

Gig Harbor City Council Meeting



March 27, 2000

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
March 27, 2000

CALL TO ORDER:

PUBLIC HEARING: Formation of a Municipal Division in the District Court II.

CONSENT AGENDA:

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

1. Approval of the Minutes of the March 13, 2000, City Council and March 23, 2000 Special City Council Meetings.
2. Correspondence / Proclamations:
 - a. Pierce County Department of Community Services - Economic Development Efforts.
3. Kimball Drive / Pioneer Way Improvement Project - Consultant Services Contract.
4. Pt. Fosdick Improvement Project - Right of Way Donation /Temporary Construction Easement.
5. Approval of Payment of Bills for March 27, 2000:
Checks #24649 through #24764 for \$224,636.76. Check #24648 replaced voided Check #24209.
6. Liquor License Application - Old Harbor Saloon.

OLD BUSINESS:

1. Court Consolidation/ Formation of a Municipal Division in the District Court II.
2. Second Reading of Ordinances - Planning Commission Recommendations:
 - a) Vertical zoning
 - b) New/revised Definitions, Chapter 17.04
 - c) New C-2 (Commercial) District, Chapter 17.41
 - d) Map Rezone - New C-2 District
 - e) Amendments to the C-1 (Commercial) District

NEW BUSINESS:

1. City of Gig Harbor Civic Center Project Architectural Design and Engineering - Consultant Services Contract.
2. First Reading of Ordinance - Condemnation of an Easement for Location of Pump Station No. 3.
3. Jerisich Park Dock - Cathodic Protection Engineering Service - Consultant Services Contract.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS / MAYOR'S REPORT:

STAFF REPORTS:

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF MARCH 13, 2000

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

CALL TO ORDER: 7:04 p.m.

PUBLIC HEARING: First Reading of Ordinances – Planning Commission Recommendations.

- a) Vertical Zoning
- b) New/revised Definitions, Chapter 17.04
- c) New C-2 (Commercial) District, Chapter 17.41
- d) Map Rezone – New C-2 District
- e) Amendments to the C-1 (Commercial) District

Mayor Wilbert opened this public hearing at 7:05 p.m.

Dave Morris, 6018 106th Ave NW – Mr. Morris spoke on behalf of the Chamber of Commerce and asked council to refer to their letter of November 17, 1999 which outlined their concerns with the vertical zoning proposal.

Donna Lormor, 3026 Harborview Drive – Ms. Lormor spoke on behalf of the Downtown Restaurant and Retailers Association in support of the proposed retail clustering.

Jo Graffe, 3126 Harborview Drive – Ms. Graffe voiced her support of this ordinance and it's proactive approach to zoning.

Linda Gair, 9301 N. Harborview Drive – Ms. Gair spoke in support of the vertical zoning ordinance and cited several cities which have implemented such regulations and maintained their downtown vitality. She stated that statements made by the Chamber that there has been an increase in retail business activity were false.

Richard Yasger, 1105 37th St Ct NW – Speaking on behalf of the Peninsula Neighborhood Association Mr. Yasger voiced his concerns with the retail clustering. Mr. Yasger stated that big retail stores possibly moving into the Gig Harbor North area are what will destroy the downtown and that we should be focusing on those issues.

Joannie Smith, 3116 Harborview Drive – Ms. Smith voiced her support of the vertical zoning ordinance and invited the City Council to come and walk through the shops and see what state the buildings are in and witness for themselves just how few customers they have. She further stated that she used to employ 2-3 people in her shop and can now easily handle it alone.

Walt Williamson, Gig Harbor Marina – Speaking against the proposed vertical zoning, Mr. Williamson cited his difficulty in finding a tenant for his building.

Rick Gagliano, 8607 58th Ave NW – Mr. Gagliano brought up several issues which he felt were important to consider in vertical zoning. He suggested that Council consider additional height incentives along with the vertical zoning. Mr. Gagliano felt that the bigger task of a vision for the downtown should be considered before vertical zoning.

John Gilich, 7005 Soundview Drive – Voicing his concerns with vertical zoning, Mr. Gilich stated his desire to see incentives rather than restrictions implemented.

Scott Wagner, P.O. Box 492, Gig Harbor – Mr. Wagner spoke against the vertical zoning ordinance and stated his belief that it was taking away property rights without compensation.

John Holmaas, 7524 Goodman Drive – Mr. Holmaas spoke against the proposed vertical zoning ordinance.

Walt Smith, 11302 Burnham Drive – Speaking for the group Forward Together, Mr. Smith voiced his opposition to the proposed vertical zoning ordinance.

Paul Cyr, 4102 55th St Ct NW – Mr. Cyr spoke on behalf of the Stroh family and how this zoning change would affect their business. He asked the Council to consider including the Stroh's property in the C-2 designation with an agreement that would be recorded with the property to not allow motor vehicle sales. He also pointed out the need for a definition of a rental business.

Tom Kerlich, Attorney at Law – Representing the Stroh family, Mr. Kerlich supported many of Mr. Cyr's statements in opposition to the zoning of the Stroh's property and his concern for the Stroh's opportunities for future expansion.

Dave Morris, 6018 106th Ave NW – Mr. Morris spoke against the new C-2 zoning and questioned the council about their concern for the SR-16 corridor and motor vehicle sales when the City had just worked with Pierce Transit to develop the Park and Ride facility along SR-16.

There being no further public input, Mayor Wilbert closed the public hearing at 8:07 pm.

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 Minutes of the February 28, 2000, City Council Meeting.
2. Correspondence/Proclamations:
 - a) Letter from Mayor of Bremerton re: I-695 Lawsuit.
 - b) PSRC Executive Board Report
 - c) D.R.E.A.M. Announcement.
 - d) Safe Streets Academy
 - e) Junior Daffodil Parade.
 - f) Proclamation – Foster Parents
 - g) Letter from Lieutenant General James Hill.
3. Burnham Drive Watermain Extension – Webster Easement Agreement
4. Condemnation Attorney Contract
5. Crackseal Melter Applicator – Purchase Authorization.
6. Approval of Payment of Bills for March 13, 2000:

- Checks #24501 through #24647 for \$290,122.34. Check #24500 was voided.
7. Approval of Payroll for the month of February in the amount of \$197,651.18.
 8. Liquor License Renewals: Maritime Mart; Eagles; Gig Harbor Texaco; Tides Tavern.

City Attorney Carol Morris asked that item number four, the Condemnation Attorney Contract be moved to new business as there were changes that needed to be made to the contract.

Councilmember Ekberg asked that item number eight, the Liquor License Renewals, be moved to new business as he had some concerns.

MOTION: Move to approve the Consent Agenda as amended.
Ekberg/Ruffo - unanimously approved.

OLD BUSINESS:

1. Court Consolidation – City Administrator Mark Hoppen gave a brief update of the Court Consolidation and the possibility of hiring a consultant. Mr. Hoppen recommended the council hold a public hearing at the next council meeting to address these issues.

MOTION: Move to conduct a Public Hearing on the court consolidation at the next council meeting.
Ekberg/Ruffo – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinances – Planning Commission Recommendations:
 - a) Vertical zoning
 - b) New/revised Definitions, chapter 17.04
 - c) New C-2 (Commercial) District, Chapter 17.41
 - d) Map Rezone – New C-2 District
 - e) Amendments to the C-1 (Commercial) District

Planning Director Ray Gilmore gave a brief overview of the proposed vertical zoning and responded to some issues raised during the public comment period. He pointed out that Mr. Williamson would not be affected by the vertical zoning as the offices he referred to are more than fifty feet from the right of way. Mr. Gilmore clarified the section on non-conforming uses by stating that a non-conforming use may remain indefinitely unless it is abandoned for more than a year or replaced by a conforming use. Councilmember Robinson asked if the Waterfront Millville district had special restrictions which protected it's character. Mr. Gilmore responded that yes, Waterfront Millville does have zoning restrictions to protect it's "fishing village" character.

Planning Commission Chairman Paul Kadzik gave a presentation on the Planning Commissions recommendations for vertical zoning using a color map of the parcels affected.

Councilmember Picinich asked why the Planning Commission had not considered including the parcels on the corner of Soundview and Harborview owned by Hauge. Councilmember Young asked if other areas of the city had been considered as well. Councilmember Picinich mentioned a memo he had received from Jim Pasin dated March 9, 2000 and asked staff to read it. Councilmember Ruffo inquired as to whether or not the proposed bridge or the East/West Road had entered into the Commission's recommendation and had they considered offering incentives?

Dr. Kadzik stated that their recommendations were not based on the bridge or the East/West Road and none of the incentives proposed seemed viable. Councilmember Robinson asked Donna Lormor how many members were represented by the Downtown Retailers Association. She responded that they had at least 50 members, and of those members several were also building owners.

Planning Director Ray Gilmore gave an overview of the changes to the C-1 zoning district and the proposed new C-2 zoning district. He addressed statements made during the public comment period regarding the 30 foot buffer between the C-1 and C-2 zones and residential. He confirmed that the buffer is the same for both zones.

Planning Commission Chairman Paul Kadzik gave a brief presentation of how the Planning Commission arrived at their recommendation on this zoning change.

Paul Cyr spoke on behalf of the Stroh family and pointed out that the definition of nursery stock did not fully cover what currently exists at Strohs which would make them non-conforming. He also pointed out that there is no definition provided for rental businesses such as the one that exists on the Stroh property.

Joe Malich spoke against the proposed zoning change. He stated that this would further restrict him from finding a place to put a car lot.

Attorney Tom Kerlich addressed the issue of clearer definitions to allow the Stroh's to be a conforming use. He further stated his concern regarding the Stroh's ability to rebuild should their building be destroyed.

Ray Gilmore stated that a non-conforming use can be maintained if the building is destroyed. It is the use that must continue without interruption of more than a year, not the building.

Councilmember Ekberg stated that he would like to see rental businesses addressed in the code. Councilmember Robinson suggested that we also more clearly define nursery stock.

Chairman Kadzik stated that it was the Planning Commission's intent to include all landscape items. He then gave a brief summation of the proposed changes.

2. Re-establishment of Street Monuments Survey – Consultant Services Contract. Public Works Director Dave Skinner gave a brief background on the need for re-establishment of the street monuments. He stated that the city had received several complaints from surveyors who have had to re-establish property lines and not had street monuments to work from.

City Attorney Carol Morris pointed out a change that needed to be made to the contract on page 4 subsection F.

MOTION: Move to approve Consultant Services Contract in the amount of \$5,461.10 with the proposed change.
Young/Robinson - unanimously approved.

3. Amendment No.2 – Comprehensive Water Plan Update – Consultant Services Contract. Public Works Director David Skinner gave a short explanation of this amendment to include the preparation of an Operations and Maintenance Manual in the scope of work for Gray and Osborne.

MOTION: Move to authorize Amendment No. 2 to the Consultant Services Contract not to exceed \$12,000.00.
Young/Robinson - unanimously approved.

4. Condemnation Attorney Contract. City Attorney Carol Morris stated that Mr. Hurley had requested that page 3 section 10 be deleted. Councilmember Picinich asked for the reason for striking this item. Ms. Morris stated that since the item required Mr. Hurley to provide insurance it could be assumed that he did not have any. Council asked Ms. Morris to confirm this and if this were in fact true that Ms. Morris should handle the condemnation. No motion was made, this item was tabled.

5. Liquor License Renewals: Maritime Mart; Eagles; Gig Harbor Texaco; Tides Tavern. Councilmember Ekberg stated that he had noticed on several occasions that the Maritime Mart has had signs up in their store that they were unable to sell beer and wine due to liquor license violations. He asked Mayor Wilbert to draft a letter to the Maritime Mart letting them know that if these violations continue the Council will not recommend renewal of their license.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert asked Public Works Director Dave Skinner to give an update on the odor elimination at the Sewer Treatment Plant. Mr. Skinner stated that they had isolated the problem and that the pumps were getting an air lock in the middle of the night, causing them to shut down. They are implementing a secondary treatment program on March 27th and it should reduce the problem within 1-2 weeks.

STAFF REPORTS: None scheduled.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Special Council Meeting – Harborwest Appeal, March 23rd at 6 p.m.

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

MOTION: Move to adjourn to executive session at 9:40 p.m. for approximately 30 minutes.
Picinich/Ruffo - unanimously approved.

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

ADJOURN:

MOTION: Move to adjourn at 9:50 p.m.
Owel/Picinich - unanimously approved.

Cassette recorder utilized.
Tape 559 Both Sides.
Tape 560 Both Sides.
Tape 561 Both Sides.

Mayor

City Clerk

DRAFT

SPECIAL GIG HARBOR CITY COUNCIL MEETING OF MARCH 23, 2000

PRESENT: Councilmembers Ekberg, Young, Robinson, Owel, Dick, Picinich, Ruffo and Mayor Wilbert.

CALL TO ORDER: 6:04 p.m.

NEW BUSINESS:

1. Appeal of the Hearing Examiner's Decision - Harborwest Subdivision. Mayor Wilbert explained that this was a closed record hearing and appeal procedure for the Council to consider the pertinent facts, applicable law and to make a final decision on the application of Harborwest Subdivision - SUB 98-01, the Huber/McGowan Development. She continued to explain that this was an application for a preliminary plat of a 149-lot subdivision located south of Rosedale Street and west of Schoolhouse Road. She then opened the hearing and asked for cooperation in following the hearing procedures, which she read aloud, allowing only the applicant and appellants to present fifteen minutes of oral argument based upon the evidence already presented during the open public record hearings. She stressed that no new evidence could be presented.

She stated that the Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance and appearance, and asked if anyone in the audience objected to her participation as Mayor, or to any Councilmember's participation in the hearing.

William Linn - PO Box 1157, Tacoma, representing the Applicant. Mr. Linn explained that the doctrine not only requires actually fairness but appearance of fairness, and expressed his concern that Councilmember Robinson was a member and perhaps a Board Member of the Peninsula Neighborhood Association, one of the appellants. He said on that basis, that they request that he not participate in these proceedings under the Appearance of Fairness Doctrine.

Mayor Wilbert said that Councilmember Robinson indicated that he was not longer a member of the Board of PNA. She then asked if there was anyone else who wishes to object.

Robert Mack, Smith Ollie & Blaine, representing the Peninsula Neighborhood Association. Mr. Mack asked if other parties would have an opportunity to respond to Mr. Linn's objection. Carol Morris, the city's Legal Counsel, replied in the affirmative. Mr. Mack continued to say he had received a letter from Mr. Linn yesterday afternoon and a call from Ms. Morris advising him of the objection of Councilmember Robinson's former membership on the Board of the Peninsula Neighborhood Association. He said that he had reviewed the case which Ms. Morris cited, and said that the issue was not whether or not the person was on the board but if the person was a member. He said that the Mayor and other Councilmembers are also members of the Neighborhood Association and the objection would also attach to them. He added that it does raise an issue given the broad membership of their organization and that they have not had an

opportunity to respond to fully. He added that if Mr. Linn insists on the objection, it raises a concern that other Councilmembers could sit on this matter.

Mayor Wilbert asked if any other members wished to disclose past membership in the organization. Carol Morris asked that Council disclose any conflict of interest or appearance of fairness issues rather than narrowing it specifically to PNA membership. Mayor Wilbert polled the Councilmembers with the following results.

Councilmember Steve Ekberg explained that he would recuse himself from the proceedings as he has clients who are both property owners in the proposed development and appellants to the project. He then left the room.

Councilmember Derek Young said that he had received correspondence from appellant, Nicholas Natiello, which are on record in the Planning Department, most of which were over a year ago.

Councilmember Mark Robinson explained that he was previously a member of the PNA Board of Directors, however, had recused himself from any discussion or contact with respect to this issue. He added that he didn't even realize they had filed an appeal until the city told him. He said he specifically has had not contact with them in regards to this issue and resigned from the board three weeks ago. He said that his only knowledge of the project prior to the packet he received from the city was during his campaigning, when he door belled in adjacent neighborhoods and people told him what they thought. He said he is still a current member.

Mayor Wilbert said that she had been a member of PNA in the past. She said she had not had any ex parte communication. Carol Morris asked that she disclose that she had received written communication from Nicholas Natiello, which she did.

Councilmember Marilyn Owel read a prepared memorandum for the record stating her membership in several local organizations, including PNA. She added that she is not active in PNA, however, her dues are current. She said that she had also received the correspondence from Mr. Natiello, and on March 6th, she received a call from him and immediately told him she could not discuss the issue of Harborwest. He asked if she had read a letter in the Gateway he submitted and explained that he didn't always pick on staff. They then talked about their boating hobbies.

Councilmember Bob Dick said that also received the correspondence from Nicholas Natiello as all Councilmembers had. He said that he had not read anything since the appeal had been filed, and confined himself to the record. He said that he has not spoken to the appellants or the applicants about any issues.

Councilmember John Picinich said that he attends the yearly PNA Auction, but has not had any contact with any of the parties except the correspondence from Nicholas Natiello.

Councilmember Frank Ruffo said that he has had no ex parte communication with anyone on the matter and that he is not a member of the PNA. He said he was willing, able and ready to rule on this matter.

Mayor Wilbert asked if there were any additional objections to any of the Councilmembers or herself sitting on this appeal. Hearing no response she polled each Councilmember to see if they wished to have Councilmember Robinson recuse himself from the proceedings. She asked the following question: "Do you believe that Councilmember Robinson, because of this objection from the public, should recuse himself from this hearing?" The response was as follows.

Councilmember Ruffo: affirmative. Councilmember Picinich: affirmative. Councilmember Dick: yes. Councilmember Owel: yes. Councilmember Young: yes.

Mayor Wilbert announced that it was unanimous to request that Councilmember Robinson recuse himself and that she asked that he honor that request. Councilmember Robinson asked Carol Morris to better define the extent to where the Appearance of Fairness Doctrine applies to interested versus disinterested people. Ms. Morris explained that the standard is that this hearing has to be fair and has to appear to be fair. She said that although it may not answer the question, the issue is there is an appellant claiming that Councilmember Robinson has an appearance of fairness problem, an assertion with which she agreed. She continued to state that if this case were presented to a court, the decision would be invalidated if Councilmember Robinson decided to sit. She recommended that he step down as a result without any further briefing or discussion, given the fact he was being challenged by an appellant, creating a risk for litigation, invalidating any decision that may be made at this hearing.

Mayor Wilbert again asked Councilmember Robinson to recuse himself without any further discussion. The Mayor then called a ten minute recess at 6:23 p.m.

The meeting resumed at 6:30 p.m. and the Mayor Wilbert asked Councilmember Robinson to recuse himself, and explained that if he did not wish to do so, she would entertain a motion to postpone the hearing to a later date.

MOTION: Move to continue this hearing and set the date at Council's convenience.
Picinich/

Ms. Morris said that Mr. Mack might raise an objection to Councilmember's participation if they were members of PNA, so she requested a disclosure of each member's involvement with PNA. Councilmember Young said he was never a member, was only involved briefly, but never paid dues. Mayor Wilbert said she had been a member for ten to fifteen years, but had never attended a meeting, just paid the dues. Councilmember Owel explained that she had been a member of PNA for two or three years as a believer of community organizations with an educational mission. She said that she had occasionally favored some of their positions, but does not attend their regular meetings. She said that she has only attended their issues meetings on the bridge, including the one in the Council Chambers last week. Councilmember Dick said that he has not been a member of PNA or contributed to it. Councilmember Picinich says he is a big contributor at their November auction, but is not a member. Councilmember Ruffo said that he is not a member and has not contributed.

Mr. Mack said that he was not going to raise an objection, and what he had addressed with Ms. Morris was the issue that Mr. Linn only objects to one member of the Council. Ms. Morris said that he would have an opportunity to raise an objection at the next meeting as Council had already made the decision that Councilmember Robinson should step down. Mr. Mack asked that Councilmembers read what the State Supreme Court said the law was in regards to this issue in the next few weeks. He added that he had no objections to any Councilmembers sitting on the appeal. He said that his concern was that an objection had been raised against one Councilmember, when others have a similar status.

Mayor Wilbert restated the motion with an April 10th date, and Councilmember Ruffo seconded it. She then asked if the appellants agreed to this date.

Mr. Linn explained that Mr. Huber had been in this process for four years and that he did not understand why the process could not proceed at this point. Mayor Wilbert explained that there was a motion on the table and asked for the vote. Councilmember Young called for the question.

MOTION: Move to continue this hearing and set the date for April 10th.
Picinich/Ruffo - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 6:37 p.m.

Cassette recorder utilized.
Tape 562 Side A 000 - 323

Mayor

City Clerk



Pierce County

Department of Community Services
Office of Economic Development
8815 South Tacoma Way, Suite 202
Tacoma, Washington 98499-4588
(253) 798-7205 ♦ 1-800-992-2456 ♦ FAX (253) 798-6604 ♦ TDD/Voice 1-800-833-6388

LINDA HURLEY ISHEM

Director

RECEIVED

MAR 16 2000

CITY OF GIG HARBOR

March 16, 2000

Mayor Gretchen S. Wilbert
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Dear Mayor Gilbert:

Thank you for the opportunity to talk to you at the March Cities and Towns Association meeting about the economic development efforts we are working on throughout the County. Our goal is to support programs and initiatives that enhance the economic viability of our community.

As I mentioned at that meeting, one program is a directory of contacts for businesses; we hope this will be a resource for businesses presently located in Pierce County or hoping to relocate here. Rob Allen will be contacting your community in the near future to get information to include in the directory.

If you have questions or if we can provide information or assistance, please contact us at your convenience. Our direct phone numbers and e-mail addresses are:

- | | | |
|--------------|--|--|
| Denise Dyer | 253-798-6926
ddyer@co.pierce.wa.us | Manager, Economic Development |
| Rob Allen | 253-798-6915
rallen3@co.pierce.wa.us | Economic Development Specialist |
| Sheree Clark | 253-798-6916
sclark1@co.pierce.wa.us | Loan Officer (Business Loans & Assistance) |

Please contact us any time. Again thank you; we look forward to working with you in the future.

Sincerely,

Denise Dyer
Economic Development Manager





City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: KIMBALL DRIVE IMPROVEMENT PROJECT
- CONSULTANT SERVICES CONTRACT
DATE: MARCH 20, 2000

DRS.

INTRODUCTION/BACKGROUND

A budget objective for 2000 includes the design of the Kimball Drive Improvement Project. This project will provide for a three-lane section with a continuous two way left turn lane extending south from the proposed Pioneer Way Intersection Improvement (Pierce Transit Park and Ride Project) to the southern entrance into the Pierce Transit Park and Ride Facility. On February 23, 2000, the Transportation Improvement Board (TIB) authorized \$32,760 of UATA funds for the design phase for this project retroactive to February 1, 2000. On November 22, 1999 Council authorized execution of a Consultant Services Contract with the consulting engineering and surveying firm SCA Engineering, to perform a base map survey for this and the Grandview Athletic Field projects. This work has been completed.

At this time, consultant services are needed to complete the design, prepare the plans, specification and estimates, and perform other related services for the construction of the Kimball Drive Improvement Project.

After reviewing the Consultant Services Roster, SCA Engineering, was selected as the most qualified to perform the work. Their selection was based on their work on the project, extensive municipal experience including use of the Washington State Department of Transportation plans and specifications, and ability to meet the project schedule.

Council approval of the Consultant Services Contract is being requested.

POLICY CONSIDERATIONS

SCA Engineering is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This project was anticipated in the approved 2000 budget.

RECOMMENDATION

I recommend that the Council authorize execution of the Consultant Services Contract with SCA Engineering for engineering services for the Kimball Drive Improvement Project in an amount not to exceed sixty-three thousand three hundred forty dollars and sixty-seven cents (\$63,340.67).

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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and SCA Engineering organized under the laws of the State of Washington, located and doing business 677 Woodland Square Loop SE, PO Box 3485, Lacey, Washington 98503 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design of Kimball Drive Improvement Project, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 22, 2000, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Sixty-three thousand three hundred forty dollars and sixty-seven cents (\$63,340.67) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. . The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2000; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

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

modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from 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 notification will be given to the City of Gig Harbor for any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT
Marcy Gustafson
SCA Engineering
PO Box 3485
Lacey, Washington 98509-3485

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City,

CIVIL ENGINEERING PAGE 02

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 _____, 2000.

CONSULTANT
By: *Pamela A. Her*
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Marcy J. Gustafson, P.E.
SCA Engineering
PO Box 3485
Lacey, Washington 98509-3485

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

EXHIBIT "A"
SCOPE OF SERVICES
KIMBALL DRIVE IMPROVEMENT PROJECT
CSP 9811
CIVIL ENGINEERING SERVICES

GENERAL DESCRIPTION AND PROJECT UNDERSTANDING

This project involves preparation of plans, specifications, and estimates (PS&E) for roadway improvements to approximately 1,990 L.F. of Kimball Drive, bounded on the north by Pioneer Way, and on the south by the Pierce Transit Park & Ride Lot. The PS&E documents will include design of curb and gutter, sidewalks, planters, storm drainage, roadway rehabilitation, channelization and signing, and traffic control.

The proposed improvements will be designed within the existing right of way. No new right of way acquisition is planned at this time.

SCOPE OF WORK

1. Preliminary Design (30%):

Preliminary design will begin with obtaining digital files for Pierce Transit's improvements to the Pioneer Way and Kimball Drive intersection and transit station expansion. The intersection plans will be inserted into the Kimball Drive civil design base map prepared by SCA Engineering's survey department, defining our north project boundary and match line. The preliminary roadway plans will then be prepared showing locations of new curb and gutter, handicap ramps, planter strips, and sidewalks. Using Kitsap County's Storm Drainage Manual, the drainage design concept will be developed and a preliminary storm drainage concept report prepared. Preliminary channelization plans will also be prepared at this time. When the 30% plans are complete, SCA Engineering will meet with the City to present the design and discuss review comments. City comments and revisions will then be incorporated into the plans. At approximately 50% plan completion, SCA will attend a public meeting with the local businesses along Kimball Drive to address questions about the design.

2. Final Design and PS&E Preparation (95%):

Final design will begin with the approved 30% level design drawings. The roadway and storm drainage profile will be developed and incorporated into the roadway plan sheets. Storm drainage design will be completed and erosion control plans prepared. The channelization plans will be finalized and signing will be added to the plans. SCA Engineering anticipates the following plan sheets for the final design set:

Kimball Drive Roadway Improvements
Exhibit A - Scope of Services

1. Cover sheet
2. Quantity tabulation and legend sheet
3. Structure notes and tables
4. Utility/removal plan
5. Roadway cross-sections and details
6. Roadway and storm drainage plan and profile sheets
7. Erosion control plan
8. Storm drainage and erosion control details
9. Channelization and signing plan
10. Channelization and signing details
11. Landscape and street lighting plans (planter strip landscaping only and street lighting conduit and junction box locations only)
12. Traffic control plans

An engineer's estimate of construction costs will also be prepared during final design. A complete set of project specifications will be developed once the project bid items are identified and quantities have been determined. The specifications will follow WSDOT format and will include standard City of Gig Harbor language for certain divisions. SCA Engineering will work closely with the City during development of the specifications to ensure that all sections meet City requirements.

When the 95% level PS&E documents have been prepared, SCA Engineering will meet with the City to present the submittal and discuss review comments. Comments and revisions from both the City and TIB will then be incorporated into the plans and specifications. When both the City and TIB have approved the PS&E documents, SCA Engineering will provide a bid-ready reproducible set to the City. Digital files can also be provided upon request. SCA Engineering will assist as needed during the bidding phase by providing clarifications to the plans and specifications, answering any contractor questions that may arise, and attending the bid opening.

3. Construction Support Services (optional on-call):

SCA Engineering will perform supplemental construction support services as requested by, and agreed to in writing by the City. The scope and budget will be prepared and agreed to on an individual task assignment basis. The City currently has an allowance of \$5,000 for on-call construction services.

4. Project Administration:

SCA's Civil Engineering Manager will serve as project manager and will be responsible for overall project quality control of the above tasks, engineering procedures, and final product. The Civil Engineering Manager will provide weekly project status reports throughout the duration of the project, and will be the City's contact for contracting and billing issues.

Kimball Drive Roadway Improvements
Exhibit A - Scope of Services

5. Additional Scope of Work Options:

SCA Engineering has the in-house expertise and will be available to perform additional services in connection with the project at the request of the City of Gig Harbor. These services include design of street lighting; irrigation design; public involvement; and subsequent construction engineering and surveying.

PROJECT DELIVERABLES

- Preliminary Design (30%) Drawings and storm drainage concept report for initial City review.
- Final Design (95%) Plans, Specifications, and Engineer's Estimate of construction costs for City review and approval.
- Approved "bid-ready" reproducible PS&E documents.
- Digital files of approved design drawings, if requested.

SERVICES PROVIDED BY THE CITY

- Provision of Pierce Transit digital files for Pierce Transit Park and Ride project and Kimball Drive / Pioneer Drive intersection improvements (or permission for Otak Engineering to release files to SCA Engineering).
- Copies of storm drainage plans and reports for existing storm facilities along Kimball Drive corridor, as needed.
- Advertisement of project for bids.
- Reproduction and distribution of all bid documents to bidders.

REIMBURSABLES

Expenses to be reimbursed by the City include:

- Fees for reprographics, postage, and mileage.

PROJECT COMPLETION

SCA Engineering is available to begin work immediately upon authorization of this scope of work and will deliver the preliminary (30%) design drawings to the City on or before 45 calendar days from the notice to proceed. Final design will begin immediately upon receipt of 30% review comments.

Scope of Work and Fee Estimate

SCA ENGINEERING

EXHIBIT "B" - Schedule of Rates and Estimated Hours

Project: KIMBALL DRIVE IMPROVEMENT PROJECT

Client City of Gig Harbor

SCA Reference Numbers: P00012, File Reference: P0012budg.xls

Task No.	Design Tasks:	Design Tasks:						Total Hours
		Principal	Project Mgr	Project Engineer	Design Engineer	Engr. Technician	Landscape Designer	
Task 1 - Preliminary Design (30%)								
1	Obtain Pierce transit digital files for improvements to Pioneer Dr. and Kimball Dr. intersection, and transit station. Insert into existing survey base map.				1	2		3
2	Prepare preliminary storm drainage concept report (for SEPA process).		2		8	2	4	16
3	Prepare preliminary storm drainage design concept per new DOE Manual and roadway plans showing proposed new curb & gutter, handicap ramps, planter strips, and sidewalks. Plan view only at 30% level. (4 sheets at 1"=20' scale).		12		60	64		136
4	Prepare preliminary channelization plans (2 sheets at 1"=20' scale)		8		16	20		44
5	Meet with City to discuss 30% plan review comments. Incorporate review comments into plans.		4		12	16	2	34
6	Project correspondence and coordination with City staff (task 1).	2	4		8			14
7	Public Meeting with Businesses along Kimball Drive		4		4			8
Subtotal Task 1		2	34		109	104	6	255
Task 2 - Final Design / PS&E Preparation								
7	Prepare cover sheet (1 sheet).		1		2	8		11
8	Prepare quantity and legend sheet (1 sheet).		2		8	16		26
9	Prepare structure notes / tables (1 sheet).		4		12	24		40
10	Prepare utility/removal plan (1 sheet).		1		12	16		29
11	Prepare roadway cross-sections and details (1 sheet).		1		8	16		25

SCA ENGINEERING

EXHIBIT "B" - Schedule of Rates and Estimated Hours

Project: KIMBALL DRIVE IMPROVEMENT PROJECT

Client City of Gig Harbor

SCA Reference Numbers: P00012, File Reference: P0012budg.xls

Task No.	Design Tasks:	Design Tasks:						Total Hours	
		Principal	Project Mgr	Project Engineer	Design Engineer	Engr. Technician	Landscape Designer		Clerical
12	Prepare roadway and storm drainage plan & profile sheets. (4 sheets at 1"=20' scale).		8		64	48		120	
13	Prepare erosion control plan (1 sheet at 1"=40' scale).		2		8	16		26	
14	Prepare storm drainage and erosion control detail sheets (2 sheets).		1		8	16		25	
15	Prepare channelization and signing plans (2 sheets at 1"=20' scale).		4		20	24		48	
16	Prepare channelization and signing detail sheet (1 sheet).		2		6	8		16	
17	Prepare planter strip landscaping and street light plans (to show conduit and j-box locations only) (2 sheets at 1"=20' scale).		4		16	24	16	60	
18	Prepare traffic control plans (4 sheets at 1"=20' scale).		4	40		48		92	
19	Prepare engineer's estimate of construction costs.		2		8	4	2	16	
20	Prepare complete specifications.	2	8		32		16	58	
21	Meet with City to discuss 95% plan review comments. Incorporate City's review comments into plans and specs.	2	4		12	20	6	44	
22	Submit PS&E documents to TIB for review. Incorporate TIB review comments into plans & specs.		2		6	8	2	18	
23	Project correspondence, coordination with City staff and TIB (task 2).	2	8		8		2	20	
24	Coordinate with contractors through bid opening as needed. Attend bid opening.		4		8		2	14	
Subtotal Task 2		6	62	40	238	296	18	28	688
Total Hours:		8	96	40	347	400	18	34	943

SCA ENGINEERING**EXHIBIT "B" - Schedule of Rates and Estimated Hours****CONSULTANT FEE DETERMINATION SCHEDULE -****PROJECT: Kimball Drive Improvement Project - Gig Harbor, Washington**

Project No. P00012 File: P0012FDS.XLS

**Consultant Fee Determination
Summary Sheet**

<i>Discipline</i>	<i>Hours</i>	<i>Rate</i>	<i>Amount</i>
Principal	8.00	\$40.00	\$320.00
Project Manager	96.00	\$30.00	\$2,880.00
Project Engineer	40.00	\$28.00	\$1,120.00
Design Engineer	347.00	\$21.50	\$7,460.50
Engineering Technician	400.00	\$17.50	\$7,000.00
Landscape Designer	18.00	\$18.00	\$324.00
Clerical	34.00	\$13.00	\$442.00
Direct Salary Cost (DSC) :			\$19,546.50
Overhead Cost (OH) :			
(OH Rate) * (DSC)	165.89%	\$19,546.50	\$32,425.69
Fixed Fee :			
(Fixed Fee Rate) * (DSC)	29.00%	\$19,546.50	\$5,668.49
Direct Non-Salary Costs :			
Expenses: Reproduction; mileage		\$700.00	
Subtotal Non-Direct Salary Costs :			<u>\$700.00</u>
Total SCA Engineering (Direct & Non-Direct Costs) :			\$58,340.67
Construction Support Services (optional on-call)			\$5,000.00
TOTAL COST FOR PROFESSIONAL ENGINEERING SERVICES AND EXPENSES:			\$63,340.67



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR *D.R.S.*
SUBJECT: POINT FOSDICK IMPROVEMENT PROJECT, CSP - 9806
- PERMANENT AND TEMPORARY CONSTRUCTION EASEMENT
AGREEMENTS
DATE: MARCH 21, 2000

INTRODUCTION/BACKGROUND

A budget objective for 2000 includes the design and construction of the Point Fosdick Improvement Project. This project will provide for a five-lane widening and sidewalk improvements along the commercial frontages on Point Fosdick Drive. Improvements include four through lanes, two-way left-turn lane, bicycle lanes, curbs, gutters, landscaped planter strips, sidewalks, storm sewer improvements, provisions for future signalization, and architectural street lights.

On January 28, 2000, the Transportation Improvement Board (TIB) authorized an increase in UATA funding from \$481,600 to \$729,900 for the design and construction of this project. To construct this project, the City requires an approximate total of 13,982 square feet of permanent easements and an approximate total of 48,321 square feet of temporary construction easements across the following commercial frontages:

BANK OF AMERICA, OLYMPIC PLAZA, GIG HARBOR MOTOR INN, PENINSULA LIBRARY,
PENINSULA CHRISTIAN FELLOWSHIP, KITSAP BANK, PENINSULA REGIONAL MEDICAL
CENTER, HARBOR MONSOON, TELCO CREDIT UNION

City staff has met with the above property owners, and has received signed agreements granting both permanent and temporary easements across each property. The City's standard easement agreement has been prepared to reflect the standard easement conditions.

Nowicki and Associates, Inc. has performed a level 1 site assessment on the properties and has determined no evidence of possible surface contamination.

Council approval of the easement agreements is being requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that the Council accept the attached easement agreements.

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

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and BANK OF AMERICA (hereinafter the "Owners"), whose mailing address is Jones, Lang and LaSalle, 1001 Fourth Avenue, Seattle, Washington, Attn: Ms. Cindy Smith, Property Manager.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4815 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-1740-39) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

TERMS

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

A. **Grant.**

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". The City shall, upon completion of any work within the Property covered by this Easement, restore the surface of the Easement and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

Section 2. This Agreement shall be recorded in the office of the Pierce County Auditor and shall run with the Properties. The burdens and benefits of the easements granted under this Agreement shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legal representatives, successors assigns and beneficiaries.

Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Easement Agreement, which contains the entire understanding of the parties on the subject.

Section 5. Any invalidity, in whole or in part, of any provision of this agreement shall not affect the validity of any other provision.

Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

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

Owner Edna J. King
By: Edna J. King
Its Vice President & General Mgr.

ACCEPTANCE:

The City of Gig Harbor
By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

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STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF King) ss.
)

I certify that I know or have satisfactory evidence that Edwin J. Fairbairn is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as VP Asset Manager of Bank of America to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 3/21/00



Tiffany A Neher De la Rosa
(Signature)
Tiffany A Neher De la Rosa
NOTARY PUBLIC, State of Washington,
residing at: Poulsbo
My appointment expires: 4-21-03

818

EXHIBIT A

Commencing at the Southwest corner of the Southeast quarter of SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington; thence along the South line of said Southeast quarter South 88°22'51" East 30 feet to a point on the East right of way line of 30th Avenue, N.W. (Point Fosdick-Gig Harbor County Road) as existing prior to May 15, 1974; thence along said East right of way line North 02°05'50" East 179.75 feet; thence South 87°54'10" East 270 feet; thence South 2°05'50" West 180 feet, more or less, to the South line of said Southeast quarter; thence West along said South line 270 feet, more or less, to the point of beginning.

EXCEPT the West 10 feet thereof conveyed to Pierce County for right of way for Point Fosdick Drive N.W. (107th Avenue, Northwest) by Deed recorded under Auditor's No. 2549648.

EXCEPT the South 30 feet for 48th Street, Northwest.

TOGETHER with an easement for ingress, egress and parking of vehicles on the portions of the following described property as are improved for parking or accomdation of vehicles:

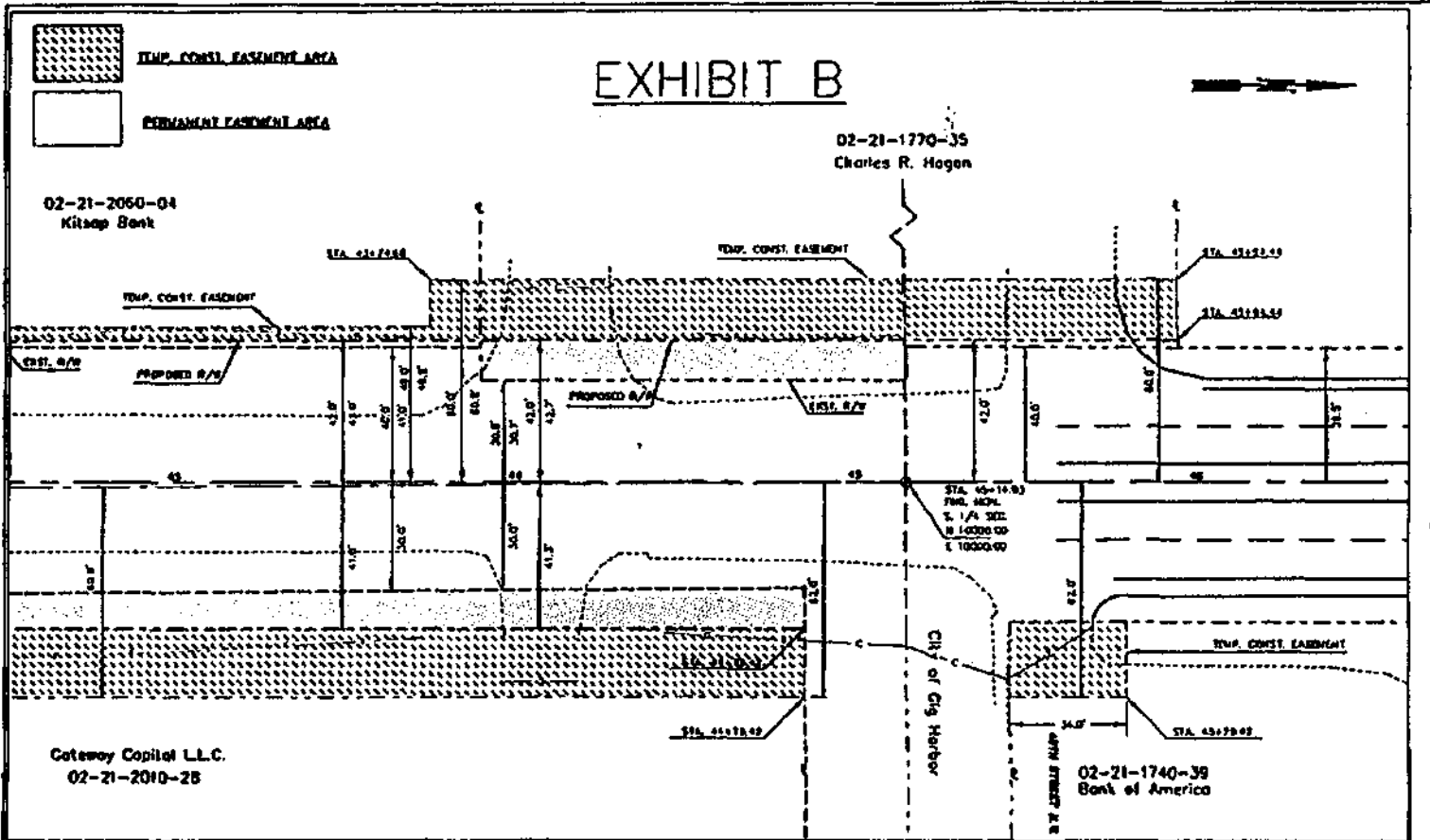
Commencing at the Southwest corner of the Southeast quarter of SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington; thence along the South line of said Southeast quarter South 88°22'51" East 30 feet to a point on the East right of way line of 30th Avenue, N.W. (Point Fosdick-Gig Harbor County Road), as existing prior to May 15, 1974; thence along said East right of way line North 02°05'50" East 179.75 feet to the true point of beginning; thence continuing North 02°05'50" East along said right of way line 589.31 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR 16 M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; thence Northeasterly along said parallel line a distance of 342.26 feet; thence leaving said parallel line South 02°05'50" West 249.68 feet; thence South 87°54'10" East 165.00 feet; thence South 02°05'50" West 598.60 feet; thence North 87°54'10" West 220.00 feet; thence North 02°05'50" East 165.00 feet; thence North 87°54'10" West 270.00 feet to the point of beginning.

EXCEPT the most Westerly 10 feet thereof conveyed to Pierce County for right of way for Point Fosdick Drive, N.W. (107th Avenue, Northwest), by Deed recorded under Auditor's No. 2549648.

EXCEPT that portion thereof conveyed to Pierce County for 48th Street, N.W.

END OF EXHIBIT A

EXHIBIT B



02-21-1770-35
Charles R. Hagan

02-21-2060-04
Kitap Bank

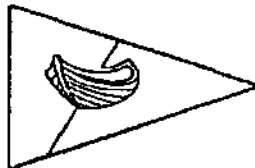
Coteway Capital L.L.C.
02-21-2010-28

02-21-1740-39
Bank of America

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

Page 7 of 7

MS

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and GIG HARBOR CORPORATE CENTER (hereinafter the "Owners"), whose mailing address is 4423 Point Fosdick Drive, Gig Harbor, Washington 98335, Attn: Ms. Evelyn Hogan Lynn.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4423 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2050-10) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to

the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner Evelyn M. Lynn aka
By: Evelyn Hager Lynn
Its mg. Partner

The City of Gig Harbor

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

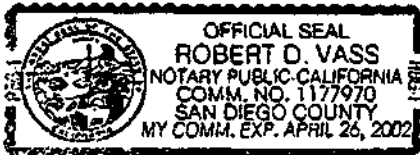
residing at: _____

My appointment expires: _____

STATE OF ^{CALIFORNIA} WASHINGTON)
COUNTY OF San Diego) ss.

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

DATED: 3/22/00



[Handwritten Signature]
(Signature)
Robert D. Vass
NOTARY PUBLIC, State of Washington ^{California}
residing at: 20 C. Via P-1054 Capistrano
My appointment expires: 4/26/2002

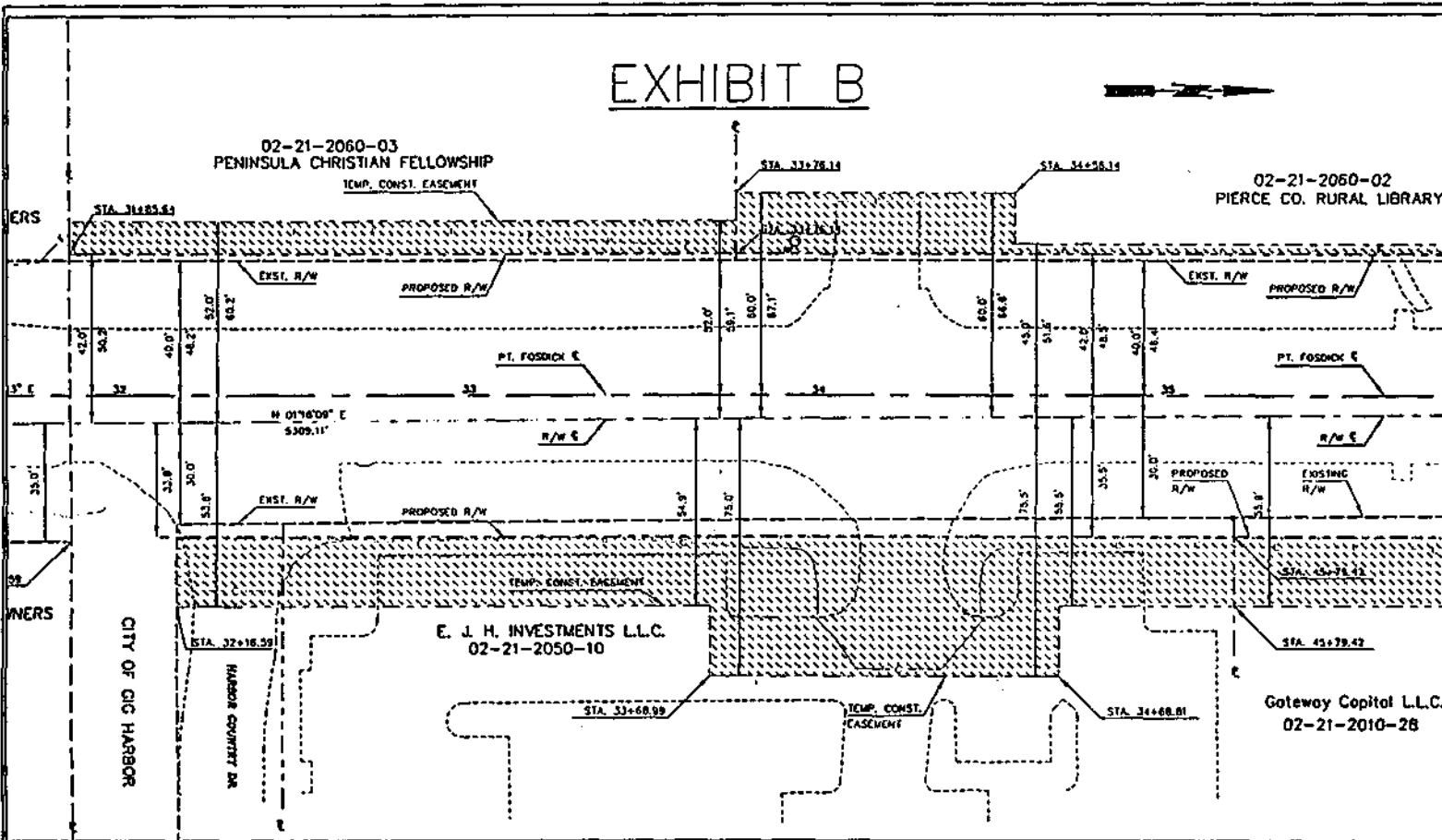
PROPERTY LEGAL DESCRIPTION
EXHIBIT A

Lot 1, as shown on SHORT PLAT NO. 8112020249, filed with the Pierce County Auditor, in Pierce County, Washington.

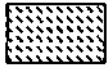
EXCEPT the South 60 feet of the East 50 feet thereof conveyed to the City of Gig Harbor by Deed recorded under Auditor's No. 9109110258.

END OF EXHIBIT A

EXHIBIT B



Page 7 of 7



TEMP. CONST. EASEMENT AREA

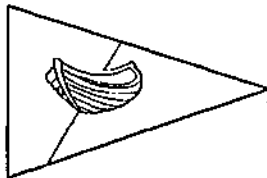
POINT FOSDICK DRIVE



PERMANENT EASEMENT AREA

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and GIG HARBOR MOTOR INN (hereinafter the "Owners"), whose mailing address is Gateway Capital, 5312 Pacific Highway East, Fife, Washington 98424, Attn: Mr. John Hogan.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4709 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2010-28) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. **Grant.**

1. Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement

over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner Gateway Capital, LLC
By: *John Hogan* JOHN HOGAN
Its Member

The City of Gig Harbor
By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

My appointment expires: _____

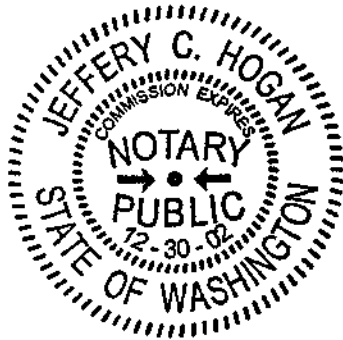
STATE OF WASHINGTON)

) ss.

COUNTY OF Spokane)

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

DATED: 3/7/00



Jeffery C. Hogan
(Signature)

NOTARY PUBLIC, State of Washington,
residing at: Edgewood
My appointment expires: 12-30-02

PROPERTY LEGAL DESCRIPTION
EXHIBIT A

PARCEL A:

The Northwest quarter of the Northeast quarter of SECTION 20, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington.

EXCEPT the South 332.4 feet thereof.

EXCEPT the East 1031.68 feet of the North 380 feet of the South 712.4 feet thereof.

EXCEPT the North 30 feet thereof.

EXCEPT 30th Avenue N.W. (Pt. Fosdick Gig Harbor Rd.)

EXCEPT the following described property:

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of SECTION 20, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington; thence along the East line thereof, South 365 feet; thence West at right angle 125 feet; thence South at a right angle 70 feet; thence East at a right angle 125 feet; thence along the East line of said subdivision North 70 feet to the true point of beginning.

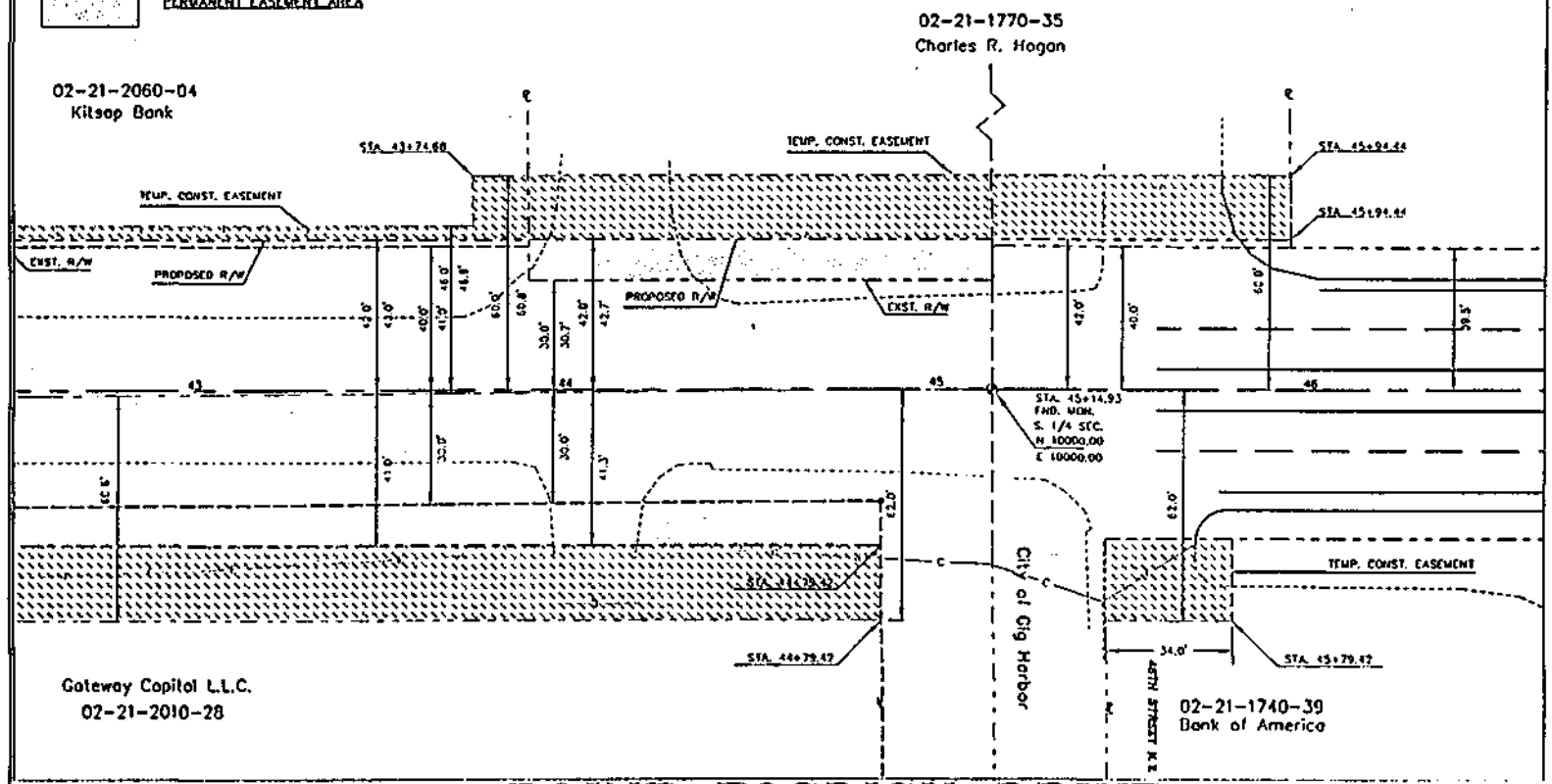
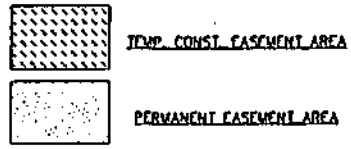
PARCEL B:

An undivided one-half interest in the following described property:

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of SECTION 20, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington; thence along the East line thereof South 365 feet; thence West at right angle 125 feet; thence South at a right angle 70 feet; thence East at a right angle 125 feet; thence along the East line of said subdivision North 70 feet to the true point of beginning.

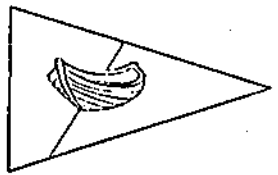
END OF EXHIBIT A

EXHIBIT B



Page 7 of 12

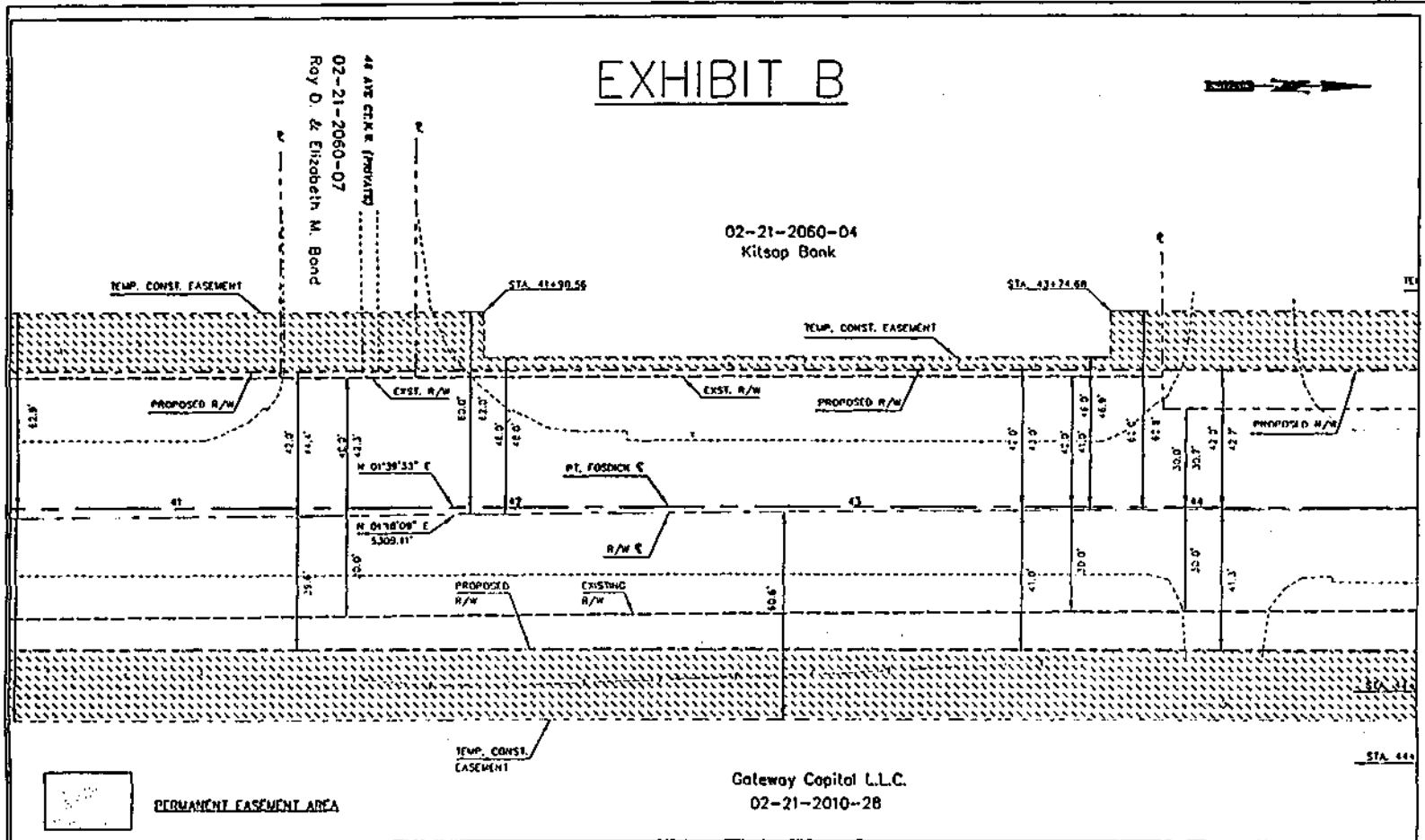
POINT FOSDICK DRIVE



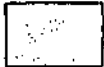
City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS

3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

EXHIBIT B



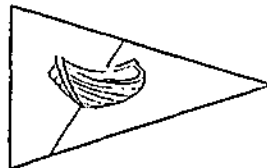
Page 8 of 12



PERMANENT EASEMENT AREA



TEMP. CONST. EASEMENT AREA



POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS

3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

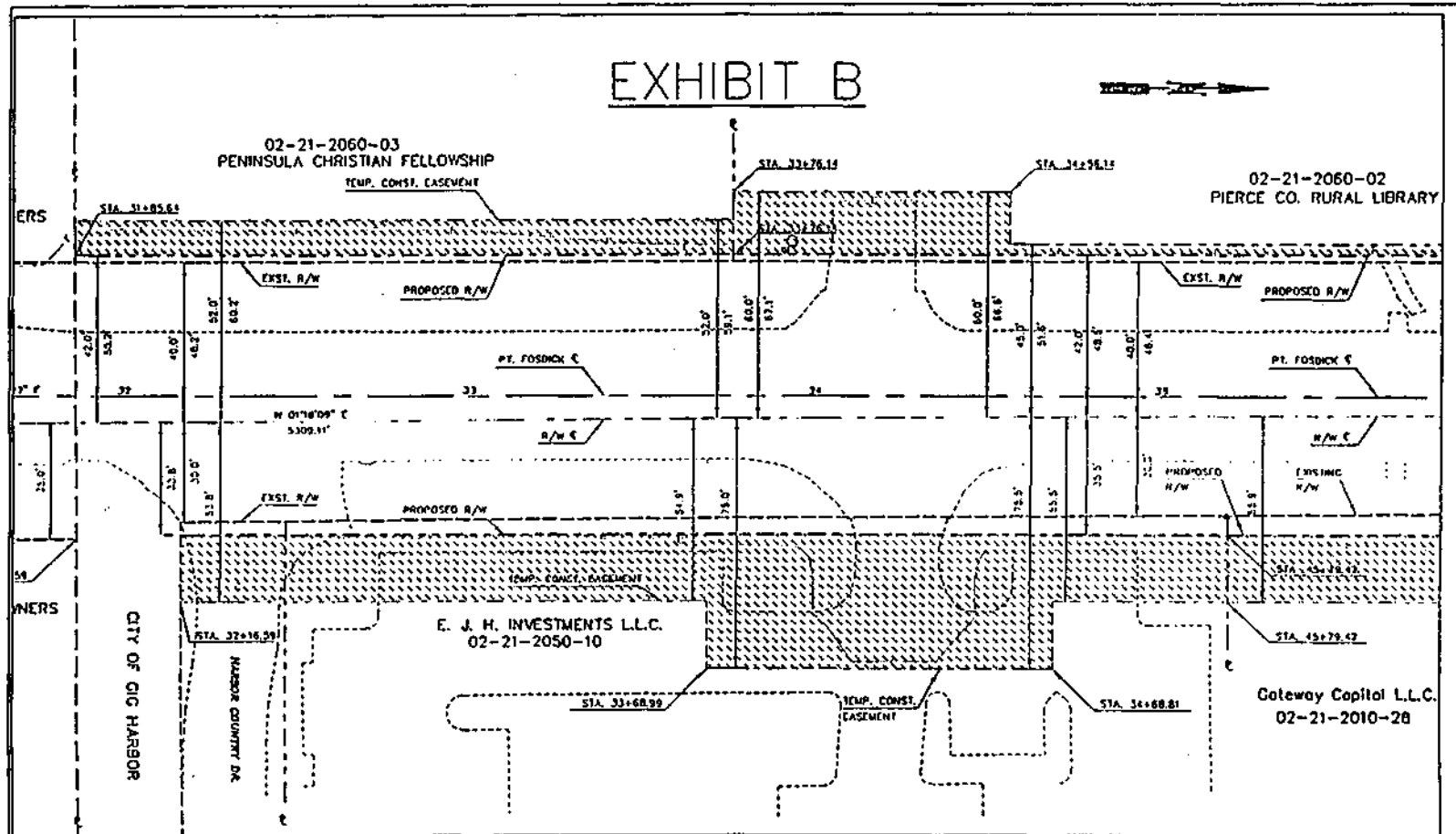
Gateway Capital L.L.C.
02-21-2010-28

48 AVE CRK R (PRIVATE)
02-21-2060-07
Roy D & Elizabeth M. Bond


02-21-2060-04
Kitsop Bank

STA 44+00.00

EXHIBIT B

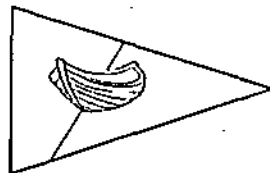


Page 9 of 12

 TEMP. CONST. EASEMENT AREA

POINT FOSDICK DRIVE

 PERMANENT EASEMENT AREA

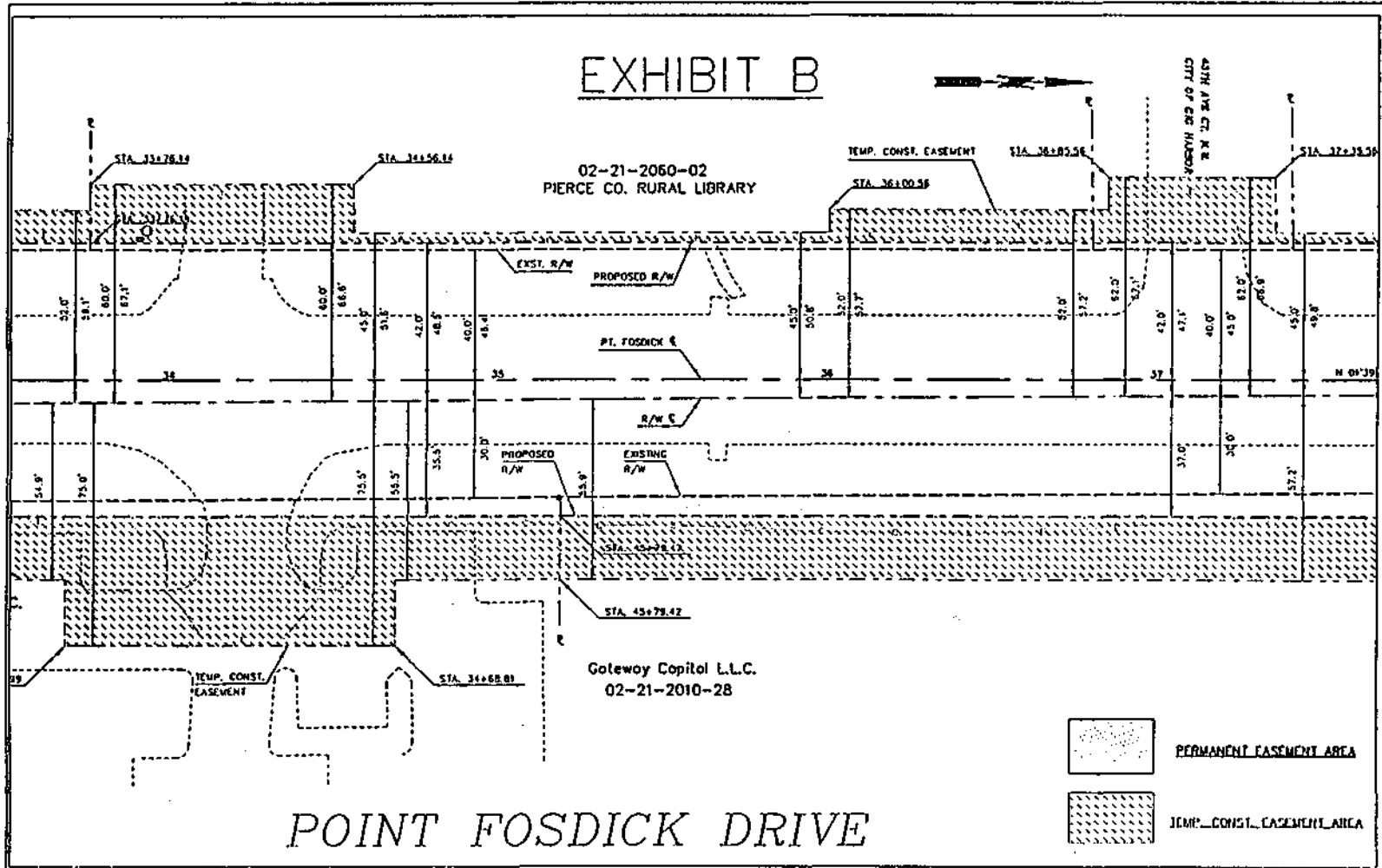


City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS

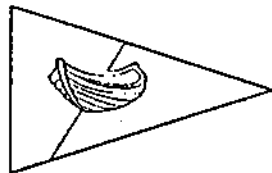
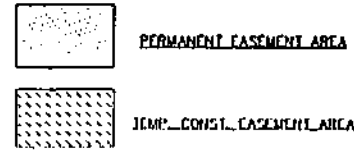
3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

EXHIBIT B



Page 10 of 12

POINT FOSDICK DRIVE



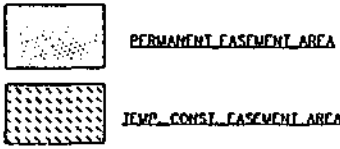
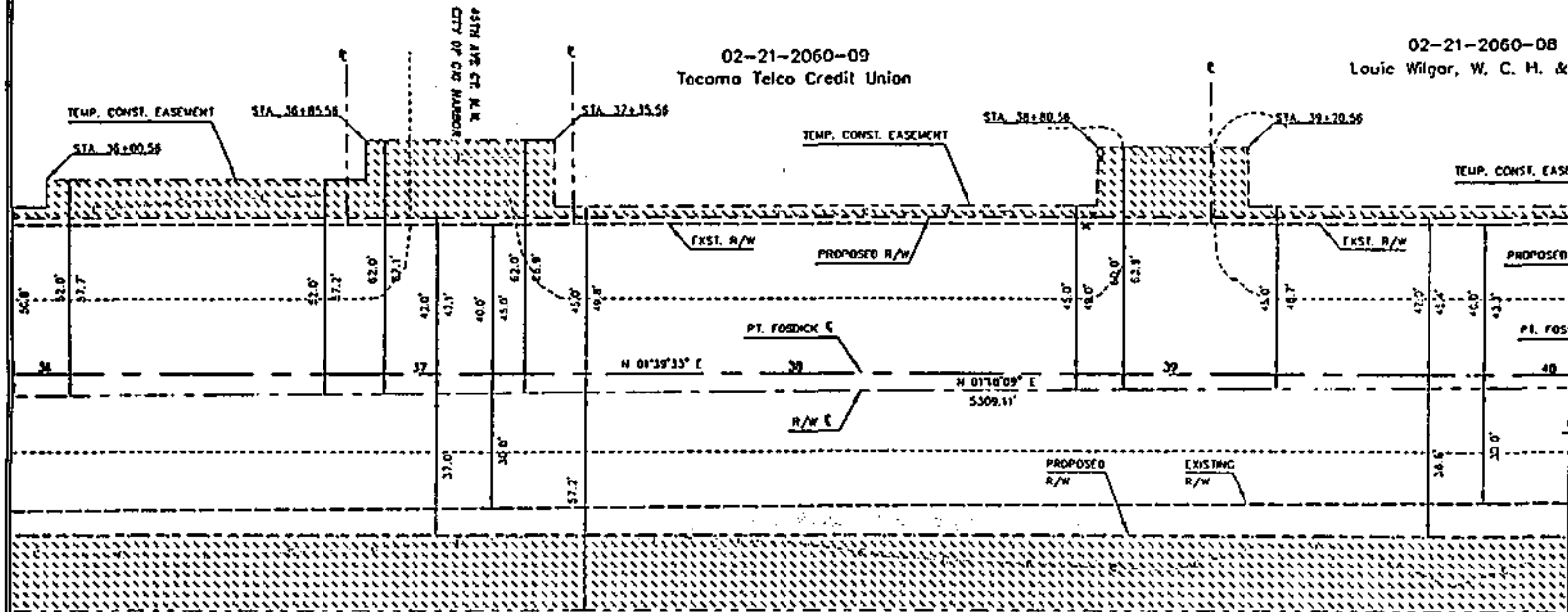
City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS

3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

EXHIBIT B

02-21-2060-09
Tacoma Telco Credit Union

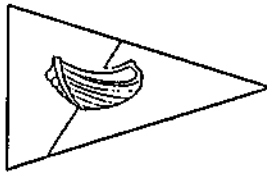
02-21-2060-08
Louie Wilgar, W. C. H. &



Goleway Capital L.L.C.
02-21-2010-28

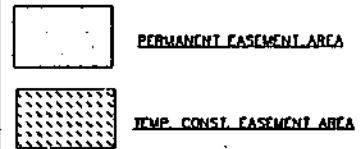
POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

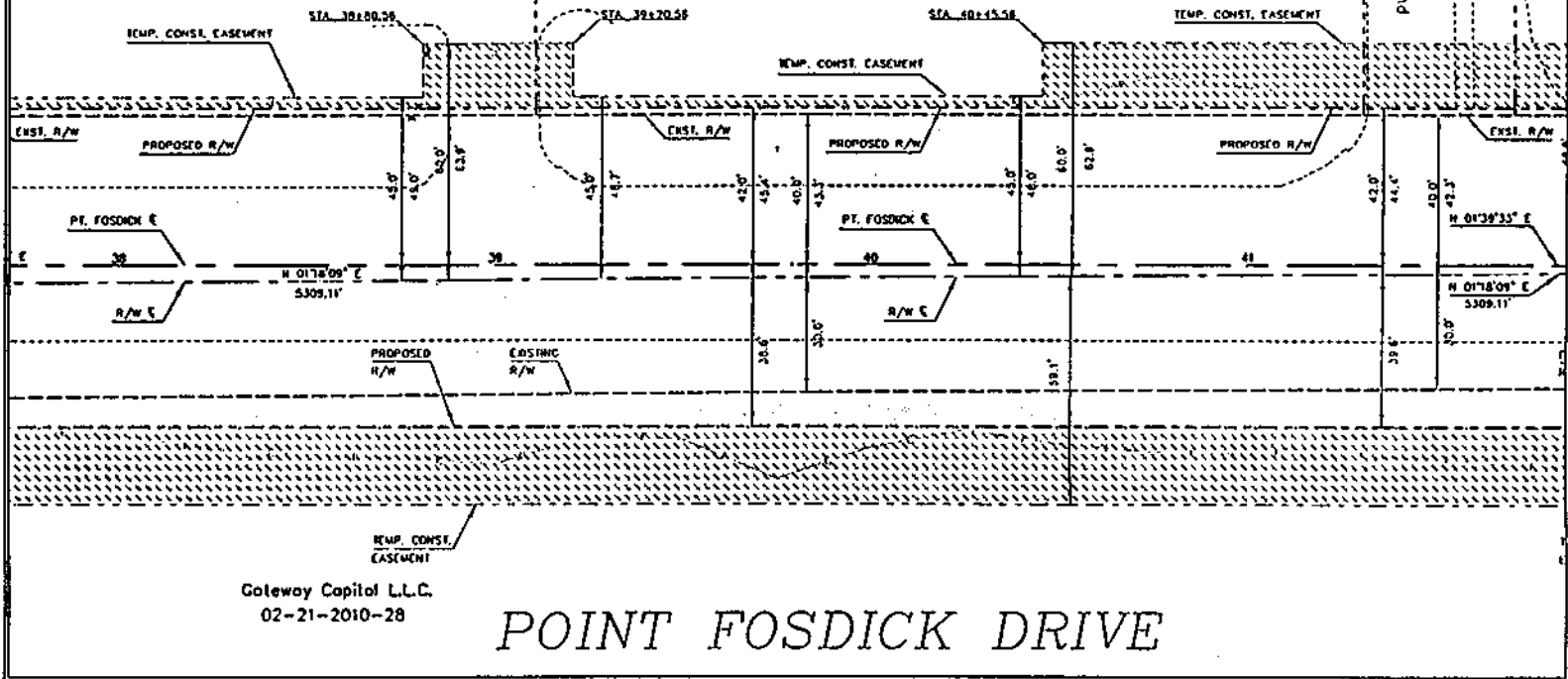
EXHIBIT B



02-21-2060-09
Pocomo Telco Credit Union

02-21-2060-08
Louie Wilgor, W. C. H. & T. K. H. Chung

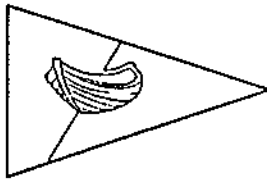
48 AVE CTR. E (PREV) 2
02-21-2060-07
Roy D. & Elizabeth M. Bond



Gateway Capitol L.L.C.
02-21-2010-28

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

Page 12 of 12

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and HARBOR MONSOON (hereinafter the "Owners"), whose mailing address is 4628 Point Fosdick Drive, Gig Harbor, Washington 98335, Attn: Messrs. Wilgar Louie and Timothy Chung.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4628 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-08) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to

the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the East two (2) feet of the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". The City shall, upon completion of any work within the Property covered by this Easement, restore the surface of the Easement and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable to the condition they were in immediately before commencement of the work or entry by the City. This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

Section 3. This Agreement shall be recorded in the office of the Pierce County

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

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

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

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

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

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

ACCEPTANCE:

OWNERS

CITY OF GIG HARBOR

By: *Senjia Lane*
Its _____

By: _____
Its Mayor

By: *Mlanda Kovic*
Its _____

Attest:
By: _____
City Clerk

By: *Timothy Blum*
Its _____

Approved as to form:

By: *Imelda Lin Chung*
Its _____

By: _____
City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.
)

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

DATED: 3-22-2000



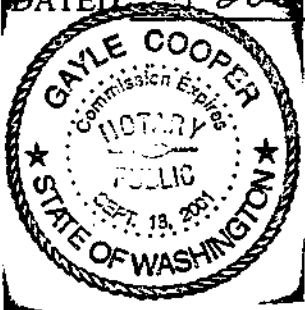
Gayle Cooper
(Signature)
Wash
NOTARY PUBLIC, State of Washington,
residing at: Pierce Co
My appointment expires: 9-18-2001

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.
)

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

DATED: 3-22-2000



Gayle Cooper
(Signature)
WA.
NOTARY PUBLIC, State of Washington,
residing at: Pierce Co
My appointment expires: 9-18-2001

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.

I certify that I know or have satisfactory evidence that Irene Loi-Lin Chung the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as _____ of _____ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 3-22-2000



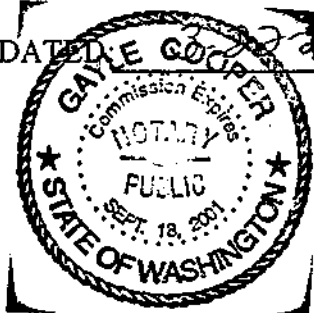
Gayle Cooper
(Signature)
WA
NOTARY PUBLIC, State of Washington,
residing at: Pierce Co
My appointment expires: 9-18-2001

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.

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

DATED: 3-22-2000



Gayle Cooper
(Signature)
WA
NOTARY PUBLIC, State of Washington,
residing at: Pierce Co
My appointment expires: 9-18-2001

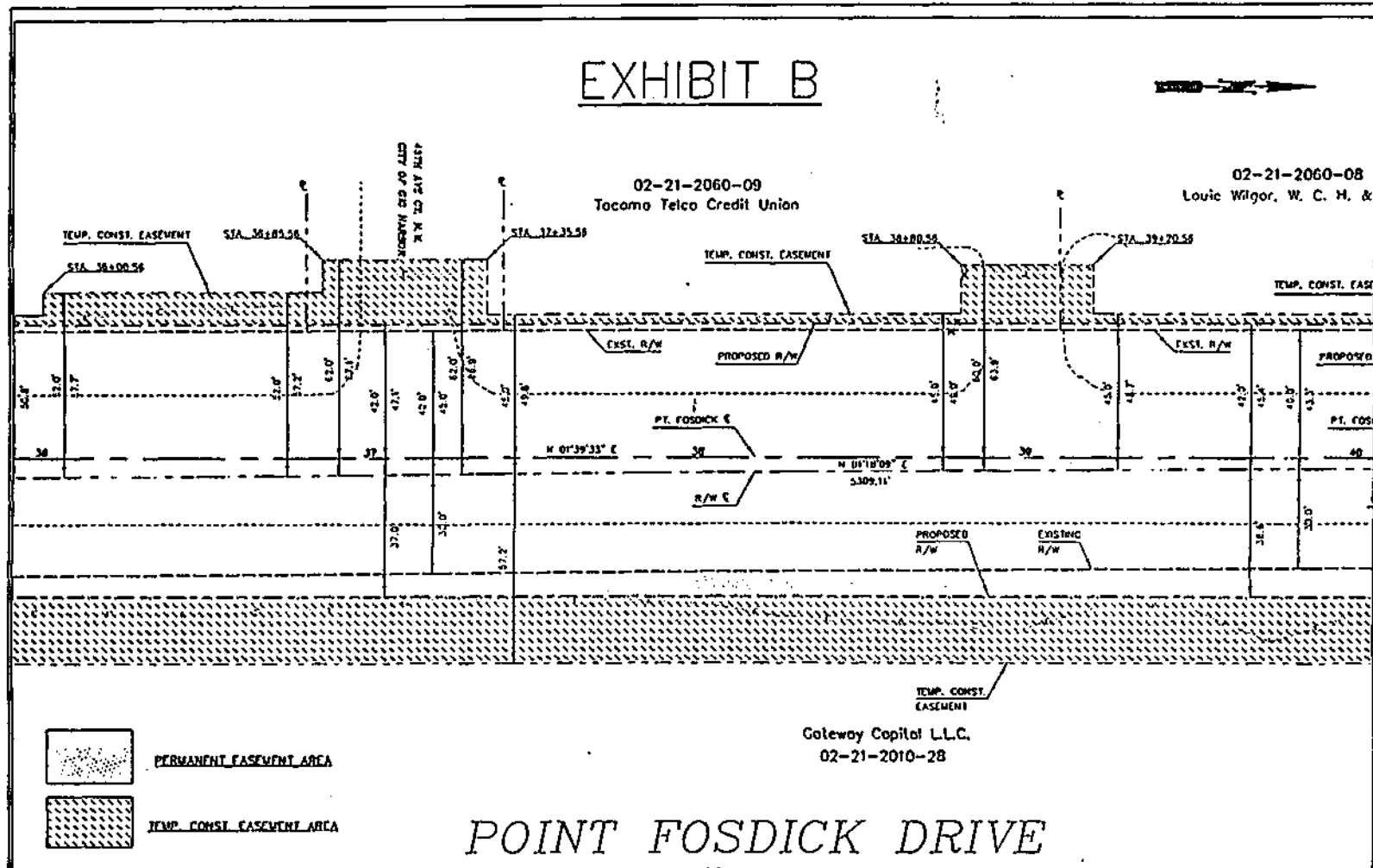
PROPERTY LEGAL DESCRIPTION
EXHIBIT A

Lot 2, as shown on SHORT PLAT NO. 8801060208, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT the South 30 feet thereof.

END OF EXHIBIT A

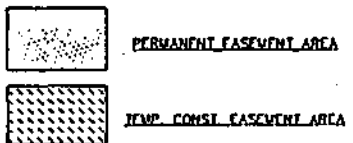
EXHIBIT B



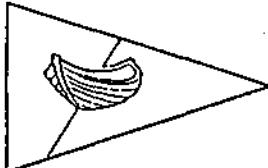
02-21-2060-09
Tocoma Telco Credit Union

02-21-2060-08
Louie Wilgor, W. C. H. &

Gateway Capital L.L.C.
02-21-2010-28



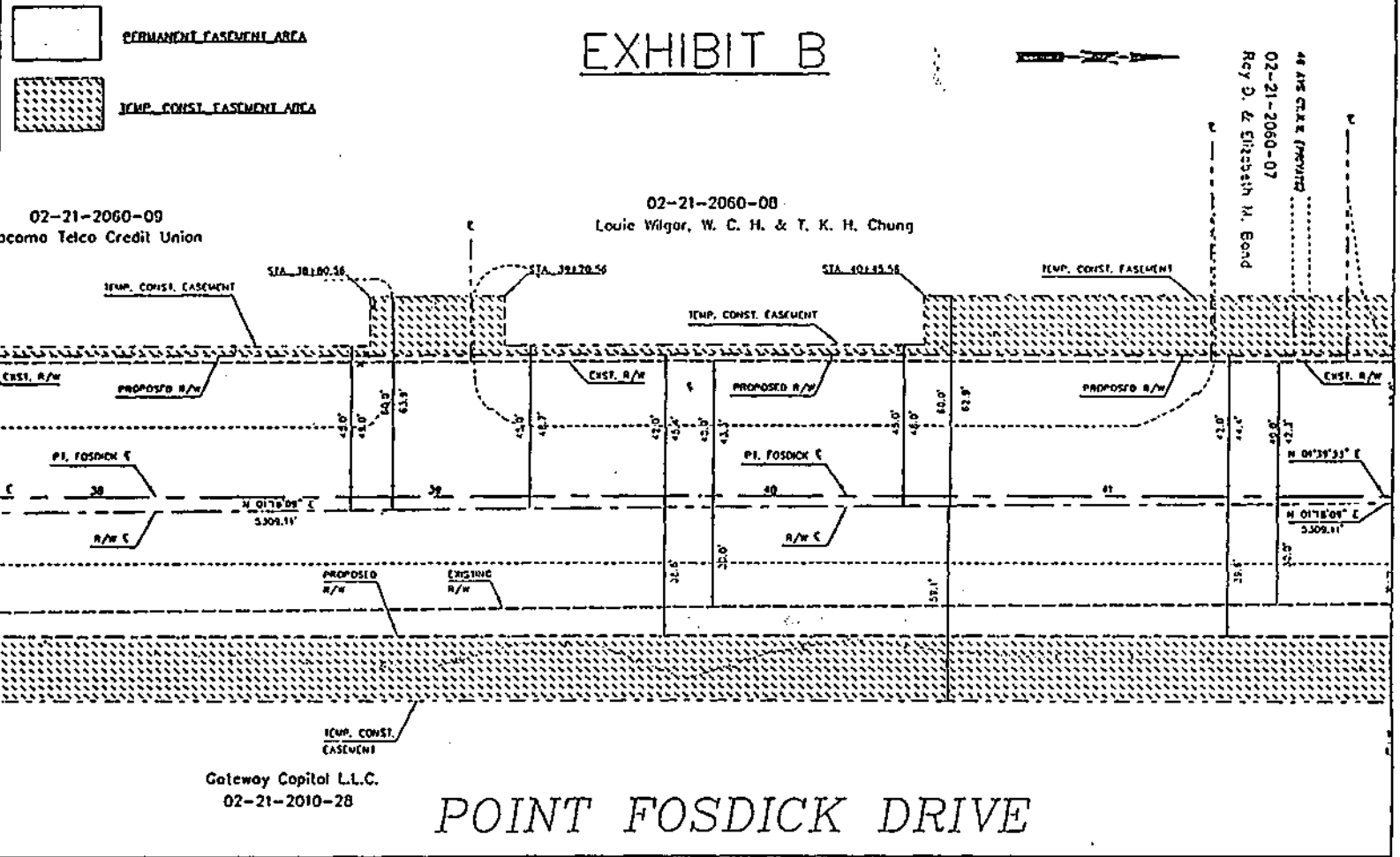
POINT FOSDICK DRIVE



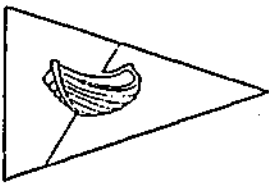
City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS

3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

EXHIBIT B



City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000,
by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal
corporation and ~~OLYMPIC~~ PLAZA SHOPPING CENTER (hereinafter the "Owners"),
whose mailing address is 5312 Pacific Highway East, Fife, Washington 98424, Attn:
Mr. Charles Hogan.

L
HARBOR

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in
the real property commonly known as 5010 Point Fosdick Drive, Gig Harbor,
Washington 98335, (Tax Parcel Number 02-21-1770-35) which is legally described in
Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference
incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the
City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806);
and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to
the City, its successors and assigns, a permanent, nonexclusive right-of-way easement

over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By:  By: _____
Its _____ Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

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

DATED: 3/7/00



[Signature]
(Signature)

NOTARY PUBLIC, State of Washington,
residing at: ~~12-30-02~~ Edgewood
My appointment expires: 12-30-02

PROPERTY LEGAL DESCRIPTION
EXHIBIT A

PARCEL B:

That portion of the Southeast quarter of the Southwest quarter of SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST, of the W.M., in Pierce County, Washington, described as follows:

Commencing at the Southeast corner of the Southwest quarter of said SECTION 17; thence North $88^{\circ}29'17''$ West a distance of 40.00 feet to the Westerly margin of Point Fosdick Road; thence North $02^{\circ}05'50''$ East along said margin a distance of 60.86 feet to the point of beginning; thence continuing North $02^{\circ}05'50''$ East a distance of 581.26 feet; thence leaving said margin North $88^{\circ}47'17''$ West a distance of 199.39 feet; thence South $02^{\circ}04'18''$ West a distance of 492.55 feet; thence South $87^{\circ}49'47''$ East a distance of 154.02 feet; thence South $02^{\circ}04'18''$ West a distance of 85.38 feet; thence South $87^{\circ}49'47''$ East a distance of 45.09 feet to the point of beginning.



TEMP. CONST. EASEMENT AREA

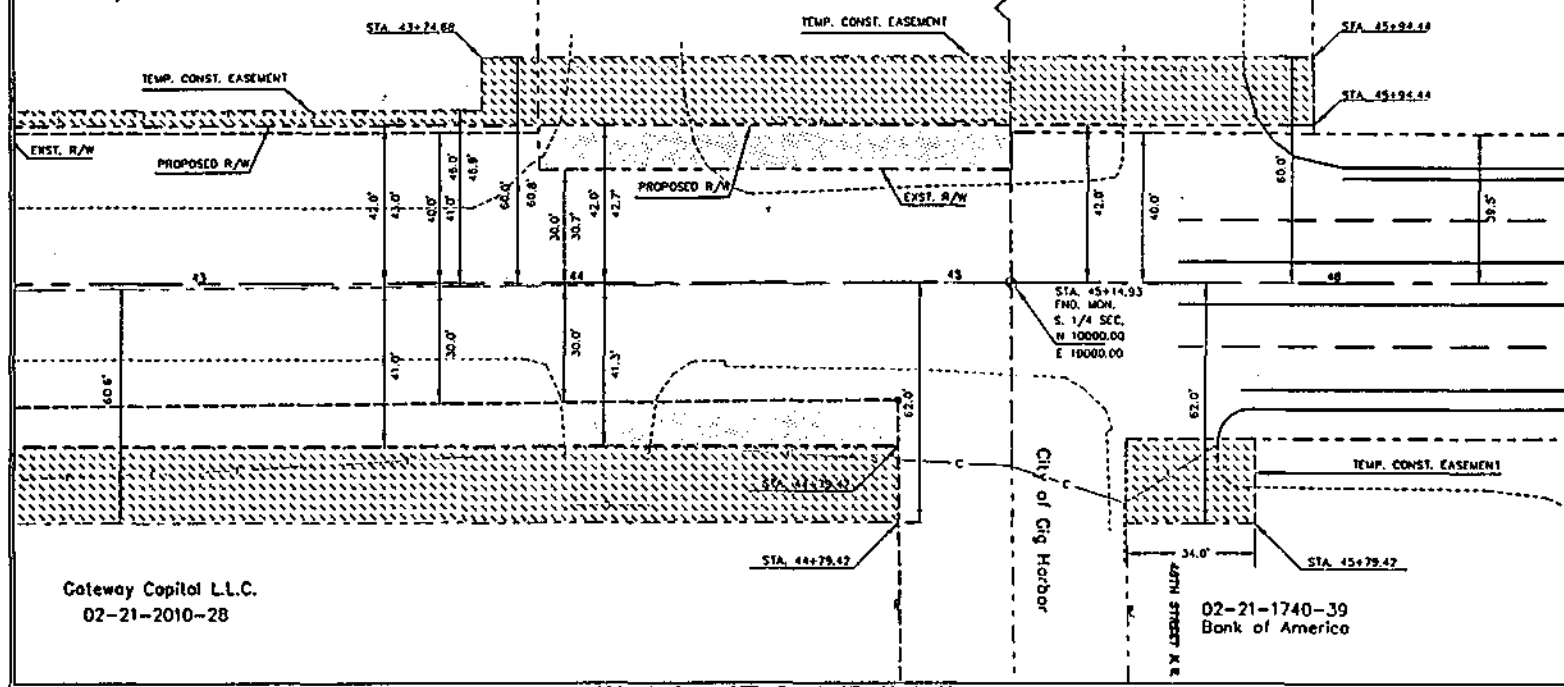
PERMANENT EASEMENT AREA

EXHIBIT B



02-21-2060-04
Kitsap Bank

02-21-1770-35
Charles R. Hogan



Page 7 of 7

Gateway Copitol L.L.C.
02-21-2010-28

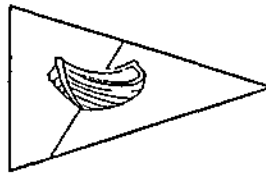
City of Gig Harbor

02-21-1740-39
Bank of America

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and KITSAP BANK (hereinafter the "Owners"), whose mailing address is 619 Bay Street, Port Orchard, Washington 98366, Attn: Mr. Harry Bertelsen.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4714 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-04) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. **Permanent Easement.** The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owners' property as depicted in a map

attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

Section 4. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement

shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By:

James F. Carmichael
As PRESIDENT

By:

Its Mayor

Attest:

By:

City Clerk

Approved as to form:

By:

City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF Kitsap) ss.
)

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

DATED: 2-17-2000



Renae B. Ward

(Signature) Renae B. Ward

NOTARY PUBLIC, State of Washington,
residing at: Port Orchard

My appointment expires: 8-9-2002

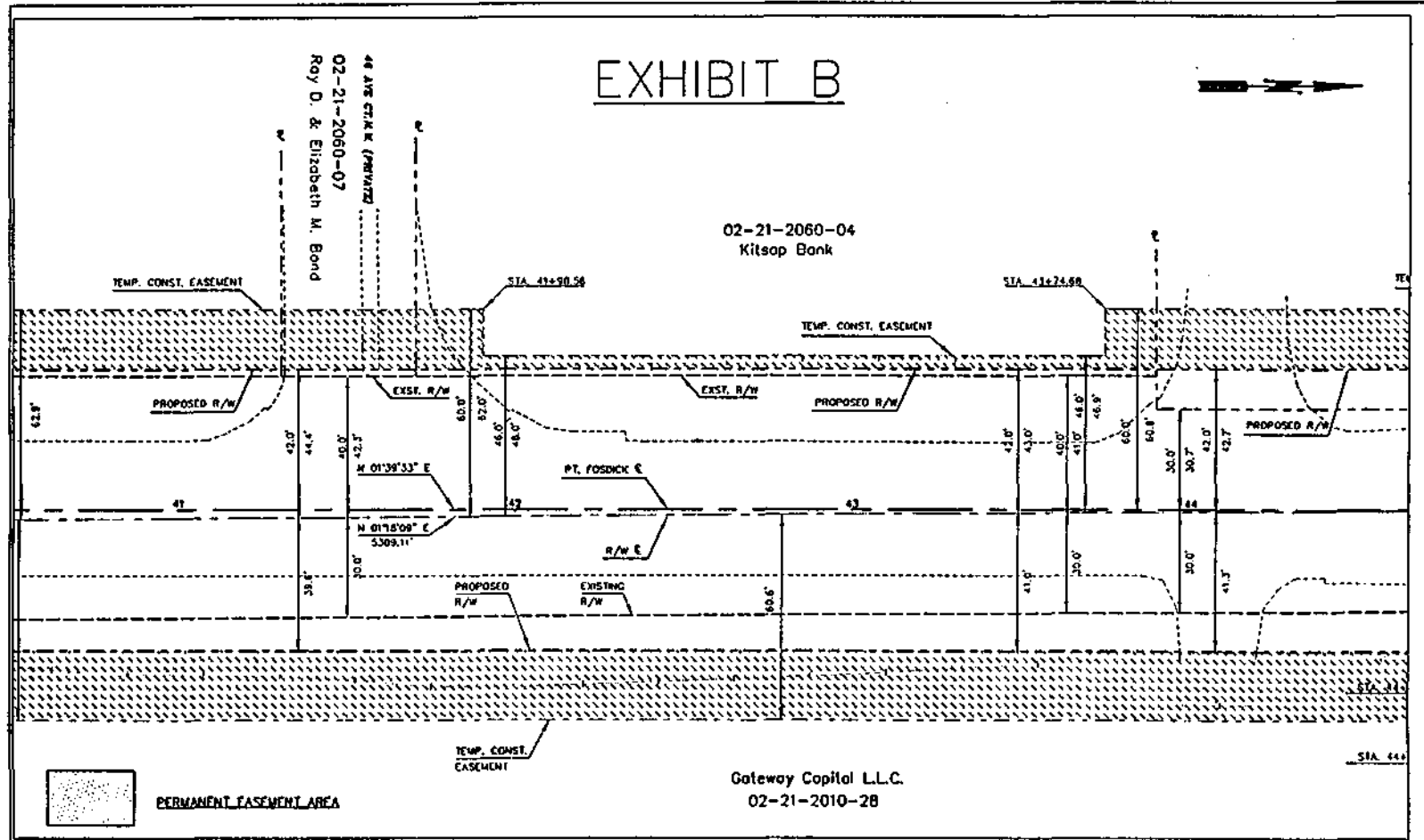
PROPERTY LEGAL DESCRIPTION
EXHIBIT A

EXHIBIT A

Lot 1, as shown on SHORT PLAT No. 8801060208, filed with the Pierce
County Auditor, in Pierce County, Washington.


END OF EXHIBIT A

EXHIBIT B



Page 7 of 7

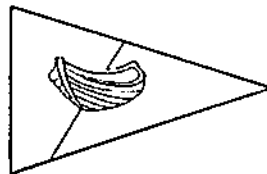
 PERMANENT EASEMENT AREA

 TEMP. CONST. EASEMENT AREA

Gateway Copital L.L.C.
02-21-2010-28

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

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

THIS AGREEMENT is made this ____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and PENINSULA CHRISTIAN FELLOWSHIP (hereinafter the "Owners"), whose mailing address is 3114 45th Street Court NW, Washington 98335, Attn: Pastor Dennis Fuqua.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 3114 45th Street Court, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-03) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement

over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By: _____
Its _____

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF _____)

) ss.
)

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

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____

My appointment expires: _____

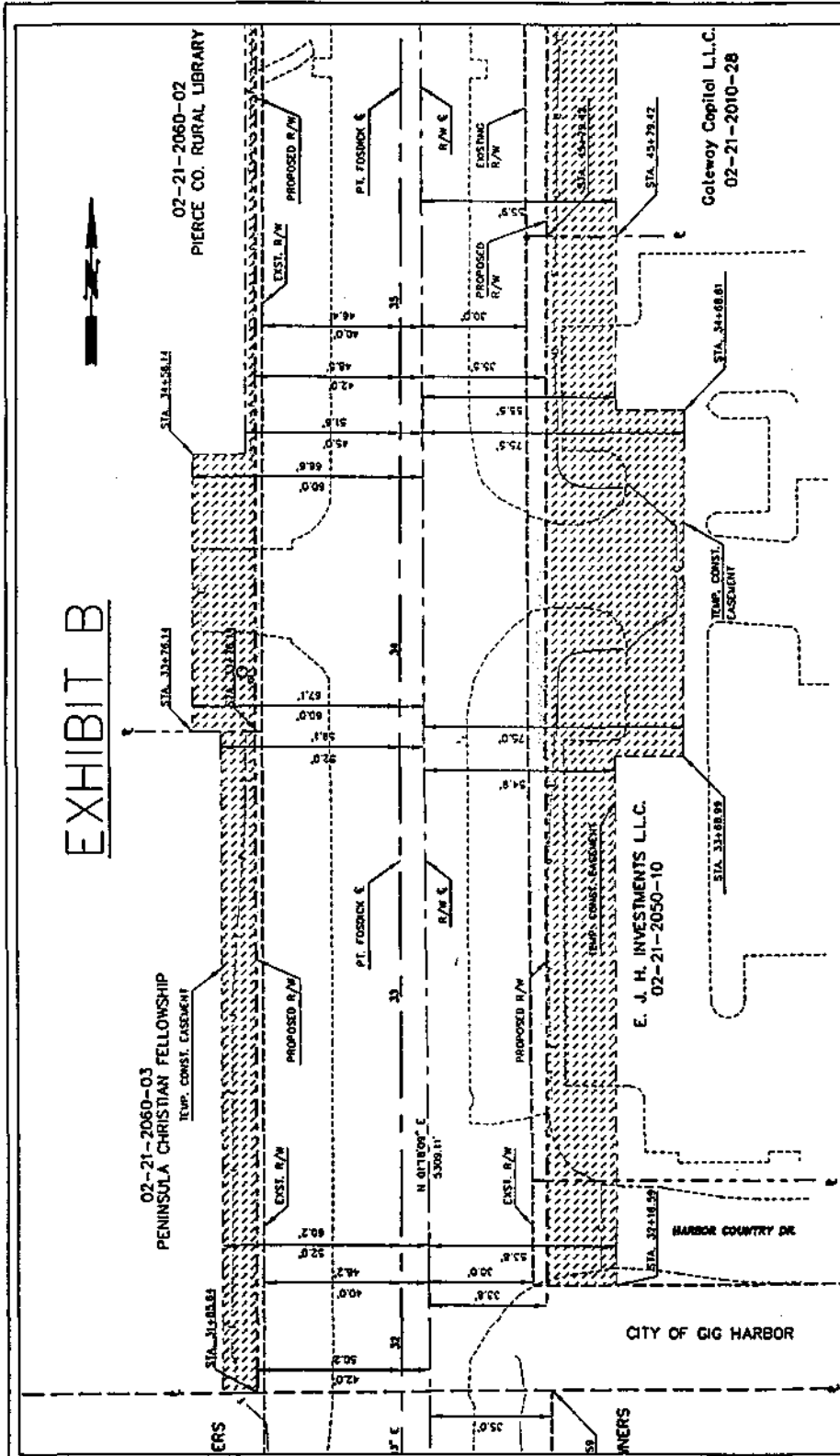
EXHIBIT A

Lot 1, as shown on SHORT PLAT NO. 8904140056, which is an amendment of Short Plat No. 8604230110, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT that portion conveyed to Pierce County for right of way for 45th St. Ct. N.W. by Deed recorded under Auditor's No. 9609060130.

END OF EXHIBIT A

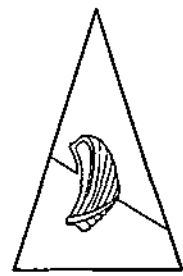
EXHIBIT B



TEMP. CONST. EASEMENT AREA
 PERM. EASEMENT AREA

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."
 DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
 Gig Harbor, Wa 98335
 (253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this ____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and PENINSULA LIBRARY (hereinafter the "Owners"), whose mailing address is Pierce County Library System, 3005 112th Street East, Tacoma, Washington 98466, Attn: Mr. Larry McCarty, Facilities Manager.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4424 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-02) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement

over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By: Shelton R. Struck
Its Chair, Board of Trustees

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

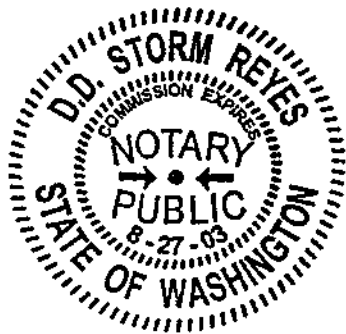
My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.

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

DATED: 3-16-2000



D.D. Storm Reyes
(Signature)
D.D. Storm Reyes
NOTARY PUBLIC, State of Washington,
residing at: Pierce County
My appointment expires: 8-27-03

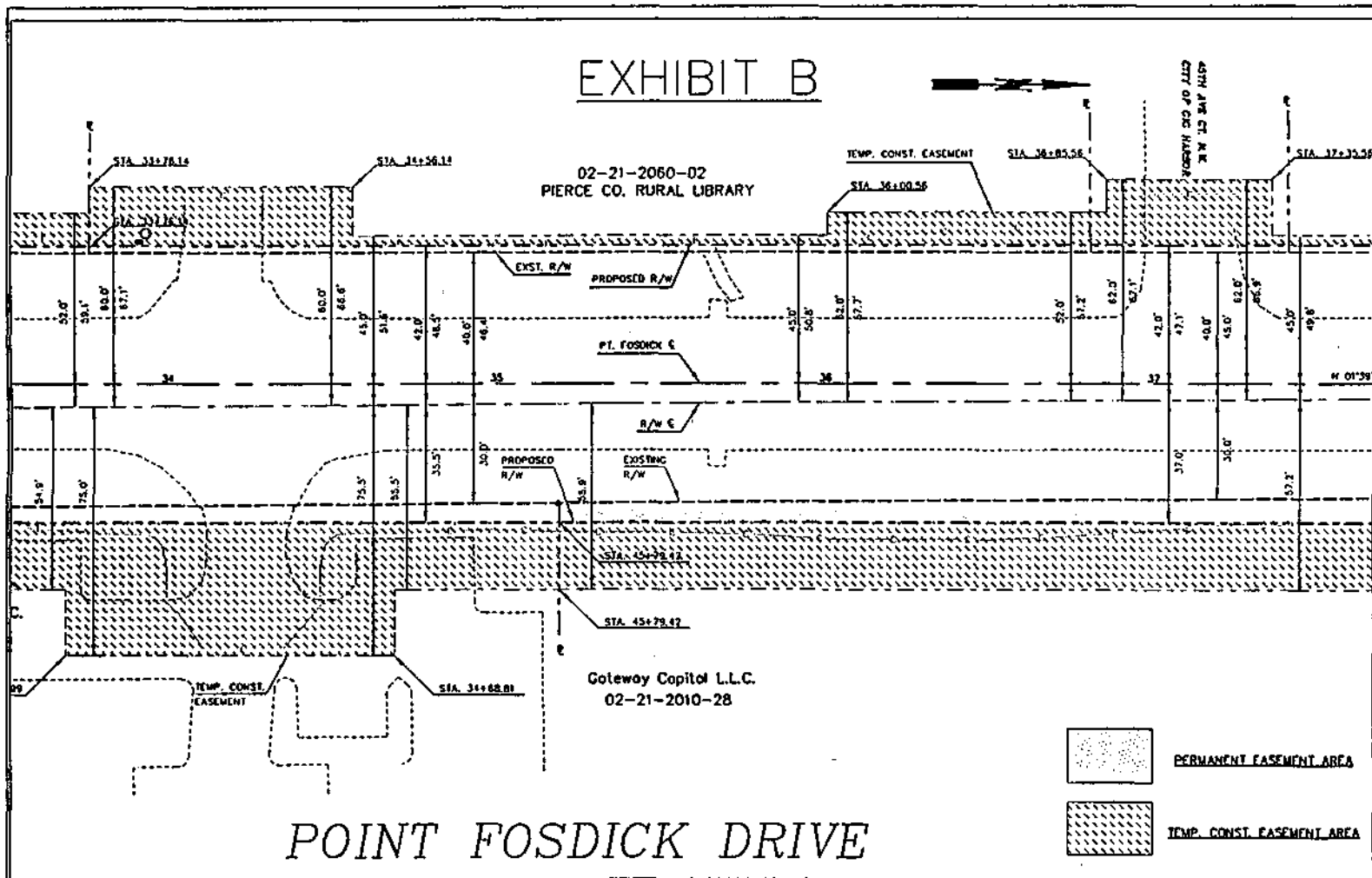
PROPERTY LEGAL DESCRIPTION
EXHIBIT A

Lot 1, as shown on SHORT PLAT NO. 8904140056, which is an amendment of Short Plat No. 8604230110, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT that portion conveyed to Pierce County for right of way for 45th St. Ct. N.W. by Deed recorded under Auditor's No. 9609060130.

END OF EXHIBIT A

EXHIBIT B

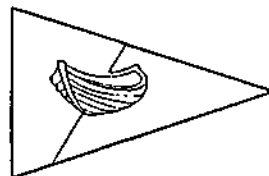


Page 7 of 7

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this ____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and PENINSULA REGIONAL MEDICAL CENTER (hereinafter the "Owners"), whose mailing address is Olympic Pharmacy, 4700 Point Fosdick Drive, Gig Harbor, Washington 98335, Attn: Mr. Ray Bond.

R E C I T A L S

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4700 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-07) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

T E R M S

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement

over, in, along, across, under and upon the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By: RAD Bell
Its Managing Partner

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)

COUNTY OF PIERCE)

) 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 he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,

residing at: _____

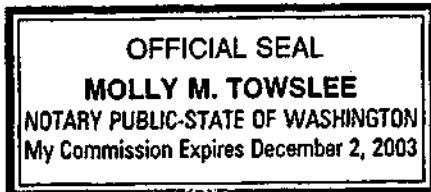
My appointment expires: _____

STATE OF WASHINGTON)

COUNTY OF Pierce) ss.
)

I certify that I know or have satisfactory evidence that Ray D. Bond is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as Managing Partner of 4700 PT Fosdick to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 2/17/00



Molly M Towslee
(Signature)
Molly M. Towslee
NOTARY PUBLIC, State of Washington,
residing at: Gig Harbor
My appointment expires: 12/2/03

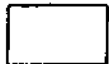
PROPERTY LEGAL DESCRIPTION
EXHIBIT A

Lot 4, as shown on SHORT PLAT NO. 8801060208, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT that portion conveyed to Pierce County for right of way for 45th Street Ct. N.W. by Deed recorded under Auditor's No. 9609060130.

END OF EXHIBIT A

EXHIBIT B



PERMANENT EASEMENT AREA

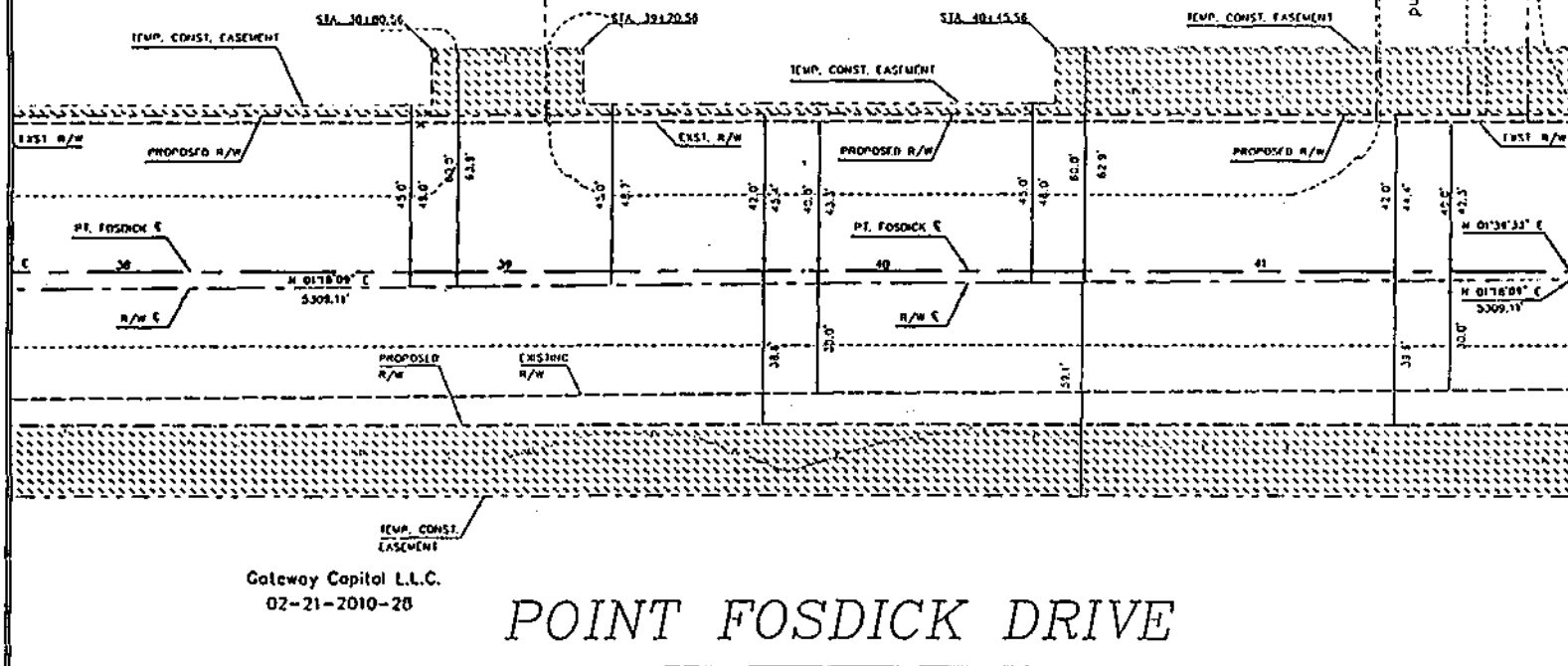


TEMP. CONST. EASEMENT AREA

02-21-2060-09
bcorno Telco Credit Union

02-21-2060-08
Louis Wilgor, W. C. H. & T. K. H. Chung

44 AIR CTR. R. (PREVAIL)
02-21-2060-07
Roy D. & Elizabeth M. Bond

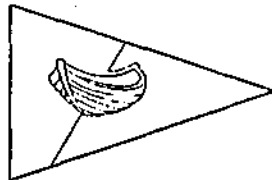


Gateway Capitol L.L.C.
02-21-2010-28

POINT FOSDICK DRIVE

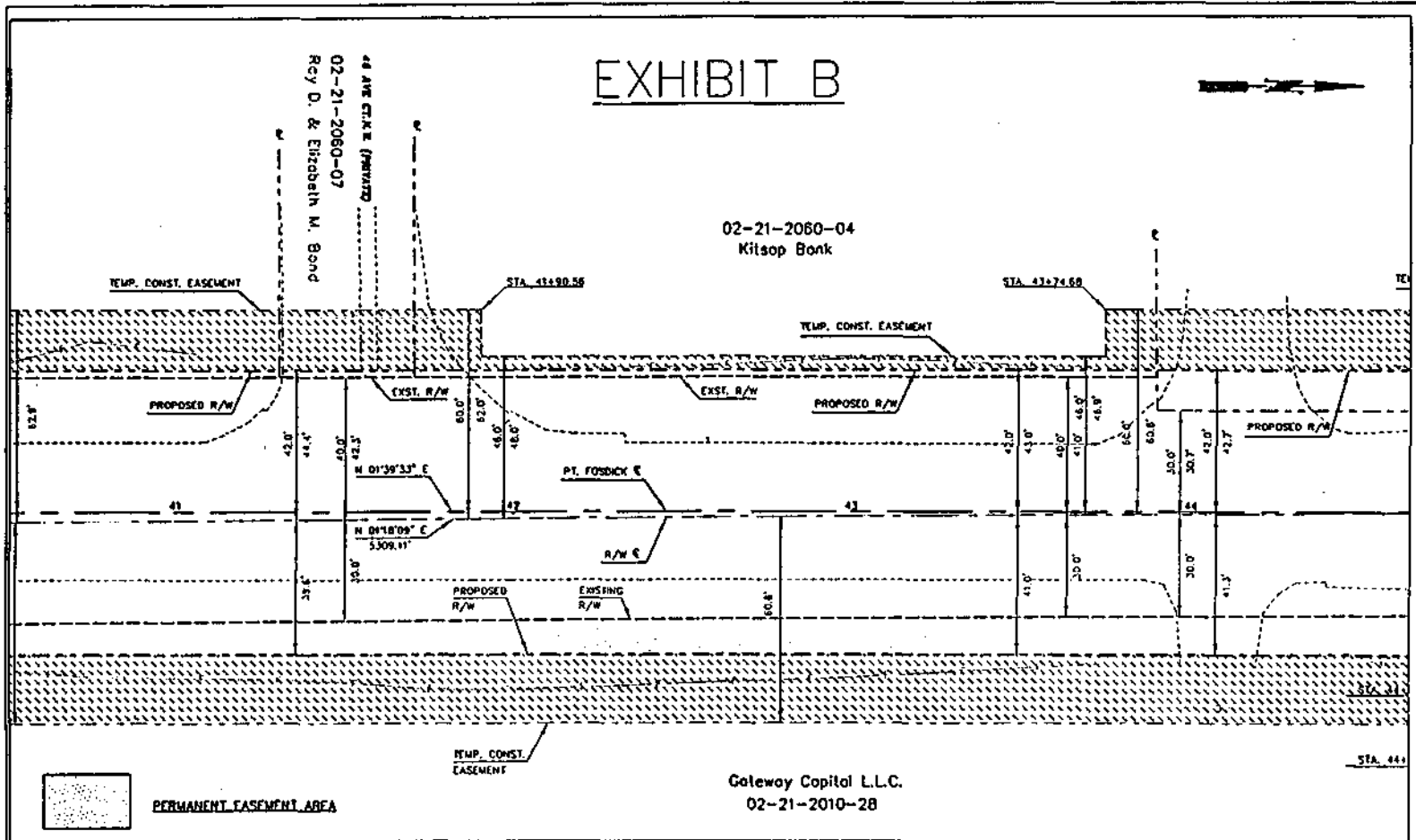
City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

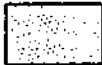
EXHIBIT B



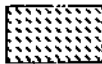
48 AVE CTR. R. (PRIVATE)
02-21-2060-07
Roy D. & Elizabeth M. Bond

02-21-2060-04
Kitsop Bank

Gateway Capital L.L.C.
02-21-2010-28



PERMANENT EASEMENT AREA

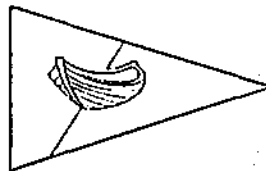


TEMP. CONST. EASEMENT AREA

POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

**AGREEMENT FOR DEDICATION OF PERMANENT AND
TEMPORARY RIGHT-OF-WAY EASEMENT
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the City of Gig Harbor (hereinafter the "City"), a Washington municipal corporation and TELECO COMMUNITY CREDIT UNION (hereinafter the "Owners"), whose mailing address is PO Box 1595, Tacoma, Washington 98401, Attn: Ms. Denise Reagan.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as 4521 Point Fosdick Drive, Gig Harbor, Washington 98335, (Tax Parcel Number 02-21-2060-09) which is legally described in Exhibit "A", (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

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

WHEREAS, in exchange for the Owners' dedication of the Right-of-Way, the City agrees to construct the Point Fosdick Roadway Improvement Project (CSP 9806); and

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

TERMS

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

A. Grant.

1. Permanent Easement. The Owners hereby convey and grant to the City, its successors and assigns, a permanent, nonexclusive right-of-way easement over, in, along, across, under and upon the Owners' property as depicted in a map

attached hereto and incorporated herein as Exhibit "B". Together with the nonexclusive right of ingress to and egress from the Roadway over the Owners' property, and for the reconstruction, operation, repair and maintenance of same. This permanent easement shall commence on the date of execution of this Agreement.

2. Temporary Construction Easement. In addition to the permanent easement described herein, the Owners hereby grant a temporary nonexclusive easement for the purpose necessarily and reasonably related to the construction of the Point Fosdick Roadway Improvement Project across, along, in, upon, under and over the Owners' property as depicted in a map attached hereto and incorporated herein as Exhibit "B". This temporary construction easement shall commence on the date of execution of this Agreement, and shall terminate on the date the roadway improvements are accepted by the City Council.

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

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

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

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

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

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

Section 4. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement

shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

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

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

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

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

ACCEPTANCE:

Owner

The City of Gig Harbor

By: Richard C. Brandema
Its PRESIDENT & CEO

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

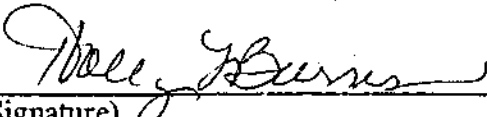
STATE OF WASHINGTON)

COUNTY OF Pierce)

) ss.
)

I certify that I know or have satisfactory evidence that Richard C. Brandsma is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as Pres. & CEO of Telco Community CU to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: March 10, 2000


(Signature)
Holly L. Burns
NOTARY PUBLIC, State of Washington,
residing at: Tacoma
My appointment expires: 07/19/00

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that he/she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____

My appointment expires: _____

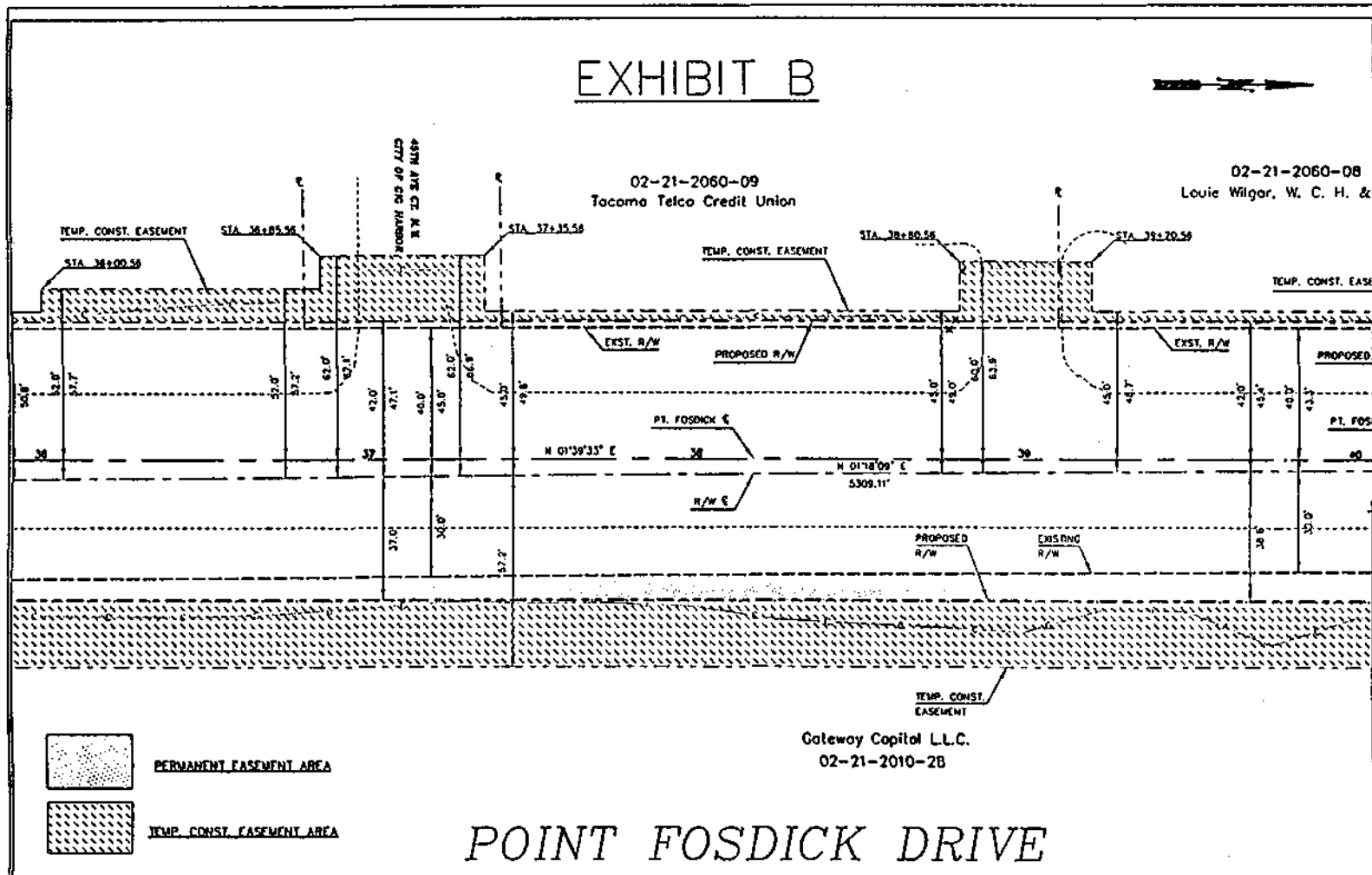
EXHIBIT A

Lot 3 and the South 30 feet of Lot 2, as shown on SHORT PLAT NO. 8801060208, filed with the Pierce County Auditor, in Pierce County, Washington.

EXCEPT that portion conveyed to Pierce County for right-a-way for 45th St. Ct. N.W. by Deed Recorded under Auditors No. 96090601301.

END OF EXHIBIT A

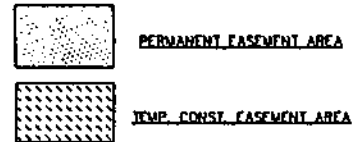
EXHIBIT B



02-21-2060-09
Tacoma Telco Credit Union

02-21-2060-08
Louie Wilgar, W. C. H. &

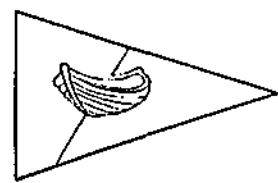
Gateway Capital L.L.C.
02-21-2010-28



POINT FOSDICK DRIVE

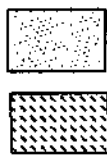
City of Gig Harbor. The "Maritime City."

DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145

EXHIBIT B



PERMANENT EASEMENT AREA

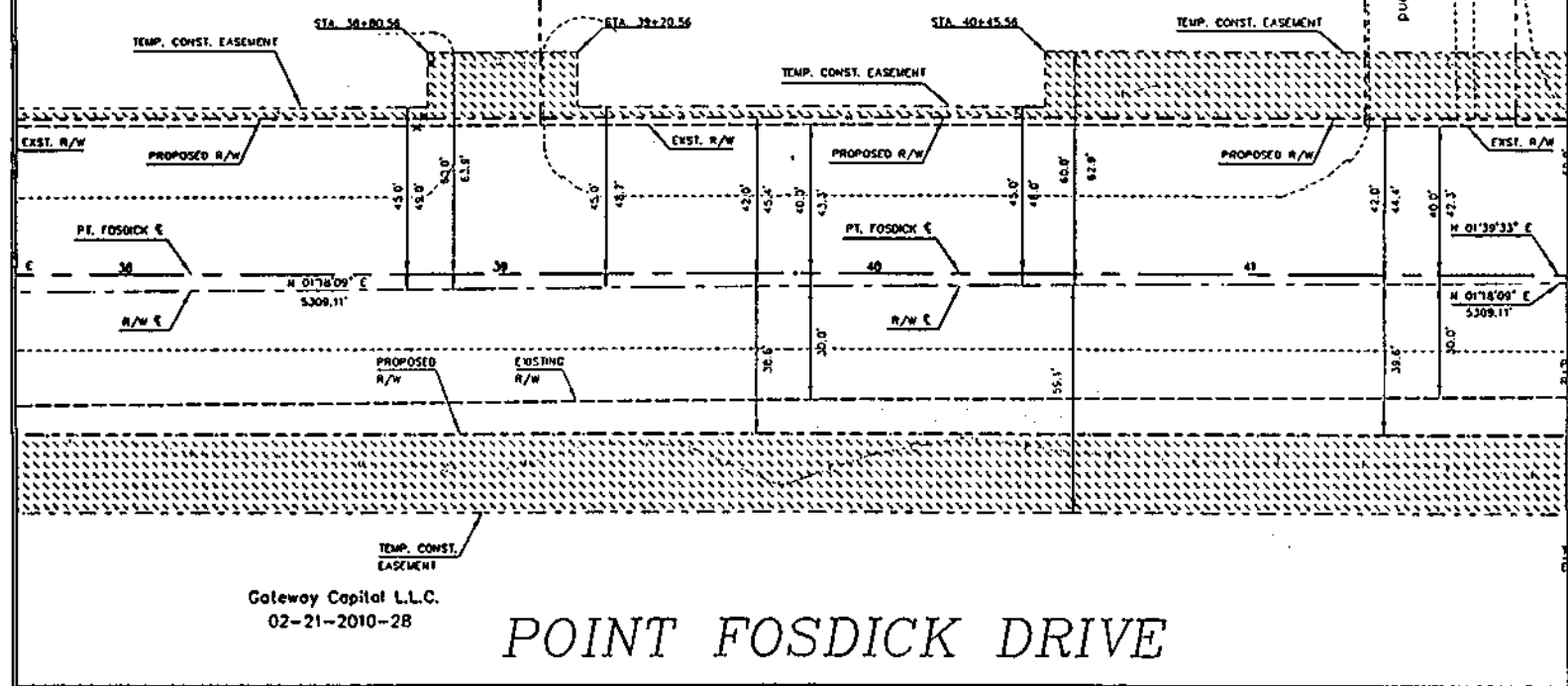
TEMP. CONST. EASEMENT AREA



02-21-2060-09
come Telco Credit Union

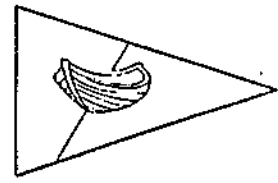
02-21-2060-08
Louie Wilgor, W. C. H. & T. K. H. Chung

48 ARE CTR. (PRIVATE)
02-21-2060-07
Roy D. & Elizabeth M. Bond



POINT FOSDICK DRIVE

City of Gig Harbor. The "Maritime City."
DEPARTMENT OF PUBLIC WORKS



3105 Judson Street
Gig Harbor, Wa 98335
(253) 851-8145



RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
 License Division - 3000 Pacific, P.O. Box 43075
 Olympia, WA 98504-3075
 (360) 664-1600

RECEIVED

TO: CITY OF GIG HARBOR

MAR 24 2000

DATE: 3/22/00

RE: NEW APPLICATION

CITY OF GIG HARBOR

License: 073240 - 2F County: 27
 Tradename: OLD HARBOR SALOON
 Loc Addr: 5109 POINT FOSDICK DR NW
 GIG HARBOR WA 98335-1716

APPLICANTS:
 THE OLD HARBOR SALOON, L.L.C.

Mail Addr: 5109 PT FOSDICK DR NW
 GIG HARBOR WA 98335-1716

KESLING, PETER R
 1944-01-11 532-40-5898
 KESLING, PATRICIA ANN
 (Spouse) 1944-10-06 532-44-0990
 DE GALAN, JAMES
 1960-12-03 531-78-3253
 POWELL, ERIC RICHARD G
 1951-08-18 570-86-9678

Phone No.: 253-566-3698 PAT FERGUSON CONSULTING

Privileges Applied For:
 TAVERN - BEER/WINE

As required by RCW 66.24.010(8), you are notified that application has been made to the Washington State Liquor Control Board for a license to conduct business. If return of this notice is not received in this office within 20 DAYS from the date above, it will be assumed that you have no objection to the issuance of the license. If additional time is required you must submit a written request for an extension of up to 20 days. An extension of more than 20 days will be approved only under extraordinary circumstances.

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Do you approve of applicant ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? | <input type="checkbox"/> | <input type="checkbox"/> |

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: COURT CONSOLIDATION
DATE: MARCH 21, 2000

INFORMATION/BACKGROUND

Court consolidation is an issue that arose in the late 1980s, not many years after the District Court and Municipal Court became separate entities. In the early 1980s, the two courts operated out of city chambers and had done so for years. In the early '80s, however, the District Court moved to the small office building near the Narrows Bridge (now in decay), located immediately to the right of the bridge off the harbor-bound lane. Proximity was an issue for the City of Gig Harbor at this time, as were DWI costs, given the sentencing guidelines of the time. Interestingly, cost and proximity are apparently always the chief motivating factors for discussions about court structure. This issue has refused to go away over time - throughout two city administrations - because the District Court moved back to an in-city location during May of 1987 and because cost/benefit analysis reveals the obvious efficiencies of consolidating court function.

POLICY CONSIDERATIONS

The process for rejoining the two local courts on to one site, forming the proposed Municipal Division of the District Court, will take time to process - perhaps a year. This should allow adequate time for court staff to adjust to the anticipated change. Should some court employees find suitable employment before the court dissolves, the court would be temporarily staffed until the transition. There is reason to expect that career development issues might result in change to court personnel even with maintenance of the status quo. The discussion at hand would not be causative. This issue has been on and off the table since the late '80s.

The draft interlocal agreement is again attached for your review. This interlocal will be subject to review by the county's Redistricting Committee, and then will return to Council for possible approval. Carol Morris will discuss the redistricting process with the City Council as it develops.

FISCAL CONSIDERATIONS

Delaying this decision may affect the design timeline of the City of Gig Harbor Civic Center. Burr, Lawrence, Rising & Bates has been selected to develop the design of the facility. In order to facilitate the rigorous timeline for design, a contract for architectural services is on this agenda. The cost of retaining the Municipal Court was previously articulated in the Rodenbach memo.

RECOMMENDATION

Staff recommends that Council direct staff to proceed to initiate the process to form a Municipal Division of District Court.

Then and Now

Formation of a Municipal Division of the District Court

Consolidation criticisms 1996 (non-monetary/Judge Paja 1996)

No mayoral control over the judicial officer every four years.

No DAC attorney present during arraignment.

No control over prosecution.

Repeal of city criminal code of special interest.

No prosecution of city civil code.

No control over location of court.

No control over probation department or over drug/alcohol, domestic violence, anger management, or mental health treatment.

Fewer citizens using Gig Harbor City Hall.

No direct access to Court and to City Prosecutor.

City will be a "guinea pig." No other examples in Pierce County.

County will be responsible for standards of performance.

City loses input into jail budget.

Loss of community service to non-profit agencies.

Loss of communication between police and court.

Municipal Div. proposal 2000

Ability after three years to hire own personnel, including the judicial officer.

DAC is available at the District Court for arraignment.

May hire prosecutor.

No repeal of special ordinances will be necessary.

City may arrange to prosecute.

Most office space is within the city.

Unchanged, although both courts utilize the same types of programs. District Court personnel related to these areas are more highly trained.

Municipal Division capable of hiring parochial employees.

Edgewood, University Place, Lakewood as precedents.

Ability after three years to hire own personnel, including the judicial officer.

See above.

Supervised and controlled community service.

Ability after three years to hire own personnel, including the judicial officer.

EFFECTS ON CITY DEPARTMENTS
(CONTRIBUTED BY EACH DEPARTMENT)

PLANNING AND BUILDING DEPARTMENT

The typical enforcement process used by Planning and Building is a civil penalty process which does not require action by the City of Gig Harbor Municipal Court.

The only code that is enforced by this department as a criminal misdemeanor is the enforcement of the Uniform Fire Code. If after repeated efforts to resolve a violation the defendant has not made the necessary correction(s) a citation is issued. This process requires the support of a prosecuting attorney. The District Court would provide a prosecuting attorney for the enforcement of violations of the Uniform Fire Code that has been adopted by the State of Washington. When Planning and Building is required to issue a citation for a violation to Sections of the Uniform Fire Code that are amendments to the code that have been adopted by the City of Gig Harbor, a special prosecuting attorney would need to be employed by the City of Gig Harbor.

In respect to land use violations, if there is a need for criminal prosecution, the complaint or lawsuit is filed in Pierce County Superior Court.

Since the revision of the Gig Harbor Municipal Code, completed last July, requiring the enforcement of the Uniform Fire Code as a criminal misdemeanor, this department has issued two citations (one in September and one in December of 1999). Neither violation related to an amendment to the Uniform Fire Code and, therefore, could be prosecuted by a Pierce County Prosecutor. Only one land use violation has gone to municipal court and that was under a code recitation that has since been amended.

POLICE DEPARTMENT

Forming a Municipal Division has few impacts to the Police Department, short of the county court just refusing to provide service or prosecute.

Prosecution of specific city ordinances. The county prosecutor cannot prosecute any city ordinances. A cure is to appoint any county Deputy Prosecuting Attorney as a city prosecutor by contract. That would be one way of resolving the concern.

Transport/detention. The department currently transports in-custody persons for court; this procedure would not change with consolidation. Of minor concern is the fact that we would need to take in-custodies to the District Court and hold them there until they are done. Currently, the officer can leave in-custody persons in a holding cell and still be available, since we have others in the station to watch them. I think this would be an inconvenience and would cost us a few man-hours per year. Not what I consider significant, but worth mentioning.

Level of service. The county might decide to give us bad/limited/insufficient service. They may decide to not prosecute our cases when they get busy. While this is a possibility, this is not likely to occur. We could have conflicts where we wanted a case to go forward and the prosecutor thought it was legally insufficient to proceed. In our current situation, when Gary Johnson brings

this type of issue to me I can still override him, pay the cost and go forward with the case. I'm not sure we could do that with the county. I'm also not sure that the city would want to take my legal opinion over an attorney regarding pursuing a case anyway. Of course, under Municipal Division as proposed, the city could hire its own prosecutor, if it was ever necessary.

Security. It appears that within a few years the court will need to provide security on a regular basis. This is handled in a variety of ways by a variety of courts. Some hire "blue jackets" - private security firms to man the entries and magnetometers. Others hire off duty officers from their jurisdiction. This obviously would add to the overtime budget for the Police Department. While it may be popular with the troops, it needs to be considered. Court security provision is a matter of when, not if.

PUBLIC WORKS

Throughout the GHMC there are various penalties associated with violations within the public right-of-way as well as a future ordinance for Stormwater that will impose a civil penalty of \$50 dollars per day. Each of the violations, which are defined as Civil, will have no effect on the department as a result of the court consolidation; however, a second violation of the same code would then be considered a criminal penalty and would be required to go before the District Court. If the City enters into an agreement with Pierce County, it is my understanding that the County will not prosecute cases that are not state law. This will require the City to hire a prosecutor for these cases. It should be pointed out that to City Attorney Carol Morris' recollection (seven years with Gig Harbor) no criminal cases of this nature have been in the Municipal Court.

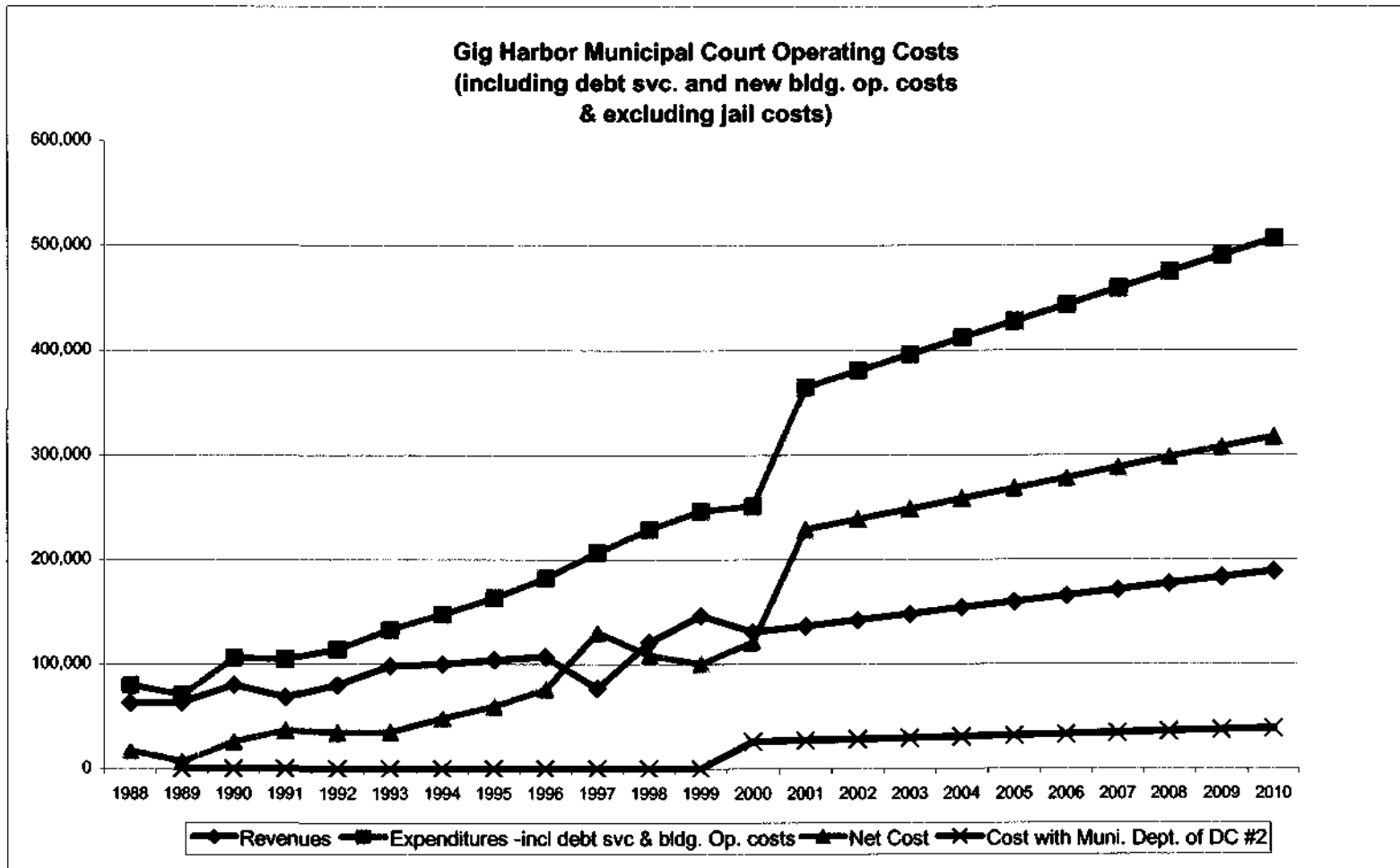
It should be noted that the GHMC has many different types of penalties for various code infractions. If the court is consolidated with Pierce County, then the city's existing code must be reviewed and revised to reflect a uniform penalty system which specifies all violations as civil penalties with repeat offenses as criminal. This will assure that the majority of such infractions, however, infrequent, are handled through the City Attorney and not the Pierce County District Court system.

FINANCE

The only impact of consolidation would be a slight reduction in Finance Department workload because the Finance Department currently reconciles the monthly bail account bank statement and reviews the Municipal Court's monthly cash receipting reports.

CITY CLERK

The only fines imposed by the City Clerk are for delinquent business licenses. A resolution allowing such to be turned over to collections has adequately addressed this issue. From an office management point of view, court consolidation would free up the Council Chambers for meeting space, minimize the disruption caused by angry clients, minimize bathroom defacement, and reduce the number unsupervised children on court days.



Annual new facility operating expense and debt service:

According to the June 1999 Gig Harbor Municipal Facilities Plan:

Annual operating costs are estimated at \$13,000.

Debt Service on the new court facility is estimated to be \$85,000.

(The sharp increase in expenditures projected in 2001 reflect the court's share of costs of the new facility.)

Forecast Method:

Forecast values were obtained using linear regression (MS Excel forecast function).

Draft

**INTERLOCAL AGREEMENT BETWEEN
PIERCE COUNTY AND CITY OF GIG HARBOR
RELATING TO DISTRICT COURT, PROSECUTION
AND ASSIGNED COUNSEL SERVICES**

THIS INTERLOCAL AGREEMENT is entered into this day by and between Pierce County, a political subdivision of the State of Washington (herein referred to as "COUNTY") and the City of Gig Harbor, a municipal corporation of the State of Washington (herein referred to as "CITY").

WHEREAS, the CITY currently operates a municipal court to process municipal code violations occurring within the City limits; and

WHEREAS, the COUNTY operates Pierce County District Court No. 2 which is a full time district court that serves all of Pierce County lying west of the Narrows Bridge and to the Kitsap and Mason County lines; and

WHEREAS, the CITY has determined that, given the number of cases filed within the CITY and the costs involved with operating a separate municipal court, it is more cost effective to consolidate municipal and district court functions by creating a municipal department of the Pierce County District Court and to enter into an Interlocal Agreement which will document the terms of the consolidation, and

WHEREAS, the CITY has agreed to repeal those portions of its code duplicative of the identical provisions in the Revised Code of Washington (RCW), and

WHEREAS, the CITY and COUNTY have mutually considered anticipated costs of services, as well as anticipated and potential revenues to fund the services, including fines and fees; and

WHEREAS, the parties are authorized to enter into such agreements by virtue of RCW Chapter 39.34;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and the CITY as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to memorialize the

agreement reached between the CITY and the COUNTY regarding the consolidation of municipal and district court resources in the creation of a municipal department of Pierce County District Court. It is the purpose of this agreement that court, prosecution, and assigned counsel services on all violations of the Revised Code of Washington occurring within the CITY's limits, will be provided by Pierce County District Court No. 2. As a condition precedent to this agreement, the City will comply with RCW 3.46.040 to create a Municipal Department of District Court No. 2. This agreement will take effect upon adoption of the redistricting plan by the Pierce County Council.

SECTION 2. COUNTY SERVICES TO BE PROVIDED.

2.1 Pierce County District Court No. 2. Pierce County District Court No. 2 shall provide court services for all violations of the Revised Code of Washington occurring within the CITY's limits. The COUNTY shall provide court services to the CITY at the same level as the COUNTY provides for the same types of cases originating in unincorporated Pierce County served by District Court No. 2.

2.1.1 Municipal Cases. The term "municipal cases" shall include all cases alleging violations of the Gig Harbor Municipal Code (GHMC) as amended in accordance with this agreement, occurring within the CITY and filed with District Court #2.

2.1.2 Municipal Court Services. The term "municipal court services" shall include: the filing, processing, adjudication, penalty enforcement and appeal processing for all traffic infractions filed in District Court No. 2, and the filing, prosecution, adjudication, sentencing, post sentencing and appeal processing for all criminal cases filed in District Court No. 2 and any and all other court functions provided by law as they relate to municipal cases filed by the CITY in District Court No. 2. The COUNTY shall provide all necessary judicial clerical personnel to perform such services in a timely manner as required by law and court rule, and shall also provide probation and domestic violence advocacy services as necessary and appropriate.

- 2.2 District Court Prosecution. The Pierce County Prosecuting Attorney's Office shall provide sufficient personnel to provide prosecution services for criminal traffic and criminal non-traffic, misdemeanor and gross misdemeanor cases filed with District Court No. 2.

All violations of the Revised Code of Washington alleged to have occurred within the limits of the City of Gig Harbor are covered by this Agreement and shall be reviewed, filed and prosecuted by the Office of the Pierce County Prosecutor. The City Attorney may indicate an interest in a particular CITY case or express an opinion about a proposed disposition. The office of the Prosecuting Attorney shall consider such interest or opinion, but shall retain sole discretion to prosecute the case in a manner it deems appropriate.

Cases involving violations of the Municipal Code of the City of Gig Harbor may be prosecuted by the City Attorney.

- 2.3 Assigned Counsel. The Pierce County Department of Assigned Counsel shall assign personnel to provide legal counsel services to persons accused of committing offenses within the municipal boundaries of the CITY in the same manner as it would to persons accused of committing offenses within unincorporated Pierce County. Such services will include, but are not limited to, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by District Court No. 2, and all subsequent proceedings in District Court No. 2 relating to the offense.
- 2.4 Jail Services Governed by Separate Contract. Housing of defendants in-custody at the Pierce County Detention Center on municipal cases and the terms, conditions, and costs related thereto are governed by a separate agreement executed between the CITY and the COUNTY, and will still remain the fiscal responsibility of the CITY.
- 2.5 The COUNTY shall not be responsible for transport of municipal case prisoners.

SECTION 3. CITY RESPONSIBILITY. The CITY shall be responsible for initiating all documentation to implement the termination of the municipal court as described herein, repealing provisions in its criminal code which duplicate those in the Revised Code of Washington, and for transferring its municipal court services to the municipal department of District Court No. 2. The CITY will be responsible for all transport of prisoners to and from any required court appearance.

SECTION 4. DISPOSITION OF REVENUES, FEES, FINES, AND COSTS. In return for and in consideration of the assumption of responsibilities identified herein by the COUNTY, the COUNTY shall retain all fees, costs, fines and penalties imposed on all cases filed in District Court No. 2. The CITY shall not be required to pay a filing fee to the COUNTY for the processing of cases charged under the Revised Code of Washington nor will the CITY be billed separately for prosecution or assigned counsel services in connection with these charges, unless such provisions are included in subsequent amendments to this Interlocal Agreement. In return for these services the CITY shall also pay the COUNTY \$26,000 per year (by June 30 of each year) commencing in 2000. This amount will be increased by the CPI-Seattle urban inflation rate for each succeeding year. For example, the amount to be paid in the year 2001 would be \$26,000 plus the percentage change in the CPI for 2000.

SECTION 5. TERMINATION OF ASSIGNED COUNSEL AGREEMENT. This Interlocal Agreement is intended to supersede and replace the Assigned Counsel Agreement executed in March 1994. No penalty shall accrue to either party as a result of the termination of the Assigned Counsel Agreement.

SECTION 6. DESIGNATION OF LIAISONS AND DISPUTE RESOLUTION. The COUNTY shall designate an employee representative for the various departments that will be providing the services contemplated herein to act as a liaison with the CITY to handle daily administration of this Agreement. The CITY shall also designate one or more liaisons for the various services described herein. Each party shall notify the other in writing of its designated representatives for the various services. COUNTY liaisons shall meet with the CITY liaisons on a regular or on an as-needed basis, whichever the liaisons deem appropriate, to discuss questions and resolve problems regarding the delivery of services and activities to be performed under this Agreement, including but not limited to personnel distribution. Any operational conflict that is not resolved by the liaisons shall be referred to the City Administrator and the Executive Director of Public Safety.

Any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof that cannot be resolved, shall be submitted to non-binding arbitration under chapter 7.04 RCW. The prevailing party in any subsequent litigation shall be entitled to its reasonable attorneys' fees, costs and expenses.

SECTION 7. DURATION. The term of this Interlocal Agreement shall be ten (10) years. The agreement shall commence on January 1, 2000, or as soon thereafter as the redistricting plan is adopted by the Pierce County Council, and terminate at midnight, December 31, 2009. Thereafter, this Agreement shall renew automatically from year to year unless the termination process outlined herein is invoked.

SECTION 8. TERMINATION PROCESS. Neither party may terminate this agreement prior to January 1, 2004. If either party wishes to terminate this agreement on that date or any subsequent date, written notice must be given at least twelve months prior to the proposed date of termination.

SECTION 9. PERIODIC REVIEW AND RENEWAL OF AGREEMENT. Pursuant to RCW 3.50.805, the parties hereto shall meet every 4 years to review the terms of this Agreement, and determine whether any amendments are necessary. If the parties are unable to agree on the terms of renewal or any amendment of existing terms, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceedings, the terms of this Agreement shall remain in effect. The parties shall have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

SECTION 10. INDEMNIFICATION AND DEFENSE. The COUNTY shall defend, indemnify and save harmless the CITY, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY, its officers, employees, or agents associated with the performance of this Agreement. In executing this Agreement, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility which arises in whole or in part from the existence or effect of CITY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such CITY ordinance, rule, regulation, resolution,

custom, policy or practice is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's fees.

The CITY shall defend, indemnify and save harmless the COUNTY, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the acts or omissions of the CITY, its officers, employees or agents associated with the performance of this Agreement. In executing this Agreement, the CITY does not assume liability or responsibility for or in any way release the COUNTY from any liability or responsibility which arises in whole or in part from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the COUNTY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the COUNTY, the CITY, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's fees.

It is further specifically and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this indemnification section shall survive the termination of this Agreement.

SECTION 11. The City and County have negotiated this Agreement pursuant to the principles described in, RCW 39.34.180, and have considered: (a) anticipated costs of services; (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

SECTION 12. NO THIRD-PARTY BENEFICIARY. The COUNTY does not intend by this Agreement to assume any contractual obligations to anyone other than the CITY, and the CITY does not intend by this Agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the CITY do not intend that there be any third-party beneficiary to this Agreement.

SECTION 13. INSURANCE COVERAGE. The parties hereto shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$500,000.00 and a policy limit of no less than \$5,000,000.00 dollars. For purposes of this Agreement the parties acknowledge that the COUNTY is self-insured.

SECTION 14. NON-DISCRIMINATION. The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 15. ASSIGNMENT. Neither the COUNTY nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 16. NOTICE. Any formal notice or communication to be given by the COUNTY to the CITY under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

CITY OF GIG HARBOR
3105 Judson Street
Gig Harbor, Washington 98335

Attention: City Administrator

Any formal notice or communication to be given by the CITY to the COUNTY under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

PIERCE COUNTY
Pierce County Executive's Office
930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100
Attention: Executive Director of Public Safety

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITY or the COUNTY giving notice thereof to the other as herein provided.

SECTION 17. COUNTY AS INDEPENDENT CONTRACTOR. COUNTY is, and shall at all time be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between CITY and COUNTY or any of the COUNTY's agents or employees. The COUNTY shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by COUNTY pursuant to this Agreement.

Nothing in this Agreement shall make any employee of the CITY a COUNTY employee or any employee of the COUNTY a CITY employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded COUNTY or CITY employees by virtue of their employment.

SECTION 18. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 19. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING.

This Interlocal Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

SECTION 20. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 21. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

SECTION 22. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 23. FILING. Copies of this Interlocal Agreement, together with the resolution of the Pierce County Council and the City Council of the City of Gig Harbor, approving and ratifying this Agreement, shall be filed with the Gig Harbor City Clerk, the Pierce County Auditor, and the Secretary of the State of Washington after execution of the Agreement by both parties.

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

GIG HARBOR

PIERCE COUNTY

GRETCHEN WILBERT
Mayor

Date

DOUG SUTHERLAND
Pierce County Executive

Date



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: RAY GILMORE, DIRECTOR, PLANNING AND BUILDING
SUBJECT: SECOND READING OF ORDINANCE (PLANNING COMMISSION
RECOMMENDATIONS); AMENDMENTS TO TITLE 17 GHMC
DATE: MARCH 22, 2000

BACKGROUND/INTRODUCTION

Attached for Council's consideration are five proposed ordinances amending Title 17 of the Gig Harbor Municipal Code. The ordinances were developed by the Planning Commission over a series of public meetings in 1999 and were introduced to Council at a first reading on March 8. The proposed ordinances consist of the following:

- Ordinance A "Vertical zoning" (retail clustering in portions of the DB and WC districts)
- Ordinance B New/revised definitions, Chapter 17.04 (some related to vertical zoning)
- Ordinance C New C-2 (Commercial) District, Chapter 17.41
- Ordinance D Map Rezone – New C-2 district
- Ordinance E Amendments to the C-1 (Commercial) district

POLICY ISSUES

Following the public hearing at the last Council meeting, Council requested that staff address issues respective to uses of C-1 property which involve landscaping material and supplies and rental facilities. Proposed definitions are attached to this report.

The proposed amendments would change use and performance standards in the respective sections of Title 17 of the Gig Harbor Municipal Code.

FISCAL IMPACT

The proposed amendments would not have any fiscal impact respective to city revenues.

RECOMMENDATION

This is the second reading of the ordinance. Additional public testimony is not required. If Council so directs that the ordinance be amended to include new language, a public hearing would be required. The public hearing may be conducted by the Council or by the City Planning Commission. If Council wishes to adopt the changes as proposed by the Planning Commission or to not amend the code sections, it may do so at this second reading.

DRAFT
NEW DEFINITIONS

17.04.433.0001 Landscaping Materials and Supplies: "Landscaping materials and supplies" means those materials intended for retail sale, which are used in landscape construction and include materials such as architectural paving units, stonework and ornaments, fencing materials, site furnishings, erosion and drainage materials, non-agricultural irrigation supplies, plant materials, bulk soils amendments not exceeding 30 cubic yards of any one product (including, top soil, bark, sand, compost), and other materials typically used by small commercial landscape companies and individual homeowners. (Bulk materials must be contained in three sided structures and properly screened. Proper care should be taken to avoid composting and other odors.)

17.04.369 Gardening Materials and Supplies: "Gardening materials and supplies" means those materials intended for retail sale to the home gardener and include plant materials, packaged soil amendments, garden tools (hand and small machine tools), residential garden furnishings, gardening books, and similar products for the residential gardener.

17.04.697.0001 Rental Equipment and Supplies: "Rental Equipment and Supplies" means items offered for rent (by the hour, day, or week) for temporary use by individuals and small contractors. These may include banquet items (including chairs, tables, food service equipment, awnings, sound equipment, and lights), hand and power tools (saws, pruning tools, compressors, drills etc), and consumer or commercial mechanized vehicular equipment (including turf care equipment, compact tractors, small commercial skid steers), but not including industrial construction equipment (such as agricultural tractors, crawler dozers and loaders, wheel loaders, back hoes, excavators, scrapers, graders, mid to large size skid steers or other any other equipment that should be operated by an experienced professional operator.)



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: Mayor Wilbert and City Council
FROM: Paul L. Kadzik, Chairman, Planning Commission
SUBJ: Proposed changes to GHMC Chapter 17 Zoning
DATE: February 21, 2000

Dear Mayor and Council;

As you are well aware, the Planning Commission has been working on a number of issues dealing with Title 17 GHMC (zoning). We have held two public hearings and numerous work sessions concerning these issues and are recommending changes in many areas of the code. At this time we are forwarding five ordinances for your consideration. Some of changes that we are recommending are housekeeping items, however there are two items that have significant implications for the future of Gig Harbor and as such have drawn some controversy. We feel it would be helpful to you in your deliberations to have some background and history on the recommendations which we have, not easily, arrived at concerning those two items.

RETAIL CLUSTERING (Ordinance A)

Our recommendations on Retail Clustering (vertical zoning) are contained in **Ordinance A**. They came about as a response to concerns that the Downtown Retail Merchant and Restaurant Association have over the possibility that Gig Harbor's retail core is in jeopardy. Their position is that the city should proactively take measures to preserve that core rather than try to resurrect it after it is gone. Cities such as Tacoma, Bremerton and numerous others bear witness to the difficulty and economic cost of that task. A proposed remedy to this concern is **Retail Clustering** whereby retail and similar pedestrian/tourist oriented uses are encouraged at the street level/street face and other non-pedestrian "destination oriented" uses are encouraged at locations other than the street level/street face.

Allowed uses

In the context of this discussion retail clustering is somewhat of a misnomer. As it pertains to the proposal, retail clustering includes *all the previously permitted uses* in the effected areas *except* three. Allowed (permitted or conditional) uses would be:

**Retail sales,
Banks and Depository
institutions,
Restaurants,
Guest accom-
modations, Residences,
Daycare,**

Commercial recreation

(eg. bowling alleys,
theaters),

Community Centers,

Personal services

(e.g. beauty and
barber shops),

Visitor centers,

Libraries,

And others.

Restricted uses

Those uses that would **still be allowed** (permitted or conditional), but restricted as to location (not at the street level/street face) would be:

Business offices (e.g. medical, dental, legal, accounting, and reality services),

Maintenance and repair services (on-site service and repair of vehicles and equipment),

Private clubs and lodges.

Arguments presented in favor of action

The following were the main arguments that the planning commission considered in favor of the recommendations. During testimony it was stated that:

1. Maintaining a vibrant retail core is a desirable endeavor, and certain business uses encourage that vibrancy better than others.
2. In downtown Gig Harbor retail and related activities are highly dependent on tourists and other casual shoppers who stroll the district browsing, shopping and eating. In order to maintain this activity there needs to be a certain critical mass of retail and related activities clustered in the district. **Business which directly front on the street should therefore be of the type which encourage the casual stroller to continue to explore and patronize the district.** It was noted that stretches of non-pedestrian uses discourage the casual browser from this exploration and thus work against a vibrant retail core.
3. Retail and related types of business rely heavily on street face exposure and in the downtown area the availability of this type of leased space is limited. Non-pedestrian or "destination" type uses on the other hand do not rely as much on this exposure for the majority of their clientele.
4. Compared to other small cities, Gig Harbor has a relatively small downtown core. It would not take much change in the current mix of uses to change the over all feel from one that is primarily retail to one that is primarily office oriented. This argument has even more merit with the recent loss of a significant percentage of potential retail space to the Russell Foundation project.

Arguments presented against action

The Planning commission also looked at arguments against the recommendation. During testimony it was stated that:

1. The problem is perceived rather than real;
2. The proposed solution is exclusionary, restrictive, and preferential and is considered spot zoning. As such it infringes upon individual property owners' rights to maximize the economic return of their property;
3. The market, not the city should determine the best use for a property;
4. Other avenues such as economic incentives should be employed to achieve the desired result;
5. Gig Harbor is a one-story town and therefore the proposal is unrealistic;
6. Additional arguments (received after testimony was closed) stated that zoning is inherently "**a tool of last resort** [and should be applied only when] an undesirable land use trend appears ... to be **irreversible...**" (Chamber of Commerce letter dated 11/17/99, emphasis added).

No doubt you will hear other arguments both for and against this proposal during your hearings.

Planning commission findings

The planning commission considered all of the above and felt that it was indeed a desirable thing to preserve a vibrant retail core. Although we do not have any prescience as to the future of our downtown area, the experiences of other cities, both large and small, would seem to indicate that the possibility of losing that valuable asset was real. **If it occurred it would be insidious in nature and once gone difficult to restore.** We weighed the benefits to the city as a whole, as opposed to the disadvantage to individual property owners and businesses involved and felt that the proposal was a reasonable and reasoned proactive measure. Our decision was not made lightly and we feel it would be worthwhile to iterate some additional factors that were taken into consideration in making that decision:

1. The individual property owners were by no means unanimous in their position on this issue. We received both pro and con comments from those owners who did testify, but in fact we received very little testimony at all from owners of the affected parcels. Most of the con testimony we did receive was from property owners who either mistakenly thought their properties were included in the proposal, or whose properties were eventually dropped from the proposal;
2. *At the time* the Chamber of Commerce was neutral on this issue. They have since come out against the proposal (Chamber letter 11/17/99);
3. The proposal affects very few uses (see the three uses listed above);
4. Under the proposal existing non-conforming business uses **may continue indefinitely, and may indefinitely convert to other non-conforming uses** within certain easily met guidelines. The most significant effect on existing businesses would be limitations on expansion;

5. The major effect on property owners, and indeed the city, would be on in-fill and replacement development;
6. Even if the city had the resources to provide financial or other programs to encourage the desired result, it would be difficult to come up with significant incentives which would achieve those results. Additionally there are legal concerns over the appropriateness of such incentives;
7. **It is well within the city's prerogative to use zoning to achieve certain ends.** Except for the fact that that this proposal has a "vertical" aspect to it, it is very little different than other "horizontal" zoning restrictions. A good example of this is the adjacent Waterfront Millville district where quite the opposite restrictions have been adopted. **Business offices are encouraged and retail and other related uses are discouraged.** This is an acknowledgement of the residential nature of the area and the **unwanted** vibrancy that retail uses would bring to that setting.
8. Although one-story buildings currently characterize Gig Harbor's downtown, the slope of the terrain combined with current height allowances would allow for two-stories on in-fill and replacement construction on most of the affected parcels. The major long-term effect of this proposal may be not only a viable downtown, but also a very different street face.
9. For better or worse we are already experiencing a renewed investment interest in downtown Gig Harbor which needs to be acknowledged and, to the best of our abilities, managed.

It is important to note that this proposal did not originate with the Planning Commission, but rather was a response to a legitimate concern which was brought to our attention. We took into serious consideration all of the above testimony and significantly altered the original proposal, both in depth and breath. Two items noted above deserve repeating. The first is the fact that, with the proposed Russell Foundation project, we are already seeing a change in the nature of downtown. The second is taken from the Chamber of Commerce's letter of 11/17/99. We do not wish to wait, as other cities have done, until there is **"an emergency situation...that appears to be irreversible"**. We see this proposal not as a tool of **"last resort"** but as a valuable one of first resort to positively effect change as opposed to having change affect us.

Please see addendum that outlines other cities' efforts to accomplish a similar goal.

MODIFICATION OF DEFINITIONS (Ordinance B)

Ordinance B contains modifications to existing definitions and the addition of new definitions necessitated by Ordinance A. Notable are the new definitions for: **Business Office** which includes most types of non-retail uses (e.g. accounting, legal, reality, and healthcare); **Maintenance and Repair Services**; **Personal Service** which includes beauty and barber services and; **Retail Floor Level** which defines where Ordinance A will be in effect.

MODIFICATION OF EXISTING C-1 ZONING DISTRICTS ADOPTION OF NEW C-2 DISTRICT (Ordinance C, D and E)

The proposals to modify the existing C-1 zoning districts and create a new C-2 district are contained in Ordinances C, D and E. Almost all of the public comment received on these proposals was from the one landowner most affected. It is the Planning Commission's opinion that these ordinances are very significant to the overall welfare of the city.

The need for rethinking current C-1 zoning areas

There are currently three areas in the city zoned C-1. They are:

1. The area known as Borgan's Corner;
2. The area fronting on the east side of Highway 16, known as Stroh's and;
3. The area fronting on the west side of Highway 16 which includes the automobile dealerships, The Inn at Gig Harbor and the commercial area behind the Inn.

At the present time the C-1 designation is our most intense use and would allow for outdoor sales of any type to include automobiles, trucks, motor homes, mobile and manufactured homes, used busses, construction cranes and other heavy equipment, stacked canopies for pickup trucks, boats, and other visually intense uses. **In short any of the three C-1 districts within the city have the potential to become what Interstate-5 has become between the Tacoma Dome and Milton.** This has been a concern of the Planning Commission for some time, but especially so since the up-zone of the Stroh's area from B-2 to C-1 in May of 1998.

Background – West Side Annexation

The background on that particular rezone is of some interest. When, in March of 1997, the city annexed the West Side Business District, the Stroh's had property on both sides of Highway 16. Neither property was within the city limits and both were included as part of the annexation agreement. Also, as part of that agreement the Stroh's property on the east side of the highway was zoned B-2 while the property on the west side was zoned RB-2. Both parcels previously had a Pierce County designation of Community Center (roughly equivalent to Gig Harbor's current C-1).

West Side Sub-Area Planning Committee

In early 1998 a West Side Sub-Area Planning Committee was appointed by the Mayor to discuss issues associated with the newly annexed properties, including zoning needs; and to make recommendations to the Planning Commission. One of their recommendations was to up-zone three properties to a C-1 designation. Two of those properties fronted on opposite sides of Highway 16 and were owned by the Stroh family. We held public hearings on all the proposals and accepted most of the recommendations including an up-zone of the area behind The Inn at Gig Harbor from RB-2 to C-1. We felt, however that the C-1 designation was too intense for the Highway 16 frontage and did not accept that portion of the recommendation.

Highway 16 Corridor

On numerous occasions during testimony for issues as varied as signage, the Urban Growth Boundary, and the Comprehensive Plan we have heard the same plea from both the citizens of Gig Harbor and the county. *Preserve the Highway 16 view corridor!* If trees get removed along that corridor, both we and the city planning department (and I suspect the City Council also) hear about it. It seems to be one issue upon which few disagree.

Up-Zone

In light of this the Planning Commission recommended up-zoning the Stroh's property on the west side of Highway 16 from RB-2 to B-2. We recommended leaving the east side property at its B-2 designation. This would have grandfathered the Stroh's store, allowing it to continue to do business as always, but would prevent more intense future uses. The Stroh's did not protest the west side designation, but did appeal to the City Council to put aside the Planning Commission's recommendation and up-zone the parcel on the east side of Highway 16 (the current Stroh's store) to a C-1 designation. Their argument was that most of the current uses of the property fit under the C-1 designation and they did not wish to be a legal but non-conforming use. The Council agreed with this argument and allowed the up-zone. The Planning Commission is therefore recommending an alternate solution to the potential for an undesirable increase in the nature and intensity of the retail aspect, and a degradation of the visual aspect of both the Highway 16 and the Borgan's Corner areas.

Proposed solution – new zone designation

We feel that a good portion of the problem arises from the fact that there is too great a jump in allowed uses between our two most intense zoning designations (B-2 to C-1). We are therefore proposing a new zoning designation to allow for a more gradual transition between zones. Our recommendation is to have two commercial designations (C-1 and C-2) similar to the designations in other zoning categories (R-1 to R-2 to R-3; RB-1 to RB-2; B-1 to B-2; WR to WM to WC). *The new C-2 would replace the old C-1.* It would contain the most intense uses allowed in the city and would retain *all* the permitted and conditional uses now contained in the old C-1. The revised C-1 would contain most of the previously allowed uses with the notable exception of the sale of "motor vehicles, boats, recreation vehicles, and manufactured or prefabricated houses". It does allow for commercial greenhouses and outdoor display of nursery grown items and building material sales. It does also place some limits on the outdoor display of all merchandise except nursery stock.

Application of new zones

Our proposal would retain the most intense designation (C-2) for the area that currently includes the existing automobile dealerships as outlined above. We recognize that this does place a C-2 district on Highway 16, but it acknowledges the reality of the current usage. We are proposing placing the two areas known respectively as Borgan's Corner and Stroh's in the revised C-1 designation, also acknowledging the reality of current usage. The Planning Commission considers both areas to be visually sensitive and feels

that the more intense C-2 designation is inappropriate for these parcels. Additionally both areas have very similar current uses, especially in regards to the retail sales of nursery stock and landscape items. These uses require outdoor displays, but of a less intense nature than motor vehicle and related sales. We feel both areas will well fit the revised C-1 without engendering a significant number of non-conforming uses, or without placing undue hardship on the current owners.

A PROACTIVE FUTURE

All too frequently in the past the Planning Commission and the City Council have found themselves in the position of reacting to the unintended and unforeseen consequences which result from the inherent limitations of the GHMC. In many cases the reaction is akin to closing the proverbial barn door after the horse is long gone. We feel that trying to anticipate the future and thereby providing the Council with the tools to effect that future in a positive way is the main reason that the Planning Commission exists. Our intentions are to continue to provide that service to the Mayor, the Council, and the City. We therefore respectfully submit our recommendations on the two above issues for your considered deliberations. The issues are, in our opinion, vital.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Kadzik". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul L. Kadzik, DDS
Chairman
City of Gig Harbor Planning Commission

Addendum

ADDENDUM

The following excerpts are from the Municipal Codes of other cities are offered to show how others have dealt with this issue. Bold emphasis is added. It was not possible to discern how the individual codes are actually applied, or how large an area they encompass, only the apparent philosophy of the codes themselves.

City of Mount Vernon, Washington

Municipal Code, Title 1 Zoning:

Chapter 17.45 C-1 Central Business District

17.45.020 Application by subdistrict

Two subdistricts are established in the C-1 district:

- A. C-1a. **Emphasizes pedestrian-oriented retail shopping on the ground floor.** The area should include a high level of pedestrian amenities, including continuous storefronts with awnings, improved pedestrian sidewalks and crosswalks, and benches and street trees;
- B. C-1b. Provides for those downtown support services such as banks, offices, motels, gas stations and print shops which are not as pedestrian oriented but are essential to the life of the downtown businesses.

City of Bainbridge Island, Washington

Municipal Code, Chapter 18 Zoning:

Section 18.04.010 Purpose.

A. Mixed use town center zone...

2. Erickson Avenue Overlay District.

The purpose of the Erickson Avenue Overlay District is to preserve the unique and historic features of the Erickson Avenue neighborhood...[r]etail development is permitted... [on the] ground floor...**office development... [is permitted] in the upper floors...**

City of Walla Walla, Washington

Municipal Code, Title 20 Zoning:

Chapter 20.70 CC Central Commercial District

20.70.010 Purpose

The Central Commercial District is designed to accommodate a wide variety of commercial activity (**particularly those that are pedestrian oriented**) together with compatible residential life styles which will result in the most intensive and attractive use of the city's central business district

City of Santa Monica, California

Municipal Code, Chapter 9.04 Zoning:

Section 9.04.02.030 Definitions

Section 9.04.02.030-650 **Pedestrian-oriented use.**

A use which is intended to encourage walk-in customers and which generally does not limit the number of appointments...

Section 9.04.08.12 RVC Residential-Visitor Commercial District

9.04.08.12.10 Purpose

The RVC District is intended to protect the existing residential mix in the area while providing for the concentration and expansion of coastal-related, lodging, dining, recreation, and shopping needs of tourists and others in the oceanfront area...

9.04.08.12.020 Permitted uses.

(Contains numerous retail, entertainment, convention, lodging and restaurant uses)

9.04.08.12.040 Conditional uses.

(d) General offices uses, except within the ground floor street frontage ...

City of Palo Alto, California

Municipal Code Chapter 18 Zoning:

Section 18.47 Pedestrian Shopping Combining District (P) regulations

18.47.010 Special purposes.

The pedestrian shopping combining district is intended to modify the regulations of the CN neighborhood commercial district, the CC community commercial district and the CD commercial downtown district **in locations where it is deemed essential to foster the continuity of retail stores and display windows** and to avoid a monotonous pedestrian environment in order to establish and maintain an economically healthy retail district.

18.47.040 Use limitations and site development regulations.

(a) Pedestrian design features required. On any site...adjoining a designated pedestrian sidewalk or pedestrian way...the following design features intended to create pedestrian or shopper interest, to provide weather protection for pedestrians, and to preclude inappropriate or inharmonious building design...;

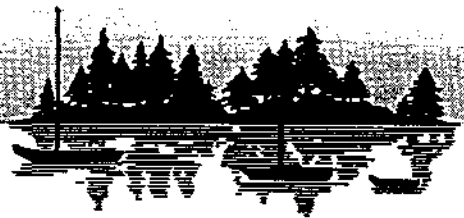
(1) Display windows, or retail display areas;

(2) Pedestrian arcades...;

(3) Landscaping or architectural design features intended to preclude blank walls or building faces...

GIG HARBOR ✓ PENINSULA AREA
CHAMBER OF COMMERCE

3302 HARBORVIEW DR., STE 2 GIG HARBOR, WA 98332 PHONE (253) 851-6865 FAX (253) 851-6881



November 17, 1999

The Honorable Gretchen Wilbert
Mayor, City of Gig Harbor
Cc: City Council and Planning Commission members
3105 Judson
Gig Harbor, Washington 98335

RECEIVED

NOV 18 1999

CITY OF GIG HARBOR

Dear Mayor Wilbert:

Over the past few months, the Chamber's Business Development committee has discussed the merits and potential impacts of the proposed vertical zoning ordinance. We would like to go on record at this time opposing the zoning change for the following reasons:

It is our understanding that the premise for considering such an ordinance in Gig Harbor is to "preserve" and or "protect" the viability of a particular downtown retail district (not all retail areas) and to disable or negate a potential trend for professional office type tenants to dominate space suitable for retail in this one specially defined district. Although the proposed boundaries for this selected district have changed several times, we understand current discussions include a portion of the downtown retail area generally from Rosedale Street to the Tides Tavern, and with frontage on Harborview Avenue.

We believe the proposed vertical zoning is "exclusionary," "restrictive" or "spot" zoning. In effect, certain buildings (or portions of buildings) in a narrowly defined portion of Gig Harbor's retail areas - which are now zoned for a variety of commercial uses - would be restricted to "retail only." Applying the basic concept of supply and demand to such an environment, one can conclude that if an owner has such a restriction on his building, and there is no real demand for retail space at that time, the owner will suffer either a vacancy situation or reduced rent.

The City should only consider a change of zoning as a "tool of last resort," when all other avenues have been exhausted. Or, perhaps, it could be applied in an emergency situation where there has been well-documented, community-wide recognition of an undesirable land use trend that appears to be irreversible, and the traditional forces of supply and demand for whatever reason do not appear to be working.

What occurs to us is that in the past 5 to 10 years, there appears to be an actual increase in the general retail business activity in the downtown area. If this is true, then no emergency exists that threatens the viability of downtown retail—and certainly not to the extent that zoning, as a tool of last resort, ought to be implemented.

We feel that there are several serious negative features to utilizing zoning as a tool to address a perhaps "perceptual problem" of a threatened retail viability in the downtown area. These would include, but not be limited to:

1. The issue of "preferential" treatment of one segment of the local economy (retail) through zoning—and the dangerous precedent it would set if the City sponsors and initiates a zone change which favored a certain class of commercial uses and penalizes others.
2. The issue of "spot" zoning, or selective zoning, based on short term and immediate land use special zoning for a narrowly defined specific area—as opposed to long-term comprehensive zoning.
3. The issue of creating adverse factions within the city (retail tenants vs. professional office tenants, landlords vs. tenants etc.)

4. The issue of creating real financial hardships on landlords by limiting the uses to which their buildings may be used. This can affect appraised values, banking arrangements, and create undue vacancies.
5. Any of a variety of legal issues arising from the previous concerns.

On the other hand, we also feel there are several positive ways to effectively address this situation without a zoning change, which would include but not be limited to the formation of a partnership between the City, landlords and retail tenants, the Chamber of Commerce, and other interested parties to focus on "incentives" to enhance the downtown retail areas, such as:

1. Tax incentives
2. Signage incentives
3. Voluntary "covenants" which consenting landlords can place on their own property without city or zoning mandates.
4. Promotions
5. Economic Development
6. Permit incentives
7. Parking
8. Creative sidewalk/landscape/utility arrangements

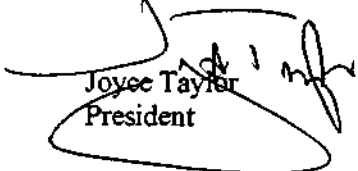
The successful implementation of a broad-based partnership effort as outlined above will, in our opinion, dilute and/or eliminate the negative consequences of a zone change, while doing a better job of accomplishing the overall goal of long term downtown retail enhancement. One of the first priorities could be a simple research effort to examine what other cities/communities have done successfully to enhance the retail climate within their jurisdictions.

We also have concluded that the proposed vertical zoning proposal would be difficult and costly to administer. For example, selecting the building/properties which are "in the new zone" requires discretion—as well as which portions of which buildings, for what period of time, and trying to track when a tenant moves out and for how long, and when the new zoning would apply—are all administrative nightmares.

And, virtually all of the contentious legal issues that would logically arise through a "preferential" zoning program would also be eliminated. We would look forward to active participation on such a partnership effort.

We are available for questions and discussions. Please feel free to contact me or the Chamber's Vice President of Business Development, Dave Morris, at 851-4511.

Sincerely,



Joyce Taylor
President

File

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR CITY COUNCIL, GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REVISING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE IN ORDER TO ASSURE CONSISTENCY BETWEEN TITLE 17 AND THE CITY OF GIG HARBOR DESIGN MANUAL; ASSURING THE POTENTIAL FOR RETAIL CLUSTERING IN THE DB (DOWNTOWN BUSINESS) ZONE AND IN THE WC (WATERFRONT COMMERCIAL) ZONE BY LIMITING THE TYPES OF USES ALLOWED AT THE STREET LEVEL; PROVIDING A NEW DEFINITION TO DEFINE A RETAIL LEVEL APPLICABLE TO THE DB AND WC DISTRICTS; CLARIFYING REQUIREMENTS FOR PUBLIC PATHWAYS TO THE WATERFRONT FROM THE FRONTAGE STREET IN WATERFRONT ZONES; AND AMENDING SECTIONS 17.31.010, 17.31.020, 17.31.030, 17.31.060, 17.31.080, 17.31.110, 17.50.010, 17.50.020, 17.50.030, 17.50.040, 17.50.060, 17.50.070, and 17.50.090 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor adopted a Design Manual in August of 1996 to implement the goals and policies of the City's comprehensive plan and:

WHEREAS, the Design Manual in many instances includes either more restrictive or more liberal performance standards than the standards found in the Chapter 17 of the Gig Harbor Municipal Code.

WHEREAS, section 17.98.020 states that where there are conflicts between the performance standards of the zoning code, and the standards in the design manual, the standards of the design manual shall prevail.

WHEREAS, conflicts between the zoning code and design manual make interpretation of City standards difficult; and,

WHEREAS, the downtown business, waterfront commercial and general business zones are located in areas defined as commercial/business in the City,s comprehensive plan; and,

WHEREAS, page 9 of the Comprehensive plan states that the commercial/business provides *primarily retail* and wholesale facilities, including service and sales. [emphasis added]. Business and Professional offices are also anticipated in the commercial/business areas; and,

WHEREAS, Gig Harbor's current zoning map identifies numerous areas which are zone RB-1 and RB-2, which are zoned *primarily* for professional offices; and,

WHEREAS, there is 3 % more land zoned RB-1 and RB-2 than land zoned DB, WC or B-2

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combined, indicating that there is ample opportunity in the City for business and professional offices; and,

WHEREAS, sufficient land is also zoned for business and professional office in the Gig Harbor North Planned Community Business Park, which zone specifically permits professional offices and corporate headquarters and where retail uses are specifically *not* encouraged (see intent statement of PCD-BP); and,

WHEREAS, the City of Gig Harbor Comprehensive Plan has the stated goal on page 28 to retain the vitality of historic business districts; and,

WHEREAS, the Planning Commission has considered the input and expressed concerns of downtown merchants in Gig Harbor and has observed conditions of Gig Harbor's Downtown and the conditions of other downtowns including Seattle and Bremerton and finds as follows:

1. The vitality of Gig Harbor's downtown is characterized and strengthened by retail and restaurant type activities which cater to residents and tourists alike.
2. The ability to cluster retail is an important aspect of successful retailing.
3. Retailing is most successful at the street level,
4. The most critical areas for retail clustering in the downtown/waterfront areas, based upon access, visibility and orientation to the waterfront, include the Waterfront Commercial zone from Soundview Drive to Rosedale Street, that portion of Soundview Drive in the Downtown Business zone from Judson Street to Harborview Drive , that portion of Pioneer Way from Judson Street to Harborview Drive, and the Downtown Business zone fronting Harborview Drive.
5. Retail clustering opportunities are threatened by conversion of buildings and properties along the above defined street frontages to offices and services which do not normally cater to tourists; and,

WHEREAS, the City of Gig Harbor Comprehensive plan includes the following goals on page 11:

1. Establish special zoning districts which may distinguish unique land use concerns.
2. Utilize special or extra land use planning techniques such as district overlays or design review guidelines to protect or enhance historical or cultural identities. Special districts may be established for a mixed-use waterfront, a pedestrian-oriented downtown district, a special old-town business district or an historical residential neighborhood in the Millville Area.

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3. Employ special planning development review procedures for the establishment of . . . mixed use developments, special waterfront projects or other proposals which would serve the overall community interests; and,

WHEREAS, the Planning Commission, having considered the Comprehensive Plan goals, finds as follows:

1. Retailing in the downtown/waterfront areas is an important element of Gig Harbor's historic district/waterfront culture and is an important means of sharing the historic district/waterfront culture with residents and tourist alike.
2. Retail shops are the kinds of uses that attract tourists and entice pedestrian shoppers. Sufficient retailing opportunities are therefore important for maintaining a pedestrian-oriented downtown.
3. Preserving ground level floor space in specified sections of the historic downtown/waterfront districts will preserve retailing as a viable and important activity in these zones, consistent with the goals and policies of the City's comprehensive plan.
4. Retailing is clearly a unique land use concern in the downtown/waterfront areas. This concern is heightened by the potential loss of retailing in specified sections of the downtown/waterfront areas due to increased interest in these areas for uses that are not supportive of retail marketing.
5. Employment of special planning tools are appropriate to address these concerns and to serve the overall community interests.
6. An overlay is one type of planning tool that can define acceptable locations for retail in the areas of concern. Defining a retail floor level in the definition section of the zoning code and then referencing that definition when describing permitted uses in each zone is a convenient way of establishing or describing the overlay; and,

WHEREAS, two public hearings were held on May 20, 1999 and July 29, 1999 by the Planning Commission to receive input from the community on proposed amendments to Title 17 intended to address the above findings and concerns; and,

WHEREAS, on _____ at a regularly scheduled City Council meeting, the Gig Harbor City Council considered the ordinance; and,

WHEREAS, the City sent copies of the proposed amendments to Chapter 17 to DCTED as per WAC 365-195-620(1) and RCW 36.70A.106.

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

Section 1. Section 17.31.110 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.110 Intent.

A. The purpose of the DB district is to:

1. Provide for an area that offers a broad range of goods and services for the citizens of Gig Harbor;
2. Promote and enhance services and activities which cater to visitors to the city; and
3. Maintain the traditional scale and character of downtown Gig Harbor.

B. The standards for development in this chapter are intended to allow uses which are:

1. Are primarily conducted within enclosed buildings except for parking, dining areas, portable vendor carts and newsstands;
2. Protect views; and
3. Allow for commercial developments which do not adversely affect residences through excessive noise or bothersome activities. (Ord. 573 ' 2, 1990).
4. Preserve opportunities for retail clustering.

Section 2. Section 17.31.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.020 Permitted principal uses and structures.

The following principal uses and structures are permitted in a DB district:

- A. Retail sales;
- B. Banks and depository financial institutions;
- C. Restaurants;
- D. Guest accommodations;
- E. ~~Business and professional offices~~ Business offices, except on retail floor levels;
- F. Commercial recreation (theaters, bowling alleys, etc.);
- G. ~~Gasoline service stations~~;
- H. G. Personal services
- I. Art galleries;
- J. Maintenance & repair services, except on retail levels.
- K. Residential uses; and
- J. L. Uses and structures customarily accessory to the permitted uses. (Ord. 573 ' 2, 1990).
- M. Family day care.

Section 3. Section 17.31.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.030 Conditional uses.

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Subject to the requirements of Chapter 17.64 GHMC and standards and procedures for conditional uses set forth in this title, the following uses may be allowed:

- A. Hospitals and clinics;
- B. Retirement homes;
- C. Child Commercial Family day care centers;
- D. Public utilities and public service uses such as visitors centers, libraries, electrical substations, telephone exchanges and police, fire and water facilities;
- E. Recreational buildings and community centers;
- F. Schools, public and private, including playgrounds and athletic fields;
- G. ~~Wholesale sales and distributor establishments;~~
- H. G. Light manufacturing and assembling (non-industrial, craft-oriented only);
- I. ~~H. Taverns and lounges;~~
- J. I. Religious institutions;
- K. J. Private clubs and lodges, except on retail floor levels, and;
- L. ~~Residential uses; and~~
- M. K. Uses conducted outside buildings unless otherwise permitted by the City's Design Manual. (Ord. 573 ' 2, 1990).

Section 4. Section 17.31.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.060 Minimum building setback requirements.

In a DB district, there are no minimum requirements for front, side and rear building setbacks. Setback dimensions may be determined as part of the site plan review of Chapter 17.96 GHMC; provided, however, that where a DB district abuts a residential district, ~~a building setback shall be required as specified below, and the space so created shall be landscaped to screen the commercial uses from the abutting residential district. Such building setbacks shall be a minimum of 20 feet. (Ord. 573 ' 2, 1990).~~ the minimum yard shall be 20 feet with a dense vegetative screen located on the commercial property.

Section 5. Section 17.31.080 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.080 Maximum height of structures.

In the DB district, all buildings and structures shall ~~have a maximum height of 16 feet conform to the height standards specified in the Historic District section of the City's Design Manual.~~ (Ord. 710 ' 29, 1996; Ord. 573 ' 2, 1990).

Section 6. Section 17.31.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.31.110 Performance standards.

In a DB district, performance standards are as follows:

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A. Exterior Mechanical Devices. Air conditioners, heating, cooling and ventilating equipment, pumps and heaters and all other mechanical devices shall be screened.

B. Landscaping. Landscaping is required and shall be installed in conformance with the City's Design Manual, Chapter 17.78 GHMC ~~by~~ of this title and/or conditions of approval of discretionary applications required by this title, such landscaping shall be maintained in a neat manner. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

C. Outdoor Storage of Materials. The outdoor storage of materials, including but not limited to lumber, auto parts, household appliances, pipe, drums, machinery or furniture, is permitted as an incidental or accessory activity of a permitted use or the principal feature of a conditional use. Such storage shall be screened by a wall, fence, landscaping or structure from surrounding properties and streets. Outdoor storage is not allowed in any required yard, landscape or buffer area.

D. Outdoor Display of Merchandise. The outdoor display of merchandise is limited to the area immediately along the building frontage a maximum distance of 12 feet from the building. Outdoor displays of merchandise on public sidewalks or rights-of-way shall be regulated per Chapter 12.02 GHMC.

~~E. Outdoor Lighting. Within 100 feet of any residential zone or use, outdoor lighting and aerial-mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. Such lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement.~~

E. Outdoor lighting, fixtures and furnishings. Outdoor light fixtures, poles, racks, containers, planters and furnishings shall conform to all Design Manual standards. Within 100 feet of any residential zone or use, all ground-mounted floodlighting or light projection above the horizontal plane shall is prohibited, except as otherwise allowed for signage.

F. Trash Receptacles. Trash receptacles shall be screened from view unless in an approved sidewalk container of an approved design. Screening shall be complementary to building design and materials. (Ord. 710 ' 30, 1996; Ord. 573 ' 2, 1990).

Section 7. Section 17.50.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.010 Intent.

It is the intent of the waterfront commercial district to provide a wide range of uses and activities on the shorelines of Gig Harbor located within the area proximate to the downtown business district. Development should be water-oriented, and maintain the scale of existing structures and preserve opportunities for retail clustering. Highest priority will be accorded to those uses that are water-dependent. Other uses that provide a high degree of physical access to the waterfront have the next priority. Those activities that are not water-dependent but maintain or enhance views and the character of the area may also be permitted.

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Section 8. Section 17.50.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.020 Permitted uses.

The following uses are permitted in a waterfront commercial district:

- A. Marinas and boat launch facilities;
- B. Piers, docks, wharfs and associated buildings;
- C. Boat repair and sales facilities;
- ~~D. Marine-related sales and offices;~~
- ED. Delicatessens;
- DE. Personal services
- EF. Art galleries
- ~~F.G. Public park and access facilities;~~
- G.H. Yacht clubs;
- H.I. Wholesale and retail sales of fisheries products for human consumption;
- ~~I. J. Restaurants, taverns and lounges;~~
- J.K. Professional Business offices, except on retail floor levels;
- ~~K.L. Residential, up to a fourplex;~~
- LM. General retail sales.

Section 9. Section 17.50.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.030 Conditional uses.

Subject to the requirements, standards and procedures for conditional uses set forth in Chapter 17.64 GHMC, the following uses may be permitted in a waterfront commercial district:

- A. Guest accommodations;
- B. Public facilities;
- C. Parking lots for related shoreline uses;
- D. Processing of fisheries products for off-premises human consumption;
- E. Boat construction.
- F. Taverns and lounges

Section 10. Section 17.50.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.040 Development standards.

In a waterfront commercial district, the minimum development requirements are as follows:

	Single-Family Dwelling	Attached up to 4 Units	Non-residential
A. Minimum lot area (sq. ft.) ¹	6,000	6,000/unit	15,000
B. Minimum lot width	50'	100'	100'

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C.	Minimum front yard ²	<u>20'0'</u>	<u>20'0'</u>	<u>20' 0'</u>
D.	Minimum side yard	8'	10'	10'

On a 50-foot wide lot, 20 feet of combined side yard setback is required and may be allotted as desired except that a minimum of 5 feet on any one side is required. For every additional foot of lot width beyond 50 feet, .25 feet of side yard setback is required.

E.	Minimum rear yard	25'	25'	25'
F.	Minimum yard abutting Tidelands	0'	0'	0'
G.	Maximum site impervious coverage	50%	55%	70%
H.	Maximum density	3.5 dwelling units per acre		

¹ An undersized lot shall qualify as a building site if such lot is a lot of record at the time this chapter became effective.

² In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line, provided such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors.

I. 1. Maximum impervious lot coverage may be increased up to a maximum of 80 percent upon execution of a written agreement with the city and the property owner, and provided further, that the agreement is filed with the county auditor as a covenant with the land, when the development provides for waterview opportunities and/or waterfront access opportunities in conjunction with commercial uses, as follows:

Maximum Imp. Coverage	Number of Waterview/ <u>Waterfront</u> Access Opportunities
a. 50/55/70	0
b. +10%	1
c. +10%	2
d. +10%	3

2. ~~Waterview/Harbor Access~~ Waterview Opportunities include the following:

a. ~~Waterview opportunity, by means of a~~ public view corridors measuring 20 frontage feet along the street or 20 percent of the total waterfront frontage of the parcel, whichever is greater. View corridors shall be from public rights-of-way. Parking shall not be allowed in view corridors. Fences or railings shall not be allowed in view corridors except where required by the city building code. Shrubbery in view corridors shall not exceed a height of three feet and trees shall have no branches lower than 10 feet above the level of the frontage sidewalk. A waiver on tree branch height may be granted by the city council for a defined growth period.

b. ~~Waterview opportunity, by means of a~~ A five-foot-wide public pathway along the property perimeter down one side line of the property to mean higher high water or a bulkhead or to the

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waterside face of structure, whichever is further waterward, then across the waterside face of the property or structure and back to the street along the other side line.

c. ~~Water view opportunity, by means of a~~ A public viewing platform at the highest level of any structure on the property. Minimum area of the platform shall be 50 square feet. Railings around the platform may exceed the maximum height permitted for the structure. The platform shall be open to the public

3. Waterfront access opportunities include the following:

d. ~~a. Harbor access opportunity, by means of a~~ A public fishing pier extending out to the mean lower low water and connected by a minimum five-foot-wide public pathway to the frontage street. A minimum of 10 feet of open water shall surround the fishing pier.

e. ~~b. Harbor access opportunity, by means of a~~ A public small boat landing available for transient use by rowboats, canoes, dinghies, etc., extending out to mean lower low water and connected by a five-foot-wide public pathway to the frontage street. A minimum of 10 feet of open water shall surround the small boat landing.

f. ~~c. Harbor access opportunity, by means of a~~ A public transient moorage for up to two 30-foot boats and which must have a minimum water depth of eight feet and which must be easily accessible to visiting boats and connected by a five-foot-wide public pathway to the frontage street. A minimum of 10 feet of open water shall surround the public transient moorage. and The moorage must be posted with signage which can be read at a distance of 100 feet. (Ord. 725 ' 5, 1996; Ord. 710 ' 56, 1996; Ord. 598 ' 3, 1991; Ord. 573 ' 2, 1990).

4. Waterfront access opportunities must be marked for public use with a sign at the frontage street. Water view access opportunities must also be marked for public use with a sign at the frontage street if the view is not visible from the frontage street.

Section 11. Section 17.50.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.060 Maximum height of structures.

In a waterfront commercial district, the maximum building height shall not exceed 16 feet or as otherwise allowed by the City's Design Manual. (Ord. 710 ' 58, 1996; Ord. 573 ' 2, 1990).

Section 12. Section 17.50.070 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.070 Parking and loading facilities.

In a waterfront commercial district, parking and loading facilities on private property shall be provided in accordance with the requirements of Chapter 17.72 GHMC and the City's Design Manual. (Ord. 573 ' 2, 1990).

Section 13. Section 17.50.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.50.090 Performance standards.

A

In a waterfront commercial district, performance standards are as follows:

A. Exterior Mechanical Devices. Air conditioners, heating, cooling and ventilating equipment, pumps and heaters and all other mechanical devices shall be screened.

B. Landscaping. Landscaping is required and shall be installed in conformance with Chapter 17.78 GHMC, the City's Design Manual and/or by conditions of approval of discretionary applications required by this title; such landscaping shall be maintained in a neat manner. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

C. Outdoor Storage of Materials. The outdoor storage of materials, including but not limited to lumber, auto parts, household appliances, pipe, drums, machinery or furniture, is permitted as an incidental or accessory activity of a permitted use or the principal feature of a conditional use. Such storage shall be screened by a wall, fence, landscaping or structure from surrounding properties and streets.

~~D. Outdoor Lighting. Within 100 feet of any residential zone or use, outdoor lighting and aerial-mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. Said lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement. (Ord. 573 '2, 1990).~~

D. Outdoor lighting, fixtures and furnishings. Outdoor light fixtures, poles, racks, containers, planters and furnishings shall conform to all Design Manual standards. Within 100 feet of any residential zone or use, all ground-mounted floodlighting or light projection above the horizontal plane shall is prohibited except as otherwise allowed for signage.

Section 14. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 15. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR, Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

CITY CLERK, Molly Towslee

A

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 2/23/00
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

A

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000____, the City Council of the CITY OF GIG HARBOR, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

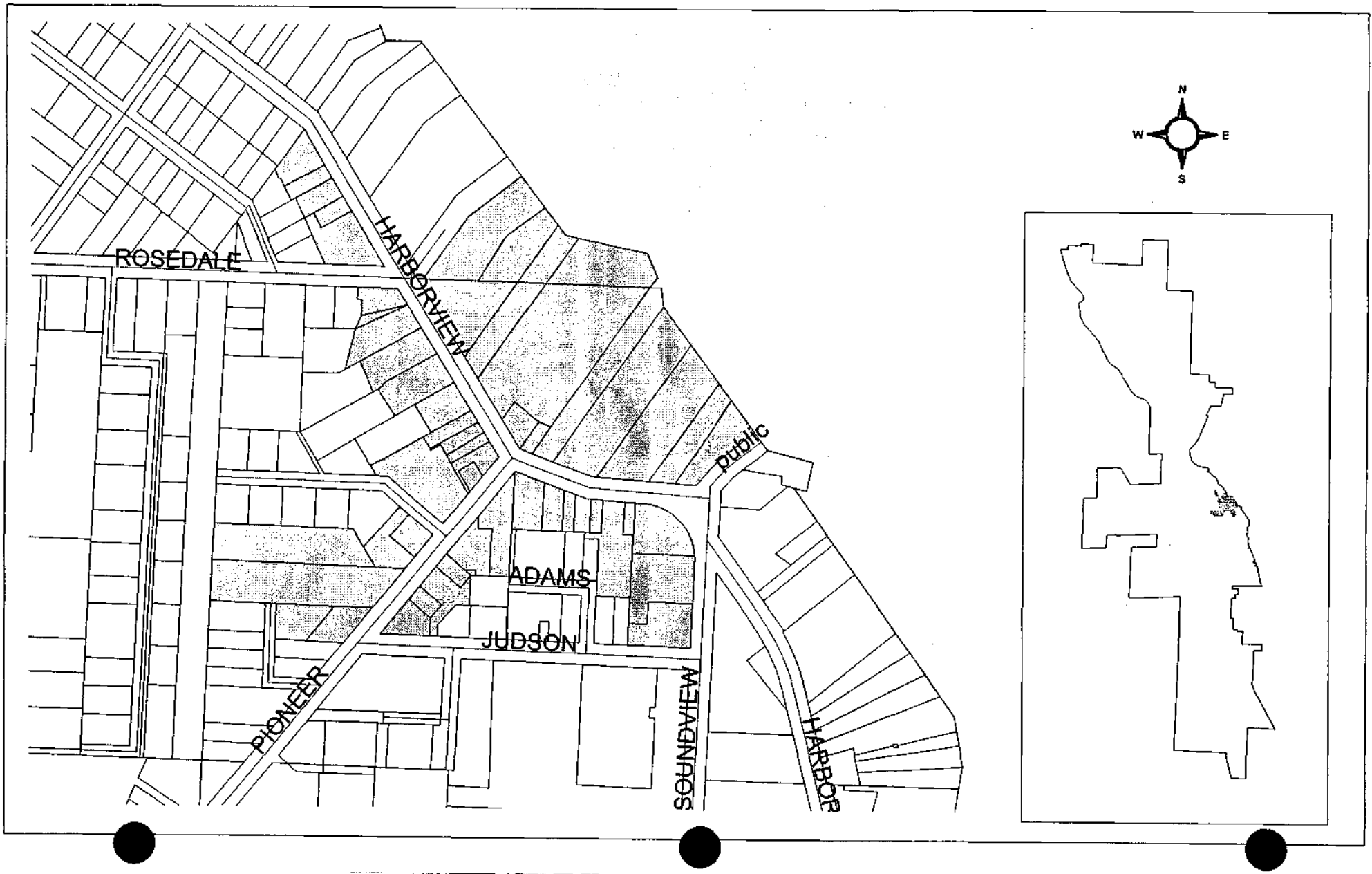
AN ORDINANCE OF THE CITY OF GIG HARBOR CITY COUNCIL, GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REVISING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE IN ORDER TO ASSURE CONSISTENCY BETWEEN TITLE 17 AND THE CITY OF GIG HARBOR DESIGN MANUAL; ASSURING THE POTENTIAL FOR RETAIL CLUSTERING IN THE DB (DOWNTOWN BUSINESS) ZONE AND IN THE WC (WATERFRONT COMMERCIAL) ZONE BY LIMITING THE TYPES OF USES ALLOWED AT THE STREET LEVEL; PROVIDING A NEW DEFINITION TO DEFINE A RETAIL LEVEL APPLICABLE TO THE DB AND WC DISTRICTS; CLARIFYING REQUIREMENTS FOR PUBLIC PATHWAYS TO THE WATERFRONT FROM THE FRONTAGE STREET IN WATERFRONT ZONES; AND AMENDING SECTIONS 17.31.010, 17.31.020, 17.31.030, 17.31.060, 17.31.080, 17.31.110, 17.50.010, 17.50.020, 17.50.030, 17.50.040, 17.50.060, 17.50.070, and 17.50.090 OF THE GIG HARBOR MUNICIPAL CODE.

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

DATED this _____ day of _____, 2000.

Molly Towslee, City Clerk

City of Gig Harbor Planning Commission Retail Cluster Zones (proposed)



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND-USE AND AMENDING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING A NEW DEFINITION TO DEFINE A RETAIL LEVEL APPLICABLE TO THE DB ZONING DISTRICTS; DELETING THE DEFINITION OF BUSINESS AND PROFESSIONAL OFFICES AND ESTABLISHING NEW DEFINITIONS FOR PERSONAL SERVICES AND BUSINESS OFFICES; PROVIDING A NEW DEFINITION OF MAINTENANCE AND REPAIR SERVICES; PROVIDING A NEW DEFINITION FOR RETAIL FLOOR LEVEL; CLARIFYING DEFINITIONS FOR BANKS, COMMERCIAL STRUCTURES, DWELLING UNIT, GROUND COVER; AMENDING SECTIONS 17.04.090, 17.04.245, 17.04.285, 17.04.320, 17.04.407 OF THE GIG HARBOR MUNICIPAL CODE; ADDING NEW SECTIONS 17.04.201, 17.04.553.001, 17.04.702 TO THE GIG HARBOR MUNICIPAL CODE; AND REPEALING SECTION 17.04.680 AND REPLACING IT WITH A NEW SECTION 17.04.680 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor Comprehensive plan includes the following goals on page 11:

“Establish special zoning districts which may distinguish unique land use concerns”.

“Utilize special or extra land use planning techniques such as district overlays or design review guidelines to protect or enhance historical or cultural identities. Special districts may be established for a mixed-use waterfront, a pedestrian-oriented downtown district, a special old-town business district or an historical residential neighborhood in the Millville Area”.

“Employ special planning development review procedures for the establishment of . . . mixed use developments, special waterfront projects or other proposals which would serve the overall community interests”; and,

WHEREAS, the Planning Commission, having considered the Comprehensive Plan goals, finds as follows:

1. Retailing in the downtown/waterfront areas is an important element of Gig Harbor’s historic district/waterfront culture and is an important means of sharing the historic district/waterfront culture with residents and tourist alike.

B - Final

2. Retail shops are the kinds of uses that attract tourists and entice pedestrian shoppers. Sufficient retailing opportunities are therefore important for maintaining a "pedestrian-oriented downtown".
3. Preserving ground level floor space in specified sections of the historic downtown/waterfront districts will preserve retailing as a viable and important activity in these zones, consistent with the goals and policies of the City's comprehensive plan.
4. Retailing is clearly a unique land use concern in the downtown/waterfront areas. This concern is heightened by the potential loss of retailing in specified sections of the downtown/waterfront areas due to increased interest in these areas for uses that are not supportive of retail marketing.
5. Employment of special planning tools are appropriate to address these concerns and to serve the overall community interests.
6. An overlay is one type of planning tool that can define acceptable locations for retail in the areas of concern. Defining a retail floor level in the definition section of the zoning code and then referencing that definition when describing permitted uses in each zone is a convenient way of establishing or describing the overlay; and,

WHEREAS, the City of Gig Harbor Planning Commission has determined that the existing definition for professional offices and services allows for many uses in zones that are incompatible with abutting residential development and that new or clarified definitions are needed to correct this deficiency; and,

WHEREAS, two public hearings were held on May 20, 1999 and July 29, 1999 by the Planning Commission to receive input from the community on proposed amendments to Title 17 intended to address the above findings and concerns; and,

WHEREAS, on _____ at a regularly scheduled City Council meeting, the Gig Harbor City Council considered the ordinance; and,

WHEREAS, the City sent copies of the proposed amendments to Chapter 17 to DCTED as per WAC 365-195-620(1) and RCW 36.70A.106.

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

Section 1. Section 17.04.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

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17.04.090 Banks and ~~financial~~ depository institutions.

"Banks and ~~financial~~ depository institutions" means those uses ~~which are~~ involved in deposit banking as classified in major groups group 60, 61 and 62 in the Standard Industrial Classification Manual (SICM), 1987 edition or as amended. (Ord. 724 § 1, 1996).

Section 2. A new Section 17.04.201 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

17.04.201 Business office.

"Business offices" include such services or skills as business or financial management (except banks and depository institutions), accounting, health or dental care, planning, designing, insurance, counseling, advising, research, bookkeeping, property management or real estate. Business offices are not primarily involved in the sale or lease of on-site products or merchandise.

Section 3. Section 17.04.245 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.245 Commercial building/structure.

"Commercial building/structure" implies all activities or work designed or planned for the mass market, for profit, or for non-residential gatherings. Commercial refers to all non-residential uses or structures, a type of structure or portion of a structure which is used primarily for wholesale or retail sale or trade of products not manufactured on the site. Professional services (GHMC 17.04.680) and manufacturing (GHMC 17.04.436) are excluded from this definition.

Section 4. Section 17.04.285 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.285 ~~Drive-in~~ Drive-up restaurant.

"Drive-in Drive-up restaurant" means any food or beverage service establishment that contains the following characteristics:

- A. An outside (~~drive-through~~ Drive-up) service window; or
- B. The provision of services to patrons who are in automobiles on the premises of the eating establishment.

Section 5. Section 17.04.320 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.320 Dwelling unit.

"Dwelling unit" is one or more a room or a combination of contiguous rooms that are accessible to each other from the indoors ~~rooms with at least one~~ and that (a) includes a kitchen or kitchenette equipped with a sink, stove top or burner and refrigerator space; (b) includes a bath with a toilet and tub or shower; (c) has access to the outdoors, or to common corridors which give access to the outdoors, that is separate from the outdoor access of other dwelling units in the

B

same structure; (d) provides physical separation between the unit and other units within the same structure by means of a wall or door (with or without locks); and (e) that is designed as a unit for occupancy by not more than one family for sleeping and living purposes.

Section 6. Section 17.04.407 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.407 Ground cover.

"Ground cover" means small plants such as salal, ivy, ferns, mosses, ornamental grasses, lawn, shrubs or other types of cultured vegetation as used in improved landscaping which normally cover the ground and shall include trees less than three inches in diameter measured at 54 inches aboveground.

Section 7. A new Section 17.04.553.001 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

17.04.553.001 Maintenance & Repair Services.

"Maintenance & repair services" include all uses primarily involved in product cleaning, repairs, vehicle or machinery servicing, janitorial work, yard maintenance, or similar uses in which customers bring products on-site for service, or where equipment is stored on-site and used off-site.

Section 8. Section 17.04.680 is hereby repealed.

17.04.680 ~~Professional office or service.~~

~~"Professional office or service is the use of a facility or structure for the provision of a specialized service or skill. Professional offices or services are not involved in the sale or lease of a product or merchandise on-site (Ord. 703 § 15, 1996; Ord. 573 § 2, 1990).~~

Section 9. A new Section 17.04.680 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

17.04.680 Personal Service.

"Personal services" include all hair, nail and skin care services such as beauty parlors, barber shops and tanning salons.

Section 10. A new Section 17.04.702 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

17.04.702 Retail Floor Level

"Retail floor level" includes any floor area that at any point is within 6 feet of the outdoor finished grade and within 50 feet of the following street rights-of-way:

- a. Soundview Drive in the DB zone from Judson Street to Harborview Drive;
- b. Harborview Drive in the DB and WC zones;
- c. That portion of Pioneer Way in the DB zone from Judson Street to Harborview Drive;
- d. The WC zone along Harborview Drive from Soundview Drive to Rosedale Street;

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On buildings with multiple floor levels conforming to this definition and which front on only one street, the retail level shall be the lower level.

Section 11. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 12. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR, Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

CITY CLERK, Molly Towslee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 2/23/00
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

B

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000, the City Council of the CITY OF GIG HARBOR, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND-USE AND AMENDING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING A NEW DEFINITION TO DEFINE A RETAIL LEVEL APPLICABLE TO THE DB ZONING DISTRICTS; DELETING THE DEFINITION OF BUSINESS AND PROFESSIONAL OFFICES AND ESTABLISHING NEW DEFINITIONS FOR PERSONAL SERVICES AND BUSINESS OFFICES; PROVIDING A NEW DEFINITION OF MAINTENANCE AND REPAIR SERVICES; PROVIDING A NEW DEFINITION FOR RETAIL FLOOR LEVEL; CLARIFYING DEFINITIONS FOR BANKS, COMMERCIAL STRUCTURES, DWELLING UNIT, GROUND COVER; AMENDING SECTIONS 17.04.090, 17.04.245, 17.04.285, 17.04.320, 17.04.407 OF THE GIG HARBOR MUNICIPAL CODE; ADDING NEW SECTIONS 17.04.201, 17.04.553.001, 17.04.702 TO THE GIG HARBOR MUNICIPAL CODE; AND REPEALING SECTION 17.04.680 AND REPLACING IT WITH A NEW SECTION 17.04.680 OF THE GIG HARBOR MUNICIPAL CODE.

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

DATED this _____ day of _____, 2000.

Molly Towslee, City Clerk

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND USE; AMENDING THE GIG HARBOR ZONING CODE TO INCLUDE A NEW ZONING DISTRICT CALLED THE "COMMERCIAL DISTRICT" (C-2), DESCRIBING THE CITY'S INTENT IN THE CREATION OF THE DISTRICT, THE USES ALLOWED IN THE DISTRICT AS EITHER PERMITTED OUTRIGHT, ACCESSORY USES OR CONDITIONAL USES, PERFORMANCE STANDARDS, INCLUDING SUCH REQUIREMENTS AS MAXIMUM GROSS FLOOR AREA, SETBACKS, HEIGHT AND LOT COVERAGE, ALLOWING ADULT ENTERTAINMENT FACILITIES IN C-2 ZONES; AMENDING SECTION 17.58.040 AND ADDING A NEW CHAPTER 17.41 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Planning Commission finds that the existing C-1 zone allows outdoor display of vehicles and other large items that cannot be reasonably displayed inside a structure except in very limited numbers, and,

WHEREAS, the allowance for outdoor displays of vehicles and similar large items is necessary and reasonable, provided such displays are not incompatible with surrounding development and zones; and,

WHEREAS, such displays are incompatible with, and detract from, the visual quality of the view basin and abutting residential development; and,

WHEREAS, a proposed new zoning district (C-2) is adopted to provide for outdoor displays and more intense uses; and,

WHEREAS, there is property in the City that is currently being used consistent with permitted, accessory and conditional uses described in this ordinance; and,

WHEREAS, there is a need to allow a variety of more intense uses in Gig Harbor as the City wants to encourage variety (as long as it does not negatively impact the public or adjacent properties), but also because there is property in the City that could appropriately be zoned for such use; and,

WHEREAS, the proposed C-2 zoning district is consistent with the City's Comprehensive Plan; and,

WHEREAS, two public hearings were held on May 20, 1999 and July 29, 1999 by the Planning Commission to receive input from the community on proposed amendments to Title 17 intended to address the above findings and concerns; and,

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WHEREAS, on _____ at a regularly scheduled City Council meeting, the Gig Harbor City Council considered the ordinance; and,

WHEREAS, the City sent copies of the proposed amendments to Chapter 17 to DCTED as per WAC 365-195-620(1) and RCW 36.70A.106.

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

Section 1. A new chapter 17.41 to the Gig Harbor Municipal Code is hereby adopted to read as follows:

Chapter 17.41 COMMERCIAL DISTRICT (C-2)

Sections:

- 17.41010 Intent.
- 17.41.020 Permitted principal uses and structures.
- 17.41.030 Permitted accessory uses and structures.
- 17.41.040 Conditional uses.
- 17.41.050 Repealed.
- 17.41.055 Maximum gross floor area.
- 17.41.060 Site plans.
- 17.41.065 Commercial district minimum requirements and performance standards along the waterfront.
- 17.41.070 Minimum lot requirements.
- 17.41.075 Maximum residential density.
- 17.41.080 Minimum building setback requirements.
- 17.41.090 Maximum coverage by all buildings.
- 17.41.100 Maximum height of structures.
- 17.41.110 Parking and loading facilities.
- 17.41.120 Performance standards.

17.41.010 Intent.

A C-2 district is intended to provide for uses that, though not necessarily hazardous or offensive, have more visual impact in terms of outdoor displays as viewed from adjacent properties or public rights-of-way, and more industrial in terms of the secondary impacts, such as noise, odors, dirt, vibration, than uses permitted in other commercial zones in the City. The C-2 zone should be located adjacent to C-1 zones or other non-residential zones so that any secondary impacts of the C-2 zone uses will not cause an inordinate amount of inconvenience or problem for neighboring uses. These uses include light manufacturing, wholesale and retail sales, outdoor storage and display, maintenance and processing. The regulations for a C-2 district are intended

C

to allow the efficient use of the land while making the district attractive and compatible with a variety of uses allowed within the district and in adjacent districts.

17.41.020 Permitted principal uses and structures.

The following principal uses and structures are permitted in a C-2 district:

- A. All uses permitted in a B-2 district;
- B. Maintenance & repair services;
- C. The production, processing, cleaning, servicing, testing, and repair of materials, goods and products, except that junkyards, auto wrecking yards, garbage dumps and any activity that emits smoke, excessive noise, dirt, vibration or glare, or is otherwise offensive or hazardous, is prohibited;
- D. Indoor amusement establishments;
- E. Animal hospitals, clinics with overnight confinement and pounds;
- F. The sale of motor vehicles, boats, recreation vehicles, and manufactured or pre-fabricated houses;
- G. Carwashes;
- H. Building material sales;
- I. Cartage and express facilities and trucking;
- J. Contractors' offices and shops;
- K. Fishing equipment supplies and repairs;
- L. Frozen food lockers;
- M. Fuel and ice sales;
- N. Commercial greenhouses;
- O. Linen towel, diaper and similar supply services and laundry facilities;
- P. Storage, warehousing and wholesaling establishments;
- Q. Light assembly or manufacturing;
- R. All permitted uses of the waterfront;
- S. Child day care facilities;
- T. Family day care;
- U. Adult family homes; and
- V. Adult entertainment facilities subject to the provisions of Chapter 17.58 GHMC.

17.41.030 Permitted accessory uses and structures.

The following accessory uses and structures are permitted in a C-2 district:

- A. Temporary portable buildings for and during construction

17.41.040 Conditional uses.

Subject to the requirements of Chapter 17.64 GHMC and the standards and procedures for conditional uses as set forth in this title, the following uses may be permitted in a C-2 district:

- A. Hospitals, clinics and establishments for people convalescing from illness or operation;
- B. Homes for the aged;
- C. Public utilities and public service uses such as libraries, electrical substations, telephone exchanges and police, fire and water facilities;
- D. Recreational buildings and community centers;

C

- E. Schools, including playgrounds and athletic fields incidental thereto;
- F. Houses of religious worship, rectories and parish houses;
- G. Private and not-for-profit clubs;
- H. Planned unit developments
- I. Home occupations;
- J. Ministorage facilities;
- K. Drive-up window restaurants; and
- L. Residential uses.

17.41.055 Maximum gross floor area.

The maximum gross floor area per commercial structure is 65,000 square feet.

17.41.060 Site plans.

Before a building permit will be issued in a C-2 district, the site plan review process as specified in Chapter 17.96 GHMC shall be followed.

17.41.070 Minimum lot requirements.

In a C-2 district, the minimum site development area is 6,000 square feet, and the minimum lot width is 50 feet.

17.41.075 Maximum residential density.

The maximum residential density is seven dwelling units per acre.

17.41.080 Minimum building setback requirements.

In a C-2 district, a minimum 10-foot front yard setback is required. There are no minimum requirements for side and rear building setbacks, which shall be determined as part of the site plan review, pursuant to Chapter 17.96 GHMC. Where a C-2 district abuts a residential district, the minimum yard shall be 30 feet with a dense vegetative screen located on the commercial property. The minimum separation between commercial structures on the same site shall be 20 feet.

17.41.090 Maximum coverage by all buildings.

In a C-2 district, the maximum coverage *of the lot* is 80 percent.

17.41.100 Maximum height of structures.

In a C-2 district, all buildings and structures shall not exceed a height of 35 feet, except as provided for under Chapter 17.62 GHMC, Height restriction area or as otherwise allowed by the City's Design Manual

17.41.110 Parking and loading facilities.

In a C-2 district, parking and loading on private property shall be provided in connection with any permitted or conditional use as specified in Chapter 17.72 GHMC. Parking and loading is not allowed in any required yard, landscape or buffer areas.

17.41.120 Performance standards.

In a C-2 district, performance standards are as follows:

C

A. Exterior Mechanical Devices. Air conditioners, heating, cooling and ventilating equipment, pumps and heaters and all other mechanical devices shall be screened.

B. Landscaping. Landscaping is required and shall be installed in conformance with Chapter 17.78 GHMC, the City's Design Manual. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

C. Outdoor Storage of Materials. Outdoor storage of materials, including but not limited to lumber, auto parts, household appliances, pipe, drums, machinery or furniture, is permitted as an incidental or accessory activity of a permitted use or the principal feature of a conditional use. Such storage shall be screened by a wall, fence, landscaping or structure from surrounding properties and streets. Outdoor storage, except for greenhouse nursery stock, is not allowed in any required landscape area, buffer area, or required outdoor common area.

D. Outdoor Display of Merchandise. The outdoor display of merchandise, except for greenhouse nursery stock, is limited to paved surface areas and is not allowed in any required yard, landscape area, buffer area, or outdoor common area.

E. Outdoor Lighting and fixtures. Outdoor light fixtures and poles shall conform to all Design Manual standards. Within 100 feet of any residential zone or use, all ground-mounted floodlighting or light projection above the horizontal plane is prohibited, except as otherwise allowed for signage.

F. Trash Receptacles. Trash receptacles shall be screened from view. Screening shall be complementary to building design and materials.

Section 2. Section 17.58.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.58.040. Separation requirements.

A. An adult entertainment facility shall not be permitted to locate in any zoning district other than the general business district (B-2) and commercial districts (C-1 and C-2). Within the B-2, C-1 or C-2 district, an adult entertainment facility shall not be permitted to locate within 500 feet of any of the following zones or uses, whether such zones or uses are located within or outside of the city limits:

* * *

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

C

APPROVED:

MAYOR, Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

CITY CLERK, Molly Towslee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 2/23/00
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

C

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000, the City Council of the CITY OF GIG HARBOR, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND USE; AMENDING THE GIG HARBOR ZONING CODE TO INCLUDE A NEW ZONING DISTRICT CALLED THE "COMMERCIAL DISTRICT" (C-2), DESCRIBING THE CITY'S INTENT IN THE CREATION OF THE DISTRICT, THE USES ALLOWED IN THE DISTRICT AS EITHER PERMITTED OUTRIGHT, ACCESSORY USES OR CONDITIONAL USES, PERFORMANCE STANDARDS, INCLUDING SUCH REQUIREMENTS AS MAXIMUM GROSS FLOOR AREA, SETBACKS, HEIGHT AND LOT COVERAGE, ALLOWING ADULT ENTERTAINMENT FACILITIES IN C-2 ZONES; AMENDING SECTION 17.58.040 AND ADDING A NEW CHAPTER 17.41 TO THE GIG HARBOR MUNICIPAL CODE.

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

DATED this _____ day of _____, 2000.

Molly Towslee, City Clerk

D

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND USE; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GIG HARBOR TO ZONE PROPERTY WITH THE NEW ZONING DESIGNATION OF INCLUDE A NEW C-2 COMMERCIAL DISTRICT WEST OF SR-16, NORTH OF OLYMPIC DRIVE.

WHEREAS, the Planning Commission finds that the existing C-1 zone allows outdoor display of vehicles and other large items that cannot be reasonably displayed inside a structure except in very limited numbers, and,

WHEREAS, the allowance for outdoor displays of vehicles and similar large items is necessary and reasonable, provided such displays are not incompatible with surrounding development and zones; and,

WHEREAS, such displays are incompatible with, and detract from, the visual quality of the view basin and abutting residential development; and,

WHEREAS, a proposed new zoning district (C-2) is adopted to provide for outdoor and more intense uses; and,

WHEREAS, two public hearings were held on May 20, 1999 and July 29, 1999 by the Planning Commission to receive input from the community on proposed amendments to Title 17 intended to address the above findings and concerns; and,

WHEREAS, on _____ at a regularly scheduled City Council meeting, the Gig Harbor City Council considered the ordinance; and,

WHEREAS, the City sent copies of the proposed amendments to Chapter 17 to DCTED as per WAC 365-195-620(1) and RCW 36.70A.106.

WHEREAS, the official zoning district map of the City of Gig Harbor should be amended to provide the new C-2 district west of SR-16 in those areas previously zoned C-1.

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

Section 1. The Gig Harbor Zoning District Map is hereby amended as follows:
All existing C-1 parcels lying west of SR-16 and north of Olympic Drive NW (see attached Exhibit 1) are proposed to be C-2. Such parcels are more specifically defined by the following tax assessor's parcel numbers:

D

02-21-17-2-017	400099 - 001-0	950100 - 001-0	02-21-07-6-020	455500- 010-0
2-025	002-0	002-0	6-021	011-0
2-030	003-0	003-0	6-022	012-1
2-035	004-0	004-0	6-023	012-2
2-036	005-0	005-0		013-0
2-038	006-0	006-0		014-2
2-039	007-0	007-0		014-5
2-049	008-0	008-0		
2-078				
2-077				
2-073				
2-089				
2-088				
2-099				
2-091				
2-111				

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

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR, Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

CITY CLERK, Molly Towslee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 2/23/00
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

D

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000, the City Council of the CITY OF GIG HARBOR, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

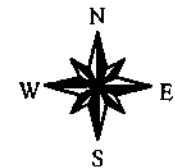
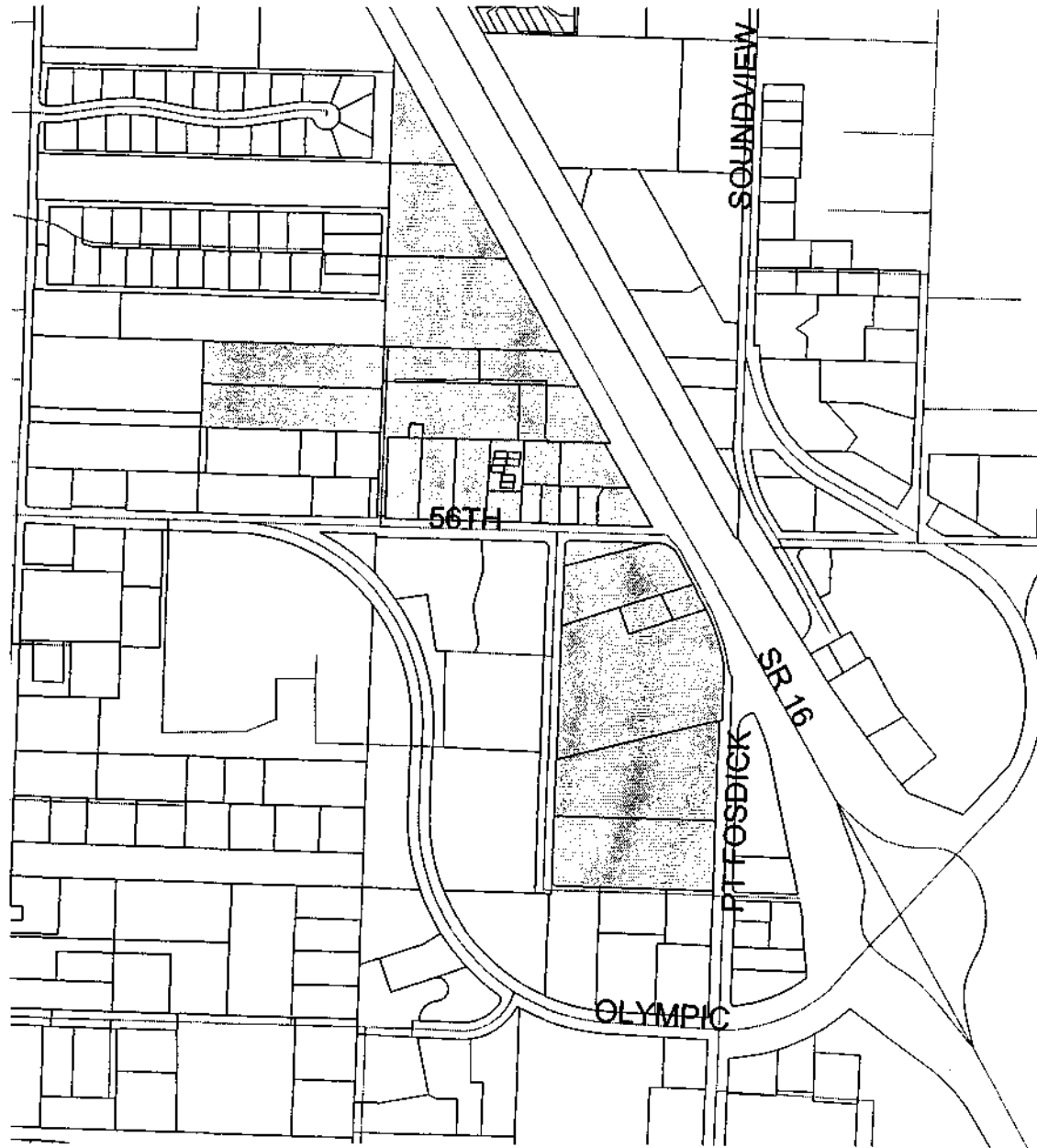
AN ORDINANCE OF THE CITY OF GIG HARBOR, GIG HARBOR, WASHINGTON, RELATING TO ZONING AND LAND USE; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GIG HARBOR TO INCLUDE A NEW C-2 COMMERCIAL DISTRICT WEST OF SR-16.

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

DATED this _____ day of _____, 2000.

Molly Towslee, City Clerk

City of Gig Harbor Planning Commission Proposed Rezone from C-1 to C-2



E

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR CITY COUNCIL, GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REVISING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE IN ORDER TO ASSURE CONSISTENCY BETWEEN TITLE 17 AND THE CITY OF GIG HARBOR DESIGN MANUAL; PROVIDING CLARIFICATION LANGUAGE AS TO THE INTENT OF THE C-1 DISTRICT; AMENDING THE C-1 DISTRICT TO PROMOTE COMPATIBILITY WITH NEARBY RESIDENTIAL DISTRICTS BY ELIMINATING SPECIFIC USES WHICH RELY UPON OUTDOOR DISPLAYS AS PRODUCT MERCHANDISING; REQUIRING A MINIMUM TEN-FOOT FRONT YARD IN C-1 DISTRICTS; REDUCING THE MAXIMUM GROSS FLOOR AREA FROM 65,000 SQUARE FEET PER STRUCTURE TO 50,000 SQUARE FEET PER STRUCTURE; AMENDING SECTIONS 17.40.010; 17.40.020; 17.40.040; 17.40.055; 17.40.080; 17.40.100; 17.40.110 AND 17.40.120 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Planning Commission finds that the existing C-1 zone allows outdoor display of vehicles and other large items that cannot be reasonably displayed inside a structure except in very limited numbers, and,

WHEREAS, The allowance for outdoor displays of vehicles and similar large items is necessary and reasonable, provided such displays are not incompatible with surrounding development and zones; and,

WHEREAS, Such displays are incompatible with, and detract from, the visual quality of the view basin and abutting residential development; and,

WHEREAS, two public hearings were held on May 20, 1999 and July 29, 1999 by the Planning Commission to receive input from the community on proposed amendments to Title 17 intended to address the above findings and concerns; and,

WHEREAS, on _____ at a regularly scheduled City Council meeting, the Gig Harbor City Council considered the ordinance; and,

WHEREAS, to improve compatibility with nearby and adjacent lessor intense zoning districts, adjustments to some of the C-1 district standards are appropriate.

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

E

Section 1. Section 17.40.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.010 Intent.

A C-1 district is intended to provide for a variety of uses that, though not necessarily hazardous or offensive, may be more intensive than general different from direct retail and wholesale sales and services to customers or residential developments. These uses include light manufacturing, sales, limited outdoor storage and display, maintenance and processing. The regulations for a C-1 district are intended to allow the efficient use of the promote a variety of light industrial and commercial uses within the district which are land while making the district attractive and compatible with the visual character of the view basin or with residential development in surrounding districts. ~~a variety of uses within the district and in surrounding districts.~~

Section 2. Section 17.40.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.020 Permitted principal uses and structures.

The following principal uses and structures are permitted in a C-1 district:

A. All uses permitted in a B-2 district;

~~B. Repair shops for appliances, automobiles and small equipment; Maintenance & repair services;~~

C. The production, processing, cleaning, servicing, testing, and repair of materials, goods and products, except that junkyards, auto wrecking yards, garbage dumps and any activity that emits smoke, excessive noise, dirt, vibration noxious odors or glare, or is otherwise offensive or hazardous, is prohibited;

D. Indoor amusement establishments;

~~E. Animal hospitals, clinics with overnight confinement and pounds;~~

~~F. The sale of motor vehicles, cars and trailers, and vehicle services such as carwashes, garages, tire and battery service facilities;~~

E. Carwashes;

~~G. Boat sales and show rooms;~~

F. Indoor sales of non-motorized boats;

~~H. G. Building material sales;~~

I. H. Cartage and express facilities and trucking;

~~J. I. Contractors' offices and shops;~~

~~K. J. Fishing equipment supplies and repairs;~~

~~L. K. Frozen food lockers;~~

~~M. L. Fuel and ice sales Gas stations;~~

~~N. M. Commercial greenhouses and/or outdoor display of nursery grown items;~~

~~O. N. Linen towel, diaper and similar supply services and laundry facilities;~~

~~P. O. Storage, Mini-storage, warehousing and wholesaling establishments;~~

~~Q. P. Light assembly or manufacturing;~~

~~R. Q. All permitted uses of the waterfront districts, provided that the subject site is abutting the waterfront;~~

S. R. Child Commercial family day care facilities;

~~T. S. Family day care;~~

U. T. Adult family homes; and

V. U. Adult entertainment facilities subject to the provisions of Chapter 17.58 GHMC.

E

Section 3. Section 17.40.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.040 Conditional uses.

Subject to the requirements of Chapter 17.64 GHMC and the standards and procedures for conditional uses as set forth in this title, the following uses may be permitted in a C-1 district:

- A. Hospitals, clinics and establishments for people convalescing from illness or operation;
- B. Homes for the aged;
- C. Public utilities and public service uses such as libraries, electrical substations, telephone exchanges and police, fire and water facilities;
- D. Recreational buildings and community centers;
- E. Schools, including playgrounds and athletic fields incidental thereto;
- F. Houses of religious worship, rectories and parish houses;
- G. Private and not-for-profit clubs;
- H. Planned unit developments;
- I. Home occupations;
- J. ~~Ministorage facilities;~~
- K. ~~J. Drive-in Drive-up window restaurants; and~~
- L. ~~K. Residential uses;~~
- L. Animal hospitals, clinics with overnight confinement and pounds;

Section 4. Section 17.40.055 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.055 Maximum gross floor area.

The maximum gross floor area per commercial structure is ~~65,000~~ 50,000 square feet.

Section 5. Section 17.40.080 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.080 Minimum building setback requirements.

In a C-1 district, a minimum 10-foot front yard setback is required. There there are no minimum requirements for front, side and rear building setbacks, except where a C-1 district abuts a residential district, the minimum yard shall be 30 feet with a dense vegetative screen located on the commercial property. Setback dimensions Otherwise, side and rear yard setbacks shall be determined as part of the site plan reviews of Chapter 17.96 GHMC. Where a C-1 district abuts a residential district, the minimum yard shall be 30 feet with a dense vegetative screen located on the commercial property. The minimum separation between commercial structures on the same site shall be 20 feet.

Section 6. Section 17.40.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.100 Maximum height of structures.

In a C-1 district, all buildings and structures shall not exceed a height of 35 feet, except as provided for under Chapter 17.62 GHMC, Height restriction area or as otherwise allowed by the City's Design Manual.

E

Section 7. Section 17.40.110 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.110 Parking and loading facilities.

In a C-1 district, parking and loading on private property shall be provided in connection with any permitted or conditional use as specified in Chapter 17.72 GHMC. Parking and loading is not allowed in any required yard, landscape or buffer areas.

Section 8. Section 17.40.120 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.40.120 Performance standards.

In a C-1 district, performance standards are as follows:

A. Exterior Mechanical Devices. Air conditioners, heating, cooling and ventilating equipment, pumps and heaters and all other mechanical devices shall be screened.

B. Landscaping. Landscaping is required and shall be installed in conformance with Chapter 17.78 GHMC, the City's Design Manual and/or by conditions of approval of discretionary applications required by this title; such landscaping shall be maintained in a neat manner. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

C. Outdoor Storage of Materials. The outdoor storage of materials, including but not limited to lumber, auto parts, household appliances, pipe, drums, machinery or furniture, is permitted as an incidental or accessory activity of a permitted use or the principal feature of a conditional use. Such storage shall be screened by a wall, fence, landscaping or structure from surrounding properties and streets. Outdoor storage, except for greenhouse nursery stock, is not allowed in any required landscape or buffer areas.

D. Outdoor Display of Merchandise. The outdoor display of merchandise, except for greenhouse nursery stock, is limited to an area no further than 30 feet from the perimeter of the building and is not allowed in any required landscape area, buffer area, or outdoor common area.

~~D. Outdoor Lighting. Within 100 feet of any residential zone or use, outdoor lighting and aerial mounted floodlighting shall be shielded from above in such a manner that the bottom edge of the shield shall be below the light source. Such lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement.~~

E. Outdoor lighting and fixtures. Outdoor light fixtures and poles shall conform to all Design Manual standards. Within 100 feet of any residential zone or use, all ground-mounted floodlighting or light projection above the horizontal plane is prohibited, except as otherwise allowed for signage.

~~E. F. Trash Receptacles. Trash receptacles shall be screened from view. Screening shall be complementary to building design and materials.~~

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

E

Section 10. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR, Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

CITY CLERK, Molly Towslee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 2/23/00
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

E.

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000, the City Council of the CITY OF GIG HARBOR, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR CITY COUNCIL, GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REVISING TITLE 17 OF THE GIG HARBOR MUNICIPAL CODE IN ORDER TO ASSURE CONSISTENCY BETWEEN TITLE 17 AND THE CITY OF GIG HARBOR DESIGN MANUAL; PROVIDING CLARIFICATION LANGUAGE AS TO THE INTENT OF THE C-1 DISTRICT; AMENDING THE C-1 DISTRICT TO PROMOTE COMPATIBILITY WITH NEARBY RESIDENTIAL DISTRICTS BY ELIMINATING SPECIFIC USES WHICH RELY UPON OUTDOOR DISPLAYS AS PRODUCT MERCHANDISING; REQUIRING A MINIMUM TEN-FOOT FRONT YARD IN C-1 DISTRICTS; REDUCING THE MAXIMUM GROSS FLOOR AREA FROM 65,000 SQUARE FEET PER STRUCTURE TO 50,000 SQUARE FEET PER STRUCTURE; AMENDING SECTIONS 17.40.010; 17.40.020; 17.40.040; 17.40.055; 17.40.080; 17.40.100; 17.40.110 AND 17.40.120 OF THE GIG HARBOR MUNICIPAL CODE.

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

DATED this _____ day of _____, 2000.

Molly Towslee, City Clerk



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR
**SUBJECT: CITY OF GIG HARBOR CIVIC CENTER – ARCHITECTURAL DESIGN
AND ENGINEERING SERVICES - CONSULTANT SERVICES CONTRACT**
DATE: MARCH 20, 2000

INTRODUCTION/BACKGROUND

A budget objective for 2000 includes the design of the City of Gig Harbor Civic Center. Consultant services are needed for the architectural, civil/structural, and landscape design to develop the project plans.

The City requested proposals from qualified architectural firms for the design of a City Service Center complex. Eleven firms responded and submitted proposals for this project.

An interview panel of department heads and Council members were selected to review the submittals. After reviewing the eleven proposals, four firms were invited to present a presentation to the interview panel. Based on the presentations and evaluation of materials submitted for review, the architectural firm of Burr Lawrence Rising + Bates Architects, P.S. (BLR&B) was selected as the most qualified to perform the work. Their selection was based on their understanding of the project, familiarity with the area, and extensive municipal experience.

The steering committee, composed of department heads, a City Council member, and a Gig Harbor Citizen has met with BLR&B to discuss the proposed scope of the project. In order to develop the design of the new Gig Harbor Civic Center in conjunction with a public participation process, staff envisions the design effort to be in two phases. Phase 1 will develop the master project schedule, facilitate the program review and confirmation process, and prepare the final architectural program and facility area summary. Phase 1 will complete with a presentation to the City Council and community, the committees recommended facility plan. Phase 2 will perform the actual design of the contract drawings and specifications for the facility as outlined and approved in Phase 1.

This contract is for Phase 1 only; the scope of work and fee for Phase 2 will be negotiated during the Phase 1 work. The project presently is scheduled for construction in April 2001.

POLICY CONSIDERATIONS

Burr Lawrence Rising + Bates Architects, P.S. is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This project was anticipated in the approved 2000 budget.

MAYOR WILBERT AND CITY COUNCIL

MARCH 20, 2000

PAGE 2

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Burr Lawrence Rising + Bates Architects, P.S. for the design work for Phase 1 in the amount not to exceed sixty-one thousand three hundred sixty-eight dollars and no cents (\$61,368.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
BURR LAWRENCE RISING + BATES ARCHITECTS, P.S.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Burr Lawrence Rising + Bates Architects, P.S. organized under the laws of the State of Washington, located and doing business 1145 Broadway Plaza, Suite 1200, Tacoma, Washington 98402-3519 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design of City of Gig Harbor Civic Center, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 22, 2000, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Sixty-one thousand three hundred sixty-eight dollars and no cents (\$61,368.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. . The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2000; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT

Thomas Jerry Lawrence, FAIA
Burr Lawrence Rising + Bates Architects, P.S.
1145 Broadway Plaza, Suite 1200
Tacoma, Washington 98402-3519

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City,

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 _____, 2000.

CONSULTANT

By: Thomas Jerry Lawrence By:
Its Principal

CITY OF GIG HARBOR

Mayor

Notices to be sent to:

CONSULTANT
Thomas Jerry Lawrence, FAIA
Burr Lawrence Rising + Bates Architects, P.S.
1145 Broadway Plaza, Suite 1200
Tacoma, Washington 98402-3519

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

SCOPE OF SERVICES – EXHIBIT A
GIG HARBOR CIVIC CENTER
ARCHITECTURAL PROGRAMMING PROCESS

<i>Date</i>	<i>Time</i>	<i>Steering Comm. Meetings</i>	<i>Sub-Committee Meetings</i>	<i>Community Meetings</i>	<i>City Council Meeting</i>	<i>Meeting Agenda</i>
		No. 1				<ul style="list-style-type: none"> ◆ Review programming/planning process. ◆ Draft committee Mission Statement. ◆ Review City of Gig Harbor Mission Statement and goals. ◆ Review Gig Harbor Municipal Facilities Master Plan. ◆ Brainstorm Design Goals.
		No. 2				<ul style="list-style-type: none"> ◆ Review draft of Project Rationale. ◆ Continue brainstorming Design Goals and “Keys to Design”. ◆ Hand-out draft example of Civic Center program elements.
		No. 3				<ul style="list-style-type: none"> ◆ Review and edit draft Design Goals and Keys to Design. ◆ Discuss and define program elements.
		No. 4				<ul style="list-style-type: none"> ◆ All day facility visitations.
		No. 5				<ul style="list-style-type: none"> ◆ Debrief on facility visitations, amend program elements/descriptions as required.
			No. 1			<ul style="list-style-type: none"> ◆ Police Department – all day work session, program questionnaire process.
			No. 2			<ul style="list-style-type: none"> ◆ Municipal Court – half-day work session, program questionnaire process. (Optional)
			No. 3			<ul style="list-style-type: none"> ◆ City Council Chambers and support areas, half-day work session, program questionnaire process.
			No. 4			<ul style="list-style-type: none"> ◆ Administration Area, program questionnaire process.
			No. 5			<ul style="list-style-type: none"> ◆ Finance Department, program questionnaire process.
			No. 6			<ul style="list-style-type: none"> ◆ Planning Department, program questionnaire process.

SCOPE OF SERVICES – EXHIBIT A
GIG HARBOR CIVIC CENTER
ARCHITECTURAL PROGRAMMING PROCESS

<i>Date</i>	<i>Time</i>	<i>Steering Comm. Meetings</i>	<i>Sub-Committee Meetings</i>	<i>Community Meetings</i>	<i>City Council Meeting</i>	<i>Meeting Agenda</i>
			No. 7			◆ Public Works Department, program questionnaire process.
			No. 8			◆ Common Support Areas, program questionnaire process.
			No. 9			◆ Exterior Spaces , program questionnaire process.
		No. 6				◆ Review draft of architectural program questionnaires.
		No. 7				◆ Sustainable Design Workshop, half-day.
				No. 1		◆ Meeting with surrounding neighborhood to share general scope and goals of project and listen to their issues and concerns.
				No. 2		◆ Meeting with Architect/Engineers, Contractors and Developers to solicit input and advice on how the City can best serve their needs and how those needs may be supported by City organizational structure and facility design.
		No. 8				◆ Discuss input from community meetings, incorporate feed back into programming decisions. ◆ Review square footage allocations. ◆ Review Sustainable Design Workshop minutes.
		No. 9				◆ Hand-out final draft of architectural program questionnaires. ◆ Discuss upcoming Concept Design Charette.
		No. 10				◆ Concept Design Charette, half day.
				No. 3		◆ Meeting with community at large, share programming process, Design Charette process and results. Receive their feedback and input.
		No. 11				◆ Present concept design drawings, receive feedback from committee.

SCOPE OF SERVICES – EXHIBIT A
GIG HARBOR CIVIC CENTER
ARCHITECTURAL PROGRAMMING PROCESS

<i>Date</i>	<i>Time</i>	<i>Steering Comm. Meetings</i>	<i>Sub- Committee Meetings</i>	<i>Community Meetings</i>	<i>City Council Meeting</i>	<i>Meeting Agenda</i>
		No. 12				<ul style="list-style-type: none"> ◆ Present cost modeling results. ◆ Set priorities if required.
		No. 13				<ul style="list-style-type: none"> ◆ Hand-out final architectural program document.
					No. 1	<ul style="list-style-type: none"> ◆ Present architectural program document for approval/adoption by council.

SCHEDULE OF RATES AND ESTIMATED HOURS - EXHIBIT B

GIG HARBOR CIVIC CENTER

ARCHITECTURAL PROGRAMMING PROCESS

> PREPARE FOR AND ATTEND (10) STEERING COMMITTEE MEETINGS:

Principal Architects:	90 hrs x \$123/hr	11,070.00
Associate Architect:	32 hrs x \$99/hr	3,168.00
Clerical:	12 hrs x \$52/hr	624.00

> FACILITY VISITATIONS:

Principal Architects:	16 hrs x No Charge	0.00
Associate Architect:	8 hrs x No Charge	0.00

> PREPARE FOR, FACILITATE AND DOCUMENT SUSTAINABLE DESIGN CHARETTE:

Principal Architects:	14 hrs x \$123/hr	1,722.00
Associate Architect:	8 hrs x \$99/hr	792.00
Clerical:	4 hrs x \$52/hr	208.00

> PREPARE FOR AND FACILITATE CONCEPTUAL DESIGN CHARETTE:

Principal Architects:	24 hrs x \$123/hr	2,952.00
Associate Architect:	36 hrs x \$99/hr	3,564.00

> PREPARE/EDIT ARCHITECTURAL PROGRAM QUESTIONNAIRES, ATTEND (9) SUB-COMMITTEE MEETINGS:

Principal Architects:	84 hrs x \$123/hr	10,332.00
Associate Architect:	44 hrs x \$99/hr	4,356.00
Clerical:	24 hrs x \$52/hr	1,248.00

> DEVELOP CONCEPT SITE AND FLOOR PLANS:

Principal Architects:	20 hrs x \$123/hr	2,460.00
Associate Architect:	32 hrs x \$99/hr	3,168.00

> PREPARE FOR, ATTEND AND RECORD MINUTES OF (4) COMMUNITY MEETINGS:

Principal Architects:	32 hrs x \$123/hr	3,936.00
Associate Architect:	8 hrs x \$99/hr	792.00
Clerical:	6 hrs x \$52/hr	312.00

> PREPARE COST MODEL:

Principal Architects:	12 hrs x \$123/hr	1,476.00
The Robinson Company:	Lump Sum	3,500.00
Tres West Engineers:	Lump Sum	1,400.00
Warner Engineers:	Lump Sum	1,000.00
Chalker Putnam Collins & Scott	Lump Sum	800.00

> ASSEMBLE FINAL ARCHITECTURAL PROGRAM DOCUMENT:

Principal Architects:	16 hrs x \$123/hr	1,968.00
Clerical:	10 hrs x \$52/hr	520.00

SCHEDULE OF RATES AND ESTIMATED HOURS – EXHIBIT B

GIG HARBOR CIVIC CENTER

ARCHITECTURAL PROGRAMMING PROCESS

> PREPARE FOR AND PRESENT TO CITY COUNCIL:

Principal Architects: 6 hrs x No Charge 0.00

<i>TOTAL ESTIMATED SERVICES</i>	<i>\$ 61,368.00</i>
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SCHEDULE OF RATES AND ESTIMATED HOURS – EXHIBIT B
GIG HARBOR CIVIC CENTER
ARCHITECTURAL PROGRAMMING PROCESS

BILLING RATE SCHEDULE
EFFECTIVE JANUARY, 2000

Category:

1.	Principals.....\$123.00 Jerry Lawrence, FAIA Paul Rising, AIA Tom Bates, AIA
2.	Senior Associates\$104.00 Lee Fenton, AIA Dennis Kabba, AIA
3.	Associates / Project Manager\$99.00 Ron Tjerandsen Hossein Peigahi Kit Burns John Wegener
4.	Project Architect.....\$89.00 David Bertus Kurt Cross Shauna Essman Rick Franklin Les Gertsman Charlie Glassie Robert Jacklin Doug Jason Jim Kuhlman Mike Reynolds Doug Williams Steve Russo
6.	Job Captain.....\$83.00 Bob Lindstrom Mike Desmarteau Bob Murdoch Bob Goldstein
7.	CADD/Drafters\$71.00 David Hickman Sameer Kulkarni
8.	Secretarial.....\$52.00 Chris Pourakbari Kathleen Bjorkheim Nancy Green

Note: Reimbursable costs for reproductions, faxes, computer plots and shipping costs shall be billed in addition to the above hourly rates at a rate of 1.1 times the actual cost.



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: CAROL MORRIS, LEGAL COUNSEL
SUBJECT: PUMP STATION NO. 3 CONDEMNATION
DATE: MARCH 24, 2000

INFORMATION/BACKGROUND

The Public Works Director, Dave Skinner, informed the Mayor and Council in February of a need to condemn property near the small overflow parking lot for the Union 76 Station on the south side of Harborview Drive. In a memo dated February 23, 2000, Mr. Skinner asked the Council to provide authorization for the negotiation of a contract with a condemnation attorney for this purpose.

The Council decided not to enter into a contract with the selected condemnation attorney at the last regular meeting. I will be handling the condemnation proceeding, if the attached ordinance is adopted.

FINDINGS TO BE MADE IN CONDEMNATION ORDINANCE:

As stated in Mr. Skinner's memo of February 23, 2000, the City representatives have attempted to negotiate a purchase of the necessary property and/or property rights for the installation of Pump Station No. 3. These negotiations have not been successful.

As an optional code, non-charter city, the City of Gig Harbor has the authority to condemn property and property rights. RCW 35A.11.020. The City is required to exercise its rights of condemnation as set forth in chapter 8.12 and 8.28 RCW. RCW 35A.64.200.

In order for the City to condemn property, it must make a determination that the use to be made of the property is a public use. Cities are statutorily authorized to condemn property for all of the specific uses described in RCW 8.12.030. Pump Station No. 3 is a facility associated with the City's Waste Water Treatment Plant, and the City is authorized, in RCW 8.12.030, to condemn property for drains, sewers, aqueducts, reservoirs and pumping stations (this is only a partial list).

When a city decides to condemn property, the city must adopt an ordinance, and state in the ordinance that unless the improvement will be paid for wholly or in part by special assessment, compensation to the property owner shall be from the City's general funds. RCW 8.12.040.

The City must also make a finding that the public interests require the condemnation

of the property for the public use. Staff has included information regarding the public need for the construction of Pump Station No. 3 in the "whereas" sections of the attached ordinance.

Finally, the City must make a finding that the amount of property described in the ordinance is necessary to accomplish the public purpose. This means that the Council must analyze whether the amount of property or the nature of the interest to be condemned will be all the City needs to construct Pump Station No. 3.

RECOMMENDATIONS:

- A. Findings. The staff has drafted an ordinance to guide the Council's findings in the adoption of a condemnation ordinance for Pump Station No. 3. Additional facts can be added as the Council deems appropriate, based upon additional information provided by the Public Works Director during the Council meeting. The staff recommends that the Council adopt the findings set forth in the ordinance, at a minimum.

- B. Procedure. Staff recommends that the Council set this matter for public hearing during the next regular Council meeting, and that if the Council agrees with the staff's findings, to adopt the ordinance at that time.

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN REAL PROPERTY AND REAL PROPERTY INTERESTS FOR THE PURPOSE OF CONSTRUCTING THE PROJECT COMMONLY KNOWN AS THE GIG HARBOR PUMP STATION NO. 3, TOGETHER WITH ALL NECESSARY AND RELATED WORK TO MAKE A COMPLETE IMPROVEMENT IN ACCORDANCE WITH APPLICABLE CITY STANDARDS, PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY NECESSARY THEREFORE, AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTION AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.

WHEREAS, Pump Station No. 3 is the final pump station prior to discharge of raw sewage in the City's wastewater treatment plant; and

WHEREAS, the National Pollutant Discharge Elimination System (NPDES) permit issued in 1997 for the City's expanded wastewater treatment plant requires that Pump Station No. 3 be upgraded to accommodate the 4.0 mgd peak flow; and

WHEREAS, the current pump station No. 3 has numerous deficiencies, including aging equipment and controls; and

WHEREAS, in 1995, the City had to abandon plans for expanding the existing pump station and connecting a pair of larger diameter pressure pipes from the existing station to the Wastewater Treatment Plant due to the discovery of contaminated soil from a leaking underground fuel storage

tank from the adjacent gas station in the immediate vicinity of the pump station. Because of the unknown limits of contamination in the vicinity of the existing pump station an alternate location for the new pump station was selected.

WHEREAS, based upon the above deficiencies and the requirements of the NPDES permit, the City has determined that a new pump station must be constructed in a different location; and

WHEREAS, the City Engineering Staff determined that the small overflow parking lot for the Union 76 station on the south side of Harborview Drive is the best location for the new pump station (as shown on Exhibit B, attached hereto and incorporated herein by this reference) because it is in the vicinity of an existing pump station and unused twin pressure lines at that pump station, it is separated from the heavily used pedestrian sidewalk on the north side of Harborview Drive; it provides better screening due to the adjoining vegetated hillside; it will have a low impact on the existing land use because the majority of the facility will be constructed underground, and it will not intrude into the view of Gig Harbor from Harborview and the adjacent sidewalk, and

WHEREAS, the City Engineering Staff determined that the area required for the new pump station is 2,631 square feet, which will include an approximate 18 foot diameter underground pump vault and a 12 foot by 16 foot underground valve vault, above ground will be an architectural concrete block well house which will house the odor controls and the pump controls for the station. The site will also include a small area for a biofilter that is essentially a bed of composite and bark that aids in the odor control process. The total facility will utilize the entire area as shown on Exhibit

B; and

WHEREAS, the City Engineering Staff recommends that the City Council condemn an easement or fee title to a portion of the 9.4 acre parcel located at approximately 3998 Harborview Drive, which is currently a gravel lot; and

WHEREAS, the City Engineering Staff have attempted to negotiate purchase of all necessary property and/or property rights for Pump Station No. 3 in the portion of the property shown on Exhibit B and legally described in Exhibit A; and

WHEREAS, the City Engineering Staff's research on the ownership of the property has disclosed uncertainty regarding the ownership of the property, which cannot easily be determined without a judicial proceeding designed to allow for the payment to all persons who can demonstrate to the Court that they have a compensable interest in the property; and

WHEREAS, in view of these difficulties, the City Council has determined to condemn the property and/or property rights necessary for completion of the Pump Station No. 3 Project; now, therefore,

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

Section 1. Declaration of Public Use. The City Council hereby finds that the construction of Pump Station No. 3, which is a necessary appurtenance to the City's Waste Water Treatment Plan, and contemplated by the City's NPDES permit for the Waste Water Treatment Plant, is a Public Use.

Section 2. Declaration that Public Interest Requires the Property. The public health, safety, necessity and convenience demand that the Pump Station No. 3 Project, including acquisition of property and/or property interests, legally described in Exhibit A, attached hereto and by this reference incorporated herein, be condemned, appropriated, taken and damaged for the construction of said Project and improvements.

Section 3. Declaration of Necessity. The City Council of the City of Gig Harbor, after hearing the report of the City Staff, and reviewing the plan for construction of the Pump Station No. 3 Project, hereby declares that all of the property described in Exhibit A, and as depicted in Exhibit B, is necessary for public use and the construction of the Pump Station No. 3 Project, to accomplish the public purpose.

Section 4. Authority of the City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the condemnation proceedings provided by law to condemn, take and appropriate the Property necessary to carry out the provisions of this ordinance, and to pay just compensation to the property owners as provided in chapter 8.12 RCW.

Section 5. Compensation to be Paid out of General Fund. The just compensation to be paid by the City to the property owners in this condemnation shall be taken from the City's General Fund.

Section 6. Effective date. This ordinance, being the exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

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. _____

CAM157473.10/00085.050020

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2000, the City Council of the City of Gig Harbor, Washington, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN REAL PROPERTY AND REAL PROPERTY INTERESTS FOR THE PURPOSE OF CONSTRUCTING THE PROJECT COMMONLY KNOWN AS THE GIG HARBOR PUMP STATION NO. 3, TOGETHER WITH ALL NECESSARY AND RELATED WORK TO MAKE A COMPLETE IMPROVEMENT IN ACCORDANCE WITH APPLICABLE CITY STANDARDS, PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY THEREFORE, AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTIONS AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SUCH CONDEMNATION.

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

DATED this _____ day of _____, 2000.

CITY CLERK, MOLLY TOWSLEE



City of Gig Harbor. The "Maritime City"

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

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR *DRS*
**SUBJECT: JERISICH PARK DOCK CATHODIC PROTECTION ENGINEERING
SERVICE - CONSULTANT SERVICES CONTRACT**
DATE: MARCH 21, 2000

INTRODUCTION/BACKGROUND

As part of the 1998 Jerisich Park Dock Extension project was the installation of 18-inch precast concrete piles. The contract was changed to use steel piles after the contractor was unable to drive the concrete piles due to unfavorable subgrade conditions. Because the piles that were installed are galvanized steel and integral to the structure of the dock, we need to develop a design to cathodically protect the piles.

A consultant has been selected to prepare drawings, installation instructions, and a bill of materials. The system will be designed for installation by City staff consisting of mounting aluminum anodes to each pile. Materials are estimated at approximately \$4,000-\$5,000.

Norton Corrosion Limited (NCL) was selected by staff as the most qualified firm to develop the plans and specifications for installation of the new cathodic protector system. Their selection was based on NCL's experience and ability to perform the work.

POLICY/FISCAL CONSIDERATIONS

There is no budgeted objective for this project, however we have completed one objective with a savings of \$5,000 and anticipate being under budget in our Capital Outlay Fund.

Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Norton Corrosion Limited, in an amount not to exceed two thousand eight hundred forty-nine dollars and five cents (\$2,849.05).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
NORTON CORROSION LIMITED**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Norton Corrosion Limited organized under the laws of the State of Washington, located and doing business at 8820 222nd Street S.E., Woodinville, Washington 98072 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City presently has a requirement for the design of a cathodic protection system, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated March 7, 2000, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

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

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Two thousand eight hundred forty-nine dollars and five cents (\$2,849.05) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within thirty (30) 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 design work described in **Exhibit A** shall be completed by June 1, 2000; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

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

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

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

VI. Discrimination

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

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from 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 notification will be given to the City of Gig Harbor for any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

XVI. Written Notice

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

CONSULTANT
Dale Doughty, P.E.
Norton Corrosion Limited
8820 222nd Street S.E.
Woodinville, Washington 98072

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

XVII. Assignment

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

XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2000.

CONSULTANT
By: Dale Doughty
Its Principal

CITY OF GIG HARBOR

Mayor

Notices to be sent to:
CONSULTANT
Dale Doughty, P.E.
Norton Corrosion Limited
8820 222nd Street S.E.
Woodinville, Washington 98072

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**EXHIBIT A – SCOPE OF SERVICES
FOR
CITY OF GIG HARBOR
JERISICH PARK DOCK
CATHODIC PROTECTION DESIGN
March 7, 2000**

Norton Corrosion Limited (NCL) will provide a galvanic (non-powered) cathodic protection design to protect the Jerisich Park Dock steel piles from corrosion. NCL will supply a bill of materials and installation instructions and design drawings to allow a city diver to install this system. NCL will provide material cost estimates based upon 3 and 10 year cathodic protection system design lives.

- Task 1 Project Administration - This project will be complete 30-60 days after receipt of your Notice to Proceed. No progress reports or coordination meetings (project management) are budgeted. All tests will be approved by the City prior to implementation.
- Task 2 Review Existing Drawings and Perform Site Inspection - NCL will travel to the job site, review existing drawings, and perform a visual inspection of the Jerisich Park Dock. On-site potential testing and other tests will be performed at the discretion of our Professional Corrosion Engineer.
- Task 3 Develop Design, Prepare Drawings, Installation Instructions, and Bill of Materials - NCL will design, prepare, and deliver 8½ x 11" installation instructions and drawings to allow city divers to complete this project on a "Do it Yourself" basis. Anode weights will be limited to approximately 40 pounds.
- Task 4 Post Installation Testing - Upon notification from the city that installation of the anodes is complete, NCL will return to Jerisich Park Dock and perform post installation potential testing; other tests will be performed at the discretion of our Corrosion Engineer. All tests will be approved by the City prior to implementation.
- Task 5 Prepare and Delivery Report - NCL will prepare and deliver the post-installation testing report detailing raw data collected, observations, conclusions, and O&M recommendations.

Exhibit B
Fixed Fee Proposal
Rates and Hours
Project Name: City of Gig Harbor Jerisich Park Dock

NORTON CORROSION LIMITED

Principal/Sr. Corrosion Engineer, Principal

Project Quality Control	0.50 HRS	X	\$101.70	=	\$50.85
Total Principal/Sr. Corrosion Engineer, Principal	0.50				\$50.85

Sr Corrosion Engineer

On-Site/Field Work	4.00 HRS	X	\$92.50	=	\$370.00
Basis of Design/Design Calculations	1.00 HRS	X	\$92.50	=	\$92.50
Development of plans	4.00 HRS	X	\$92.50	=	\$370.00
Development of installation instructions	3.00 HRS	X	\$92.50	=	\$277.50
Final Basis of Design/Design Calculations	0.50 HRS	X	\$92.50	=	\$46.25
Final Plans	1.50 HRS	X	\$92.50	=	\$138.75
Final installation instructions	2.50 HRS	X	\$92.50	=	\$231.25
Final Bill of Materials	1.50 HRS	X	\$92.50	=	\$138.75
Post-installation acceptance testing	3.00 HRS	X	\$92.50	=	\$277.50
Post installation acceptance testing report	2.00 HRS	X	\$92.50	=	\$185.00
Travel time- 2 Round trips	6.00 HRS	X	\$92.50	=	\$555.00
Total Sr Corrosion Engineer	29.00				\$2,682.50

Draftsman/CAD Computer Support

Development of plans	3.00 HRS	X	\$47.70	=	\$143.10
Final Revision and Submittal of Final Plans	1.00 HRS	X	\$47.70	=	\$47.70
Total Draftsman/CAD Computer Support	4.00				\$190.80

Secretarial

Development of specifications	1.50 HRS	X	\$37.10	=	\$55.65
Final Specifications	1.00 HRS	X	\$37.10	=	\$37.10
Post installation acceptance testing report	1.50 HRS	X	\$37.10	=	\$55.65
Total Secretarial	4.00				\$148.40

Total Norton Corrosion Limited

\$3,072.55

Mileage

NCL	160.00	mi	x	0.325	=	\$52.00
Total Mileage	160.00					\$52.00

Total Project Cost

\$3,124.55

Deduct 3 hours (@\$92.50) if NCL can mobilize at our convenience

(\$277.50)

Total Project Cost if NCL can mobilize at our convenience

\$2,847.05