative, Synchro Software will be used to calculate Level of Service, Average Delay, and Queue length.

For the roundabout option the performance will be analyzed using two methods to check the viability of a roundabout. aaSIDRA will be used to calculate Level of Service, Average Delay, Degree of Saturation, and Queue lengths. A second check of the capacity of the roundabout will be performed using the guidelines from the FHWA "ROUNDABOUTS an Informational Guide"

Pedestrian and Bicycle Quality of Service will be calculated using Florida Department of Transportation Quality of Service models. The purpose is to measure the comfort and security of pedestrians and bicyclists rather than focusing on the volumes.

Task 140 Design Requirements

The Consultant shall prepare conceptual designs for two action alternatives in sufficient detail to develop preliminary estimates of the construction cost of the action alternatives.

Task 150 Feasibility Report

The Consultant shall summarize the findings and present recommendations in a Draft Feasibility Report. The Draft report shall be submitted to the City for review and comments. The Consultant shall revise the draft report to reflect the City's comments and prepare a Final Feasibility Report.

End of Scope

SKILLINGS-CONNOLLY, INC.

CONSULTING ENGINEERS

EXHIBIT D-1

CONSULTANT FEE DETERMINATION -- SUMMARY SHEET

Project Name: _____

DIRECT SALARY COST (DSC)					
Classification	Man Hours	X	Rate	=	Cost
PRINCIPAL	0	X	\$52.88	=	\$0.00
RIGHT OF WAY NEGOTIATOR	0	X	\$33.65	=	\$0.00
PROJ. ENGINEER/MANAGER	2	X	\$42.00	=	\$84.00
ENGINEER	122	X	\$29.00	=	\$3,538.00
TECHNICIAN	58	X	\$24.00	=	\$1,392.00
INSPECTOR	0	X	\$28.85	=	\$0.00
PROF. SURVEYOR	0	X	\$33.00	=	\$0.00
2 MAN SURVEY CREW	0	X	\$32.00	=	\$0.00
3 MAN SURVEY CREW	0	X	\$57.85	=	\$0.00
CLERICAL	0	X	\$23.56	=	\$0.00
CONTRACTS ADMINISTRATOR	2	X	\$25.00	=	\$50.00
Total Hours =	184				Total Cost = \$5,064.00
OVERHEAD Including Salary Additives (OH):					
OH Rate X DSC	159.29%	X	\$5,064.00	=	\$8,066.45
FIXED FEE (FF):					
FF Rate X (DSC+OH)	15%	X	\$13,130.45	=	\$1,969.57
REIMBURSABLES:					
MILEAGE @	400	X	0.34	=	\$136.00
MISC. EXPENSE				=	\$0.00
			SUB TOTAL		\$136.00
SUBCONSULTANT COST (See Exhibit G):					
GEOTECHNICAL @	0.00	X	1.15	=	\$0.00
Traffic Counts @	2475.00	X	1.10	=	\$2,722.50
SUBCONSULTANTS @	0.00	X	1.10	=	\$0.00
SUBCONSULTANTS @	0.00	X	1.10	=	\$0.00
			SUB TOTAL		\$2,722.50
MANAGEMENT RESERVE FUND					
SUB TOTAL	\$17,958.51	X	0%	=	\$0.00
GRAND TOTAL				=	\$17,958.51
PREPARED BY:	_____			DATE:	_____

**Exhibit B - Cost Estimate
SKILLINGS-CONNOLLY, INC.**

Project Name:		PRINCIPAL	RIGHT OF WAY NEGO	PROJ. ENGINEER/MANAGER	ENGINEER	TECHNICIAN	INSPECTOR	PROF. SURVEYOR	2 MAN SURVEY CREW	3 MAN SURVEY CREW	CLERICAL
TASK #	TASK DESCRIPTION										
100	PRE-TASK										
101	Scoping										
110	PROJECT ADMINISTRATION										
111	Billings										
112	QA/QC			2							
120	STUDIES & REPORTS										
121	Traffic Count Analysis				6						
122	Data Collection From Gig Harbor				2						
123	Review Conceptual Roundabout Design				4						
124	Project Traffic Data to year 2025				2						
130	ALTERNATIVE DEVELOPMENT										
131	Develop Alternative Conceptual Layouts				24	24					
132	Redistribute Traffic for Each Alternative				8						
133	Calculate Alternative Level of Service				8						
134	Bicycle and Pedestrian Quality of Service Runs				8						
140	DESIGN REQUIREMENTS										
141	Prepare Conceptual Design for each Alternative				16	24					
142	Estimate Quantities and Prepare Preliminary Estimate				16						
150	FEASIBILITY REPORT										
151	Draft Report				24	8					
152	Revise Report per City Comments				4	2					
	HOURS PER DISCIPLINE	0	0	2	122	58	0	0	0	0	0



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION FOR PUBLIC HEARING
- RUST STREET VACATION REQUEST
- DOUGLAS AND JEANETTE SORENSEN
DATE: SEPTEMBER 22, 2003

INTRODUCTION/BACKGROUND

The City received a letter on August 7, 2003 from Mr. and Mrs. Douglas Sorensen, owners of the abutting property, petitioning the City to vacate portions of Rust Street in accordance with GHMC 12.14.002C.

Specifically, the request is for the vacation of the south 30 feet of the Rust Street right-of-way currently held by the City, and abutting the north property frontage of parcel no. 2260000200. Prior research on this right-of-way has determined that this portion of Rust Street was platted in Pierce County in 1891 and was not opened or improved by 1905, therefore it automatically was vacated by operation of law in 1896. The City's ability to open this portion of Rust Street is barred by lapse of time and the City has no interest in the street. In order to ensure that this portion of Rust Street is placed on tax rolls and the ownership is formally recorded, the property owner has requested that the City vacate the street under GHMC 12.14.

The right-of-way proposed for vacation along Rust Street is surplus to the City's needs, and the City does not have any plans for improving the right-of-way proposed for vacation. The vacation request will not eliminate public access to any property.

As defined in 12.14 GHMC a resolution must be passed by the Council setting a time and date for a public hearing on the proposed street vacation.

FISCAL CONSIDERATIONS

The processing fee has been paid in accordance with GHMC 12.14.004.

RECOMMENDATIONS

I recommend that the Council pass the resolution setting Monday, October 13, 2003 at 7:00 P.M. as the date for the public hearing on the proposed street vacation of Rust Street.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE VACATION OF A PORTION OF RUST STREET.

WHEREAS, Douglas H. and Jeanette M. Sorensen, desires to initiate the procedure for the vacation of the portion of Rust Street, a portion of the original plat of the Town of Artena.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor, Washington:

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor Civic Center on Monday, October 13, 2003, at 7:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

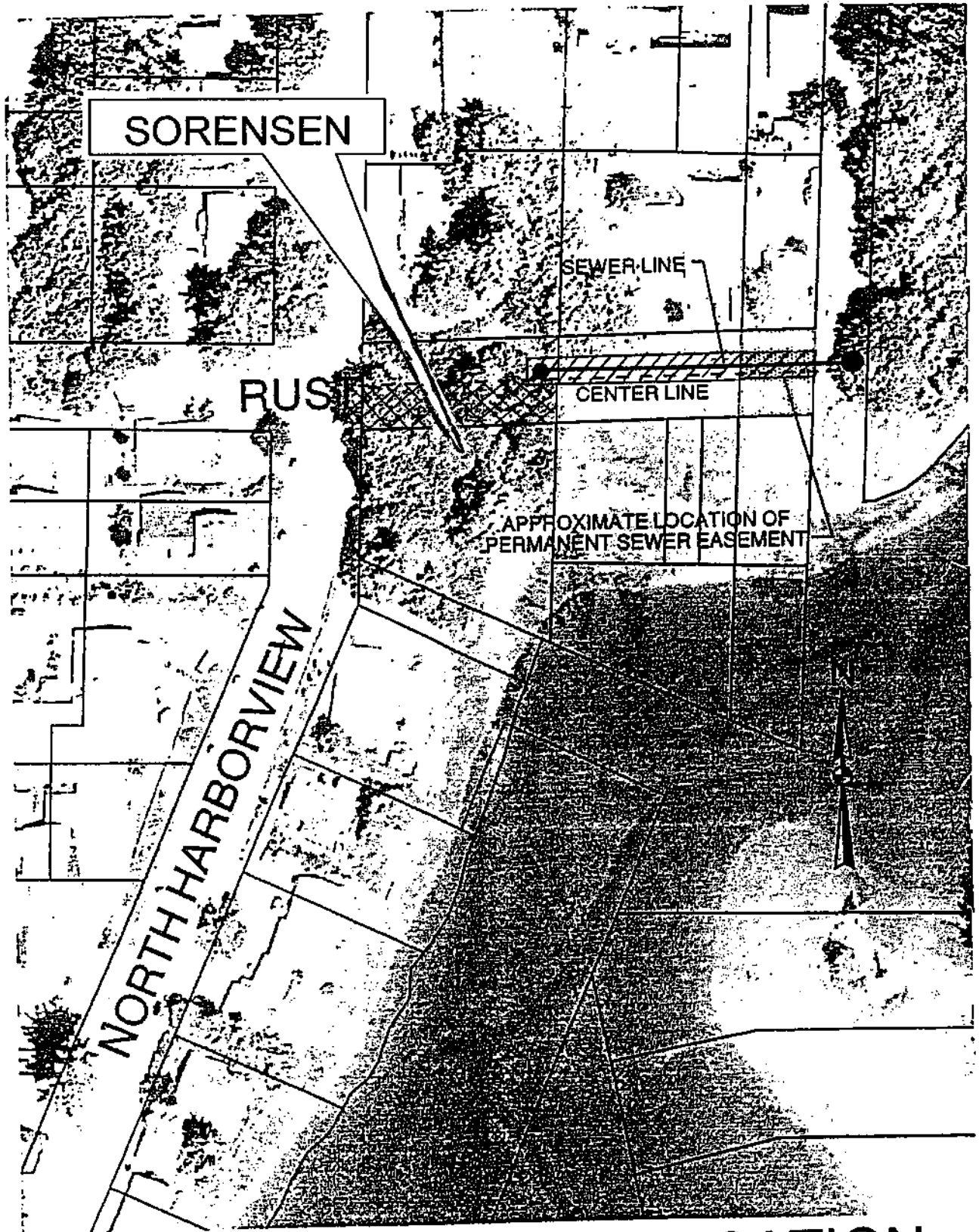
Section 2. The City Clerk is directed to post notices of the hearing in three public places and on the street to be vacated and to mail notices to all owners of any property abutting the portion of street to be vacated, pursuant to RCW 35.79.020.

PASSED this ____th day of September, 2003.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly M. Towslee, City Clerk



SORENSEN STREET VACATION

EXHIBIT B



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: FIRST READING OF AN ORDINANCE – LATECOMER AGREEMENTS,
ADDING A NEW CHAPTER 13.35 GHMC
DATE: SEPTEMBER 22, 2003

INFORMATION/BACKGROUND

The City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW). It is appropriate that we incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code.

The City Attorney has drafted the proposed Ordinance for consideration by the Council.

RECOMMENDATION

I recommend that the Council approve the Ordinance as presented following a second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LATECOMER REIMBURSEMENT OF THE COSTS OF DEVELOPER-INSTALLED SEWER AND WATER EXTENSIONS; DESCRIBING THE METHOD FOR DETERMINING THE PRO RATA SHARE TO BE PAID BY LATECOMERS; ESTABLISHING DEFINITIONS, LIMITATIONS ON LATECOMER AGREEMENTS, APPLICATION REQUIREMENTS, FEES, DEADLINE FOR SUBMISSION, AND DESCRIBING THE PROCESS FOR COUNCIL APPROVAL OF A LATECOMER AGREEMENT; ADDING A NEW CHAPTER 13.35 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City may contract with owners of real estate for the construction of certain utility facilities within City limits or within ten miles of the City's corporate limits, to connect such facilities to the public water or sewer system and serve the area in which the real estate is located (chapter 35.91 RCW) and

WHEREAS, the City Council desires to incorporate a formal process for the approval of such contracts, or latecomer agreements in the City's code; and

WHEREAS, the City SEPA Responsible Official determined that this ordinance was categorically exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting's of September 22 and October 13, 2003; Now, Therefore,

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

Section 1. A new chapter 13.35 is hereby added to the Gig Harbor Municipal Code, to read as follows:

**Chapter 13.35
LATECOMER AGREEMENTS
FOR WATER AND SEWER**

Sections:

- | | |
|------------------|--|
| 13.35.010 | Purpose. |
| 13.35.020 | Definitions. |
| 13.35.030 | Limitations on Latecomer Agreement. |
| 13.35.040 | Effect of Latecomer Agreement. |
| 13.35.050 | Fees – application. |

- 13.35.060 **Deadline for Submission of Application.**
- 13.35.070 **Administrative Fees and Recording Costs.**
- 13.35.080 **Method for Determining Fair Pro Rata Share.**
- 13.35.090 **Cost of Construction to be Examined by City Engineer.**
- 13.35.100 **Approval and Acceptance of Water and/or Sewer Facilities.**
- 13.35.101 **No Requirement for Execution of Latecomer Agreement.**

13.35.010 Purpose. The purpose of this chapter is to implement chapter 35.91 RCW, and to describe the process for a developer to request the execution of a latecomer agreement with the City Council, so that the developer may be reimbursed by other property owners for the cost of installation of an extension for water and/or sewer facilities.

13.35.020 Definitions. The definitions set forth in this section shall apply throughout this chapter:

A. "Cost of construction" means the cost incurred by the developer for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), as required in order to create and install the water and/or sewer facilities in accordance with all applicable laws, ordinances and standards, including the City's public works standards. The cost of construction shall be documented in writing by the developer on final invoices or other documents showing the amounts paid by the owner. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City and the developer concerning the cost of the water and/or sewer facilities, the City Engineer's determination shall be final.

B. "Developer" means a property owner or authorized agent of the property owner who has constructed a water and/or sewer extension, and desires to execute a latecomer agreement with the City.

C. "Engineer" means the City Engineer or his/her designated representative.

D. "Latecomer ('s) Agreement" means a written contract between the City and a Developer(s) providing for the partial reimbursement of the cost of constructing the water and/or sewer facilities. The Latecomer Agreement shall be a standard agreement approved as to form by the City Attorney.

E. "Latecomer" means a property owner not a party to a duly executed and recorded Latecomer Agreement, who seeks to connect to the water and/or sewer extension constructed under the Latecomer Agreement, by making payment to the City of his or her pro rata share of the cost of construction within the timeframe established in the Agreement.

F. "Water and/or Sewer Facilities" means storm, sanitary or combination sewers, force mains, pumping stations and disposal plants, water mains, hydrants, reservoirs, or appurtenances.

13.35.030 Limitations on Latecomer Agreement. The City Council may execute a Latecomer Agreement for water and/or sewer facilities with a property owner who constructs water and/or sewer facilities as long as the following are met:

A. The water and/or sewer facility to be constructed by the Developer must be consistent with the City's latest adopted version of the comprehensive plan. The water and/or sewer facility to be constructed by the Developer must be within the City or within ten miles from the City corporate limits, connecting with the City public water or City sewerage system to serve the area in which the real estate owned by the Latecomers is located.

B. The Latecomer Agreement must provide for a period of not to exceed fifteen years for the reimbursement of the Developer and his/her assigns by the Latecomer who did not contribute to the actual cost of such water and/or sewer facilities and who subsequently taps into or uses the same.

C. The Latecomer Agreement must require that the Latecomer pay his or her fair pro rata share of the cost of the construction of the water and/or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto.

D. The Latecomer Agreement shall be effective as to any owner of real estate not a party unless such Latecomer Agreement has not been recorded in the office of the Pierce County Auditor prior to the time that the latecomer taps into or connects to said water and/or sewer facilities.

13.35.040 Effect of Latecomer Agreement. No person, firm or corporation shall be granted a permit or be authorized to tap into, or use any such water and/or sewer facilities or extensions thereof during the period of time set forth in a recorded Latecomer Agreement without first paying to the City, in addition to any and all other costs and charges assessed for such tap, or use or for the water and/or sewer facilities constructed in connection therewith, the amount required by the Latecomer Agreement. Whenever any tap or connection is made into a water and/or sewer facility subject to a Latecomer Agreement, without such payment having first been made, the City may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile or pipe located in the facility right of way and dispose of unauthorized material so removed without any liability whatsoever.

13.35.050. Fees – application. An application for a latecomer agreement shall be made on a form provided by the City, accompanied by:

A. A non-refundable application fee of \$250.00 plus \$25.00 for every separate parcel proposed to be encumbered by the Latecomer Agreement or a non-refundable fee equal to 6% of the total estimated cost of the Latecomer Agreement, whichever is greater;

B. Record drawings stamped by a Washington State Licensed Engineer or Land Surveyor and a Bill of Sale;

C. Itemized and quantified list of costs of construction, prepared, stamped and signed by a Washington State Licensed Civil Engineer.

D. An 18" x 24" scaled drawing stamped by either a Washington State Licensed Civil Engineer or Land Surveyor showing the water and/or sewer facility size, location and the proposed areas potentially encumbered for this Latecomer Agreement, including dimensions, County identification number of each tax parcel therein, the size of the parcel, useful elevations as necessary by the City for determining benefit, all existing utility services and appurtenances. The map must also include the method proposed to be used by the Developer to determine the assessment, *i.e.*, frontage square footage and zone end termini.

E. An 18" x 24" vicinity map showing tax lot numbers and dollar amounts assessed on each lot. Also, a separate legal description for each individual tax parcel potentially encumbered for the Latecomer Agreement.

13.35.060 Deadline for Submission of Application. An application for a Latecomer Agreement must be submitted to the City within ninety (90) days after: (a) the City notifies the owner that the water and/or sewer facilities constructed by the Developer are acceptable to the City for City operation and maintenance; and (b) the Developer has posted a two-year maintenance bond. Failure by the Developer to submit a complete application prior to this deadline constitutes a waiver of the ability to request execution of a Latecomer Agreement with the City.

13.35.070 Administrative Fees and Recording Costs. In addition to the fair pro rata charge imposed by the Latecomer Agreement, the City shall charge a fee of five (5) percent of the amount collected from a Latecomer to cover the City's administrative costs of collecting and dispersing reimbursed amounts. Collected Latecomer Agreement fees disbursed to the Developer shall be less the five (5) percent charge. The Developer shall pay all costs of recording the Latecomer Agreement with the Pierce County Auditor's Office, as required by law (RCW 65.08.170).

13.35.080 Method for Determine Fair Pro Rata Share. The Developer may propose any method for determining the fair pro rata share, for example, the method of assessment permitted for local improvement district assessment, including, but not limited to the front-foot method, the zone end termini method, and square footage

method. The City may, in its discretion, determine the method of assessment used to calculate the Latecomer Fee and the City's decision on the method of assessment shall be final. The fair pro rata share of the cost of the water and/or sewer facilities attributable to the Developer's property shall be deducted from the cost of construction.

13.35.090 Cost of Construction to be Examined by City Engineer. The cost of construction of the water and/or sewer facilities shall be examined by the City Engineer, prior to the City Council meeting on the Latecomer Agreement. The City Engineer shall provide a recommendation to the Council as to his examination of the cost of construction, the method of assessment, the Latecomer reimbursement area, or any other matter connected to the Latecomer Agreement.

13.35.100 Approval and Acceptance of Water and/or Sewer Facilities by City. All water and/or sewer facilities proposed to be accepted for City ownership and maintenance (and later subject to a Latecomer Agreement), must be located on City-owned property or the necessary easements must be dedicated to the City prior to execution of a Latecomer Agreement, such that the City may operate, maintain, demolish, reconstruct, improve or expand the water and/or sewer facilities in the future.

13.34.101 No Requirement for Execution of Latecomer Agreement. Nothing in this chapter shall be construed as requiring the City to enter into a Latecomer Agreement with a Developer. Nothing in this chapter requires the City to enter into a Latecomer Agreement ninety one (91) days after the City formally accepts the water and/or sewer facilities for ownership and maintenance.

Section 2. 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 3. 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 _____, 2003.

CITY OF GIG HARBOR

GRETCHEN A. 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: _____



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: DEDICATION OF TRAIL – PLAT OF MALLARDS LANDING
DATE: SEPTEMBER 22, 2003

INFORMATION/BACKGROUND

The City entered into a Concomitant Zoning Agreement for the Tallman Annexation (ANX 91-07) on June 17, 1994. A condition of this agreement required that the property owner install certain recreational trail improvements on the property and in turn dedicate the facilities to the City no later than December 13, 2003. The necessary required improvements have been completed and dedication to the City can now proceed.

The City Attorney has drafted the proposed Bill of Sale for consideration by the Council.

RECOMMENDATION

I recommend that the Council approve the Bill of Sale as presented thereby accepting the dedication of trail easements and recreational trail improvements associated with the Plat of Mallards Landing.

BILL OF SALE

This Bill of Sale is provided to the City of Gig Harbor (the "City" hereinafter), from TALMO, INC. (the "TALMO" hereinafter).

WITNESSETH:

WHEREAS, the TALMO is the owner of certain real property comprised of one hundred twenty (120) acres located in the general area of WOLLOCHET WAGNER and

WHEREAS, a condition of annexation of the property to the City in 1994, the parties entered into a Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07), recorded with the Pierce County Auditor under Auditor's File No. 9502080325 (hereinafter the "Agreement"); and

WHEREAS, as a condition of the Preannexation Agreement, TALMO has installed certain recreational trail improvements on the property, as shown in the map attached hereto as Exhibit A, which is incorporated herein by reference; and

WHEREAS, the Agreement also provided that TALMO would dedicate certain trail easements to the City and turn over the recreational trail improvements to the City for ownership and maintenance; and

WHEREAS, TALMO dedicated the necessary easements to the City in the plat of MAWARDS LANDING, filed with the Pierce County Auditor under Auditor's file No. 200103265002; and

WHEREAS, TALMO has now finished all of the work on the recreational trail improvements and now desires to turn over the recreational trail improvements to the City for ownership and maintenance; Now, Therefore,

TERMS

Section 1. Description of Recreational Trail Improvements and Conveyance.

TALMO hereby conveys the recreational trail improvements shown on Exhibit A to the City. TALMO warrants that there are no liens or other encumbrances on the recreational trail improvements, that TALMO is the owner of such improvements and that TALMO has the right to convey such improvements to the City.

Section 3. Attorney's Fees. In any action between the parties to enforce any term of this Bill of Sale, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

Section 4. Governing Law and Venue. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Bill of Sale shall lie in Pierce County Superior Court.

Dated this 16 day of SEPTEMBER, 2003.

THE CITY OF GIG HARBOR

By _____
Its Mayor

TALMO, INC.

By James O. Tallman,
Its PRESIDENT

MALLARDS' LANDING

SHEET 6 OF 8

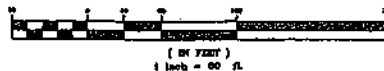
A PORTION OF THE S.W. 1/4, THE SE. 1/4 AND THE NE. 1/4 OF THE SE. 1/4 OF SECTION 7,
TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON

RECEIVED
MAR 07 2002
COUNTY RECORDER
PIERCE COUNTY

ADAM TALLMAN PARK AREA EXHIBIT (EASEMENT 'A')



GRAPHIC SCALE



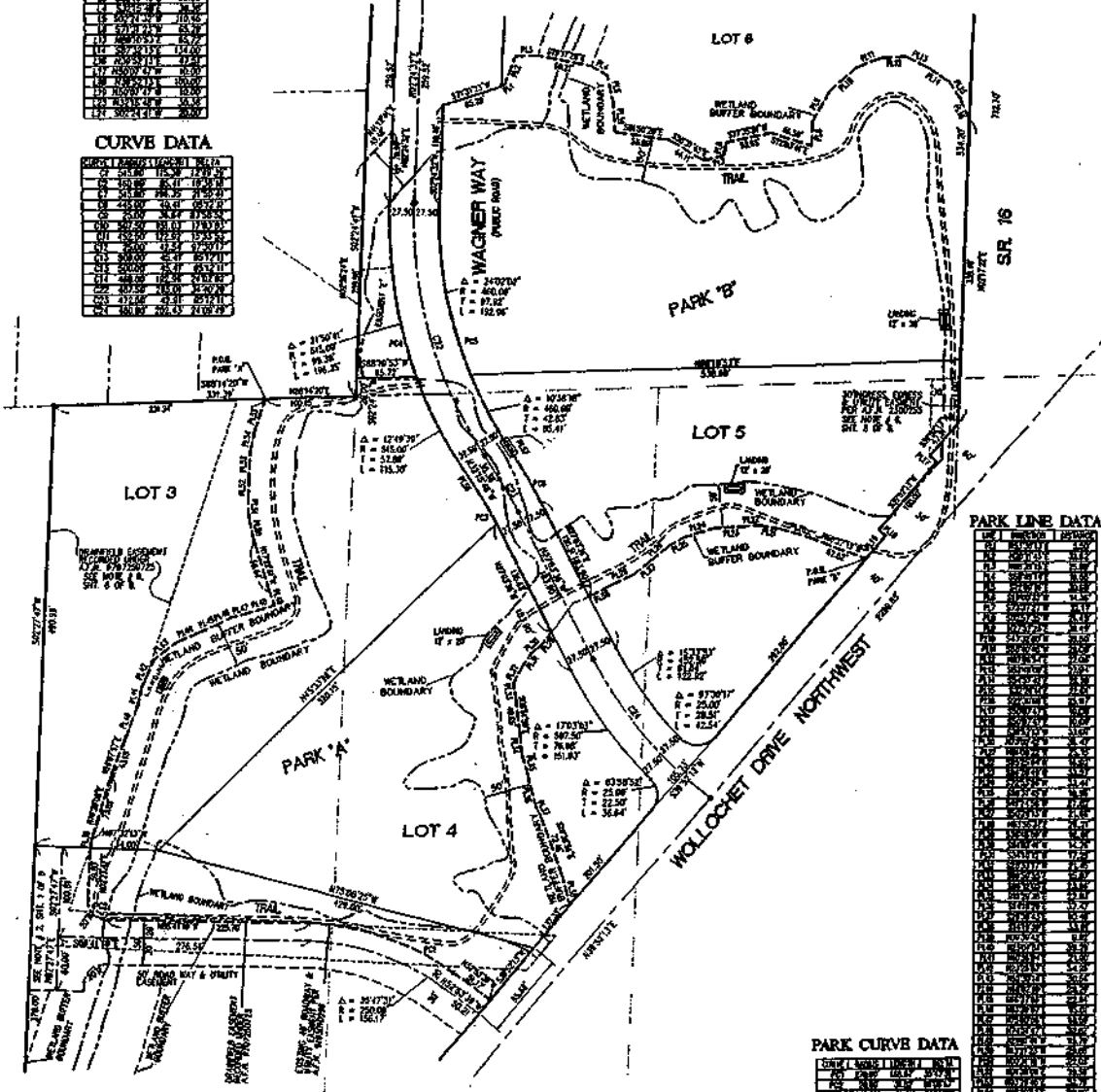
LINE DATA

LINE	DESCRIPTION	BEARING	DISTANCE
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

CURVE DATA

LINE	DESCRIPTION	BEARING	DISTANCE	ANGLE	RADIUS
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

SEE SHEET 4 OF 8



PARK LINE DATA

LINE	DESCRIPTION	BEARING	DISTANCE
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

PARK CURVE DATA

LINE	DESCRIPTION	BEARING	DISTANCE	ANGLE	RADIUS
1
2
3
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5
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SEE SHEET 2 OF 8

Page 3 of 3

Exhibit A

FOR LEGEND, SURVEY CONTROL
SEE SHEET 1 OF 8
FOR LEGAL DESCRIPTION, APPROVALS,
AND DEDICATION SEE SHEET 3 OF 8





TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER, CHIEF OF POLICE *MB*
SUBJECT: AUGUST INFORMATION FROM PD
DATE: SEPTEMBER 16, 2003

The August activity statistics are attached for your review.

Our two Reserve Officers provided 87.5 hours of volunteer service in August. The time was spent in on patrol duties. Our two recruit Reserve Officers have completed the Reserve Officer Basic Academy and will be joining the department for further training next month. Our newest Reserve began September 3.

The bike unit was used for 19 hours of patrol time in August. Bike officers arrested three suspects for Minor in Possession of Alcohol and issued one notice of infraction while conducting bike patrol.

The Marine Services Unit worked 103 hours in August. This was divided between 95.5 hours of patrol, 6 hours for administrative purposes, and 1 1/2 hours of training. The unit responded to 1 dispatched call, performed 24 marine inspections, 1 search and rescue call, 7 boater assists, and 1 boating complaint.

MEMORANDUM

DATE: September 3, 2003
TO: Chief Barker H-1
Sgt Emmett H-4
FROM: Ofcr M. Dougil H-11
SUBJECT: MSU STATS: August 2003

During the month of August 2003, the GHPD MSU accounted for the following activity:

Patrol Hours: 95.5
Admin Hours: 6
Maint. Hours: 1.5
Training Hours: 0

TOTAL HOURS: 103

Dispatched Calls: 1
Boating Citations: 0
Marine Inspections: 24
Search & Rescue: 1
Boater Assists: 7
Boating Complaints: 1

Respectfully Submitted;



Matthew R. Dougil H-11