

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
July 10, 2006 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

SWEARING IN CEREMONY: Officer Raquel Brunson, Officer Charles Dennis, and Reserve Officer Jeffrey Shepherd.

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 City Council Meeting of June 26, 2006.
2. Resolution Setting Public Hearing – Bujacich Road NW and 54th Avenue NW Street Vacation Request – Harbor Reach Estates, LLC.
3. 2006 Summer Sounds at Skansie Contracts.
4. 2006 Summers Concert Series at Skansie Brothers Park – Sound System Contract.
5. Recommendation for 2006 Art Grant – Drawing You In Program.
6. Olympic Drive / 56th Roadway Improvement Project – Temporary Easement Agreements.
7. Integrated Permit Tracking Application Software Purchase / Contract Authorization.
8. Payment of Bills for July 10, 2006.
Checks #50785 through #50900 in the amount of \$270,768.49.
9. Payment of Payroll for the month of June:
Checks #4289 through # 4324 and direct deposit entries in the amount of \$276,383.62.

OLD BUSINESS:

1. Public Hearing and Second Reading of Ordinance – Comprehensive Plan Amendments, Authorizing Resolutions and Development Agreements.

NEW BUSINESS:

1. First Reading of Ordinance – Ordering the Formation of a Hospital Benefit Zone.
2. First Reading of two Ordinances – Revisions to Chapter 12.18 – Telecommunications and Cable Television Service and a Proposed Franchise with Comcast.

STAFF REPORT: None scheduled.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF JUNE 12, 2006

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Dick, Payne, and Mayor Hunter. Councilmember Kadzik was absent.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

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

1. Approval of the Minutes of Special City Council Meeting of June 5, 2006 and City Council Meeting of June 12, 2006.
2. Second Amendment to the Utility Extension Agreement – Request for Additional Residential Service Connection – Canterwood Development Company.
3. First Amendment – Contract for Evaluation of the Community Development Department.
4. Interagency Data Sharing Agreement with the Department of Revenue.
5. Liquor License Change of Ownership: Albertson's.
6. Liquor License Application: Gourmet Essentials.
7. Liquor License Renewals: The Keeping Room; Harbor Rock Café; Hunan Garden; Kinza Teriyaki; and Spiro's Bella Notte'.
8. Payment of Bills for June 26, 2006.
Checks #50645 through #50784 in the amount of \$441,795.06.

MOTION: Move to approve the Consent Agenda as presented.
Ekberg / Franich – unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance – Amendments to Business License Code. Molly Towslee, City Clerk, presented this ordinance that would amend the city's licensing code to reflect the recent agreement with the State Department of Licensing to act as the city's agent for business license purposes.

MOTION: Move to adopt Ordinance No. 1049 as presented.
Franich / Payne – unanimously approved.

2. Public Hearing and Second Reading of Ordinance – Comprehensive Plan Amendments and Development Agreements – **Postponed until next Meeting on July 10, 2006.** Mayor Hunter announced that this agenda item would come at the next meeting.

3. Second Reading of Ordinance – Amendments to the Harbor Code. Mark Hoppen, City Administrator, presented this ordinance that adopts by reference RCW

79A.60 which outlines the regulation of recreational vessels and establishes a monetary penalty for all civil infraction violations.

MOTION: Move to adopt Ordinance No. 1050 as presented.
Franich / Payne – unanimously approved.

NEW BUSINESS:

1. Public Hearing and Resolution Executing a Utility Extension Agreement for 12718 Burnham Drive. John Vodopich, Community Development Director, presented the information on this request for an outside utility extension agreement for an existing residence owned by Greg and Tami Vermillion. He described the project, adding that this site is located in the Peninsula School District's Latecomer's District and that the applicant would be required to pay the latecomer's fee prior to connection.

Mayor Hunter opened the public hearing at 7:05 p.m. No one came forward to speak, he closed the hearing.

Councilmember Dick asked for clarification on the UGA line that cuts the parcels in half. John Vodopich explained that the line shown is the shoreline, and because the parcel owners own the tidelands which run into the water, it makes the map a bit deceptive.

MOTION: Move to adopt Resolution No. 675 as presented.
Young / Ekberg – unanimously approved.

2. Wetland Evaluations – Consultant Services Contract. John Vodopich presented this contract with David Evans and Associates to perform some investigative wetlands evaluations at the Eddon Boatyard Site, the Scofield Property, and in the vicinity of Borgen Boulevard Interchange.

Councilmember Young asked why this is being done now. John Vodopich explained that there are time constraints on the Eddon Boat Site, and the other properties have been included for economy of scale. Mayor Hunter added that the wetlands in the Gig Harbor North area are an unknown cost for the interchange improvements.

MOTION: Move for approval of the wetlands evaluation contract with David Evans and Associates in an amount not to exceed Two Thousand Five Hundred Thirty-five dollars (\$2,535.00) as presented.
Franich / Payne – unanimously approved.

PUBLIC COMMENT: No one signed up to speak.

STAFF REPORT:

John Vodopich, Community Development Director - Proposed City-initiated Annexation.
No verbal report given.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Franich commented that he and Councilmember Conan attended the June 21st Council Community Coffee event held at the Peninsula Library. He said that there was a pretty good turn-out and that he had a nice time interacting with the people. He said that he looks forward to holding them in the future. Councilmember Conan added that it was a great time and he hopes that other Councilmembers have an opportunity to attend one of the future events.

Councilmember Ekberg announced that he would not be present at the meetings in July.

Mayor Hunter said that he wants to do a better job of communicating with Council. He referenced his letter on communications and said that he believes that a better stream of communication will occur that will allow all the Boards and Council know what is going on. He said that on July 10th, there is a kick-off for the Interlocking Software Program which involves Kurt Latimore and will get the departments going on permit tracking in the next few months.

Mayor Hunter then said that he had passed out some information regarding the clear-cut on Point Fosdick, adding that he believes that the city needs to review how the patterns of development are working. He said that one method of calculation doesn't serve all type of development.

Councilmember Franich said that he was surprised at the clearing when he drove by, and agreed that it is a good idea to address this issue to see if there are deficiencies in the code.

Councilmember Young suggested that because this is something in the Design Code that the Design Review Board should be asked to make a recommendation. He said that the reason the rules are crafted as they are is because they wanted a more urban style of development. He agreed that there may be a better way to do this.

Councilmember Franich responded that there is a conflict of urban verses traditional styles of development. He said that he favors preserving the character of Gig Harbor, and many of the things that promote the character of Gig Harbor run afoul of the idea of urban development.

Councilmember Ekberg mentioned that because the Planning Commission has no meetings scheduled for the summer months, perhaps they could dovetail with the Design Review Board to explore this issue together. Mayor Hunter said that he would look into this.

Mayor Hunter then announced that the city had been invited to participate in the Annual Dragon Boat Racing Challenge, which would require 25 people to man a boat in a 250

meter race on September 16th. He said he has an informational CD if anyone is interested.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Proposed Marina Fire Safety Requirements: June 27th, 5:30 p.m. Civic Center Community Rooms.
2. Gig Harbor North Traffic Options Committee: June 28th, 9:00 a.m., Civic Center Community Rooms.
3. Friends of the Parks Commission: July 5th, 5:30 p.m., Civic Center Community Rooms.

ADJOURN:

MOTION: Move to adjourn at 7:18 p.m.
Payne / Ekberg – unanimously approved.

CD recorder utilized:
Disk #1 Track 1- 12

Charles L. Hunter, Mayor

Molly M. Towslee, City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION FOR PUBLIC HEARING - BUJACICH ROAD NW AND
54TH AVENUE NW STREET VACATION REQUEST – HARBOR REACH
ESTATES, LLC
DATE: JULY 10, 2006

INTRODUCTION/BACKGROUND

The city received a letter on June 13, 2006 from Mr. Sterling Griffin, managing member of Harbor Reach Estates, LLC, owners of the abutting property, petitioning the city to vacate a portion of Bujacich Road NW and 54th Avenue NW in accordance with GHMC 12.14.002.

The right-of-way proposed for vacation along Bujacich Road NW and 54th Avenue NW has a 16-inch water main located approximately 12 feet east of the right-of-way line. The water main will require a 20-foot easement. Future sewer main construction may require utilizing the remaining portion of the right-of-way requested to be vacated. The Director of Operations recommends retaining an easement on the entire portion requested to be vacated for future utility construction, repair and maintenance.

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

POLICY CONSIDERATIONS

The April 5, 2006 Comprehensive Plan Amendments Final Supplemental Environmental Impact Statement identifies this area west of SR-16 as being appropriate for an improved north/south arterial connection between Bujacich Road NW and Wollochet Drive. As such, staff will be recommending denial of the requested street vacation as the right-of-way may be needed for future improvements.

FISCAL CONSIDERATIONS

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

RECOMMENDATIONS

I recommend that Council pass the resolution setting Monday, August 21, 2006 at 7:00 p.m. as the date for the public hearing on the proposed street vacation of Bujacich Road NW and 54th Avenue NW.

RESOLUTION NO. 676

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE STREET VACATION OF A PORTION OF BUJACICH ROAD AND 54TH AVENUE.

WHEREAS, Harbor Reach Estates, LLC, desires to initiate the procedure for the vacation of the portion of Bujacich Road and 54th Avenue.

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

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor Civic Center on Monday, August 21, 2006 at 7:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

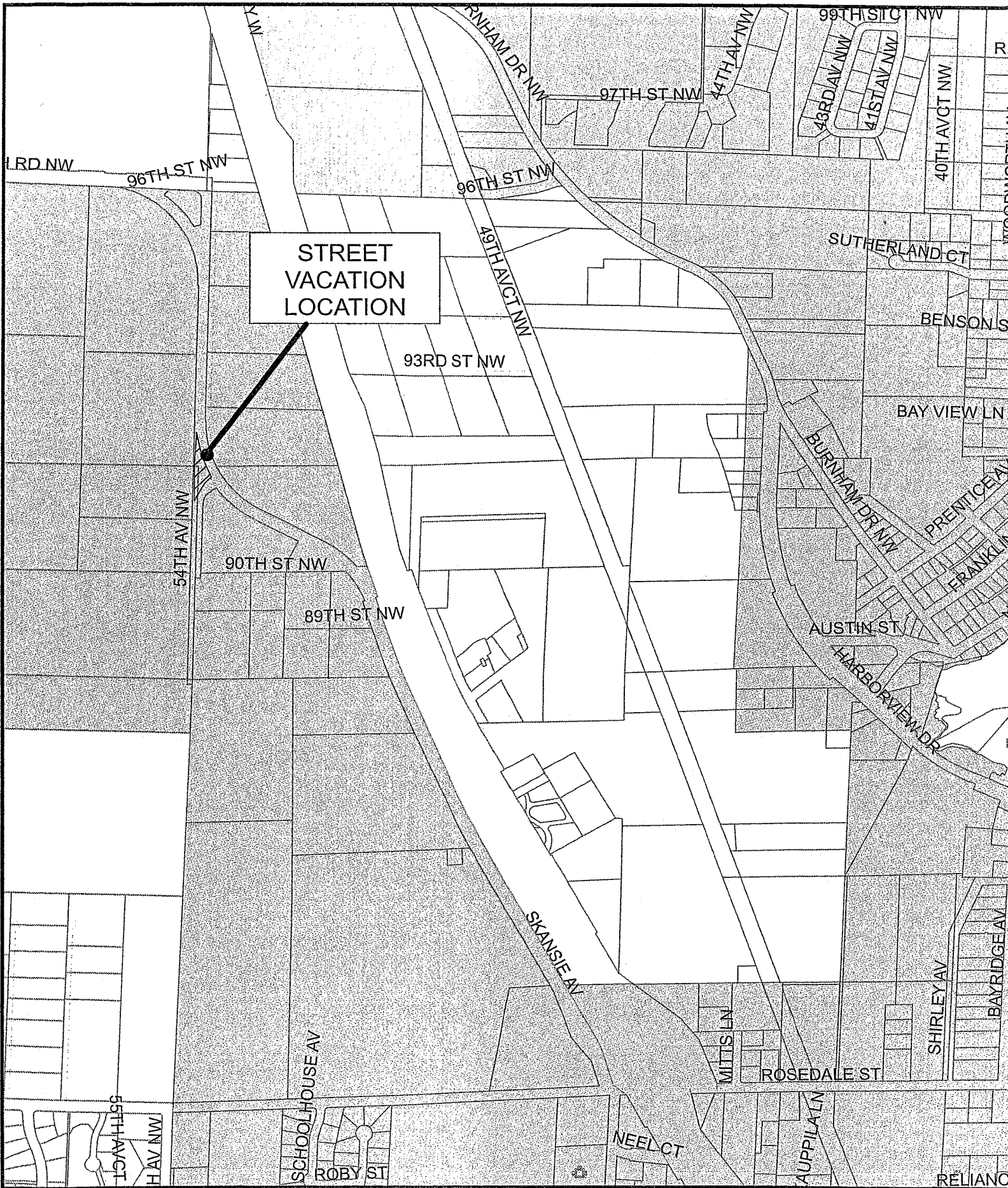
Section 2. The City Clerk is directed to post notices of the hearing in three public places and on the street to be vacated and to mail notices to all owners of any property abutting the portion of street to be vacated, pursuant to RCW 35.79.020.

PASSED this 10th day of July, 2006.

Charles L. Hunter, Mayor

ATTEST:

Molly M. Towslee, City Clerk



HARBOR REACH ESTATES STREET VACATION
VICINITY MAP

RESOLUTION NO. 676

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, TO INITIATE THE PROCEDURE FOR THE STREET VACATION OF A PORTION OF BUJACICH ROAD AND 54TH AVENUE.

WHEREAS, Harbor Reach Estates, LLC, desires to initiate the procedure for the vacation of the portion of Bujacich Road and 54th Avenue.

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

Section 1. A public hearing upon said street vacation shall be held in the council chambers of Gig Harbor Civic Center on Monday, August 21, 2006 at 7:00 p.m., at which hearing all persons interested in said street vacation are invited to appear.

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

PASSED this 10th day of July, 2006.

Charles L. Hunter, Mayor

ATTEST:

Molly M. Towslee, City Clerk

HARBOR REACH ESTATES, L.L.C.
A REAL ESTATE DEVELOPMENT COMPANY

June 13, 2006

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

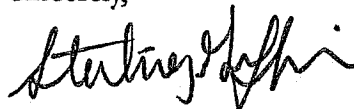
**RE: VACATION OF ROAD RIGHT-OF-WAY
(BUJACICH ROAD/54TH AVENUE)**

Dear City of Gig Harbor:

We the undersigned, property owners in full fee of the abutting real estate, petition and request the City Council to declare the above captioned right-of-way surplus and vacate the City's interest in our favor. The additional right-of-way is more fully described in the attached legal description and shown on the attached exhibit drawing. Both the legal description and drawing were prepared and surveyed, licensed by the State of Washington.

If necessary, easements may need to be granted to the City or other private purveyors for utility construction, repair and maintenance. If easements are necessary, our surveyor can prepared those for your consideration. Please contact us if you need any additional information to continue processing this request.

Sincerely,



Sterling Griffin
Managing Member

CITY-CASHDRWR1Jaci
Harbor Reach Estates LLC CR Batch 020.06
2006

**PMB 139, 5114 #E, PT. FOSDICK DRIVE
GIG HARBOR, WA * 98335
OFFICE: (253) 858-3205**

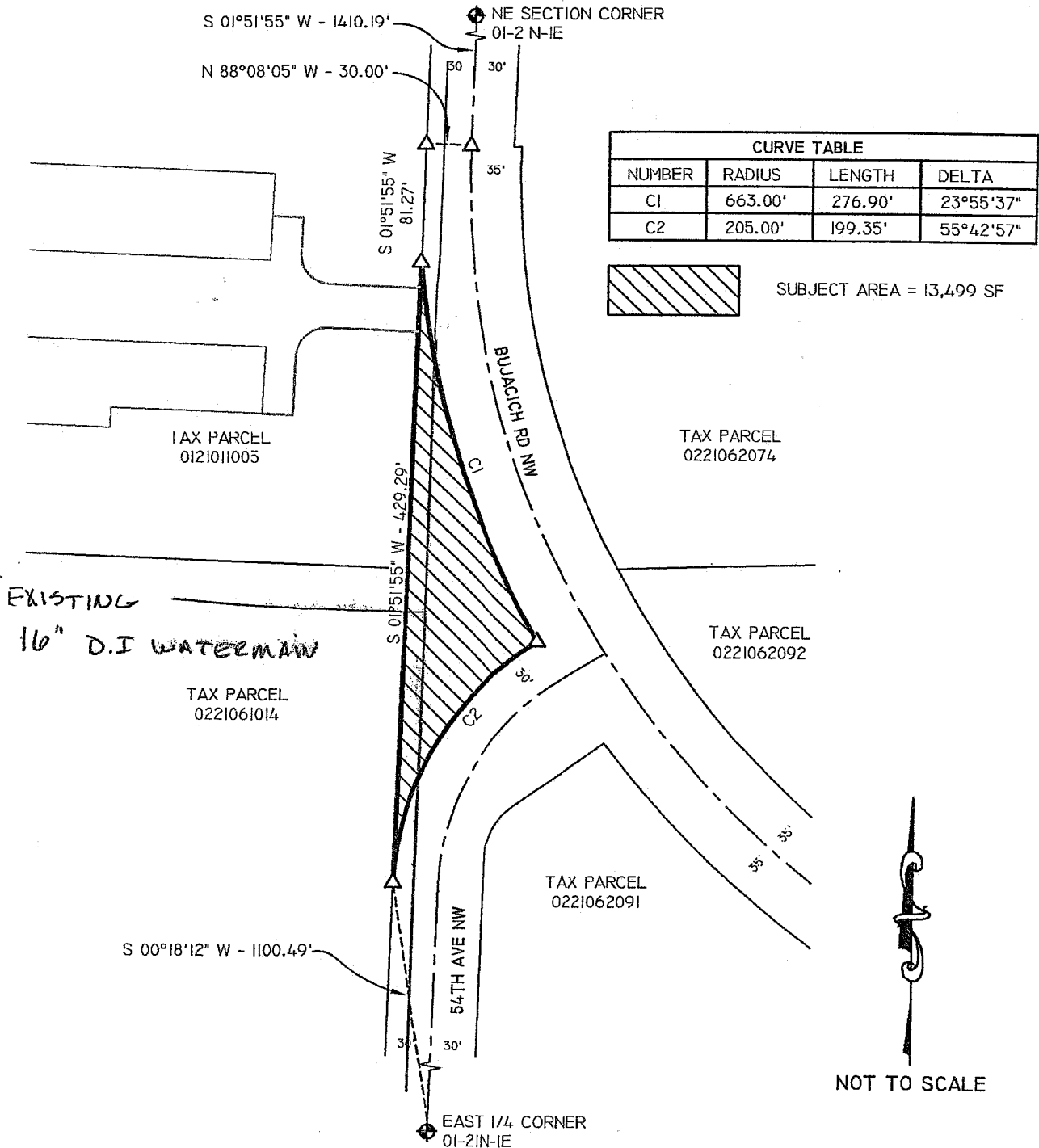
Date 06/20/2006
0002422 150.00
Cash 0.00
Check 150.00
Credit 0.00

EXHIBIT "A"
PROPERTY DESCRIPTION

Commencing from a brass disk marking the Northeast Corner of Section 1, Township 21 North, Range 1 East, Willamette Meridian, Pierce County, Washington; Thence South $01^{\circ}51'55''$ West on the east section line of said section 1, 1410.19 feet; Thence North $88^{\circ}08'05''$ West 30.00 feet; Thence South $01^{\circ}51'55''$ West parallel with the east section line of said section 1, 81.27 feet, to **The True Point of Beginning** of this description; thence continuing South $01^{\circ}51'55''$ West 429.29 feet to a point, from which the East 1/4 corner of said section 1 bears, South $00^{\circ}18'12''$ West 1100.49 feet; Thence northeasterly 199.35 feet on the arc of a non-tangent curve to the right whose radius equals 205.00 feet, with a central angle of $55^{\circ}42'57''$, and whose chord bears North $29^{\circ}43'23''$ East 191.59 feet; Thence northwesterly 276.90 feet on the arc of a non-tangent curve to the right whose radius equals 663.00 feet, with a central angle of $23^{\circ}55'37''$, and whose chord bears North $17^{\circ}08'26''$ West 274.89 feet to the true point of beginning, all containing 13,499 square feet, more or less. Area described is also shown on the attached Exhibit "B".

EXHIBIT "B"

LOCATED IN THE NE 1/4 SECTION 1, TOWNSHIP 21 NORTH, RANGE 1 EAST, AND NW 1/4 SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON



PacWest Engineering, LLC
 5009 PACIFIC HIGHWAY EAST, UNIT 9-0
 FIFE, WA 98424
 Phone (253) 926-3400
 Fax (253) 926-3402

DWG: 05-585.DWG

DATE: 6-12-06

PROJECT: 05-585



ADMINISTRATION

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: LAUREN LUND, MARKETING DIRECTOR *LL*
SUBJECT: 2006 SUMMER SOUNDS AT SKANSIE CONTRACTS
DATE: JULY 10TH, 2006

Attached you will find 7 contracts for the performers for the 2006 Summer Sounds at Skansie Concert Series.

Ron Lunceford of The Retro Rangers Budgeted 2006	\$1,500
Vivian Williams Budgeted 2006	\$ 300
Rich Wetzel of Groovin' Higher Orchestra Budgeted 2006	\$1,000
Philip Boulding of Magical Strings Budgeted 2006	\$ 650
Dean Zelikovsky of The Beatniks Budgeted 2006	\$1,500
Theresa Chiddick of Island Jamz Budgeted 2006	\$ 500
Dan Minter of Almost Handsome Band Budgeted 2006	\$ 300

FISCAL CONSIDERATIONS

All of these expenses are budgeted in the 2006 Marketing Office budget from hotel-motel tax.

RECOMMENDATION

I recommend approval of the contracts as presented.

JUN. 29. 2006 8:51AM

City of Gig Harbor

NO. 9671 P. 2

CONTRACT FOR SUMMER CONCERT SERIES PERFORMER AGREEMENT WITH GIG HARBOR

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and RON LUNCEFORD of the Retro Rangers, whose address is 1524 S. Brookside Terrace, Tacoma, WA 98465 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, July 18th, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on, Tuesday, July 18th, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on July 18th, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Fifteen Hundred Dollars and no cents (\$1500.00), which shall be paid to Ron Lunceford following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

JUN. 29. 2006 8:51AM: City of Gig Harbor

NO. 9671 P. 3

III. Relationship of Parties

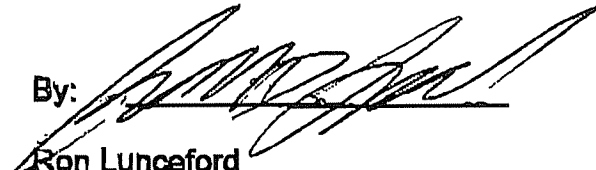
The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 30th day of June, 2006.

THE CITY OF GIG HARBOR

By: 
Ron Lunceford
The Retro Rangers
1524 S. Brookside Terrace
Tacoma WA 98465

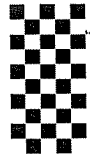
By: _____
Mayor

APPROVED AS TO FORM:

Glg Harbor City Attorney

ATTEST:

Glg Harbor City Clerk



**CONTRACT FOR SUMMER CONCERT SERIES
PERFORMER AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and VIVIAN WILLIAMS, whose address is 424 35TH Ave., Seattle, WA 98122 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, July 25th, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on July 25th, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on Tuesday, July 25th, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Three Hundred Dollars and no cents (\$300.00), which shall be paid to Vivian Williams following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

III. Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28th day of June, 2006.

THE CITY OF GIG HARBOR

By: Vivian T. Williams

By: _____
Mayor

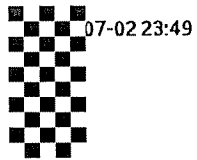
Vivian Williams
424 35th Ave
Seattle, WA 98122

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk



**CONTRACT FOR SUMMER CONCERT SERIES
PERFORMER AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and RICHARD WETZEL of GROOVIN' HIGHER ORCHESTRA, whose address is 3721 S. Alaska Street Tacoma, WA 98418 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, August 1st, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on Tuesday, August 1st, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on August 1st, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer One Thousand Dollars and no cents (\$1000.00), which shall be paid to Richard Wetzal following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

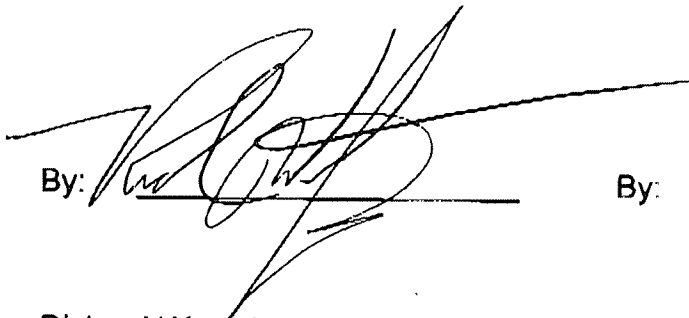
III. Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 3rd day of July, 2006.

By: 

Richard Wetzel
3721 S. Alaska Street
Tacoma, WA 98418

THE CITY OF GIG HARBOR

By: _____
Mayor

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

**CONTRACT FOR SUMMER CONCERT SERIES
PERFORMER AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Philip Boulding of MAGICAL STRINGS, whose address is PO Box 1240 Olalla, WA 98359 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, August 15th, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on August 15th, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on August 15th, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Six Hundred Fifty Dollars and no cents (\$650.00), which shall be paid to Philip Boulding following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

III. Relationship of Parties

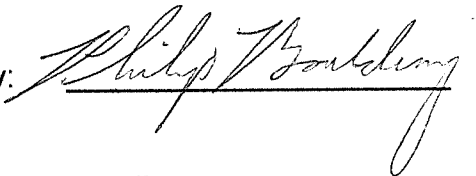
The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28 day of June, 2006.

THE CITY OF GIG HARBOR

By: 

Philip Boulding

Magical Strings
PO Box 1240
Olalla, WA 98359

By: _____
Mayor

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

CONTRACT FOR SUMMER CONCERT SERIES PERFORMER AGREEMENT WITH GIG HARBOR

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Dean Zelikovsky of The Beatniks, whose address is 2809 Thorndyke Ave W, Ste. C, Seattle, WA 98199 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, August 22nd, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on Tuesday, August 22nd, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on August 22nd, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer One Thousand Five Hundred Dollars and no cents (\$1500.00), which shall be paid to Dean Zelikovsky following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

III. Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 29th day of June, 2006.

THE CITY OF GIG HARBOR

By: 

By: _____
Mayor

APPROVED AS TO FORM:

Dean Zelikovsky
Machine Entertainment for the Beatniks
2809 Thorndyke Ave W., Ste. C
Seattle, WA 98199

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

**CONTRACT FOR SUMMER CONCERT SERIES
PERFORMER AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Theresa Chiddick of ISLAND JAMZ, whose address is 4008 66th St NW, Gig Harbor, WA 98335 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, August 29th, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on August 29th, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on August 29th. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Five Hundred Dollars and no cents (\$500.00), which shall be paid to Theresa Chiddick following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

III. Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28th day of June, 2006.

THE CITY OF GIG HARBOR

By: Theresa Chiddick By: _____
Mayor

Theresa Chiddick
Island Jamz Entertainment
4008 66th St NW
Gig Harbor, WA 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

**CONTRACT FOR SUMMER CONCERT SERIES
PERFORMER AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and DAN MINTER of THE ALMOST HANDSOME BAND, whose address is 2710 52nd Ave NW, Gig Harbor, WA 98335 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, September 5, 2006, with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on September 5, 2006, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage Pro Sound & Light, under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on September 5, 2006. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Three Hundred Dollars and no cents (\$300.00), which shall be paid to Dan Minter following the performance. In order to facilitate payment the City requests that the Performer submit invoice to City 30 days prior to concert date.

Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28th day of June, 2006.

THE CITY OF GIG HARBOR

By: 

By:

Mayor

Dan Minter
The Almost Handsome Band
2710 52nd Ave NW
Gig Harbor, WA 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: DAVID BRERETON, DIRECTOR OF OPERATIONS *David*
SUBJECT: 2006 SUMMERS CONCERT SERIES AT SKANSIE BROTHERS PARK
– SOUND SYSTEM CONTRACT
DATE: JULY 10, 2006

INTRODUCTION/BACKGROUND

The 2006 Operations Budget provides for the allowance of a sound technician at each of the nine Summer Sounds Concert Series performances at Skansie Brothers Park. Potential contractors were contacted in accordance with the City's Small Works Roster Process (Resolution No. 592). Two contractors responded with the following price quotation proposals:

Pacific Stage Pro Sound & Light	\$2,925.00
Flamingo Audio	\$4,500.00

Based on the price quotations received, the lowest price quotation was from Pacific Stage Pro Sound & Light in the amount of Two Thousand Nine Hundred Twenty-Five Dollars and no cents (\$2,925.00).

Attached is the contract for Pacific Stage Pro Sound & Light for \$2,925.00 to be paid in nine separate invoices (for each of the nine performances) at \$325.00 each.

FISCAL CONSIDERATIONS

This work is within the \$6,000 that was anticipated in the adopted 2006 Budget, identified under the Park Operating Fund, Objective No. 13.

RECOMMENDATION

I recommend the Council authorize the award and execution of the contract for the 2006 Summer Sounds Concert Series at Skansie Brothers Park for a sound system technician to Pacific Stage Pro Sound & Light as the lowest responsible respondent, for their bid quotation amount of Two Thousand Nine Hundred Twenty-five Dollars and no cents (\$2,925.00).

**CONTRACT FOR SUMMER CONCERT SERIES
CONTRACTOR AGREEMENT WITH GIG HARBOR**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and PACIFIC STAGE PRO SOUND & LIGHT, whose address is 703 Cushing SW Olympia, WA 98502 (hereinafter the "Contractor").

RECITALS

WHEREAS, the City wishes to engage the Contractor to provide musical services, as part of the Gig Harbor 2006 Summer Concert Series; and

WHEREAS, the Contractor agrees to provide such services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert series on; July 11, 2006, July 18, 2006, July 25, 2006, August 1, 2006, August 8, 2006, August 15, 2006, August 22, 2006, August 29, 2006, September 05, 2006 with an expected audience of 200-250 persons. The concert will take place regardless of the weather, rain or shine.

The Contractor agrees to provide sound services at the above listed concerts, between the hours of 6:30 p.m. to 8:00 p.m., with set-up anytime after 3pm.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Contractor will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Contractor Three Hundred Twenty-five Dollars and no cents (\$325.00) for each performance, which shall be paid to Pacific Stage Pro Sound & Light by mail following specified performance. In order to facilitate payment the City requests that the Contractor submit separate invoices for each performance to City 30 days prior to concert date(s).

III. Relationship of Parties


The Contractor will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Contractors or his employees, agents and sub-consultants. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

III. General Provisions.

Any assignment of this Contract by the Contractor without the written consent of the City shall be void. 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. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2006.

THE CITY OF GIG HARBOR

By: 

*President
Pacific Stage The*

By: _____
Mayor

APPROVED AS TO FORM:

Pacific Stage
703 Cushing SW
Olympia WA 98502-5112

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: BETTY WILLIS, CHAIRPERSON, CITY OF GIG HARBOR ARTS COMMISSION
SUBJECT: RECOMMENDATION FOR 2006 ART GRANT – DRAWING YOU IN PROGRAM
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

A budgeted objective for 2006 authorized to continue the City of Gig Harbor Arts Commission (GHAC) Project Support Program to provide funding to arts and cultural organizations that provide events for the benefit of city residents. In February 2006, eight grant applications were approved by City Council in the amount of \$17,575, which left a balance remaining of \$7,425.

Last year, the “Drawing You In” program was a great success. This free weekly event, sponsored by the GHAC, developed and coordinated by Lita Dawn Stanton, provided an opportunity for local artists and the community to “pull up an easel” and sketch a live model posing under the Pavilion. The Wednesday event was held at the Rotary Pavilion at the Skansie Brothers Park from 1:00 to 4:00 p.m. This year, the Arts Commission has asked the Peninsula Art League (PAL) if they would be interested in hosting the event in an effort to pass the programming on to an established local arts organization.

FISCAL CONSIDERATION: There is \$7,425 remaining of the \$25,000 in the 2006 Parks and Recreation Budget (Objective No. 9). \$1,100 of that budget could be used for the 2006 summer “Drawing You In” program.

RECOMMENDATION:

The GHAC recommends that Council authorize the attached agreement to award \$1,100 to Peninsula Art League to fund the “Drawing You In” program.

Request for Funding:

TO: Mayor Chuck Hunter and City Council Members
Cc: City of Gig Harbor Arts Commissioners and
Laureen Lund, Marketing Director

FROM: Lita Dawn Stanton

DATE: June 26, 2006

WHEN: **“Drawing You In”** Live Models at Skansie Brothers Park

WHERE: Under the Rotary Pavilion

WHEN: Every Wednesday -- 1 to 4pm -- July 5 through Sept 27

Last year, the **Drawing You In** program was a great success. It was advertised and well attended by area artists and the interest to continue the program this season is high. There were a number of letters written last year thanking the City and requesting that it become a regular program for the community. Due to that success, the City of Gig Harbor Arts Commission unanimously agreed to ask Council to fund the 2006 **Drawing You In** program.

This year, the event will be extended one month by beginning sooner (the month of July) and will be hosted by the Peninsula Art League (PAL). It was also suggested that the refreshments that were provided at no charge last year (water, fruit and/or cookies) be provided again this year. That increase is reflected in this year's budget request (approximately \$15/ea week). Four seated easels will be constructed (\$25/ea) by Harry Sundberg and become the property of this GHAC program. Each model will receive \$60, for a total of \$780 (13 Wednesdays) over the course of the summer program. Drawing paper (newsprint pads) and graphite will be available to the public at large so that they can participate impromptu. Last year, many children participated as their parents looked on and did a great deal to “draw in” those who would otherwise be unable to participate. Those supplies are budgeted at \$25.

The central location of the event coupled with the unique array of artists and techniques creates an enormously interesting addition to downtown activities. As a member of the PAL, I have offered to head the committee and train others to facilitate the program. I hope that Council will continue to support it. Thank you.

**AGREEMENT BETWEEN GIG HARBOR AND PENINSULA ART LEAGUE
FOR DISTRIBUTION OF
GIG HARBOR ARTS COMMISSION PROJECT GRANT FUNDS**

This Agreement is made and entered into by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation (hereinafter the "City"), and the Peninsula Art League, a 501-C3 corporation of Washington, PO Box 1422, Gig Harbor, WA, 98335, (hereinafter "Peninsula Art League"), for the distribution of Gig Harbor Arts Commission Project Grant Funds for the express purposes described in this agreement.

WHEREAS, the City established the Gig Harbor Arts Commission to recommend art projects that involve city residents and the most appropriate use of the Project Grant Funds (pursuant to Ordinance 876); and

WHEREAS, the Gig Harbor Art Commission made a recommendation to the City Council that One Thousand One Hundred Dollars and no cents (\$1,100.00) be given to the Peninsula Art League to pay for Professional Fees, refreshments and event supplies, and as further described in the grant application submitted by Peninsula Art League, attached hereto as Exhibit A; and

WHEREAS, the City desires to disburse such funds to PENINSULA ART LEAGUE for the purposes set forth in the grant application and as set forth in this Agreement; Now, Therefore,

In consideration of the terms, conditions and covenants contained herein, the parties hereto agree as follows:

Section 1. Scope of Activities. The City shall provide One Thousand One Hundred Dollars and no cents (\$1,100.00) in funding to PENINSULA ART LEAGUE to perform the following activities and no others:

Drawing You In Program (Live Figure Drawing), scheduled every Wednesday from 1:00 to 4:00 p.m. at the Rotary Pavilion located at the Skansie Brothers Park. The dates of the event are July 5th through September 27, 2006.

Section 2. Term. This agreement shall commence upon execution by the duly authorized representatives of both parties and shall terminate on December 31, 2006 unless sooner terminated as provided herein. Sections 4, 9 and 11 of this agreement shall survive the termination of this agreement.

Section 3. Distribution and Payment. The total funding provided by the City to PENINSULA ART LEAGUE under this Agreement shall not exceed One Thousand One Hundred Dollars and no cents (\$1,100.00) and will be paid upon receipt of invoice from PENINSULA ART LEAGUE. PENINSULA ART LEAGUE shall expend the funds prior to

December 31, 2006. Any funds not spent by December 31, 2006 shall be promptly returned to the City.

Section 4. Auditing of Records, Documents and Reports. PENINSULA ART LEAGUE shall maintain books, records, documents and other materials that sufficiently and properly reflect all expenditures made pursuant to this Agreement. The City Finance Director and any of his/her representatives shall have full access and the right to examine and copy, during normal business hours, all of the records of PENINSULA ART LEAGUE with respect to matters covered in this Agreement. Such rights shall last for six (6) years from the date the disbursement is made hereunder.

Section 5. Compliance with Federal, State and Local Laws. PENINSULA ART LEAGUE agrees to abide by all applicable federal and state statutes and regulations prohibiting employment discrimination, and any other statutes and regulations pertaining to the subject matter of this Agreement.

Section 6. Reporting. PENINSULA ART LEAGUE agrees to produce a final report, as attached as Exhibit B, summarizing the expenditures of the funds distributed under this Agreement on or before December 31, 2006. In addition, copies of invoices for all reported expenditures shall be submitted to the City with this report.

Section 7. Recapture and Noncompliance. In the event of a final determination by a court of competent jurisdiction that PENINSULA ART LEAGUE has failed to expend the grant funds in accordance with state law and this Agreement, the City reserves the right to commence an action against PENINSULA ART LEAGUE to recover said funds, in addition to all of the City's other available remedies at law.

Section 8. Legal Relations. Neither PENINSULA ART LEAGUE, nor any employee, officer, official or volunteer of PENINSULA ART LEAGUE shall be deemed to be an independent contractor, employee or volunteer of the City. No liability shall attach to PENINSULA ART LEAGUE or the City by reason of entering into this Agreement except as expressly provided herein.

Section 9. Indemnification. PENINSULA ART LEAGUE agrees to be responsible for and assumes liability for its own negligent acts or omissions, and those of its officers, agents, officials, employees or volunteers while performing work or expending funds pursuant to this Agreement to the fullest extent provided by law, and agrees to save, indemnify, defend and hold the City harmless from any such liability. This indemnification clause shall apply to any and all causes of action arising out of performance of work or expenditures of funds under this Agreement. Each contract for services or activities utilizing funds provided in whole or in part by this Agreement shall include a provision that the City is not liable for injuries, damages or claims for damages arising from the performance of any activity by an employee, contractor, subcontractor or independent contractor of PENINSULA ART LEAGUE under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination.

Section 10. Severability. If any phrase, sentence or provision of this agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this agreement, and to this end the provisions of this agreement are declared to be severable.

Section 11. Attorneys' Fees. In the event that the City is required to institute a lawsuit against PENINSULA ART LEAGUE to enforce any of the terms of this Agreement and the City prevails in such lawsuit, PENINSULA ART LEAGUE agrees to reimburse the City for its reasonable costs, expenses, attorneys' fees and expert witness fees, including such costs, expenses and fees incurred in any appeal.

Section 12. Recipients of Gig Harbor Arts Commission grants must agree to add the City of Gig Harbor Arts Commission as a sponsor and City of Gig Harbor logo to any marketing and promotional materials generated as part of any activity or project funded through City of Gig Harbor Arts Commission grants. The City of Gig Harbor logo is a trademarked logo, available for use by permission of the City of Gig Harbor, and required as recognition for the City of Gig Harbor's support on any promotional material grant recipients produce. Recipients agree to contact the City of Gig Harbor Tourism Marketing Director to obtain logo information.

Section 13. Entire Agreement. This document contains all covenants, agreements and stipulations of the parties on the subject matter expressed herein. No changes, amendments or modifications of the terms of this Agreement shall be valid unless reduced to writing and signed by the duly authorized representatives of both parties as an amendment to this Agreement.

DATED this ___th day of _____, 2006.

THE CITY OF GIG HARBOR

By _____
Its Mayor

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

PENINSULA ART LEAGUE

By Eric Allen Peavy
Its PRESIDENT

Print Name: ERIC ALLEN PEAVY

Drawing You In Program

ABSTRACT

Free figure drawing event for all ages and levels
Live model
1 to 4 Wednesday's from July through September

LOCATION

Rotary Pavilion at Skansie Brothers Park

EQUIPMENT

Wooden Stage stored in the **Netshed (Lita Dawn's)
White Painters Tarp to drape over stage (Lita Dawn's)
3 Sitting Easels for Public Use (PALS)
"Easel for Public Uses!" signs
Foamcore Sign for PAL publicity and rack cards
Table for Refreshments & Snacks, Music, Sign-up Sheets, and Extra Supplies (Lita Dawn's)
Sandwich Board with Event Info (Lita Dawn's)
**Chair for Model (donated weekly)

MODELS

3 hours at \$20/ea or \$60.00 payable in cash day of event.

**Netshed

Storage for easels, stage, chair, table, sandwich board and tarp only. The flooring is undergoing structural re-enforcement so stay in the front area nearest the door and keep traffic/people to a minimum. Key will be provided. Keep gate closed.

**Chair

This was treated like a prop each week to provide more variety. A tall stool, rocking chair, bench, or high back chair worked well and sometimes no chair at all. Keep in mind the length of the pose and age of the model when considering chair choices.

PROGRAM MANAGEMENT

PROPS:

I asked the models to bring their own. Hats, shawls, textured materials and anything else they thought would enhance the experience. It was up to us to provide seating. Some brought their own timers.

LIGHTING:

I tried a large light on a stand but the fill light is too strong and it was ineffective. It also limited the artist access/positioning (blinded them). IF (and that's a big if) lighting were to be installed, it would have to be in the rafters and extremely high lumens to create enough light to cast a shadow.

Feedback from last year: Many artists do not want to be under direct ultraviolet light and the rapid lighting change makes longer poses more frustrating than it's worth.

Suggestion: on those days when it's overcast, move from under the Pavilion to utilize cast shadows but only if it is a unanimous decision by all participants.

SIGN-UP SHEETS:

I kept an E-mail Sign-Up Sheet out on the table weekly. By drawing a line after each week, I could update the internet notification message list. I will continue to monitor and update that list for PAL.

ROUTINE - AT THE BEGINNING OF EACH SESSION

- Welcome everyone
- Introduce yourself
- Introduce the model
- Explain Peninsula Art League Sponsorship & Membership
- Explain Gig Harbor Arts Commission Grant paying for the model and refreshments
- The opportunity to use the "public easels", paper and graphite/charcoal
- Free refreshments
- Identify Sign-Up Sheet Table
 - for weekly e-mail notification reminders
 - for models
 - PAL membership forms
- Explain the format
 - 2 warm-ups @ 5 minutes each,
 - 1 @ 10 minutes,
 - then same pose @ 20 minutes each for rest of event
 - This allows those who want to complete a work the opportunity to do so, while those who want shorter poses can physically move around the model.
 - Model will have 5 minutes between each 20 minute pose.
- Make sure someone is chosen to monitor timing for the model (unless they bring their own timer)

MUSIC:

I received mixed feedback. I had some who like quiet and some who plugged into their own headsets and some who really liked having classical or "FM"-style music playing in the background. If it's played softly, most feedback suggested that the music was relaxing and encouraged. It was especially welcomed by passer-bys who were drawn to the music and the environment to watch.

WEEKLY SUPPLIES

1. Bottled Water (20)
2. Cookies or Oranges (same +)
3. Sign-Up Sheets & Pens
4. Membership Forms
5. Music Player
6. CD's
7. Timer
8. Graphite and/or Charcoal
9. Drawing Paper
10. Backing & Clips
11. Additional Props, Hats, Blanket/Shawl

PUBLICITY

CITY:

Laureen Lund at the City of Gig Harbor Tourism Department will do news releases if you give her a heads up. Confirm posting on City website. lundl@cityofgigharbor.net

PAL:

Check with Myrna Binion for Newsletter timeline. 857-4222 Prepare digital ad per dimensions. myrnab@centurytel.net

PAL WEBSITE:

Check with Charlie for updating PAL website. charlee@nwlink.com

DOWNTOWN MERCHANTS:

Check with Waterfront Association arabellas@harbournet.com to be included in the ArtWalk Brochure Schedule of Events (publication by Lita Dawn)

PENINSULA GATEWAY

Arts & Entertainment Section. 853-9247 Contact Gateway or e-mail images and info directly: callie.white@mail.tribnet.com

OTHER BRANDING/PUBLICITY METHODS

- On-Site Informational Sandwich Board
- On-Site Flyers
- On-Site Sign-Up Sheets

Models

Rose Biggess	857-6065	Haitian, excellent features & props, experienced
Jennifer Lantz (daughter) Stephanie Ann (mother)	884-9863 851-1649	20's, thin, earthy petite, offered to join in but never did
Emily	851-4196	Amish looking, petite, excellent, experienced
Hannah Espada	230-6354	Asian, daughter of Pong Son Espada Mother's # 921-9329 or 531-5330
Jeri Gates	851-1827	
Doug Gorman	383-4908	
Nicole	265-2213	
Sid Cloud	851-2842	
Diane Vivona		
Milissa Wyman		
Jillian		
Colin Bull	842-9660	
Harry Sundberg	265-3780	
Lee Crider	857-5132	
Alyssa & Jessica Golka	481-7513	
Clare Ridlin		

"Drawing You In"

LIVE FIGURE DRAWING AT SKANSIE PARK

Future Events

The Gig Harbor Arts Commission would like your input to determine next year's programming goals. Please answer any or all of the questions below (print out form) and return to **Mo Whitaker**, City of Gig Harbor, 3510 Grandview, Gig Harbor 98335 or e-mail litadawn@centurytel.net. Thank you!

Preferred day each week?

Wednesday (no Mon. or Fri.)

Time?

1 - 4 pm

Number of hours?

2 1/2 - 3 hours

Preferred location? (Convenience? Other options?)

Whatever has good light
and room -

Structure? (One pose vs. gestural poses? Instruction / Critiques?)

Poses are good, gestures for a change
are good -

Comments: (continue on back)

Great Gathering - I enjoyed it!
Would be willing to contribute for
the "model" fund.

Thanks Lynne

Sponsored by the

GIG HARBOR ARTS COMMISSION



"Drawing You In"

LIVE FIGURE DRAWING AT SKANSIE PARK

Future Events

The Gig Harbor Arts Commission would like your input to determine next year's programming goals. Please answer any or all of the questions below (print out form) and return to **Mo Whitaker**, City of Gig Harbor, 3510 Grandview, Gig Harbor 98335 or e-mail litadawn@centurytel.net. Thank you!

Preferred day each week? MON / TUES / THURSDAY

Time? 1:00 PM TO 3:00 PM

Number of hours? 2 HOURS

Preferred location? (Convenience? Other options?)

SOME LOCATION, BUT IN GOOD WEATHER
ON THE DOCK GIVES BETTER LIGHT/CONTRAST
ON THE MODEL.

Structure? (One pose vs. gestural poses? Instruction / Critiques?)

ONE POSE IF 2 HOURS, IF 3 HOURS
DO 1 POSE FOR 2 & OTHER POSES FOR LAST
HOUR.

Comments: (continue on back)

IF USING THE GAZBO WE NEED
LIGHTS (PORTABLE) TO LIGHT THE MODEL.

THANKS, GREAT IDEA

Sponsored by the

GIG HARBOR ARTS COMMISSION



"Drawing You In"

LIVE FIGURE DRAWING AT SKANSIE PARK

Future Events

The Gig Harbor Arts Commission would like your input to determine next year's programming goals. Please answer any or all of the questions below (print out form) and return to **Mo Whitaker**, City of Gig Harbor, 3510 Grandview, Gig Harbor 98335 or e-mail lifadawn@centurytel.net. Thank you!

Preferred day each week? wed or thurs

Time? ~~1-3 or 4~~ 1-4

Number of hours? 3

Preferred location? (Convenience? Other options?)

Gig Harbor City Hall

Structure? (One pose vs. gestural poses? Instruction / Critiques? - sure)

↑ would love!

Comments: (continue on back)



Sponsored by the

GIG HARBOR ARTS COMMISSION

"Drawing You In"

LIVE FIGURE DRAWING AT SKANSIE PARK

Future Events

The Gig Harbor Arts Commission would like your input to determine next year's programming goals. Please answer any or all of the questions below (print out form) and return to **Mo Whitaker**, City of Gig Harbor, 3510 Grandview, Gig Harbor 98335 or e-mail litadawn@centurytel.net. Thank you!

Preferred day each week? WED OR THUR

Time? AFTER NOON

Number of hours? 3 is good

Preferred location? (Convenience? Other options?)

LOCATION IS GOOD

Structure? (One pose vs. gestural poses? Instruction. Critiques?)

YES

Comments: (continue on back)

THIS IS A GREAT IDEA



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GIG HARBOR ARTS COMMISSION

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Preferred day each week? T, TH best Wok.

Time? Doesn't matter

Number of hours? 3

Preferred location? (Convenience? Other options?)

The park is fine. Indoors would be even better, but I can only think of the Fox Island location we already have on Wednesdays.

Structure? (One pose vs. gestural poses? Instruction / Critiques?)

I like one pose so you can finish a painting.

Comments: (continue on back)

I would pay just to keep this going!



Sponsored by the

GIG HARBOR ARTS COMMISSION

"Drawing You In"

LIVE FIGURE DRAWING AT SKANSIE PARK

Future Events

The Gig Harbor Arts Commission would like your input to determine next year's programming goals. Please answer any or all of the questions below (print out form) and return to **Mo Whitaker**, City of Gig Harbor, 3510 Grandview, Gig Harbor 98335 or e-mail litadawn@centurytel.net. Thank you!

Preferred day each week? Wed

Time? 1:00-4:00

Number of hours? 3

Preferred location? (Convenience? Other options?)

G.H. area

Structure? (One pose vs. gestural poses? Instruction / Critiques?) ^{no}

gestural poses, plus longer poses

Comments: (continue on back)

great group. would like to make a
habit of it.



Sponsored by the

GIG HARBOR ARTS COMMISSION



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E., CITY ENGINEER
SUBJ: OLYMPIC DRIVE AND 56TH STREET ROADWAY IMPROVEMENT
PROJECT (CSP-0133) – AGREEMENT FOR DEDICATION OF
TEMPORARY SLOPE AND CONSTRUCTION EASEMENT
AGREEMENTS
DATE: JULY 10, 2006

INTRODUCTION/BACKGROUND

As part of the ongoing process for the City's Olympic Drive and 56th Street Roadway Improvement Project (CSP-0133), an 'Agreement for Dedication of Temporary Slope and Construction Easements' are required from Parcel No. 0221176018, owned by Gregory L. and Pamalee K. Fox and commonly known as Fox Chiropractic located at 3715 56th St. NW.

In order for the City to have access and the ability to construct this project, the subject easement agreements have been granted by the owners for these purposes. The easement agreements shall commence on the date of execution of the agreements. The temporary easement agreements shall terminate on the date the roadway improvements are accepted by the City Council (see attached exhibits).

The City's standard easement agreements have been drafted and approved by City Attorney Carol Morris.

City Council approval of the easement agreements are requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that City Council approve these easement agreements as presented.

**AGREEMENT FOR DEDICATION OF TEMPORARY
SLOPE AND CONSTRUCTION EASEMENTS
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this ____ day of _____, 2006, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (hereinafter the "City"), and GREGORY L. FOX and PAMALEE K. FOX, husband and wife, (hereinafter the "Owners"), whose mailing address is 3715 56TH ST NW, GIG HARBOR WA 98335-8240.

RECITALS

WHEREAS, the Owners are holders of a fee or substantial beneficial interest in the real property commonly known as FOX CHIROPRACTIC, located at 3715 - 56TH ST NW, GIG HARBOR, WA (Tax Parcel Number 0221176018) 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 Temporary Slope and Construction Easements, which easements are legally described in **Exhibit B** (the "Temporary Slope Easement" and "Temporary Construction Easement") which is attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Slope Easement to tie into the roadway any improvements requiring a permanent slope, and the City requires the Temporary Construction Easement over the Property in order to tie the private driveway on the Property into the City's permanent Roadway (the Olympic Drive and 56th Street Roadway Project) so that the Property Owners will have access to the Roadway. In exchange for the Owners' dedication of the Temporary Slope and Construction Easements, the Owners will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP - 0133); 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 Temporary Slope and Construction Easements to the City.

A. **Grant.**

1. TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS. The Owners hereby grant nonexclusive Temporary Slope and Construction Easements for the City to tie

into the permanent Roadway any improvements requiring a permanent slope, and where the City requires the Temporary Construction Easement over the Property in order to tie the private driveway on the Property into the City's permanent Roadway for the construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owners' property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C**.

The City shall, upon completion of any work within the Property covered by these Easements, restore the surface of the Easements and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. These Temporary Slope and Construction Easements shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

B. Conditions. The Temporary Slope and Construction Easements described above are 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 permanent slope improvements and to the tie in from the permanent Roadway improvements.

2. The Owners shall not use any portion of the areas within the temporary easements for any purpose inconsistent with the City's construction of the Roadway during the term of this Agreement. The Owners shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Slope and Construction Easements without prior notification to the Owners.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance.

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 Agreement, which contains the entire understanding of the parties on the subject.

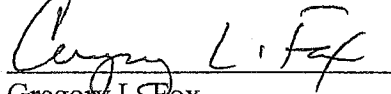
Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

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.

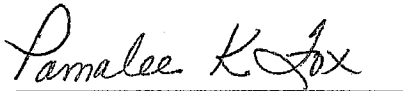
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ACCEPTANCE:

OWNERS



Gregory L. Fox

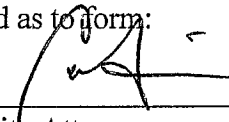


Pamalee K. Fox

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 Charles L. Hunter is the person who appeared before me, and said person acknowledged that he 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 Gregory L. Fox and Pamalee K. Fox are the persons who appeared before me, and said persons acknowledged that they are authorized to execute the instrument and acknowledged it to be their free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: 6/26/06

Patricia M. McGallian
(Signature)

Patricia M. McGallian
NOTARY PUBLIC, State of Washington,

residing at: Kitap County

My appointment expires: 1-22-2009

residing at: Kitap County

My appointment expires: 1-22-2009

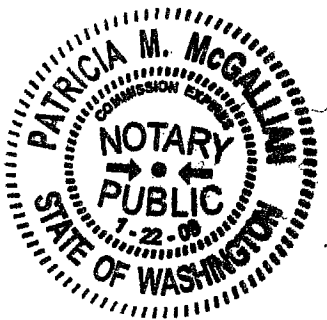


EXHIBIT A

PROPERTY LEGAL DESCRIPTION

LOT 1, AS SHOWN ON SHORT PLAT NO. 8211150277, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY DEED RECORDED UNDER AUDITOR'S NUMBER 8803210188 FOR ADDITIONAL RIGHT OF WAY FOR 56TH STREET NORTHWEST.

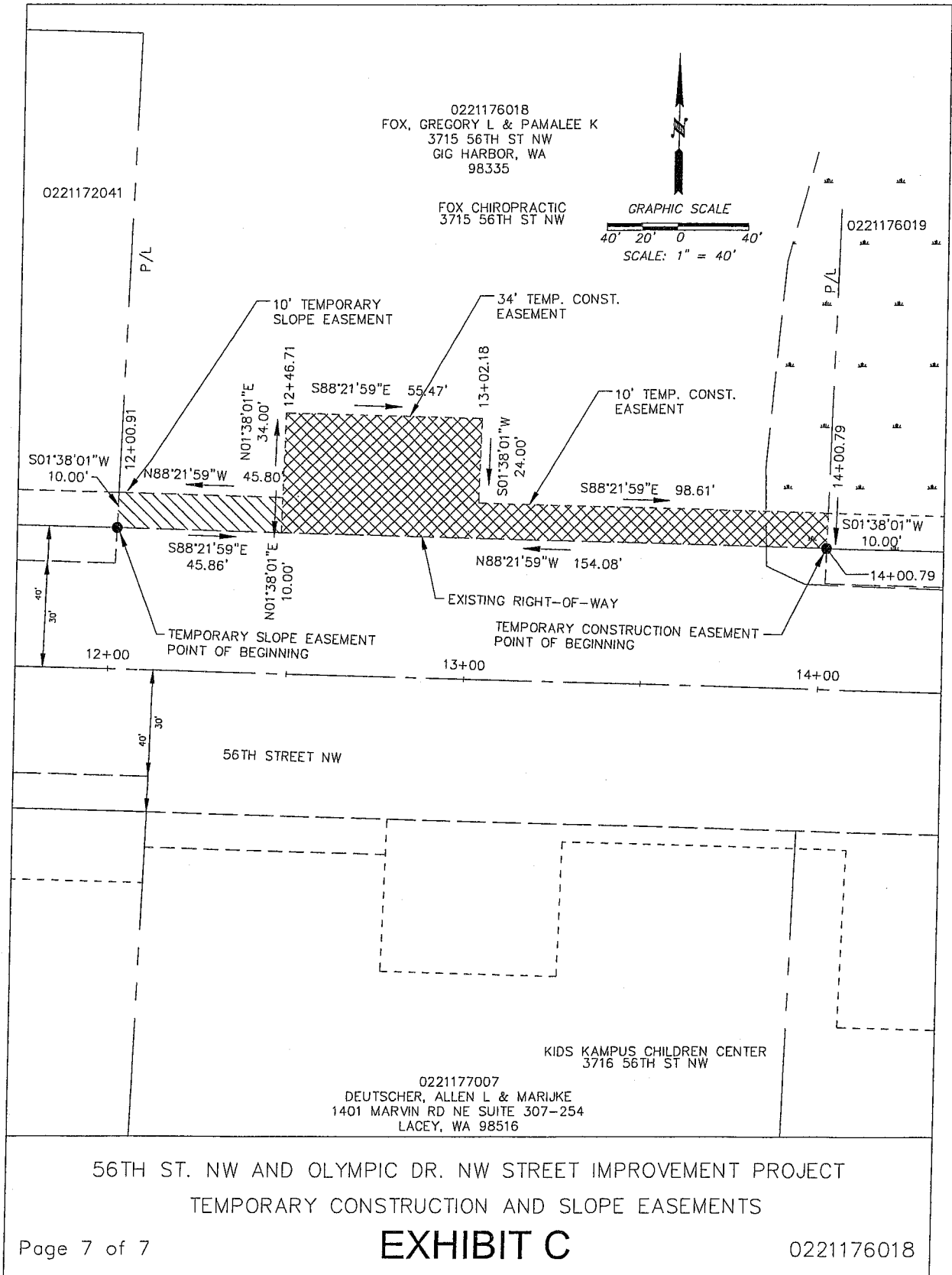
EXHIBIT B

TEMPORARY SLOPE EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 0221176018 ALONG 56TH STREET NW AND DESCRIBED AS "10' TEMPORARY SLOPE EASEMENT" AND WHOSE SOUTHWEST PROPERTY CORNER BEING THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING", THENCE S88°21'59"E A DISTANCE OF 45.86', THENCE N01°38'01"E A DISTANCE OF 10.00', THENCE N88°21'59" A DISTANCE OF 45.80', THENCE S01°38'01"W A DISTANCE OF 10.00' AND RETURNING TO THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING".

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

A PORTION OF PARCEL NO. 0221176018 ALONG 56TH STREET NW AND DESCRIBED AS "10' AND 34' TEMPORARY CONSTRUCTION EASEMENT" AND WHOSE SOUTHEAST PROPERTY CORNER BEING THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING", THENCE N88°21'59"W 154.08', THENCE N01°38'01"E A DISTANCE OF 34.00', THENCE S88°21'59"E A DISTANCE OF 55.47', THENCE S01°38'01"W A DISTANCE OF 24.00', THENCE S88°21'59"E A DISTANCE OF 98.61', THENCE S01°38'01"W A DISTANCE OF 10.00' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING".





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: INTEGRATED PERMIT TRACKING APPLICATION
SOFTWARE – PURCHASE / CONTRACT AUTHORIZATION
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

In March of 2006, the Community Development Department advertised a Request for Proposals (RFP) for the purchase, installation and implementation of an integrated permit tracking application software for the Community Development Department to track all phases of land development including residential and commercial construction.

Six companies were contacted and two responses were received from Interlocking Software Corporation and Bitco Software LLC. After reviewing the proposals and conducting interviews with both firms, Interlocking was chosen based upon their track record and references from other jurisdictions. Their support, service and training performance record is excellent. Interlocking's services provide for hardware, software, with a one-year support and maintenance and software interfaces with web-based GIS, FMS and Tax Parcel Data interface development. Interlocking will provide the city with an interface with the e-City government software and MyBuildingPermit.com which will allow for greater access via the Internet and online permitting.

Work is expected to begin following City Council approval of the three attached contracts.

- City of Gig Harbor Consultant Services Contract
- Interlocking Software Corp. Software License and Support Agreement
- Oracle Software License and Services Agreement

The City Attorney has reviewed and approved these contracts with applicable revisions being made to the city's contract.

ISSUES/FISCAL IMPACT

The purchase, installation, training and implementation of the permit tracking software and one-year maintenance is within the \$55,000 that was anticipated in the adopted 2006 Budget and as identified under Community Development General Fund 001, Objective No. 4.

RECOMMENDATION

I recommend that Council authorize the attached three contracts with Interlocking Software Corporation in the amount of Forty-nine Thousand Six Hundred Twenty-five Dollars (\$49,625).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
InterLocking Software Corporation**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and InterLocking Software Corporation, a corporation organized under the laws of the State of Washington located and doing business at 19362 Powder Hill Place NE, Poulsbo, Washington 98370 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the purchase, installation and implementation of permit tracking application software and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated April 14, 2006, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

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

TERMS

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Forty-nine Thousand Six Hundred Twenty-five Dollars and No Cents (\$49,625.00) 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 billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the rates shown in **Exhibit A** unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

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

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2006; provided however, that additional time shall be granted by the City for excusable days or extra work. Product and technical support are provided as part of the InterLocking Software License Agreement, and are an on-going effort which shall commence on the date the software application becomes operational, and extend for a period of one year as described in Exhibit A. At the option of the City, product and technical support may be renewed on an as annual basis.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as

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

VI. Discrimination

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

VII. Indemnification

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

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

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

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

VIII. Insurance

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

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

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

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

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

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

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

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work

hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

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

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

The Consultant specifically agrees that this provision shall govern over any provision in any contract between the City and Consultant requiring arbitration for resolution of disputes.

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:
InterLocking Software Corporation
Gary Macy, Executive Vice President
19362 Powder Hill Place NE

John P. Vodopich, AICP
Community Development
Director
City of Gig Harbor

Poulsbo, WA 98370
(360) 394-5900

3510 Grandview Street
Gig Harbor, WA 98335
(253)851-6170

XVII. Assignment

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

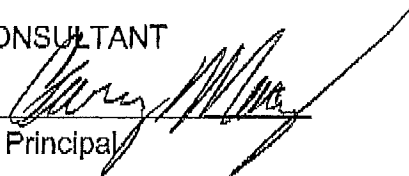
XVIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this 3rd day of July, 2006.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

CONSULTANT:
InterLocking Software Corporation
Gary Macy, Executive Vice President

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor

19362 Powder Hill Place NE
Poulsbo, WA 98370
(360) 394-5900

3510 Grandview Street
Gig Harbor, WA 98335
(253)851-6170

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

(print or type name)

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

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

(print or type name)

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

My Commission expires: _____

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: INTEGRATED PERMIT TRACKING APPLICATION
SOFTWARE – PURCHASE / CONTRACT AUTHORIZATION
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

In March of 2006, the Community Development Department advertised a Request for Proposals (RFP) for the purchase, installation and implementation of an integrated permit tracking application software for the Community Development Department to track all phases of land development including residential and commercial construction.

Six companies were contacted and two responses were received from Interlocking Software Corporation and Bitco Software LLC. After reviewing the proposals and conducting interviews with both firms, Interlocking was chosen based upon their track record and references from other jurisdictions. Their support, service and training performance record is excellent. Interlocking's services provide for hardware, software, with a one-year support and maintenance and software interfaces with web-based GIS, FMS and Tax Parcel Data interface development. Interlocking will provide the city with an interface with the e-City government software and MyBuildingPermit.com. [John, what great things will e-City do for us?? Maybe insert that here]

Work is expected to begin following City Council approval of the attached three contracts.

City of Gig Harbor Consultant Services Contract
Interlocking Software Corp. Software License and Support Agreement
Oracle Software License and Services Agreement

The City Attorney has reviewed these contracts and has made applicable revisions to the city's contract.

ISSUES/FISCAL IMPACT

The purchase, installation, training and implementation of the permit tracking software and one-year maintenance is within the \$55,000 that was anticipated in the adopted 2006 Budget and as identified under Community Development General Fund 001, Objective No. 4.

RECOMMENDATION

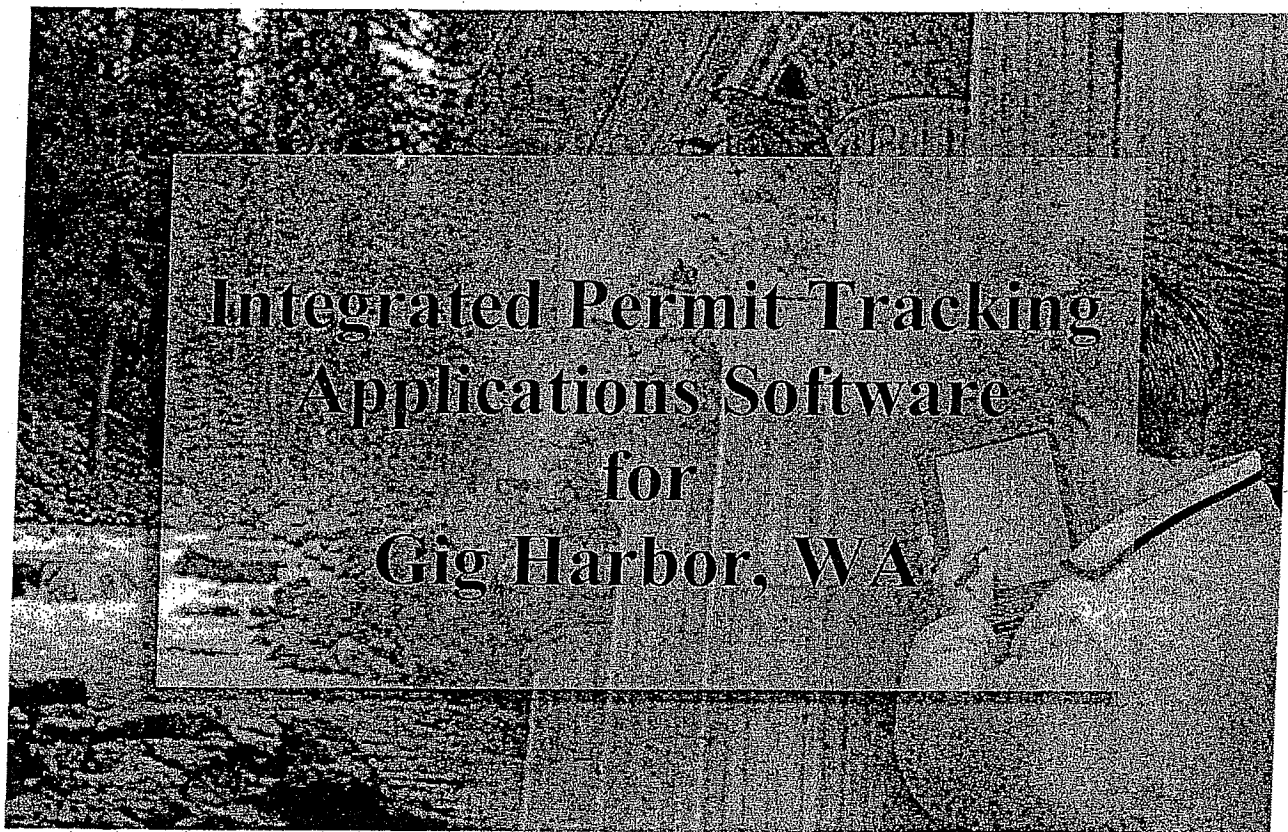
I recommend that Council authorize the attached three contracts in the amount of Forty-nine Thousand Six Hundred Twenty-five Dollars (\$49,625).

Exhibit A



InterLocking

S O F T W A R E



Integrated Permit Tracking
Applications Software
for
Gig Harbor, WA

Revised June 5, 2006

Prepared by:
Tom Hickey
Vice President, Sales

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PROPOSAL SUBMISSION FORM

Request For Proposal for Integrated Permit Tracking Application Software

To:
 Attn: John Vodopich
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, WA 98335

The undersigned, having carefully read and considered the Request for Proposal to provide an Integrated Permit Tracking Application Software Program for the City, does hereby offer to perform such services on behalf of the City, in the manner described and subject to the terms and conditions set forth in the attached proposal. Services will be performed at the rates set forth in said proposal.

PROPOSER

Company Name: InterLocking Software Corporation

Doing business as: an individual a partnership a corporation

duly organized under the laws of the State of Washington

by: _____ Gary Macy, Executive Vice President
signature of authorized representative type or print name

PRINCIPLE OFFICE ADDRESS

Street address 19362 Powder Hill Place, NE

City Poulsbo

County Kitsap

State Washington Zip Code 98370

Telephone (360) 394-5900

E-mail Address thickey@interlockingsoftware.com

Fax (360) 799-2600

TAXPAYER IDENTIFICATION NUMBER

Employer I.D. No. 01-0710526

OR Social Security No. _____

Corporation or partnership

individual

ALL PROPOSALS MUST INCLUDE THIS COVER SHEET. IN ADDITION, THE PROPOSAL MUST CONTAIN ALL THE CONTENT AND EVALUATION REQUIREMENTS LISTED IN THIS BID PROPOSAL PACKAGE.

City of Gig Harbor, RFP, Integrated Permit Tracking Application Software, March 3, 2006

TRANSMITTAL LETTER

John Vodopich
Community Development Director
City of Gig Harbor, WA
3510 Grandview Street
Gig Harbor, WA 98335

RE: RFP for the Integrated Permit Tracking Application Software for the Community Development Department

April 14, 2006

Mr. John Vodopich:

InterLocking Software is pleased to present this RFP response to the City of Gig Harbor, Washington for the Integrated Permit Tracking Application Software. Based upon a thorough review of the RFP, InterLocking will provide the City of Gig Harbor with a dedicated team with Permitting and implementation expertise to meet or exceed all the requirements of the RFP.

InterLocking has a strong tradition of creating value through a clear understanding of our client's business strategies and technological challenges during the implementation process. We form long-term partnerships that are based on strategic cooperation and collaboration. This approach results in technological solutions that bring full value to solving difficult business challenges for our government clients.

Thank you for your consideration.

Respectfully submitted,

Tom Hickey
Vice President, Sales

1 EXECUTIVE SUMMARY

InterLocking Software Corporation is pleased to have this opportunity to propose on the City of Gig Harbor, Washington's Land Management and Permit Software system. InterLocking is confident in our understanding of the City's project and its objectives, and our ability to meet or exceed the requirements of the City. This new system will provide data management of the planning, building, code enforcement, SEPA and engineering/bonding processes for the Community Development Department, including Planning, Building & Fire Safety, Engineering, Code Enforcement and Operations.

InterLocking Software Corporation's strengths lie in our people, products, and processes. Our combination of dedicated customer service, technical expertise, reliable technologies, and proven methodologies will ensure a successful implementation of Gig Harbor's new Permitting system.

1.1 PEOPLE

The InterLocking team of professionals has more than 20 years experience designing, developing, and deploying business systems to a variety of government and private organizations. InterLocking's Project Managers, Business Systems Analysts, Application Developers and Database Administrators work closely with our customers to understand the customer's business requirements and apply proven methodologies to accomplish successful projects.

InterLocking invested more than 2 years working with local government in developing the Land Management and Permitting System that forms the core of this proposal. A significant portion of that time was spent mastering the complex nature of the Permitting business processes. Working hand-in-hand with City/County Government employees has provided InterLocking professionals with a keen understanding of the challenges faced by the Gig Harbor, Washington staff. These same professionals will be assigned to the Gig Harbor Permitting project. The City of Gig Harbor will be assured of receiving the best InterLocking has to offer. They will benefit from having the original Systems Architect manage the project and oversee the installation of each product.

1.2 PRODUCT

InterLocking's products have been developed using the knowledge gained from more than 100 custom application development projects. Using industry leading technology toolsets to build these products; InterLocking has leveraged its experience and skills to create a robust, scalable, configurable, and customizable solution.

This application delivers a comprehensive business solution for Gig Harbor's Permitting needs. Additionally, the application's foundation provides an extendible and customizable platform upon which the City of Gig Harbor can support new or changing business processes.

The application's core functionality is based on table driven design methods, which enable the end user to configure the application and meet unique organizational needs. This can be accomplished without technical support, thereby giving business process owners the ability to tailor the application's features and functions. The intent of local user configuration is to provide long-term product life with minimal need for help from local information services or consultants.

1.3 PROCESSES

InterLocking employs industry best practices and proven methodologies that support each phase of the software lifecycle. These processes and procedures have been fine-tuned over the last 10 years by InterLocking professionals to provide a succinct set of technical and business methodologies.

InterLocking's *business* methodologies includes management of the following areas:

1. Project Management
2. Risk Management
3. Strategic Analysis
4. Business Process Analysis
5. Configuration Management

These methodologies ensure on-time and on-budget delivery and application fit-for-purpose functionality.

InterLocking's *technical* methodologies including management of the following areas:

1. Technology Integration
2. Application Installation
3. Configuration/Customization
4. Data Migration and Validation
5. End-User and Technical Training
6. Hand-over / Transition
7. Maintenance and Support

These methodologies ensure consistent, trouble-free, and reliable implementations, educated and confident end users, and technically competent local support staff.

1.4 RESPONSIBLE PROPOSAL EXECUTIVE

The InterLocking contact responsible for this proposal is:

Tom Hickey
Vice President, Sales
InterLocking Software Corporation
19362 Powder Hill Place NE
Poulsbo, WA 98370
206-817-2081 cell
866-866-1214
360-779-2600 fax
thickey@ilsc.us
www.InterLockingSoftware.com

2 BACKGROUND INFORMATION

2.1 NAME OF FIRM

InterLocking Software Corporation

2.2 CORPORATE HEADQUARTERS

InterLocking Software is located in Kitsap County, WA, with field offices in Seattle, WA and Coco Beach, FL.

Corporate Headquarters

19362 Powder Hill Place NE
Poulsbo, WA 98370
360.394.5900
866.866.1214

2.3 PROJECT MANAGEMENT OFFICE

The Corporate Headquarters will be the Project Management Office for this project, located in Poulsbo, WA. This location was established in June 2002 when InterLocking Software was established.

Corporate Headquarters

19362 Powder Hill Place NE
Poulsbo, WA 98370
360.394.5900
866.866.1214

2.4 OWNERSHIP TYPE

InterLocking Software is a privately held Corporation.

2.5 LENGTH OF TIME IN BUSINESS

InterLocking Software was established in the Spring of 2002 as the exclusive sales and marketing arm for Paladin Data Systems. Paladin was established in the fall of 1994.

2.6 POTENTIAL CONTRACT CONFLICTS

The Integrated Permit Tracking Application project with the City of Gig Harbor proposes no conflicts of interest for InterLocking Software with respect to existing clients, contracts or property interests.

2.7 CORPORATE HISTORY

On June 4, 2002 InterLocking Software Corporation was formed as the exclusive marketing entity for software systems designed, developed and maintained by Paladin Data Systems Corporation. InterLocking Software Corporation and Paladin Data Systems Corporation have executed a reciprocal Joint Operating Agreement (JOA) wherein InterLocking provides marketing, sales, and support functions for software and licensing, while Paladin provides the implementation as well as all financial and performance guarantees. The two corporations operating under this JOA will be identified throughout this document as simply "InterLocking".

InterLocking Software's geographic area of business spans the Western and Central United States, to be expanded to Eastern cities and counties in the future.

Founded in 1994, Paladin has a proven history of providing first-rate solutions to local, state, and federal agencies, Fortune 500 companies, and small to mid-sized corporations. Paladin provides superior custom information systems solutions, within tight schedules and budget constraints. Paladin has more than 10 years experience with the design and development of major applications using a variety of operating system environments.

Paladin is a privately held professional services firm committed to providing long term service to customer/partners. Paladin provides management consulting services, entire development project teams and/or individual specialists. The reputation for integrity and ethics coupled with highly skilled professionals has contributed to Paladin being named one of the fastest growing private companies in the USA by INC Magazine and one of the best companies to work for 4 years running. Paladin has also received awards for "best standards" and "most innovative" for work on the InterLocking Land Information Systems. Paladin maintains offices in Poulsbo and Seattle, Washington, as well as a field site in Cocoa Beach, Florida to support clients throughout the world. Paladin's teams of consultants specialize in implementing Information Technology solutions to both the public and private sectors. Paladin's website can be found at <http://www.paladindata.com>.

2.8 MANAGEMENT PHILOSOPHY

We are dedicated to our customers' success.

The philosophical underpinnings that ground InterLocking Software Corporation lay the foundation for our approach to our customer relationships. We are committed to providing the support, resources and knowledge necessary to assist our customers in successfully reaching their efficiency goals.

We build a strong, lasting relationship with each of our customers and champion their causes as if they are our own. We recognize that each client is unique and strive to fulfill their needs in terms of operational and personnel practices, customer service requirements and budget constraints.

All of this combines for customer care that is second to none.

3 COMPANY EXPERIENCE

3.1 KITSAP COUNTY, WASHINGTON

Company Name	Kitsap County, Washington
Business Address	614 Division Street Port Orchard, WA 98366
Name of Contact	Craig Adams
Title of Contact	Application Manager
Telephone Number	(360) 337-4946
Description of Work	<p>Land Information System InterLocking was hired to replace a 20-year-old Assessor/Treasurer system, by designing a table-driven tax administration and permit tracking system that is totally integrated with the County's GIS, appraisal, auditor and financial systems. Not only does the new system efficiently handle all property tax and assessor related functions, but provides a fully integrated, state-of-art web-based permit tracking system.</p> <p>Permit & Licensing System Within the scope of the Land Information System, InterLocking developed the Permit and Licensing sub-system. From this model, Kitsap County benefits from the real time sharing of assessor parcel data while performing permit and licensing business functions. The four largest cities in the County have subsequently implemented the system in a shared multi-jurisdictional fashion. This scenario creates a single repository for permit and land-use information throughout Kitsap County.</p>
Year Completed	The InterLocking Land Management, Permitting and Licensing applications were implemented in the March, 2003.

3.2 CITY OF BREMERTON, WASHINGTON

Company Name	City of Bremerton, Washington
Business Address	345 6th Street, Suite 600 Bremerton, WA 98337
Name of Contact	Janet Lunceford
Title of Contact	Code Compliance Officer
Telephone Number	(360) 473-5213

Company Name	City of Bremerton, Washington
Description of Work	<p>Multi-Jurisdictional Permit & Licensing System</p> <p>With the benefit of InterLocking's multi-jurisdictional model, the City of Bremerton has access to Kitsap County tax parcel information in a real-time environment. With the shared parcel data repository resident within the Kitsap County system infrastructure, both City and County jurisdictions have access to the same assessor data. While this provides the City with increased visibility of valuable parcel data such a parcel boundary history, the County assessor benefits from immediate visibility of new construction activity outside the unincorporated areas.</p>
Year Completed	The InterLocking Land Management, Permitting and Licensing applications were implemented in the June, 2003.

3.3 CITY OF UNIVERSITY PLACE, WASHINGTON

Company Name	City of University Place, Washington
Business Address	3715 Bridgeport Way West University Place, WA 98466
Name of Contact	Linda Seesz
Title of Contact	Project Manager
Telephone Number	(253) 566-5656
Description of Work	<p>Permit & Licensing System</p> <p>The Interlocking Permit and Licensing product is implemented in the City of University Place and replaces a legacy paper-based system. The centralized parcel data repository, a component of the Interlocking product foundation, provides the city with a robust view of the Pierce County assessor parcel data.</p>
Year Completed	The InterLocking Permitting and Land Management application was implemented in the March, 2004.

3.4 CITY OF FIFE, WASHINGTON

Company Name	City of Fife, Washington
Business Address	5411 23 rd Street East Fife, WA 98424
Name of Contact	Bev Boyle
Title of Contact	Senior Planner /Environmental Officer
Telephone Number	(253) 922-9625
Description of Work	<p>Permitting & Licensing System</p> <p>InterLocking's Permitting and Licensing software provides the City of Fife with a fully integrated system to fulfill their Permitting, Planning, Cashiering, Code Enforcement and Inspection needs.</p>
Year Completed	The InterLocking Permitting and Land Management application was implemented in the December, 2004.

3.5 CITY OF REXBURG, IDAHO

Company Name	City of Rexburg, Idaho
Business Address	12 North Center Rexburg, ID 83440
Name of Contact	Steve Christenson
Title of Contact	IS Manager
Telephone Number	(208) 359-3020
Description of Work	Permit & Licensing System The City of Rexburg contracted with InterLocking Software to implement a fully integrated Permit and Licensing package. This installation included Permit and Licensing software applications, the Inspection Assistant software application installed on handheld field device hardware, Public Portal access for the submittal and tracking of Permit or Licensing applications, and full GIS and mapping integration.
Year Completed	The InterLocking Permitting and Licensing application was implemented in the June, 2004.

3.6 COCONINO COUNTY, ARIZONA

Company Name	Coconino County, Arizona
Business Address	219 East Cherry Flagstaff, AZ 86001
Name of Contact	Larry Dannenfeldt
Title of Contact	IT Director
Telephone Number	928-779-6795
Description of Work	Permit & Licensing System w/ Web Portal and Inspection Assistant Coconino County utilizes the InterLocking Software Permit and Licensing integrated solution which will integrate with the Permit and License business functions for the Community Development, Public Works, and Environmental Services departments with State managed assessor parcel data and resident GIS and centralized addressing data. This implementation is complimented with the addition of the Inspection Assistant hand-held device and Public Web portal software components.
Year Completed	The InterLocking Permitting and Licensing application was implemented in Coconino County in the May, 2005.

3.7 CITY OF RIDGEFIELD, WASHINGTON

Company Name	City of Ridgefield, Washington
Business Address	230 Pioneer Avenue PO Box 608 Ridgefield, WA 98642
Name of Contact	Eric Eiserman
Title of Contact	Planning & Zoning Director

Company Name	City of Ridgefield, Washington
Telephone Number	(360) 887-3557
Description of Work	Permit & Licensing System The Interlocking Permit and Licensing product is implemented in the City of Ridgefield, WA. The centralized parcel data repository, a component of the Interlocking product foundation, provides the city with a robust view of the Clark County assessor parcel data.
Year Completed	The InterLocking Permitting and Licensing application was implemented in the September, 2005.

3.8 RIVERTON CITY, UTAH

Company Name	Riverton City, Utah
Business Address	12830 South Redwood Road Riverton, UT 84065
Name of Contact	Penny Atkinson
Title of Contact	Permit Manager
Telephone Number	801-208-3135
Description of Work	Permit & Licensing System w/ Web Portal InterLocking's Permitting & Licensing software provides Riverton City with a fully integrated system to fulfill their Permitting, Planning, Cashiering, Code Enforcement and Inspection needs. Riverton City uses the Permitting system to manage all aspects of their community development organization. This implementation is complimented with the addition of the Public Web portal software components
Year Completed	The InterLocking Permitting application was implemented in the December, 2005.

3.9 BUCKEYE, ARIZONA

Company Name	Town of Buckeye, Arizona
Business Address	100 N. Apache Buckeye, AZ 85326
Name of Contact	Dee Hathaway
Title of Contact	IT Director
Telephone Number	(623) 695-0195
Description of Work	Permit & Licensing System w/ Web Portal and Inspection Assistant The Town of Buckeye utilizes the InterLocking Software Permit and Licensing integrated solution which fully integrates with the Permit and License business functions. This implementation is complimented with the addition of the Inspection Assistant hand-held device and Public Web portal software components.
Year Completed	The InterLocking Permitting & Licensing application was implemented in the November, 2005.

3.10 FLORENCE, ARIZONA

Company Name	Town of Florence, Arizona
Business Address	775 North Main Street P.O Box 2670 Florence, AZ 85232
Name of Contact	Larry Quick
Title of Contact	Planning Director
Telephone Number	(520) 868-7540
Description of Work	Permit & Licensing System w/ Web Portal and Inspection Assistant The Town of Florence of utilizes the InterLocking Software Permit and Licensing integrated solution which fully integrates with the Permit and License business functions. This implementation is complimented with the addition of the Inspection Assistant hand-held device and Public Web portal software components.
Year Completed	The InterLocking Permitting and Licensing application was implemented in the December, 2005.

4 SCOPE OF SERVICES

InterLocking is proposing Permitting & Licensing software to provide the City of Gig Harbor, Washington with a fully integrated system to fulfill their Permitting, Planning, Cashiering, Code Enforcement and Field Inspection needs. To facilitate discussion, InterLocking will provide details on software capabilities and services to support the implementation, customization, maintenance, and training of the software.

4.1 HARDWARE DESCRIPTION

Interlocking recommends and deploys Dell hardware. Based on a 20 user license, the preferred configuration is (1) Dell PowerEdge 2850 2U server to host the Oracle database and application servers in a variety of operating environments.

4.2 SOFTWARE DESCRIPTION

InterLocking is proposing the Permitting and Licensing Software products. These include:

4.2.1 The InterLocking Foundation

The Interlocking Foundation provides a superior technology platform in support of all municipal government systems requiring centralized parcel data and contact information. Additionally, the Interlocking Foundation establishes a common cash receipting system in support of not only all Interlocking product modules, but any other Non-Interlocking systems requiring cash receipting functionality.

4.2.2 Permitting Modules

The Permit & Licensing modules enable Gig Harbor's departments to combine resources, allowing a single repository to serve the permitting needs. This not only consolidates resources, but also creates a one-stop permit management system that coordinates and integrates the following business areas:

- Permits (Building, Land Use, Public Works)
- Permit Workflow
- Inspections
- Fees
- Parcel Repository (Ownership, Situs, Legal Description)
- Contacts Repository
- Contractors
- Cashiering
- Code Enforcement
- Table driven configurable codes (inspection types, approval types, fees, conditions, etc.)

4.2.3 Ad Hoc Query and Reporting

The Ad Hoc Query and Reporting tool supports analytical reporting and data review. A broad range of extensive reporting features are built-in to the Permitting & Licensing modules to provide a wide variety of available reports. In addition, the Oracle Discoverer Ad Hoc query tool, integrated with

InterLocking's simplified view of the data model, empowers the user with additional analytical tools and report writing capabilities.

4.2.4 Database and Application Server Software

All Database and Application Server Software required to support the application is included with the Permitting modules. InterLocking's solution includes all necessary Oracle software to satisfy the City of Gig Harbor's application and deployment requirements including licenses, product upgrades, and technical support. InterLocking's solution is built on Oracle 10g technology and provides Oracle Database Standard Edition, and Oracle Internet Application Server Enterprise Edition.

4.3 OPTIONAL SOFTWARE PRODUCTS

4.3.1 Field Inspection Device Software

The Field Inspection Device software application operates on a Windows based Tablet PC which facilitates data collection of building inspection information in the field.

4.3.2 Internet Public Access Portal

The Internet Public Access Portal provides customer access to permit status, inspection request submittal, forms library, permit reports and online application submittal. It supports customer self-service and can be embedded into existing web sites, or deployed as a stand-alone web site. Through a number of possible configurations, the system administrator can easily customize access to available information.

5 IMPLEMENTATION PLAN

Interlocking follows a proven approach to system implementation. By providing the client with an automated data gathering tool that makes it easy for the user to define their unique system configuration requirements, the implementation project benefits from the functional expertise that only the client user can bring to the table. That, coupled with InterLocking's technical expertise in system deployment, leaves the City of Gig Harbor with a dependable and stable system which will carry them well into the future by accommodating easy adaptation of the product to new business practices as they arise.

5.1 IMPLEMENTATION METHODOLOGY

A standardized methodology is followed when deploying InterLocking off the shelf solutions.

5.2 INSTALLATION

InterLocking's off the shelf Land Management and Permitting solution provides the City of Gig Harbor with all necessary hardware and software components needed to deploy the Land Management/Permit and Licensing solution. The InterLocking technical team configures the hardware and installs necessary software components off site, prior to delivery to the client site.

5.3 CONFIGURATION

While the Interlocking technical team is preparing the eventual production system environment, the client staff is preparing for the configuration of their new system by utilizing an automated electronic data gathering tool provided to them. In this manner, the client is able to easily define and document dynamic data values such as Permit Types and associated inspection, approval and fee dependencies that will need to be set up in the new system prior to deployment. As this data is turned over to the product implementation staff, InterLocking is able to configure the Permitting system to meet the business process requirements unique to the City of Gig Harbor. By assisting the client in identifying and establishing these values, InterLocking demonstrates the manner in which the user will maintain them through the graphical user interface once the system is implemented.

All work, to this point, is performed on the InterLocking job site in Poulsbo, Washington. The Land Management/Permit and Licensing application is delivered to the client pre-installed, fully configured with Gig Harbor unique data and ready to deploy.

5.4 TESTING AND TRAINING

In preparation for system test and data validation, we recommend that the functional leads develop a comprehensive test plan that includes a representative sample of data specific to their test case scenarios. In addition, a full set of migrated data should be moved to the test database during this phase. The system is available to the user for a pre-established period of time prior to moving it into full production. During a portion of this time, our staff is onsite full-time to provide assistance and answer questions in regards to the functionality of the system. This provides the user surety that the new system will produce accurate results in a live environment.

Interlocking believes that the level of training delivered throughout this process leaves our clients with a knowledgeable support staff and user community capable of adequately operating and administering their Permitting system.

5.5 IMPLEMENTATION

Once the implementation teams, comprised of both Interlocking and client personnel, have validated the accuracy of the configuration, application updates, and data migration, they are ready for the move to a production environment. Final system preparation is typically performed over a weekend. This prevents any system down time during normal business hours. Interlocking personnel are on-site for this process, serving to assist the client IT staff. In addition, at the request of the client, Interlocking personnel will remain on-site and offer post implementation support to the resident IT and functional user staff. In this manner, Interlocking is able to insure that the resident staff is fully ready to assume the role of primary and system support user for the new system. By going this extra mile, Interlocking has a proven track record of successful system implementation and a long list of satisfied clients.

Post-implementation and continuing support is an important component of a strong and lasting relationship with the City of Gig Harbor. InterLocking understands that problems and issues can arise when a new system is implemented. InterLocking commits to providing the support, resources and knowledge to assist Gig Harbor's staff before, during and after the system is in production.

5.6 MAINTENANCE AND SUPPORT PROGRAM

5.6.1 Phase I Post-sales Support

Communication between appropriate City individuals and InterLocking after a contract is negotiated is essential for a successful project. The InterLocking Oversight Director and Project Manager will establish relationships with Gig Harbor's senior management to ensure a similar vision and a productive working environment. During implementation, InterLocking will have project team members working together with City staff to complete the required work to successfully configure and install the new system.

5.6.2 Phase II On-Site Product Implementation Support

As a component of the Implementation Plan, immediately preceding the move of the new system to production, the Interlocking technical team is on-site, insuring that the system setup supports the business process requirements for the City of Gig Harbor and that the users are fully trained and on-board in the use of the new system. Any discrepancies that arise will be evaluated, prioritized and resolved, depending on the problem classification.

5.6.3 Phase III Continuous Technical and Product Support

To contact InterLocking for assistance, two avenues are available:

- **Help desk** – 1-866-866-1214 - available 8 a.m. to 5 p.m. (PT) Monday through Friday to answer most questions instantly. For answers that require research or a patch, a

Technical Assistance Request (TAR) is registered in the web-based support system and resolved accordingly.

- **Web-based support** – through the Client Log-in site - available 24/7, the Web-based support can be used to access product information and share product ideas as well as submit and track recommendations for product enhancements and possible product deficiencies. Our online trouble action tracking ensures that customers are kept abreast of progress on any open request.

5.7 TECHNICAL SUPPORT LEVELS

Technical support is provided for problems that are demonstrable in the current release of an InterLocking licensed product, running unaltered on an appropriate hardware and operating system configuration as specified in the program documentation. Current InterLocking product release information is accessible via the online Customer Support System (www.interlockingsoftware.com).

A license set consists of all licenses that a contracting entity owns of a program and all licenses of any programs that are technically dependent. A customer with a license set is able to subscribe to one or both of the following Technical Support options:

5.8 UPDATES SUBSCRIPTION SERVICE

Updates Subscription Service is the base level for all InterLocking support services and consists of:

- Program Updates
- Patches
- General maintenance releases
- Selected functionality releases
- Documentation updates
- Limited access to bug fix information and patches

5.9 PRODUCT SUPPORT

In order to purchase Product Support for a license set, customer must first acquire Updates Subscription Service for that license set. Product Support consists of:

- Assistance with Technical Assistance Requests (TARs) 8 hours per day, 5 days a week
- Ability to log TARs with InterLocking 24/7.
- Non-technical customer service during normal business hours

5.10 DELIVERY OF UPDATES, ENHANCEMENTS, AND FIXES

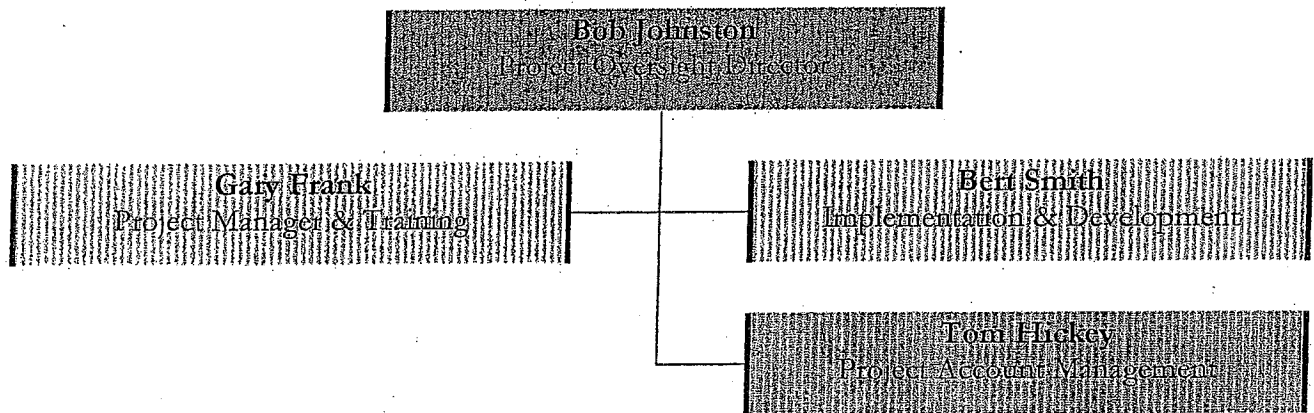
InterLocking releases new versions of the software two times per calendar year to its supported customers having a current Updates Subscription Service. There is no additional license fee, other than shipping charges. When a new release is available, InterLocking will ship one update copy for each licensed operating system. Customer shall be responsible for copying and installing the new version.

In a similar method, program enhancements and bug fixes will be shipped for customer installation. If requested, these can be sent via email to the Technical Contact for each Jurisdiction.

6 PROJECT STAFFING

6.1 PROJECT MANAGEMENT & ORGANIZATION STRUCTURE

InterLocking Software utilizes a team approach with all our implementation projects. Robert Johnston, Chief Operating Officer, will act as the Project Oversight Director for Integrated Permit Tracking Application Software project, with Gary Frank as Acting Project Manager. Bert Smith will focus on Implementation and Development and Tom Hickey will continue his role as Account Manager for this project.



6.2 PROJECT STAFF

Please see Appendix A for detailed staff résumés.

6.2.1 Robert Johnston, Project Oversight Director

Staff name:	Robert Johnston
Position in the company:	Chief Operating Officer
Length of time in position:	3 years
Project position and responsibilities:	<p>Oversight Director</p> <ul style="list-style-type: none"> ▪ Establish relationships with senior management to ensure a similar vision and a productive working environment ▪ Hardware and software coordination ▪ Manage/facilitated all technical aspects to include installation, configuration and migration ▪ Coordinated between customers technical team and InterLocking Software technical team

Staff name: Robert Johnston	
Qualifications Summary:	A highly skilled Product Implementation Manager, Information Systems Analyst and Database Application Developer with over 25 years experience. Extensive experience in developing custom, Oracle-based applications using Oracle Designer and Developer tools, including experience in Web-based application development. Broad experience in developing interfaces for Oracle applications. Participated as Project Manager and/or Technical Lead in several large-scale software project teams. Widely experienced in all aspects of the software development and maintenance life cycle.
Technical skills and qualifications for the project position:	<ul style="list-style-type: none"> ▪ Project Manager ▪ Technical Lead ▪ Application Designer ▪ Application Developer ▪ Data Modeler ▪ Database Administrator
Relevant experience in implementations of software in other municipalities	<p>Oversight Director responsibilities for prior InterLocking application implementations include:</p> <ul style="list-style-type: none"> ▪ Kitsap County, WA ▪ Bremerton, WA ▪ Port Orchard, WA ▪ Rexburg, ID ▪ University Place, WA ▪ Fife, WA ▪ Coconino County, WA ▪ Buckeye, AZ ▪ Ridgefield, WA ▪ Florence, AZ ▪ Riverton, UT
Education, field of study and degree(s) earned	Chapman College, Orange, CA Bachelor of Science, Electronics/Computer Science
Professional registrations(s) and/or professional memberships	Not applicable

6.2.2 Gary Frank, Project Manager & Training

Staff name: Gary Frank	
Position in the company:	Senior Business Systems Analyst
Length of time in position:	3 years

Staff name: Gay Frank	
Project position and responsibilities:	<ul style="list-style-type: none"> ▪ Business Analyst ▪ Analysis and requirements definition of customer business processes and customizations to the application ▪ Project management responsibilities for the implementation activities of the application. ▪ Primary trainer for the application, inspection tablets and ad-hoc query tool
Qualifications Summary:	Mr. Frank is a Senior Business Systems Analyst with demonstrated success directing the development and implementation of innovative technology solutions. Mr. Frank has more than 20 years experience in all aspects of technical assessments and solution implementation. He has participated as a Project Manager or Technical Lead in multiple large-scale software project teams, and is widely experienced in all aspects of the software life cycle from design through maintenance.
Technical skills and qualifications for the project position:	<ul style="list-style-type: none"> ▪ Systems/Data Analysis – 25+ years performing analysis and design duties for automated business solutions in the private and public sectors ▪ Project Management – 20+ years providing project management leadership and oversight over technical and non-technical staff including: developers, analysts, subject-matter experts, and end-users ▪ Customer Support – 25+ years providing technical and subject-matter support to customer IT staff and end-users ▪ Trainer – 20+ years training business system end users with little or no computer experience
Relevant experience in implementations of software in other municipalities	Project management responsibilities and primary trainer for the application, inspection tablets and ad-hoc query tool for prior InterLocking application implementations include: <ul style="list-style-type: none"> ▪ Ridgefield, WA ▪ Buckeye, AZ ▪ Riverton, UT ▪ Florence, AZ
Education, field of study and degree(s) earned	Bachelor of Science, Mathematics Whitworth College, Spokane, WA
Professional registrations(s) and/or professional memberships	Not applicable

6.2.3 Bert Smith, Project Implementation and Development

Staff name: Bert Smith	
Position in the company:	Information Management Specialist
Length of time in position:	7 years

Staff name: Bert Smith	
Project position and responsibilities:	<ul style="list-style-type: none"> ▪ Senior Developer ▪ Design and develop any custom type application functions ▪ Perform data migration ▪ Assist in user configuration and application installation
Qualifications Summary:	A highly skilled Information Systems Analyst and Database Application Developer with over 7 years experience. Extensive experience in developing custom, Oracle-based applications using Oracle Designer and Developer tools, including experience in Web-based application development. Broad experience in developing interfaces for Oracle applications. Widely experienced in all aspects of the software development and maintenance life cycle.
Technical skills and qualifications for the project position:	<ul style="list-style-type: none"> ▪ Application Designer ▪ Application Developer ▪ Data Modeler ▪ Database Administrator Migration specialist
Relevant experience in implementations of software in other municipalities	<p>Project Implementation and Development responsibilities for prior InterLocking application implementations include:</p> <ul style="list-style-type: none"> ▪ Kitsap County, WA ▪ Bremerton, WA ▪ Port Orchard, WA ▪ Rexburg, ID ▪ University Place, WA ▪ Fife, WA ▪ Coconino County, WA ▪ Buckeye, AZ ▪ Ridgefield, WA ▪ Florence, AZ ▪ Riverton, UT
Education, field of study and degree(s) earned	<ul style="list-style-type: none"> ▪ Associate in Technical Arts, Computer Systems Support Olympic Community College, Bremerton, WA, ▪ Bachelor of Science, Marine Engineering U.S. Merchant Marine Academy, Kings Point, NY ▪ U.S. Navy Nuclear Power Training Program ▪ Oracle Designer ▪ Oracle Developer ▪ Oracle DBA ▪ Oracle PL/SQL ▪ Oracle Forms ▪ Oracle Reports
Professional registrations(s) and/or professional memberships	Not applicable

6.2.4 Tom Hickey, Project Account Manager

Staff name: Tom Hickey	
Position in the company:	Vice President, Sales
Length of time in position:	3 years
Project position and responsibilities:	Account Manager
Qualifications Summary:	15 years of software sales and marketing.
Technical skills and qualifications for the project position:	15 years of software sales and marketing.
Relevant experience in implementations of software in other municipalities	Account Management responsibilities for prior InterLocking application implementations include: <ul style="list-style-type: none"> ▪ Kitsap County, WA ▪ Bremerton, WA ▪ Port Orchard, WA ▪ Rexburg, ID ▪ University Place, WA ▪ Fife, WA ▪ Coconino County, WA ▪ Buckeye, AZ ▪ Ridgefield, WA ▪ Florence, AZ ▪ Riverton, UT
Education, field of study and degree(s) earned	Bachelor of Science, Marketing Ball State University, Muncie, IN
Professional registrations(s) and/or professional memberships	Not applicable

7 IMPLEMENTATION PLAN

Please see Appendix B for a detailed Implementation Plan.

8 PRICING FOR THE CITY OF GIG HARBOR, WA

Land Management and Permitting System - Web-Based Deployment

InterLocking Software proposes a 20-user license system for the City of Gig Harbor, WA

8.1 HARDWARE AND SOFTWARE

Software Licenses (20) \$38,500

- ILSC Permitting Standard Edition
- Oracle Application and Database Software (ASFU)
 - Oracle IAS: Enterprise Edition
 - Oracle Database: Standard Edition
 - Oracle Database: Standard Edition 1 (Processor Based)

Hardware

- Application Server and Database Server
 - 1 Dell PowerEdge 2850
 - 3 year warranty included

Field Inspection Device Software License (per installation) (1 licenses) \$1,200

InterLocking Permit & Licensing Modules offer a Windows based Tablet PC application that facilitates data collection of building inspection information. The Field Inspection software license fee includes all applicable training. Hardware not included.

Annual Product Support and Maintenance \$9,925

- ILSC Technical and End-User Support and Subscription Service
- Application and Database software Technical Support and Subscription Service

8.2 INCLUDED SERVICES

Software Implementation

- Project Management
- Installation
- Configuration
- Testing and Training (60 hours)
- Implementation

Software Interfaces

- 30-60 hours estimated for Web-based GIS, FMS (Financial Management System) and Tax Parcel Data interface development.
- 160 hours estimated for fully functional MyBuildingPermit.com interface. InterLocking Software will provide a fully functional, tested and validated interface with the e-City government software. InterLocking Software will work with e-City government to provide Gig Harbor with the interface before 12/31/2006.

TOTAL: \$49,625

8.3 ADDITIONAL SERVICES¹

8.3.1 Additional 10-User License

.....\$13,000

8.3.2 Internet Public Access Portal

.....\$3,500

- Permit status Tracking
- Permit reports
- Inspection requests
- Permit application submittal

8.3.3 Custom Reports

.....\$130/hr

InterLocking Software will develop customized reports in addition to the reports included in the ILSC Permitting standard edition.

- \$130/hour - 3-5 hours estimate per report created.

8.3.4 Data Migration

.....\$130/hr

InterLocking will provide procedures for exporting data from legacy systems, develop scripts for migration of data, export legacy data from existing systems, migrate legacy data to production the database, and generate reports on migration statistics.

- \$130/hour - 30-60 hours estimate.

8.3.5 Additional Training

.....\$100/hr

InterLocking Software will provide extended training in the areas of configuration administration, end user, and reporting functions.

- \$100/hour – Jurisdiction’s discretion.

8.3.6 DBA on Demand

.....\$5,000/ yr

InterLocking Software Corporation’s DBA On-Demand is a subscription-based remote database administration, maintenance, and support service. ILSC DBA On-Demand is staffed with Oracle Certified Professionals, 24 hours a day, and 365 days a year.

- \$5000/year

¹ Based on Time and Materials
Pricing does not include Washington Sales Tax

Appendices

APPENDIX A - RÉSUMÉS

ROBERT JOHNSTON

Chief Operation Officer
rjohnston@ilsc.us

A highly skilled Product Implementation Manager, Information Systems Analyst and Database Application Developer with over 25 years experience. Extensive experience in developing custom, Oracle-based applications using Oracle Designer and Developer tools, including experience in Web-based application development. Broad experience in developing interfaces for Oracle applications. Participated as Project Manager and/or Technical Lead in several large-scale software project teams. Widely experienced in all aspects of the software development and maintenance life cycle.

Functional Roles

- Chief Operation Officer
- Project Manager
- Technical Lead
- Application Designer
- Application Developer
- Data Modeler
- Database Administrator
- Mentor
- Instructor

Environments

- Oracle 10g/9i/8i RDBMS
- Microsoft Windows
- UNIX
- Novell NetWare
- VM/CMS
- DOS
- OS/2

Development Tools

- Oracle Designer
- Oracle Developer
- Oracle Reports
- Oracle PL/SQL
- Oracle Application Server
- Oracle Server Manager
- SQL*Plus
- SQL*DBA
- SQL*Net
- SQL*Loader
- .NET cSharp

Industries

- Local Government
- Aerospace
- Engineering Services
- Environmental
- Financial Management
- Govt/Defense
- Health Care
- Insurance
- Manufacturing
- Training
- Retail and Wholesale

PROFESSIONAL EDUCATION

- Chapman College, Orange, CA, Bachelor of Science – Electronics/Computer Science

PROJECT EXPERIENCE

- InterLocking Software – Design, develop and support the InterLocking Software product suite (Assessments, Taxation, Permitting, Business License, et al).
- Marco Marine Systems – Analyst and developer for project creating a complete Oracle ERP system for a manufacturing company.
- Community Health Information Systems – Served as Project Manager on large project to convert FoxPro system to Oracle forms-based system. The system supports all transactions for this large insurance carrier and is comprised of Members, Providers, Referrals, Claims, Finance, Adjudication, and Notifications subsystems.
- Marina Management System – Analyst and developer for project to develop an Oracle Developer 2000-based application for commercial resale. The project includes Oracle Computer Assisted Software Engineering (CASE) methodologies and rapid application development features of Oracle Designer/Developer. The system includes accounts receivable, reservations, GL interface, point-of-sale, smart GUI interface and operations wizard functions in support of managing a marina.
- Radiological Training System - Analyst and developer for project to convert US Navy Oracle Card-based database application to an Oracle forms-based application. The project includes Oracle CASE methodologies, reverse engineering, and rapid application development features of Oracle Designer 2000.
- “S.T.A.R. 2000” – Technical Team Leader in project to design and integrate an Oracle RDBMS into current Starbucks store systems. Provide design guidance and methodologies to a group of five developers.
- DBA - Database systems administration and support of the Oracle databases and applications on the HP/UX platform.
- “S.T.A.R. 2000” - Project defining the architecture, CASE modeling, risk analysis, and direction recommendations for creating a network of over 2000 Oracle distributed databases supporting Starbucks worldwide operations.
- Wetlands Regulatory Data Systems (REGDIS) - Analyst and developer for project to convert a WANG-based IS using Oracle CASE to develop a client/server database system, including third-party imaging software using OLE to provide for imaging services in an Oracle Forms application.
- Address Management System (AMS) - Served as the systems architect and initial project manager for the United States Postal Service Address Management System (AMS) (contract valued over \$35 million). This implementation utilized current Oracle technologies in a distributed database environment to replace a five-bay Amdahl Mainframe. Symmetric Replication, Enterprise Networks, CASE technology, and 35 Oracle consultants were utilized to distribute the processing over 85 district sites.
- Regulatory Control System (RCS) - Served as the technical coordinator, project manager, and lead programmer for the Regulatory Control System (RCS) for the United States Army Corps of Engineers. This project involved data collection and expert analysis for tracking specific information about air quality regulations and compliance. This system migration was

unique in that optical technologies were integrated with Oracle products to provide a seamless client/server Implementation distributed over four sites. Additionally, responsible for development of an Air Quality Tracking System (AQTS) for this customer.

- Material Management System (MMS) - This migration project involved converting a legacy COBOL Navy material management system to client/server utilizing the Oracle database and Designer/Developer 2000.
- Management Systems Analyst/Developer. Provided training, technical support, user support, and systems support. Responsible for programming and systems integration while converting "legacy" mainframe systems to client/server architecture. Systems included manufacturing/production support and materiel/supply inventory control. Extensive Oracle CASE CDE tool usage and RDBMS operations. Provided systems support for Novel File Servers, IBM, and Sun computers. Managed data interfaces between local hosts and corporate systems. Provided troubleshooting and diagnostic repair of software/hardware.
- Calibration of precision test equipment; recommended and implemented new test procedures.

EMPLOYMENT HISTORY

- InterLocking Software – COO – 2003 to Present
- Paladin Data Systems – Vice President – 1995 to Present
- Oracle Corp. – Principal Consultant – 1995
- Pacific Western Services, Inc. – Oracle/UNIX Systems Consultant – 1994 to 1995
- Lockheed Martin Missiles & Space – Management Systems Developer, Senior Metrology Technician – 1981 to 1994
- Electromatic Scientific Laboratory, Inc. – Metrology Technician – 1980 to 1981
- U.S. Air Force – Precision Measuring Equipment Specialist – 1976 to 1980

GARY A. FRANK

Senior Business Systems Analyst
gfrank@InterLockingsoftware.com

Mr. Frank is a Senior Business Systems Analyst with demonstrated success directing the development and implementation of innovative technology solutions. Mr. Frank has more than 20 years experience in all aspects of technical assessments and solution implementation. He has participated as a Project Manager or Technical Lead in multiple large-scale software project teams, and is widely experienced in all aspects of the software life cycle from design through maintenance.

Functional Roles	Environments	Development Tools	Industries
Business Analyst	Microsoft Windows	C	Human Resources
Project Manager	UNIX	Visual Basic	Business Applications
Systems Analyst	DOS	Microsoft Project	Financial Management
Technical Lead		Visio	Federal Government
Application Designer			City/County
Data Modeler			Municipalities
Mentor			
Instructor			

SUMMARY OF EXPERIENCE

- Corporate Strategy/Leadership
- Management/Supervision
- Product Management
- Project Management
- Operations Management/Support
- Systems/Data Analysis
- Technical Sales Support
- Account Management
- Customer Support

PROJECT SPECIFIC OF EXPERIENCE

Project management responsibilities for the implementation activities of the InterLocking applications. Customer implementation projects led include:

- Ridgefield, WA
- Buckeye, AZ
- Riverton, UT
- Florence, AZ

Primary trainer for the application, inspection tablets and ad-hoc query tool

PROFESSIONAL EDUCATION

Whitworth College, Spokane, WA, Bachelor of Science - Mathematics

INDUSTRY EXPERIENCE

- InterLocking Software Corporation – Senior Business Systems Analyst – 2004 to Present
- Avue Technologies – Chief Technology Officer, Vice President of Product Development – 1985 to 2003
- BDM International – Senior Software Engineer – 1985 to 1990
- Tacoma News Tribune – Data Processing Manager – 1984 to 1985
- WHY System Incorporated – Senior Systems Manager – 1983 to 1984
- Tacoma News Tribune – Senior Programmer – 1980 to 1982
- R.A. Hanson Company – Programmer – 1975 to 1979

BERT SMITH

Information Management Specialist
bsmith@paladindata.com

A highly skilled Information Systems Analyst and Database Application Developer with over 5 years experience. Extensive experience in developing custom, Oracle-based applications using Oracle Designer and Developer tools, including experience in Web-based application development. Broad experience in developing interfaces for Oracle applications. Widely experienced in all aspects of the software development and maintenance life cycle.

Functional roles	Environments	Development TOOLS	Industries
Technical Lead	Oracle 8i RDBMS	Oracle Designer 6	Government/Defense
Application Designer	Microsoft Windows	Oracle Developer 6	Engineering Services
Application Developer	UNIX	Oracle Reports 6	Environmental
Data Modeler	DOS	Oracle PL/SQL	Health Insurance
Mentor		SQL*Plus	Manufacturing
Instructor		C	Training
		C++	
		COBOL	
		Access	

PROFESSIONAL EDUCATION

- Olympic Community College, Bremerton, WA, Associate in Technical Arts, Computer Systems Support
- United States Merchant Marine Academy, Kings Point, NY, Bachelor of Science, Marine Engineering
- U.S. Navy Nuclear Power Training Program
- Oracle Designer
- Oracle Developer
- Oracle DBA
- Oracle PL/SQL
- Oracle Forms
- Oracle Reports

PROJECT EXPERIENCE

- Health Insurance Carrier – development of forms and triggers for data validation. Converted legacy data to new Oracle database. Integrated triggers with table API.
- Developed PL/SQL batch processing on an Oracle-based Medical Benefits Management System to produce an EDI feed of medical benefits using the 4010 standard. Conducted significant process improvements to reduce the processes' run time. Provided data analysis and developed procedures to improve data reliability and consistency.

- Conducted Y2K testing and improvements on both PL/SQL and COBOL programs.
- Regional Coordinator for Naval Activities in the Pacific Northwest for Information Systems, Disaster Preparedness, Emergency Management, and Base Security.
- Developed requirements, supervised installation, and provided operational support of a LAN linking a large and geographically diverse staff.
- Wrote a regional personnel augmentation plan for increased requirements.
- Drafted, prepared, and executed a Disaster Preparedness Plan for a 10 state region.
- Commanded a U.S. Navy nuclear powered submarine with a crew of 130. Responsible for personnel, management, operation, and training for a vessel valued at \$1 billion.
- Managed the successful completion of a \$10 million shipyard maintenance period. Project completed on time and under budget.
- Using business process reengineering saved over \$50,000 in operational funds through use of alternative supply methodologies.
- Prepared comprehensive training and continuing education programs to meet Navy requirements. Briefed executive officials on current and evolving plans and policies. Prepared training program budget estimates. Established school and training requirements. Coordinated development of trainers and training simulators with naval training commands and contracting companies.
- Developed and implemented training requirements for several different areas including the Navy's fast attack submarine trainers and fire fighting trainer.
- Directed the Department Heads, as Executive Officer of a nuclear powered submarine with a crew of 170, in the conduct of command administration, schedules and inspections, evaluations of personnel performance, and crew training.
- Serving as Certification Team Leader, trained and certified over 400 personnel in the technical aspects of submarine weapons systems tactical employment.
- As Engineering Department Head, directed the operation and maintenance of an \$800 million submarine nuclear propulsion plant and all other ship mechanical systems. Managed all aspects of plant operations and maintenance, directed department training and certification of watchstanding personnel.

EMPLOYMENT HISTORY

- Paladin Data Systems – Information Management Specialist – 2000 to Present
- Electronic Data Systems Corp. – Programmer/Data Analyst – 1998 to 2000
- U.S. Navy – Line Officer – 1976 to 1996

APPENDIX B - IMPLEMENTATION PLAN

**INTERLOCKING SOFTWARE CORPORATION
SOFTWARE LICENSE AND SUPPORT AGREEMENT**

THIS AGREEMENT ("Agreement") is between INTERLOCKING SOFTWARE CORPORATION, a Washington corporation, 19362 Powder Hill Place NE, Poulsbo, WA 98370 ("InterLocking"), and The City of Gig Harbor ("Customer"), a Washington incorporated city, 3510 Grandview Street, Gig Harbor, WA 98335, and shall be effective as of _____ ("Effective Date").

IN CONSIDERATION of the mutual covenants, and conditions set forth below, the receipt and adequacy of which are hereby acknowledged, the parties to this agreement hereby agree as follows:

1.0 DEFINITIONS

1.1 "Documentation" means the user guides and manuals for installation and use of the Software, regardless of the media or format of such materials.

1.2 "Error" means a reproducible defect in the Software or Documentation when operated on a Supported Environment which causes the Software not to operate substantially in accordance with the Documentation.

1.3 "Fees" means, as appropriate, the license fees ("License Fees") or support fees ("Support Fees") payable by Customer to InterLocking pursuant to Article 7.0.

1.4 "Software" means the specific software program described in Exhibit A, including any Updates thereto.

1.5 "Specifications" means InterLocking's published functional and operational specifications for the Software.

1.6 "Support" means InterLocking's ongoing support as described at www.InterLockingsoftware.com, and updated from time to time, for the Licensed Software described in Exhibit A, including any Updates thereto. Unless otherwise indicated in Exhibit A, Support shall be available eight (8) hours per business day, 9:00 AM to 5:00 PM, Pacific U.S. Time, Monday through Friday, excluding U.S. legal holidays.

1.7 "Supported Environment" means the specific configuration of hardware and releases of the operating software and platforms described in Exhibit A.

1.8 "Update" means a subsequent release of the Software issued by InterLocking from time to time to deal with any Errors or to enhance the functionality of the Software as part of any Support purchased by Customer during the term of this Agreement.

2.0 SOFTWARE LICENSE

2.1 Rights Granted. Subject to the terms and conditions of this Agreement and in consideration of the payment of the Fees under Article 7, InterLocking hereby grants to Customer for the Customer's internal business use only a perpetual, personal, non-exclusive, non-transferable and non-assignable license to use the Software (in object code form only) and the Documentation on the Supported Environment. Customer may make one copy of the Software and Documentation for back-up purposes. Except as so expressly licensed, no other rights are granted to Customer and none shall be implied.

2.2 Limitations. Except as reasonably necessary for Customer's own internal use, Customer shall not (a) cause or permit the copying or reproduction of the Software or Documentation; (b) disclose the Software or Documentation to or permit any use thereof by any third party; (c) disassemble, decompile or reverse engineer the Software or create any derivative works based thereon; (d) sublicense, lease,

distribute or enter into any time share or service bureau arrangement with respect to the Software; or (e) export the Software outside the United States without InterLocking's prior written consent.

2.3 Incidental Hardware. Solely for the convenience of Customer, Customer may order and InterLocking may resell hereunder certain third party-supplied computers, servers or other similar hardware to operate the Software within the Supported Environment (collectively, "Third Party Hardware"). InterLocking hereby assigns and passes through to Customer "AS-IS" any warranties or service agreements on any Third Party Hardware from the original equipment manufacturers ("OEMs"), and InterLocking makes no independent representations or warranties with respect to any such Third Party Hardware. Customer acknowledges that Customer shall look solely and exclusively to the respective OEMs with respect to any issues or problems regarding any such Third Party Hardware.

3.0 TECHNICAL SUPPORT.

3.1 General. Except during the Warranty Period in Section 5.1 hereof, InterLocking provides the Software to Customer "AS IS" and without Support. At its option, Customer may purchase Support as described in Exhibit A on an annual basis upon payment of the then-current Support Fees. If Support has been terminated or interrupted, InterLocking may, at its option, reinstate such Support to Customer only if InterLocking then offers such Support for the Software and Customer pays a fee equal to the Support Fees that would have been payable for the period during which Support was terminated or interrupted.

3.2 Access to Personnel and Equipment. If Customer has purchased Support for the Software, Customer shall provide InterLocking with reasonable access to Customer's personnel and equipment, including remote dial-in from InterLocking facilities to the Supported Environment, to perform the Support. InterLocking shall only access and use the Supported Environment for purposes of Support.

3.3 Incidental Expenses. For any on-site services requested by Customer in relation to any Support provided under this Agreement, Customer shall reimburse InterLocking for its actual and reasonable travel, lodging and out-of-pocket expenses thereby incurred.

3.4 Training, Data Conversion and Database Administration Services. At its option, Customer may also purchase training, data conversion or database administration services from InterLocking. All such separate services shall be billed to Customer on a time-and-materials basis at InterLocking's then-current rates unless the parties expressly agree otherwise in writing.

3.5 Third Party Hardware. Customer shall work directly with any relevant OEMs regarding any technical support questions or issues regarding Third Party Hardware. InterLocking shall not provide any Support for Third Party Hardware.

4.0 TERM AND TERMINATION.

4.1 Term. This Agreement shall continue indefinitely unless terminated in accordance with this Article 4.0

4.2 Termination for Convenience. Customer may terminate this Agreement at any time upon thirty (30) days written notice to InterLocking, provided such termination for convenience shall not entitle Customer to any refund of any License Fees or Support Fees paid prior to such termination.

4.3 Termination for Material Breach. Either party may terminate this Agreement upon ten (10) days written notice to the other party if the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) days written notice thereof.

4.4 Insolvency or Bankruptcy. If Customer becomes insolvent or enters into any voluntary or involuntary bankruptcy proceeding that is not dismissed within sixty (60) days of filing, InterLocking may treat such situation as a material breach hereunder. If InterLocking becomes insolvent or enters into any voluntary bankruptcy proceeding that is not dismissed within sixty (60) days of filing, at Customer's option and upon payment of any applicable Fees to InterLocking, this Agreement and its licenses of intellectual property to Customer are intended to and shall remain in full force and effect under Section 365(n) of the U.S. Bankruptcy Code

4.5 Cumulative Remedies. Termination of this Agreement or any license hereunder shall not limit either party's right to pursue other remedies available to it, including, without limitation, injunctive relief.

4.6 Survival. Upon any termination of this Agreement, Customer shall promptly cease using, and shall return or destroy, all copies of the applicable Software and Documentation. The parties' rights and obligations under Articles 4.0 through 11.0, including, without limitation, Customer's duty to pay any outstanding Fees or expenses, shall survive any such termination.

5.0 WARRANTIES, INDEMNITIES AND REMEDIES.

5.1 Limited Software Warranty. For a period of ninety (90) days from the Effective Date ("Warranty Period"), InterLocking represents and warrants to Customer that the Software will function in all material respects in accordance with the Specifications. INTERLOCKING DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE OR WILL PERFORM WITHOUT INTERRUPTION, THE SOFTWARE WILL NECESSARILY MEET CUSTOMER'S REQUIREMENTS; OR ANY ERROR CAN OR WILL BE CORRECTED. Customer shall give InterLocking prompt written notice of any claim under the foregoing warranty; and in such event, InterLocking's sole obligation shall be to use its reasonable commercial efforts to modify or repair the Software to conform to the Specifications. The foregoing warranty shall not apply to the extent that any alleged defect derives from (a) a combination of the Software with any program, equipment or device not supplied by InterLocking or not described in the Specifications; (b) any modification or customization of the Software by or on behalf of Customer which is not performed by InterLocking; or (c) Customer's failure to use the most current version of the Software provided to Customer.

5.2 Limited Warranties. InterLocking represents and warrants to Customer that:

- (a) InterLocking has not intentionally included or embedded any disabling code or devices within the Software;
- (b) InterLocking has the full power and authority to grant the licenses for the Software and Documentation under this Agreement to Customer without the consent of any other person; and
- (c) Neither the license to or use by the Customer of the Software and Documentation (including the copying thereof) will constitute an infringement of a third party's U.S. patent, copyright, trademark or trade secret.

5.3 Disclaimer of Other Warranties. INTERLOCKING GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN SECTIONS 5.1 and 5.2. WITHOUT LIMITING THE FOREGOING, NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, AND NO IMPLIED WARRANTY ARISING FROM USAGE OR TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE IS GIVEN OR MADE BY INTERLOCKING OR SHALL ARISE BY OR IN CONNECTION WITH THIS AGREEMENT. CUSTOMER FURTHER EXPRESSLY DISCLAIMS ALL LIABILITIES AND WARRANTIES ON BEHALF OF KITSAP COUNTY, STATE OF WASHINGTON, AS A SUPPLIER OR LICENSOR TO INTERLOCKING AND ANY OTHER THIRD PARTY SUPPLIERS, INCLUDING WITHOUT LIMITATION CONSEQUENTIAL DAMAGES AND ALL IMPLIED WARRANTIES.

5.4 InterLocking Indemnity to Customer. InterLocking shall defend and indemnify Customer and its officers, directors, employees and agents from and against liability, costs, damages and fees, including reasonable attorneys' fees and legal costs incurred by Customer resulting from or arising out of the infringement or violation by the Software on a third party's valid U.S. patent, copyright, trademark or trade secret (collectively, "IP Legal Claim"). Notwithstanding the foregoing, InterLocking shall have no liability to Customer for any IP Legal Claim based on (a) solely on Customer's operation of an application developed using the Software and not upon the Software itself; (b) Customer's combination of the Software with other products not furnished by InterLocking when such IP Legal Claim is based upon such combination; (c) Customer's continued use of a superseded version of the Software when a non-infringing current version is available from InterLocking; or (d) Customer's use of an altered version of the Software not supplied by InterLocking when such IP Legal claim is based upon such alteration.

5.5 Customer Indemnity to InterLocking. Customer shall defend and indemnify InterLocking and its officers, directors, employees and agents from and against liability, costs, damages and fees, including reasonable attorneys' fees and legal costs incurred by InterLocking resulting from or arising out of the use of the Software with any data not owned by Customer ("Third Party Data"), any failure of Customer to secure the proper third party consents to use, compile or publish such Third Party Data, and all acts or omissions relating thereto (collectively, "Third Party Data Legal Claim").

5.6 Mechanics of Indemnity. A party seeking indemnity for an IP Legal Claim or a Third Party Data Claim ("Indemnified Party") give the other party ("Indemnifying Party") prompt written notice of any such Legal Claim and give the Indemnifying Party full authority, information and assistance and sole control over the defense and settlement of such claim. In response to any such IP Legal Claim, InterLocking, in its sole discretion and at its sole expense, may procure from such third party the right to allow Customer to continue to use the Software; modify or replace the Software or infringing portions thereof to become non-infringing; or, if neither option is commercially reasonable under the circumstances, InterLocking may terminate this Agreement and refund the applicable Fees to Customer. In response to any such Third Party Data Claim, Customer, in its sole discretion and at its sole expense, may procure from such third party the right for Customer to continue to use, compile or publish such data; modify its use, compilation or publication thereof to satisfy such third party; or, if neither option is commercially reasonable under the circumstances, may terminate this Agreement without refund of the applicable Fees to Customer. An Indemnified Party may engage counsel of its own choosing and at its sole expense. An Indemnified Party shall not settle any Legal Claim without Indemnifying Party's written consent, which consent will not be unreasonably withheld.

6.0 LIMITATIONS OF LIABILITY.

6.1 Liability Cap. TO THE EXTENT PERMITTED BY LAW, INTERLOCKING'S AGGREGATE CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER ARISING FROM CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AMOUNT OF LICENSE, SUPPORT OR OTHER SERVICE FEES OR EXPENSES PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY.

6.2 Consequential Damages Exclusion. IN ANY CASE, NEITHER CUSTOMER NOR INTERLOCKING OR ITS SUPPLIERS SHALL NOT BE LIABLE IN ANY AMOUNT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

7.0 PAYMENTS.

7.1 Fees and Expenses. Customer shall pay all Fees or expenses according to the payment terms set forth in Exhibit A . In addition, on any sums not paid when due, Customer shall pay interest at the

lower of the maximum legal rate of interest or one percent (1%) per month, which interest will be immediately due and payable. Without limiting the foregoing, as an additional remedy for non-payment when due, InterLocking may suspend its Support of the Software until all amounts in arrears (including applicable interest) have been paid in full.

7.2 Payments. Customer shall make all payments of Fees or expense in United States Dollars and directed to: InterLocking Software Corporation, 19362 Powder Hill Place NE, Suite 100, Poulsbo, WA 98370. Attention: Accounts Receivable.

7.3 Taxes. The Fees listed in Exhibit A do not include any sales, use, excise, import or export, value added tax, or any other tax applicable to the Software and not based on InterLocking's net income (collectively, "Taxes"). Customer shall be solely responsible for payment of any Taxes and shall not offset, deduct or withhold any sum for such Taxes from its payments of the Fees or expenses hereunder.

8.0 OWNERSHIP AND CONFIDENTIALITY.

8.1 Ownership of InterLocking Materials. Customer acknowledges that InterLocking or its suppliers shall own all right, title and interest in and to any patent, copyright, trademark, trade secret or other intellectual property right in the Software, Documentation or other materials provided by InterLocking under this Agreement, which shall be treated as the confidential information of InterLocking. Customer shall not remove or alter any copyright, trademark or other proprietary notice thereon, whether in printed or electronic form. Nothing in this Agreement shall be construed to create a "work for hire," and neither the Software nor the Documentation shall be considered a "work for hire."

8.2 Ownership of Customer or Third Party Data. InterLocking acknowledges that Customer or its suppliers shall own all right, title and interest in and to any intellectual property right in the data used, compiled or published with the Software, which shall be treated as the confidential information of Customer except to the extent such data may be placed in the public domain by Customer. InterLocking shall not remove or alter any proprietary notice thereon, whether in printed or electronic form.

8.3 Non-Disclosure. Each party shall keep confidential and take any other reasonable steps to protect the intellectual property rights in the other party's confidential information ("Confidential Information") and shall not use or disclose the same except as permitted by this Agreement.

8.4 Injunctive Relief. Each party acknowledges that any material breach of this Article 8.0 will cause irreparable harm to the other party, and that, accordingly, in addition to any other remedies at law or in equity for any breach or threatened breach, an aggrieved party may seek injunctive and equitable relief, including, but not limited to, the right to specific performance, without the necessity of posting a bond.

9.0 ESCROW.

Upon payment of the separate escrow fees ("Escrow Fees") described in Exhibit A and execution of an appropriate Software Escrow and License Agreement, InterLocking shall deposit the source code for the most current version of the Software and Documentation, as now exists or hereafter becomes available (collectively, "Escrow Materials") with a reputable and independent software escrow firm in the United States for the benefit and non-exclusive use of Customer in the event that InterLocking ceases to do business or is otherwise unable to provide Support for the Software.

10.0 DISPUTE RESOLUTION.

10.1 Dispute Resolution. Except as provided in Section 10.2 below, InterLocking and Customer shall each use its best efforts to resolve any dispute between them promptly and amicably and without resort to any legal process if feasible within thirty (30) days of receipt of a written notice by one party to the other

party of the existence of such dispute. The foregoing requirement in this Section 10.1 shall be without prejudice to either party's rights, if applicable, to terminate this Agreement under Section 4.3 above.

10.2 Litigation Rights Reserved. If any dispute arises with regard to the unauthorized use or infringement of Confidential Information by a party, the other party may seek any available remedy at law or in equity from a court of competent jurisdiction.

10.3 Procedure for Arbitration. Except as provided in Section 10.2 above, any dispute, claim or controversy arising out of or in connection with this Agreement which has not been settled through negotiation within a period of thirty (30) days after the date on which either party shall first have notified the other party in writing of the existence of a dispute shall be settled by final and binding arbitration under the then applicable Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any such arbitration shall be conducted by a single neutral arbitrator appointed by mutual agreement of the parties or, failing such agreement within fifteen (15) days of a demand for arbitration, in accordance with said Rules. Such arbitrator shall be an experienced business attorney or independent certified public account with background in commercial software products. Any such arbitration shall be conducted in Seattle, Washington, U.S.A. An arbitral award may be enforced in any court of competent jurisdiction. Notwithstanding any contrary provision in the AAA Rules, the following additional procedures and rules shall apply to any such arbitration:

(a) Each party shall have the right to request from the arbitrator, and the arbitrator shall order upon good cause shown, reasonable and limited pre-hearing discovery, including (i) exchange of witness lists, (ii) depositions under oath of named witnesses at a mutually convenient location, (iii) written interrogatories and (iv) document requests;

(b) Upon conclusion of the pre-hearing discovery, the arbitrators shall promptly hold a hearing upon the evidence to be adduced by the parties and shall promptly render a written opinion and award;

(c) The arbitrators may not award or assess punitive damages against either party or any other damages limited or excluded by Article 6.0; and

(d) Each party shall bear its own costs and expenses of the arbitration and one-half (1/2) of the fees and costs of the arbitrator, subject to the power of the arbitrator, in their sole discretion, to award all such reasonable costs, expenses and fees to the prevailing party.

11.0 MISCELLANEOUS.

11.1 Entire Agreement. This Agreement and its exhibits supersede, and their terms shall govern over, all prior proposals, agreements or other communications between the parties, oral or written, regarding the subject matter of this Agreement. If there is any conflict between the terms of this Agreement and any exhibit hereto, the terms of this Agreement shall control. This Agreement and its exhibits shall not be modified except by a subsequently dated written amendment signed by the parties, and any conflicting terms on a Customer purchase order or other similar document purporting to supplement the provisions hereof shall be void.

11.2 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strike, shortage, riot, insurrection, fire, flood, storm, explosion, acts of God, war, governmental action, labor condition, earthquake, material shortage or any other cause which is beyond the reasonable control of such party. The affected party shall give prompt written notice to the other party of any such event.

11.3 Assignment. Neither this Agreement nor any rights or obligations of either party hereunder may be assigned, in whole or in part, without the prior written approval of the other party, which approval shall not be unreasonably withheld, provided, however, either party's rights and obligations, in whole or in part,

under this Agreement may be assigned by such party as part of any merger or acquisition of such party with another entity that has agreed in writing to be bound by the terms and conditions of this Agreement.

11.4 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

11.5 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and, in such event, any such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or intended provision within the limits of applicable law or applicable court decisions.

11.6 Law, Jurisdiction and Venue. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, excluding its choice of laws rules. Subject to Article 10.0, any action at law, suit in equity or other judicial proceeding arising under or out of this Agreement may be instituted and maintained only in a court of competent jurisdiction located in Kitsap County, Washington.

11.7 No Agency. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

11.8 Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

11.9 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

11.10 Customer Reference. InterLocking may refer to Customer as a customer in sales or marketing presentations, press releases or other similar activities. Customer shall reasonably cooperate with calls or questions from other potential users of the Software.

11.11 Notices. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given three (3) business days following the date when mailed by first-class mail, postage prepaid, or the next business day if sent by nationally recognized overnight courier to the addresses listed on page 1 hereof.

11.12 Export Restrictions. The Software is subject to the U.S. Export Administration Regulations ("EAR"). Customer shall not knowingly export or re-export, or knowingly permit the re-export of, the Software or any technical data relating to the Software, directly or indirectly, to any other country or any other user except as permitted by the EAR.

11.13 Non-solicitation of Employees. Starting when this agreement is signed by all parties, and continuing for a period of six months following the successful deployment of the licensed software, each party agrees not to solicit for employment any technical or professional employees of the other party without the prior written approval of the other party.

11.14 Limitations on reverse engineering, decompilation, and disassembly. You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

11.15 No rental/commercial hosting. You may not rent, lease, lend or provide commercial hosting services with the Software.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives.

INTERLOCKING SOFTWARE CORPORATION

_____ ("CUSTOMER")

Signature

Signature

Print Name

Print Name

Print Title

Print Title

APPENDIX A - Pricing for the City of Gig Harbor, WA

Land Management and Permitting System - Web-Based Deployment

InterLocking Software proposes a 20-user license system for the City of Gig Harbor, WA

Hardware and Software

Software Licenses (20)..... \$38,500

- ILSC Permitting Standard Edition
- Oracle Application and Database Software (ASFU)
 - Oracle IAS: Enterprise Edition
 - Oracle Database: Standard Edition
 - Oracle Database: Standard Edition 1 (Processor Based)

Hardware

- Application Server and Database Server
 - 1 Dell PowerEdge 2850
 - 3 year warranty included

Field Inspection Device Software License (per installation) (1 licenses) \$1,200

InterLocking Permit & Licensing Modules offer a Windows based Tablet PC application that facilitates data collection of building inspection information. The Field Inspection software license fee includes all applicable training. Hardware not included.

Annual Product Support and Maintenance \$9,925

-ILSC Technical and End-User Support and Subscription Service
- Application and Database software Technical Support and Subscription Service

Included Services

Software Implementation

- Project Management
- Installation
- Configuration
- Testing and Training (60 hours)
- Implementation

Software Interfaces

- 30-60 hours estimated for Web-based GIS, FMS (Financial Management System) and Tax Parcel Data interface development.
- 160 hours estimated for fully functional MyBuildingPermit.com interface. InterLocking Software will provide a fully functional, tested and validated interface with the e-City government software. InterLocking Software will work with e-City government to provide Gig Harbor with the interface before 12/31/2006.

TOTAL: \$49,625



ORACLE LICENSE AND SERVICES AGREEMENT

A. Agreement Definitions

"You" and "your" refers to the individual or entity that has executed this agreement ("agreement") and ordered Oracle programs and/or services from Oracle USA, Inc. ("Oracle") or an authorized distributor. The term "programs" refers to the software products owned or distributed by Oracle which you have ordered, program documentation, and any program updates acquired through technical support. The term "services" refers to technical support, education, outsourcing, consulting or other services which you have ordered.

B. Applicability of Agreement

This agreement is valid for the order to which this agreement accompanies.

C. Rights Granted

Upon Oracle's acceptance of your order, you have the limited right to use the programs and receive any services you ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. You may allow your agents and contractors to use the programs for this purpose and you are responsible for their compliance with this agreement in such use. If accepted, Oracle will notify you and this notice will include a copy of your agreement. Program documentation is either delivered with the programs, or you may access the documentation online at <http://oracle.com/contracts>. Services are provided based on Oracle's policies for the applicable services ordered, which are subject to change, and the specific policies applicable to you, and how to access them, will be specified on your order. Upon payment for services, you will have a perpetual, non-exclusive, non-assignable, royalty free license to use for your internal business operations anything developed by Oracle and delivered to you under this agreement; however, certain deliverables may be subject to additional license terms provided in the ordering document.

The services provided under this agreement may be related to your license to use programs which you acquire under a separate order. The agreement referenced in that order shall govern your use of such programs. Any services acquired from Oracle are bid separately from such program licenses, and you may acquire either services or such program licenses without acquiring the other.

D. Ownership and Restrictions

Oracle retains all ownership and intellectual property rights to the programs and anything developed by Oracle and delivered to you under this agreement resulting from the services. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

You may not:

- remove or modify any program markings or any notice of Oracle's proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs; or
- disclose results of any program benchmark tests without Oracle's prior written consent.

E. Warranties, Disclaimers and Exclusive Remedies

Oracle warrants that a program licensed to you will operate in all material respects as described in the applicable program documentation for one year after delivery. You must notify Oracle of any program warranty deficiency within one year after delivery. Oracle also warrants that services ordered will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the services described in the ordering document.

ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY, AND ORACLE'S ENTIRE LIABILITY, SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY, OR IF ORACLE CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES PAID TO ORACLE FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO ORACLE FOR THE DEFICIENT SERVICES.

F. Trial Programs

You may order trial programs, or Oracle may include additional programs with your order which you may use for trial, non-production purposes only. You may not use the trial programs to provide or attend third party training on the content and/or functionality of the programs. You have 30 days from the delivery date to evaluate these programs. If you decide to use any of these programs after the 30 day trial period, you must obtain a license for such programs from Oracle or an authorized distributor. If you decide not to obtain a license for any program after the 30 day trial period, you will cease using and will delete any such programs from your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these programs.

G. Indemnification

If someone makes a claim against either you or Oracle ("Recipient" which may refer to you or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, or material ("Material") furnished by either you or Oracle ("Provider" which may refer to you or Oracle depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider will indemnify the Recipient against the claim if the Recipient does the following:

- notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated someone else's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid for it and any unused, prepaid technical support fees you have paid for the license. If you are the Provider and such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. This section provides the parties' exclusive remedy for any infringement claims or damages.

H. Technical Support

For purposes of the ordering document, technical support consists of annual technical support services you may have ordered. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies, incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided for supported programs during the period for which fees for technical support have been paid. You should review the policies prior to entering into the ordering document for the applicable services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

Technical support is effective upon the effective date of the ordering document unless otherwise stated in your order. If your order was placed through the Oracle Store, the effective date is the date your order was accepted by Oracle.

Technical support acquired with your order may be renewed annually and, if you renew technical support for the same number of licenses for the same programs, for the first and second renewal years the fee for technical support will not increase by more than 5% over the prior year's fees. If your order is fulfilled by a member of Oracle's partner program, the fee for technical support for the first renewal year will be the price quoted to you by your partner; the fee for technical support for the second renewal year will not increase by more than 5% over the prior year's fees.

If you decide to purchase technical support for any license within a license set, you are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if you agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If you decide not to purchase technical support, you may not update any unsupported program licenses with new versions of the program.

I. End of Agreement

If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, the other party may terminate this agreement. If Oracle ends this agreement as specified in the preceding sentence or ends the license for the program under the Indemnification section, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for programs ordered and/or services received under this agreement plus related taxes and expenses. Except for nonpayment of fees, we each agree to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this agreement, you may not use those programs and/or services ordered. You further agree that if you have used an Oracle Finance Division contract to pay for the fees due under an order and you are in default under that contract, you may not use the programs and/or services ordered and Oracle may end this agreement. Provisions that survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

J. Fees and Taxes

All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the programs and/or services you ordered, except for taxes based on Oracle's income. Also, you will reimburse Oracle for reasonable expenses related to providing the services. Fees for services listed in an ordering document are exclusive of taxes and expenses. You agree that you have not relied on the future availability of any programs or updates in entering into the payment obligations in your order.

K. Nondisclosure

By virtue of this agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall be limited to the terms and pricing under this agreement, and all information clearly identified as confidential.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the information to a federal or state governmental entity as required by law.

L. Entire Agreement

You agree that this agreement and the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the programs and/or services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such programs and/or services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. It is expressly agreed that the terms of this agreement and any Oracle ordering document shall supersede the terms in any purchase order or other non-Oracle ordering document and no terms included in any such purchase order or other non-Oracle ordering document shall apply to the programs and/or services ordered. This agreement and ordering documents may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of you and of Oracle. Any notice required under this agreement shall be provided to the other party in writing.

M. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.

N. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs. You agree that such export control laws govern your use of the programs (including technical data) and any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

O. Other

This agreement is governed by the substantive and procedural laws of California and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco, San Mateo, or Santa Clara counties in California in any dispute arising out of or relating to this agreement.

If you have a dispute with Oracle or if you wish to provide a notice under the Indemnification section of this agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Oracle USA, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.

You may not assign this agreement or give or transfer the programs and/or any services or an interest in them to another individual or entity. If you grant a security interest in the programs and/or any services deliverables, the secured party has no right to use or transfer the programs and/or any services deliverables, and if you decide to finance your acquisition of the programs and/or any services, you will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>.

Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.

Upon 45 days written notice, Oracle may audit your use of the programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. You agree to pay within 30 days of written notification any fees applicable to your use of the programs in excess of your license rights. If you do not pay, Oracle can end your technical support, licenses and/or this agreement. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with the audit.

The Uniform Computer Information Transactions Act does not apply to this agreement.

P. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.

Q. License Definitions and Rules

To fully understand your license grant, you need to review the definition for the licensing metric and term designation as well as the licensing rules which are listed below.

Adapter: is defined as each software code interface, installed on each Oracle Internet Application Server Enterprise Edition, which facilitates communication of information between each version of a third party software application or system and Oracle programs.

Beacon: is defined as each target that is deployed and managed by the program that measures the response time of remote software or hardware interfaces by communicating with those interfaces over protocols, api's or programmatic interactions and measuring the total time elapsed between the initiation of communication and completion of the associated response from the remote interface.

Collaboration Program User: is defined as an individual authorized by you to use the programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. For the purposes of counting and licensing the number of Real Time Collaboration users, a Collaboration Program User within your company is defined as a user able to initiate, or host, a web conference and also participate in a web conference; all participants in the web conference external to your company and attending a web conference are not required to be licensed.

Computer: is defined as the computer on which the programs are installed. A Computer license allows you to use the licensed program on a single specified computer.

Connector: is defined as each connector connecting the software product with an external product. A unique connector is required for each distinct product that the software product is required to interface.

Federated Link: is defined as a one-to-one pairing between a source domain and a destination domain. A source domain is the point of origin for a request. A destination domain contains the resource that users from source domains want to access. One source domain might have many pairings with different destination domains and one destination domain might have many pairings with different source domains. Each and every pairing is a federated link.

Hosted Named User: is defined as an individual authorized by you to access the hosted service, regardless of whether the individual is actively accessing the hosted service at any given time.

Implementation Services, Packaged Methods, Architecture Services, Accelerator Services, Assessment Services and Workshops
Each Implementation Service, Packaged Method, Architecture Service, Accelerator Service, Assessment Service and Workshop is provided subject to the statement of obligation for that particular offering and Oracle's consulting services policies. Oracle's consulting services policies may be accessed at <http://oracle.com/contracts>, and are subject to change.

Learning Credits: may be used to acquire education products and services offered in the Oracle University online catalogue posted at <http://www.oracle.com/education> under the terms specified therein. Learning credits may only be used to acquire products and services at the list price in effect at the time you order the relevant product or service, and may not be used for any product or service that is subject to a discount or a promotion when you order the relevant product or service. The list price will be reduced by applying the discount specified above. Notwithstanding anything to the contrary in the previous three sentences, learning credits may also be used to pay taxes, materials and/or expenses related to your order; however, the discount specified above will not be applied to such taxes, materials and/or expenses. Learning credits are valid for a period of 12 months from the date your order is accepted by Oracle, and you must acquire products and must use any acquired services prior to the end of such period. You may only use learning credits in the country in which you acquired them, may not use them as a payment method for additional learning credits, and may not use different learning credits accounts to acquire a single product or service or to pay related taxes, materials and/or expenses. Learning credits are non-transferable and non-assignable. You may be required to execute standard Oracle ordering materials when using learning credits to order products or services.

Named User Plus: is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. A non human operated device will be counted as a named user plus in addition to all individuals authorized to use the programs, if such devices can access the programs. If multiplexing hardware or software (e.g., a TP monitor or a web server product) is used, this number must be measured at the multiplexing front end. Automated batching of data from computer to computer is permitted. You are responsible for ensuring that the named user plus per processor minimums are maintained for the programs contained in the user minimum table in the licensing rules section; the minimums table provides for the minimum number of named users plus required and all actual users must be licensed.

Network Device: is defined as the hardware and/or software whose primary purpose is to route and control communications between computers or computer networks. Examples of network devices include but are not limited to, routers, firewalls and network load balancers.

Oracle Finance Division Contract: is a contract between you and Oracle (or one of Oracle's affiliates) that provides for payments over time of some or all of the sums due under your order.

Oracle University Knowledge Center Service: is defined as a web based learning environment hosted by Oracle that provides on demand access to either an individual Oracle University training course ("Online Course") or to all of the Oracle University training courses available on the Knowledge Center website ("Passport"). The Oracle University Knowledge Center service is available at <http://www.oracle.com/education/oukc/>, and is made available to you subject to the terms of this agreement and Oracle University's Online Hosting Access Policies, which are located at http://www.oracle.com/education/oukc/hosting_policies.html and may be updated

by Oracle from time to time without notice to you. Online Courses are made available on a named user basis, and the Passport is made available on a membership basis. In the event that any Oracle programs are made available for download as part of the service, then use of such programs is subject to the terms of this agreement. If you acquire the Oracle University Knowledge Center service, the term shall be one year from the effective date of your order. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, ORACLE DOES NOT WARRANT THAT THE ORACLE UNIVERSITY KNOWLEDGE CENTER SERVICE WILL BE PROVIDED UNINTERRUPTED OR ERROR-FREE.**

Processor: shall be defined as all processors where the Oracle programs are installed and/or running. Programs licensed on processor basis may be accessed by your internal users (including agents and contractors) and by your third party users. For the purposes of counting the number of processors which require licensing for a Sun UltraSPARC T1 processor with 4, 6 or 8 cores at 1.0 gigahertz or 8 cores at 1.2 gigahertz for only those servers specified on the Sun Server Table which can be accessed at <http://oracle.com/contracts>, "n" cores shall be determined by multiplying the total number of cores by a core processor licensing factor of .25. For the purposes of counting the number of processors which require licensing for AMD and Intel multicore chips, "n" cores shall be determined by multiplying the total number of cores by a core processor licensing factor of .50. For the purposes of counting the number of processors which require licensing for all hardware platforms not otherwise specified in this section, a multicore chip with "n" cores shall be determined by multiplying "n" cores by a core processor licensing factor of .75. All cores on all multicore chips for each licensed program for each core processor licensing factor listed above are to be aggregated before multiplying by the appropriate core processor licensing factor and all fractions of a number are to be rounded up to the next whole number. Notwithstanding the above, when licensing Oracle Standard Edition One or Standard Edition programs on servers with a maximum of 1 processor with 1 or 2 cores, only 1 processor shall be counted.

For example, a Sun UltraSPARC T1 based server installed and/or running the program on 6 cores would require 2 processor licenses (6 multiplied by a core processor licensing factor of .25 equals 1.50 which is then rounded up to the next whole number which is 2). An Intel or AMD based server installed and/or running the program on 7 cores would require 4 processor licenses (7 multiplied by a core processor licensing factor of .50 equals 3.50 which is then rounded up to the next whole number which is 4). Two multicore servers, for hardware platforms not specified above, installed and/or running the program on 10 cores would require 8 processor licenses (10 multiplied by a core processor licensing factor of .75 equals 7.50 which is then rounded up to the next whole number which is 8).

For the Healthcare Transaction Base program, only the processors on which Internet Application Server Enterprise Edition and this program are installed and/or running are counted for the purpose of determining the number of licenses required. For the iSupport, iStore and Configurator programs, only the processors on which Internet Application Server (Standard Edition and/or Enterprise Edition) and the licensed program are running are counted for the purpose of determining the number of licenses required for the licensed program; under these licenses you may also install and/or run the licensed program on the processors where a licensed Oracle Database (Standard Edition and/or Enterprise Edition) is installed and/or running. With respect to the Customer Data Hub program, in determining the number of licenses required, only processors on which both Oracle Database Enterprise Edition and the Customer Data Hub program are running in production shall be counted.

Program Documentation: is defined as the program user manual and program installation manuals.

Tape Drive: is defined as mechanical devices used to sequentially write, read and restore data from magnetic tape media. Typically used, but not limited to, data protection and archival purposes, tape drives are deployed either as a standalone unit(s) or housed within a robotic tape library. Examples of tape drive include but are not limited to, Linear Tape Open (LTO), Digital Linear Tape (DLT), Advanced Intelligent Type (AIT), Quarter-Inch Cartridge (QIC), Digital Audio Tape (DAT), and 8mm Helical Scan.

Technical Reference Manuals

Technical Reference Manuals ("TRMs") are Oracle's confidential information. You shall use the TRMs solely for your internal data processing operations for purposes of: (a) implementing applications programs, (b) interfacing other software and hardware systems to the applications programs and (c) building extensions to applications programs. You shall not disclose, use or permit the disclosure or use by others of the TRMs for any other purpose. You shall not use the TRMs to create software that performs the same or similar functions as any of Oracle products. You agree: (a) to exercise either at least the same degree of care to safeguard the confidentiality of the TRMs as you exercise to safeguard the confidentiality of your own most important confidential information or a reasonable degree of care, whichever is greater; (b) to maintain agreements with your employees and agents that protect the confidentiality and proprietary rights of the confidential information of third parties such as Oracle and instruct your employees and agents of these requirements for the TRMs; (c) restrict disclosure of the TRMs to those of your employees and agents who have a "need to know" consistent with the purposes for which such TRMs were disclosed; (d) maintain the TRMs at all times on your premises; and (e) not to remove or destroy any proprietary or confidential legends or markings placed upon the TRMs. Oracle shall retain all title, copyright and other proprietary rights in the TRMs. TRMs are provided to you "as-is" without any warranty of any kind. Upon termination, you shall cease using, and shall return or destroy, all copies of the applicable TRMs.

Terabyte: is defined as a terabyte of computer storage space used by a storage filer equal to one trillion bytes.

Test: is defined as each unit of interaction with a software or hardware interface for which the total time elapsed between the initiation of communication and the completion of the resulting response is measured. A test may run on it's own or be set up in conjunction with additional tests so that there are multiple units of interaction. Each unit of interaction must be counted as a Test; execution of a test or set of tests multiple times does not require additional tests. Examples of tests include but are not limited to, an http-get for a URL, icmp-echo for an IP address and sql-execute for a database.

Term Designation

If your program license does not specify a term, the program license is perpetual and shall continue unless terminated as otherwise provided in the agreement.

1, 2, 3, 4, 5 Year Terms: A program license specifying a 1, 2, 3, 4 or 5 Year Term shall commence on the effective date of the order and shall continue for the specified period. At the end of the specified period the program license shall terminate.

1 Year Hosting Term: A program license specifying a 1 Year Hosting Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Hosting Term may only be used for providing internet hosting services.

1 Year Oracle Hosted Term: A program license specifying a 1 Year Oracle Hosted Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Oracle Hosted Term must be hosted by Oracle.com via Computer and Administration services.

1 Year Subscription: A program license specifying a 1 Year Subscription shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate.

Licensing Rules

Failover: Your license for the following programs, Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One), Oracle Database Enterprise Edition Options, Oracle Internet Application Server (Enterprise Edition, Standard Edition, Standard Edition One or Java Edition) and Oracle Internet Application Server Options, includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate days in any given calendar year. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the program(s).

Testing: For the purpose of testing physical copies of backups, your license for the Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One) includes the right to run the database on an unlicensed computer for up to four times, not exceeding 2 days per testing, in any given calendar year.

You are responsible for ensuring that the following restrictions are not violated:

- Oracle Database Standard Edition may only be used on servers that have the ability to run a maximum of 4 single-core processors. For multicore chips, the maximum number of cores per server is determined by multiplying the core processor licensing factors (as specified in the processor definition) by the number of cores. The result must be less than or equal to 4 and the total number of cores must be less than or equal to 8. Oracle Database Standard Edition may also be used on a single cluster of servers supporting up to a maximum of four single-core processors per cluster (2 2-way nodes, 4 1-way nodes, or 1 1-way node and 1 3-way node). For multicore chips, the maximum number of cores per cluster is determined by multiplying the core processor licensing factors (as specified in the processor definition) by the number of cores. The result must be less than or equal to 4 and the total number of cores in the cluster must be less than or equal to 8.
- Oracle Standard Edition One and Internet Application Server Standard Edition One may only be used on servers that have the ability to run a maximum of 2 single-core processors. For multicore chips, the maximum number of cores per server is determined by multiplying the core processor licensing factors (as contained in the processor definition) by the number of cores. The result must be less than or equal to 2 and the total number of cores must be less than or equal to 4.
- The number of TRACE licenses (Rdb Server Option) must match the number of licenses of the associated database.
- The number of Diagnostics Pack and/or Configuration Management Pack licenses must match the number of licenses of the associated Internet Application Server program (Enterprise Edition, Standard Edition or Java Edition). The number of Identity Management licenses must match the number of licenses of the associated Internet Application Server Standard Edition program.
- For the TimesTen In-Memory Database, Replication - TimesTen to TimesTen and Cache Connect to Oracle programs, the number of gigabytes (GB) specified in the program name is the maximum size of data store (aggregate of in-memory databases or caches on a single computer system or node in a cluster of servers) irrespective of the number of processors licensed. You may not exceed the specified GB data store limitation unless you acquire additional licenses from Oracle.

If you purchase Named User Plus licenses for the programs listed below, you must maintain the following user minimums and user maximums:

Program	Named User Plus Minimum
Oracle Database Enterprise Edition	25 Named Users Plus per Processor
Rdb Enterprise Edition	25 Named Users Plus per Processor
CODASYL DBMS	25 Named Users Plus per Processor
TopLink and Application Development Framework	10 Named Users Plus per Processor
Internet Application Server Java Edition	10 Named Users Plus per Processor*
Internet Application Server Standard Edition	10 Named Users Plus per Processor*
Internet Application Server Enterprise Edition	10 Named Users Plus per Processor*
BPEL Process Manager	10 Named Users Plus per Processor
Portal	10 Named Users Plus per Processor
Identity Management	10 Named Users Plus per Processor
Integration	10 Named Users Plus per Processor
Business Intelligence	10 Named Users Plus per Processor
Forms and Reports	10 Named Users Plus per Processor
Web Services Manager	10 Named Users Plus per Processor
XML Publisher	10 Named Users Plus per Processor
Virtual Directory	10 Named Users Plus per Processor
SOA Suite for Non Oracle Middleware	10 Named Users Plus per Processor
Business Activity Monitoring for Non Oracle Middleware	10 Named Users Plus per Processor
Fusion Middleware for PeopleSoft	10 Named Users Plus per Processor

*The Named User Plus Minimum does not apply if the program is installed on a one processor machine that allows for a maximum of one user per program.

Program	Named User Plus Maximum
Personal Edition	1 Named User Plus per database

The number of licenses for the programs listed below must match the number of licenses of the associated database and if you purchase Named User Plus licenses for these programs, you must maintain, at a minimum, 25 Named Users Plus per Processor per associated database:

Real Application Clusters, Partitioning, OLAP, Data Mining, Spatial, Advanced Security, Label Security, Diagnostics Pack, Tuning Pack, Change Management Pack, Configuration Management Pack

The effective date of this agreement shall be _____, 2006. (to be completed by Oracle)

Company Name: _____

ORACLE USA, INC.

Authorized Signature: _____

Authorized Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signature Date: _____

Signature Date: _____



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING REGARDING THE 2005 COMPREHENSIVE
PLAN AMENDMENTS; SECOND READING OF AN ORDINANCE;
AND CONSIDERATION OF DEVELOPMENT AGREEMENTS
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

The 2005 Comprehensive Plan amendments are being presented for City Council consideration. The following three privately initiated amendments and one City initiated amendment are being proposed:

- **#04-01 Don Huber (Huber/Bingham Property)** - The applicant is proposing a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 18.88 acres from Planned Community Development Residential Low to Planned Community Development Residential Medium.
- **#05-01 Franciscan Health Systems - West** - The applicant is proposing a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 19.3 acres from Planned Community Development Residential Medium (PCD-RMD) to Planned Community Development Business Park (PCD-BP).
- **#05-03 HMT Partnership** - The applicant is proposing an amendment to the 2002 (as amended in 2003) City of Gig Harbor Wastewater Comprehensive Plan to reconfigure the design and location of future wastewater infrastructure improvements in the C-7 basin.
- **City of Gig Harbor - Transportation Element Revisions** - The April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS) identified proposed revisions to the Transportation Element, Chapter 11, of the December 2004 Comprehensive Plan (FSEIS Appendix B).

The City Council passed Resolution No. 646 on April 11, 2005, which established the work program for the processing of these individual Comprehensive Plan amendments for 2005. In July 2005, a Determination of Significance (DS) was issued with regards to the proposed Comprehensive Plan amendments. A Draft Supplemental Environmental

the proposed Comprehensive Plan amendments. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued in January 2006, and the Final Supplemental Environmental Impact Statement (FSEIS) was issued in April 2006. A timely appeal on the adequacy of the FSEIS was filed but was subsequently withdrawn by the appellant.

The Planning Commission held a work study session on April 6, 2006 and a public hearing on April 20, 2006 on the proposed Comprehensive Plan amendments. The Planning Commission recommended approval of the Comprehensive Plan amendments #04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership based on the findings of fact and recommended conditions of approval as outlined in the April 13, 2006 staff reports prepared for each application. The Planning Commission also recommended approval of the revisions to the Transportation Element (Chapter 11) of the adopted Comprehensive Plan as identified in Appendix B of the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).

A copy of the Planning Commission minutes from April 20, 2006, together with the staff reports for each of the proposed amendments has been included in your packet for review.

The City Attorney has drafted Development Agreements for each of the proposals. The Development Agreements for HMT Partnership and Don Huber have been signed by the applicants.

The representative for the Franciscan Health System has agreed to the terms in Comprehensive Plan Amendment Development Agreement. They have not agreed to the Indemnification clause (Section 13) of the Construction of Transportation Improvements Agreement.

The Franciscan Health System would agree to the following language (its additional language is noted in bold):

Indemnification. The Developer agrees to indemnify and save the City, its officials, officers, agents and representatives harmless from and against any and all liability, damages, expenses and judgments arising in connection with this Agreement, unless occasioned by the negligence or intentional misconduct of the City **or the breach of this Agreement by the City, provided the defense of any such claim is tendered to Developer.**

The City Attorney advises Council not to accept the Franciscan Health System indemnification language.

The Development Agreements will need to be adopted by resolution should the Council choose to approve the proposed amendments.

RECOMMENDATION

I recommend that the public testimony be taken at this public hearing and that the Council deliberate the merits of each comprehensive plan amendment and take appropriate action to either approve or deny each amendment.

Individual motions on each of the four pending comprehensive plan amendments will be necessary.

Motions to approve an amendment will also need to include a separate motion to approve a Resolution to execute the corresponding Development Agreement.

A final motion on the Ordinance for the amendments to the Comprehensive Plan will be necessary.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING REGARDING THE 2005 COMPREHENSIVE
PLAN AMENDMENTS; SECOND READING OF AN ORDINANCE;
AND CONSIDERATION OF DEVELOPMENT AGREEMENTS
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

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- **#04-01 Don Huber (Huber/Bingham Property)** - The applicant is proposing a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 18.88 acres from Planned Community Development Residential Low to Planned Community Development Residential Medium.
- **#05-01 Franciscan Health Systems - West** - The applicant is proposing a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 19.3 acres from Planned Community Development Residential Medium (PCD-RMD) to Planned Community Development Business Park (PCD-BP).
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the proposed Comprehensive Plan amendments. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued in January 2006, and the Final Supplemental Environmental Impact Statement (FSEIS) was issued in April 2006. A timely appeal on the adequacy of the FSEIS was filed but was subsequently withdrawn by the appellant.

The Planning Commission held a work study session on April 6, 2006 and a public hearing on April 20, 2006 on the proposed Comprehensive Plan amendments. The Planning Commission recommended approval of the Comprehensive Plan amendments #04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership based on the findings of fact and recommended conditions of approval as outlined in the April 13, 2006 staff reports prepared for each application. The Planning Commission also recommended approval of the revisions to the Transportation Element (Chapter 11) of the adopted Comprehensive Plan as identified in Appendix B of the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).

A copy of the Planning Commission minutes from April 20, 2006, together with the staff reports for each of the proposed amendments has been included in your packet for review.

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The Franciscan Health System would agree to the following language (its additional language is noted in bold):

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The City Attorney advises Council not to accept the Franciscan Health System indemnification language.

The Development Agreements will need to be adopted by resolution should the Council choose to approve the proposed amendments.

RECOMMENDATION

I recommend that the public testimony be taken at this public hearing and that the Council deliberate the merits of each comprehensive plan amendment and take appropriate action to either approve or deny each amendment.

Individual motions on each of the four pending comprehensive plan amendments will be necessary.

Motions to approve an amendment will also need to include a separate motion to approve a Resolution to execute the corresponding Development Agreement.

A final motion on the Ordinance for the amendments to the Comprehensive Plan will be necessary.

ORDINANCE NO. xxxx

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO GROWTH MANAGEMENT AND PLANNING, MAKING THE FOLLOWING AMENDMENTS TO THE CITY'S COMPREHENSIVE LAND USE PLAN: (1) APPROVING WITH A DEVELOPMENT AGREEMENT (RESOLUTION #) OR DENYING THE HUBER APPLICATION #04-01; (2) APPROVING WITH A DEVELOPMENT AGREEMENT (RESOLUTION #) OR DENYING THE FRANCISCAN HEALTH SYSTEMS-WEST APPLICATION #05-01; (3) APPROVING WITH A DEVELOPMENT AGREEMENT (RESOLUTION #) OR DENYING THE HMT PARTNERSHIP APPLICATION #05-03; AND (4) ADOPTING A REVISED TRANSPORTATION ELEMENT, CHAPTER 11 OF THE ADOPTED DECEMBER 2004 COMPREHENSIVE PLAN.

WHEREAS, the City of Gig Harbor plans under the Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the Act requires the City to adopt a Comprehensive Plan; and

WHEREAS, the City adopted a revised GMA Comprehensive Plan as required by RCW 36.70A.130 (4) in December 2004; and

WHEREAS, the City is required to consider suggested changes to the Comprehensive Plan (RCW 36.70A.470); and

WHEREAS, the City may not amend the Comprehensive Plan more than once a year (RCW 36.70A.130); and

WHEREAS, the City is required to provide public notice and public hearing for any amendments to the Comprehensive Plan and the adoption of any elements thereto (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, on April 11, 2005, the Gig Harbor City Council passed Resolution No. 646 which established the work program for the processing of individual Comprehensive Plan amendments for 2005; and

WHEREAS, the Washington State Office of Community Development was a party of record to the Supplemental Environmental Impact Statement (SEIS) process that was undertaken for the proposed amendments to the Comprehensive Plan; and

WHEREAS, the City Community Development Director notified the Washington State Office of Community Development of the City's intent to amend the Comprehensive Plan on May 1, 2006, pursuant to RCW 36.70A.106; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Office of Community Development on June 5, 2006 pursuant to RCW 36.70A.106; and

Land Use Element

WHEREAS, the Act requires that the Comprehensive Plan include a land use element designating the proposed general distribution and general location and uses of land, where appropriate, for the different types of allowed uses in the City, as well as other information (RCW 36.70A.070(1)); and

WHEREAS, on July 14, 2005, the City SEPA Responsible Official issued a Determination of Significance (DS) with regards to the proposed Comprehensive Plan amendments (#04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership); and

WHEREAS, on January 3, 2006, the Draft Supplemental Environmental Impact Statement (DSEIS) was issued; and

WHEREAS, on January 19, 2006, the Planning Commission held a public hearing on the Draft Supplemental Environmental Impact Statement (DSEIS); and

WHEREAS, on April 5, 2006, the Final Supplemental Environmental Impact Statement (FSEIS) was issued; and

WHEREAS, on April 6, 2006, the Planning Commission held a work study session on the proposed Comprehensive Plan amendments; and

WHEREAS, on April 19, 2006, Gig Harbor North Associates, LLC filed a timely appeal on the adequacy of the April 5, 2006, the Final Supplemental Environmental Impact Statement (FSEIS); and

WHEREAS, on April 20, 2006, the Planning Commission held a public hearing on the proposed Comprehensive Plan amendments (#04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership) and the proposed revision to the Transportation Element of the Comprehensive Plan as identified in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS); and

WHEREAS, on April 20, 2006, the Planning Commission recommended approval of the Comprehensive Plan amendments #04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership based on the findings of fact and recommended conditions of approval as outlined in the April 13, 2006 staff reports prepared for each application; and

WHEREAS, on April 20, 2006, the Planning Commission recommend approval of the revisions to the Transportation Element (Chapter 11) of the adopted Comprehensive Plan as identified in Appendix B of the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS); and

WHEREAS, on May 31, 2006, Gig Harbor North Associates, LLC withdrew their appeal of the adequacy of the April 5, 2006, the Final Supplemental Environmental Impact Statement (FSEIS); and

WHEREAS, on June 12, 2006, the Gig Harbor City Council held a public hearing and first reading of an Ordinance implementing the Planning Commission's recommended approval of the Comprehensive Plan amendments #04-01 Huber, #05-01 Franciscan Health System-West, and #05-03 HMT Partnership; and the recommended revisions to the Transportation element of the Comprehensive Plan during a public meeting; and

WHEREAS, on XX, 2006, during a regular City Council meeting, the Gig Harbor City Council held a second reading of an Ordinance implementing the Planning Commission's recommended approval of the Comprehensive Plan amendments and voted on the Comprehensive Plan amendments; Now, Therefore:

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

Section 1. Comprehensive Land Use Map and Plan Text Amendments.

A. **Notice.** The City Clerk confirmed that public notice of the public hearings held by the City Council on the following applications was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive land use map and plan text amendments is a legislative act. The Appearance of Fairness doctrine does not apply.

C. **Testimony.** The following persons testified on the applications at the June 12, 2006 public hearing:

1. Public Hearing and First Reading of Ordinance – Comprehensive Plan Amendments and Development Agreements. John Vodopich explained that this is the ordinance adopting the 2005 Comprehensive Plan Amendments. He gave an overview of the four amendments, explaining that the Development Agreements would be available at the June 22nd meeting as they were still being revised.

Mayor Hunter opened the public hearing on the Huber/Bingham Property Amendment #04-01 at 7:28 p.m. No one came forward to speak and the public hearing closed.

He then opened the public hearing on the Franciscan Health Systems – West Amendment #05-01.

Laurie Nichols – 2703 No. Yakima Avenue, Tacoma. Ms. Nichols gave an overview of the history of the project to date. She stressed that if the amendment is not approved, the hospital project will not be feasible.

No one else came forward to speak and the public hearing closed at 7:31 p.m. Mayor Hunter then opened the public hearing on the HMT Partnership Amendment #05-03.

No one signed up to speak and the public hearing closed. Mayor Hunter then opened the last public hearing on the City of Gig Harbor – Transportation Element Revisions. No one signed up to speak and the public hearing closed at 7:32 p.m. Mayor Hunter asked if Councilmember had any questions or comments on the amendments.

Councilmember Young asked for clarification on the comment in the Planning Commission minutes regarding larger access points for the Huber/Bingham Property Amendment. Mr. Vodopich responded that this would be addressed during the actual project development level rather than with the Comp Plan amendment.

D. Applications.

1. **#04-01, Don Huber Application.** The applicant, Don Huber proposed a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 18.88 acres from Planned Community Development Residential Low to Planned Community Development Residential Medium.

After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, applicable law, and the

public testimony, the City Council **adopted or rejected** the Planning Commission recommendation and voted to **approve or deny** this application.

[Insert language regarding the Council’s deliberations on approval or denial]

2. **#05-01, Franciscan Health System-West Application.** The applicant, Franciscan Health System-West proposed map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation. The proposed map amendment is to change the designation of approximately 19.3 acres from Planned Community Development Residential Medium (PCD-RMD) to Planned Community Development Business Park (PCD-BP).

After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City’s Comprehensive Plan, applicable law, and the public testimony, the City Council **adopted or rejected** the Planning Commission recommendation and voted to **approve or deny** this application.

[Insert language regarding the Council’s deliberations on approval or denial]

3. **#05-03, HMT Partnership, Application.** The applicant, HMT Partnership proposed an amendment to the 2002 (as amended in 2003) City of Gig Harbor Wastewater Comprehensive Plan to reconfigure the design and location of future wastewater infrastructure improvements in the C-7 basin.

After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City’s Comprehensive Plan, applicable law, and the public testimony, the City Council **adopted or rejected** the Planning Commission recommendation and voted to **approve or deny** this application.

[Insert language regarding the Council’s deliberations on approval or denial]

4. **Transportation Element Revisions.** The April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS) identified proposed revisions to the Transportation Element, Chapter 11, of the December 2004 Comprehensive Plan (FSEIS Appendix B).

After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City’s Comprehensive Plan, applicable law, and the public testimony, the City Council **adopted or rejected** the Planning Commission recommendation and voted to **approve or deny** these revisions as identified in Exhibit D, attached to this Ordinance.

[Insert language regarding the Council’s deliberations on approval or denial]

Section 2. Transmittal to State. The City Community Development Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Office of Community Development within ten days of adoption, pursuant to RCW 36.70A.106.

Section 3. Severability. If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this _____ day of _____ 2006.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

Exhibit A

Huber #04-01 Legal Description and Map

Section 30 Township 22 Range 02 Quarter 34: E 1/2 OF SE OF SW EXC BORGEN
BLVD AFN 2000-07-13-0671 DC/BL06-19-02BL

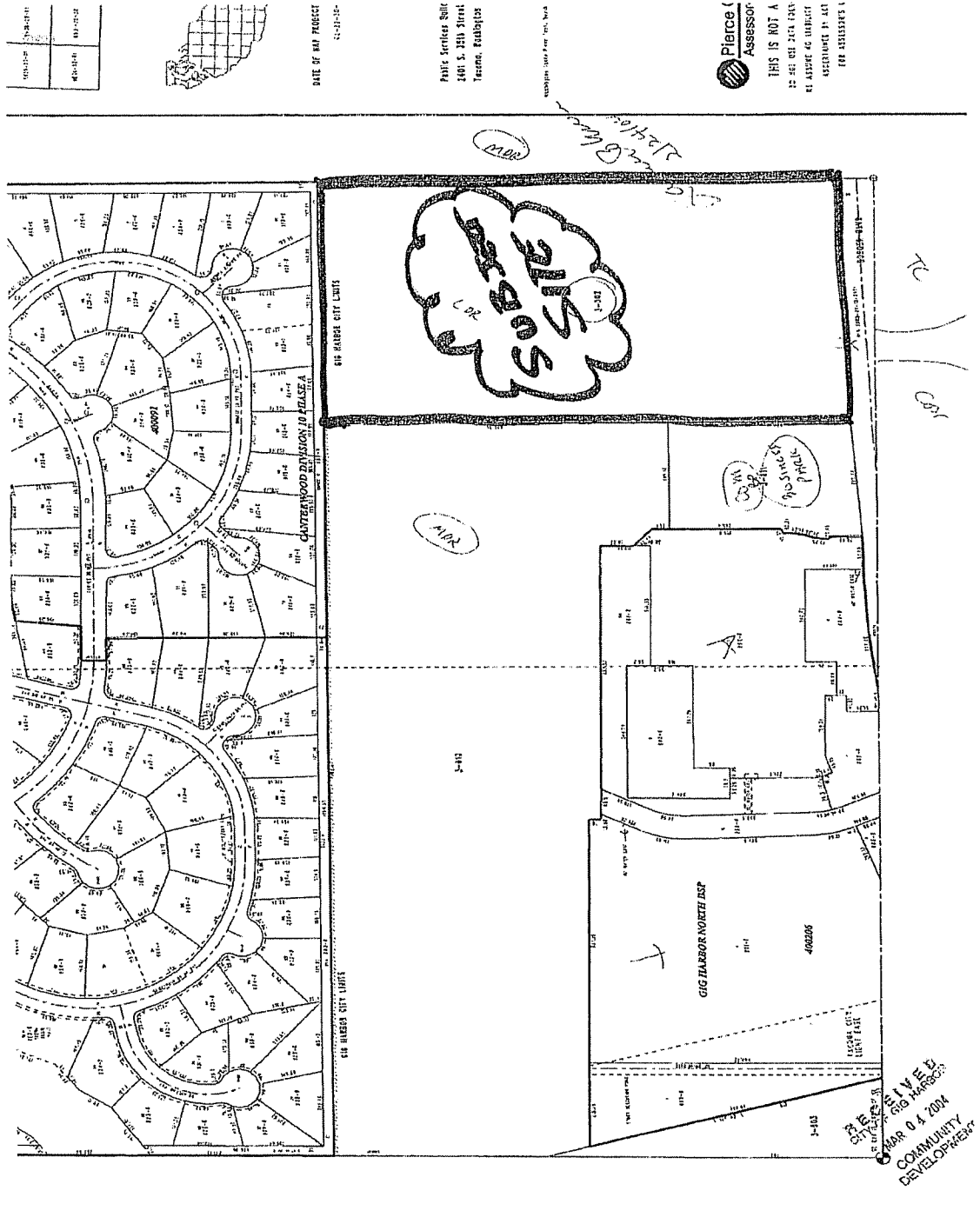
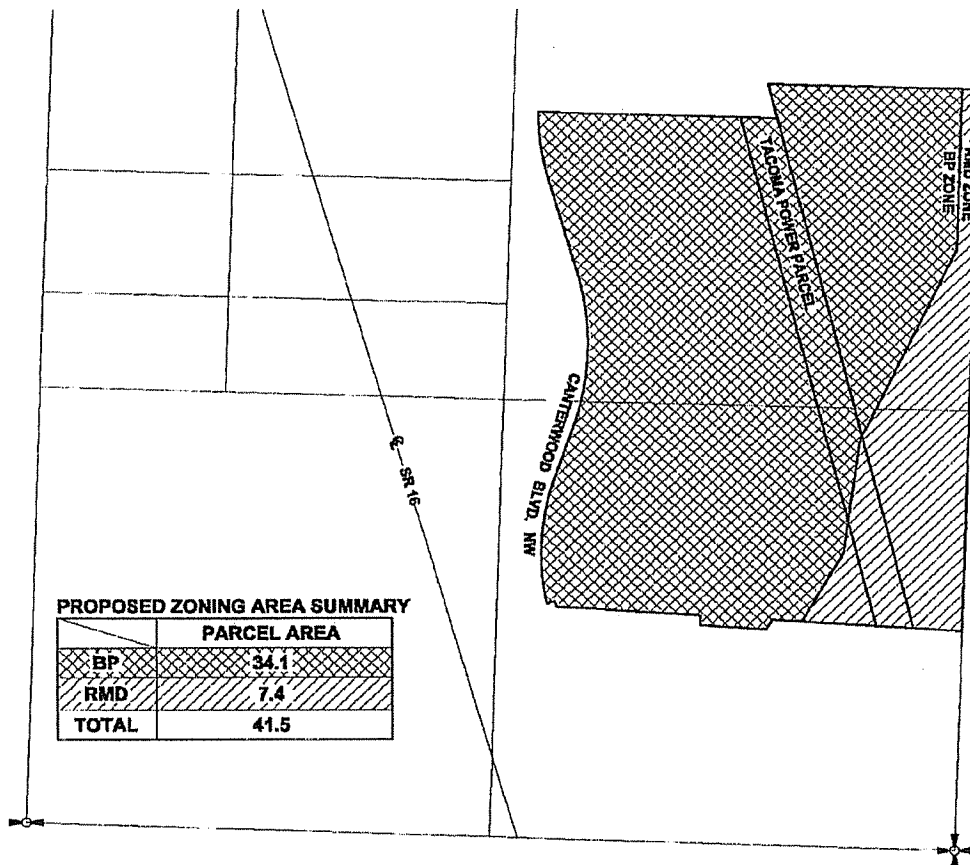


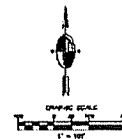
Exhibit B Franciscan Health System-West #05-01 Legal Description and Map

Exhibit "C" Map of PROPOSED Land Use



PROPOSED ZONING AREA SUMMARY

PARCEL AREA	
BP	34.1
RMD	7.4
TOTAL	41.5



<p>PROPOSED ZONING MAP St. Anthony Hospital</p>	<p>THE HANCOCK COMPANY FRANCISCAN HEALTH SYSTEM 1475 E. 10th Ave. Suite 100 Denver, CO 80202 TEL: 303.733.8800 FAX: 303.733.8801</p>	<p>ADOWL ARCHITECTS & ENGINEERS 1475 E. 10th Ave. Suite 100 Denver, CO 80202 TEL: 303.733.8800 FAX: 303.733.8801</p>	<p>DATE: 10/10/05 SCALE: AS SHOWN PROJECT: ST. ANTHONY HOSPITAL SHEET: 1 OF 1</p>	<p>DATE: 10/10/05 SCALE: AS SHOWN PROJECT: ST. ANTHONY HOSPITAL SHEET: 1 OF 1</p>	<p>DATE: 10/10/05 SCALE: AS SHOWN PROJECT: ST. ANTHONY HOSPITAL SHEET: 1 OF 1</p>
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BP ZONE LEGAL DESCRIPTION

THAT PORTION OF LOT 1 OF THE BOUNDARY LINE ADJUSTMENT AS
RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200406290853
LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTH EAST CORNER OF SAID LOT 1
THENCE N86°06'11"W ALONG THE SOUTH BOUNDARY OF SAID LOT 1 TO THE
BEGINNING OF THIS LINE DESCRIPTION;

THENCE N29°49'34"E 235.31 FEET

THENCE N08°11'16"E 345.74 FEET

THENCE N25°28'44" E 633.15 FEET

THENCE N01°54'57"E 485.49 FEET TO THE NORTH LINE OF SAID LOT 1 AND THE
TERMINUS OF THIS LINE DESCRIPTION.

Exhibit C
February 2002 Wastewater Comprehensive Plan
2005 Annual Amendment - HMT Partnership #05-03
COLLECTION SYSTEM EXPANSIONS AMENDMENT
February 3, 2005 report prepared by Robin D. Nelson, P.E.
of Hammond Collier Wade Livingstone

Exhibit A

February 2002 Wastewater Comprehensive Plan
2004 Annual Amendments

COLLECTION SYSTEM EXPANSIONS AMENDMENT

SYSTEM EXPANSION C-7 (38TH Avenue NW)

SUMMARY

This Annual Amendment was initiated by a developer to provide sanitary sewer service to a parcel located north of 56th Street NW and east of 38th Avenue NW. The parcel is underdeveloped and the current single family residence is served by on-site septic system. The developer desires to improve the parcel in accordance with the designated land use defined in the City of Gig Harbor's Comprehensive Plan, R - 1 (3du/ac). Figure 1 identifies the parcel proposed for development.

The proposed site is located in Basin C-7 identified in the City's Wastewater Comprehensive Plan. Basin C-7 is zoned primarily residential single family with low or moderate densities. The wastewater generated from this basin, particularly the proposed development identified in figure 1, would be domestic wastewater.

The proposed capital improvements to be completed within the 20 year planning horizon for drainage basin C-7 were amended in the 2003 Annual Amendments process. Figure 1 summarizes these amendments to the 2002 Wastewater Comprehensive Plan. Specifically, Olympic Drive (56th Street NW) would no longer be served by a gravity lateral sewer main extended from 38th Avenue NW. Approximately 384 LF of 8 inch gravity sewer would be installed flowing easterly to a new pump station along the south side of 56th Street NW. The 120 gpm lift station would pump the wastewater south easterly approximately 779 LF through a 4 inch force main to the existing gravity main along Olympic Drive.

These improvements would serve approximately six connections with an estimated sewage flow of 300 gallons per day per connection, which is consistent with the unit flows identified in the City's Wastewater Comprehensive Plan. 1800 gallons per day or 1.75 gallons per minute would discharge to the proposed lift station. The lift station capacity far exceeds the flows generated from the 6 connections identified in the 2003 Amendment and provides flexibility for the future amendments.

The 2004 Amendment is shown in Figure 2. The new capital improvements for this 2004 amendment will require implementation of proposed 2003 amended capital improvements, prior to or concurrently, to serve the northerly portion of drainage basin C-7. Due to the timing for the proposed arterial improvements to 56th Street NW and recent development pressure the demand for public sewers in this sub-region of basin C-7 north of 56th Street NW is increasing.

The 2004 proposed amendment would still consist of extending an 8-inch sewer main north along 38th Avenue NW to approximately 60th Street NW. However, the sewer main would connect to the proposed 8-inch gravity sewer flowing easterly along Olympic Drive (56th Street NW) per the 2003 annual amendment for the basin C-7. The wastewater flow would then enter the proposed Lift

Station and pumped through the 4 inch force main to the existing gravity sewer along Olympic Drive installed as part of ULID No. 2.

This 2004 amendment proposes to extend the 8 inch gravity sewer north along 38th Avenue toward the intersection with Olympic Drive. The gravity main would terminate prior to the intersection. This small extension would primarily provide gravity sewer service to the lots fronting 38th Avenue to the east and within the C-7 service area boundary. The proposed 8 -inch extension has more than adequate capacity to serve the current land use defined. At Department of Ecology minimum slope criteria for an 8 inch sewer main, the capacity of the proposed extension is 358 gallons per minute. To give this capacity perspective, the entire sub-basin which this extension is a small part has a peak domestic flow of 320 gallons per minute.

In order to maximize gravity sewer service within this sub-region, a small 8-inch main extension north along what would be the extension of 34th Avenue NW is proposed as well. This small extension of 100 LF would serve the remaining sub-regions easterly slopes of the localized depression and sensitive area immediately north of 56th Street.

The 2004 proposed capital improvements will not change the service area of drainage basin C-7 and maximizes gravity sewer service. The improvements will not require increasing the size of the pump station proposed for the 2003 amendment. The added flow will actual reduce retention times in the lift station and insure scouring velocities in the 4-inch force main of greater than 2.0 feet per second.

The 2003 improvements are anticipated to be constructed in the next 5 – 6 years. Construction of the gravity sewer and force main is anticipated to be part of the 56th Street Improvements project. The lift station would be constructed by private development. Should private development preclude the roadway project, then all improvements would be funded and constructed by private development.

The 2004 amended improvements are contingent upon implementation of the proposed 2003 amended capital improvements. All 2004 improvements would be entirely funded and constructed by private developers. The 8-inch gravity main should be installed with sufficient depth to maximize gravity service to the north along 38th Avenue NW and 34th Avenue NW.

IMPACTS

Existing City Facilities

The proposed capital improvements identified in this 2004 amendment will not generate or discharge additional wastewater flows other than what was identified in the original 2002 Wastewater Comprehensive Plan update. It will increase the flow tributary to the proposed modifications identified in the 2003 Annual Amendment for drainage basin C-7.

The proposed improvements identified in the 2003 amendment include an 8- inch gravity sewer main, 120 gpm lift station and 4-inch force main. The additional flow from the remaining service area north of 56th Street NW will generate approximately 109,234 gpd peak flow or 76 gpm. Couple this with the projected 1800 gpd flow for the 2003 Amendment and the total tributary flow to the lift station is still well below the proposed capacity of 120 gpm. More importantly, the added flow will improve the operation and reduce possible septic conditions occurring as a result of low flows.

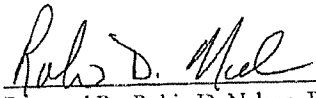
The 2003 Amended capital improvements were identified to have no adverse impact to the existing conveyance system downstream. The capacity of the lift station will not change therefore, if the 2003 amended improvement have no adverse impact neither will the 2004 proposed capital improvements.

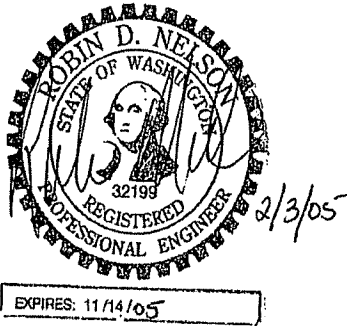
Environmental

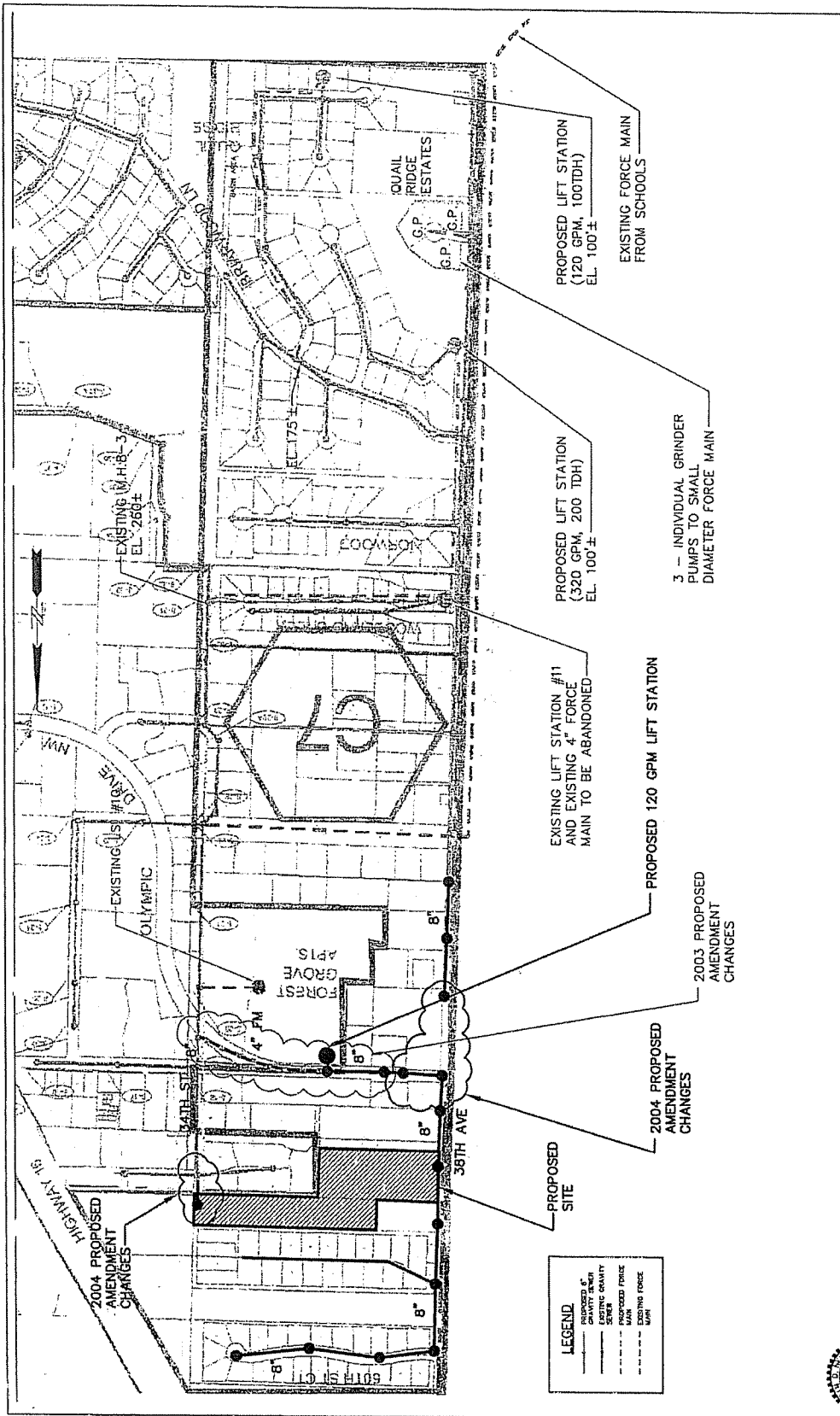
The proposed improvements will not have any adverse impacts to the environment. A SEPA checklist will be required for the improvements prior to construction. The private developer will be responsible to complete the checklist and for review and processing in accordance with the City's Community Development policies.

Fiscal

Funding for the 2004 amended capital improvements will be provided entirely by the developer. City funds will not be expended as part of the project.


Prepared By: Robin D. Nelson, PE





LEGEND

---	PROPOSED 8" DIAMETER SANITARY SEWER
---	EXISTING 8" DIAMETER SANITARY SEWER
---	PROPOSED FORCE MAIN
---	EXISTING FORCE MAIN

JOB NO. 0420004-02
 DRAWING NO. C-1
 SHEET 6

CITY OF GIG HARBOR
 COMPREHENSIVE PLAN
 PROPOSED AMENDMENT
 FIGURE 2
 COLLECTION SYSTEM EXPANSION C-7



HAMMOND COLLIER WADE LIVINGSTONE
 ARCHITECTS AND ENGINEERS
 1000 1ST AVENUE, SUITE 100
 SEASIDE, WA 98148
 PHONE: (206) 881-1111
 FAX: (206) 881-1112
 WWW: WWW.HCWAL.COM

DESIGNED BY	DN
CHECKED BY	DN
DATE PLOTTED	10/27/04
DATE	10/27/04
BY	DN

CURRENT NOTES

2004 PROPOSED AMENDMENT CHANGES



Exhibit D
Comprehensive Plan Transportation Element Revisions, Chapter 11

CITY OF GIG HARBOR
2005 COMPREHENSIVE PLAN AMENDMENTS
FINAL SUPPLEMENTAL EIS

APPENDIX B:
COMPREHENSIVE PLAN CHAPTER 11,
TRANSPORTATION ELEMENT
(PROPOSED REVISIONS)

Prepared by
David Evans and Associates, Inc.



415 - 118th Avenue SE
Bellevue, WA 98005

Prepared for
City of Gig Harbor



3510 Grandview Street
Gig Harbor, WA 98335
COGH0000-0025

April 5, 2006

Chapter 11

TRANSPORTATION

SECTION 1. EXISTING CONDITIONS

The City of Gig Harbor is required, under the state Growth Management Act (GMA), to prepare a Transportation Element as part of its Comprehensive Plan. In 1994, the City completed an update of its comprehensive land use plan to comply with GMA requirements and help estimate future traffic growth within the city. Since then, Gig Harbor has annexed portions of unincorporated Pierce County surrounding it. This update reflects changes that have occurred since 1994, using 1998 as existing conditions and 2018 as the planning horizon. **Figure 1-1** shows the Gig Harbor urban growth area.

The specific goal of the GMA, with regard to transportation, is to “encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.” The GMA requires that the local comprehensive plans, including the land use and transportation elements, be consistent and coordinated with required regional programs. In addition, the GMA requires that transportation facility and service improvements be made concurrent with development.

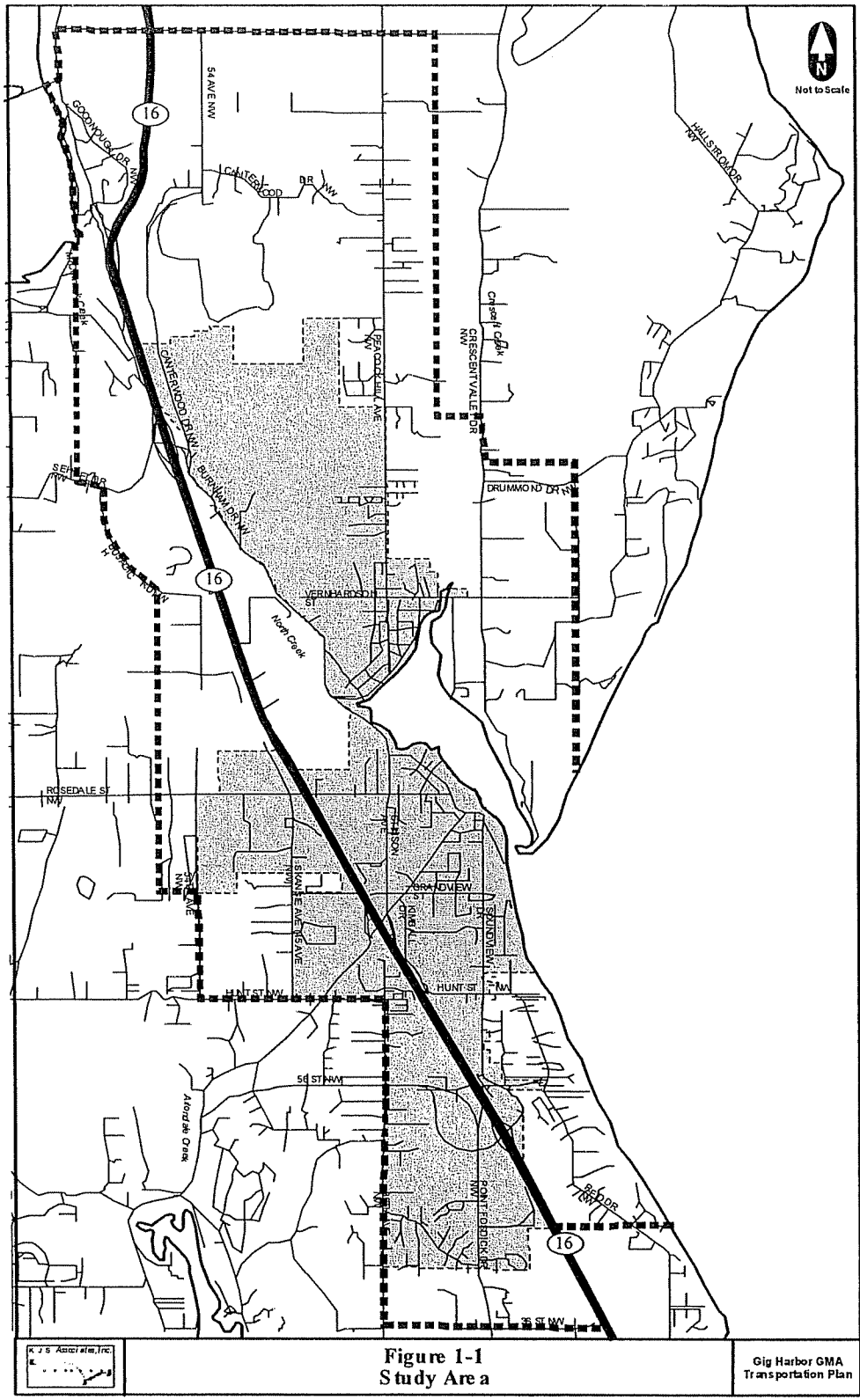
Existing Transportation System

This section of the transportation plan describes the existing transportation system conditions in the study area, including a description of the roadway characteristics, functional classification, traffic volumes, level of service, accidents, and transit service. Planned transportation improvements from the Washington State Department of Transportation (WSDOT) Plan, Pierce County Capital Facilities Element of the Comprehensive Plan, the Pierce County Six-Year Transportation Improvement Program (TIP) and Gig Harbor Six-Year TIP are also described.

Functional Classification and Connectivity

Roadway hierarchy based on functional classification provides a network of streets based on distinct travel movements and the service they provide. Roadway layout shall be based primarily on the safety, efficiency of traffic flow, and functional use of the roadway. Roadways are divided into boulevards, arterials, major and minor local residential, private streets, and alleys.

Roadways of all classifications shall be planned to provide for connectivity of existing and proposed streets in relation to adjoining parcels and possible future connections as approved by the Community Development Department. New development roadway systems should be designed so as to minimize pedestrian travel to bus stops.



Boulevards and arterials are intended for the efficient movement of people and goods and have the highest level of access control. They have limited access and accommodate controlled intersections. Boulevards and arterials have been identified in the most current adopted version of the *City of Gig Harbor Transportation Plan*. The City Engineer will classify all new roadways.

Collectors generally connect commercial, industrial, and residential projects to other collectors, arterials, and boulevards and have a moderate level of access control. Minor collectors may be used if turn lanes are not required. If the collector connects to another collector or to an arterial, the roadway shall be a major collector. The City will determine if a collector is a major or minor, type I or type II, based on a review of the development potential of all contributing properties, the exiting right-of-way if it is an existing roadway, and the necessity of turn lanes. Auxiliary left turn lanes are desired when connecting to boulevards, arterials, and major collectors. Collectors are identified in the most current adopted version of the *City of Gig Harbor Transportation Plan*. The City Traffic Engineer will classify all new roadways.

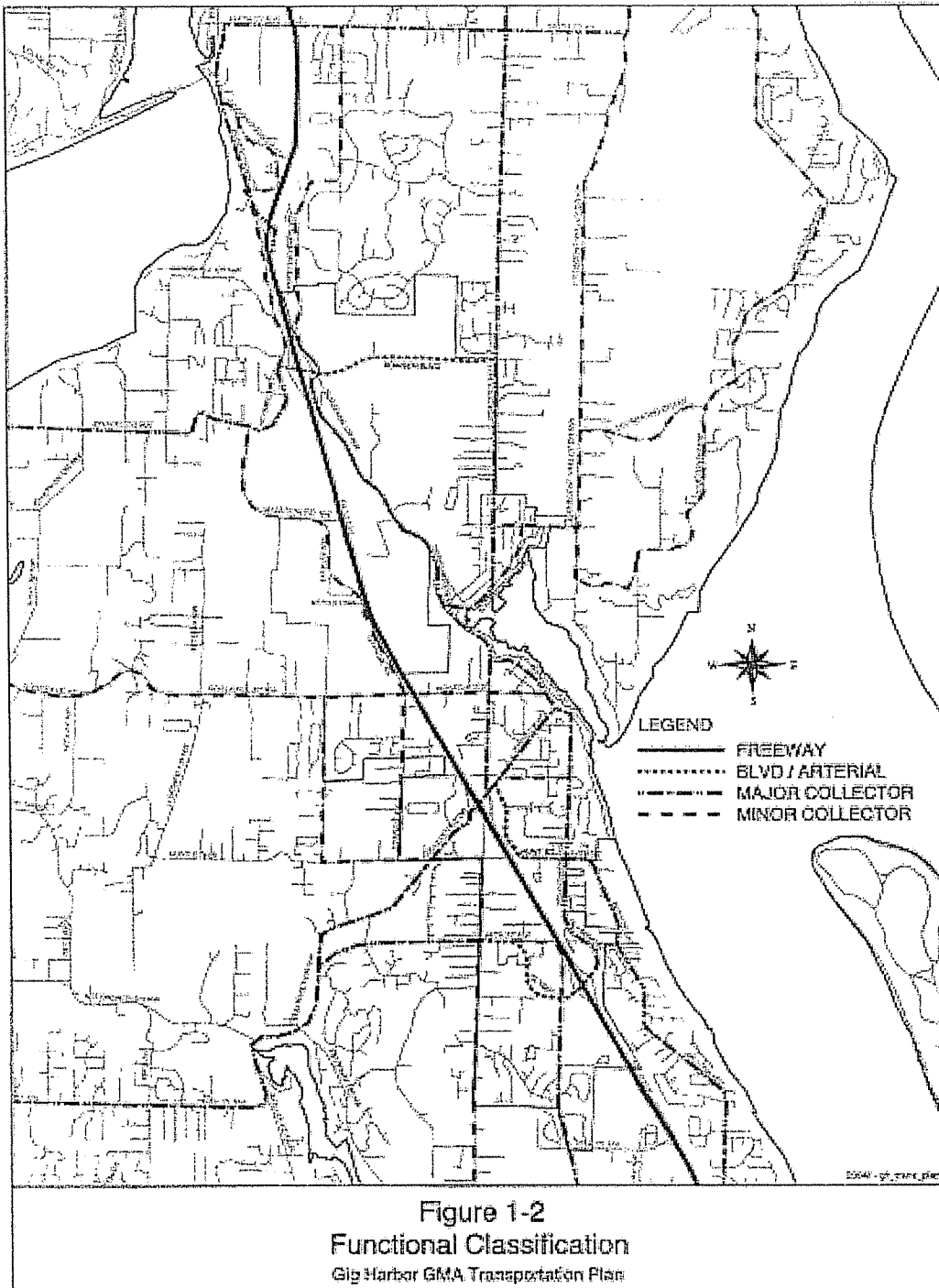
Major and minor local residential streets shall interconnect with each other and with minor collectors and have a minimum level of access control. Alleys in residential neighborhoods are encouraged. If the local residential street connects to a major collector or to an arterial, the street shall be a major local residential. In such developments, connectivity shall be a key design factor, although the internal flow shall be discontinuous to discourage cut-through traffic movement and excessive speed. Traffic calming techniques shall be designed into all residential subdivisions.

The pedestrian network shall be paramount in the residential roadway network. Minor local residential streets serve as land access from residences and generally connect with major local residential and minor collectors. Safety is always the major consideration when determining intersection locations and connectivity.

State-owned transportation facilities and highways of statewide significance [See also Section 5]

In 1998, the Washington State Legislature enacted the “Level of Service Bill” (House Bill 1487) which amended the Growth Management Act (GMA) to include additional detail regarding state-owned transportation facilities in the transportation element of comprehensive plans. Within Gig Harbor, SR 16 has been designated as a Highway of Statewide Significance (HSS) in WSDOT’s Highway System Plan (HSP). SR 16 provides the major regional connection between Tacoma, Bremerton, and the Olympic Peninsula. It connects to Interstate 5 in Tacoma and to SR 302 in Purdy. Through Gig Harbor, SR 16 is a full limited access four lane freeway with interchanges at Olympic Drive, Pioneer Way and Burnham Drive. It is classified as an urban principal arterial.

The only other state-owned facility within the planning area is SR 302 which connects SR 16 across the Key Peninsula with SR 3 to Shelton. It is a two-lane state highway with no access control.



Local Transportation System

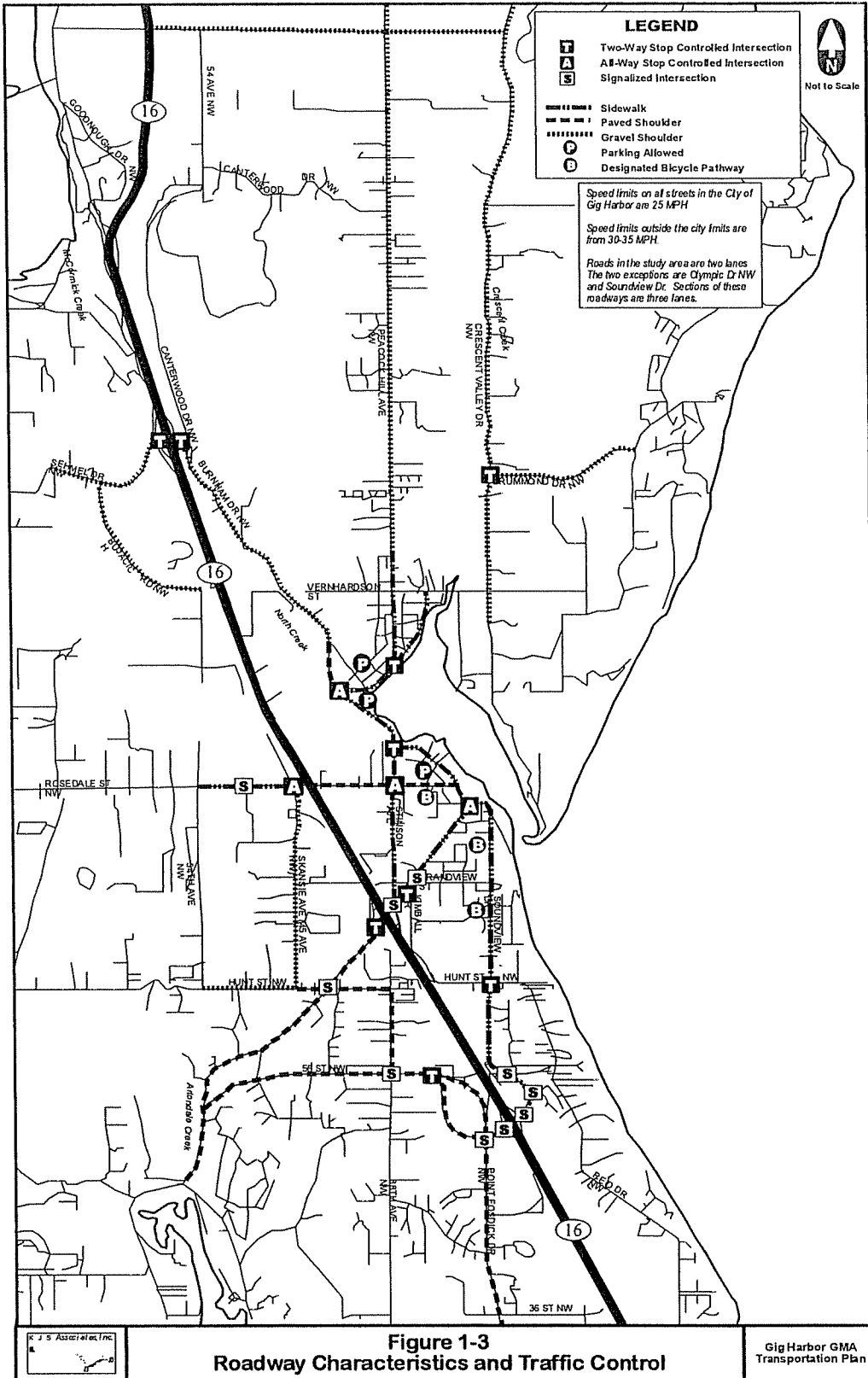
The downtown area of Gig Harbor and surrounding residences are served by the interchange with SR 16 at Pioneer Way. The southern portion of the city is served by the Olympic Drive NW interchange, and north of the existing city limits, access from SR 16 is provided by the Burnham Drive NW interchange.

One of the key north-south arterials serving the city and local residences is Soundview Drive, which becomes Harborview Drive through downtown Gig Harbor. Pioneer Way also provides access to residences and downtown Gig Harbor. Access to the unincorporated areas north of the city is provided by Peacock Hill Road, Crescent Valley Drive, Burnham Drive NW, and Borgen Boulevard. Outside the city limits to the southwest, Olympic Drive NW and Wollochet Drive NW provide access to residential areas in unincorporated Pierce County.

The roadway characteristics of these arterials in the study area are shown in **Figure 1-3**. The majority of roadways within the city limits are two lanes with a speed limit of 25 mph. The speed is reduced to 20 mph along North Harborview Drive in the downtown area. There are retail shops on both sides of the street in this area, and the reduced speed provides increased safety for pedestrians crossing the street between shops. In addition, Soundview Drive has three lanes (one lane in each direction and a center, two-way, left-turn lane along portions of the roadway). Outside of the city limits, all roadways are also two lanes, with the exception of Olympic Drive NW (56th Street NE), Point Fosdick Drive, and Borgen Boulevard, which have three lanes in some sections, and Point Fosdick Drive which has five lanes from Olympic to 44th Street NW. Borgen Boulevard has portions of four lanes with two roundabouts. The speed limit on these roadways varies between 30 and 35 mph.

Pedestrian and bicycle facilities are an integral part of the transportation network, and the provision for these facilities will be incorporated in the transportation improvement program. Currently, sidewalks are provided at least on one side of the roadway on most city arterials. In addition, separate bicycle lanes are provided on various roadways, including Soundview Drive and on portions of Rosedale Street, Point Fosdick Drive, and North Harborview Drive. Parking is allowed in the retail center on Harbor View Drive and North Harborview Drive.

Existing intersection traffic control devices also are indicated on **Figure 1-3**. Within the city, there are signalized intersections at Pioneer Way/Grandview Street, Pioneer Way/Kimball Drive, Olympic Drive /Point Fosdick Drive, Wollochet Drive/Hunt Street, Olympic Drive/Holycroft Street, Rosedale Street/Schoolhouse Avenue, and 38th Avenue/56th Street. In addition, the SR 16 northbound and southbound ramps at Olympic Drive, and the SR 16 northbound ramp at Pioneer Way, are signalized. All other major intersections and SR 16 ramp intersections are stop sign controlled, except the SR 16/Burnham Drive northbound and southbound ramps, which intersects a single lane roundabout on the southbound ramps and a two-lane roundabout on the northbound ramps.



Traffic Volumes

A comprehensive set of street and intersection traffic counts was collected in 1997. Average weekday traffic volumes (AWDT) are summarized in **Figure 2-1**. AWDT volumes represent the number of vehicles traveling a roadway segment over a 24-hour period on an average weekday. P.M. peak hour traffic volumes represent the highest hourly volume of vehicles passing through an intersection during the 4-6 p.m. peak period. Since the p.m. peak period volumes usually represent the highest volumes of the average day, these volumes were used to evaluate the worst case traffic scenario that would occur as a result of the development.

Intersection Level Of Service

The acknowledged method for determining intersection capacity is described in the current edition of the Highway Capacity Manual (*Transportation Research Board [TRB], Special Report 209*). Capacity analyses are described in terms of Level of Service (LOS). LOS is a qualitative term describing the operating conditions a driver will experience while driving on a particular street or highway during a specific time interval. It ranges from LOS A (little or no delay) to LOS F (long delays, congestion).

The methods used to calculate the levels of service in the 1998 analysis are described in the *1994 Highway Capacity Manual* (Special Report 209, Transportation Research Board). The measure of effectiveness for signalized intersections is average stopped delay, which is defined as the total time vehicles are stopped in an intersection approach during a specified time period divided by the number of vehicles departing from the approach in the same time period.

The methods used to calculate the levels of service subsequent to 2000 are described in the 2000 Highway Capacity Manual (Special Report 209, Transportation Research Board). The measure of effectiveness for signalized intersections is control delay, which is defined as the sum of the initial deceleration delay, queue move up delay, stopped delay and final acceleration delay.

For unsignalized intersections, level of service is based on an estimate of average stopped delay for each movement or approach group. The evaluation procedure is a sequential analysis based on prioritized use of gaps in the major traffic streams for stop controlled and yield controlled movements (i.e., left turns off of the major street); these two movement types at unsignalized intersections will be referred throughout the remainder of this report as “controlled movements”. In most jurisdictions in the Puget Sound region, LOS D or better is defined as acceptable, LOS E as tolerable in certain areas, and LOS F as unacceptable.

The City of Gig Harbor is required by RCW 36A.070(6)(b) “to prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development.”

The City of Gig harbor has constructed several roundabouts since adoption of the transportation element, including a six-legged roundabout at the intersection of Borgen Blvd, Burnham Drive,

Canterwood Blvd and the SR 16 on and off-ramps. These intersections require evaluation with specific roundabout analysis software. The City of Gig Harbor will determine appropriate LOS analysis procedures for the roundabouts consistent with the LOS policy of the plan. The City or its designee will conduct all LOS calculations for roundabouts in the City of Gig Harbor to ensure consistency in analysis. Developers will reimburse the city or its designee the cost to complete the analysis if the development is shown to impact a roundabout with any new trips.

Traffic Accidents

Traffic accident records compiled by the Gig Harbor Police Department for the 17-month period from January, 1999, through and including May, 2000, were reviewed. The Police Department accident records included the date and location of each accident, and specified an accident type: "injury," "non-injury," "hit-and-run," "parking lot," or "pedestrian/cyclist."

During the 17-month analysis period there were 308 accidents on the Gig Harbor street system, of which 72 (23%) were injury accidents. Only two accidents involved pedestrians or bicyclists, though both of these accidents involved injuries.

The streets with the greatest accident experience were Olympic Drive, along which 84 accidents occurred (five per month), and Point Fosdick Drive, along which 69 accidents occurred (four per month). Pioneer Way and Hunt Street each experienced 22 accidents, and Wollochet Drive and Harborview Drive each experienced 18. No other street experienced more than 15 accidents.

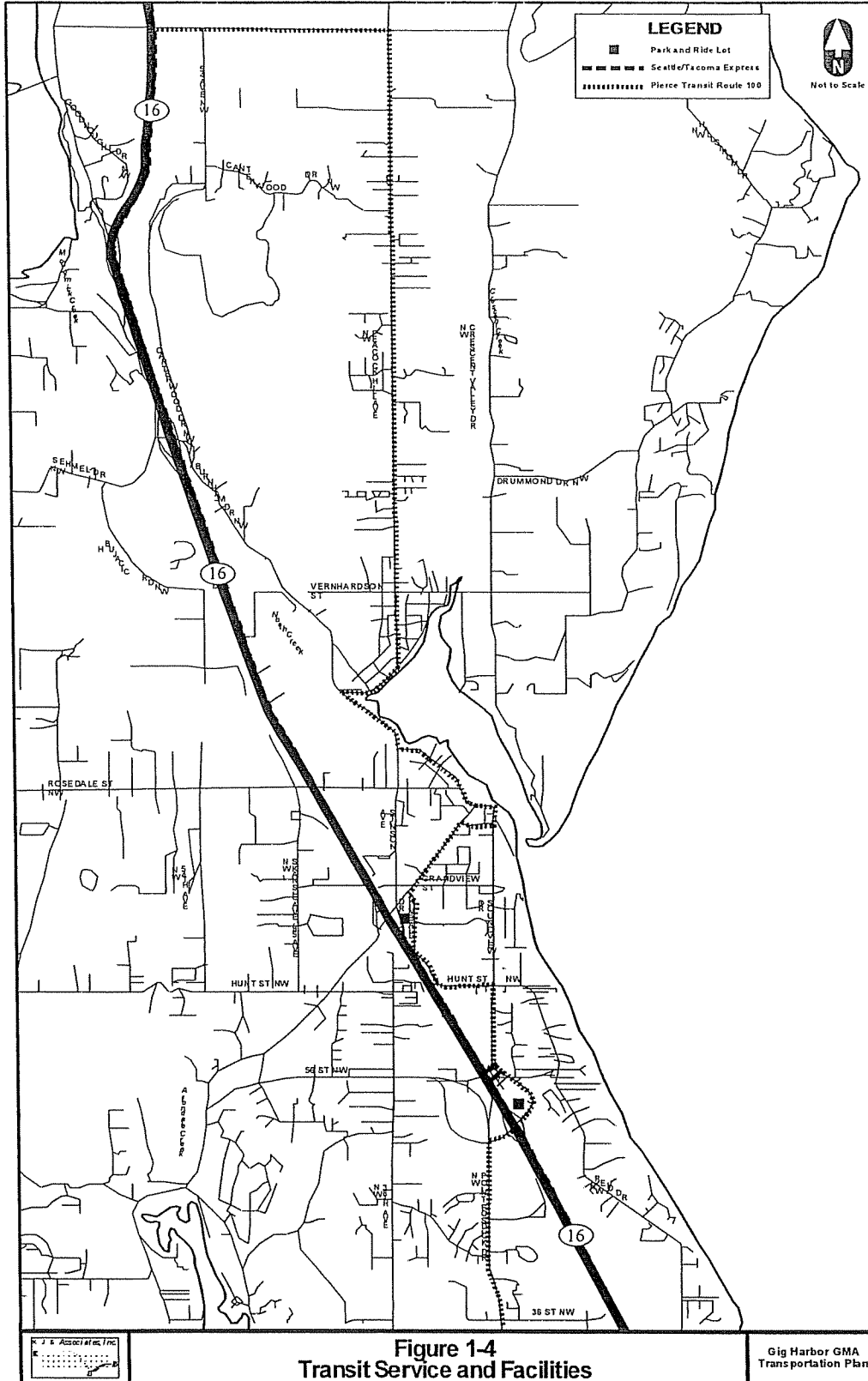
Transit Service and Facilities

The service provider for Gig Harbor is Pierce Transit. The four transit routes that currently serve Gig Harbor are shown in **Figure 1-4**.

Route 100 extends from the Gig Harbor Park and Ride to the Tacoma Community College Transit Center. During weekdays, the route operates on half-hour headways, and on one-hour headways on the weekends. Route 102 provides express bus service from Purdy to Downtown Tacoma via the Gig Harbor Park and Ride. It operates during weekday peak hours only, with service being provided every 30 minutes.

Local bus service in Gig Harbor is provided by Routes 111 and 112. Route 111 runs from the Gig Harbor Park and Ride to the Gig Harbor Library at Point Fosdick. Hourly service from morning to evening is provided on this route seven days a week. Route 112 extends from the Purdy Park and Ride to the Gig Harbor Park and Ride via Peacock Hill Avenue. Transit service for this route also operates on one hour headways, seven days a week. Route 113 from Key Center connects with Routes 100, 102, and 112 at the Purdy Park and Ride.

Pierce Transit continues to look at ways to improve transit service to and from the peninsula area. Possible improvements include the creation of several entirely new park and rides. The creation of new transit routes will depend heavily on increased capacity on the Tacoma Narrows Bridge.



Planned Transportation Improvements

Based on projections by Pierce County, this area of the state, including the study area, will continue to grow. Specifically, it is expected that residential growth will occur on the Gig Harbor peninsula and job growth will occur in the area between the city and Tacoma.

Pierce County Transportation Plan

In order to adequately address the existing and future transportation issues, Pierce County completed the Pierce County Transportation Plan in 1992. The proposed project list was updated in 2000 and incorporated into the Gig Harbor Peninsula Community Plan. The project list has not been revised since adoption of the Community Plan in 2001. Project priorities are identified as: Premier Priority, High Priority, Medium Priority, and Low Priority. Conservatively, Pierce County believes they will be able to fund all Premier and High Priority projects and half of the Medium Priority projects. Optimistically, they hope to be able to fund all projects on county roads. Premier and High Priority projects that impact the study area are listed below.

Premier Priority

- P28. 56th Street, Wollochet Drive to Point Fosdick Drive: Widen to four lanes; provide pedestrian and drainage improvements.
- P29. Wollochet Drive, 40th Street to Gig Harbor City Limits: Widen to four lanes; improve intersections and shoulders.
- P53. Sehmel Drive NW, 70th Avenue NW to Bujacich Road NW: Improve intersections, alignment and shoulders.
- P63. 38th Avenue, 36th Street to Gig Harbor City Limits: Improve intersection and shoulders.
- P73. Jahn Ave/32nd Street/22nd Avenue, Stone Drive to 36th Street: Realign and improve shoulders

High Priority

- P30. Point Fosdick Drive, 56th Street to Stone Drive: Provide pedestrian and drainage improvements; improve intersections.
- P42. Hunt Street NW, Lombard Drive NW to Gig Harbor city limits: Improve intersections, alignment, and shoulders.
- P50. Ray Nash Drive NW, 36th Street NW to Rosedale Street NW: Improve alignment and widen shoulders.

- P64. 144th Street NW/62nd Avenue NW, intersection (Peninsula High School): Channelization and possible traffic control.
- P68. 96th Street NW, Crescent Valley Drive NW to city limits: Add paved shoulders.
- P76. Point Fosdick Drive NW/Stone Drive NW/34th Avenue NW, intersection: Channelization, traffic control, and realignment.

Pierce County Six-year Transportation Improvement Program (TIP)

The prioritization process for transportation projects in unincorporated Pierce County is implemented through the Six-Year Road Program and the Annual Road Program. The projects identified that impact the study area for 2004-2009 are summarized below.

- Rosedale Street, 66th Avenue NW to Lombard Drive NW. Reconstruct roadway to improve vertical alignment.
- Fillmore Drive/Gustafson/56th Street NW. Provide turn lane(s) at intersection.
- Hunt Street, 46th Avenue NW to Lombard Drive NW: Reconstruct roadway to improve horizontal/vertical alignment.
- Wollochet Drive, Fillmore Drive NW to 40th Street NW: Widen and reconstruct roadway to provide more lane(s).
- Point Fosdick Drive NW/36th Street NW: County portion of Gig Harbor intersection project.
- 36th Street NW, city limits to 22nd Avenue NW. Reconstruct to improve vertical alignment.
- Jahn Avenue NW/32nd Street NW/22nd Avenue NW, 36th Street NW to 24th Street NW. Reconstruct roadway to improve horizontal/vertical alignment.

As future funds become available, the improvement projects from the Pierce County Comprehensive Transportation Plan will be added to the most recent six-year road program.

Gig Harbor Six-year Transportation Improvement Plan (TIP)

The City is required to update its Transportation Improvement Plan (TIP) every year. The TIP is adopted by reference, and a copy of the current plan can be obtained from the City's Public Works Department.

Washington State Department of Transportation Highway Improvement Program

The 20-year WSDOT Highway System Plan includes several potential projects in the Gig Harbor vicinity. These include:

- Construction of a 750 stall park and ride lot in the Purdy area.
- Widening of SR 302 to four lanes with a restricted median from the Key Peninsula Highway to SR 16.
- Widening of SR 16 from four lanes to six creating HOV lanes, interchange improvements, TSM/TDM, and Intelligent Transportation System improvements from SR 302 to the Pierce/Kitsap county line.

WSDOT's funded project list includes:

- Construct core HOV lanes, new interchange, and Intelligent Transportation System improvements to SR 16 between the 36th Street interchange and the Olympic interchange.
- Overlay existing ramps at the Wollochet Drive interchange on SR 16.
- Construct core HOV lanes, interchange improvements, frontage road, and Intelligent Transportation System improvements to SR 16 at the Olympic interchange to Purdy (SR 302)

In addition, WSDOT is currently constructing a new Tacoma Narrows Bridge to provide significantly increased capacity for the congested crossing on the existing bridge. An integral element of the new bridge project is construction of a split diamond interchange with half at 24th Street and half at 36th Street. The 24th Street improvements are integral to the Tacoma Narrows Bridge project, and a portion of the improvements in P73 will be included in the bridge project. The new Tacoma Narrows Bridge will significantly increase highway capacity and improve access between the Gig Harbor/Peninsula area and the "mainland" (Tacoma, I-5, etc.). These capacity and access improvements will have a significant effect on long-term growth and development in and around Gig Harbor, and will affect Gig Harbor area travel patterns, traffic volumes, and transportation improvement needs.

This Gig Harbor Transportation Element, which is based on and developed for the current growth forecasts, does not account for the transportation system needs and impacts associated with a new Tacoma Narrows Bridge.

The WSDOT has funded a study of SR 302 to develop and analyze new alignments for SR 302 from the Kitsap Peninsula to SR 16. The final alignment of SR 302 will affect access and circulation to Gig Harbor.

Concurrency Ordinance

The City of Gig Harbor requires either the construction of or financial commitment for the construction of necessary transportation improvements from the private or public sector within six years of the impacts of a development. Methods for the City to monitor these commitments include:

- Annual monitoring of key transportation facilities within updates to the Six-Year Transportation Improvement Program (TIP);
- Monitoring intersections for compliance with the City’s LOS Standard. The City of Gig Harbor LOS for intersections is LOS D; except for specified intersections in the Downtown Strategy Area and North Gig Harbor Study Area.
- The specific intersections and the current LOS for each in the Downtown Strategy Area are:
 - Harborview Drive/North Harborview Drive LOS F
 - Harborview Drive/Pioneer Way LOS F
 - Harborview Drive/Stinson Avenue LOS F
 - Harborview Drive/Rosedale LOS D
 - North Harborview Drive/Peacock Hill LOS C
 - Harborview/Soundview LOS B

The above intersections may be allowed to operate at a LOS worse than D, consistent with the pedestrian objectives identified in the Downtown Strategy Area.

- The specific intersections and the LOS for each in the North Gig Harbor Area are:
 - Burnham Drive/Borgen Drive/Canterwood Blvd/SR16 Ramps LOS E

The above intersection shall operate at LOS E or better (80 seconds of delay)

- Identifying facility deficiencies;
- Reviewing comprehensive transportation plan and other related studies for necessary improvements;
- Making appropriate revisions to the Six-Year TIP; and
- Complying with HB 1487 and WSDOT for coordinated planning for transportation facilities and services of statewide significance.

SECTION 2. TRAFFIC FORECASTING AND ANALYSIS

Traffic forecasting is a means of estimating future traffic volumes based on the expected growth in population and employment within an area. For the Gig Harbor area, traffic forecasts were prepared using current traffic counts, a travel demand forecasting computer model prepared for the Pierce County Transportation Plan, and estimates of population and employment developed

for the City's Comprehensive Land Use Plan. As specified by the Growth Management Act (GMA), a 20 year horizon was used in the process to produce traffic forecasts for 2018.

This is essentially the same process as was followed in the 1994 Comprehensive Plan Transportation Element. **Table 2-1** below summarizes the population and employment growth assumptions that were used for the traffic forecasts.

Table 2-1. Growth Assumptions, 1998 - 2018

Year	Population	Employment
1998	6,900	5,230
2006	14,560	7,700
2018	21,370	10,900

Methodology

The growth in population and employment in an area provides a basis for estimating the growth in travel. Population growth generally results in more trips produced by residents of homes in the area, and employment growth generally results in more trips attracted to offices, retail shops, schools, and other employment or activity centers. To estimate future traffic volumes resulting from growth, computerized travel demand models are commonly used. In areas where travel corridors are limited, growth factors applied to existing traffic counts can be also an effective approach to traffic forecasting.

A combined approach was used for the City of Gig Harbor. The Pierce County Transportation Plan computer model developed by KJS provided information on area wide growth and was used as a tool in assigning traffic to various roads and intersections. For growth data, the 1998 Draft Gig Harbor Comprehensive Plan Update (prepared by the Beckwith Consulting Group) was used. Traffic counts taken in 1996 and 1997 provided data on existing travel patterns.

Primary Sources of Information

The primary sources of information used to forecast travel demand in Gig Harbor and the surrounding Urban Growth Area (UGA) were the Pierce County Transportation Model, the Gig Harbor Comprehensive Plan Update, and the Gig Harbor Travel Demand Model.

Pierce County Transportation Model

KJS Associates developed a 2010 travel demand model for Pierce County as a part of the county's GMA Transportation Planning program (the model has since been updated by Pierce County). The Pierce County transportation model is based on the Puget Sound Regional Council's (PSRC) regional model covering King, Pierce, Snohomish and Kitsap Counties. The

model utilizes the standard transportation planning methodology: Trip Generation, Trip Distribution, Modal Choice and Trip Assignment.

For the Pierce County model, a system of traffic analysis zones (TAZs) was developed based on the same boundaries used by the PSRC in the regional model. This enabled KJSA to use the zonal demographic and street network data which PSRC provides, for the regional system, and to refine that information to provide more detail within Pierce County. The model was calibrated to 1990 conditions; 1990 traffic counts were used to calibrate the model's traffic flow patterns, and 1990 demographic/land use data provided the basis for the trip generation, trip distribution, mode choice, and traffic assignment assumptions. All forecasts from the model were based on 2000 and 2010 demographic/land use forecasts from PSRC.

Since the PSRC 20-year demographic forecasts appear to be consistent with the GMA forecasts for the City and IUGA, the PSRC 2010 database was used in the revised Pierce County model as the basis for travel demand forecasts.

Gig Harbor Comprehensive Plan Update

As a part of the Comprehensive Plan Update, the City used the existing and proposed comprehensive land use plans to estimate the residential and employment capacities of various areas of the Gig Harbor Interim Urban Growth Area (IUGA). In doing so, the IUGA was divided into 71 "units", or zones, for analysis purposes.

The existing land uses and an inventory of the number of platted lots within each zone were used to estimate the existing population of each zone. The size of commercial and employment/business areas on the Land Use plan was used to estimate the employment capacities within each zone.

Gig Harbor Travel Demand Model

The 71 land use zones from the Comprehensive Plan were used to create a more detailed traffic analysis zone structure within the Pierce County model. The 1998 population estimates and employment capacities for each of the 71 zones in the Comprehensive Plan Update were used to initially allocate the 1990 population and employment data from PSRC to each TAZ within the IUGA. The 1990 data were used since this is the most recent census which provides complete information for the area outside of the Gig Harbor IUGA. The 1990 data were then factored to 1998 estimates using the Comprehensive Plan information and 1998 traffic counts.

The growth in population and employment within each zone was converted into travel demand by the model. Since the base year was calibrated using 1998 traffic volumes, the 20-year growth in travel demand produced by the model resulted in 2018 travel demand estimates. This is consistent with the requirement of GMA.

Employment growth, unlike population growth, was assumed to occur around existing areas of high employment. Like the allocation of population, employment was allocated to each zone

based on the capacities of the zone as calculated by Beckwith in the Comprehensive Plan Update.

To insure that the travel demand calculated by the model resulted in accurate estimates of traffic volumes on the road network, 1998 traffic counts on selected roads were used to calibrate the model. However, the model results are at best only a rough estimate of future traffic volumes. They provided a guide to general traffic trends and flow patterns, rather than exact traffic volumes on specific roadway links.

All trips were assigned to the City and County arterial system based on existing trip distribution and traffic assignment patterns. In addition to the population and employment forecast assumptions, specific assumptions were required to determine growth in external traffic volumes. For the Pierce County Peninsula Focus Area, the external connections in the south are the SR 16 highway crossing at the Tacoma Narrows Bridge and north to Kitsap County.

North Gig Harbor (NGH) Subarea Traffic Model 2005

A subarea traffic model was developed for the North Gig Harbor Traffic Mitigation Study (2005). The model was developed to analyze three Comprehensive Plan Amendments in 2005/6. Proposed and pipeline projects in the NGH subarea and a buildout analysis were included in the traffic model to identify transportation impacts and required mitigation.

Traffic Analysis (1998)

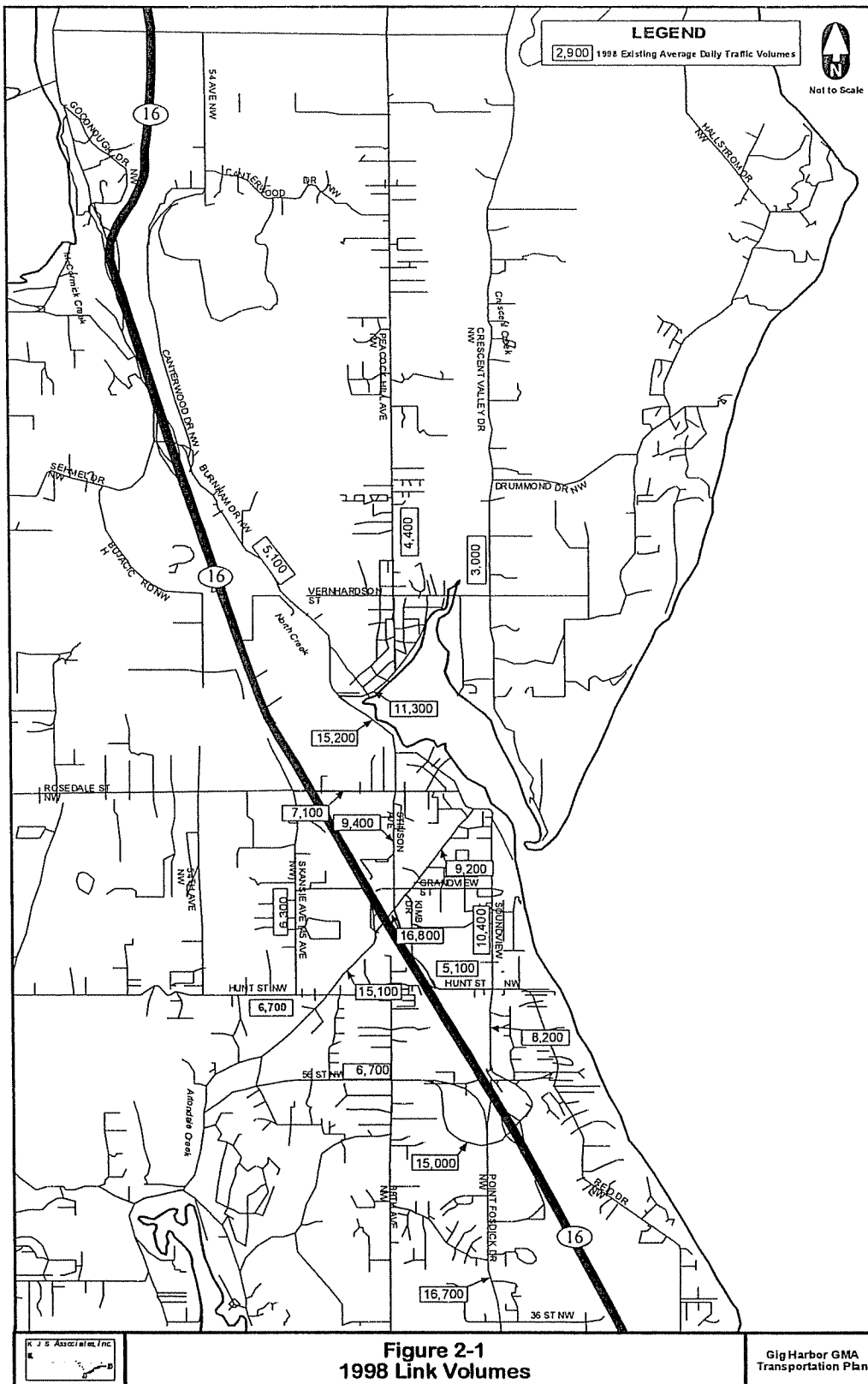
Existing (1998) daily traffic volumes on key roadway segments or links, and intersection levels of service are shown in Figure 2-1. The existing 1998 p.m. peak hour intersection levels of service are compiled in Table 2-2. As shown in Table 2-3 below, there are significant delays at three stop-sign controlled intersections in 1998.

Table 2:2: 1998 Intersection Levels of Service

SIGNALIZED INTERSECTIONS	1998 LOS
38 th Ave E/56th NW	C (D ^{**})
Olympic Dr/SR 16 NB ramps	C (D ^{**})
Olympic Dr/SR 16 SB ramps	C (C ^{**})
Pioneer Wy/Grandview St	A
Pioneer Wy/SR 16 NB ramps	D (E ^{**})
Point Fosdick Dr/Olympic Dr	D (D ^{**})
Rosedale/Schoolhouse	A
Wollochet Dr/Hunt St	B (C ^{**})
UNSIGNALIZED INTERSECTIONS	1998 LOS
36th Ave/Pt Fosdick Dr	C
Crescent Valley Dr/Drummond Dr	B
Harborview Dr/North Harborview Dr	F
Harborview Dr/Pioneer Way	F
Harborview Dr/Stinson Ave	F
Hunt/Skansie	C
Olympic/Hollycroft	C
Peacock Hill Ave/North Harborview Dr	A
Rosedale St/Skansie Ave	B
Rosedale St/Stinson Ave	C
Soundview Dr/Hunt St	B
SR 16 NB ramps/2 lane roundabout	A* (A ^{**})
SR 16 SB ramps/Single lane roundabout	B* (B ^{**})
SR 16 SB ramps/Wollochet Dr	F (F ^{**})
Borgen Blvd/51 st roundabout	A* (A ^{**})

* 2004 existing condition

(A^{**}) 2005 existing condition DEA 2005, City of Gig Harbor 2005Note: Refer to North Gig Harbor Traffic Mitigation Study for additional 2005 intersection operations in the NGH Study area.



Traffic Analysis - 2018

Once the model was calibrated to existing conditions, growth rates were applied to estimate traffic volumes for 2018. **Figure 2-2** shows roadway link volumes for 2018. **Figure 2-3** shows the intersection level of service for 2018, which is also summarized in **Table 2-3** below.

Table 2-3: PM Peak Hour Intersection Levels of Service

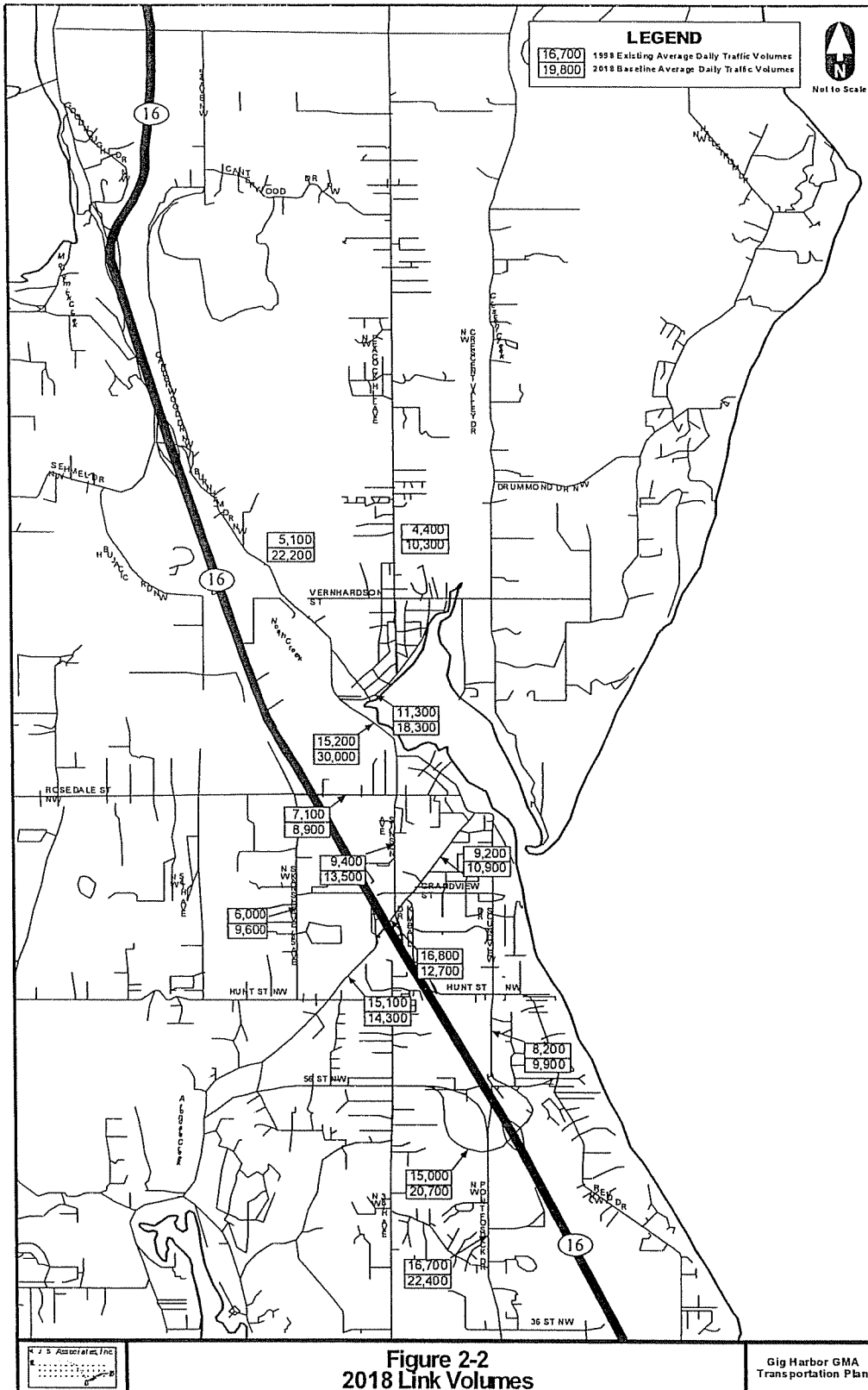
SIGNALIZED INTERSECTIONS	2018 LOS
38 th Ave E/56th NW	F
Olympic Dr/SR 16 NB ramps	C
Olympic Dr/SR 16 SB ramps	C
Olympic/Hollycroft	C
Pioneer Wy/Grandview St	B
Pioneer Wy/SR 16 NB ramps	D
Point Fosdick Dr/Olympic Dr	D
Rosedale/Schoolhouse	A
Wollochet Dr/Hunt St	F
UNSIGNALIZED INTERSECTIONS	2018 LOS
36th Ave/ Point Fosdick Dr	F
Crescent Valley Dr/Drummond Dr	F
Harborview Dr/North Harborview Dr	F*
Harborview Dr/Pioneer Wy	F*
Harborview Dr/Stinson Ave	F*
Hunt/Skansie	F
Peacock Hill Ave/North Harborview Dr	B
Rosedale St/Skansie Ave	C
Rosedale St/Stinson Ave	F
Soundview Dr/Hunt St	F
SR 16 NB ramps/2 lane roundabout	D** F***
SR 16 SB ramps/Single lane roundabout	F** F***
SR 16 SB ramps/Wollochet Dr	F
Stinson Ave/Grandview St	F
Borgen Blvd/51 st roundabout	A** E***

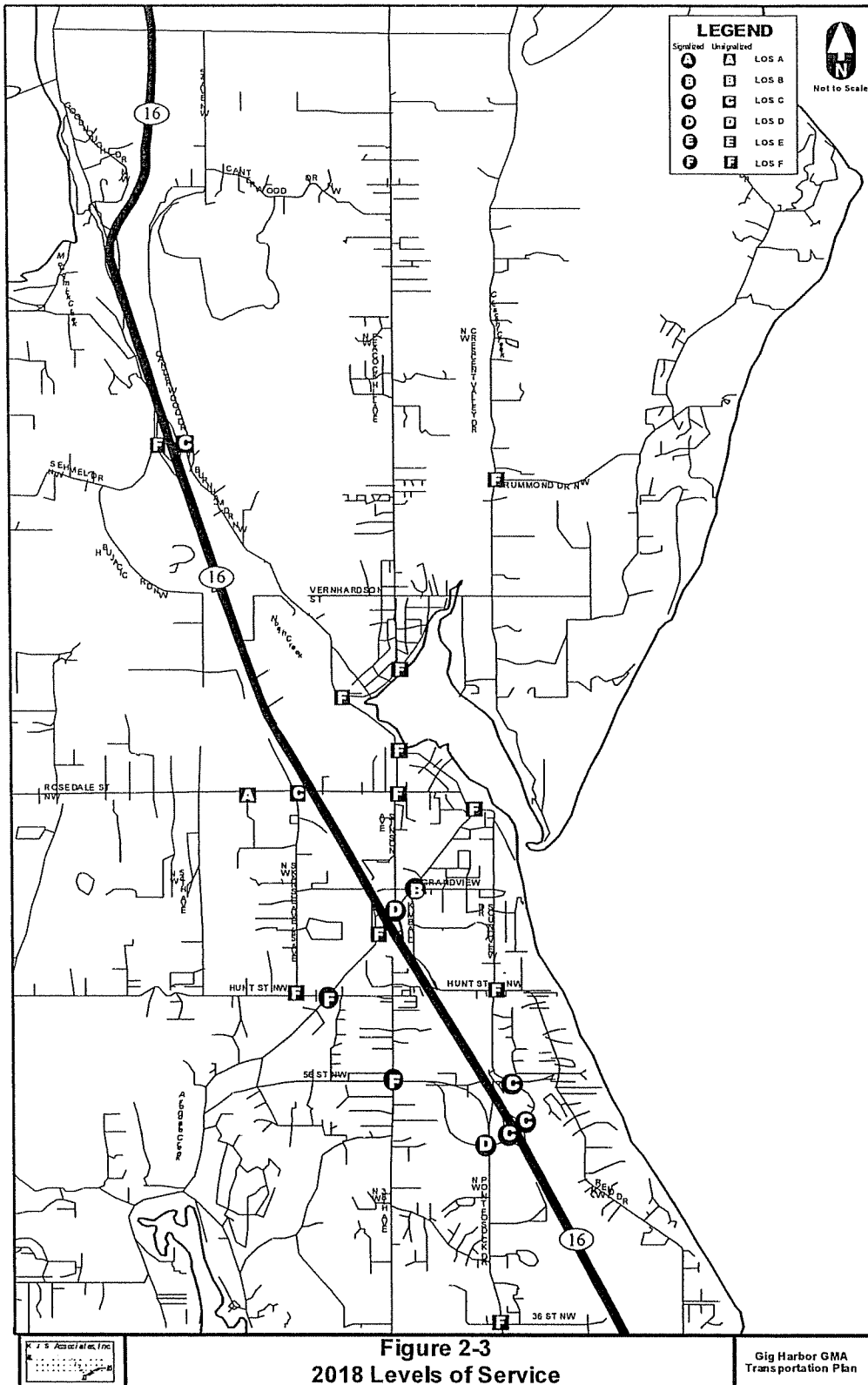
* Located within the downtown strategy area. Intersection impacts will be investigated on a case by case basis with implementation of various transportation strategies.

** 2013 Level of Service Summary

*** 2005 plus unmitigated pipeline conditions DEA 2005

Note: Refer to North Gig Harbor Traffic Mitigation Study for additional updated future intersection operations in the NGH Study area.





North Gig Harbor Traffic Analysis 2005

The North Gig Harbor Traffic Mitigation Study 2005 included an analysis of traffic operations in the NGH area and was completed to identify transportation mitigation requirements for three Comprehensive Plan Amendments. The Study identified near term transportation impacts of pipeline development, near term development proposals and buildout of the subarea. Potential long term mitigation measures for the NGH study area were identified. The future traffic volumes and intersection LOS shown for the NGH subarea are superseded by those in the NGH Traffic Mitigation Study. The technical analysis of the study is incorporated herein by reference.

SECTION 3. ALTERNATIVES ANALYSIS

This section discusses the major transportation system improvements necessary to address identified deficiencies in the 2018 analysis year.

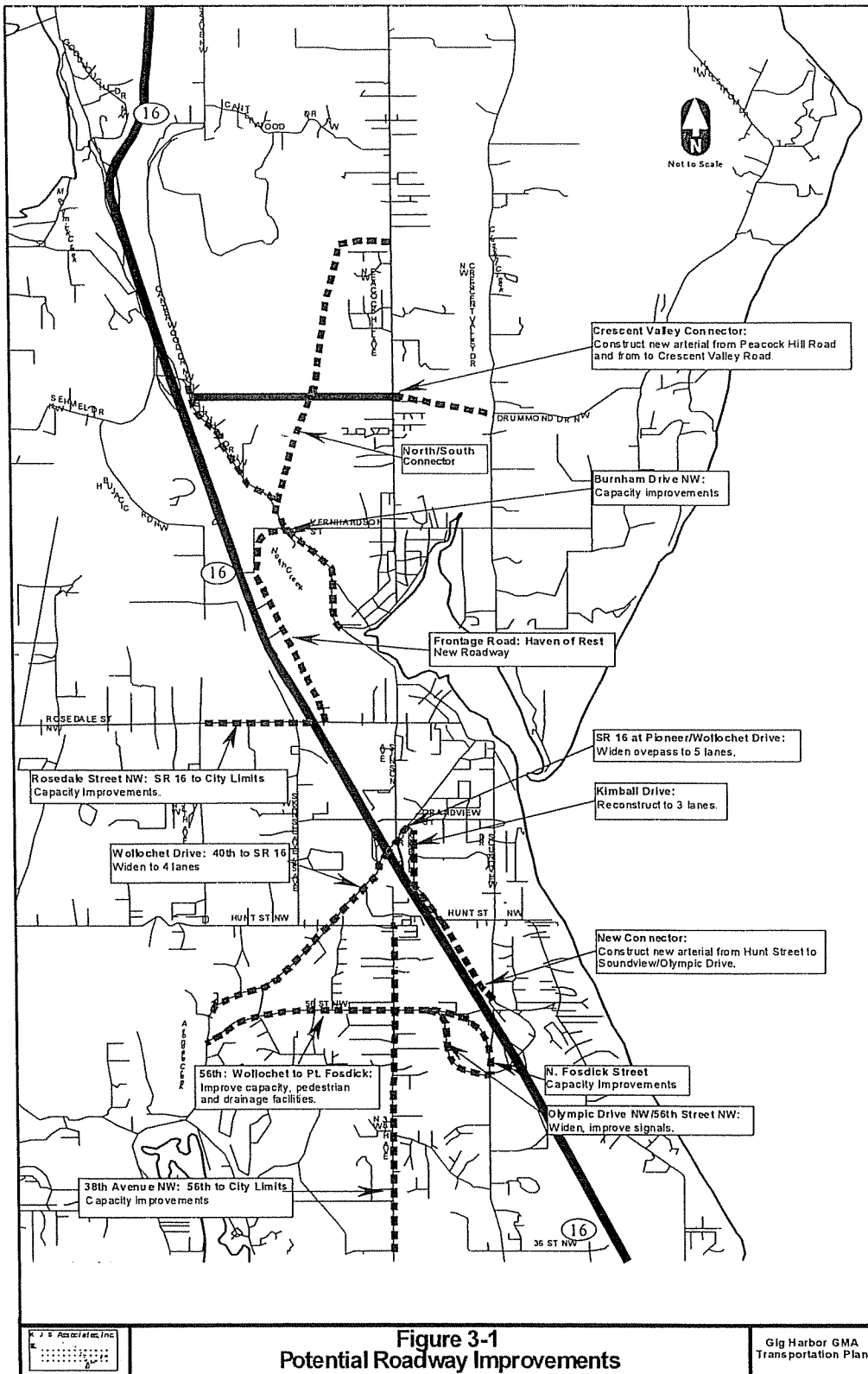
The potential improvements are organized in three categories: 1) roadway improvements, 2) intersection improvements, and 3) other improvements and transportation strategies.

Roadways

Figure 3-1 shows the potential roadway improvements, which include roadway widening, new arterial links, structures, and freeway and ramp improvements. Projects include a new north-south connector from Burnham Drive to Borgen Blvd. for circulation and access in the Gig Harbor north area, and a new east-west. Other improvements call for widening of several arterials, including Olympic Drive NW, Wollochet Drive, and Rosedale Street NW. Several other projects were dependent upon approval and construction of the new Tacoma Narrows Bridge, which is under construction.

North Gig Harbor Roadways 2005

The North Gig Harbor Traffic Mitigation Study 2005 identified a long-range system of transportation improvements to support the buildout of existing and proposed zoning in the NHG Study area, including three proposed Comprehensive Plan Amendments. The projects identified may be considered if needed in future Transportation Improvement Plans (TIP's), consistent with this element to ensure concurrency is maintained. Funding for the roadway plan has not yet been determined, and therefore development approvals may be delayed until funding is secured pursuant to GMA requirements.



Intersections

By 2018, the most significant level of service problems would occur at intersections whose movements are controlled by stop signs rather than traffic signals. Stop signs are efficient under relatively low volume conditions, or where clear preference for through traffic movement is desired.

Most of the high-volume stop sign controlled intersections in Gig Harbor will deteriorate to LOS F for the worst movement by 2018. Typically, installation of traffic signals will resolve such conditions. However, in the downtown strategy area, where capacity improvements such as widening or signalization would severely impact the character of quality of the area, the City shall make every effort to implement and require developers to implement “transportation improvements and strategies” other than traditional roadway or intersection capacity expansion improvements, and to instead consider such methods as increased public transportation service, ride sharing programs, site access control, demand management, and other transportation systems management strategies.

Tables 3-1 and 3-2 summarize the options examined at each signalized and unsignalized intersection, and the recommended improvement is noted for each intersection. Additional discussion is contained in Section 6 under recommendations.

Table 3-1: Evaluation of Improvements at Signalized Intersections

SIGNALIZED INTERSECTIONS	2018 LOS	Discussion	Recommendations
Wollochet Drive/Hunt Street	B	No improvement needed	
Pioneer Way/SR 16 NB ramps	LOS F (high volumes on fwy overxing)	Widening overcrossing per WSDOT plans and constructing east/west road will improve LOS	Implement WSDOT plans for this interchange
Pioneer Way/Grandview Street	B	No improvement needed.	

Table 3-2: Evaluation of Improvements at Unsignalized Intersections

UNSIGNALIZED INTERSECTIONS	2018 LOS	Discussion	Recommendation
Harborview Dr/North Harborview	F*	The pedestrian character of the area, coupled with relatively low speeds in downtown, makes signalization for the purposes of improving vehicle flow of this intersection not advisable.	Improve pedestrian crossings, ensure adequate sight distances and maintain stop-sign control unless pedestrian safety and mobility can be enhanced with signalization.
Harborview Drive/Stinson	F*	Same as above.	Save as above.
Rosedale/Skansie (46th)	F	Industrial area traffic along Skansie and growth west of SR 16 will create volumes too high for stop-sign control to handle.	Monitor and install traffic signal when warranted.
Harborview Drive/Pioneer Way	F*	The pedestrian character of the area, coupled with relatively low speeds in downtown, makes signalization for the purposes of improving vehicle flow of this intersection not advisable.	Improve pedestrian crossings, ensure adequate sight distances and maintain stop-sign control unless pedestrian safety and mobility can be enhanced with signalization..
SR 16 SB ramps/Wollochet	F	These ramps would be signalized with WSDOT planned improvement.	Implement intersection improvement per WSDOT plans.
Soundview/Hunt Street	D	Kimball connector will improve conditions at this intersection	Monitor and install stop sign all way control when warranted
SR 16 SB ramps/Single lane roundabout	F	Current and future high traffic volumes will require capacity improvements at the existing WSDOT roundabout.	Monitor and coordinate with WSDOT on future improvements.
Stinson/ Grandview	C	No deficiency	none
Stinson/ Rosedale	F	East/west road will reduce volumes sufficiently to level accommodated by stop-sign control	Maintain stop-sign control at this location.
Peacock Hill/North Harborview	E	East/west road will reduce volumes sufficiently to level accommodated by stop-sign control	Maintain stop-sign control at this intersection.
Hunt/Skansie	F	High volumes and increased left turns from Skansie require signal control and turn lanes	Monitor and signalize when required.

* Located within the downtown strategy area. Intersection impacts will be investigated on a case by case basis with implementation of various transportation strategies.

North Gig Harbor Intersections 2005

The North Gig Harbor Traffic Mitigation Study 2005 identified a long range system of transportation improvements to support the buildout of existing and proposed zoning in

the NHG Study area, including three proposed Comprehensive Plan Amendments. The existing six-legged intersection at Burnham Drive/Borgen Blvd./Canterwood and the SR 16 on and off-ramps can not support the development allowed under current zoning. The study identified a single point urban interchange as a possible solution to the capacity issue. The interchange is not currently on WSDOT's plan for the SR 16 corridor. The City must determine to what extent it can rely on this project when making concurrency determinations. Concurrency approvals may be limited until a specific SR 16/Burnham Drive interchange capacity improvement project is included in the Regional STIP and WSDOT's system plan.

Other Improvements and Strategies

Over the next two decades, the City of Gig Harbor will experience a 40 percent increase in population and a 70 percent in employment within the City and its surrounding Urban Growth Area (UGA). This growth will also result in an increase in traffic volumes to, from, through and within the city. Transportation strategies must be implemented to accommodate this growth, including:

- Transportation Demand Management strategies such as: Commute Trip Reduction, High Occupancy Vehicles (HOV such as van pools, car pools, etc.), telecommuting and flexible work hours.
- Transportation System Management strategies such as integrated policies and planning, Intelligent Vehicle Highway Systems (IVHS), signal coordination, etc.
- Modal shift from private vehicles to transit and carpooling.
- Enhancements of non-motorized travel to encourage alternate modes of transportation such as walking, cycling and elimination of trips altogether through compute trip reduction.
- Upgrading of existing motorized facilities.
- Construction of new motorized facilities.

The above strategies will require close coordination of efforts with the Washington State Department of Transportation, Pierce Transit, Pierce County and Kitsap County. The development of TSM and TDM policies and procedures should be consistent with other surrounding jurisdictions programs and will require public involvement.

Transportation Demand Management goals should be integrated with the development review process and should be a part of any traffic impact assessment and mitigation program.

The City Council, Planning Commission and the residents of Gig Harbor value a balance between motorized and non-motorized alternatives to help solve transportation issues in Gig Harbor.

Specific Projects for Transportation Demand Management include:

- Comply with state commute trip reduction program for major employers.
- Develop a comprehensive transit information program with Pierce Transit.
- Work with Pierce Transit to develop a vanpooling and ridematch service.
- Work with the WSDOT to implement the High Occupancy Vehicle lanes on SR 16 and on and off ramps where applicable.
- Work with the WSDOT to integrate the SR 16 queue by-pass on ramps with City streets.
- Develop a comprehensive parking management strategy to integrate parking availability and pricing with any transportation demand management strategy.
- Work with WSDOT and local transit agencies to provide a Park and Ride lot in the vicinity of the SR 16 Burnham Drive interchange.

Specific projects for Transportation Systems Management would include:

- Work with the WSDOT to coordinate the SR 16 HOV project, local-state signal coordination, driver information and Intelligent Vehicle Highway Systems with the local street network.
- Develop a signal re-timing and coordination project to reduce delay and congestion at the City's signalized intersections.

The recommendations for transportation improvements for the City of Gig Harbor address these concerns. The motorized improvements focus on intersections and roadways, while the recommendations for non-motorized travel consist primarily of ways to expand the bicycle facilities, complete the sidewalk network and evaluate other options. Recommendations for transit are mainly directed to Pierce Transit, which serves the City of Gig Harbor.

SECTION 4. RECOMMENDED TRANSPORTATION PLAN

The Growth Management Act requires an assessment of how well a recommended transportation plan meets the requirements of the Act and how well the level of service goals are met. The recommended improvements are summarized in **Table 4-1**.

Table 4-1 Recommended Transportation Plan

<i>Roadway Facility</i>	<i>Limits</i>	<i>Description</i>	<i>Lead Agency</i>	<i>Trigger Year</i>
56th Street–Point Fosdick Drive	Olympic – Olympic	Reconstruct to 3 lanes	Gig Harbor	2009
Skansie Avenue pedestrian improvements	Alternative High School - Rosedale	Minor widening, sidewalk; drainage	Gig Harbor	2004
Grandview Street Ph 2	Stinson – Pioneer	Reconstruct to 2 lanes; bike; pedestrian	Gig Harbor	2007
Grandview Street Ph 3	McDonald - Soundview	Reconstruct; bike; pedestrian	Gig Harbor	2008
45 th Avenue	Point Fosdick – 30 th	Sidewalk on one side	Gig Harbor	2006
38th Avenue Ph 1	56th St -- city limits	Reconstruct to 2/3 lanes; bike; pedestrian	Gig Harbor	2010
Olympic Drive–56th Street	38th – Point Fosdick	Widen to 5 lanes; bike lanes; pedestrian, drainage	Gig Harbor	2007
Prentice Street	Burnham – Fennimore	Pedestrian, drainage	Gig Harbor	2008
Briarwood Lane	38th Ave – Pt Fosdick	Pedestrian, drainage	Gig Harbor	2006
Burnham Drive Ph 1	Franklin – Harborview	Reconstruct/widen; pedestrian; drainage	Gig Harbor	2007
38th Avenue Ph 2	56 th - Hunt	Reconstruct to 2/3 lanes; bike; pedestrian	Gig Harbor	2008
Vernhardsen Street	Peacock Hill – city limit	Pavement restoration; pedestrian; drainage	Gig Harbor	2007
Rosedale Street Ph 2	SR 16 – city limit	Widen to 2 thru lanes; bike	Gig Harbor	2006
Franklin Avenue Ph 2	Burnham–Peacock Hill	Pedestrian, drainage	Gig Harbor	2008
Point Fosdick pedestrian improvements	Harbor County – 36 th	Sidewalk on east side	Gig Harbor	2010
Harborview Drive	N Harborview - Burnham	Reconstruct roadway; bike; pedestrian	Gig Harbor	2009
Rosedale Street Ph 3	SR 16 – Shirley	Widen to 2 thru lanes; bike; pedestrian; drainage	Gig Harbor	2009
North-South Connector (Swede Hill Road)	Borgen – Burnham	Corridor preservation	Gig Harbor	2007
Burnham Drive Ph 2	Franklin – North/South Connector	Widen roadway; pedestrian; drainage	Gig Harbor	2010
50 th Court	Olympic – 38 th	Construct 2 lane roadway; pedestrian	Gig Harbor	2008
Crescent Valley Connector	Peacock – Crescent Valley	New roadway	Pierce County	2008
38 th Avenue /Hunt Street Ph 1	Skansie – 56 th	Design 2/3 lane section w/ median; bike	Gig Harbor	2008
Burnham Drive Ph 3	North/South Connector - Borgen		Gig Harbor	2010
Hunt St Ped Xing of SR 16	38 th – Kimball	Construct Ped undercrossing	Gig Harbor	2006
Wollochet Drive	Hunt St – SR 16	Widen roadway; pedestrian	Pierce County	2011
<i>Intersection</i>	<i>Limits</i>	<i>Description</i>	<i>Lead Agency</i>	<i>Trigger Year</i>
36th/Point Fosdick	intersection	Improve intersection	Gig Harbor	2004
Hunt/Skansie	intersection	Install signal	Gig Harbor	2010
<i>Other Improvements</i>				
Downtown parking lot	Central business district	Off-street parking	Gig Harbor	2010

Figure 4-1 shows the estimated 2018 daily traffic volumes on selected links with the improvements listed in the recommend transportation plan.

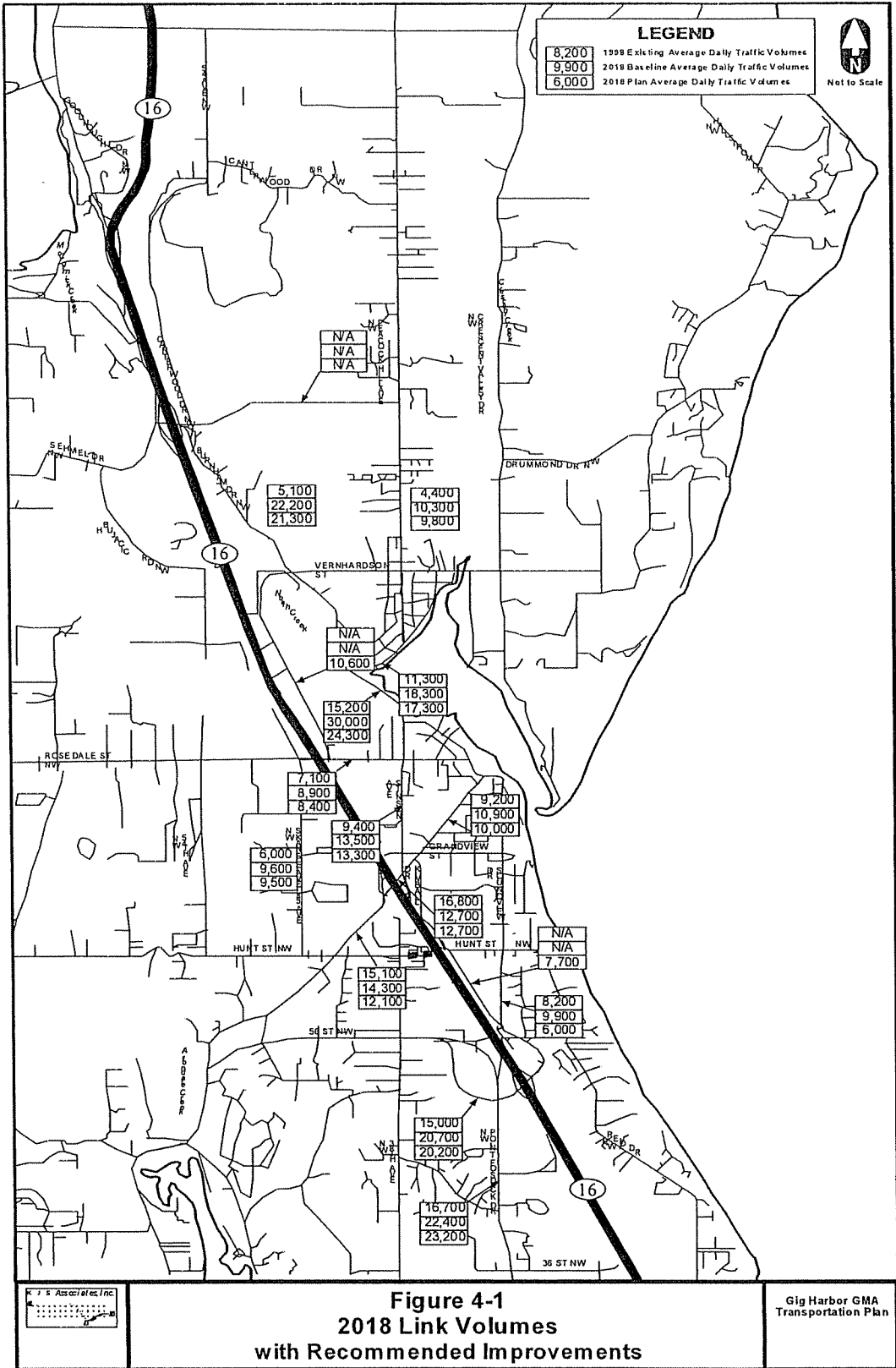
Roadway Improvements

Due to the proposed Tacoma Narrows bridge project which is currently under construction, many transportation improvements may be required to either be modified or constructed. The City has included many of these projected improvements in an effort to identify costs and other constraints related to these major projects. All of the identified improvements have a major impact to the City and the underlying transportation infrastructure.

- 1) At the time of the traffic modeling was conducted, the City excluded those major projects related to the bridge and only included the projects directly related to the City's existing and projected growth and infrastructure needs.

North Gig Harbor Roadway Improvements 2005

The North Gig Harbor Traffic Study identified a long range system of transportation improvements to support the buildout of existing and proposed zoning in the NHG Study area, including three proposed Comprehensive Plan Amendments. The projects identified may be considered as needed in future Transportation Improvement Plans (TIP's), consistent with this element to ensure concurrency is maintained. The projects are not currently funded, but are demonstrated to provide a consistent transportation plan for the land use in the NGH area these projects may be considered, if funding or a strategy for funding those projects is in place per GMA requirements.



Intersection Improvements

The 2018 levels of service at key intersections with the improvements in the Recommended Plan are shown in **Table 4-2**.

Table 4-2: 2018 Plan Intersection Levels of Service

INTERSECTION	No Improvements	With Recommended Improvements
36th St/Point Fosdick Dr ⁽¹⁾	F	C
Crescent Valley Dr/Drummond Dr	F	C
Harborview Dr/North Harborview Dr ⁽²⁾	F*	F*
Harborview Dr/Pioneer Wy ⁽²⁾	F*	F*
Harborview Dr/Stinson Ave ⁽²⁾	F*	F*
Hunt/Skansie	F	C
North Harborview Dr/Peacock Hill Ave	F	B
Olympic Dr/Hollycroft	C	C
Olympic Dr/SR 16 NB ramps	C	C
Olympic Dr/SR 16 SB ramps	C	C
Pioneer Wy/Grandview St	B	B
Pioneer Wy/SR 16 NB ramps	D	C
Point Fosdick Rd/Olympic Dr	D	D
Rosedale St/Skansie Ave ⁽¹⁾	C	C
Rosedale St/Stinson Ave	F	D
Soundview Dr/Hunt St	F	C
SR 16 SB ramps/Burnham Drive ⁽¹⁾	F	#E
SR 16 SB ramps/Wollochet Dr ⁽¹⁾	F	A
Wollochet Dr/Hunt St	F	D

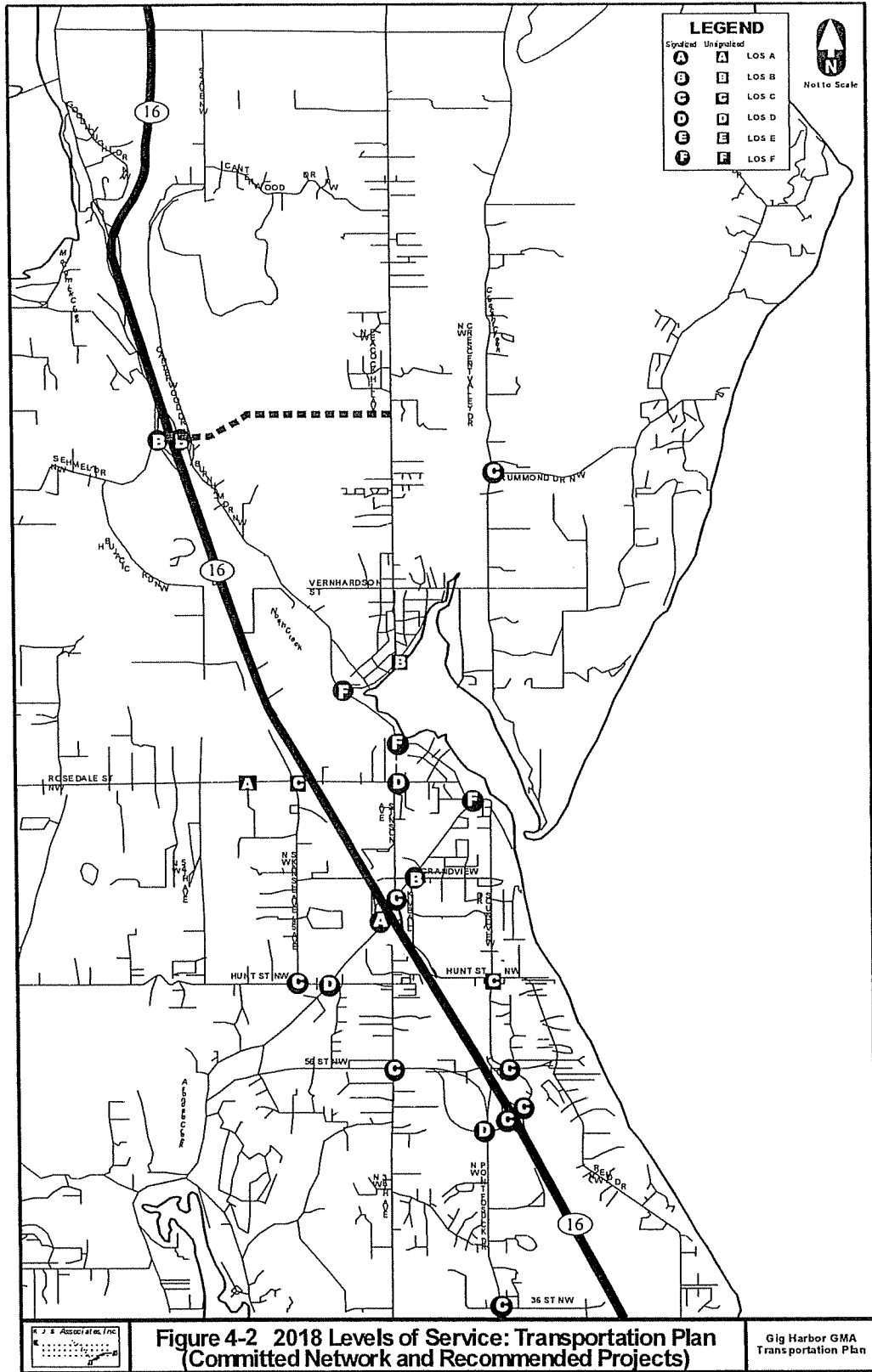
* recognized as acceptable in the downtown strategy area.

⁽¹⁾ Improvement includes signalization.

⁽²⁾ Downtown strategy Area -- signalization not recommended.

with SPUI

Figure 4-2 shows the 2018 Plan intersection levels of service. The levels of service are based on traffic volumes generated by growth in the area and implementation of the improvements listed in the Recommended Plan. The capacity analysis shows that most of the City’s intersections will be able to meet the LOS D goal. The goal has been met, for the most part, by upgrading unsignalized intersections to signalized operation – or by making other improvements to increase capacity.



Other Improvements and Strategies

Transit

Gig Harbor participates with the local transit agency, Pierce Transit in a variety of projects. This cooperation has been in the planning and capital improvement projects. Pierce Transit has a System Plan to the year 2020. Long term improvement plans for the Peninsula area include:

- Construct the North Gig Harbor Transit Center near the SR 16 Burnham Drive interchange and add bus routes to serve it.
- Establish more direct regional transit services to major destinations in the Tacoma, Bremerton, Olympia and Seattle areas.
- Increased paratransit services.
- Increase ridesharing (carpool and vanpool) programs.
- Construct capital projects listed in the 6-year Capital Improvement Plan.

Marine Transportation

The waterfront and harbor of Gig Harbor are a primary focus area for many of the City's activities including commercial, retail, industrial, tourism and recreation activities. These activities create generate traffic and parking demand which is concentrated around Harborview and North Harborview arterials.

There is demand for marine improvements in Gig Harbor. Access for public or private marine services should be provided at a central dock location near the downtown area. Continued upgrading and enhancement of the Jerisich Park dock area should be emphasized. The increased use of marine services would also place demands on downtown parking.

Possibilities of provision of recreational passenger ferry services should be coordinated with private providers. Some discussions have taken place regarding private ferry services to Gig Harbor, and the City should continue to pursue these opportunities. Due to the high costs and parking impacts associated with commuter ferry services, it is not recommended that the city pursue passenger-only ferry services with Washington State Ferries.

Coordinating Transportation and Land Use Planning To Support Transit and Pedestrian Oriented Land Use Patterns

To ensure that this plan is consistent with evolving land use patterns, and to guide land use and new development with respect to transportation that promotes transportation-related goals, the City will work towards:

- Reducing vehicle trips and vehicle miles traveled during peak periods to minimize the demand for constructing costly road improvements;
- Providing effective public transportation services to help reduce car dependence in the region and serve the needs of people who rely on public transportation;
- Encouraging bicycle and pedestrian travel by providing inviting, safe, convenient and connected routes, education and incentive programs, and support services such as bike racks, showers and lockers;
- Maintaining and improving a network of highways, streets and roads that moves people, goods and services safely and efficiently, minimizes social and environmental impacts, and supports various modes of travel.
- Providing adequate connections and access among all transportation modes.

Non Motorized Travel

The residential character of Gig Harbor makes non-motorized travel an important aspect of the Transportation Element. A complete pedestrian and bicycle network would link neighborhoods with schools, parks, and retail activity, allowing residents and visitors to walk or bicycle to these areas rather than drive.

Outside of the downtown retail core, sidewalks have been constructed sporadically, resulting in a discontinuous system of walkways for pedestrians. There are even fewer facilities for bicyclists within Gig Harbor; bicyclists must share the traveled lane with motorists. While there are no facilities for equestrians within Gig Harbor, there is generally little demand for equestrian travel.

Recommended improvements for non motorized uses are shown in **Figure 4-3**. The plan outlines pedestrian, bicycle path, and marine service improvements.

Downtown Strategy Area

Much of Gig Harbor's commercial, tourist and recreational facilities are located along the waterfront, creating congestion in the downtown area and generating demand for pedestrian amenities and additional parking. Traditional roadway or intersection capacity improvements here would destroy the unique character of the downtown.

Within the downtown strategy area, defined as Harborview Drive and North Harborview Drive between Soundview Drive and Peacock Hill Avenue, the City has reclassified the LOS on the intersections identified below to the LOS Classification shown below. The City is required by RCW 36.70A.070(6)(b) "to prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development." It is the City's intent to ensure

that the types of “transportation improvements and/or strategies” allowed within this area be oriented towards improved pedestrian safety and convenience. Furthermore, in order to preserve the pedestrian character of the area, the City shall make every effort to implement and require developers to implement “transportation improvement strategies” other than traditional roadway or intersection capacity expansion improvements, and to instead consider such methods as increased public transportation service, ride sharing programs, site access control, demand management and other transportation systems management strategies.

The specific intersections and current LOS that will be considered under the above are

- Harborview Drive/North Harborview Drive LOS F
- Harborview Drive/Pioneer Way LOS F
- Harborview Drive/Stinson Avenue LOS F
- Harborview Drive/Rosedale LOS D
- North Harborview Drive/Peacock Hill LOS C
- Harborview/Soundview LOS B

The above intersections may be allowed to operate a LOS worse than D, consistent with the pedestrian objectives identified in the Downtown Strategy Area.

North Gig Harbor LOS

The North Gig Harbor Traffic Study identified a long range system of transportation improvements to support the buildout of existing and proposed zoning in the NHG Study area, including three proposed Comprehensive Plan Amendments. The projects identified may be considered as needed in future Transportation Improvement Plans (TIP's), consistent with this element to ensure concurrency is maintained. The buildout potential of the NGH Study area is such that the maintaining LOS D for the intersection of Borgen/Canterwood/Burnhan Drive/SR 16 is not feasible due to environmental and fiscal constraints. An LOS E standard is proposed for the intersection to provide a reasonable balance between land use, LOS, environmental impacts and financial feasibility.

SECTION 5. HOUSE BILL 1487 COMPLIANCE

The 1998 legislation House Bill 1487 known as the “Level of Service” Bill, amended the Growth Management Act; Priority Programming for Highways; Statewide Transportation Planning, and Regional Planning Organizations. The combined amendments to these RCWs were provided to enhance the identification of, and coordinated planning for, “transportation facilities and services of statewide significance (TFSSS)” HB 1487 recognizes the importance of these transportation facilities from a state planning and programming perspective. It requires that local jurisdictions reflect these facilities and services within their comprehensive plan.

To assist in local compliance with HB 1487, the Washington State Department of Transportation (WSDOT), Transportation Planning Office and the Washington State Department of Community Trade and Development, Growth Management Program, (now Office of Community Development [OCD]) promulgated implementation guidelines in the form of a publication entitled “Coordinating Transportation and Growth Management Planning”.

Together with these entities, the City of Gig Harbor has worked to compile the best available information to include in the comprehensive plan amendment process.

- Inventory of state-owned transportation facilities within Gig Harbor: SR 16 provides the major regional connection between Tacoma, Bremerton and the Olympic Peninsula. It connects to Interstate 5 in Tacoma and to SR 302 in Purdy. SR 302 is the only other state-owned transportation facility within the planning area, connecting SR 16 with SR 3 to Shelton.
- Estimates of traffic impacts to state facilities resulting from local land use assumptions: **Figure 5-1** provides 20-year traffic volumes for SR-16, which is the only state facility within Gig Harbor. The volumes were generated by Pierce County model, which includes land use assumptions for 2018 for Gig Harbor.
- Transportation facilities and services of statewide significance (TFSSS) within Gig Harbor: SR 16 is included on the proposed list of TFSSS.
- Highways of statewide significance within Gig Harbor: The Transportation Commission List of Highways of Statewide Significance lists SR 16 as an HSS within the City of Gig Harbor and its growth area.
- The North Gig Harbor Traffic Mitigation Study 2005 identified a long range system of transportation improvements to support the buildout of existing and proposed zoning in the NHG Study area, including three proposed Comprehensive Plan Amendments. The Study found that SR 16/Burnham Interchange would fail at build out conditions. Additional access to SR 16 at 144th Ave was identified as a possible mitigation measure, and in traffic modeling provided benefits to operations at the Burnham Drive/BorgenBlvd interchange.

The City of Gig Harbor asserts that proposed improvements to state-owned facilities will be consistent with the Regional Transportation Plan (RTP) and the State Highway System Plan within Washington's Transportation Plan (WTP).

The City of Gig Harbor acknowledges that the concurrency requirement does not apply to transportation facilities and services of statewide significance in Pierce County.

WSDOT has several improvements planned in conjunction with the new Tacoma Narrows Bridge project, including a new interchange at 24th Street and 36th Street and SR16/Wollochet Drive ramp improvements. The increased capacity and access caused by the bridge construction will affect the Gig Harbor area transportation improvement needs and long-term growth and development in the area. Several major transportation improvements will be required within the City of Gig Harbor and neighboring Pierce County. These include:

- Hunt Street Pedestrian Overcrossing
- Crescent Valley Connector
- Hunt/Kimball Connector
- North-South Connector
- Expanded interchange at SR 16 Burnham Drive
- Added Access to SR 16 at 144th Avenue or similar location

SECTION 6. FINANCIAL ANALYSIS AND CONCURRENCY

The State of Washington's Growth Management Act (GMA) requires that a jurisdiction's transportation plan contain a funding analysis of the transportation projects it recommends. The analysis should cover funding needs, funding resources, and it should include a multi-year financing plan. The purpose of this requirement is to insure that each jurisdiction's transportation plan is affordable and achievable. If a funding analysis reveals that a plan is not affordable or achievable, the plan must discuss how additional funds will be raised, or how land use assumptions will be reassessed.

Federal Revenue Sources

The 1991 federal Intermodal Surface Transportation Efficiency Act (ISTEA) reshaped transportation funding by integrating what had been a hodgepodge of mode- and category-specific programs into a more flexible system of multi-modal transportation financing. For highways, ISTEA combined the former four-part Federal Aid highway system (Interstate, Primary, Secondary, and Urban) into a two-part system consisting of the National Highway System (NHS) and the Interstate System. The National Highway System includes all roadways not functionally classified as local or rural minor collector. The Interstate System, while a component of the NHS, receives funding separate from the NHS funds.

In 1998, the Transportation Efficiently Act for the 21st Century (TEA-21) continued this integrated approach, although specific grants for operating subsidies for transit systems were reduced.

National Highway System funds are the most likely source of federal funding support available for projects in Gig Harbor. **Table 6-1**, taken from the Highway Users Federation of the Automotive Safety Foundation pamphlet *The Intermodal Surface Transportation Efficiency Act of 1991*, describes the types of projects that qualify for funding under NHS (the categories and definitions were virtually unchanged in TEA-21).

To receive TEA21 funds, cities must submit competing projects to their designated Regional Transportation Planning Organization (RTPO) or to the state DOT. Projects which best meet the specified criteria are most likely to receive funds. Projects which fund improvements for two or more transportation modes receive the highest priority for funding. (e.g., arterial improvements which includes transit facilities and reduces transit running times, and constructs pedestrian and bicycle facilities where none existed before).

Table 6-1. Projects Eligible for National Highway System Funding

-
- Construction, reconstruction, resurfacing, restoration and rehabilitation and operational improvements to NHS segments
 - Construction and operation improvements to non-NHS highway and transit projects in the same corridor if the improvement will improve service to the NHS, and if non-NHS improvements are more cost-effective than improving the NHS segment.
 - Safety improvements
 - Transportation planning
 - Highway research and planning
 - Highway-related technology transfer
 - Start-up funding for traffic management and control (up to two years)
 - Fringe and corridor parking facilities
 - Carpool and vanpool projects
 - Bicycle transportation and pedestrian walkways
 - Development and establishment of management systems
 - Wetland mitigation efforts
-

Historical Transportation Revenue Sources

The City of Gig Harbor historically has used three sources of funds for street improvements:

- Income from Taxes
 - Motor Vehicle Excise Tax (MVET)
 - Motor Vehicle Fuel Tax (MVFT)
- Income from Intergovernmental Sources:
 - HUD Block Grants
 - Federal Aid (FAUS, FAS, ISTEA, etc.)
 - Urban Arterial Board
 - TIB and STP Grants
- Miscellaneous Income:
 - Interest Earnings
 - Miscellaneous Income
 - Developer Contributions
 - Impact Fees (begun in 1996)

In the past, motor vehicle excise tax (MVET) and motor vehicle fuel tax (MVFT) allocations from the state have been the major sources of continuing funding for transportation capital improvements. Initiative 695, passed by the voters in 1999, removed MVET as a significant funding source, so the MVFT (“gas tax”) funding appear

to be the only reliable source of transportation funds for the future. MVET and MVFT also provided funds for state and federal grants which are awarded competitively on a project-by-project basis and from developer contributions which are also usually targeted towards the developer's share of specific road improvements.

Revenue Forecast

The projected revenues for Gig Harbor's recommended transportation capital improvements are shown in **Table 6-2**. According to these forecasts, approximately 32% of funding for transportation capital improvements for the next 20 years will come from LIDs, general funds and economic grants. Project-specific SEPA mitigation fees and City traffic impact fees will provide 32% of road capital funds. Additionally, approximately 36% will come from project-specific state and federal funding grants and taxes.

Table 6-2. Gig Harbor Transportation Revenue Forecast, 2000 to 2018

Funding Source	Six-year 2001-2006	Percent	Twenty-year 2000-2018	Percent
MVFT ("gas tax")	\$400,000	8.7%	\$2,000,000	15.7%
State and federal grants	\$500,000*	10.80%	\$2,600,000*	20.5%
SEPA mitigation and Developer Contribution	\$2,000,000	43.5%	\$3,400,000	26.8%
City Traffic Impact Fees	\$100,000	2.2%	\$700,000	5.5%
Other funds (LIDs, general funds, economic grants, etc)	\$1,600,000	34.8%	\$4,000,000	31.5%
Totals	\$4,600,000	100.0%	\$12,700,000	100.00%

*Includes projected grants for projects whose completion would likely extend beyond 2006.

Capital Costs for Recommended Improvements

As discussed in Section 4, there are several capacity-related improvements within the Gig Harbor UGA needed to achieve adequate levels of service by 2018.

The capacity-related improvements listed in **Table 6-3** will be necessary to meet GMA level of service standards in 2018. Most of these projects have already been included in the City's current *Six-Year Transportation Improvement Program*, along with project-specific identified funding sources.

Table 6-3. Capacity-related improvement costs, 2004 to 2010

<i>Facility</i>	<i>Description</i>	<i>Estimated Cost</i>	<i>Predictable (non-grant) Funding</i>
56th Street–Point Fosdick Drive	Reconstruct to 3 lanes	\$2,650,000	\$775,000
Skansie Avenue pedestrian improvements	Minor widening, sidewalk; drainage	\$ 150,000	\$30,000
Grandview Street Ph 2	Reconstruct to 2 lanes; bike; pedestrian	\$250,000	\$250,000
Grandview Street Ph 3	Reconstruct; bike; pedestrian	\$ 510,000	\$510,000
45 th Avenue	Sidewalk on one side	\$ 70,000	\$70,000
38th Avenue Ph 1	Reconstruct to 2/3 lanes; bike; pedestrian	\$6,588,000	\$1,788,000
Olympic Drive–56th Street	Widen to 5 lanes; bike lanes; pedestrian, drainage	\$4,000,000	\$1,000,000
Prentice Street	Pedestrian, drainage	\$ 520,000	\$520,000
Briarwood Lane	Pedestrian, drainage	\$ 450,000	\$400,000
Burnham Drive Ph 1	Reconstruct/widen; pedestrian; drainage	\$ 415,000	\$135,000
38th Avenue Ph 2	Reconstruct to 2/3 lanes; bike; pedestrian	\$4,400,000	\$1,400,000
Vernhardsen Street	Pavement restoration; pedestrian; drainage	\$ 223,000	\$198,000
Rosedale Street Ph 2	Widen to 2 thru lanes; bike	\$ 593,000	\$88,000
Franklin Avenue Ph 2	Pedestrian, drainage	\$ 500,000	\$500,000
Point Fosdick pedestrian improvements	Sidewalk on east side	\$ 265,000	\$265,000
Harborview Drive	Reconstruct roadway; bike; pedestrian	\$ 560,000	\$560,000
Rosedale Street Ph 3	Widen to 2 thru lanes; bike; pedestrian; drainage	\$ 445,000	\$60,000
North-South Connector (Swede Hill Road)	Corridor preservation	Developer	\$0
Burnham Drive Ph 2	Widen roadway; pedestrian; drainage	\$2,775,000	\$775,000
50 th Court	Construct 2 lane roadway; pedestrian	\$ 1,000,000	\$420,000
Crescent Valley Connector	New roadway	\$4,300,000	\$290,000
38 th Avenue /Hunt Street Ph 1	Design 2/3 lane section w/ median; bike	\$ 208,000	\$62,000
Burnham Drive Ph 3		\$4,400,000	\$1,400,000
Hunt St Xing of SR 16 Kimball Dr Ext	Construct 2 lane SR 16 undercrossing	\$12,475,000	\$398,000
Wollochet Drive	Widen roadway; pedestrian	\$5,000,000	\$0
36th/Point Fosdick	Improve intersection	\$ 980,000	\$650,000
Hunt/Skansie	Install signal	\$1,000,000	\$300,000
Total Costs		\$ 54,727,000	\$12,844,000

Summary of Costs and Revenues

Based on the revenues and costs listed above, the proposed capacity-related transportation element improvements are affordable within the City’s expected revenues for transportation capital costs. **Table 6-4** summarizes costs and revenues for the six and twenty year periods analyzed in the transportation element.

As shown in **Table 6-4**, the City expects to obtain a proportion of anticipated revenues from grants or other discretionary sources. The revenue estimate indicates the City will

be able to pay for its share of the recommended improvements, however, none of the assumptions about existing sources are guaranteed. The proposed projects include several that could receive matching funds from state and federal grant programs, for which there is considerable competition and limited grant funding. Should the necessary grant funds not be available, the City has several other strategies it can employ to balance revenues and public facility needs. These strategies, listed below, range from the development of other funding sources to the revision of City land use and growth policies:

- Obtain funds from other sources (e.g., loans)
- Revise land use policy
- Pursue cost-sharing opportunities with other agencies (e.g., WSDOT or Pierce County) and/or the private sector

The proposed improvements over the next 20 years total \$53,442,000. Proposed improvements and expected revenues are therefore balanced as shown in the **Table 6-4** below. The projects that have been excluded from the revenue obligation requirements are the Hunt Street overcrossing, the Crescent Valley connector, the Hunt/Kimball connector and the North-South Connector.

Table 6-4. Summary of capacity-related project capital costs and revenues

Category	Six-year 2004-2010	Percent of Revenues	Twenty-year 2000-2018	Percent of Revenues
<u>Projected Revenues</u>	<u>\$54,727,000</u>	<u>100.0%</u>	<u>\$54,727,000</u>	<u>100%</u>
predictable sources	\$12,844,000	23%	\$12,844,000	23%
grant sources	\$41,883,000	77%	\$41,883,000	77%
Projected Expenditures	\$54,727,000	100%	\$54,727,000	100%
Net	\$-0-	0%	\$-0-	0%

North Gig Harbor Capital Cost and Revenue Summary 2005

The North Gig Harbor Traffic Study identified a long range system of transportation improvements to support the buildout of existing and proposed zoning in the NHG Study area, including three proposed Comprehensive Plan Amendments. The projects identified may be considered as needed in future Transportation Improvement Plans (TIP's), consistent with this element to ensure concurrency is maintained. The projects identified in the study include City, County, State, and Developer responsibility. The revenue required for the projects was identified. The projects are not yet funded. The projects may be added to the TIP as revenue sources such as impact fees, agency contributions, and or grants are obtained. A new revenue source was created in 2006 by passage of HB 2670, allowing the creation of Benefit Districts for infrastructure improvements, this revenue source could generate as much as \$2,000,000 per year towards infrastructure improvements.

SECTION 7. GOALS AND POLICIES

The transportation goals contained in this element are:

- Create an Effective Road and Sidewalk Network.
- Create an appropriate balance between transportation modes where each meets a different function to the greatest efficiency.
- Design and Construction Standards
- Level of Service Standards
- Air Quality

GOAL 11.1: CREATE AN EFFECTIVE ROAD AND SIDEWALK NETWORK.

The City of Gig Harbor shall plan for an effective road network system.

Policy 11.1.1 Complete development of the arterial road grid serving the planning area.

Policy 11.1.2 Develop a trans-highway connector across SR-16 at Hunt Street.

Policy 11.1.3 Establish a Kimball connector which would provide access between Hunt and Soundview Road and reduce traffic volumes on Soundview.

Policy 11.1.4 Establish a functional classification system which defines each road's principal purpose and protects the road's viability.

Policy 11.1.5 Develop an arterial and collector system which collects and distributes area traffic to SR-16.

Policy 11.1.6 Define a collector road system which provides methods for transversing the neighborhoods, districts and other places within the area without overly congesting or depending on the arterial system or any single intersection.

Policy 11.1.7 Establish effective right-of-way, pavement widths, shoulder requirements, curb-gutter-sidewalk standards for major arterials, collectors and local streets.

Policy 11.1.8 Improve collector roads in the planning area particularly Rosedale and Stinson Avenues, to provide adequate capacity for present and future projected traffic loads, pedestrian and bicyclist activities.

Policy 11.1.10 Work with downtown property owners to determine an effective parking plan of business owners.

Policy 11.1.11 Provide planning and design assistance in establishing a local parking improvement district for the downtown area.

GOAL 11.2: MODAL BALANCE

Create an appropriate balance between transportation modes where each meets a different function to the greatest efficiency.

- Policy 11.1.1 Work with Pierce Transit to satisfy local travel needs within the planning area, particularly between residential areas, the downtown and major commercial areas along SR-16.
- Policy 11.2.2 Work with Pierce Transit to locate Pierce Transit Park and Ride lots in areas which are accessible to transit routes and local residential collectors, but which do not unnecessarily congest major collectors or arterial roads or SR-16 interchanges.
- Policy 11.2.3 Establish a multipurpose trails plan which provides designated routes for pedestrians and bicyclists.
- Policy 11.2.4 Designate routes around Gig Harbor Bay, within the Crescent and Donkey Creek corridors, from the Shoreline (north Gig Harbor) business district to Goodman school and into Gig Harbor North, from the downtown business district to Grandview Forest Park and other alignments which provide a unique environmental experience and/or viable options to single occupancy vehicles.
- Policy 11.2.5 The City should adopt and implement a program which increases public awareness to the city's transportation demand management strategies, including non-motorized transportation and increased use of local transit. Adopted strategies include a Transportation Demand Management Ordinance (Gig Harbor Ordinance #669).

GOAL 11.3: DESIGN AND CONSTRUCTION STANDARDS

Establish design construction standards which provide for visually distinct roadways while providing efficient and cost effective engineering design.

- Policy 11.3.1 Adopt and implement street construction standards which implement the goals and policies of the City of Gig Harbor Comprehensive Plan Design Element and the City Design Guidelines.
- Policy 11.3.2 Identify and classify major or significant boulevards & arterials.
- Policy 11.3.3 Provide for an efficient storm drainage system in road design which minimizes road pavement needed to achieve levels of service.
- Policy 11.3.4 Implement design standards which provide, where feasible, for a pleasing aesthetic quality to streetscapes and which provide increased pedestrian safety by separating sidewalks from the street edge.

GOAL 11.4: LEVEL OF SERVICE STANDARDS

Policy 11.4.1 The City of Gig Harbor Level of Service Standard for intersections is LOS D, except for the following intersections identified in the Downtown Strategy Area

- Harborview Drive/North Harborview Drive

- Harborview Drive/Pioneer Way
- Harborview Drive/Stinson Avenue
- Harborview Drive/Rosedale
- North Harborview Drive/Peacock Hill
- Harborview/Soundview

The above intersections may be allowed to operate a LOS worse than D, consistent with the pedestrian objectives identified in the Downtown Strategy Area.

Policy 11.4.2 If funding for capacity projects falls short, the Land Use Element, LOS, and funding sources will be re-evaluated. Impact fees should be used to the extent possible under GMA to fund capacity project costs.

Policy 11.4.3 Level of service E will be acceptable at the SR 16 westbound ramp terminal roundabout intersection on Burnham Drive, provided that: (a) the acceptable delay at LOS E shall not exceed 80 seconds per vehicle as calculated per customary traffic engineering methods acceptable to the city engineer; and (b) this policy shall cease to have effect if a capital improvement project is added to the Transportation Improvement Program and is found by the City to be foreseeably completed within six years and to add sufficient capacity to the interchange and adjacent intersections so as to achieve a level of service of D or better upon its completion including the impacts of all then-approved developments that will add travel demand to the affected intersections.

Policy 11.4.4 When a proposed development would degrade a roadway or intersection LOS below the adopted threshold on a state highway, the roadway or intersection shall be considered deficient to support the development and traffic impact mitigation shall be required based on the recommendation of the City Engineer and consistent with the Washington State Highway System Plan Appendix G: Development Impacts Assessment.

Policy 11.4.5 The City shall maintain a current traffic model to facilitate the preparation of annual capacity reports and concurrency reviews.

GOAL 11.5: AIR QUALITY

The City should implement programs that help to meet and maintain federal and state clean air requirements, in addition to regional air quality policies.

- Policy 11.5.1 The City's transportation system should conform to the federal and state Clean Air Acts by maintaining conformity with the Metropolitan Transportation Plan of the Puget Sound Regional Council and by following the requirements of WAC 173-420.
- Policy 11.5.2 The City should work with the Puget Sound Regional Council, Washington State Department of Transportation, Pierce Transit and neighboring jurisdictions in the development of transportation control measures and other transportation and air quality programs where warranted.

RESOLUTION NO. 6xx

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT
AGREEMENT WITH HARBOR ESTATES LLC.**

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, Harbor Estates applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the “Comp Plan Amendment” or “CPA”), to change the Comprehensive Land Use designation on the Property from Planned Community Development Residential Low Density (PCD-RLD) to Planned Community Development Residential Medium Density (PCD-RMD); and

WHEREAS, on June 26, 2006, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the

Development Agreement attached hereto as Exhibit A; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with the applicant Harbor Estates LLC.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 26th day of June 2006.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: //06
PASSED BY THE CITY COUNCIL: //06
RESOLUTION NO. 6xx

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HARBOR ESTATES LLC, FOR A
COMPREHENSIVE PLAN AMENDMENT/RESIDENTIAL SUBDIVISION**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Harbor Estates, LLC, a Limited Liability Corporation organized under the laws of the State of Washington, hereinafter the "Developer" or "Harbor Estates."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as Gig Harbor Estates, which is located at 4000 Borgen Boulevard, Gig Harbor, Washington; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

a) Harbor Estates LLC is the fee simple owner of the property located at 4000 Borgen Boulevard, Gig Harbor, which is legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

b) Harbor Estates applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the "Comp Plan Amendment" or "CPA"), to change the Comprehensive Land Use designation on the Property from

Planned Community Development Residential Low Density (PCD-RLD) to Planned Community Development Residential Medium Density (PCD-RMD); and

c) Harbor Estates seeks the Comprehensive Plan Amendment ("CPA") so that it may apply for a residential preliminary plat; and

e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA associated with the three applications for CPA's submitted to the City for 2006, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and

f) The Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by Harbor Estates could be mitigated by the conditions that are listed in Exhibit E, attached hereto;

g) The Final SEIS recommended certain potential mitigation measures to be imposed on the FHS Comp Plan Amendment, and that Harbor Estates would participate proportionately in the cost of such improvements, all as set forth in Exhibit E; and

h) The Final SEIS notes that the Washington State Department of Transportation "has not fully commented on the proposed mitigation that impact state owned transportation facilities," (Final SEIS, April 5, 2006, App. C-13); and

i) During the SEIS process, representatives from FHS, the City, WSDOT, the development community and Pierce County, participated in a number of meetings to discuss the transportation improvements described in the EIS and Final SEIS, yet Pierce County has yet to comment on the EIS or Final SEIS; and

j) The Planning Commission recommended that the City Council approve the Harbor Estates Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with Harbor Estates to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by Gig Harbor Estates as a condition of the City's approval of Harbor Estates' Comp Plan Amendment; and

WHEREAS, by Ordinance No. _____, the City approved the Harbor Estates Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. _____, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 19.32 acres in the City of Gig Harbor. After approval of the CPA, the Developer plans to submit a 126 Lot Single Family Residential Preliminary Plat application.

Section 2. *The Subject Property.* The Project site or the "Subject Property" is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

b) "Construction Engineering" means on-site construction management pertaining to the coordination of separate contracts, phased construction, monitoring of individual phases of the work, adjustment of the work to accommodate changed conditions or unanticipated interferences, determination of whether materials and workmanship are in conformance with the approved contract drawings and specifications arrangement for the performance of necessary field and laboratory tests, preparation of change orders, and review of progress payments.

c) "Council" means the duly elected legislative body governing the City of Gig Harbor.

d) "Director" means the City's Community Development Director.

e) "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.

f) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this

Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

g) "Mitigation for Harbor Estates' Project" is the specific mitigation described in Exhibit E, as well as Harbor Estates' financial participation as described in Exhibit E for the design and construction of the Transportation Mitigation Improvements, described in Exhibits C and D.

g) "Project" means the anticipated development of the Subject Property, as specified in Section 1.

h) "Project Manager" means the City's contract person responsible for the management of all phases of the project.

i) "Transportation Mitigation Improvements" are those specifically described in Exhibit C and pictorially depicted in Exhibit D, attached hereto and incorporated herein.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A - Legal description of the Subject Property.
- b) Exhibit B - Map showing approved Comp Plan Amendment.
- c) Exhibit C - List of required Transportation Mitigation Improvements to be performed by FHS, subject to a separate Development Agreement with the City, for which Gig Harbor Estates will participate in the cost.
- d) Exhibit D - Map showing the required Transportation Mitigation Improvements.
- e) Exhibit E - Mitigation to be performed by Gig Harbor Estates.

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
- b) The "Developer" or Owner is Harbor Estates LLC, whose mailing address is P.O. Box 64160, Tacoma, WA 98464.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Commencement, Duration and Termination.

A. Commencement. This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the Developer's Comprehensive Plan Amendment, and is contingent upon execution of this Development Agreement. The Developer acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years. Within this two year period, the Developer will submit project permit applications for the Project to the City for review, and if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force until all of the required mitigation described in Exhibits C, D and E is constructed/performed, unless extended or terminated as provided herein.

2. As described in the "whereas" sections above, the Developer intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public. Based on that review, the City may impose different or additional mitigation or conditions on the development of the Developer's Property. If the City imposes different or additional mitigation, then the parties shall amend this Agreement to reflect the mitigation/conditions imposed on the project permit applications. The Developer's execution of this Agreement shall not waive the Developer's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit an application to the City for a preliminary plat within two years after the Effective Date of this Agreement. If this application is submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the

Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to residential or non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Limited Vested Rights Applicable to Comp Plan Amendment. Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available water, sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a preliminary plat application within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for water, sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

Section 9. Further Discretionary Actions. Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future preliminary plat and building permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

Section 10. Developer's Obligation to Design and Construct Transportation Mitigation Improvements; City's Assumption of Developer's Obligation.

A. Developer's Obligation. Developer agrees that as a condition of the City's approval of the Comp Plan Amendment, as well as approval of a subsequent preliminary plat application (consistent with the Comp Plan Amendment), that the Developer shall participate financially in the design and construction of the transportation mitigation improvements described in Exhibits C and D attached hereto, on or before the City's issuance of any occupancy certificates for the Project. The proportionate share of financial participation is set forth in Exhibit E, attached hereto.

B. Subsequent Agreement for Financial Contribution. The Developer agrees to pay its proportionate share of the cost of all of the Transportation Mitigation Improvements, as identified in Exhibits C, D and E, along with all the City design and construction engineering costs. The parties agree to negotiate an agreement on or before the City's final decision on the Developer's preliminary plat application that will establish the following: (a) the timing of the Developer's proportionate share of the initial payment for design costs; (b) the establishment of a set aside account at the Developer's bank for the Developer's proportionate share of the funds necessary to construct the Transportation Mitigation Improvements, using the forms approved by the City Attorney, so that the City can draw funds as needed for the construction; (c) the manner in which change orders increasing the cost of the Transportation Improvements will be handled; and (d) the manner in which disputes between the parties will be settled. The Developer acknowledges that failure to enter into an agreement with the City as set forth above will result in the City's decision not to construct the Transportation Mitigation Improvements, and may require the Developer to enter into an agreement with FHS and others in order to ensure construction of the Transportation Improvements.

The City's decision to construct these Transportation Mitigation Improvements as set forth herein shall not be interpreted to mean that the City (or the public in general) has any responsibility for the funding of the Transportation Mitigation Improvements. If the City receives the CERB grant, and if the grant covers any of costs paid by the Developer, the City agrees to reimburse the Developer for Developer's costs relating to the Transportation Mitigation Improvements that are listed in Exhibits C and D. However, the CERB grant, if received, will only cover a portion of the Transportation Mitigation Improvements. The Developer shall pay the City for its proportionate share of all costs relating to the City's construction of all Transportation Mitigation Improvements, including those not covered by the CERB grant, as shown in Exhibit E.

C. Additional Financing Methods. The Developer acknowledges that in order for the City to construct the Transportation Mitigation Improvements, the City must adopt some framework for the assessment and collection of funds from property owners for same (it is unknown whether the City will receive the CERB grant, and the CERB grant will not cover all of the Transportation Mitigation Improvements). Therefore, the City may create a street assessment reimbursement district pursuant to chapter 35.72 RCW, local improvement district or other means of financing the construction of the Transportation Mitigation Improvements. The City agrees to reimburse the Developer for the costs of any Transportation Mitigation Improvements that have been previously paid by the Developer, to the extent allowed by law.

The Developer acknowledges that the Property legally described in Exhibit A would be specially benefited by the Transportation Mitigation Improvements and the mitigation described in Exhibit E. The Developer agrees to sign a petition for the formation of a LID or ULID for the Transportation Mitigation Improvements and/or the mitigation described in Exhibit E at such time as one is circulated and the Developer hereby

appoints the Mayor of the City of Gig Harbor has his/her/its attorney-in-fact to sign such a petition in the event the Developer fails or refuses to do so.

With full understanding of the Developer's right to protest formation of an LID or ULID to construct the Transportation Mitigation Improvements pursuant to RCW 35.43.180, the Developer agrees to participate in any such LID or ULID and to waive his/her/its right to protest formation of the same. The Developer shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provision of this Agreement, this waiver of the right to protest shall be valid for a period of ten (10) years from the date this Agreement is signed by the Developer.

The Developer acknowledges that formation of any street assessment reimbursement district is subject to the procedures in chapter 35.72 RCW, and that the City Council's ruling on such area is final. RCW 35.72.040(2). The Developer agrees not to challenge the adoption of an ordinance adopted pursuant to RCW 35.72.010.

The Developer acknowledges that nothing in this Section requires the City to construct the Transportation Mitigation Improvements on or before a date certain, or at all, in the event of an appeal of the Comprehensive Plan Amendment(s) or Development Agreements, the street assessment reimbursement district, LID or other method of financing design and construction of the Transportation Mitigation Improvements.

Section 11. *No Obligation to Financially Contribute to the Required Transportation Mitigation Improvements or Perform Mitigation if Permits for the Project are Not Approved.* The parties acknowledge that the Developer shall not have any obligation to financially contribute to the design and construction of the Transportation Mitigation Improvements or the Mitigation described in Exhibit E if the City does not approve (or conditionally approve) the Developer's application for a preliminary plat for the Project described herein. In the event that the applications submitted by FHS for its Property are not approved, the City may, in its sole discretion, elect not to perform as described in Section 10(B) above.

Section 12. *Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required.* The parties acknowledge that the City's approval of the preliminary plat for Gig Harbor Estates may include the Transportation Mitigation Improvements, the mitigation described in Exhibit E, as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the application for preliminary plat.

Section 13. Existing Land Use Fees and Impact Fees.

A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.

C. The Developer may request a credit from transportation impact fees for the construction of the Transportation Improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid for any improvements.

Section 14. Dedication of Public Lands. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the Development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 15. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 16. Effect upon Termination on Developer Obligations.

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning

code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

Section 18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 19. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

Section 20. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent

Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 22. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

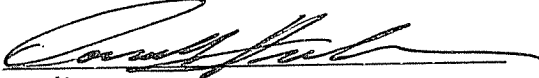
Section 23. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 24. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 25. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:
HARBOR ESTATES, LLC

By 
Its Manager

CITY OF GIG HARBOR

By _____
Its Mayor

ATTEST:

By _____
City Clerk

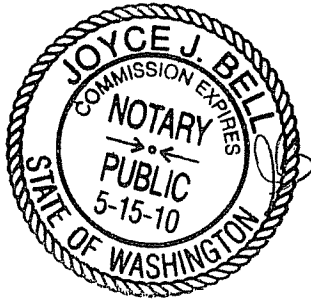
APPROVED AS TO FORM:

By _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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

Dated: 7/5/06



Joyce J. Bell

Joyce J. Bell
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:
Aburn WA

My Commission expires: 5/15/10

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: ___

Exhibit A

Legal description of the Subject Property

Tax Parcel #02-22-30-3-002

The East half of the Southeast quarter of the Southwest quarter of Section 30,
Township 22 North, Rang 2 East of the Willamette Meridian; except Borgen Boulevard
deeded to the City of Gig Harbor through AFN 2000-07-13-0671

Exhibit C

List of required Transportation Mitigation Improvements to be performed by FHS, subject to a separate Development Agreement with the City, for which Harbor Estates LLC will participate in the cost.

In satisfaction of the conditions of the Comprehensive Plan Amendment and as consideration for the Development Agreement, the Developer shall:

1. Implement transportation demand management measures in accordance with the City's adopted commute trip reduction regulations, as set forth in chapter 10.28 GHMC, to reduce single occupant vehicle use.
2. Allow future transit service to be provided directly to the Property, consistent with the plans of Pierce Transit, and provide accommodations for such service in the approved site plan for the Project.
3. Construct full frontage improvements along the west boundary of the Property that fronts on Canterwood Boulevard, and construct a waterline transmission main extension along Canterwood Blvd. up to and across the entire Property frontage, consistent with adopted City standards. Improvements shall consist of a twelve (12) foot wide lane, cement concrete curb and gutter, planter strip, sidewalk, retaining walls, street illumination, storm drain system and an irrigation system.
4. Construct on Canterwood Boulevard a second southbound lane along with a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary of the Property. South Access of FHS to RAB required. The City is responsible for the design and construction of the improvements to the right-of-way.
5. Construct on the northbound (east) side of Canterwood Boulevard a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary (or south access) of the Property.
6. Construct a bypass lane on the north side of the East Roundabout from Canterwood Boulevard southbound to the SR 16 on-ramp northbound(Westbound). The design shall meet WSDOT standards.
7. Construct a second exit lane on the SR 16 on-ramp northbound (westbound) from the East Roundabout for an appropriate taper length acceptable to the Washington State Department of Transportation ("WSDOT"). The design shall meet WSDOT standards
8. Construct and extend the storage of the SR 16 off-ramp northbound 450 feet south of the East Roundabout. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might

adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

9. Construct a bypass lane on the south side of the East Roundabout from the SR 16 off-ramp northbound(westbound) to Burnham Drive southbound.

10. Construct a second southbound lane on the SR 16 off-ramp to the existing Roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet of additional storage. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

11. Construct a second lane circulating lane around the entire circumference of the West Roundabout. The design shall meet WSDOT standards.

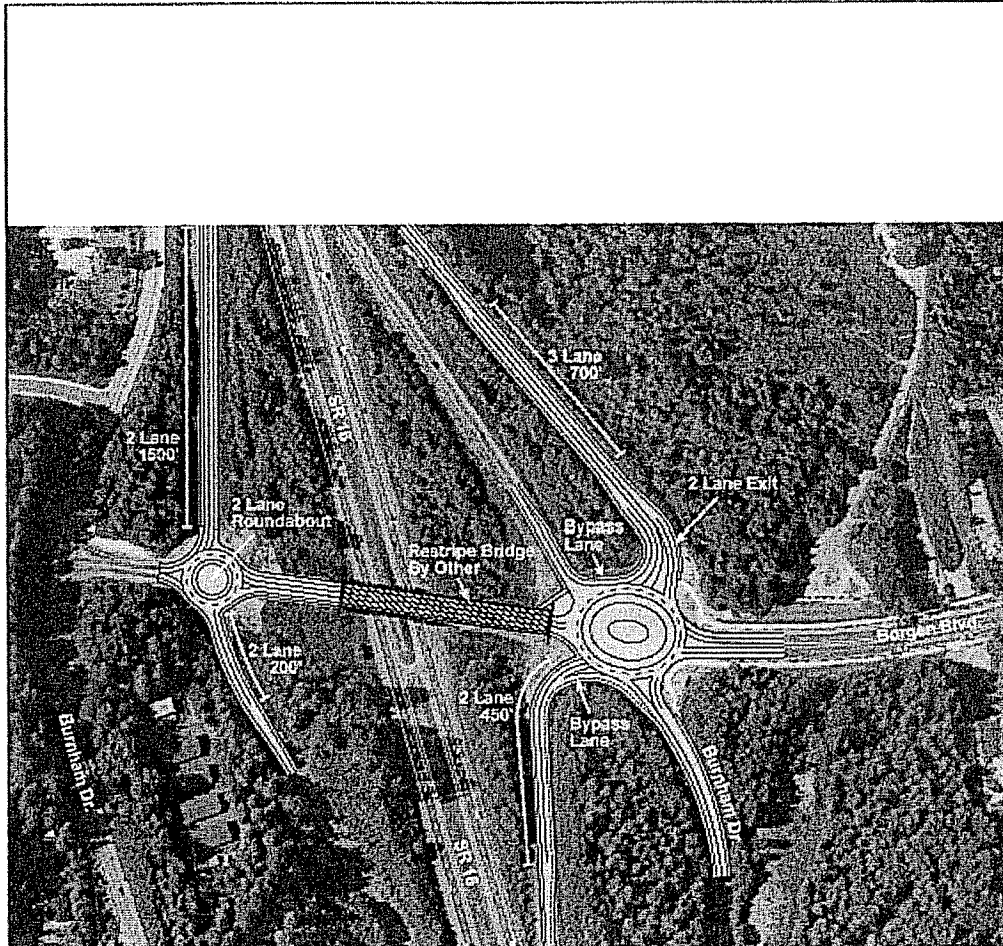
12. Construct a second exit lane on the SR 16 on-ramp southbound from the West Roundabout for an appropriate taper length acceptable to WSDOT. The design shall meet WSDOT standards.

13. Convert the channelization of the existing Burnham Drive bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, or as required by WSDOT within the existing bridge width. The design shall meet WSDOT standards.

14. Convert the channelization of the East Roundabout to align with the revised channelization on the existing Burnham Drive bridge over SR 16.

15. Exhibit D pictorially depicts the required improvements.

Exhibit D- Map showing the required Transportation Mitigation Improvements



*Proposed Mitigation
St. Anthony Hospital*

*City of Gig Harbor
2005 Comprehensive Plan Amendments*

COGH0000-0025

January 2006

Figure 14



DAVID EVANS
& ASSOCIATES

Gx1165

p:\c\cogh0000\025-0800\res-0830\deliv\enables\facis\final_seis_040506.doc

Exhibit E
Mitigation to be performed by Harbor Estates LLC

CPA 04-01 (Huber/Bingham Property) Site-Specific Mitigation Measures
Pages 90 & 91 FSEIS

Land use impacts from the proposed development would be regulated by the provisions of the Comprehensive Plan and the Gig Harbor Municipal Code. Where more intense development is possible on the Huber/Bingham Property site (CPA 04-01) due to higher densities allowed under the PCD-RMD zone, the Housing Element of the City's Comprehensive Plan contains specific policies designed to mitigate the impacts of higher density housing, including Policies 5.2.1., 5.2.2., and 5.2.3. More specifically the provisions of the PCD-RMD zone (GHMC 17.21), the City's subdivision regulations (GHMC Title 16), and the City's development standards are expected to mitigate any impacts to a nonsignificant level.

The Huber/Bingham Property CPA application in particular could generate between 122 and 169 PM peak hour trips depending on whether the project develops as proposed or were to utilize higher residential densities on the site allowed under the proposed rezone scenario. The TIA prepared for the CPA application by PacWest Engineering (2005) estimated 127 PM peak hour trips on Borgen Boulevard will be generated by the proposed 121 lot single family subdivision. That calculation relied on an unverified trip rate formula not commonly used in traffic studies, and is excessive. The 122 PM peak hour trip figure estimated in the SEIS can be used for subsequent development review purposes.

As part of a pre-annexation agreement in 2001, the City reserved 3.2 percent of the existing two-lane capacity of Borgen Boulevard for future residential development on the parcel which amounts to approximately 480 total daily trips in two directions or a maximum of 240 daily trips in any one direction. This translates to a maximum reserved capacity of 48 PM peak hour trips onto the Borgen Boulevard corridor. That capacity reservation expires as of January 1, 2006 according to the original pre-annexation development agreement between the applicant and the city. The City could issue a new CRC for 1,160 Average Daily Trips, subject to acceptance of mitigation conditions.

Under the traffic concurrency management provisions of GHMC 19.10, the City must evaluate roadway capacity planned to be available for the proposed CPA/rezone and may award a CRC upon the satisfactory performance of that evaluation. Based on the Borgen Boulevard corridor roadway and intersection improvements identified in the North Gig Harbor Traffic Mitigation Plan (DEA Inc., December 2005) and the Land Use Map and Comprehensive Plan Policy Amendments recommended in this SEIS (including adoption of LOS E at the Borgen Boulevard/SR 16 intersection), it appears

that sufficient planned roadway capacity will exist to render CPA 04-01 compliant with the concurrency requirements GHMC 19.10.

The specific mitigation requirements for this development should include:

- The developer of the subdivision may be subject to payment of traffic impact fees in accordance with the provisions of GHMC 19.12, to the extent such fees do not duplicate the following required mitigation measures for the proposed CPA 04-01 residential subdivision:
- Required frontage improvements along Borgen Boulevard consistent with adopted design standards for the facility.
- Require the developer to participate proportionately in the cost of the Borgen Boulevard/SR 16 interchange roundabout improvements and ramp improvement, or equivalent interchange replacement, described hereafter as mitigation for St. Anthony Hospital. Based on 122 trips for the Huber/Bingham development and 535 trips for the hospital development, the proportional shares are 18.57% and 81.43%, respectively.
- Require, at the project level review, a second access point for the subdivision consistent with projects L-2 and L-3 in Figure 13. If neither alternate access can be constructed and open at time of occupancy, then redesign the proposed single access point onto Borgen Boulevard to allow for additional lanes to alleviate peak hour congestion and ensure safe public access during peak periods (i.e., to ensure safe ingress/egress for emergency vehicles and to reduce the potential for accidents from turning movements during peak periods).

UNAVOIDABLE ADVERSE IMPACTS

With respect to cumulative impacts of development up to the limits of the land use plan, traffic volumes will greatly increase in the Borgen Boulevard corridor until buildout is realized. Assuming all suggested mitigation measures are implemented, LOS standards will be met (or nearly so) at all locations; however, the congestion at key intersections will remain greater than existing conditions. With respect to site-specific unavoidable adverse impacts of CPA 04-01, CPA 05-01, and CPA 05-03, none are anticipated provided that all recommended mitigation is provided.

RESOLUTION NO. 6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF DEVELOPMENT AGREEMENTS WITH FRANCISCAN HEALTH SYSTEM.

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, Franciscan Health System applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment to rearrange within the Tract 26.7 acres of the Property designated as Planned Community Development - Residential Medium Density (PCD-RMD) and 14.8 acres of Planned Community Development - Business Park, and to redesignate 19.3 acres of the PCD-RMD portion of the Tract as PCD-BP;and

WHEREAS, on July 10, 2006, the City Council held a public hearing on the Development Agreements during a regular public meeting and voted to approve the Development Agreements attached hereto as Exhibits A and B; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreements attached hereto as Exhibit A and B, with the applicant Franciscan Health System.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreements against the Property legally described in Exhibit A to the Development Agreements, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10th day of July 2006.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: //06
PASSED BY THE CITY COUNCIL: //06
RESOLUTION NO. 6

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND FRANCISCAN HEALTH SYSTEM, FOR A
COMPREHENSIVE PLAN AMENDMENT
HOSPITAL/MEDICAL OFFICE BUILDING**

THIS DEVELOPMENT AGREEMENT is made and entered into this _____ day of _____, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Franciscan Health System, a nonprofit corporation organized under the laws of the State of Washington, hereinafter the "Developer," or "FHS."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as the Franciscan Health System Hospital/Medical Office Building Development; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

a) FHS is the fee simple owner of the approximately 37.84 acre parcel of real property on the east side of Canterwood Boulevard N.W., about 1,500 feet north of Borgen Boulevard in Gig Harbor, Washington, having a street address of 11567 Canterwood Boulevard N.W., which is legally described in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property"); and

b) The Property is bisected by an approximately 3.6 acre energy transmission right-of-way (the "Right-of-Way") owned by Tacoma Power (the "Property and the Right-of-Way is collectively referred to herein as the "Tract"); and

c) FHS applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the "Comp Plan Amendment" or "CPA"), to reconfigure within the Tract 26.7 acres of the Property designated as Planned Community Development – Residential Medium Density (PCD-RMD) and 14.8 acres of Planned Community Development – Business Park, and to redesignate 19.3 acres of the PCD-RMD portion of the Tract as PCD- and

d) FHS seeks the Comp Plan Amendment so that it may apply for a rezone, conditional use permit (CUP), site plan, building permit(s) and design review for the construction of an 80-bed hospital of approximately 213,000 square feet, and an associated medical office building of approximately 100,000 square feet, and parking facilities for the hospital and medical office building (hereinafter collectively referred to as the "Project"); and

e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA, as well as two other applications for Comp Plan Amendments, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and

f) It is the City's position that the Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by FHS could be mitigated by the construction of certain transportation improvements, FHS's dedication of right-of-way and also proposed the adoption by the City of certain other amendments to its Comp Plan to facilitate and complement the transportation improvements it proposed; and

g) It is the City's position that the Final SEIS recommended certain potential mitigation measures to be imposed on the FHS Comp Plan Amendment, acknowledging that "subsequent development review, including SEPA review, will further evaluate potential impacts as appropriate and applicable at the more site-specific St. Anthony Hospital conditional use permit application and review stage," (Final SEIS, April 5, 2006, page 91); and

h) It is the position of FHS that the Final SEIS recommended that FHS be required to dedicate property to the City for use as a right-of-way to be used as an arterial connecting Canterwood Boulevard and Borgen Boulevard and found that dedication of such right-of-way will adequately "offset the impacts of

the requested rezone as a non-project action.” (Final SEIS, April 5, 2006, App. A unnumbered page 7); and

i) It is the position of FHS that the Final SEIS provided a “detailed mitigation plan for future reference in subsequent development review processes regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments evaluated”; and

j) Subject to the conditions set forth in this Development Agreement, FHS is willing to perform, as a condition of the City’s approval of the Comp Plan Amendment proposed by FHS, the transportation improvements recommended by the Final SEIS in “additional phases of development review.” (Final SEIS, April 5, 2006, page 89); and

k) The Final SEIS notes that the Washington State Department of Transportation “has not fully commented on the proposed mitigation that impact state owned transportation facilities,” (Final SEIS, April 5, 2006, App. C-13); and

l) During the SEIS process, representatives from FHS, the City, WSDOT, the development community and Pierce County, participated in a number of meetings to discuss the transportation improvements described in the EIS and Final SEIS, yet Pierce County has yet to comment on the EIS or Final SEIS; and

m) The Planning Commission recommended that the City Council approve the FHS Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with FHS to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by FHS as a condition of the City’s approval of FHS’s Comp Plan Amendment; and

WHEREAS, by Ordinance No. _____, the City approved the FHS Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. _____, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, which is planned as an 80-bed hospital of approximately 213,000 square feet, and an associated medical office building having approximately 100,000 square feet, and parking facilities for the hospital and medical office building.

Section 2. *The Subject Property.* The Project site or the "Subject Property" is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

A. "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

B. "Construction Engineering" means on-site construction management pertaining to the coordination of separate contracts, phased construction, monitoring of individual phases of the work, adjustment of the work to accommodate changed conditions or unanticipated interferences, determination of whether materials and workmanship are in conformance with the approved contract drawings and specifications, arrangement for the performance of necessary field and laboratory tests, preparation of change orders, and review of progress payments.

C. "Council" means the duly elected legislative body governing the City of Gig Harbor.

D. "Director" means the City's Community Development Director.

E. "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.

F. "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

G. "Project" means the anticipated development of the Subject Property, as specified in Section 1.

H. "Project Manager" means the City's contract person responsible for the management of all phases of the project.

I. "Transportation Mitigation Improvements" are those specifically described in Exhibit C and pictorially depicted in Exhibit D, attached hereto and incorporated herein.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- A. Exhibit A - Legal description of the Subject Property.
- B. Exhibit B - Map showing approved Comp Plan Amendment.
- C. Exhibit C - List of Transportation Mitigation Improvements.
- D. Exhibit D - Map showing the required Transportation Mitigation Improvements.

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- A. The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
- B. The "Developer" or Owner is the Franciscan Health System, which owns the Subject Property in fee, and whose principal office is located at 1717 South "J" Street, Tacoma, WA 98405; Attn: Laure Nichols, Sr. Vice President of Strategic Planning.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Commencement, Duration and Termination.

A. **Commencement.** This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the FHS Comprehensive Plan Amendment is contingent upon execution of this Development Agreement. FHS acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years from the Effective Date.

2. Within this two year period, FHS will submit project permit applications for the Project to the City for review. As described in the "whereas" sections above, FHS intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public.

a) if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force beyond the two year period until all of the required mitigation described in Exhibits C and D is constructed/performed, unless the Agreement is extended or terminated as provided herein.

b) If the City imposes different or additional mitigation on the development of FHS's Property, then the parties shall amend this Agreement during the two year period to reflect the mitigation/conditions imposed on the project permit applications. FHS's execution of this Agreement shall not waive FHS's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit the project permit applications to the City for a rezone, conditional use permit, site plan and design review within two years after the Effective Date of this Agreement. If these applications are submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7 or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This

Agreement shall automatically terminate and be of no further force and effect as to any non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Limited Vested Rights Applicable to Comp Plan

Amendment. Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available water, sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a rezone and conditional use permit within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for water, sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

Section 9. Further Discretionary Actions. Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future rezone, design review, site plan, building permits and conditional use permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

Section 10. Developer's Obligation to Design and Construct Transportation Mitigation Improvements

A. Subject to the condition that it shall receive the City's approval of the Comp Plan Amendment, as well as the City's issuance of a transportation capacity reservation certificate for 535 P.M. peak hour trips (the "CRC") and approval (or conditional approval) of a subsequent rezone (consistent with the Comp Plan Amendment), approval (or conditional approval) of a conditional use permit, design review, building permits and site plan for the Project described herein, Developer shall design and construct the transportation mitigation improvements described in Exhibits C and D attached hereto (or fund the construction of those transportation mitigation improvements) Understanding if

the City doesn't get the CERB Grant, the City may decide not to construct any of the improvements.

Section 11. Developer's Agreement on Use of the Subject Property.

A. As identified in the Final SEIS, the Developer agrees that if the rezone is approved or approved with conditions no development activity would occur on the remaining 7.4 acre portion of the site that would remain in the PCD-RMD zoning classification. (FEIS, April 5, 2006, p. 91.) Therefore, future development in this area shall be restricted to uses that do not involve construction of a building or parking facilities (e.g., open space, passive recreational uses, future streets, buffering trails, critical area mitigation, etc.) or facility that would result in the creation of any additional vehicular trips.

B. The Developer agrees that if the rezone is granted, the use of the PCD-BP portion of the Property shall be limited to hospital and related and auxiliary uses, including without limitation, medical office buildings and parking facilities, as long as such uses are consistent with the PCD-BP zone. The Developer agrees that the size of the project shall be limited to an 80-bed hospital containing approximately 213,000 square feet, an office building containing approximately 100,000 square feet, and related parking facilities for the hospital and medical office building.

C. In the event that the Developer desires to reduce the size of the medical office building, the amount of reduction (in square feet) may be added to the hospital, so that the size of the hospital is increased. Except as permitted in subsection D below, in no event shall the combined square footage of the hospital and medical office building exceed approximately 313,000 square feet.

Section 12. Additional Floor on Hospital Building. FHS originally applied to the State for a hospital with over 80 beds, but the State granted a certificate of need for an 80 bed hospital. FHS may wish to again apply to the State in the future for a larger hospital. However, if FHS constructs an 80 bed hospital now and receives a certificate of need for a larger hospital later, the construction of the hospital expansion will seriously inconvenience both the hospital staff and patients. Therefore, FHS may desire to construct an additional floor of 30,000 square feet at the same time as construction takes place for the main hospital building. FHS acknowledges that the concurrency certificate associated with its Comprehensive Plan Amendment does not cover any applications for the additional 30,000 square feet, and that FHS must submit all required application materials to be reviewed under a new project permit application process. The City shall fully review these applications under SEPA and the City's codes in existence at the time of submission of the applications. If FHS cannot obtain a concurrency certificate for the 30,000 additional floor, the City acknowledges that FHS may appeal the denial of concurrency by requesting

that construction be allowed concurrent with construction of the main hospital building, on condition that the additional floor not be occupied until the State grants the required approval for hospital expansion and concurrency can be achieved.

The Comprehensive Plan Amendment that has been approved conditioned on this Development Agreement does not cover this 30,000 square foot additional floor to the hospital. A determination of concurrency shall be made for the 30,000 square feet at the time FHS may legally occupy the additional floor (such as after the State grants the required approval for hospital expansion), not at the time the applications are submitted. In addition, FHS acknowledges that years could pass between the time that the additional floor is constructed (if approved) and the time that it is occupied. During that time, the applicable codes may change. Therefore, FHS acknowledges that the Building Official may request that conditions be imposed or impose conditions on the issuance of any permits requiring compliance with the applicable City Building Code in effect at the time of occupancy.

Nothing in this Agreement shall be construed to be approval of any application for this 30,000 square foot additional floor to the hospital, or any site or building plan. All site development and construction, including but not limited to emergency vehicle access, fire flow, fire hydrant locations, allowable heights and area and fire resistant construction must comply with the requirements of GHMC Title 15 as it exists at the time of building permit application for the 30,000 square foot additional floor, and if a condition is added to the permit allowing delayed occupancy, these requirements must also be satisfied as to the version of GHMC Title 15 as it exists at the time of occupancy.

Section 13. No Obligation to Perform Required Transportation Mitigation Improvements if Permits for the Project are Not Approved. The parties acknowledge that the Developer shall not have any obligation to perform or construct the transportation mitigation improvements if the City does not approve (or conditionally approve) the Developer's applications for rezone, conditional use permit and site plan for the Project described herein. In the event that the applications are not approved, then the City may take whatever action the City deems necessary with regard to amendment of the City's Comprehensive Plan for the Property, consistent with Section 20 herein. Any transportation concurrency certificate granted for the Comprehensive Plan Amendment shall expire within two years of the effective date of this Agreement, as provided in Section B(1).

Section 14. Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required. The parties acknowledge that the City's approval of the rezone, conditional use permit and site plan approval may include the transportation mitigation improvements,

as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the applications for rezone, conditional use permit or site plan approval.

Section 15. Existing Land Use Fees and Impact Fees.

A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.

C. The Developer may request a credit from transportation impact fees for the construction of the transportation mitigation improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid or agreed to pay for any improvements.

Section 16. Dedication of Public Lands. FHS shall convey to the City by quit claim deed or easement for street right-of-way, a strip of land thirty (30) feet in width along the generally straight (except for two irregular indentations) south boundary line of the Property, which, when combined with a thirty (30) foot wide strip along the north boundary line of the abutting property (the south boundary line of the Property and the north boundary line of the abutting property are the same line), when acquired by the City, will produce a sixty (60) foot wide right-of-way to be used by the City for street purposes. At the time FHS applies for the building permit(s) associated with the Project, FHS may submit evidence of this dedication to the City to apply for an impact fee credit under GHMC Section 19.12.080. FHS acknowledges that the City has not yet included this dedication and proposed right-of-way in the City's 2006 Six Year Road Plan. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within two (2) years of the Effective Date of this Agreement.

Section 17. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 18. Effect upon Termination on Developer Obligations.

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 19. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

Section 20. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the

duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 21. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

Section 22. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 23. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 24. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees, which shall not exceed Three Thousand Dollars (\$3,000.00). This development agreement shall not take effect until the fees provided for in this section are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 25. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of

Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 26. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 27. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 28. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

FRANCISCAN HEALTH SYSTEM

CITY OF GIG HARBOR

By _____
Its _____

BY _____
Its Mayor

ATTEST:

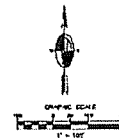
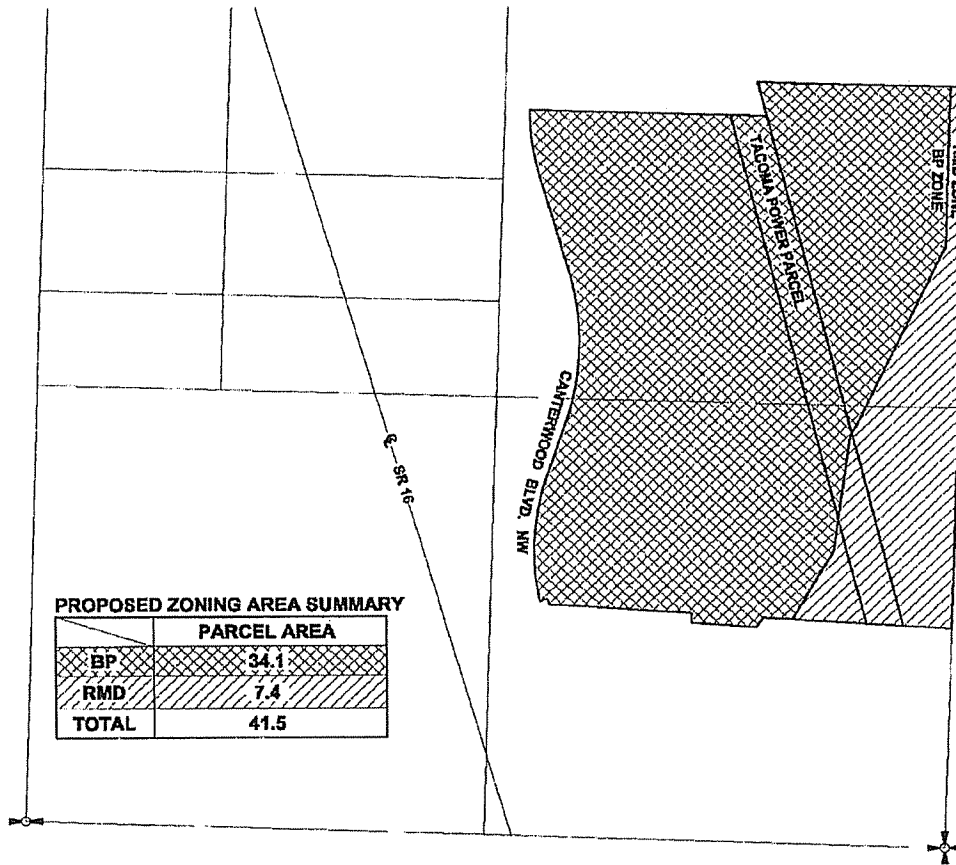
By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

**EXHIBIT B
APPROVED COMPREHENSIVE PLAN MAP AMENDMENT**

**Exhibit "C"
Map of PROPOSED Land Use**



1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	PROPOSED ZONING MAP St. Anthony Hospital GREG HANCOCK, WABSI #107018	PREPARED BY THE HANCOCK COUNTY FRANCISCAN HEALTH SYSTEM 1000 Central Ave., West Abington West Abington, PA 19390 PHONE: (610) 487-4200 FAX: (610) 487-4205	ADWL ARCHITECTURAL DESIGN 1000 Central Ave., West Abington West Abington, PA 19390 PHONE: (610) 487-4200 FAX: (610) 487-4205	DATE: _____ PLAN: _____ SHEET: _____ TOTAL SHEETS: _____	TITLE: _____ SCALE: _____ DRAWN BY: _____ CHECKED BY: _____ DATE: _____	PROJECT NO.: _____ CLIENT: _____ ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____
	101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150					

**APPROVED COMPREHENSIVE PLAN MAP AMENDMENT
PCD-BP ZONE LEGAL DESCRIPTION**

THAT PORTION OF LOT 1 OF THE BOUNDARY LINE ADJUSTMENT AS
RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200406290853
LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTH EAST CORNER OF SAID LOT 1
THENCE N86°06'11"W ALONG THE SOUTH BOUNDARY OF SAID LOT 1 TO THE
BEGINNING OF THIS LINE DESCRIPTION;

THENCE N29°49'34"E 235.31 FEET
THENCE N08°11'16"E 345.74 FEET
THENCE N25°28'44" E 633.15 FEET
THENCE N01°54'57"E 485.49 FEET TO THE NORTH LINE OF SAID LOT 1 AND THE
TERMINUS OF THIS LINE DESCRIPTION.

EXHIBIT C REQUIRED TRANSPORTATION MITIGATION

In satisfaction of the conditions of the Comprehensive Plan Amendment and as consideration for the Development Agreement, the Developer shall:

1. Implement transportation demand management measures in accordance with the City's adopted commute trip reduction regulations, as set forth in chapter 10.28 GHMC, to reduce single occupant vehicle use.
2. Allow future transit service to be provided directly to the Property, consistent with the plans of Pierce Transit, and provide accommodations for such service in the approved site plan for the Project.
3. Construct full frontage improvements along the west boundary of the Property that fronts on Canterwood Boulevard, and construct a waterline transmission main extension along Canterwood Blvd. up to and across the entire Property frontage, consistent with adopted City standards. Improvements shall consist of a twelve (12) foot wide lane, cement concrete curb and gutter, planter strip, sidewalk, retaining walls, street illumination, storm drain system and an irrigation system.
4. Construct on Canterwood Boulevard a second southbound lane along with a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary of the Property. South Access of FHS to RAB required.
5. Construct on the northbound (east) side of Canterwood Boulevard a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary (or south access) of the Property.
6. Construct a bypass lane on the north side of the East Roundabout from Canterwood Boulevard southbound to the SR 16 on-ramp northbound(Westbound). The design shall meet WSDOT standards.
7. Construct a second exit lane on the SR 16 on-ramp northbound (westbound) from the East Roundabout for an appropriate taper length acceptable to the Washington State Department of Transportation ("WSDOT"). The design shall meet WSDOT standards
8. Construct and extend the storage of the SR 16 off-ramp northbound 450 feet south of the East Roundabout. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

9. Construct a bypass lane on the south side of the East Roundabout from the SR 16 off-ramp northbound(westbound) to Burnham Drive southbound.

10. Construct a second southbound lane on the SR 16 off-ramp to the existing Roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet of additional storage. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

11. Construct a second lane circulating lane around the entire circumference of the West Roundabout. The design shall meet WSDOT standards.

12. Construct a second exit lane on the SR 16 on-ramp southbound from the West Roundabout for an appropriate taper length acceptable to WSDOT. The design shall meet WSDOT standards.

13. Convert the channelization of the existing Burnham Drive bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, or as required by WSDOT within the existing bridge width. The design shall meet WSDOT standards.

14. Convert the channelization of the East Roundabout to align with the revised channelization on the existing Burnham Drive bridge over SR 16.

15. Exhibit D pictorially depicts the required improvements.

EXHIBIT D MAP OF REQUIRED TRANSPORTATION MITIGATION



*Proposed Mitigation
St. Anthony Hospital*

City of Gig Harbor
2005 Comprehensive Plan Amendments

COGH0000-0025
January 2005

Figure 14



DAVID EVANS
& ASSOCIATES

CA1185

**AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND FRANCISCAN HEALTH SYSTEM,
FOR CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS**

THIS AGREEMENT is made and entered into this ____ day of _____, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Franciscan Health System, a nonprofit corporation organized under the laws of the State of Washington, hereinafter the "Developer," or "FHS."

RECITALS

WHEREAS, by Ordinance No. ____, the City approved the FHS Comp Plan Amendment, subject to and conditioned upon execution of a Development Agreement (hereinafter the "FHS Development Agreement") which described certain transportation mitigation to be performed by FHS (the "Transportation Mitigation"); and

WHEREAS, the City applied to the State of Washington Department of Community Economic Revitalization Board for a grant of Five Million Dollars (\$5,000,000.00) (the "CERB Grant"), to be used for the construction of that portion of the Transportation Mitigation relating to infrastructure improvements to roadway structures connected to the Burnham/Borgen Interchange, which is adjacent to the City of Gig Harbor; and

WHEREAS, the City will not know whether it has been awarded the CERB Grant until 2007 legislative session or thereabouts; and

WHEREAS, the inquiry performed by the City at this time as to the improvements likely to be covered by the CERB Grant disclosed that the Grant may not include all of the Transportation Mitigation proposed within unincorporated Pierce County and WSDOT right-of-way; and

WHEREAS, the Transportation Mitigation that FHS is required to perform is within the City limits, unincorporated Pierce County and WSDOT right-of-way; and

WHEREAS, the parties desire to address the means by which the FHS Transportation Mitigation will be performed, if the CERB Grant is received by the City and the City believes it to be cost effective and efficient to construct any portion of the Transportation Mitigation; and

WHEREAS, the parties also desire to address the means by which the FHS Transportation Mitigation will be designed, because the design work must proceed

immediately (before the parties have knowledge whether the CERB Grant has been received);

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The FHS Transportation Mitigation. The FHS Transportation Mitigation is described in Exhibit A, attached hereto and incorporated herein by this reference. A map showing the location of the Transportation Mitigation is attached hereto as Exhibit B and incorporated herein by this reference.

Section 2. Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

b) "Construction Management" means on-site construction management pertaining to the coordination of separate contracts, phased construction, monitoring of individual phases of the work, adjustment of the work to accommodate changed conditions or unanticipated interferences, determination of whether materials and workmanship are in conformance with the approved contract drawings and specifications, arrangement for the performance of necessary field and laboratory tests, preparation of change orders, and review of progress payments.

c) "FHS Project" means the anticipated development of an 80-bed hospital of approximately 213,000 square feet and an associated medical office building of approximately 100,000 square feet, and parking facilities for the hospital and medical office building on the 37.84 acre parcel on the east side of Canterwood Boulevard N.W., about 1,500 feet north of Borgen Boulevard in Gig Harbor, Washington, having a street address of 11567 Canterwood Boulevard N.W. (the "FHS Property").

d) "Project Manager" means the contract person responsible for performing the Construction Management.

Section 3. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A - FHS Transportation Mitigation.
- b) Exhibit B - Map showing approved FHS Transportation Mitigation.

Section 4. Parties to Agreement. The parties to this Agreement are:

a) The “City” is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

b) The “Developer” or “FHS” is the Franciscan Health System, which owns the FHS Property in fee, and whose principal office is located at 1717 South “J” Street, Tacoma, WA 98405; Attn: Laure Nichols, Sr. Vice President of Strategic Planning.

Section 5. Developer’s Obligation to Construct Transportation Mitigation Improvements. The Developer is obligated to install and complete the Transportation Mitigation improvements identified in Exhibits A and B at its own cost, and to assure final completion prior to the time a Certificate of Occupancy is issued for the FHS Project on the FHS Property. Construction of the Transportation Mitigation Improvements shall include design, construction engineering, excavating, grading, construction, wetland mitigation (if needed), acquisition of property (if needed), securing of permits/approvals, and related utility and storm water management work.

Section 6. City’s Agreement to Perform Transportation Mitigation Improvements if CERB Grant is Received. The Comprehensive Plan Amendment for FHS (approved by the FHS Development Agreement) is unusual and presents unique circumstances, such as:

A. Currently, there is no hospital in Gig Harbor or the immediately surrounding area. Construction of a hospital would be a benefit to the entire community.

B. The Transportation Mitigation improvements (Exhibits A and B) are extensive, and involve more than just the hospital’s street frontage improvements.

C. The Transportation Mitigation improvements (Exhibits A and B) are located both within the City limits and unincorporated Pierce County, and are within both City right-of-way and WSDOT right-of-way.

D. The City has applied for a CERB Grant for a portion of the Transportation Mitigation improvements (as well as the extension of a water line along Canterwood Boulevard N.W.), and if the City receives this Grant, it will be available to reimburse the Developer for its proportionate share of the cost of the design and construction of the improvements covered by the Grant.

E. Construction of the Transportation Mitigation improvements must be performed under the public works competitive bidding process, as well as all other associated procedures, such as prevailing wage, etc., in order for the costs to be reimbursed under the CERB Grant.

F. It is likely that the CERB Grant cannot be used for the design and construction of the Transportation Mitigation improvements that are within unincorporated Pierce County and WSDOT right-of-way. The City could design and

construct the portion of the Transportation Mitigation improvements within the City limits (so that this portion of the improvements would be eligible for reimbursement under the CERB Grant) and the Developer could design and construct the remainder. However, an integrated approach with one entity responsible for performing all of the work would likely be more efficient, cost less and have better results, as long as the Grant amount is significant enough to warrant the City's involvement in the construction process.

G. In light of the above, and in lieu of the Developer's design and construction of the Transportation Mitigation improvements described in Exhibits A and B, the City agrees to design and construct all of the improvements that are a part of the Transportation Mitigation at cost of FHS subject to subsection J herein. In addition, the City's agreement is subject to the following conditions:

1. The Developer agrees to pay for all of the design and Project Manager costs associated with the Transportation Mitigation improvements as set forth herein. The City shall initiate the design and construction engineering under the procedure set forth in Section 7 below. If the City receives the CERB Grant, and to the extent allowed by the CERB Grant and applicable law, the City shall reimburse FHS for its proportionate share of the design costs associated with CERB Grant-covered improvements.

2. The Developer agrees to pay the cost of all of the Transportation Mitigation improvements, as identified in Exhibits A and B, along with all the City construction management costs.

3. If the City receives the CERB Grant, and if the CERB Grant covers any portion of the design and construction of the Transportation Mitigation improvements and related construction engineering, the City agrees to reimburse FHS for the FHS's proportionate share of the costs paid by it that are associated with same, to the extent allowed by the CERB Grant and applicable law. Subject to subsection J herein, the City agrees to take the following steps toward construction of the Transportation Mitigation improvements:

a) the City shall prepare the necessary documents to advertise for a Project Manager, who will oversee all of the construction of the Transportation Mitigation improvements. In so doing, the City shall comply with all laws and regulations applicable to the City under state law and any other requirements that may become applicable as a result of the CERB Grant award.

b) with input from FHS, the City shall select the Project Manager. The City's decision on the Project Manager shall be final. To the extent allowed by the CERB Grant, the contract with the Project Manager shall include provisions that will provide for coordination of the construction of the Transportation Mitigation improvements covered by the CERB Grant which are within the City limits (hereinafter the "City's Portion"), with the construction of all other Transportation Mitigation

improvements which are within Pierce County and WSDOT right-of-way (hereinafter "FHS's portion"). To the extent allowed by the CERB Grant, the contract with the Project Manager will provide for separate notice and billing by the Project Manager and the contractor performing the work to the City with regard to the City's Portion and to FHS with regard to FHS's Portion of the cost of the Transportation Mitigation improvements. In addition, the contract with the Project Manager shall include a dispute resolution process to ensure expeditious resolution of disputes.

c) if it is not possible to have the Project Manager separately bill the two parties for their respective portions of the Transportation Mitigation improvements, then the parties shall follow the same escrow process applicable to design costs, as described in Section 7 herein, for the payment of FHS's portion of the Project Manager and/or contractor and/or construction costs.

d) the City shall prepare the necessary bid documents for construction of the Transportation Mitigation improvements, and advertise for same. In so doing, the City shall comply with all laws and regulations applicable to the City under state law and any other requirements of the CERB Grant.

e) with input from FHS, the City shall select the contractor and award the contract. The City's decision on the contractor shall be final. To the extent allowed by the CERB Grant, the contract with the contractor shall include the construction of the Transportation Mitigation improvements covered by the CERB Grant ("City's Portion"), and construction of all other Transportation Mitigation improvements ("FHS's portion"). To the extent allowed by the CERB Grant, the contract with the contractor shall require the contractor to submit separate notices and bills to the Project Manager for the separate portions of the Transportation Mitigation improvements.

f) once FHS's Portion of the Transportation Mitigation improvements are complete, FHS (together with the Project Manager and the contractor) shall have the responsibility to ensure acceptance for ownership, maintenance and operation by the agency with jurisdiction prior to the time a Certificate of Occupancy is issued for the FHS Project on the FHS Property. Once the City's Portion of the Transportation Mitigation improvements are complete, the City (together with the Project Manager and the contractor) shall have the responsibility to ensure acceptance for ownership, maintenance and operation by the Agency with jurisdiction, which in most, if not all cases will be the City. However, nothing in this Agreement shall create any liability or cause of action by FHS or any other third party against the City for the City's failure to complete the City's Portion of the Transportation Mitigation improvements by any particular date including any date established by the FHS Development Agreement, given that the City's expected receipt of the CERB Grant is the only reason the City has elected to enter into this Agreement with the Developer.

H. The City's decision to construct the Transportation Mitigation improvements as set forth herein shall not be interpreted to mean that the City (or the public in

general) has any responsibility for the funding, design or construction of the Transportation Mitigation improvements. If the City receives the CERB Grant, it agrees to reimburse the Developer for its proportionate share of the cost of improvements of any portion of the Grant which covers the cost of the Transportation Mitigation improvements that are listed in Exhibits A and B, as well as the extension of the water line along Canterwood Boulevard, N.W., in the event that FHS is required to install such line as a condition of the City's approval of the FHS Project, to the extent allowed by the CERB Grant and applicable law. The parties acknowledge that the CERB Grant, if received, will cover only a portion of the Transportation Mitigation improvements.

I. The Developer acknowledges that in order for the City to construct the Transportation Mitigation improvements, the City must adopt some framework for the assessment and collection of funds from property owners for same (it is unknown whether the City will receive the CERB Grant, and the CERB Grant will not cover all of the Transportation Mitigation improvements). Therefore, the City may (but is not required to) require other developers, as a condition of approval of their projects, to pay a proportionate share of the cost of the Transportation Mitigation improvements and/or the City may create a street assessment reimbursement district pursuant to chapter 35.72 RCW, local improvement district or other means of financing the construction of the Transportation Mitigation improvements. The City agrees to reimburse the Developer out of the funds received by these means for the costs of any Transportation Mitigation improvements that have been previously paid by the Developer, to the extent allowed by law.

The Developer acknowledges that the FHS Property would be specially benefited by the Transportation Mitigation improvements. The Developer agrees to sign a petition for the formation of a LID or ULID for the Transportation Mitigation improvements at such time as one is circulated and the Developer hereby appoints the Mayor of the City of Gig Harbor as its attorney-in-fact to sign such a petition in the event the Developer fails or refuses to do so.

With full understanding of the Developer's right to protest formation of an LID or ULID to construct the Transportation Mitigation improvements pursuant to RCW 35.43.180, the Developer agrees to participate in any such LID or ULID and to waive its right to protest formation of the same. The Developer shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provision of this Agreement, this waiver of the right to protest shall be valid for a period of ten (10) years from the date this Agreement is signed by the Developer.

The Developer acknowledges that formation of any street assessment reimbursement district is subject to the procedures in chapter 35.72 RCW, and that the City Council's ruling on such area is final. RCW 35.72.040(2). The Developer agrees not to challenge

the adoption of an ordinance adopted pursuant to RCW 35.72.010 (as it now exists or may hereafter be amended).

J. The Developer specifically acknowledges that nothing in this Agreement requires the City to construct the Transportation Mitigation improvements on or before a date certain or at all. In addition, the City may decide not to construct the Transportation Mitigation Improvements if the City does not receive the CERB Grant, if the Grant award is not sufficient in the City's sole discretion, to warrant the City's construction of the Transportation improvements, if an appeal is filed of the Comprehensive Plan Amendment or Development Agreement, if an appeal is filed of the FHS conditional use, site plan, design review or building permits, the street assessment reimbursement district, LID or other method of financing design and construction, City does not have to construct any of the Transportation Mitigation improvements. In the event the City decides not to construct the improvements and if the City receives any CERB grant funds for any portion of the Transportation Mitigation improvements, and to the extent allowed by the CERB grant, the City will reimburse FHS for its proportionate share of the cost of those improvements.

Section 7. Escrow Agreement. An escrow account shall be established by the City for funds to be deposited by FHS which may be drawn upon by the City solely for the purpose of paying, or reimbursing the City for, the cost of designing the Transportation Mitigation improvements. In addition, if both parties agree that the arrangement described above for the construction project manager is unworkable, and that an escrow account should be established so that the City may draw upon it in order to pay the contractor, the following procedures shall be used:

A. The total amount of initial funds to be deposited into the escrow account by FHS for design of the Transportation Mitigation improvements shall not exceed Five Hundred Thousand Dollars (\$500,000). The Developer shall eventually deposit with the City, in escrow, for use by the City the full amount of the design costs of the Transportation Improvements.

B. This Escrow Deposit shall be held in escrow by the City, in a federally insured account, and will only be paid and applied to payment of the cost of the design of the Transportation Mitigation improvements by the City as and when such costs are incurred. No interest will inure to or be paid to the Developer on the Escrow Deposit. Interest earned on the escrow account, if any, will be applied to the costs of the design of the Transportation Mitigation improvements

C. The Escrow Deposit will be used to fund the total costs of the design of the Transportation Improvements (or of FHS's Portion of the Transportation Improvements) as well as administrative and/or inspection expenses relating thereto. In the event that the total costs incurred in performing the design work (or of construction of FHS's Portion of the Transportation Improvements) are less than the Escrow Deposit, the

unexpended Portion of the Escrow Deposit will be returned to Developer within thirty (30) days of receipt of a written request of the Developer therefore.

D. In the event that the total costs incurred in performing the design work (or of construction of FHS's Portion of the Transportation Improvements) are more than the Escrow Deposit, the City shall issue another demand letter to the Developer, requesting additional funds. The Developer shall submit the additional funds to the City within thirty (30) days after receipt of the demand letter, and the City shall apply the funds to design (or construction of FHS's Portion) of the Transportation Improvements.

Section 8. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement.

Section 9. Termination. This Agreement shall terminate when the Transportation Mitigation improvements have been constructed, and accepted for ownership, maintenance and operation by all agencies with jurisdiction, or ten (10) years, whichever first occurs. Termination of this Agreement as to the Developer of the FHS Property or any portion thereof shall not affect any of the Developer's obligations to comply with the FHS Development Agreement, the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the FHS Project or FHS Property, or any other conditions of any other development specified in this Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 10. Assignment and Assumption. Either party shall have the right to assign all or part of its rights and interest in and to this Agreement, provided that the assigning party shall continue to be bound by all of its covenants and obligations hereunder, and provided that the assigning party first receives the written consent of the other party.

Section 11. Amendment to Agreement. This Agreement may not be amended verbally or in any other manner other than by an agreement in writing signed by all of the duly authorized representatives of the parties or their respective successors in interest.

Section 12. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 4. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 13. Indemnification. The Developer agrees to indemnify and save the City, its officials, officers, agents and representatives harmless from and against any and all liability, damages, expenses and judgments arising in connection with this Agreement, unless occasioned by the negligence or intentional misconduct of the City.

Section 14. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 15. Binding Effect. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties.

Section 16. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

Section 17. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

FRANCISCAN HEALTH SYSTEM

By _____
Its _____

CITY OF GIG HARBOR

By _____
Its Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

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

My Commission expires:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires:_____

EXHIBIT A TRANSPORTATION MITIGATION

In satisfaction of the conditions of the Comprehensive Plan Amendment and as consideration for the Development Agreement, the Developer shall:

1. Implement transportation demand management measures in accordance with the City's adopted commute trip reduction regulations, as set forth in chapter 10.28 GHMC, to reduce single occupant vehicle use.
2. Allow future transit service to be provided directly to the Property, consistent with the plans of Pierce Transit, and provide accommodations for such service in the approved site plan for the Project.
3. Construct full frontage improvements along the west boundary of the Property that fronts on Canterwood Boulevard, and construct a waterline transmission main extension along Canterwood Blvd. up to and across the entire Property frontage, consistent with adopted City standards. Improvements shall consist of a twelve (12) foot wide lane, cement concrete curb and gutter, planter strip, sidewalk, retaining walls, street illumination, storm drain system and an irrigation system.
4. Construct on Canterwood Boulevard a second southbound lane along with a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary of the Property. South Access of FHS to RAB required.
5. Construct on the northbound (east) side of Canterwood Boulevard a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary (or south access) of the Property.
6. Construct a bypass lane on the north side of the East Roundabout from Canterwood Boulevard southbound to the SR 16 on-ramp northbound(Westbound). The design shall meet WSDOT standards.
7. Construct a second exit lane on the SR 16 on-ramp northbound (westbound) from the East Roundabout for an appropriate taper length acceptable to the Washington State Department of Transportation ("WSDOT"). The design shall meet WSDOT standards
8. Construct and extend the storage of the SR 16 off-ramp northbound 450 feet south of the East Roundabout. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

9. Construct a bypass lane on the south side of the East Roundabout from the SR 16 off-ramp northbound(westbound) to Burnham Drive southbound.

10. Construct a second southbound lane on the SR 16 off-ramp to the existing Roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet of additional storage. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

11. Construct a second lane circulating lane around the entire circumference of the West Roundabout. The design shall meet WSDOT standards.

12. Construct a second exit lane on the SR 16 on-ramp southbound from the West Roundabout for an appropriate taper length acceptable to WSDOT. The design shall meet WSDOT standards.

13. Convert the channelization of the existing Burnham Drive bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, or as required by WSDOT within the existing bridge width. The design shall meet WSDOT standards.

14. Convert the channelization of the East Roundabout to align with the revised channelization on the existing Burnham Drive bridge over SR 16.

15. Exhibit B pictorially depicts the required improvements.

EXHIBIT B MAP OF TRANSPORTATION MITIGATION



*Proposed Mitigation
St. Anthony Hospital*

*City of Gig Harbor
2005 Comprehensive Plan Amendments*

CCGH0000-0025

January 2005

Figure 14



Cx1185

RESOLUTION NO. 6xx

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT
AGREEMENT WITH HMT.**

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, HMT applied to the City for a Comprehensive Plan Amendment to the City’s Wastewater Comprehensive Plan to reconfigure the design and location of the required future sewer infrastructure to facilitate single family development of the Property; and

WHEREAS, on June 26, 2006, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the Development Agreement attached hereto as Exhibit A; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with the applicant HMT.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 26th day of June 2006.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: //06
PASSED BY THE CITY COUNCIL: //06
RESOLUTION NO. 6xx

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HMT, FOR A
COMPREHENSIVE PLAN AMENDMENT/RESIDENTIAL SUBDIVISION**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and HMT, a partnership organized under the laws of the State of Washington, hereinafter the "Developer" or "HMT."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as Lydian Place, which is located at 5713 – 38th Street N.W., Gig Harbor, Washington; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

a) HMT is the fee simple owner of the property located at 5713 – 38th Street N.W., Gig Harbor, which is legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

b) HMT applied to the City for a Comprehensive Plan Amendment to the City's Wastewater Comprehensive Plan to reconfigure the design and location of the

required future sewer infrastructure to facilitate single family development of the Property; and

c) HMT seeks the Comprehensive Plan Amendment ("CPA") so that it may apply for a residential preliminary plat; and

e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA associated with the three applications for CPA's submitted to the City for 2006, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and

f) The Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by HMT could be mitigated by the conditions that are listed in Exhibit C, attached hereto; and

g) The Planning Commission recommended that the City Council approve the HMT Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with HMT to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by HMT as a condition of the City's approval of HMT's Comp Plan Amendment; and

WHEREAS, by Ordinance No. _____, the City approved the HMT Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. _____, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The Project. The Project is the development and use of the Property, consisting of 6.98 acres in the City of Gig Harbor. After approval of the CPA, the Developer plans to submit a 23 Lot Single Family Residential Preliminary Plat application.

Section 2. The Subject Property. The Project site or the "Subject Property" is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

b) "Council" means the duly elected legislative body governing the City of Gig Harbor.

c) "Director" means the City's Community Development Director.

d) "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.

e) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

f) "Mitigation for HMT's Project" is the specific mitigation described in Exhibit C.

g) "Project" means the anticipated development of the Subject Property, as specified in Section 1.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

a) Exhibit A - Legal description of the Subject Property.

b) Exhibit B - Map showing HMT's Comprehensive Plan Amendment.

c) Exhibit C - Mitigation to be performed by HMT Partnership

Section 5. Parties to Development Agreement. The parties to this Agreement are:

a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

b) The "Developer" or Owner is HMT, whose mailing address is P.O. Box 492, Tacoma, WA 98335.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Commencement, Duration and Termination.

A. Commencement. This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the Developer's Comprehensive Plan Amendment, and is contingent upon execution of this Development Agreement. The Developer acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years. Within this two year period, the Developer will submit project permit applications for the Project to the City for review, and if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force until all of the required mitigation described in Exhibit B is constructed/performed, unless extended or terminated as provided herein.

2. As described in the "whereas" sections above, the Developer intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public. Based on that review, the City may impose different or additional mitigation or conditions on the development of the Developer's Property. If the City imposes different or additional mitigation, then the parties shall amend this Agreement to reflect the mitigation/conditions imposed on the project permit applications. The Developer's execution of this Agreement shall not waive the Developer's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit an application to the City for a preliminary plat within two years after the Effective Date of this Agreement. If this application is submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to residential or non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Limited Vested Rights Applicable to Comp Plan Amendment. Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a preliminary plat application within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

Section 9. Further Discretionary Actions. Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future preliminary plat and building permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

Section 10. Developer's Obligation to Perform Mitigation. Developer agrees that as a condition of the City's approval of the Comp Plan Amendment, as well as approval of a subsequent preliminary plat application (consistent with the Comp Plan Amendment), that the Developer shall perform the mitigation described in Exhibit C.

Section 11. No Obligation to Perform Mitigation if Permits for the Project are Not Approved. The parties acknowledge that the Developer shall not have any

obligation to financially contribute to the design and construction of the Transportation Mitigation Improvements or the Mitigation described in Exhibit C if the City does not approve (or conditionally approve) the Developer's application for a preliminary plat for the Project described herein.

Section 12. Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required. The parties acknowledge that the City's approval of the preliminary plat for Lydian Place may include the mitigation described in Exhibit B, as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the application for preliminary plat.

Section 13. Existing Land Use Fees and Impact Fees.

A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.

C. The Developer may request a credit from transportation impact fees for the construction of the Transportation Improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid for any improvements.

Section 14. Dedication of Public Lands. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the Development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 15. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in

writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 16. Effect upon Termination on Developer Obligations.

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

Section 18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 19. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in

this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

Section 20. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 22. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 23. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 24. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

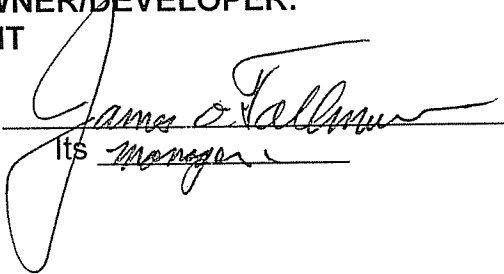
Section 25. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

HMT

By


Its manager

CITY OF GIG HARBOR

By

Its Mayor

ATTEST:

By

City Clerk

APPROVED AS TO FORM:

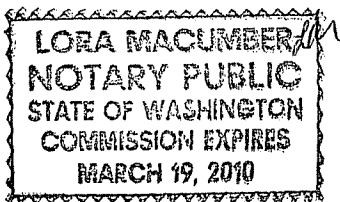
By

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

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

Dated: June 30, 2010



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

My Commission expires 3/19/2010

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

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

My Commission expires: _____

Exhibit A
Legal description of the Subject Property

EXHIBIT "A"

(Legal Description of Tax Parcels #02-21-17-2-076 and 02-21-17-2-115)

The West one-half of the South one-half of the Southwest of the Northwest of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; except the south 400 feet thereof and except the west 30 feet for the County Road (CAUSE #85-4-01658-3 & A657763)

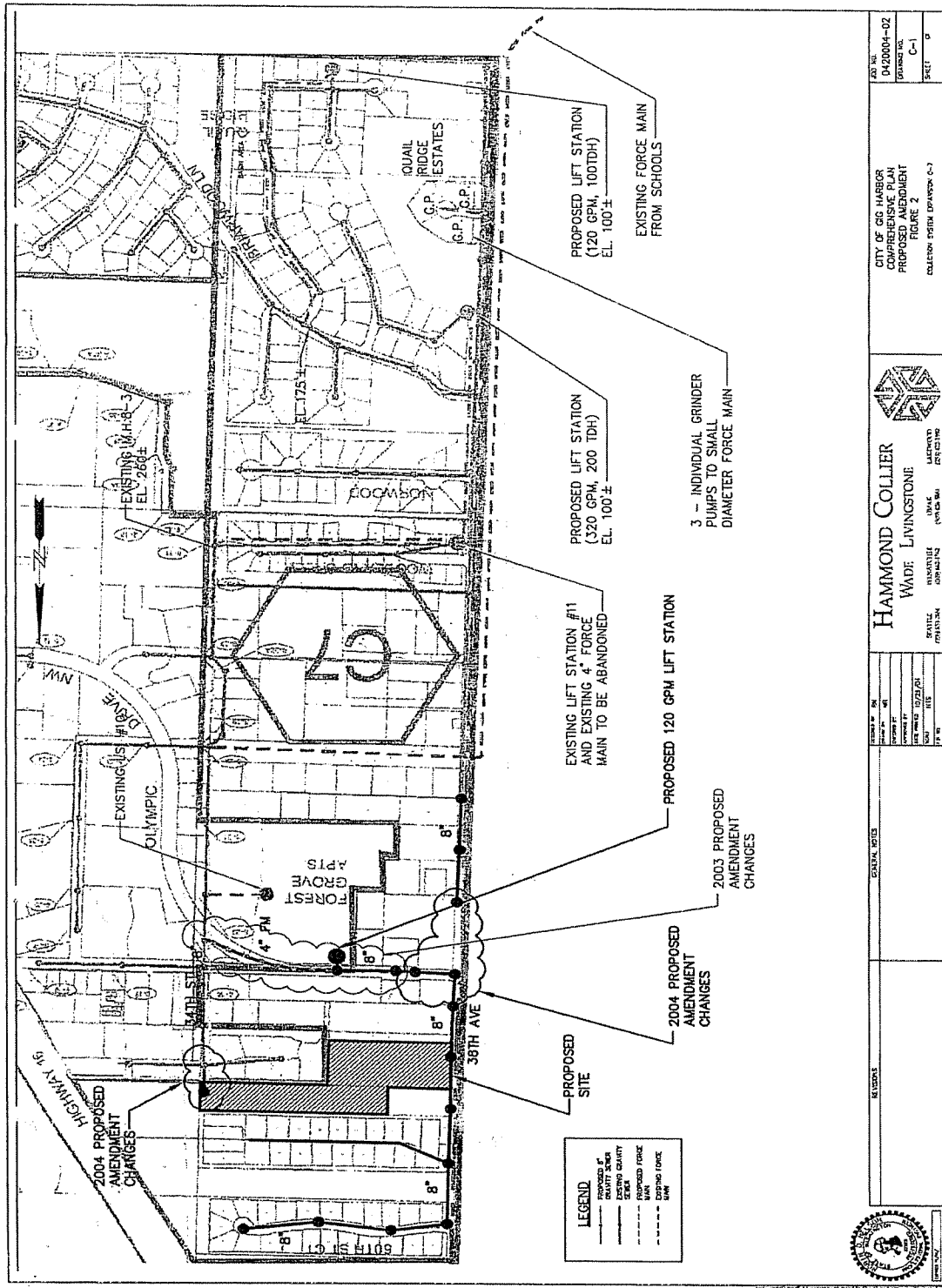
Together with:

The South 165 feet of the North 495 feet of the following described property (after taking out exceptions): The Southwest quarter of the Northwest quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian:

except the North one-half of the North one-half of the North one-half of the Southwest quarter of the Northwest quarter of said section;

except the west 30 feet for the road.

Exhibit B Map showing approved Comprehensive Amendment



PLAN NO. 042004-02
PROJECT NO. C-1
SHEET 0

CITY OF GG HARBOR
COMPREHENSIVE PLAN
PROPOSED AMENDMENT
FIGURE 2
COLLECTION SYSTEM IMPROVEMENT C-3



**HAMMOND COLLIER
WADE LIVINGSTONE**

REGISTERED PROFESSIONAL ENGINEERS
REGISTERED PROFESSIONAL ARCHITECTS

DATE	BY	CHKD BY
12/15/04	WJL	WJL
12/15/04	WJL	WJL
12/15/04	WJL	WJL

SCALE: NOTES

STUDY



Exhibit C
Mitigation to be performed by HMT Partnership

CPA 05-03 (Tallman/Halsan AKA HMT Partnership) Site-Specific Potential Mitigation Measures
Page 96 & 97 FSEIS

Land Use

Require the site developer to comply with existing comprehensive plan and development regulations concerning land use impacts. Refer to:

- GHMC Title 17.16 regulates development in the R-1 zone; and
- GHMC 18.08 regulates development in environmentally sensitive areas and provides protective measures, including buffers and setbacks for urban level development when located adjacent to critical areas.

Public Facilities

The development must comply with all provisions of the Wastewater Comprehensive Plan as amended in this FSEIS. Specifically the sewer facilities must connect to the planned facilities as described in Figure 7 as follows:

- Construct planned 8-inch gravity sewer main in 56th Street NW/Olympic Drive, from 38th Avenue NW eastward to planned lift station. Construct lift station. Construct 4 inch force main from lift station to existing sewer main in Olympic Drive near 34th Avenue NW.
- Construct planned 8-inch gravity sewer mains from the site southward, via 38th Avenue NW and via the extension of 34th Avenue NW, to connect to above-described sewer mains in 56th Street NW/Olympic Drive NW.
- Construct on-site 8 inch sewer mains for gravity flow to 34th and 38th Avenues without the use of a lift station or force main on the development site.

Transportation

Transportation impacts would be mitigated by payment of the city's traffic impact fee, and compliance with the city's concurrency management ordinance. Because of the existing LOS deficiency at the intersection of 38th Avenue NW and 56th Street NW, and the lack of a currently funded improvement to correct that deficiency, development approval on this site must be denied unless or until a financial strategy is in place to provide the needed improvements to remove the LOS deficiency. Capacity improvements for this intersection have been developed in City plans for the 56th Street NW/Olympic Drive NW corridor, including additional approach lanes, turn pockets, and signal revisions; however, these improvements are not funded. These improvements will add new capacity equal to approximately 1,800 peak hour vehicles,

for the corridor and also to this deficient intersection. The proposed development's proportionate share of future capacity for this intersection and improvements to the overall corridor is $18/1800 = 1.0$ percent. In order to remove the capacity deficiency at the intersection, however, a specific capacity improvement at the intersection must be provided that is at least commensurate with the magnitude of the development's impacts. Under GMA, the applicant has the options to provide an improvement of such magnitude, or wait for others to provide the improvement, or to modify the development proposal to reduce the site impacts.

The recommended mitigation to allow approval of this development application is as follows:

- Pay the city's traffic impact fee, based on 23 single-family dwelling units
- Construct left-turn pockets on 38th Avenue NW approaching 56th Street SW, northbound and southbound, and provide necessary matching reconstruction of pavement on both approaches to current city standards including curb/gutter/sidewalk parallel to the length of the left-turn pockets, and provide necessary matching signal control revisions. Alternatively, agree to one percent of the cost of the corridor improvements planned for 56th Street NW/Olympic Drive NW, as a contribution to the financial strategy to complete this corridor within six years.

UNAVOIDABLE ADVERSE IMPACTS

With respect to cumulative impacts of development up to the limits of the land use plan, traffic volumes will greatly increase in the Borgen Boulevard corridor until buildout is realized. Assuming all suggested mitigation measures are implemented, LOS standards will be met (or nearly so) at all locations; however, the congestion at key intersections will remain greater than existing conditions. With respect to site-specific unavoidable adverse impacts of CPA 04-01, CPA 05-01, and CPA 05-03, none are anticipated provided that all recommended mitigation is provided.

**City of Gig Harbor Planning Commission
Minutes of Public Hearing
April 20th, 2006
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Theresa Malich, Joyce Ninen and Chairperson Dick Allen. Commissioners Scott Wagner and Jill Guernsey were absent. Staff present: John Vodopich, Jennifer Sitts and Diane Gagnon.

CALL TO ORDER: 7:05 p.m.

APPROVAL OF MINUTES:

Commissioner Pasin pointed out a typographical error on page 2.

MOTION: Move to approve the minutes of April 6th, 2006.
Malich/Atkins – unanimously approved

NEW BUSINESS

1. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
Proposed changes to the City of Gig Harbor Comprehensive Plan.

1) Comprehensive Plan Proposal 04-01 (SEPA 04-08) – Land Use Map amendment re-designating approximately 18 acres of PCD-RLD (Residential Low Density) to PCD-RMD (Residential Medium Density)

2) Comprehensive Plan Proposal 05-01 (SEPA 05-01) – Land Use Map amendment re-designating and reconfiguring 14.8 acres of PCD-RMD (Residential Medium Density) to PCD-BP (Business Park) creating a total of 34.1 acres of PCD-BP for purposes of accommodating an 80-bed hospital of approximately 213,000 square feet and 100,000 square feet of medical office building.

3) Comprehensive Plan Proposal 05-03 (SEPA 05-03) – Amendment to the City of Gig Harbor Wastewater Comprehensive Plan to reconfigure the design and location of the required future sewer infrastructure to facilitate a proposed single family development.

Commissioner Allen outlined that this was a public hearing on three comprehensive plan amendments and then turned it over to staff for their presentation.

Community Development Director John Vodopich gave a power point presentation on the three comprehensive plan amendments and the process that they would go through. Mr. Vodopich went over the history of the applications stating that a determination of significance was issued in 2005 which called for the preparation of a Supplemental Environmental Impact Statement so the City retained David Evans and Associates who prepared a draft and the Planning Commission held a public hearing in January of this year. He went on to say that a comment period was held and those comments were included in the FSEIS which was issued on April 5th

of this year and on April 6th the Planning Commission had a work session on the FSEIS. He noted that the City has received an appeal of the FSEIS and stated that the appeal will go before the city's hearing examiner as determined by the current code. He stated that he had received comments from Pierce Transit although there is no comment period and that he had provided those comments to the Planning Commission. Mr. Vodopich stated that he had provided a staff report for each of the applications and gave a brief presentation on them, stating that two were map amendments in the Gig Harbor North area and one was a Wastewater Comprehensive Plan amendment. He then displayed a map of the locations of the proposed amendments along with a map showing existing and proposed developments in the GHN area. Mr. Vodopich went over the necessary Planning Commission actions, noting that they would conduct the public hearing, consider the testimony and then take action individually on each of the three proposals. He also stated that it would be necessary to make a recommendation on the proposed revision to the Transportation Element of the Comprehensive Plan as identified in Appendix B of the April 5th 2006 FSEIS. He continued to explain that after the Planning Commission made their recommendation, there would be the consideration of the appeal, and then the City Council would consider the Planning Commission recommendation and take action. He went on to say that following City Council approval the applicants would submit land use applications and project level SEPA review would begin. He concluded by saying that staff was recommending approval of all three applications as proposed, with the traffic mitigations as proposed in the FSEIS. He went over each of the applications and the concurrent site specific mitigation measures. He pointed out that Victor Saleman from David Evans and Associates; Steve Misuriak, City Engineer and Senior Planner Jennifer Sitts were all in attendance to answer any questions they might have.

Chairman Dick Allen opened the public hearing at 7:25 p.m.

Dale Pinney, GHN Associates, 8129 Lake Ballinger Way, Suite 104, Edmonds WA 98026.

Mr. Pinney stated that his concerns were with applications CPA 04-01 and CPA 05-01. He stated he had been working with the city for ten years building Gig Harbor North, building the roundabout, thought he was covered and then realized he was going to be locked out of the program. He went over the two project applications that he had turned in to the city and stated that his projects are not on the map and are not in the traffic reports. He stated that these two properties have paid \$300,000 to build what they were zoned for eight years ago, have been denied traffic concurrency and don't have an answer why. He stated that he doesn't really object to the projects, the problem is he objects to the project going forward while he gets denied. Mr. Pinney voiced his objection to CPA 04-01 and asked why would the City approve an upzone and grant 122 peak hour trips when they do their mitigation and then deny him in November of last year for a retail and bank building needing only 110 trips. He additionally stated that no one offered that he could be approved if he paid into the roundabout as he would have done that. He reiterated that he is building what he is zoned for and got denied while another project needs an upzone and is getting granted concurrency. Mr. Pinney went on to say that he agreed that the property should be medium density; he just had a problem with them getting concurrency before he gets it for property that is already zoned for what he is doing. He continued by saying that he had a similar concern with the hospital application. He stated that he understood why the city may bend the rules a little for them, but also added that there was a two year discussion on the need for business park zoning in the Gig Harbor North area and it was decided that it didn't

really need more business park. He went on to say that he has an application for an 80,000 sq ft office building and it has been denied concurrency while the city is going to issue the hospital 500 trips. He also stated that he thought that the level of PCD-BP had been maxed out and didn't see an analysis of that anywhere. He concluded by saying that he felt that with approval of these upzones in a corridor that is already non-concurrent, adding more traffic and in the same breath granting them concurrency when he had been denied is wrong and unfair. He asked that if the city is going to accept a poor level of service then please let him do his projects and contribute to it too.

Jim Pasin asked if Mr. Pinney also had residential property behind Target and Mr. Pinney said no they had sold that. He also asked if Mr. Pinney had any concurrency reserved at all and Mr. Pinney answered that he thought that the pre-annexation provided some concurrency but it was sketchy.

Community Development Director John Vodopich pointed out to the Planning Commission that the issues raised by Mr. Pinney were the same issues he had raised in his appeal and the Hearing Examiner will hear those issues.

Joe Kunkel, Hammes Company, 1425 4th Avenue, Seattle.

Mr. Kunkel gave an overview of the hospital project pointing out that they have a single parcel with two zones cutting through it and that there is no outright allowance for a hospital in any zone in the state of Washington. He stated that in general they were very supportive of the comp plan amendment as written; however they would like the city to enter into a development agreement to clarify the mitigation and provide certainty. He distributed a letter outlining his comments. Specifically, he stated they would like to clarify any additional mitigations associated with the conditional use permit. He also stated that they wanted to clarify how the 5 million dollar economic development grant is used.

Jim Pasin asked who would complete the traffic improvements and Mr. Kunkel clarified that it would be the hospital as those were their mitigations and acknowledged that there were risks associated with that.

Mr. Kunkel talked about the additional benefits of a development agreement and the hospital's proposed timeline, emphasizing that time is of the essence. He then addressed Mr. Pinney's remarks and stated that they felt the appeal was without merit and that technically it is increasing the zone but stated that they are not going to impact this site in any greater form than what is allowed today. He added that Mr. Pinney's statement that there is other land that can accommodate their use is incorrect due to the fact that you basically have to have a medical office building connected to the hospital in order to recruit physicians. He concluded by saying that the criticism of the traffic study is unfounded and noted that there had been many traffic studies done in this corridor.

Commissioner Harris Atkins asked why they were proposing to tie the development agreement to the comprehensive plan amendment and Mr. Kunkel answered that they were hoping to at least have the development agreement process started prior to the conditional use permit in order

to avoid surprises. Mr. Vodopich added that there is precedent for this as the city did do something similar with Olympic Property Group.

Discussion followed on the tax increment financing option and how it may be implemented. Commissioner Pasin clarified that they were proposing to not have to pay impact fees since they were paying for the mitigation and that their contribution in the short term solution be applied to a long term solution. Mr. Kunkel agreed and stated that the assumption is that what they would do in the short term are mitigations that will not be removed, so in fact they are doing part of the long term solution.

Tom Metzdorf, Construction Northwest

Mr. Metzdorf explained that he has been attempting to build an office for his company and found out that effectively, there is a moratorium on new applications. He stated that he felt the hospital was a good thing but it would be helpful if he had a timeline of when these solutions might be implemented and noted that the short term fix doesn't really seem to lead into the long term fix. He also stated that if he knew how much the fix was going to cost it would help him decide if he's going to invest in commercial property in this area. Mr. Metzdorf asked that the Planning Commission make a decision quickly and that he be able to find out how long and how much.

Chairman Dick Allen asked if there were anyone else that wanted to speak, there being none, he closed the public hearing at 8:17 p.m. He then called a 5 minute recess.

Commissioner Theresa Malich asked for guidance from the staff on the next step in the process.

Mr. Vodopich reminded them that four separate actions will be needed on the three comprehensive plan amendments and the subsequent change to the transportation element.

It was decided to discuss the Hospital application first.

Comprehensive Plan Proposal 05-01 (SEPA 05-01) -- Land Use Map amendment re-designating and reconfiguring 14.8 acres of PCD-RMD (Residential Medium Density) to PCD-BP (Business Park) creating a total of 34.1 acres of PCD-BP for purposes of accommodating an 80-bed hospital of approximately 213,000 square feet and 100,000 square feet of medical office building.

Commissioner Jim Pasin expressed his support of a development agreement and suggested that the Planning Commission recommend that a development agreement be entered into along with their comprehensive plan amendment. Mr. Vodopich stated that there is a codified process for development agreements. Chairman Allen, Commissioner Malich and Ninen all agreed that it would make sense to have a development agreement.

MOTION: Move to recommend approval of the proposed comp plan designation change with the staff recommendations and mitigation measures along with a recommendation that the city council enter into a development agreement with the applicant. Ninen/Atkins -

Commissioner Atkins asked Mr. Vodopich what he saw as the scope of the development agreement and Mr. Vodopich answered he thought that it would focus on transportation but it certainly could include other things, along with timing issues. Mr. Atkins then asked if there would be a project timeline and Mr. Vodopich stated that it could be discussed.

Victor Salemann from David Evans and Associates pointed out that another aspect may be limiting future development of the property.

Chairman Allen called the question and the motion passed unanimously.

Comprehensive Plan Proposal 04-01 (SEPA 04-08) – Land Use Map amendment re-designating approximately 18 acres of PCD-RLD (Residential Low Density) to PCD-RMD (Residential Medium Density)

Commissioner Ninen stated that she felt it made sense to designate this property medium density when it is surrounded by medium density and pointed out that it is a goal of the comprehensive plan to promote affordable housing.

Commissioner Atkins stated that one of the speakers had mentioned something that as part of this overall effort we have decided to reduce our level of service and when you consider that together with the fact that we already have a surplus in the number of housing units to meet our GMA requirement, he wondered if there is a compelling need to make a big change that will result in another 120 trips. He pointed out that we really don't know how bad the traffic is going to get.

Senior Planner Jennifer Sitts stated that the hospital change results in a gain in housing capacity and this change would make up for what was lost in the hospital proposal. She added that the Growth Management Hearings Board has suggested that 25% is the number that you should be over and we are at 20% and that this number is to prevent driving housing prices up.

Commissioner Atkins agreed that more affordable housing is needed but reiterated that he still questioned whether there was a need to do this before we get this traffic situation sorted out.

It was then pointed out by Commissioner Ninen that the Planning Commission can only amend the comprehensive plan once a year and if they didn't do this now it would wait another year.

Commissioner Pasin stated that he didn't recall why this property was sandwiched between two medium densities when its low density and asked if there was some logic when it was put in place that they should be aware of. Commissioner Malich answered that she believed it was zoned before the increase for Olympic Property Group and that the Planning Commission didn't want to have blanket RMD without some breakup or mixed use. She went on to say that now that across the street there is more of an intense use, maybe it makes more sense to have it RMD. Commissioner Ninen agreed that the medium density seems to make a better transition.

Commissioner Pasin asked about the pre-annexation agreement and the expiration of the capacity reservation. Mr. Vodopich explained that the provision in the pre-annexation agreement has expired and that is why they are asking that contingent upon their participation in the mitigation

improvements they be granted 122 peak p.m. trips. Mr. Pasin then asked if that would include other developments along Borgen.

Victor Salemann from David Evans, answered that the percentage splits the improvements between these two amendments; however, there could be a possibility of others participating but noted that there is a small window of opportunity with these short term improvements, after that there is no additional capacity.

Commissioner Atkins asked about in the traffic analysis and where it talks about the traffic conditions at full build out considering rezones. Mr. Salemann answered that they did assume build out with some input from the Planning Department. Mr. Atkins expressed that the timing issue was the problem and asked if the applicants decide to build something else would a study be done on how that level of service standard in the interim is being met or not met. Mr. Salemann answered that it would if they are still doing a project that would generate the same trips, if not then they would have to analyze that and see what that would do to the LOS.

Commissioner Pasin asked if the property was left as it is zoned would we also be looking at the same amount of mitigation to build it out at the low density and Mr. Salemann answered that their proportional share would be less but that we really can't only build that portion, so we wouldn't eliminate any of the short term mitigation and noted that they would likely need 48 trips versus the 122. Mr. Pasin asked for further clarification on what would happen if the property was left at its current land use designation. Senior Planner Jennifer Sitts stated that if it remained at its current designation there would be no traffic reservation issued for that property and there would be no proportional share. Mr. Pasin clarified that then if we don't approve this change this property falls into a similar situation as Mr. Pinney. Mr. Vodopich answered yes, as they have nothing reserved.

Commissioner Atkins asked if there was a project application submitted and Ms. Sitts answered that there is a preliminary plat application but their concurrency has not been denied because we are waiting for this comp plan amendment.

It was then pointed out by Commissioner Pasin that on page six it says there is a possible requirement for a second access point and if not then the request would be to design a larger access point. He suggested that if they recommended approval that they require the larger access point, even though there may be a second access. Mr. Vodopich referred them to Figure 13 in the FSEIS showing the access points. He explained where the access point would be. Mr. Atkins asked if the Planning Commission could require access across property the applicant doesn't own. Ms. Sitts stated that it would be part of the SEPA mitigation. Mr. Salemann clarified that the intent was that the road would be stubbed there with the ability to provide the connection when the other parcel develops.

MOTION: Move to accept staff findings and recommendation with the change that it be required that the access point onto Borgen have additional lanes in order to alleviate the congestion and assure public safety. Pasin/Ninen

Ms. Malich asked if they really felt that this would help alleviate concerns in upzoning this to medium density and Mr. Pasin answered that he felt it was appropriate. Ms. Ninen asked if they

wanted to add to the motion that if it was possible to have a second access or enlarge the access onto Borgen. Mr. Pasin stated that he would rather enlarge the access onto Borgen regardless of whether there are two access points. Ms. Sitts clarified that they were not intending to preclude the second access, just make the entrance onto Borgen larger and Mr. Pasin stated that was correct.

The question was called and the motion passed with four in favor and Commissioner Atkins voting no.

Comprehensive Plan Proposal 05-03 (SEPA 05-03) – Amendment to the City of Gig Harbor Wastewater Comprehensive Plan to reconfigure the design and location of the required future sewer infrastructure to facilitate a proposed single family development.

Commissioner Pasin disagreed with the applicant having to pay an impact fee and then being required to construct left turn pockets on 38th. He expressed support of the impact fee because it applies to all units within the city and disagreed with anything constructed as additional mitigation, stating that 23 homes makes little or no impact on those streets and right across the street in the county someone could build the same 23 homes and not pay a penny.

Mr. Vodopich clarified that the city and Pierce County did enter into a settlement agreement and that we actually do impose a prorata share of developments. He also stated that we comment on County projects and the County would be required to impose those mitigations.

City Engineer Steve Misuriak pointed out that there is an alternative where they could pay 1% of the corridor improvement. Commissioner Atkins asked if those corridor improvements were in the Transportation Improvement Plan and if the impact fees were for those improvements. Mr. Misuriak answered that the city's impact fee program is under funded and that there is a safety issue with that corridor that the applicant is being asked to participate in.

Discussion continued on the cost of the mitigations and the location of the left turn pocket.

MOTION: Move to recommend approval of Comprehensive Plan Amendment 05-03 subject to the recommended site specific mitigations. Atkins/Malich – Motion passed with Jim Pasin abstaining.

Community Development Director John Vodopich stated that the last item was the proposed changed to the Transportation Element of the Comprehensive Plan. He explained that staff is recommending approval and that these changes go hand in hand with the changes that they had just approved. Commissioner Pasin asked if there would have to be modifications made to the text to include the development agreement and Mr. Vodopich answered that there would not have to be modifications.

MOTION: Move to recommend approval of the revision to Chapter 11, Transportation Element as identified in appendix B. Malich/Pasin – Motion passed unanimously.

OTHER BUSINESS

Commissioner Pasin asked staff about Mr. Pinney's testimony and whether he had submitted a completed application. Ms. Sitts answered that for the 80,000 square foot building he did submit a completed application in November 2004 but put it on hold because of the critical area regulations. She continued by saying that in regard to Harborstone Credit Union, it was also turned in in November 2004 and there was a request from engineering that they revise their TIA. She stated that the request went to the applicant (Harborstone) and they did not respond for about a year and then in July 2005 the TIA from David Evans was issues that showed that the Borgen corridor was not concurrent and they did not revise their TIA until after that point.

Commissioner Atkins asked about the impact fees and Mr. Vodopich answered that about a year ago he took the six year TIP and the costs to the City Council Community Development Committee along with a staff recommendation to increase the impact fee and the council tabled it indefinitely.

Commissioner Pasin stated that due to recent developments within the community and the Mayor's public comment in the paper, he would like to get the issue of underground parking on the Planning Commission schedule. Mr. Vodopich stated that the City Council had made a motion to instruct the City Attorney to draft an ordinance and she is working on that. He also stated that the Planning Commission work program had been discussed at the City Council meeting and due to current staff shortages all text amendments will be put on hold. Ms. Sitts reminded the Planning Commission that they are invited to attend a work study session on the land use matrix on May 1st.

UPCOMING MEETINGS

May 4th, 2006 - Cancelled

ADJOURNMENT

Move to adjourn at 9:35 p.m.
Pasin/Allen – Motion carried

CD recorder utilized:
Disc #1 Tracks 1-2
Disc #2 Track 1



COMMUNITY DEVELOPMENT DEPARTMENT

**Staff Report to the Planning Commission
Community Development Department
Comprehensive Plan Map Amendment #04-01
Don Huber (Huber/Bingham Property)**

I. REQUEST

The applicant is proposing a map amendment to the Comprehensive Plan Land Use Planned Community Development (PCD) designation as identified on the Comprehensive Plan Land Use Map. The proposed map amendment is to change the designation of approximately 18.88 acres from Planned Community Development Residential Low to Planned Community Development Residential Medium.

II. GENERAL INFORMATION

APPLICANT:	AGENT/CONTACT:
Don Huber	Carl Halsan
P.O. Box 64160	P.O. Box 1447
Tacoma, WA 98464	Gig Harbor, WA 98335
(253) 564-6069	(253) 858-8820
(253) 564-6272 Fax	(253) 858-9816 Fax

III. BACKGROUND INFORMATION

The applicant is proposing a map amendment to the Planned Community Development (PCD) designation to change the designation of approximately 18.88 acres from Planned Community Development Residential Low to Planned Community Development Residential Medium. If approved, a rezone will be necessary to fully implement the change.

IV. APPLICABLE LAND-USE POLICIES/CODES

**Gig Harbor Comprehensive Plan, November 1994 – Pages 9 & 10
9. Generalized Land Use Categories
Planned Community Development (As amended by Ordinance #933,
adopted August 11, 2003)**

The purpose of a Planned Community Development (PCD) is to promote optimum site development options which are compatible with the communities' planning goals and interests. A PCD should meet the following minimum general guidelines:

- Minimum area allocated must be 100 acres.
- Land Use allocation should be approximately as follows:

Residential	60% maximum
Commercial	18% maximum
Employment	22% minimum
- Residential may consist of:
 - Housing units above or connected to commercial shops;
 - Allowances for Single Room Occupancy (SRO) housing;
 - Studio apartments;
 - Parks for full size and efficiency sized manufactured housing units.
- Adequate provisions for Parks/Open Space and Schools should be provided for in the PCD.
- Site development design must be consistent with Community Design standards of the Comprehensive Plan and adopted design guidelines.

A Planned Community Development (PCD) incorporates the following generalized land use categories:

- Planned Community Development Residential Low (PCD-RLD, 4.0 - 7.0 dwelling units per acre) - Provides for well designed residential developments which are located to minimize adverse effects on the environment or sensitive natural areas; provides for clustering of dwelling units to protect important natural features and amenities, limit the costs of development and public service costs and to maintain, enhance and complement the natural beauty of the Gig Harbor community; and allows unique and innovative residential development concepts that will provide for unconventional neighborhoods, provide affordable housing for a wide range of income levels, maintain or enhance community linkages and associations with other neighborhoods, and to allow village and traditional neighborhood forms.
- Planned Community Development Residential Medium (PCD-RMD, 8.0 - 16.0 dwelling units per acre) - Provides for greater population densities to facilitate high quality affordable housing, a greater range of lifestyles and income levels; provides for the efficient delivery of public services and to increase residents' accessibility to employment, transportation and shopping; and serves as a buffer and transition area between more intensively developed areas and lower density residential areas.

- Planned Community Development Commercial (PCD-C) - Provides for the location of businesses serving shoppers and patrons on a wider basis as distinguished from a neighborhood area; encourages urban development; encourages attractive natural appearing development and landscaping; promotes a quality visual environment by establishing standards for design, size and shape of buildings that create an attractive business climate; and where appropriate, residential uses should be located above commercial uses.
- Planned Community Development Business Park (PCD-BP) - Provides for the location of high quality design development and operational standards for technology research and development facilities, light assembly, and warehousing, associated support service and retail uses, business and professional office uses, corporate headquarters and other supporting enterprises; is intended to be devoid of nuisance factors, hazards and potentially high public facility demands; and retail uses are not encouraged in order to preserve these districts for major employment opportunities and to reduce the demand for vehicular access.
- Planned Community Development Neighborhood Business (PCD-NB) - Provides for businesses serving the everyday needs of neighboring residents; is limited in overall site area and availability of uses and is not intended to provide regional retail facilities; and provides retail and service uses that are easily accessible to local residents.

The proposed map amendment will have no effect on the Comprehensive Plan textual description of the Planned Community Development designation.

V. PUBLIC NOTICE

The City Council adopted Resolution No. 646 on April 11, 2005 which revised Resolution No. 631 and established the work program for the processing of individual Comprehensive Plan amendments in 2005.

Notice of January 19, 2006 Planning Commission public hearing was published in the Peninsula Gateway on January 4th and 11th.

Notice of April 20, 2006 Planning Commission public hearing was published in the Peninsula Gateway on April 5, 2006.

Additional notice was also provided on the City website.

VI. SEPA DETERMINATION

On July 14, 2005, the City of Gig Harbor, as lead agency for this proposal, issued a final Determination of Significance for three proposed Comprehensive Plan Amendments. A Draft Supplemental Environmental Impact Statement (DSEIS), prepared by David Evans and Associates, Inc. and Mark Personius,

AICP, was issued on January 3, 2006. The requisite comment period ran from January 4, 2006 to February 1, 2006. A Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.

No appeals of the Final Supplemental environmental Impact Statement (FSEIS) have been filed as of the date of this staff report.

VII. ANALYSIS

The proposed text amendment will increase the permitted density within the Planned Community Development land use designation by increasing the range from 4.0 - 7.0 dwelling units per acre to 8.0 - 16.0 dwelling units per acre. Specific mitigation measures for the proposed amendment are outlined in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).

Land use impacts from the proposed development would be regulated by the provisions of the Comprehensive Plan and the Gig Harbor Municipal Code. Where more intense development is possible on the Huber/Bingham Property site (CPA 04-01) due to higher densities allowed under the PCD-RMD zone, the Housing Element of the City's Comprehensive Plan contains specific policies designed to mitigate the impacts of higher density housing, including Policies 5.2.1., 5.2.2., and 5.2.3. More specifically the provisions of the PCD-RMD zone (GHMC 17.21), the City's subdivision regulations (GHMC Title 16), and the City's development standards are expected to mitigate any impacts to a non-significant level.

The Huber/Bingham Property Comprehensive Plan Amendment (CPA) application in particular could generate between 122 and 169 PM peak hour trips depending on whether the project develops as proposed or were to utilize higher residential densities on the site allowed under the proposed rezone scenario. The Traffic Impact Analysis (TIA) prepared for the CPA application by PacWest Engineering (2005) estimated 127 PM peak hour trips on Borgen Boulevard will be generated by the proposed 121 lot single family subdivision. That calculation relied on an unverified trip rate formula not commonly used in traffic studies, and is excessive. The 122 PM peak hour trip figure estimated in the SEIS, which equates to 1,160 Average Daily Trips (ADT), can be used for subsequent development review purposes.

As part of a pre-annexation agreement in 2001, the City reserved 3.2 percent of the existing two-lane capacity of Borgen Boulevard for future residential development on the parcel which amounts to approximately 480 total daily trips in two directions or a maximum of 240 daily trips in any one direction. This translates to a maximum reserved capacity of 48 PM peak hour trips onto the Borgen Boulevard corridor. That capacity reservation expires as of January 1, 2006 according to the original pre-annexation development agreement between

the applicant and the city. The City could issue a new CRC for 1,160 Average Daily Trips, subject to acceptance of mitigation conditions. Under the traffic concurrency management provisions of GHMC 19.10, the City must evaluate roadway capacity planned to be available for the proposed CPA/rezone and may award a Capacity Reservation Certificate (CRC) upon the satisfactory performance of that evaluation. Based on the Borgen Boulevard corridor roadway and intersection improvements identified in the North Gig Harbor Traffic Mitigation Plan (DEA, Inc., December 2005) and the Land Use Map and Comprehensive Plan Policy Amendments recommended in the FSEIS (including adoption of LOS E at the Borgen Boulevard/SR 16 intersection), it appears that sufficient planned roadway capacity will exist to render CPA 04-01 compliant with the concurrency requirements of GHMC 19.10 subject to the site specific mitigation measures as described in the FSEIS.

VIII. FINDINGS OF FACT

1. Pursuant to the Washington State Growth Management Act (GMA), proposed amendments or revisions to the comprehensive plan can be considered no more frequently that once every year (RCW 36.70A.130 (2)(a));
2. The City of Gig Harbor SEPA Responsible Official issued a final Determination of Significance for three proposed Comprehensive Plan Amendments on July 14, 2005. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued on January 3, 2006 and the Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.
3. Site-specific mitigation measures for the proposed amendment are outlined in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).
4. A Water Capacity Reservation Certificate (CRC) was issued on February 22, 2006 for the proposed subdivision of the subject property;
5. The proposed amendment will increase the City's housing unit capacity;
6. The Washington State Growth Management Act (GMA) requires consistency between the comprehensive plan and implementing development regulations (RCW 36.70A.040); and
7. The City Engineer has reviewed the proposed amendment; the site-specific mitigation measures for the proposed amendment as outlined in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS); and recommends approval of the amendment as proposed conditioned upon the mitigation measures.

IX. RECOMMENDATION

I recommend **approval** of the City of Gig Harbor Comprehensive Plan Map Amendment application #04-01 and the **granting** of a Transportation Capacity Reservation Certificate for 122 PM peak hour trips based on the aforementioned findings of fact and subject to the following site-specific mitigation as identified in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS):

1. Any rezone application for property shall be accompanied by a site-specific development application for the development of the property. The applicant shall submit a SEPA Checklist for the rezone and the site-specific development of the individual parcel(s), as required by WAC 197-11-060(3)(b);
2. The following detailed mitigation plan is provided for future reference in subsequent development review processes, regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments evaluated in this FSEIS. The analysis of impacts and the recommended mitigation described in this FSEIS may be relied on for SEPA review purposes; however, the final mitigation requirements for each development will not be determined until completion of additional phases of development review. Additional mitigation may be required to comply with all conditions of GHMC, whether specified in this FSEIS or not.

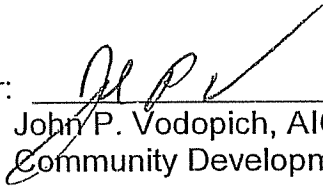
The developer of the subdivision may be subject to payment of traffic impact fees in accordance with the provisions of GHMC 19.12, to the extent such fees do not duplicate the following required mitigation measures for the proposed CPA 04-01 residential subdivision:

- Required frontage improvements along Borgen Boulevard consistent with adopted design standards for the facility.
- Require the developer to participate proportionately in the cost of the Borgen Boulevard/SR 16 interchange roundabout improvements and ramp improvement, or equivalent interchange replacement, described in the April 5, 2006 FSEIS as mitigation for St. Anthony Hospital. Based on 122 trips for the Huber/Bingham development and 535 trips for the hospital development, the proportional shares are 18.57% and 81.43%, respectively.
- Require, at the project level review, a second access point for the subdivision consistent with projects L-2 and L-3 in Figure 13. If neither alternate access can be constructed and open at time of occupancy, then redesign the proposed single access point onto Borgen Boulevard to allow for additional lanes to alleviate peak hour congestion and ensure safe public access during peak periods (i.e., to ensure safe ingress/egress for emergency vehicles and to reduce the potential for accidents from turning movements during peak periods).

The applicant shall submit full civil drawings prepared by a Washington State P.E. conforming to all City Public Works Standards, Policies and Procedures.

A Level 1 site specific Traffic Impact Analysis shall be required for City review and approval.

Project Planner: _____


John P. Vodopich, AICP
Community Development Director

Dated this 13th day of April, 2006

**CITY OF GIG HARBOR COMPREHENSIVE PLAN LAND USE MAP
SITE-SPECIFIC AMENDMENT APPLICATION**

FILED BY THE CLERK
CITY OF GIG HARBOR
MAY 10 2004
PLANNING & COMMUNITY DEVELOPMENT

A site-specific amendment is a proposed change in the Comprehensive Plan land use map designation of an individual parcel or parcels of land. A site-specific amendment to the Comprehensive Plan land use map does not result in a rezone, if approved, the applicant would be required to apply for a rezone at the conclusion of this process.

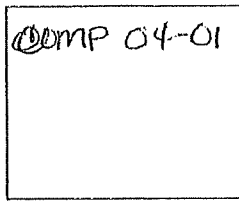
(Please Print or Type)

Owner/ Applicant: Don Huber
 Mailing Address: PO Box 64160
 City: Tacoma, WA State: WA Zip: 98464
 Phone: () 564-6069 Fax: () 564-6272

Agent/ Contact: Carl Halsan
 Mailing Address: PO Box 1447
 City: Gig Harbor State: WA Zip: 98335
 Phone: () 858-8820 Fax: () 858-9816

Site Address: North of Bergen Blvd
 City: Gig Harbor Zip: 98335
 Lot Size: ~ 20 Acres
 Assessor's Account #: 02-22-30-3-002
 Legal Description: (Please attach)
 Section: 30 Township: R2N Range: 2E

FOR CITY USE ONLY

Application Received (stamp)	
	
Received by:	_____
Assigned to:	_____
Minimum Application Fee:	_____
SEPA Checklist & Fee* if required	4 _____
Site Map	4 _____
Questionnaire	4 _____
Assessor's Map	4 _____
Ownership Certificate	4 _____
Pre-Submission Review	4 _____
Date	<u> / /</u>
Staff	_____
Application Complete*	4 _____
Date	<u> / /</u>
Staff	_____

Is the property in a special taxation or land-use program?

No Yes (specify) _____

Current Comprehensive Plan Designation:

Residential - Low

Requested Comprehensive Plan Designation:

Residential - Medium

The applicant agrees to pay a minimum application fee of \$750.00, in accordance with the adopted fee schedule on file with the City of Gig Harbor Department of Planning and Building Services. If the Planning Commission approves the application for further consideration by the City Council, the applicant may be required to submit a State Environmental Policy Act (SEPA) checklist and an additional fee of \$150.00. The applicant further understands that approval of a site-specific amendment is not a rezone. If approved, the applicant must file an application for a rezone with the City of Gig Harbor Department of Planning and Building Services. Acceptance of this application and/or payment of fees does not guarantee final approval.

Applicant Signature: *Carl J. Wells* Date: 2-23-2004

QUESTIONNAIRE

FOR SITE-SPECIFIC COMPREHENSIVE PLAN LAND USE PLAN MAP AMENDMENT APPLICATION

Please answer the following questions in text and/or graphic form on separate pages and attach them to the application. Answer all questions separately and reference the question number in your answer. An application will be considered incomplete until all the questions are answered. This questionnaire applies to map and site-specific amendment applications.

1. Please provide a detailed description and explanation of proposed amendment.
2. Has there been a change in circumstances pertaining to the Comprehensive Plan, public policy, or (if applicable), the subject property (beyond the control of the landowner)?
3. What do you anticipate will be the impacts caused by the change, including the geographic area affected and the issues presented?
4. How would the proposal comply with the community vision statements, goals, objectives, and policies of the Comprehensive Plan?
5. Is there public support for this proposal (i.e. have you conducted community meetings, etc.)? Note: All applications will be subject to full public participation, notice, and environmental review.
6. Identify the location of the subject property on a Pierce County assessor's map, which has been dated and signed by the Applicant.

RECEIVED
CITY OF GIG HARBOR
MAR 04 2004
COMMUNITY
DEVELOPMENT

Laurie B Miller

OWNERSHIP CERTIFICATION

I, Laurie B Miller, executrix of estate, hereby certify that I am the majority property owner or officer of the corporation owning property described in the attached application, and I have familiarized myself with the rules and regulations of the City of Gig Harbor with respect to filing this application, and that the statements, answers and information submitted presents the argument on behalf of this application and are in all respects true and correct to the best of my knowledge and belief.

Address: 16934 SE 47th

City and State: Belleveue, WA Phone: (425) 562-2734

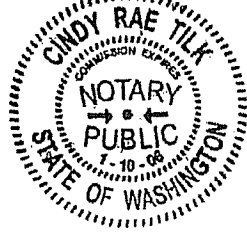
Signature: Laurie Bingham Miller for estate of Nancy/Quincy Bingham
(give corporation or company name)

ACKNOWLEDGMENT

State of Washington)
) ss.)
County of Pierce)

On this day personally appeared before me Laurie B Miller known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL this 1st day of March, 2004



Cindy Rae Tilk
Notary Public in and for the State of Washington
CINDY RAE TILK
My Commission Expires: 1-10-06

Other property owners in this application must be listed below:

Name: Bill (William) Bingham, George J. Bingham Signature: Coupeville, WA
Burbank, WA

Address: _____ City/State: _____ Zip: _____

330 N Maple, unit C
Burbank, WA 91505

812 Windrose DR
Coupeville, WA 98239

1. **Detailed description and explanation of amendment.**
We are asking that the designation of the subject property be changed from *Low Density Residential* to *Medium Density Residential*. This will allow the property to be rezoned to *Planned Community Development-Residential Medium Density* with a future application to be submitted in a couple of months. Along with the rezone application, we'll be submitting a proposed subdivision application. We recognize that the rezone and plat cannot be approved until the Comprehensive Plan amendment is approved, but we want to "parallel-process" in anticipation of the amendment being approved.
2. **Change in circumstances pertaining to the Comprehensive Plan or public policy.**
When the Gig Harbor North plan we being put together by the Planning Commission in the early 1990's, the property owners were represented by the three major land owners. The property that is subject to this change was not represented at that time. As such, the subject property was left with the least intense designation (low density residential). Today, the subject property is surrounded by properties designated with more intense designations on all sides: Medium density to the north, east and west, and commercial to the south. It only makes good planning sense to change the designation of the subject property to at least medium density. This will prevent incompatible development from taking place. It is also important to note that the property to the west has the southern half designated PCD-Business Park.
3. **Impacts caused by the change, including the geographic area affected and the issues presented.**
The only impacts of the amendment will be positive. The subject property will be allowed to be developed with housing that is more compatible with the surrounding properties. In addition, the infrastructure is already designed and in place to support intense development.
4. **How the amendment complies with the community vision statements, goals, objectives and policies of the Comprehensive Plan.**
Goal #1 of the Land Use element encourages higher density development in areas that pose the fewest environmental risks. This site has no environmental constraints. Goal #12 encourages the provision of a broad choice of housing types. With the approval of this amendment, the property can be developed in a manner that provides very small lot single family detached housing. Goal #13 encourages higher density housing in areas that have easy access to major local employment areas. Gig Harbor North will be the City's largest employment area and the subject property is part of the Gig Harbor North area. Goal #18 of the Environment element encourages higher densities on land with the fewest environmental risks and this site has none. The Housing element of the Plan encourages reducing housing costs through policy reform, and this site can provide more affordable single family housing. Finally, Gig Harbor needs housing as evidenced by the rapidly increasing prices in the

area. Suitable land for development is being used up at a rate far exceeding the planning that's been done to date. With the City only allowing 3 units per acre net throughout most of the city, we need alternatives and this site is ideal for something unique.

5. **Is there public support for the proposed amendment?**
During the last Comprehensive Plan amendment cycle, this property was the subject of a proposed change to allow for commercial development. That amendment was ultimately denied, but during the process the property owners were encouraged to consider amending the designation to medium density. This encouragement came from the public, city staff and City Council members alike. It seems that public sentiment is very willing allow this change to take place as soon as possible. All neighboring property owners have indicated preliminary support for our change. If needed, they are willing to provide letters of support and supporting public testimony.
6. **Pierce County Assessor's Map**
One is attached, and it is signed and dated by the applicant.

100-1-1-1	100-1-1-2
100-1-1-3	100-1-1-4



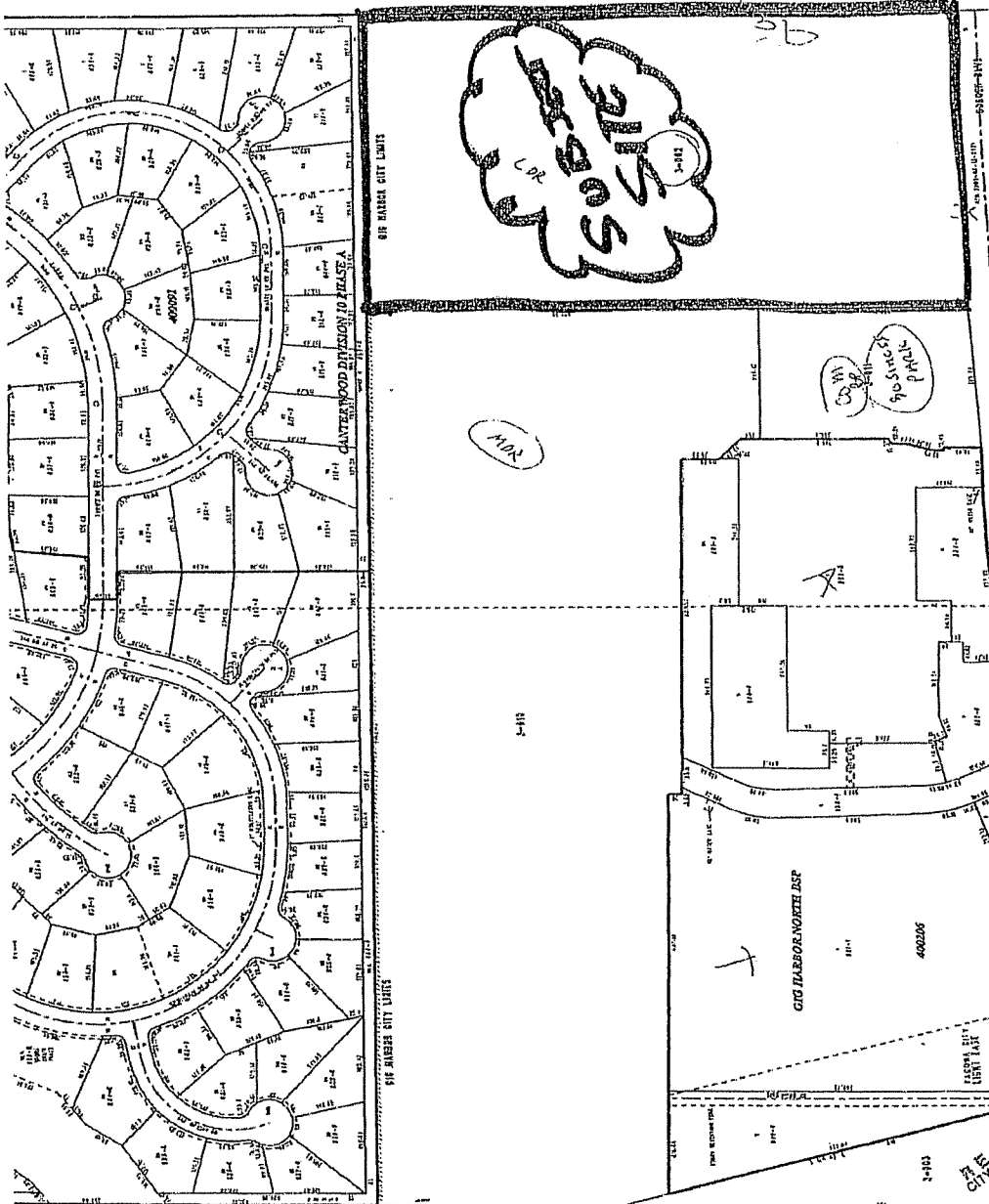
DATE OF MAP PREPARED
11-12-10

Paul J. Sperlich, Public
1401 S. 20th Street
Lebanon, OH 45039

Prepared under Public Act 153



Pierce & Associates
Assessor
THIS IS NOT A
GUARANTEE OF VALUE
OR A STATEMENT OF
THE ASSESSMENT'S



FOR THE CITY OF CANTON
COMMUNITY DEVELOPMENT
MAR 04 2004



COMMUNITY DEVELOPMENT DEPARTMENT

**Staff Report to the Planning Commission
Community Development Department
Comprehensive Plan Map Amendment #05-01
Franciscan Health System - West**

I. REQUEST

The applicant is proposing a Comprehensive Plan Land Use map amendment within the Planned Community Development (PCD) designation. The proposed map amendment is to change the designation of approximately 19.3 acres from Planned Community Development Residential Medium (PCD-RMD) to Planned Community Development Business Park (PCD-BP).

II. GENERAL INFORMATION

APPLICANT:

Franciscan Health System - West
Laure Nichols, Vice President
1717 South J Street
Tacoma, WA 98405
(253) 426-6700

AGENT/CONTACT:

Hammes Company
Joe Kunkel
1411 Fourth Avenue, Suite 1020
Seattle, WA 98101
(206) 464-4200
(206) 464-4201 Fax

III. BACKGROUND INFORMATION

The applicant is proposing an amendment to the Planned Community Development (PCD) designation to change the designation of approximately 19.3 acres from Planned Community Development Residential Medium to Planned Community Development Business Park. The proposal would amend the Comprehensive Plan Land Use map. If approved, a rezone will be necessary to fully implement the change.

IV. APPLICABLE LAND-USE POLICIES/CODES

**Gig Harbor Comprehensive Plan, December 2004
2.2.3. Generalized Land Use Categories
f) Planned Community Development**

Pages 2-5 & 2-6

f) Planned Community Development

The purpose of a Planned Community Development (PCD) is to promote optimum site development options which are compatible with the community's planning goals and interests. A PCD should meet the following minimum general guidelines:

- 1) Minimum area allocated must be 100 acres.
- 2) Land Use allocation should be approximately as follows:
 - Residential 60% maximum
 - Commercial 18% maximum
 - Employment 22% minimum
- 3) Residential may consist of:
 - i. Housing units above or connected to commercial shops;
 - ii. Allowances for Single Room Occupancy (SRO) housing;
 - iii. Studio apartments;
 - iv. Parks for full size and efficiency sized manufactured housing units.
- 4) Adequate provisions for Parks/Open Space and Schools should be provided for in the PCD.
- 5) Site development design must be consistent with Community Design standards of the Comprehensive Plan and adopted design guidelines.
- 6) Planned Community Development Residential Low (PCD-RLD, 4.0 - 7.0 dwelling units per acre) - Provides for well designed residential developments which are located to minimize adverse effects on the environment or sensitive natural areas; provides for clustering of dwelling units to protect important natural features and amenities, limit the costs of development and public service costs and to maintain, enhance and complement the natural beauty of the Gig Harbor community; and allows unique and innovative residential development concepts that will provide for unconventional neighborhoods, provide affordable housing for a wide range of income levels, maintain or enhance community linkages and associations with other neighborhoods, and to allow village and traditional neighborhood forms.
- 7) Planned Community Development Residential Medium (PCD-RMD, 8.0 - 16.0 dwelling units per acre) - Provides for greater population densities to facilitate high quality affordable housing, a greater range of lifestyles and income levels; provides for the efficient

delivery of public services and to increase residents' accessibility to employment, transportation and shopping; and serves as a buffer and transition area between more intensively developed areas and lower density residential areas.

- 8) Planned Community Development Commercial (PCD-C) - Provides for the location of businesses serving shoppers and patrons on a wider basis as distinguished from a neighborhood area; encourages urban development; encourages attractive natural appearing development and landscaping; promotes a quality visual environment by establishing standards for design, size and shape of buildings that create an attractive business climate; and where appropriate, residential uses should be located above commercial uses.
- 9) Planned Community Development Business Park (PCD-BP) - Provides for the location of high quality design development and operational standards for technology research and development facilities, light assembly, and warehousing, associated support service and retail uses, business and professional office uses, corporate headquarters and other supporting enterprises; is intended to be devoid of nuisance factors, hazards and potentially high public facility demands; and retail uses are not encouraged in order to preserve these districts for major employment opportunities and to reduce the demand for vehicular access.

The proposed amendment would increase the employment (business park) land use allocation and decrease the residential land use allocation. Given that the employment allocation is expressed in terms of a minimum and the residential allocation in terms of a maximum, a textual amendment is not necessary.

V. PUBLIC NOTICE

The City Council adopted Resolution No. 646 on April 11, 2005 which revised Resolution No. 631 and established the work program for the processing of individual Comprehensive Plan amendments in 2005.

Notice of January 19, 2006 Planning Commission public hearing was published in the Peninsula Gateway on January 4th and 11th.

Notice of April 20, 2006 Planning Commission public hearing was published in the Peninsula Gateway on April 5, 2006.

Additional notice was also provided on the City website.

VI. SEPA DETERMINATION

On July 14, 2005, the City of Gig Harbor, as lead agency for this proposal, issued a final Determination of Significance for three proposed Comprehensive Plan Amendments. A Draft Supplemental Environmental Impact Statement (DSEIS), prepared by David Evans and Associates Inc. and Mark Personius, AICP, was issued on January 3, 2006. The requisite comment period ran from January 4, 2006 to February 1, 2006. A Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.

The appeal period ends on April 19, 2006, no appeals of the Final Supplemental environmental Impact Statement (FSEIS) have been filed as of the date of this staff report.

VII. ANALYSIS

The proposed amendment will change the designation of approximately 19.3 acres from Planned Community Development Residential Medium (PCD-RMD) to Planned Community Development Business Park (PCD-BP).

Land use impacts from the proposed development would be regulated by the provisions of the Gig Harbor Municipal Code. Development would occur in accordance with the provisions of the PCD-BP zone (GHMC 17.54), the City's subdivision regulations (GHMC Title 16), the critical area regulations (GHMC 18.08) and the City's development standards. GHMC 17.54.025 requires a conditional use permit for a hospital in the PCD-BP zone. GHMC 17.64 identifies the procedures and criteria for review and issuance of a conditional use permit. Subsequent development review, including SEPA review, will further evaluate potential impacts as appropriate and applicable at the more site-specific St. Anthony Hospital conditional use permit application and review stage.

The St. Anthony Hospital proposal and site plan submitted to date indicate no presumed development activity on the remaining 7.4 acre portion of the site that would remain in PCD-RMD zoning. Therefore, future development in this area should be restricted to uses that do not involve construction of a building (e.g., open space, passive recreational uses, future streets, buffering, trails, critical area mitigation, etc.). The site-specific traffic impact mitigation indicates that some portion of this area may be necessary for right-of-way dedication for a future alternative street connection between Canterwood and Borgen Boulevard in order to relieve congestion at the existing Canterwood/Borgen/Burnham roundabout.

The St. Anthony Hospital development application in particular could generate between 535 and 869 PM peak hour trips (DEA) depending on whether the project develops as proposed or were to utilize the maximum building envelope allowed under the proposed rezone scenario.

The additional volumes added to Canterwood Boulevard due to this site's proposed development would be adequately served with a two to three lane road section along the site frontage. At the proposed hospital site entrance driveway(s), peak hour volumes may require signalization to support turning movements across through traffic on Canterwood Boulevard. This would depend on the spacing and location of driveways and details of the design of Canterwood Boulevard along the site frontage.

As Canterwood Boulevard approaches Borgen Boulevard/Burnham Drive, there is a need for two approach lanes southbound into the two-lane roundabout intersection, for the case of pipeline growth plus the hospital. However, the interchange as a whole is deficient. The Traffic Impact Analysis - St. Anthony Hospital (DEA, Inc., June 2005) indicated a need for reconstruction of the entire interchange for higher capacity without considering the hospital development, and those problems are made worse by addition of the hospital site's traffic. The North Gig Harbor Traffic Mitigation Plan adds to that finding a complete plan of improvements for all of North Gig Harbor.

The impact of the hospital on the interchange area can be reduced by developing additional routes of access to and from the hospital site that avoid the interchange. In the North Gig Harbor Traffic Mitigation Plan (DEA, Inc., December 2005) two such routes are recommended as part of the long-range plan for the study area:

- Connect Canterwood Boulevard to Borgen Boulevard via a new collector arterial that bypasses the overloaded Canterwood/Borgen/Burnham/SR 16 roundabout.
- Connect Canterwood Boulevard to the Purdy area, via a new collector arterial across or under the SR 16 freeway.

Either or both of these proposed routes has the potential to remove significant volumes from the overcrowded interchange area; however, each is a new road that would require significant effort to achieve and would also benefit other parties as well as the proposed hospital.

Traffic mitigation improvements for the hospital should be consistent with the recommendations of the North Gig Harbor Traffic Mitigation Plan. In addition, the requirements of concurrency will need to be considered to assure that LOS standards are satisfied in the short-term future represented by the "pipeline" forecast in the hospital TIA. Both of these objectives are served by either of the following two mitigation plans. The second plan is recommended for greatest flexibility and coordination of efforts by various parties.

The following detailed mitigation plan is provided for future reference in subsequent development review processes, regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments

evaluated in this FSEIS. The analysis of impacts and the recommended mitigation described in this FSEIS may be relied on for SEPA review purposes; however, the final mitigation requirements for each development will not be determined until completion of additional phases of development review. Additional mitigation may be required to comply with all conditions of GHMC, whether specified in this FSEIS or not.

Project specific traffic impact mitigation measures for CPA 05-01 shall include the following (as depicted on Figure 14 of the April 5, 2006 FSEIS):

- The developer of the hospital may be subject to payment of impact fees in accordance with the provisions of GHMC 19.12 to the extent such fees do not duplicate the following required mitigation measures. The mitigation described is required for the hospital alone; however, a proportionate share of the mitigation may be transferred to CPA 04-01 (Huber/Bingham) if that subdivision is also approved for development.
- Require the developer to implement transportation demand management measures in accordance with the City's adopted Commute Trip Reduction (CTR) regulations (GHMC 10.28) to reduce single occupant vehicle use.
- Require the developer to make accommodations in the site plan for future transit service to be provided directly to the proposed Saint Anthony Hospital (CPA 05-01), consistent with plans of Pierce Transit.
- Require the developer to make frontage improvements along Canterwood Boulevard consistent with adopted design standards for the facility.
- Require the developer to dedicate right-of-way for a future collector arterial roadway connecting Canterwood Boulevard across any part of the property to the southeast corner of the property, for continuation to Borgen Boulevard by others. The specific alignment of this route on or through the property may be determined during final site plan review.
- Require the developer to construct on Canterwood Boulevard a two-lane southbound approach to the existing roundabout intersection at Burnham Drive and Borgen Boulevard, for a length of 700 feet north of Borgen Boulevard. A 10-foot paved shoulder on this section is permissible in lieu of curb/gutter/sidewalk, because Canterwood Boulevard abuts the WSDOT highway fence on this side of Canterwood Boulevard and there is no actual pedestrian need.
- Require the developer to construct on the northbound side of Canterwood Boulevard a 10-foot shoulder from Borgen Boulevard to the site's south boundary, as an interim pedestrian safety improvement pending future development of the abutting properties. Alternatively, construct curb/gutter/sidewalk in a location satisfactory to the City Engineer and consistent with future development of abutting properties, and eligible for latecomers reimbursement.
- Require the developer to construct a bypass lane at the roundabout intersection at Burnham Drive and Borgen Boulevard, from Canterwood Drive southbound to the SR 16 on-ramp westbound, adding a second lane to that on-ramp for an appropriate taper length acceptable to WSDOT.

- Require the developer to construct a second lane approach lane on that off-ramp for approximately 450 feet to accommodate the length of expected storage queues. The additional lane on the ramp may trigger the need to prepare an Interchange Justification Report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline.
- Require the developer to construct a bypass lane at the roundabout intersection at Burnham Drive and Borgen Boulevard, from the SR 16 westbound off-ramp to Burnham Drive southbound.
- Require the developer to construct a second lane on the eastbound SR 16 off-ramp to the existing roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet to accommodate the length of expected storage queues. The additional lane on the ramp may trigger the need to prepare an Interchange Justification Report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline.
- Require the developer to expand the existing roundabout at the eastbound SR 16 off-ramp and Burnham Drive from one circulating lane to two circulating lanes, including a second exit lane to the westbound on-ramp and an appropriate taper length acceptable to WSDOT.
- If not provided as expected by other developments, require the developer to convert the channelization of the existing Burnham Drive Bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, and with channelization modifications to that roundabout.



*Proposed Mitigation
St. Anthony Hospital*

*City of Gig Harbor
2005 Comprehensive Plan Amendments*

CO25H0000-0025

January 2005

Figure 14



DAVID EVANS
& ASSOCIATES, INC.

CS1185

Based on the completion of these improvements, the site's impacts have been mitigated. The intersections in the interchange area will meet the modified LOS standard proposed for adoption as part of the proposed Comprehensive Plan Amendments. At the SR 16 eastbound ramps roundabout intersection, the average delay is less than would exist without the development. Most queue backups will fit within the available storage areas. The excess queues can be managed by traffic controls.

Table 23. Intersection Operations – Pipeline plus St. Anthony Hospital with Mitigation

Intersection	Control	Movement	PM Peak	
			LOS	Delay (Sec)
Burnham Drive NW at SR 16 Eastbound Ramps	Roundabout	Intersection	F	163
Borgen Boulevard at SR 16 Westbound Ramps	Roundabout	Intersection	E	64

Source: David Evans and Associates, Inc.

Table 24. Queue Lengths – Pipeline plus St. Anthony Hospital with Mitigation

Intersection	Road	Approach	PM Peak	
			Approach Queue Length (ft)	Available Storage Length (ft)
Burnham Drive at SR 16 Eastbound Ramps	Off-Ramp	Eastbound	1,500	1,500
	Burnham Drive	Eastbound	0	600
	Burnham Drive	Westbound	1,600	300*
Borgen Boulevard at SR 16 Westbound Ramps	Burnham Drive	Eastbound	106	700
	Off-Ramp	Westbound	326	450
	Canterwood Blvd	Southbound	614	1,400
	Borgen Blvd	Westbound	2,014	1,500*
	Burnham Drive	Northbound	134	600

Source: David Evans and Associates, Inc.

* Stop controls at Burnham/Schmel intersection will permit use of additional storage length available on Schmel Drive and on Burnham Drive beyond the interchange area. Storage length on Borgen Boulevard westbound is adequate at 90 percentile level.

FSEIS CPA 05-01 Hospital Alternate Mitigation Potential Changes to Required Mitigation

The mitigation of the hospital impacts at the SR 16/Burnham interchange could be accomplished with the implementation of the Single Point Urban Interchange (SPUI) (or alternate design with sufficient capacity) at the SR 16/Burnham Interchange. However, improvements to the SR 16 interchange are not on WSDOT's system plan or the Regional STIP, and therefore can not be fully relied upon as a mitigating measure. If a specific SR 16/Burnham Drive interchange project is added to the STIP and WSDOT's Highway Plan, then an alternative mitigation plan that includes proportional share participation in the new interchange may be considered.

WSDOT Response to Potential Changes to Required Mitigation

WSDOT cannot support the proposal to allow the interim off-ramp and roundabout highway improvements to be converted to a monetary contribution and used on the proposed future approximately \$40,000,000 interchange project. As shown in the DEIS, those improvements will be needed well before any future ultimate interchange project could be programmed, funding and design notwithstanding. Therefore, at this time, WSDOT will only support those actions that result in the interim improvements being designed and constructed as shown in the DEIS.

Other Approvals or Conditions Needed for St. Anthony Hospital from Outside Parties or Agencies

- Construction of a new water storage tank to serve North Gig Harbor (to be completed by Olympic Property Group)
- Water connection approval by the Washington State Department of Health (DOH)
- Right-of-way easement from Tacoma Power
- Washington State right-of-way permits from WSDOT

VIII. FINDINGS OF FACT

1. Pursuant to the Washington State Growth Management Act (GMA), proposed amendments or revisions to the comprehensive plan can be considered no more frequently than once every year (RCW 36.70A.130 (2)(a));
2. The City of Gig Harbor SEPA Responsible Official issued a final Determination of Significance for three proposed Comprehensive Plan Amendments on July 14, 2005. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued on January 3, 2006 and the Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.

3. Site-specific mitigation measures for the proposed amendment are outlined in the April 5, 2005 Final Supplemental Environmental Impact Statement (FSEIS).
4. A Water Capacity Reservation Certificate (CRC) was issued on March 23, 2006 for the proposed development of the subject property; &
5. The Washington State Growth Management Act (GMA) requires consistency between the comprehensive plan and implementing development regulations (RCW 36.70A.040).

IX. RECOMMENDATION

I recommend **approval** of the City of Gig Harbor Comprehensive Plan Map Amendment #05-01 and the **granting** of a Transportation Capacity Reservation Certificate for 535 PM peak hour trips based on the aforementioned findings of fact and subject to the following site-specific mitigation as identified in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS):

- The developer of the hospital may be subject to payment of impact fees in accordance with the provisions of GHMC 19.12 to the extent such fees do not duplicate the following required mitigation measures. The mitigation described is required for the hospital alone; however, a proportionate share of the mitigation may be transferred to CPA 04-01 (Huber/Bingham) if that subdivision is also approved for development.

The following detailed mitigation plan is provided for future reference in subsequent development review processes, regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments evaluated in this FSEIS. The analysis of impacts and the recommended mitigation described in this FSEIS may be relied on for SEPA review purposes; however, the final mitigation requirements for each development will not be determined until completion of additional phases of development review. Additional mitigation may be required to comply with all conditions of GHMC, whether specified in this FSEIS or not.

- Require the developer to implement transportation demand management measures in accordance with the City's adopted Commute Trip Reduction (CTR) regulations (GHMC 10.28) to reduce single occupant vehicle use.
- Require the developer to make accommodations in the site plan for future transit service to be provided directly to the proposed Saint Anthony Hospital (CPA 05-01), consistent with plans of Pierce Transit.
- Require the developer to make frontage improvements along Canterwood Boulevard consistent with adopted design standards for the facility.
- Require the developer to dedicate right-of-way for a future collector arterial roadway connecting Canterwood Boulevard across any part of the property to

the southeast corner of the property, for continuation to Borgen Boulevard by others. The specific alignment of this route on or through the property may be determined during final site plan review.

- Require the developer to construct on Canterwood Boulevard a two-lane southbound approach to the existing roundabout intersection at Burnham Drive and Borgen Boulevard, for a length of 700 feet north of Borgen Boulevard. A 10-foot paved shoulder on this section is permissible in lieu of curb/gutter/sidewalk, because Canterwood Boulevard abuts the WSDOT highway fence on this side of Canterwood Boulevard and there is no actual pedestrian need.

- Require the developer to construct on the northbound side of Canterwood Boulevard a 10-foot shoulder from Borgen Boulevard to the site's south boundary, as an interim pedestrian safety improvement pending future development of the abutting properties. Alternatively, construct curb/gutter/sidewalk in a location satisfactory to the City Engineer and consistent with future development of abutting properties, and eligible for latecomers reimbursement.

- Require the developer to construct a bypass lane at the roundabout intersection at Burnham Drive and Borgen Boulevard, from Canterwood Drive southbound to the SR 16 on-ramp westbound, adding a second lane to that on-ramp for an appropriate taper length acceptable to WSDOT.

- Require the developer to construct a second lane approach lane on that off-ramp for approximately 450 feet to accommodate the length of expected storage queues. The additional lane on the ramp may trigger the need to prepare an Interchange Justification Report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline.

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- Require the developer to construct a second lane on the eastbound SR 16 off-ramp to the existing roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet to accommodate the length of expected storage queues. The additional lane on the ramp may trigger the need to prepare an Interchange Justification Report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline.

- Require the developer to expand the existing roundabout at the eastbound SR 16 off-ramp and Burnham Drive from one circulating lane to two circulating lanes, including a second exit lane to the westbound on-ramp and an appropriate taper length acceptable to WSDOT.

- If not provided as expected by other developments, require the developer to convert the channelization of the existing Burnham Drive Bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, and with channelization modifications to that roundabout.

The applicant shall submit full civil drawings prepared by a Washington State P.E. conforming to all City Public Works Standards, Policies and Procedures.

A Level 1 site specific Traffic Impact Analysis shall be required for City review and approval.

Project Planner: _____


John P. Vodopich, AICP
Community Development Director

Dated this 13th day of April, 2006

City of Gig Harbor

RECEIVED
CITY OF GIG HARBOR
JAN 28 2005
COMMUNITY
DEVELOPMENT

Comprehensive Plan Amendment

Land Use Map

Franciscan Health System-West Application

Revised January 28, 2005

Owner:
Franciscan Health System-West
Laure Nichols, Vice President
1717 South J Street
Tacoma, WA 98405
253-426-6700

Applicant:
Franciscan Health System-West
Laure Nichols, Vice President
1717 South J Street
Tacoma, WA 98405
253-426-6700

Agent:
Hammes Company
Joe Kunkel
1411 Fourth Ave. Suite 1020
Seattle, WA 98101
206-464-4200

CITY OF GIG HARBOR COMPREHENSIVE PLAN LAND USE MAP
SITE-SPECIFIC AMENDMENT APPLICATION

January 26, 2005

A SITE-SPECIFIC AMENDMENT IS A PROPOSED CHANGE IN THE Comprehensive Plan land use map designation of an individual parcel or parcels of land. A site-specific amendment to the Comprehensive Plan land use map does not result in a rezone, if approved, the applicant would be required to apply for a rezone at the conclusion of this process.

FOR CITY USE ONLY

Owner: Franciscan Health System - West

Applicant: Franciscan Health System-West

Mailing Address: 1717 South J. St

City: Tacoma WA 98405

Phone: 253-426-6700

Agent / Contact: Hammes Company - Joe Kunkel

Mailing Address: 1411 Fourth Ave. Suite 1020

City: Seattle, WA 98101

Phone: 206-464-4200 Fax: 206-464-4201

Site Address: 11567 Canterwood Blvd. NW

City: Gig Harbor, WA 98332

Assessors parcel #: 0122254083 (new)

Legal Description: Lot 1 of BLA recorded under
AFN# 200407080296 - see attached

Section 25 Township: 22 Range 01 E

Additional Contact: Eva Jacobson / Still Water Planning, Inc.
253-851-2243

CITY OF GIG HARBOR COMPREHENSIVE PLAN LAND USE MAP
Site-specific Amendment Application

Application Received (stamp)

COMP 05-01

Received by: _____

Assigned to: _____

Minimum Application Fee _____

SEPA Checklist & Fee _____

Questionnaire _____

Assessor's Map _____

Ownership Certificate _____

Pre-Submittal Review _____

Date ____ / ____ / ____

Staff _____

Application Complete _____

Date ____ / ____ / ____

Staff _____

Is the property in a special taxation or land-use program?

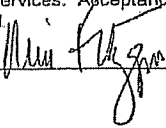
No Yes (specify) _____

Current Comprehensive Plan Designation:

Requested Comprehensive Plan Designation:

The applicant agrees to pay a minimum application fee of \$750.00, in accordance with the adopted fee schedule on file with the City of Gig Harbor Department of Planning and Building Services. If the Planning Commission approves the application for further consideration by the City Council, the applicant may be required to submit a State Environmental Policy Act (SEPA) checklist and an additional fee of \$150.00. The applicant further understands that approval of a site-specific amendment is not a rezone. If approved, the applicant must file an application for a rezone with the City of Gig Harbor Department of Planning and Building Services. Acceptance of this application and/or payment of fees does not guarantee final approval.

Applicant Signature:



Date:

1/28/05

QUESTIONNAIRE

FOR SITE-SPECIFIC COMPREHENSIVE PLAN LAND USE PLAN MAP AMENDMENT APPLICATION

Please answer the following questions in text and/or graphic form on separate pages and attach them to the application. Answer all questions separately and reference the question number in your answer. An application will be considered incomplete until all the questions are answered. This questionnaire applies to map and site-specific amendment applications.

1. Please provide a detailed description and explanation of proposed amendment.
2. Has there been a change in circumstances pertaining to the Comprehensive Plan, public policy, or (if applicable), the subject property (beyond the control of the landowner)?
3. What do you anticipate will be the impacts caused by the change, including the geographic area affected and the issues presented?
4. How would the proposal comply with the community vision statements, goals, objectives, and policies of the Comprehensive Plan?
5. Is there public support for this proposal (i.e. have you conducted community meetings, etc.)? Note: All applications will be subject to full public participation, notice, and environmental review.
6. Identify the location of the subject property on a Pierce County assessor's map, which has been dated and signed by the Applicant.

OWNERSHIP CERTIFICATION

I, Mike Fitzgerald, hereby certify that I am the majority property owner or officer of the corporation owning property described in the attached application, and I have familiarized myself with the rules and regulations of the City of Gig Harbor with respect to filing this application, and that the statements, answers and information submitted presents the argument on behalf of this application and are in all respects true and correct to the best of my knowledge and belief.

Address: 1717 South J St.

City and State: Tacoma, WA 98405 Phone: (253) 426-6700

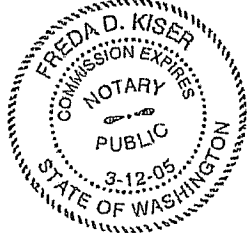
Signature: [Handwritten Signature] for Franciscan Health System West
(give corporation or company name)

ACKNOWLEDGMENT

State of Washington)
County of Pierce ss.)

On this day personally appeared before me Mike Fitzgerald known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL this 28th day of January, 2005



Freda D. Kiser
Notary Public in and for the State of Washington
residing at Tacoma
My Commission Expires: 03/12/05

Other property owners in this application must be listed below:

Name: _____ Signature: _____
Address: _____ City/State: _____ Zip: _____

Franciscan Health System - West
Application

Answers to Questionnaire

Page 3 of application

January 28, 2005

SITE SPECIFIC COMPREHENSIVE PLAN LAND USE MAP AMENDMENT APPLICATION

1. Detailed description and explanation of the proposed amendment.

This proposed amendment is to change the Gig Harbor Comprehensive Land Use Map for a 41.48 acre parcel of land which is located at the north edge of the city limits, within the Gig Harbor North Planned Community Development. (PCD)

The site has recently been combined by a Boundary Line Adjustment, creating one large parcel, and is divided between two land use zones: PCD – BP (Business Park) and PCD – RMD (Residential Medium Density). This proposal would reconfigure the areas of the Business Park and Residential zones as shown on the map, so that a more contiguous use of the land is possible with BP located in the core of the property and residential use sited on the eastern boundary as a transition zone between business uses and the residential community.

The Owners / Applicants of the property – Franciscan Health System West - plan to use this site for a Hospital / Medical campus. This proposal will allow a more congruous site plan with zone transitions thereby meeting the goals of the Comprehensive Plan and long term planning.

Natural buffer areas will be maximized to allow additional transition between zones and contiguous parcels. Existing natural drainage and sensitive areas will be substantially preserved and incorporated where possible, into a general site plan for the campus, with consideration given to future needs within the community for health care services.

2. Has there been a change in circumstances pertaining to the Comprehensive Plan, public policy or the subject property (beyond the control of the landowner)?

In 2003 the Comprehensive Plan for the PCD was amended to allow more % of commercial uses within the Gig Harbor North PCD. This change resulted in less % of Business Park (employment) land available in the area for development of a good size business or medical campus. The Business Park zone needs to be increased to allow for the uses currently being anticipated.

2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

3. What do you anticipate will be the impacts caused by the change, including the geographic area affected and the issues presented?

This property was incorporated and included in the Gig Harbor North - PCD because it is appropriate and suitable for high density / intensity urban development. It is within the area intended by the City to provide necessary urban services.

The goal is to provide a better configuration of the use zones that will incorporate the allowed uses of PCD-BP and PCD-RMD, specifically a Hospital and Medical campus. Approved uses will be carefully planned to maximize the best configuration of open space, trails, public spaces and medical campus.

The Tacoma Power Utilities transmission lines cross through the center area of the property and create a unique challenge in site planning. This map amendment will better enable the owners to plan for uses of the property in a manner consistent with good site planning and design. The owners are working with TPU to solve issues that are created by the power line location. The proposed configuration makes better use of the land and allows for the proposed uses in a more amenable location.

4. How would the proposed amendment comply with the community vision statements, goals, objectives and policies of the Comprehensive Plan?

The Comprehensive Plan states: "The purpose of a PCD is to promote optimum site development options which are compatible with the communities' planning goals".

This amendment will do exactly that.

Approval of this amendment will allow the owners to design and plan for future use of the campus in a cohesive manner. Many design and use elements can be coordinated to optimize the site. Natural features of the site will be protected or enhanced through open space plans and buffers. Areas for public use and enjoyment will be carefully planned

The development of this site with conditional use as a Hospital will provide for services that are not now available within the Gig Harbor Urban area, thus reducing the amount of traffic, time and energy demand to travel to Tacoma or Bremerton for these services.

Economic Development goal: This amendment will meet the goal of the comprehensive plan by providing economic development. This proposal has major economic development implications for the area, as evidenced in three areas:

1. Creation of Family-Wage Jobs Locally. The establishment of St. Anthony Hospital represents approximately 450 family-wage jobs.
2. The construction of the \$100 million project represents an influx of construction jobs into the area over the next 3 years.
3. The creation of St. Anthony in Gig Harbor represents vital infrastructure in the recruitment of additional employers into the area. In addition to a quality school system, a strong healthcare provider in the community is a very attractive quality considered by firms evaluating siting options.

2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

This proposal will help promote economic development in an appropriate location, sound financial opportunities and the conservation of resources and energy.

GOAL 2.8.1 Planned Community Development

“Promote site development flexibility for properties which have long-term development plans, which are suitable for a variety of intensity and density of development”

The goal of the property owners is to implement a long term development plan that will benefit the community enormously and will meet the needs of the population growth of the area for the next 20 years.

Innovative Community design concepts will be incorporated in the property site planning, as approval of this amendment will provide. This amendment will also accomplish better use of the natural areas and topography with sensitivity to balancing the land uses on the site.

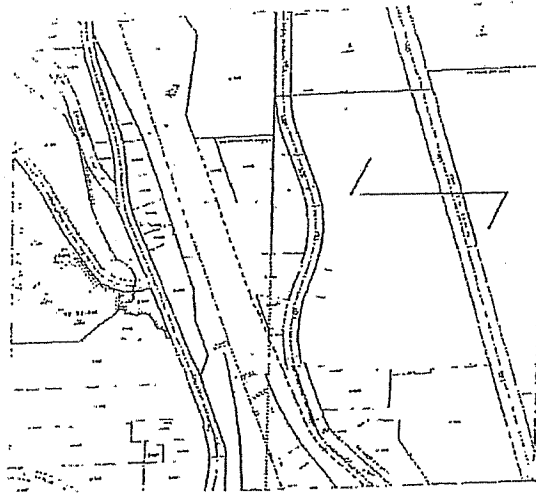
5. Is there public support for this proposal? (i.e. have you conducted community meetings, etc.)?

The Applicant understands that proposals to amend the Comprehensive Plan Map are not usually specific to any particular use. To that degree, there has been no public response.

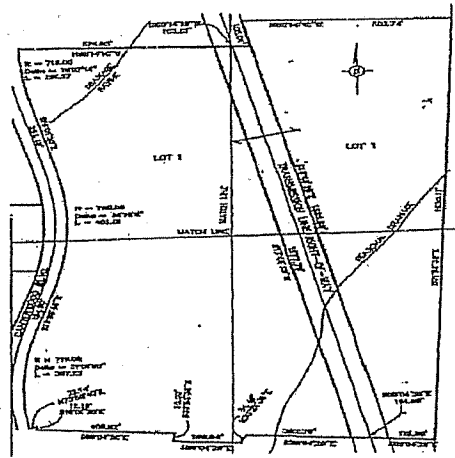
However, because the Applicant has made a detailed application to the State of Washington for a Certificate of Need for a Hospital on this site, there have been public meetings and responses to the specific use of this property as a Hospital campus.

As evidenced by the issuance of the Certificate of Need by the Washington State Department of Health, the residents of Gig Harbor and the Peninsula overwhelmingly support the need for building a new hospital. Public support for this proposal has been dramatic, with thousands of letters being received by the Department of Health for the new facility.

6. Identify the location of the subject property on a Pierce County Assessor's map, which has been dated and signed by the applicant



LOT 1 of BLA #200407080296



Applicant Franciscan Health System - West

Signature W. K. [Signature]

Date 1/28/05

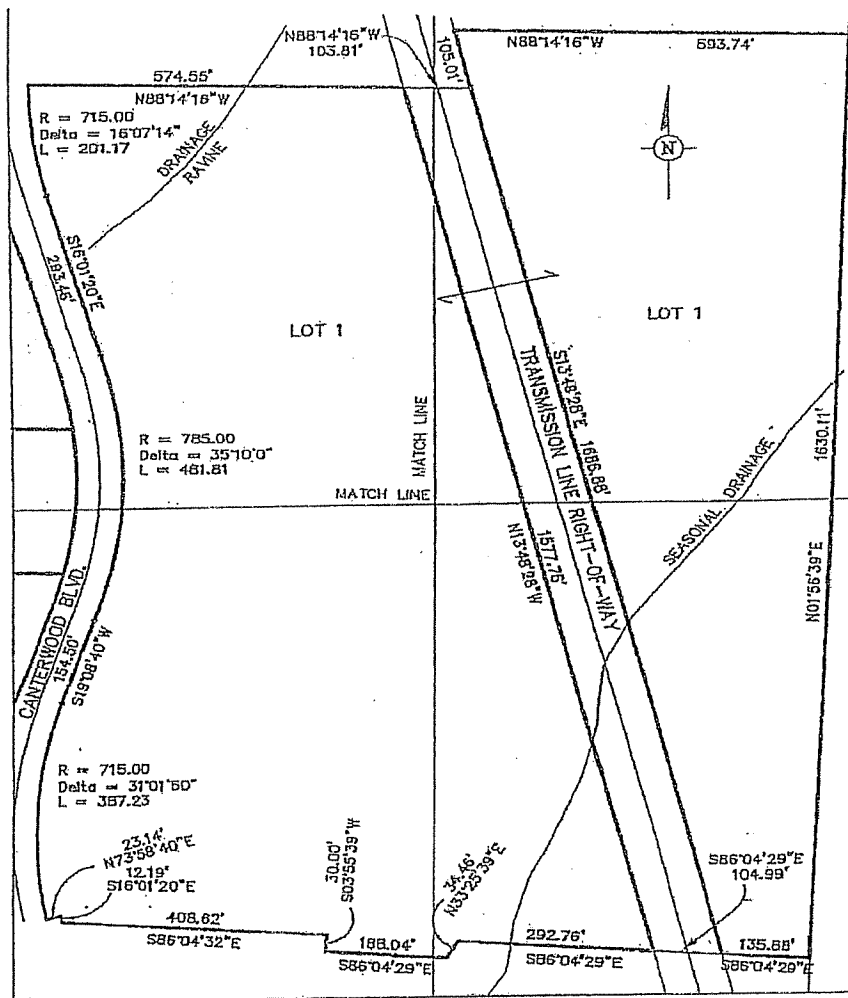
2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

Exhibit "A"

Legal description:

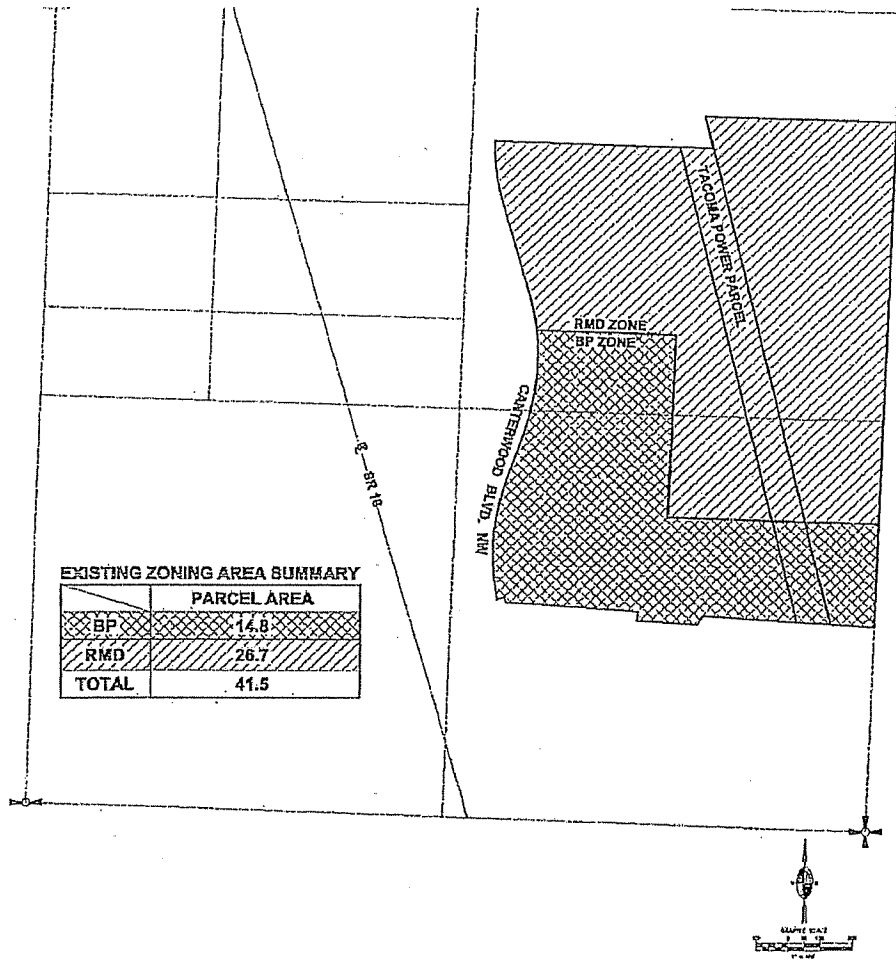
Lot 1 of Boundary Line Adjustment
AFN# 200407080296

Assessors map



2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

Exhibit "B" Map of EXISTING Land Use

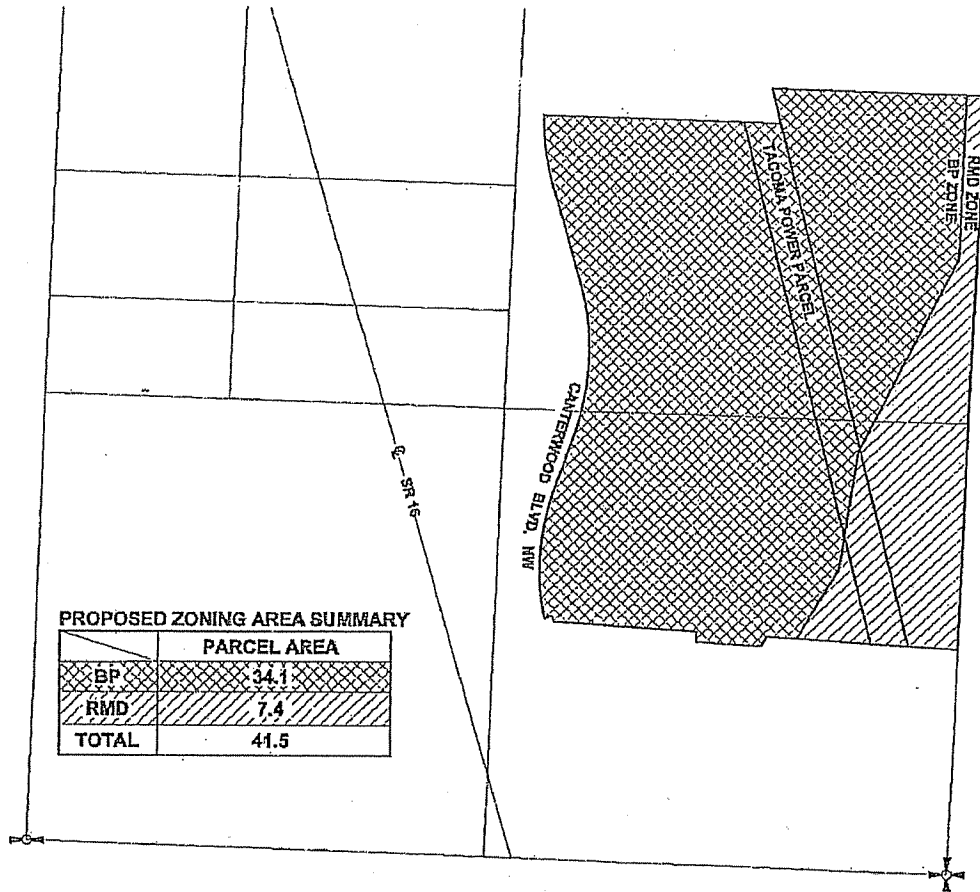


EXISTING ZONING AREA SUMMARY	
	PARCEL AREA
BP	14.8
RMD	26.7
TOTAL	41.5

<p>DATE: 11/11/05 BY: [Signature]</p>	<p>EXISTING ZONING MAP St. Anthony Hospital</p>	<p><small>CITY OF THE JAMES EARL RAY FRANCISCAN HEALTH SYSTEM</small></p>	<p>ADWL ARCHITECTURAL DESIGN WORKS, L.P.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>NO.</td> <td>DATE</td> <td>DESCRIPTION</td> <td>BY</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION	BY												
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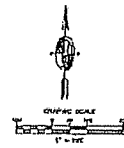
2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.

Exhibit "C" Map of PROPOSED Land Use



PROPOSED ZONING AREA SUMMARY

	PARCEL AREA
BP	34.1
RMD	7.4
TOTAL	41.5



	PROPOSED ZONING MAP St. Anthony Hospital	THE HAUSSER COMPANY FRANCISCAN HEALTH SYSTEM 1441 Evans Ave., Suite 100 P.O. Box 111-100 THE CITY OF WASHINGTON		PREPARED BY DATE SHEET NO.	
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Exhibit "D"

Fact Sheet

St. Anthony Hospital

Comprehensive Plan Amendment

June 1, 2004

Property Owner:
Franciscan Health Systems West
Laure Nichols, Vice President
1717 J Street
Tacoma, WA

Fact Sheet

St. Anthony Hospital Comprehensive Plan Amendment

I. Purpose:

The Franciscan Health Service has been working on its proposal to build a hospital in Gig Harbor for over 3 years. To date, this work has been focused on the necessary analysis and approvals from the State Department of Health. On May 16, 2004, the Department of Health rendered its decision, approving the Franciscan's application for a Certificate of Need to build an 80-bed hospital in Gig Harbor.

As FHS initiates its efforts to plan, design, and construct a state of the art hospital in Gig Harbor, it is requesting an amendment to the Comprehensive Plan for Gig Harbor. The bottom line of the amendment is to 1. Increase the amount of "Business Park" or BP zoned property on the approved site by 18.8 acres, and 2. Reconfigure the existing zoning to allow for greater flexibility in master planning the site.

II. Vision for the St. Anthony Hospital site:

- Vision - FHS proposes to develop a state-of-the-art hospital and medical campus to serve the needs of peninsula residents for generations to come. In addition to St. Anthony Hospital, FHS envisions constructing medical office facilities to attract and retain the necessary medical specialists who will be practicing at the hospital. It is important to recognize the long-term impact and commitment represented by establishing a new hospital. St. Anthony represents an investment and commitment by FHS that truly will span decades. In establishing the new medical facility, it is the intention of FHS to develop St. Anthony in a way that is compatible with the existing high quality character of the City of Gig Harbor.
- Planning Objectives - In the development of initial planning for St. Anthony, FHS has established some Guiding Principles to provide the framework for the new hospital. The initial plan will be designed in accordance with these guiding principles for the project, which include:
 - Flexibility
 - Good Neighbor
 - Safety

In addition to the guiding principles, FHS has the following objectives in mind in the design of the new facility:

- Create a high quality project commensurate with the existing unique character of the City.
- Create a project that embraces the planning goals of the Growth Management Act.
- Work creatively and responsibly to incorporate unique natural features and environmentally sensitive areas into the site plan.
- Develop a project that is economically sound over the long term.

III. Economic Benefits

The establishment of St. Anthony Hospital in Gig Harbor will be an economic force in a number of ways:

1. Construction – the \$100 million project will provide a number of local jobs in the construction of the new facility over the next 3 years. This goes beyond just the wages for the contractors and consultants, but includes a significant “ripple effect” of goods and services used during the construction.
2. Family Wage Jobs – Upon completion, St. Anthony will provide over 400 jobs with an average wage of over \$40,000. This does not include jobs associated with the medical office complex or the physicians on staff. Many of these individuals will choose to reside in the Gig Harbor area, having even greater economic impact.
3. Infrastructure – The establishment of St. Anthony represents an investment in community infrastructure that will assist in the future economic viability of the region. Local access to healthcare will be an important item prospective new employers evaluate in the establishment of their businesses in the area. A state-of-art medical facility, like a strong school system, creates the necessary underpinnings to attract new business.

IV. Current Action Before the City Council

In order to execute the project as planned, FHS is requesting the City's Comprehensive Plan be amended to allow for:

- An additional 18.8 acres of Business Park (rezoned from RMD)
- A map amendment better configuring the BP zone on the site itself.

V. Quality of Life Benefits

- A. Sense of Identity. St. Anthony Hospital will add to the development of Gig Harbor North, enhancing its sense of identity. The hospital and medical office space will be carefully planned and designed to fit the vision of Gig Harbor and the surrounding community.
- B. Reduced Dependence on Narrows Bridge and Trips to Silverdale. St. Anthony will provide the needed medical services in Gig Harbor. As documented in the Certificate of Need application, approved by the Department of Health, a number of Gig Harbor residents currently travel out of their home town for these services, which should be available locally. This will improve access to services as well as a patient's family's ability to be with their loved one.
- C. Access - The establishment of St. Anthony on Canterwood Drive NW positions it for easy access from State Highway 16. This is crucial, especially for emergency responders serving the peninsula.

Exhibit "E"
Additional Conditions

As a condition of approval of its Amended Site-Specific Amendment Application to amend the City of Gig Harbor Comprehensive Plan Land Use Map and as a mitigation measure in any determination made by the City of Gig Harbor in response to the related Environmental Checklist (Exhibit "F"), Franciscan Health System-West (the "Applicant") will agree to enter into a development agreement (the "Agreement") with the City of Gig Harbor that will require Applicant to file an application for a conditional use permit seeking to develop the PCD-BP portion of the property with a hospital having a maximum of eighty (80) beds and a medical office building containing no more than one hundred thousand (100,000) square feet of gross leaseable area. The Agreement will provide that if the conditional use permit is granted, Applicant will agree, by means of another development agreement, condition of approval, mitigation measure, restrictive covenant, or other means acceptable to the City, to limit the use of the PCD-BP portion of its property to hospital, medical office building and related uses and to restrict the PCD-RMD portion of its property to uses permitted in that district that do not involve the construction of a building (e.g., open space, passive recreational uses, buffering, trails, etc.), provided that the PCD-RMD portion so restricted may be used by Applicant to satisfy any requirement to set aside an area for natural vegetation, open space, trails, passive recreation, buffering and the like that may be imposed upon its development of the PCD-BP portion of the property. Such restriction of the PCD-RMD portion of Applicant's property would be subject to the existing transmission line right-of-way and related maintenance road owned by Tacoma Power as they currently exist or as they may be relocated. Future improvements to the PCD-BP portion (which would then be limited to hospital, medical office building, and related uses) would be reviewed in accordance with the State Environmental Policy Act (SEPA) and the City of Gig Harbor zoning and development regulations then existing.

Applicant believes that because of its willingness to limit the kind of development that may take place on the PCD-BP portion of its property and its willingness to restrict all building development on the PCD-RMD portion of its property, the development of its property with a hospital and medical office building as described above will not increase the intensity of traffic and other impacts associated with the uses and densities that are now permissible on its property under the current zoning configuration.

2005 Comprehensive Plan Amendment - Land Use Map - Franciscan Health System - West App.



COMMUNITY DEVELOPMENT DEPARTMENT

**Staff Report to the Planning Commission
Community Development Department
Comprehensive Plan Amendment #05-03
HMT Partnership**

I. REQUEST

The applicant is proposing an amendment to the 2002 (as amended in 2003) City of Gig Harbor Wastewater Comprehensive Plan to reconfigure the design and location of future wastewater infrastructure improvements in the C-7 basin.

II. GENERAL INFORMATION

APPLICANT:

HMT Partnership
P.O. Box 492
Gig Harbor, WA 98335

AGENT/CONTACT:

Carl Halsan
P.O. Box 1447
Gig Harbor, WA 98335
(253) 858-8820
(253) 858-9816 Fax

III. BACKGROUND INFORMATION

The proposed amendment to the City of Gig Harbor Wastewater Comprehensive Plan is to provide sewer service for a proposed single family development on parcel numbers 0221172115 and 0221172076 which are located in the C-7 basin. A review of the proposal was conducted by Hammond Collier Wade Livingstone (consulting engineers) which included:

- Conducted a capacity study of the existing sewer line in 34th Street and adjoining sewer infrastructure.
- Generated sewerage flow calculations of the additional parcels.
- Analyzed the proposed conveyance system for feasibility to serve both the immediate development and the adjacent sewer basin.
- Prepared a written report with supporting technical data and recommendations.

The findings of this review have been attached to this staff report.

IV. APPLICABLE LAND-USE POLICIES/CODES

The February 2002 City of Gig Harbor Wastewater Comprehensive Plan provides recommendations, cost estimates, and other information for use in planning required improvements to the City of Gig Harbor's sewer system and wastewater treatment plant. Specific recommendations for the C7 basin (38th Avenue from 60th Street to the south boundary of the UGA) are identified in Chapter 6, Collection System Expansions of the Plan on pages 6-10 through 6-12 (attached).

V. PUBLIC NOTICE

The City Council adopted Resolution No. 646 on April 11, 2005 which revised Resolution No. 631 and established the work program for the processing of individual Comprehensive Plan amendments in 2005.

Notice of January 19, 2006 Planning Commission public hearing was published in the Peninsula Gateway on January 4th and 11th.

Notice of April 20, 2006 Planning Commission public hearing was published in the Peninsula Gateway on April 5, 2006.

Additional notice was also provided on the City website.

VI. SEPA DETERMINATION

On July 14, 2005, the City of Gig Harbor, as lead agency for this proposal, issued a final Determination of Significance for three proposed Comprehensive Plan Amendments. A Draft Supplemental Environmental Impact Statement (DSEIS), prepared by David Evans and Associates Inc. and Mark Personius, AICP, was issued on January 3, 2006. The requisite comment period ran from January 4, 2006 to February 1, 2006. A Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.

The appeal period ends on April 19, 2006, no appeals of the Final Supplemental environmental Impact Statement (FSEIS) have been filed as of the date of this staff report.

VII. ANALYSIS

The proposed amendment was analyzed by Hammond Collier Wade Livingstone (consulting engineers) on behalf of the City of Gig Harbor. The findings and conclusion of this analysis are outlined in the February 3, 2005 report prepared by Robin D. Nelson, P.E. (attached). Specific mitigation measures for the proposed amendment are outlined in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).

Transportation impacts would be mitigated by payment of the city's traffic impact fee, and compliance with the city's concurrency management ordinance. Because of the existing LOS deficiency at the intersection of 38th Avenue NW and 56th Street NW, and the lack of a currently funded improvement to correct that deficiency, development approval on this site must be denied unless or until a financial strategy is in place to provide the needed improvements to remove the LOS deficiency. Capacity improvements for this intersection have been developed in City plans for the 56th Street NW/Olympic Drive NW corridor, including additional approach lanes, turn pockets, and signal revisions; however, these improvements are not funded. These improvements will add new capacity equal to approximately 1,800 peak hour vehicles, for the corridor and also to this deficient intersection. The proposed development's proportionate share of future capacity for this intersection and improvements to the overall corridor is $18/1800 = 1.0$ percent. In order to remove the capacity deficiency at the intersection, however, a specific capacity improvement at the intersection must be provided that is at least commensurate with the magnitude of the development's impacts. Under GMA, the applicant has the options to provide an improvement of such magnitude, or wait for others to provide the improvement, or to modify the development proposal to reduce the site impacts.

VIII. FINDINGS OF FACT

1. Pursuant to the Washington State Growth Management Act (GMA), proposed amendments or revisions to the comprehensive plan can be considered no more frequently than once every year (RCW 36.70A.130 (2)(a)).
2. The City of Gig Harbor SEPA Responsible Official issued a final Determination of Significance for three proposed Comprehensive Plan Amendments on July 14, 2005. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued on January 3, 2006 and the Final Supplemental Environmental Impact Statement (FSEIS) was issued on April 5, 2006.
3. Site-specific mitigation measures for the proposed amendment are outlined in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS).
4. The proposed amendment will not generate or discharge additional flows other than what was identified in the 2002 City of Gig Harbor Wastewater Comprehensive Plan update.
5. The proposed amendment will have no adverse impact to the existing conveyance system downstream.

6. The proposed improvements will not have any adverse impacts to the environment. The developer will be responsible for submitting a SEPA checklist for review and processing by the City prior to construction.
7. The capital improvements associated with the amendment will be funded by the developer and City funds will not be expended as part of the project.
8. The City Engineer has reviewed the proposed amendment; the February 3, 2005 report prepared by Robin D. Nelson, P.E. of Hammond Collier Wade Livingstone; and recommends approval of the amendment as proposed.

IX. RECOMMENDATION

I recommend **approval** of the HMT Partnership City of Gig Harbor Wastewater Comprehensive Plan Amendment #05-03 based on the aforementioned findings of fact and subject to the following site-specific mitigation as identified in the April 5, 2006 Final Supplemental Environmental Impact Statement (FSEIS):


The following detailed mitigation plan is provided for future reference in subsequent development review processes, regarding the specific developments currently proposed on the sites affected by the comprehensive plan amendments evaluated in this FSEIS. The analysis of impacts and the recommended mitigation described in this FSEIS may be relied on for SEPA review purposes; however, the final mitigation requirements for each development will not be determined until completion of additional phases of development review. Additional mitigation may be required to comply with all conditions of GHMC, whether specified in this FSEIS or not.

- Construct planned 8-inch gravity sewer main in 56th Street NW/Olympic Drive, from 38th Avenue NW eastward to planned lift station. Construct lift station. Construct 4 inch force main from lift station to existing sewer main in Olympic Drive near 34th Avenue NW;
- Construct planned 8-inch gravity sewer mains from the site southward, via 38th Avenue NW and via the extension of 34th Avenue NW, to connect to above-described sewer mains in 56th Street NW/ Olympic Drive NW;
- Construct on-site 8 inch sewer mains for gravity flow to 34th and 38th Avenues without the use of a lift station or force main on the development site;
- Pay the city's traffic impact fee, based on 23 single-family dwelling units; &
- Construct left-turn pockets on 38th Avenue NW approaching 56th Street SW, northbound and southbound, and provide necessary matching reconstruction of pavement on both approaches to current city standards including curb/gutter/sidewalk parallel to the length of the left-turn pockets, and provide necessary matching signal control revisions. Alternatively, agree to one percent of the cost of the corridor improvements planned for

56th Street NW/Olympic Drive NW, as a contribution to the financial strategy to complete this corridor within six years.

The applicant shall submit full civil drawings prepared by a Washington State P.E. conforming to all City Public Works Standards, Polices and Procedures.

A Level 1 site specific Traffic Impact Analysis shall be required for City review and approval.

Project Planner: 

John P. Vodopich, AICP
Community Development Director

Dated this 13th day of April, 2006

City of Gig Harbor Wastewater Comprehensive Plan Chapter 6, Collection System Expansions - C7 Basin

Gray & Osborne, Inc., Consulting Engineers

20-YEAR COLLECTION SYSTEM EXPANSIONS

C6: GIG HARBOR NORTH (EAST SIDE)

Basin C6 will be developed as a planned community, with residential, business, commercial and mixed-use land used. The basin has a projected 20-year population of 1,225 people, and 58 acres are zoned commercial. The total area of the basin is 227 acres. Development of the planned community will occur in the near future, making this basin a relatively high priority for sewer service.

Proposed capital improvements are summarized in Figure 6-7. Because the area is not yet fully platted, the layout of lateral lines is not shown. A gravity trunk line will flow south from the proposed east-west road to an existing sewer pipe just north of downtown. Wastewater from basin C6 will flow through lift station 2.

Construction costs will be paid for by the developers of Gig Harbor North. A cost estimate for capital improvements in basin C6 is summarized in Table 6-10:

TABLE 6-10

Construction Cost Estimate for Basin C6 (2000 dollars)

Component	Unit	Quantity	Unit Cost	Total Cost
10" Gravity Sewer*	FT	6,200	\$160	\$ 992,000
Manholes*	EA	30	\$2,000	\$ 60,000
Subtotal				\$1,052,000
Sales Tax (8.1%)				\$ 85,212
Subtotal				\$1,137,212
Contingency (20%)				\$ 227,442
Subtotal				\$1,364,654
Engineering, Overhead and Administration (25%)				\$ 341,164
Total Cost				\$1,706,000

*Estimated size based on incomplete information on road alignment. Lateral lines are not included in the quantity estimations.

C7: 38TH AVENUE FROM 60TH STREET TO THE SOUTH BOUNDARY OF THE UGA

Basin C7 has a projected 20-year population of 768, not including the Woodland Creek Estates which already has sewer service. A total of 28 acres in the basin are zoned commercial. The total area of the basin is 166 acres. Reports of failing septic tanks could potentially make this basin a high priority for sewer service, however the high cost per unit will likely delay sewer service beyond the 6-year planning period.

Proposed capital improvements are summarized in Figure 6-8. The basin will be served by an 8" trunk line on 38th Avenue, with 8" lateral lines on 60th Street, Olympic Drive, Norwood Estates, and Briarwood Lane. Additional lateral lines, not shown in the figure, will be constructed on private roads within the basin.

Due to the topography of this basin, two lift stations will be required. One lift station will be located on a City-owned lot on 40th Street Ct. that will serve 44 lots on 40th Street Ct., 35th Ave. Ct., and 35th Avenue. A 1,900-foot, 4" force main will be installed along 40th St. Ct. and 35th Avenue from the lift station to the proposed gravity sewer on Briarwood Lane. The lift station will be sized for 120 gpm in order to maintain the minimum scouring velocity in the force main. The pump will be sized for a TDH of approximately 100 feet.

A second lift station will be located at the low point of 38th Avenue, and will discharge into a force main connecting to Manhole 8-31. The pump station on 38th Avenue will serve all of basin C7, plus Woodland Creek Estates. The existing Woodland Creek Estates lift station will be abandoned, and wastewater from this subdivision will flow by gravity to the proposed sewer on 38th Avenue. It is assumed that there is no salvage value in the existing lift station.

Sizing criteria for the proposed lift station on 38th Avenue are given in Table 6-11. The populations and areas given below include all of basin C7, plus Woodland Creek Estates, minus the area served by the proposed lift station on 40th Street.

TABLE 6-11

Sizing Criteria for the Proposed Lift Station on 38th Avenue

Flow Component	Unit	Quantity (unit)	Unit Flow (gal/unit/day)	Leaking Factor	Peak Hour Flow (gpm)
Infiltration and Inflow	Acre	162	1,100	N/A	124
Residential Population	Capita	740	61	3.9	122
Commercial Acreage	Acre	28	732	3.9	56
Subtotal Peak Flow (gpm)					302
Capacity of Proposed Lift Station on 40 th Street (gpm)					120
Design Capacity for Proposed Lift Station on 38 th Avenue (gpm)					422

The 38th Avenue lift station will require a pump with a capacity of 430 gpm at 200' TDH, and a second pump of equal capacity. A 2,600-foot, 6" force main will have an alignment along 38th Avenue through Woodland Creek Estates up to the existing Manhole 8-2 on Point Fosdick Drive.

Three houses on 40th Street Ct are below street level, and the homeowners will need to install individual grinder pumps to connect to the sewer.

Because basin C7 is almost entirely developed, existing homeowners will pay the construction costs, possibly by one or more ULID formations. A construction cost estimate for basin C7 is summarized in Table 6-12:

TABLE 6-12

Construction Cost Estimate for Basin C7 (2000 Dollars)

Component	Unit	Quantity	Unit Cost	Total Cost
8" Gravity Sewer	FT	16,000	\$ 140	\$2,240,000
4" Force Main	LS	2,200	\$ 80	\$ 176,000
6" Force Main	FT	2,600	\$ 100	\$ 260,000
Lift Station on 40 th Street (120 gpm, 100' TDH)	LS	1	\$100,000	\$ 100,000
Lift Station on 38 th Avenue (430 gpm, 200' TDH)	EA	1	\$200,000	\$ 200,000
Backup Generator	EA	2	\$ 40,000	\$ 80,000
Abandon Lift Station 11	LS	1	\$ 20,000	\$ 20,000
Manholes	EA	55	\$ 2,000	\$ 110,000
Subtotal				\$3,186,000
Sales Tax (8.1%)				\$ 258,066
Subtotal				\$3,444,066
Contingency (20%)				\$ 688,813
Subtotal				\$4,132,879
Engineering, Overhead and Administration (25%)				\$1,033,220
Total Cost				\$5,166,000

C8: REID DRIVE FROM OLYMPIC VILLAGE TO HUNT STREET, AND 28TH AVENUE

Basin C8 has a projected 20-year population of 889 people. A total of 23 acres in the basin are zoned commercial, including 19 acres in Olympic Village that already have sewer service. The total area of the basin is 170 acres. Reports of failing septic tanks make this basin a relatively high priority for sewer service.

Proposed capital improvements are summarized in Figure 6-9. An 8" gravity line will serve Olympic Village and Reid Drive. The existing lift station serving the Olympic Village will be abandoned, and a new lift station will be constructed at the low point of Reid Drive between Olympic Village and Hunt Street. The forcemain from this proposed new lift station will connect with the existing forcemain on the abandoned lift station, which leads to a manhole at the top of Soundview Drive. Lots to the east of Reid Drive will require individual grinder pumps to connect to the gravity sewer.

February 3, 2005 report prepared by Robin D. Nelson, P.E. of
Hammond Collier Wade Livingstone

Exhibit A

February 2002 Wastewater Comprehensive Plan
2004 Annual Amendments

COLLECTION SYSTEM EXPANSIONS AMENDMENT

SYSTEM EXPANSION C-7 (38TH Avenue NW)

SUMMARY

This Annual Amendment was initiated by a developer to provide sanitary sewer service to a parcel located north of 56th Street NW and east of 38th Avenue NW. The parcel is underdeveloped and the current single family residence is served by on-site septic system. The developer desires to improve the parcel in accordance with the designated land use defined in the City of Gig Harbor's Comprehensive Plan, R - 1 (3du/ac). Figure 1 identifies the parcel proposed for development.

The proposed site is located in Basin C-7 identified in the City's Wastewater Comprehensive Plan. Basin C-7 is zoned primarily residential single family with low or moderate densities. The wastewater generated from this basin, particularly the proposed development identified in figure 1, would be domestic wastewater.

The proposed capital improvements to be completed within the 20 year planning horizon for drainage basin C-7 were amended in the 2003 Annual Amendments process. Figure 1 summarizes these amendments to the 2002 Wastewater Comprehensive Plan. Specifically, Olympic Drive (56th Street NW) would no longer be served by a gravity lateral sewer main extended from 38th Avenue NW. Approximately 384 L.F of 8 inch gravity sewer would be installed flowing easterly to a new pump station along the south side of 56th Street NW. The 120 gpm lift station would pump the wastewater south easterly approximately 779 L.F through a 4 inch force main to the existing gravity main along Olympic Drive.

These improvements would serve approximately six connections with an estimated sewage flow of 300 gallons per day per connection, which is consistent with the unit flows identified in the City's Wastewater Comprehensive Plan. 1800 gallons per day or 1.75 gallons per minute would discharge to the proposed lift station. The lift station capacity far exceeds the flows generated from the 6 connections identified in the 2003 Amendment and provides flexibility for the future amendments.

The 2004 Amendment is shown in Figure 2. The new capital improvements for this 2004 amendment will require implementation of proposed 2003 amended capital improvements, prior to or concurrently, to serve the northerly portion of drainage basin C-7. Due to the timing for the proposed arterial improvements to 56th Street NW and recent development pressure the demand for public sewers in this sub- region of basin C-7 north of 56th Street NW is increasing.

The 2004 proposed amendment would still consist of extending an 8-inch sewer main north along 38th Avenue NW to approximately 60th Street NW. However, the sewer main would connect to the proposed 8-inch gravity sewer flowing easterly along Olympic Drive (56th Street NW) per the 2003 annual amendment for the basin C-7. The wastewater flow would then enter the proposed Lift

Station and pumped through the 4 inch force main to the existing gravity sewer along Olympic Drive installed as part of ULID No. 2.

This 2004 amendment proposes to extend the 8 inch gravity sewer north along 38th Avenue toward the intersection with Olympic Drive. The gravity main would terminate prior to the intersection. This small extension would primarily provide gravity sewer service to the lots fronting 38th Avenue to the east and within the C-7 service area boundary. The proposed 8 -inch extension has more than adequate capacity to serve the current land use defined. At Department of Ecology minimum slope criteria for an 8 inch sewer main, the capacity of the proposed extension is 358 gallons per minute. To give this capacity perspective, the entire sub-basin which this extension is a small part has a peak domestic flow of 320 gallons per minute.

In order to maximize gravity sewer service within this sub-region, a small 8-inch main extension north along what would be the extension of 34th Avenue NW is proposed as well. This small extension of 100 LF would serve the remaining sub-regions easterly slopes of the localized depression and sensitive area immediately north of 56th Street.

The 2004 proposed capital improvements will not change the service area of drainage basin C-7 and maximizes gravity sewer service. The improvements will not require increasing the size of the pump station proposed for the 2003 amendment. The added flow will actual reduce retention times in the lift station and insure scouring velocities in the 4-inch force main of greater than 2.0 feet per second.

The 2003 improvements are anticipated to be constructed in the next 5 – 6 years. Construction of the gravity sewer and force main is anticipated to be part of the 56th Street Improvements project. The lift station would be constructed by private development. Should private development preclude the roadway project, then all improvements would be funded and constructed by private development.

The 2004 amended improvements are contingent upon implementation of the proposed 2003 amended capital improvements. All 2004 improvements would be entirely funded and constructed by private developers. The 8-inch gravity main should be installed with sufficient depth to maximize gravity service to the north along 38th Avenue NW and 34th Avenue NW.

IMPACTS

Existing City Facilities

The proposed capital improvements identified in this 2004 amendment will not generate or discharge additional wastewater flows other than what was identified in the original 2002 Wastewater Comprehensive Plan update. It will increase the flow tributary to the proposed modifications identified in the 2003 Annual Amendment for drainage basin C-7.

The proposed improvements identified in the 2003 amendment include an 8- inch gravity sewer main, 120 gpm lift station and 4-inch force main. The additional flow from the remaining service area north of 56th Street NW will generate approximately 109,234 gpd peak flow or 76 gpm. Couple this with the projected 1800 gpd flow for the 2003 Amendment and the total tributary flow to the lift station is still well below the proposed capacity of 120 gpm. More importantly, the added flow will improve the operation and reduce possible septic conditions occurring as a result of low flows.

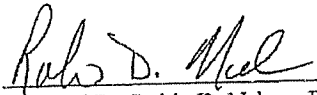
The 2003 Amended capital improvements were identified to have no adverse impact to the existing conveyance system downstream. The capacity of the lift station will not change therefore, if the 2003 amended improvement have no adverse impact neither will the 2004 proposed capital improvements.

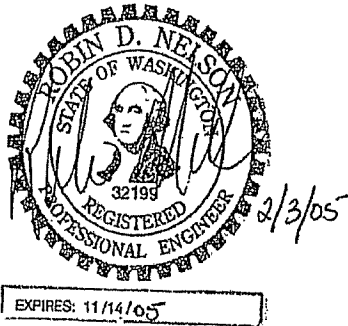
Environmental

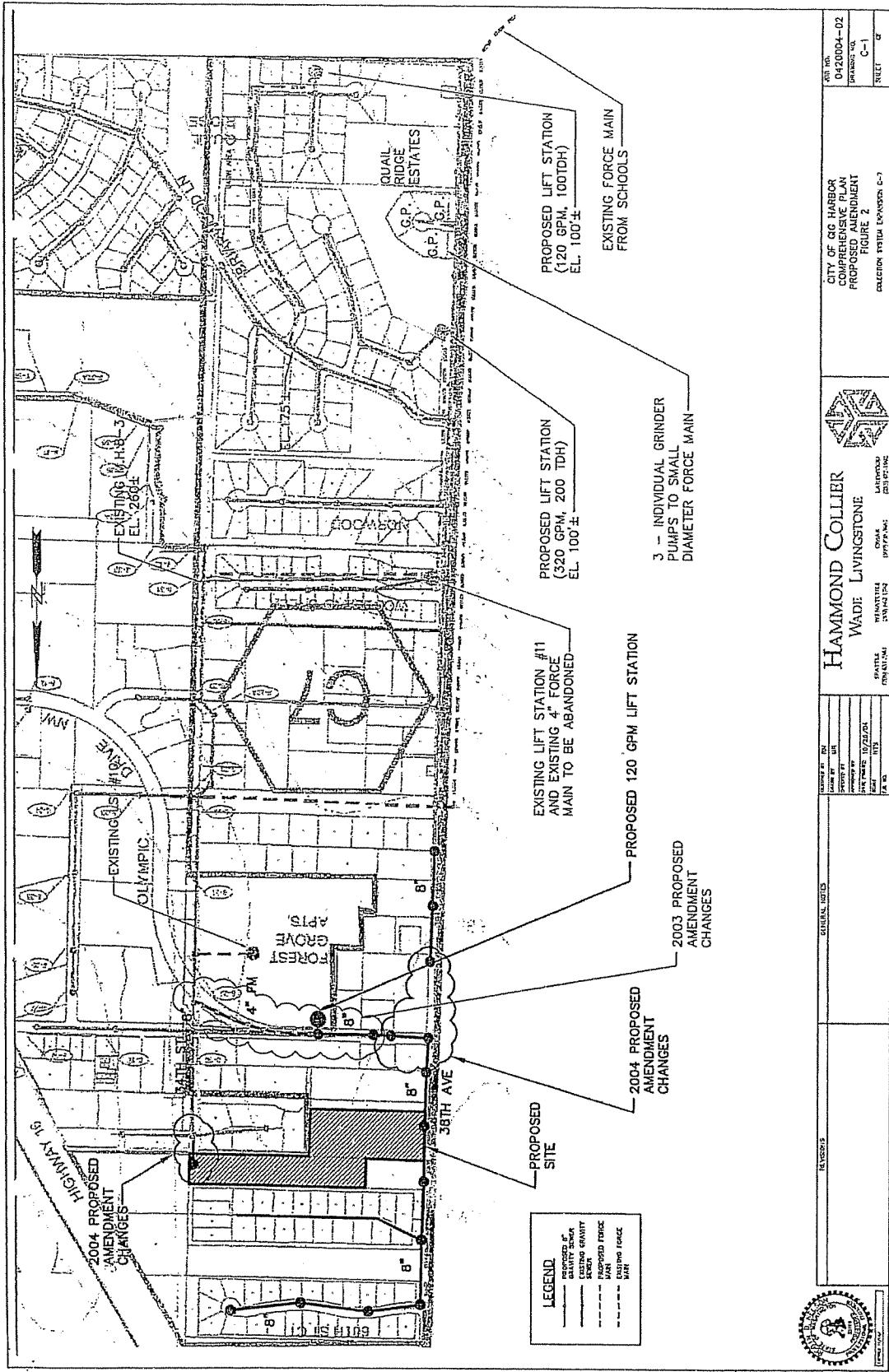
The proposed improvements will not have any adverse impacts to the environment. A SEPA checklist will be required for the improvements prior to construction. The private developer will be responsible to complete the checklist and for review and processing in accordance with the City's Community Development policies.

Fiscal

Funding for the 2004 amended capital improvements will be provided entirely by the developer. City funds will not be expended as part of the project.


Prepared By: Robin D. Nelson, PE





JOB NO. 04-20004-02
 DRAWING NO. C-1
 SHEET 07

CITY OF GC HARBOR
 COMPREHENSIVE PLAN
 PROPOSED AMENDMENT
 FIGURE 2
 COLLECTION SYSTEM EXPANSION 6-7



HAMMOND COLLIER
WAIDE LIVINGSTONE
 ENGINEERS ARCHITECTS
 1000 10th Street, Suite 100
 San Francisco, CA 94103
 Phone: (415) 774-1100
 Fax: (415) 774-1101
 Email: info@hamcoll.com

PROJECT NO. 04-20004-02
 DRAWING NO. C-1
 SHEET NO. 07
 DATE: 10/25/04
 SCALE: AS SHOWN

GENERAL NOTES:
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF GC HARBOR SPECIFICATIONS AND STANDARD SPECIFICATIONS FOR CONSTRUCTION.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
 4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL WORK PERFORMED.



LEGEND
 - - - - - PROPOSED 4" FORCE MAIN
 - - - - - PROPOSED 8" FORCE MAIN
 - - - - - PROPOSED 12" FORCE MAIN
 - - - - - PROPOSED 18" FORCE MAIN
 - - - - - PROPOSED 24" FORCE MAIN
 - - - - - PROPOSED 30" FORCE MAIN
 - - - - - PROPOSED 36" FORCE MAIN
 - - - - - PROPOSED 42" FORCE MAIN
 - - - - - PROPOSED 48" FORCE MAIN
 - - - - - PROPOSED 54" FORCE MAIN
 - - - - - PROPOSED 60" FORCE MAIN
 - - - - - PROPOSED 66" FORCE MAIN
 - - - - - PROPOSED 72" FORCE MAIN
 - - - - - PROPOSED 78" FORCE MAIN
 - - - - - PROPOSED 84" FORCE MAIN
 - - - - - PROPOSED 90" FORCE MAIN
 - - - - - PROPOSED 96" FORCE MAIN
 - - - - - PROPOSED 102" FORCE MAIN
 - - - - - PROPOSED 108" FORCE MAIN
 - - - - - PROPOSED 114" FORCE MAIN
 - - - - - PROPOSED 120" FORCE MAIN
 - - - - - PROPOSED 126" FORCE MAIN
 - - - - - PROPOSED 132" FORCE MAIN
 - - - - - PROPOSED 138" FORCE MAIN
 - - - - - PROPOSED 144" FORCE MAIN
 - - - - - PROPOSED 150" FORCE MAIN
 - - - - - PROPOSED 156" FORCE MAIN
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 - - - - - PROPOSED 270" FORCE MAIN
 - - - - - PROPOSED 276" FORCE MAIN
 - - - - - PROPOSED 282" FORCE MAIN
 - - - - - PROPOSED 288" FORCE MAIN
 - - - - - PROPOSED 294" FORCE MAIN
 - - - - - PROPOSED 300" FORCE MAIN



ADMINISTRATION

TO: MAYOR HUNTER AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR
SUBJECT: FIRST READING OF ORDINANCE ORDERING THE FORMATION OF A HOSPITAL BENEFIT ZONE
DATE: JULY 10, 2006

INTRODUCTION

This is an ordinance establishing a hospital benefit zone in order to provide funding for improvements within the benefit zone.

BACKGROUND

Once this ordinance is passed the city will be eligible to apply to the Department of Revenue (DOR) after August 1 to create the zone which will enable the city to impose a new state-shared local sales and use tax. If approved, calendar year 2007 will be considered the base year, in which DOR will measure sales and use tax generated within the zone in order to determine future incremental increases that could be used to finance certain infrastructure improvements.

The benefit zone is the immediate city area most directly impacted by transportation improvements in the Gig Harbor North area.

A public hearing concerning formation of the proposed hospital benefit zone will be held July 24, 2006.

RECOMMENDATION

Staff recommends adoption following a public hearing and second reading.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, MAKING CERTAIN FINDINGS AND
ORDERING THE FORMATION OF A HOSPITAL BENEFIT
ZONE.**

WHEREAS, the Washington State Legislature in its 2006 Regular Session approved SHB 2670, as Chapter 111, Laws of 2006 (the "Act"), authorizing the formation of hospital benefit zones; and

WHEREAS, the Franciscan Health System, a Washington nonprofit corporation ("Franciscan") is proposing to construct a hospital ("Hospital") at 11567 Canterwood Boulevard NW, and Franciscan received a certificate of need for the construction of the Hospital on June 15, 2006; and

WHEREAS, a hearing was held on July 24, 2006, after notice as provided by law, and after discussion of the proposed public improvements and the proposed boundaries of the benefit zone and due consideration thereof and of all objections thereto, the Council has determined to order the formation of a benefit zone in order to undertake the public improvements described below;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN; as follows:

Section 1. Definitions. As used herein, the following capitalized terms have the following meanings:

Act means Laws of Washington, Chapter 111, 2006 Regular Session.

Base Year means 2007 which is the calendar year immediately following the creation of the Benefit Zone.

Benefit Zone means the Gig Harbor Hospital Benefit Zone established by Section 4 of this ordinance.

Department means the State of Washington Department of Revenue.

Excise Taxes mean the local retail sales and use taxes authorized in RCW82.14.030.

Excess Excise Taxes mean the amount of Excise Taxes received by the City during each Measurement Year from taxable activity within the Benefit Zone over and above the amount of Excise Taxes received by the City during the Base Year from taxable activity within the Benefit Zone.

Excess State Excise Taxes mean the amount of Excise Taxes received by the State during the Measurement Year from taxable activity within the Benefit Zone over and above the amount of Excise Taxes received by the State during the Base Year from the taxable activity within the Benefit Zone. The term **Excise Taxes**, for the purpose of this definition, means state retail sales and use taxes imposed under chapter 82.08 and 82.12 RCW.

Fiscal Year means the year beginning July 1 and ending on June 30.

Franciscan means the Franciscan Health System, the owner and operator of the Hospital.

Hospital means St. Anthony Hospital to be constructed at 11567 Canterwood Boulevard NW and operated by the Franciscan.

Local Public Sources include, but are not limited to, private monetary contributions and Tax Allocation Revenues dedicated to the financing of the Public Improvements.

Local Tax means the sales and use tax authorized to be imposed by Section 7 of the Act.

Measurement Year means a calendar year, beginning with 2008 which is the year following the Base Year and each calendar year thereafter, that is used annually to measure the amount of Excess Excise Taxes required to be used to finance the costs of Public Improvements.

Public Improvements means the public improvements described in Section 2 of this ordinance.

State Contribution means the lesser of (i) two million dollars or (ii) an amount equal to Excess State Excise Taxes received by the State during the preceding calendar year.

Tax Allocation Revenues mean the tax revenues derived from the receipt of Excess Excise Taxes and distributed to the City in order to finance the Public Improvements.

Section 2. The City hereby designates a benefit zone within the boundaries of the City for the purpose of acquiring, constructing and installing the public improvements described on Exhibit A (excluding from the identified list the Interchange at 144th (currently outside of the boundaries of the proposed benefit zone) attached hereto and incorporated by this reference herein. The foregoing improvements are hereafter referred to as the “Public Improvements.”

Section 3. The City Council hereby makes the following findings:

(a) The Public Improvements are expected both to encourage private development within the area described in Section 4(a) (the “Benefit Zone”) and to

support the development of the Hospital;

(b) The Public Improvements proposed to be financed in whole or in part using hospital benefit zone financing are expected both to encourage private development within the Benefit Zone and to support the development of the Hospital;

(c) Private development that is anticipated to occur within the Benefit Zone, as a result of the Public Improvements, will be consistent with the county-wide planning policy adopted by Pierce County under RCW ch. 36.70A.210 and the City's comprehensive plan and development regulations as adopted under authority of chapter 36.70 RCW; and

(d) The Public Improvements proposed to be financed in whole or in part using hospital benefit zone financing (as authorized under the Act) are reasonably likely to:

- (1) increase private investment within the Benefit Zone;
- (2) increase employment within the Benefit Zone; and
- (3) generate, over a period of time that the Local Tax is expected to be imposed, state and local sales use tax revenues that are equal to or greater than the aggregate State Contributions and Local Public Sources.

Section 4. There is hereby established a hospital benefit zone of the City to be known as "Gig Harbor Hospital Benefit Zone" (herein referred to as the "Benefit Zone").

(a) The boundaries of the Benefit Zone shall be as described on Exhibit B attached hereto and incorporated by this reference herein.

(b) The estimated cost of the Public Improvements is \$136,570,000, all of which is expected to be financed by the Bonds;

(c) The Excess Excise Taxes to be used to finance the Public Improvements are expected to be in place for thirty (30) years;

(d) The average amount of tax revenue to be received in all Fiscal Years through the imposition of the "Local Tax" is shown on Exhibit C attached hereto and incorporated by this reference herein;;

(e) The City anticipates that the use of Excess Excise Taxes by the City will commence in 2011.

(f) In Section 3 of this ordinance, the City Council has made the findings required by Section 3(g) of the Act.

Section 5. Application to the Department. The City Manager is hereby directed to make application to the Department in the form and manner prescribed by the Department and file the same as soon as practicable on or after August 1, 2006.

Section 6. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 200_.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 6/7/06
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

EXHIBIT A

DESCRIPTION OF PUBLIC IMPROVEMENTS

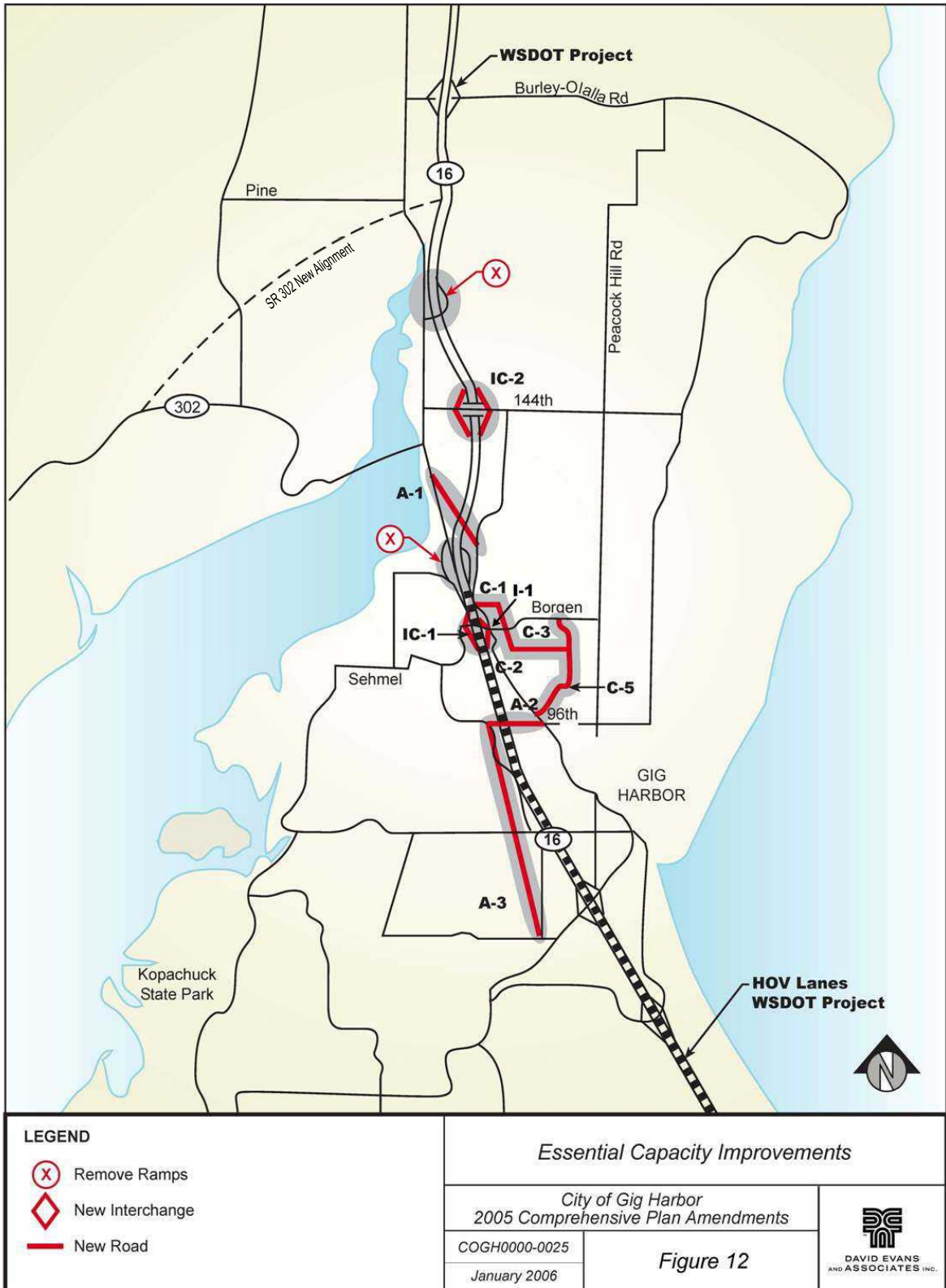
The group of improvements, beginning with the SR 16/Burnham Drive interchange project which is the cornerstone of the plan, plus several other important arterial improvements, are all essential to support that interchange or to divert some of the forecast demand away from that interchange. Completing all of these improvements is the key to maintaining LOS standards for the interchange area when North Gig Harbor is fully developed. These projects are illustrated in **Figure 1** and described next.

Project IC-1. Reconstruct the SR 16/Burnham Drive Interchange as a SPUI. This configuration replaces two roundabouts with one signalized intersection at the mid-point of the arterial bridge across the freeway. The arterial bridge is expanded to provide four through travel lanes plus turning lanes. Estimated Cost is \$40M.

Project I-1. Reconstruct the Existing Roundabout Intersection of Borgen Boulevard with Canterwood Boulevard/Burnham Drive as a Signalized Intersection. This high volume intersection is east of the SR 16/Burnham Drive interchange as reconstructed, and will need to be converted to a signalized intersection in lieu of the current six-legged roundabout at the same time as the SPUI interchange conversion. Estimated Cost is \$400K.

Project IC-2. New Interchange on SR 16 at 144th Street to Serve Northern Pierce County. In order to resolve the overload issue on the Borgen Boulevard corridor and specifically the SR 16/Burnham Drive interchange, a significant redirection of future travel demand will be necessary. **Figure 12** shows the locations of roadway improvements external to the North Gig Harbor study area that are intended to divert some external travel demand to other routes. These improvements are necessary to prevent external travel demand from overloading the SR 16/Burnham Drive interchange. Implementation of these projects will require coordination between the City of Gig Harbor, Pierce County and WSDOT. Estimated Cost is \$22M.

EXHIBIT A - continued
Figure 12. Essential Capacity Improvements



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EXHIBIT A - continued

Project A-1. New East-West Arterial Connection between Canterwood Boulevard and Purdy Drive, across SR 16, north of the SR 16/Burnham Drive Interchange. A new arterial connection is proposed across SR 16 between South Purdy Drive on the west and Canterwood Boulevard on the east. Estimated Cost is \$7.5M.

Project A-2. New East-West Arterial Connection between Burnham Drive and Bujacich Road, across SR 16, at or near 96th Street NW. Connect across the freeway at 96th Street a longer surface route that would contour southerly from 96th Street to cross SR 16 up to one quarter mile south of 96th Street, then contour back to that east-west alignment. Estimated Cost is \$13M.

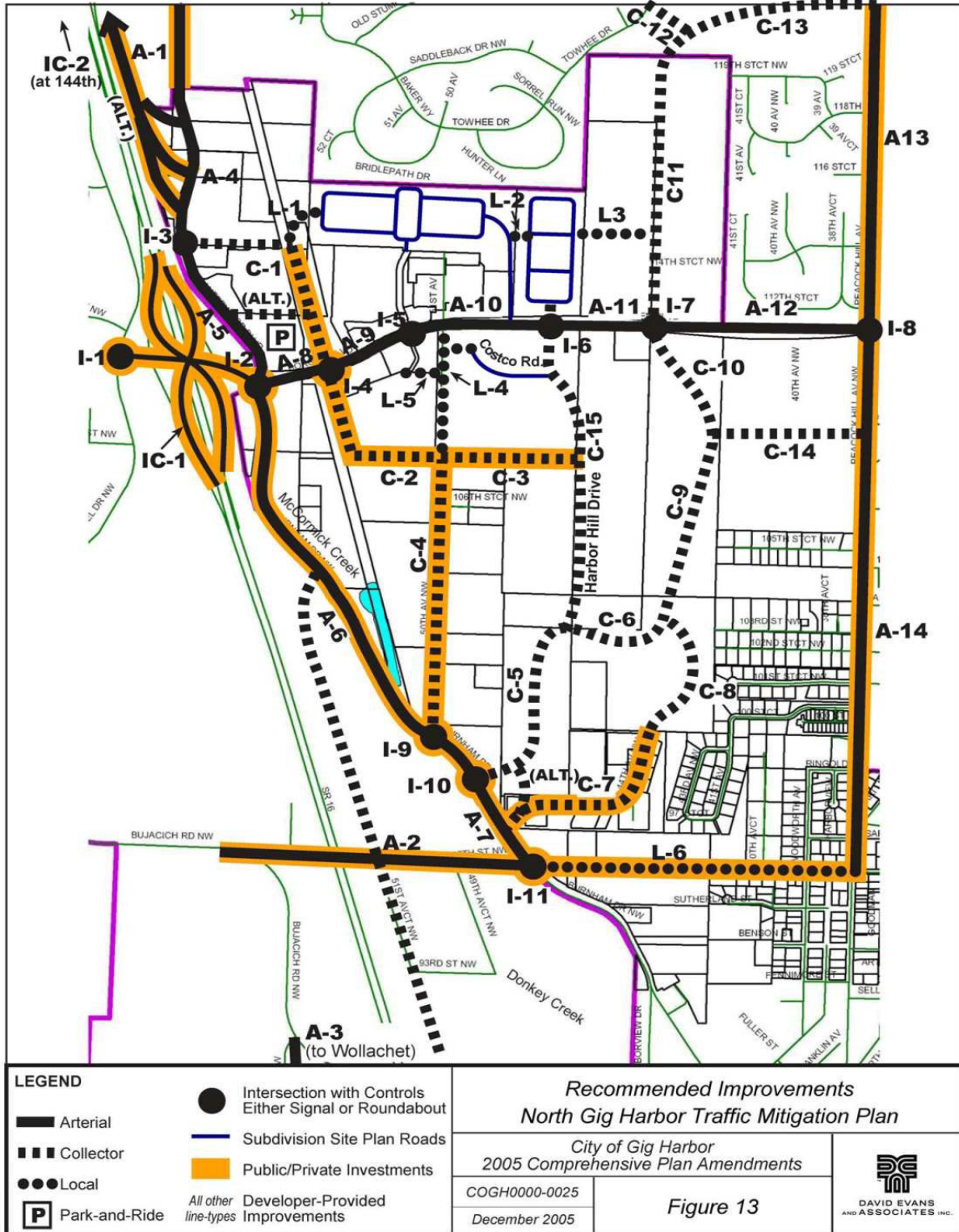
Project A-3. Improved Arterial Connection North-South between Bujacich Road and Wollochet Drive, west of SR 16. Construct an arterial connection between Bujacich Road across Rosedale Street to Wollochet Drive on the west side of SR 16. Estimated Cost is \$15M.

Project C-5. Harbor Hill Drive, South Extension to Burnham Drive. Extend Harbor Hill Drive from its current terminus down to Burnham Drive. Estimated Cost is \$6M.

Projects C-1, C-2, C-3. New Collector Arterial, Canterwood Boulevard to Borgen Boulevard to 50th Street to Harbor Hill Drive. Construct a new road from Canterwood Boulevard to Borgen Boulevard. Estimated Cost is \$15M.

EXHIBIT A - continued

Figure 13. Recommended Improvements North Gig Harbor Area Traffic Mitigation Plan



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EXHIBIT A - continued

CFPs from the City's 2004 Comp Plan

Stormwater

Project Name	Cost*
1 (DC1012) Burnham Dr	\$ 39,000
2 (AW1027) Peacock Hill Ave	\$ 24,000
3 Donkey Crk Fish Enhancement Study	\$ 62,000
4 McCormick Crk Fish Enhancement Study	\$ 62,000
TOTAL = \$ 187,000	

* In 2006 Dollars (WSDOT Index for Construction Costs)

EXHIBIT A – continued

CFPs from the City's 2004 Comp Plan

Water

Project Name	Cost*
1 Storage Tank Mtce	\$ 150,000
2 Replace Source Meters	\$ 23,000
3 Leak Detection & BFP Inventory	\$ 66,000
4 Upgrade Perrow Well	\$ 179,000
5 GH North Well (#7)	\$ 1,100,000
6 500,000 Gallon Storage Tank	\$ 2,925,000
TOTAL = \$ 4,443,000	

* In 2006 Dollars (WSDOT Indice for Construction Costs)

EXHIBIT A – continued

CFPs from the City's 2004 Comp Plan

Wastewater

Project Name	Cost ¹
1 Outfall Misc ²	\$ 77,000
2 WWTP Aeration Modifications, Complete ²	\$ 215,000
3 WWTP Dewatering ²	\$ 1,108,000
4 WWTP Headworks ²	\$ 416,000
5 WWTP Headworks Complete ²	\$ 427,000
6 Outfall Construction Phase 1 ²	\$ 542,000
7 Outfall Construction Phase 2 ²	\$ 558,000
8 Outfall Construction Phase 3 ²	\$ 4,461,000
9 WWTP Clarifier ²	\$ 679,000
10 WWTP UV Disinfection ²	\$ 398,000
11 Gig Harbor North (East Side) ³	\$ 3,224,000
12 Peacock Hill Ave from 99th St to Harbor Estates ³	\$ 3,162,000
13 Peacock Hill Ave from Harbor Estates to North UGA Boundary ³	\$ 4,545,000
14 54th Ave south of Bujacich Rd ³	\$ 2,238,000
15 East Side of Highway 16, North of Rosedale St ³	\$ 1,599,000
16 Woodhill Drive ³	\$ 864,000
17 Burnham Dr from Harborview Dr to 96th St	\$ 862,000
18 N. Harborview Dr from Peacock Hill Ave to LS#2	\$ 450,000
19 LS#4, Phase 1	\$ 2,119,000
20 LS#4, Phase 2	\$ 558,000
21 LS#8	\$ 1,074,000

TOTAL = \$ 29,576,000

1. In 2006 Dollars (WSDOT Index for Construction Costs)

2. This project is for system-wide improvements. Cost shown is only 50% of estimated construction costs.

3. Currently shown in the 2004 Comp Plan as developer funded.

EXHIBIT A - CONTINUED

CFPs from the City's 2004 Comp Plan

Parks

Project Name	Cost*
1 Burnham Dr	\$ 421,000
2 City Park at Crescent	\$ 1,920,000
3 Gig Harbor North	\$ 3,033,000
4 Trail - City Park/Sunset	\$ 90,000
5 WWTP	\$ 482,000
TOTAL = \$ 5,464,000	

* In 2006 Dollars (WSDOT Indice for Construction Costs)

EXHIBIT A - continued

CFPs from the City's 2004 Comp Plan

Summary

Facility	Cost*
1 Stormwater	\$ 187,000
2 Water	\$ 4,443,000
3 Wastewater	\$ 29,576,000
4 Parks	\$ 5,464,000
TOTAL = \$ 39,670,000	

EXHIBIT C
TAX REVENUE

CLERK'S CERTIFICATE

I, the undersigned, the duly chosen, qualified, and acting Clerk of the City of Gig Harbor, Washington, and keeper of the records of the Council of the City (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached is a true and correct copy of Ordinance No. ___ (herein called the "Ordinance") of the Council as finally adopted at a meeting of the Council held on the ___ day of July, 2006, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of July, 2006.

City Clerk

**SUMMARY OF ORDINANCE NO. _____
of the City of Gig Harbor, Washington**

On July 24, 2006 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 1048, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, MAKING CERTAIN FINDINGS AND
ORDERING THE FORMATION OF A HOSPITAL BENEFIT
ZONE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

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

APPROVED by the City Council at their regular meeting of July 24, 2006.

BY: *MOLLY M. TOWSLEE, CITY CLERK*



TO: MAYOR HUNTER AND CITY COUNCILMEMBERS
FROM: W. SCOTT SNYDER, CITY ATTORNEY
SUBJECT: REVISIONS TO CHAPTER 12.18 RIGHT-OF-WAY USE
TELECOMMUNICATIONS AND CABLE TELEVISION SERVICE AND
THE PROPOSED FRANCHISE BETWEEN THE CITY AND COMCAST
DATE: JULY 10, 2006

INFORMATION/BACKGROUND

Proposed for your consideration is a rewrite of Chapter 12.18 of City Code governing right-of-way use by telecommunications and cable television services. In addition, an extension to the City's franchise agreement with Comcast Cable is forwarded to you for your consideration. These are lengthy documents, and I would be happy to meet with you and discuss any questions you have.

Chapter 12.18 was revised in order to bring it into compliance with the provisions of Chapter 35.99 RCW. This state chapter was enacted several years ago and limits a government's regulation of public rights-of-way and use by telecommunications and cable service providers. Because of the need to extensively rewrite the chapter, it is not being provided to you in redline format.

The major changes in Chapter 12.18 occur in Section 12.18.260 *et seq.* These sections govern the relative cost burden and process for relocation of facilities in the public rights-of-way. Chapter 35.99 RCW is primarily concerned with cost apportionment when a service provider is required to relocate either within the public right-of-way or from the public right-of-way. The process that is employed in the draft ordinance mirrors that required by statute.

Current City procedures for granting right-of-way use permits are retained. The structure of the chapter is somewhat confusing in that some telecommunication entities require franchise from the City, others are deemed to have a state franchise, and, if new federal legislation is enacted, others will have a national franchise.

Within the ordinance draft, the major distinction is between those telecommunication services who use the City's right-of-way but do not provide service to citizens of Gig Harbor and those that do, whether franchised or not. All cable television service and telecommunication service providers who wish to use the City's right-of-way are required to have some form of authorization and permission. Those whose facilities are merely for the purpose of transmission and are not providing service to your citizens are required by Section 12.18.040 to have a Master Use Permit. Telecommunications providers who

provide services to your citizens are required to have a business license, a franchise (unless exempted by state or federal law) and either a Master Use Permit or an Encroachment Permit from the City. Section 12.18.050.

The purpose of a Master Use Permit is to regulate those entities which are using your right-of-way for transmission purposes or for franchisees which wish to seek annual permits for large-scale projects rather than an individual Encroachment Permits.

FRANCHISE

The franchise is modeled on a franchise approved in the City of Oak Harbor and considers the recent Kitsap County franchise. It is a short-term (five-year) franchise with a renewal option for five years. The short term recognizes both the technological change in this industry and Congress's consideration of revisions to the Telecommunications Act. This legislation, known as the Communications Opportunity, Promotion and Enforcement Act of 2006 (the COPE Act), will sweepingly revise the franchising process. There are a number of versions of the bills so these comments are general but, in general, national franchises will supplant local franchises when there are "competitive cable service providers." That is, should another entity come in and commence competition with Comcast in your community, a "national franchise" consisting of limited FCC regulation would replace your local franchise provisions. The federal legislation under consideration would continue payment of a franchise fee to the City. The City would be permitted to continue to manage its right-of-way on a "reasonable," "competitively neutral," and "nondiscriminatory" basis," as well as to impose reasonable charges for the management. However, the Act specifies no specific mechanism for that requirement.

Therefore, the current franchise and revisions to Chapter 12.18 are intended to govern your relationship with Comcast for the near term. On the longer term, it would appear that changes to federal and state limitation will continue the trend to restrict local government's ability to meaningfully regulate telecommunication providers and cable service providers in the City.

The franchise provides at your option for the construction of an I-Net or for PEG (Public, Educational, and Governmental) uses and for the funding of any such programs through user charges. In accordance with federal law, the franchise provides for pass-through of these charges to the consumer. The City Council has the option to trigger these provisions at any time during the first five years of the franchise. Please note that the franchise is renewable for an additional five-year term.

My thanks in this process to City Administrator Mark Hoppen, Community Development Director John Vodopich and City Engineer Steve Misiurak.

RECOMMENDATION

Staff recommends approval of the ordinance at its second reading.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, REPEALING AND REENACTING A NEW
CHAPTER 12.18 RIGHT--OF-WAY USE - MASTER USE
PERMITS AND UTILITY RELOCATION, AND FIXING A
TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

WHEREAS, the State Legislature has adopted Chapter 35.99 RCW governing local governments regulation of the public rights-of-way as it relates to telecommunications and cable service; and

WHEREAS, Chapter 35.99 specifically provides that its provisions “shall not preempt specific provisions in existing franchises or contracts between cities... and service providers”; and

WHEREAS, the City Council deems it to be in the public interest to adopt new provisions which comply with the provisions of Chapter 35.99 for application to new franchises by amending existing Chapter 12.18 as it relates to existing franchises and contracts; NOW THEREFORE,

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

Section 1. The Gig Harbor Municipal Code is hereby amended by the repeal of the existing Chapter 12.18 and the enactment of a new Chapter 12.18 Right-of-Way Use - Master Use Permits and Utility Relocation to read as follows:

CHAPTER 12.18
Right-of-Way Use -
Master Use Permits and Utility Relocation

- 12.18.010 Purpose.**
- 12.18.020 Definitions.**
- 12.18.030 Applicability of Chapter.**
- 12.18.040 Underlying requirements.**
- 12.18.050 Requirements for the provisions of services within the City.**
- 12.18.060 Master Use Permit; additional purposes.**
- 12.18.070 Facilities lease required.**
- 12.18.080 Exempt activities.**
- 12.18.090 Operation approvals required.**
- 12.18.100 Master Use Permit application.**
- 12.18.110 Issuance/denial of Master Use Permit.**
- 12.18.120 Written Master Use Permit required.**
- 12.18.130 Nonexclusive grant.**
- 12.18.140 Rights granted.**
- 12.18.150 Terms of Master Use Permit.**
- 12.18.160 Master Use Permit route.**
- 12.18.170 Cable television service to City users – franchise required.**
- 12.18.180 Compensation to the City.**
- 12.18.190 Amendment of permit.**
- 12.18.200 Renewal of Master Use Permit.**
- 12.18.210 Standards for renewal of permits.**
- 12.18.220 Obligation to cure as a condition of renewal.**
- 12.18.230 Notification - Transportation Improvement Plan Element - Comprehensive Plan.**
- 12.18.240 Notice and liability.**
- 12.18.250 Location within an open right-of-way.**
- 12.18.260 Relocation of facilities; cost.**
- 12.18.270 Relocation for private benefit.**
- 12.18.280 Emergency relocation.**
- 12.18.290 Additional ducts or conduits - the City may require.**

12.18.010 Purpose.

The purpose and intent of this chapter is to:

- A. Provide for the orderly use of public right-of-way by establishing clear guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of right-of-

way use by telecommunications and cable television providers and services.

B. Implement regulations that are consistent with the requirements of State law, to wit, Chapter 35.99 RCW as the same exists or is hereafter amended.

C. Conserve the limited physical capacity of the public ways held in public trust by the City.

D. Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs to be incurred by the City, to the full extent permitted by State and federal law.

E. Secure fair and reasonable compensation of the City and the residents of the City for permitting the private use of public rights-of-way while assuring that the City can continue to fairly and reasonably protect the public health, safety and welfare.

F. Enable the City to discharge its public trust consistent with the rapidly evolving State and federal regulatory policies, industry competition and technological development.

12.18.020 Definitions.

For the purpose of this chapter and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they use it shall indicate otherwise: These definitions and all provisions of this Chapter shall be interpreted in a manner consistent with the provisions of State and federal law, including but not limited to Chapter 35.99 RCW.

A. "Applicant" means any person or entity that applies for any permit pursuant to this chapter.

B. "Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

C. "City" means the City of Gig Harbor, Washington.

D. “City property” means and includes all real property owned by the City, other than right-of-way as that term is defined herein; and all property held in proprietary capacity by the City. Such City property is not subject to the right-of-way Master Use Permits as provided for by this chapter.

E. “Construction standard” means a construction standard applicable to the right-of-way or utility easement and adopted by the owner of the easement. The term shall typically refer to construction standards adopted by the City. Rights-of-way in the jurisdiction under the control of the State pursuant to RCW 47.24.020 shall be subject to State-adopted construction standards if such standards are more restrictive or intensive than those of the City.

F. “Council” means the City Council of the City of Gig Harbor, Washington acting in its official capacity.

G. “Encroachment permit” means a permit issued pursuant to Chapter 12.02 of the Gig Harbor Municipal Code.

H. “Facilities” means all of the plant, equipment, fixtures, pertinences, antennae and other facilities necessary to furnish and deliver telecommunication services and cable television services, including but not limited to poles with cross-arms, poles without cross-arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

I. “Franchise” means the initial authorization or a renewal thereof issued by the City, whether such authorization is designated as a franchise, permit, ordinance, resolution, contract, certificate, right-of-way use authorization, or otherwise which authorizes construction and operation of facilities with the City’s rights-of-way for the purpose of offering, cable service, utility or other service to subscribers or patrons.

J. “Franchisee” means the person to whom or which a franchise is granted by the Council and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined in the franchise or by the ordinances of the City, including but not limited to the provisions of this chapter.

K. “Master Use Permit” means the agreement in whatever form whereby the city may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the City to require franchise nor does it change the status of a service provider asserting an existing State-wide grant based on a predecessor telephone or telegraph company’s existence at the time of the adoption of the Washington State Constitution to occupy the right-of way. For the purposes of this definition, a franchise, except for a cable television franchise, is a Master Use Permit. A Master Use Permit does not include cable television franchises.

L. “Other ways” means the highways, streets, alleys, utility easements or other rights-of-way within the City which are under the jurisdiction and control of a governmental entity or private party other than the City.

M. “Overhead facilities” means utility poles, utility facilities and cable and television facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

N. “Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals including their lessors, trustees and receivers.

O. “Personal wireless service” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

P. “Right-of-way” means land or an easement acquired or dedicated for public roads and streets, but does not include:

1. State highways and other ways;
2. Land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the State parks and recreation commission; or

6. Federally granted railroad rights-of-way acquired under 43. U.S.C. §912 and related provisions of federal law that are not open for motor vehicle use.

Q. “Service provider” means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing telecommunications or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.

R. “State” means the State of Washington.

S. “Subscriber” means any person, entity or user of a cable system who lawfully receives cable services or other service therefrom with the franchisee’s express permission.

T. “Telecommunication service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

U. “Transportation Improvement Plan” or “TIP” means the six-year element of the city’s Comprehensive Plan as amended annually by adoption by the Council.

V. “Use permit” means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified facilities. As used herein, the term shall be synonymous with the term “encroachment permit” as utilized in Chapter 12.02 of the Gig Harbor Municipal Code.

12.18.030 Applicability of Chapter.

A. This Chapter shall be applicable to all franchises, whether approved on or after the effective date of this Chapter, and other persons seeking to utilize the right-of-way on or after the effective date of this chapter.

12.18.040 Master Use Permit authorization; use of right-of-way for transmission only.

All providers of cable television service and telecommunications service who desire to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the City for the sole purpose of providing telecommunications or cable television service to persons and areas outside of the City shall first obtain a Master Use Permit pursuant to the provisions of this Chapter.

12.18.050 Requirements for the provisions of services within the City.

Except as expressly provided herein, all providers of cable televisions service and telecommunications service to citizens of the City through facilities located in the right-of-way shall, prior to commencing operations:

- A. Obtain and maintain a franchise from the City unless expressly exempted by the provisions of State or Federal law;
- B. Obtain and maintain a business license as provided by Chapter 5.01 GHMC; and
- C. Either:
 - 1. Obtain and maintain an encroachment permit for specific construction activities. Encroachment permits for telecommunications or cable television service shall be processed within thirty (30) days unless the applicant consents to a longer processing period; or
 - 2. Obtain a Master Use Permit for all desired activities.

12.18.060 Master Use Permit; additional purposes.

Master Use Permits may be requested in the following situations:

- A. By a franchisee who seeks authorization to construct continuing, extensive construction activities over a period estimated to be in excess of six (6) months may apply for a Master Use Permit as an alternative to individual encroachment permits for individual segments of the construction activities. Such applications shall include all information required by Chapter 12.02.

B. Holders of state-wide franchises, which may not be required to obtain a Master Use Permit, are requested to do so in accordance with RCW 35.99.030(1).

12.18.070 Facilities lease required.

No provider of cable television or telecommunications services or any other entity who desires to locate equipment on City property shall locate such facilities or equipment on City property until a facilities lease is approved by the Council. The Council reserves unto itself the sole discretion in its legislative capacity to lease City property for telecommunications, cable television or other facilities, and no vested or other right shall be created by this section nor any other provision of this Chapter with respect to such facilities leases.

12.18.080 Exempt activities.

Persons who have a franchise and/or have obtained a Master Use Permit are authorized to conduct the normal day-to-day activities of providing the services for which they have obtained a business license, if required, including but not limited to customer service activities, hookups or corrections and utilization of the public right-of-way for parking that does not block the public right-of-way or violate any traffic or parking ordinance of the City. No activity which interferes with the free flow of pedestrian or vehicular traffic, involves the cutting or penetration of any street or sidewalk surface, the impairment, relocation, or interruption of the provision of any utility service, public or private, shall be undertaken without first obtaining an Encroachment Permit or Master Use Permit and any other required permits or approvals.

12.18.090 Use of right-of-way prohibited - when:

Except as provided below, no person shall break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two (2) years after its construction and installation. For the period commencing with the third year through the seventh year, any person proposing to cut, penetrate or compromise the integrity of the surface of any street or sidewalk shall conduct its operations only in accordance with a Master Use Permit or Encroachment Permit and shall provide a "city performance" bond sufficient to replace the street or sidewalk surface to its original condition. Such bond shall be provided in accordance with the city provisions of any Franchise, Master Use Permit or Encroachment Permit when in the discretion of the City Engineer a particular project poses a where any significant risk of the impairment of the

normal useful life of the street surface. Insurance and indemnity shall be provided in accord with the requirements of GHMC 12.02.030 (D) and (E). The City, at its sole discretion, may permit installation of facilities underneath a street or sidewalk during the initial two years after construction and acceptance by the City by a permittee:

A. When the facilities are installed, boring or other construction method which does not penetrate the street surface when a full city maintenance and restoration bond is provided to ensure that no surface subsidence occurs, or

B. When the permittee fully replaces the City street or sidewalk in accordance with City standards and provides a city performance and maintenance bond for the work.

12.18.100 Master Use Permit application.

Any person that desires a Master Use Permit pursuant to this Chapter shall file an application with the City which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant.

B. A description of the services that are or will be offered or provided by the applicant over its facilities.

C. A description of the transmission medium that will be used by the applicant to offer or provide such services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, depicted on a 22 x 34 inch sheet format in sufficient detail to identify:

1. The horizontal and vertical location and proposed route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route; and

3. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

4. Depiction of existing utilities and other public and/or private facilities including but not limited to cross streets, permanent land marks or other points of reference;
5. Existing right-of-way boundaries;
6. Cross section(s) of existing roadway(s) with proposed facilities, including offsets and depth;
7. Proposed construction note stating compaction and testing requirements;
8. Restoration details conforming to adopted city standard;
9. All maps, including a required area map shall have centerline stations and a north arrow orienting the map;
10. Temporary erosion and sedimentary control plan utilizing best management practices (T.E.S.C.);

E. If applicant is proposing to install overhead facilities, evidence that it has obtained the permission of the owner of existing poles or, in the alternative, that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing public ducts or conduits, within the right-of-way, information in sufficient detail to identify:

1. The excess capacity currently available in such public ducts or conduits before installation of applicant's facilities;
2. The excess capacity, if any, that will exist in such public ducts or conduits after installation of applicant's facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the right-of-way:

1. The location proposed for the new ducts or conduits;
2. The excess capacity that will exist in such public ducts or conduits after installation of applicant's telecommunications facilities.

3. Provision to be made for the installation of public conduit pursuant to GHMC 12.18.290.

H. A preliminary construction schedule and completion date.

I. A preliminary traffic control plan in accordance with the City's adopted street standards and the Manual of Uniform Traffic Control Devices (MUTCD) and current City and state standards.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the telecommunications services.

M. An application fee which shall be set by the City Council by resolution and any deposits or charges established by ordinance, resolution or franchise.

N. Requirements J through L may be satisfied pursuant to the relevant requirements of a valid franchise issued to the applicant by the City.

12.18.110 Issuance/denial of Master Use Permit.

The City Council shall hold a public hearing and receive testimony and other evidence regarding the issuance of the Master Use Permit. The City Council's decision shall be confirmed in writing, shall be based upon the record of the proceeding and shall consider and apply the factors set forth below:

A. The financial and technical ability of the applicant.

B. The legal ability of the applicant.

C. The capacity of the right-of-way to accommodate the applicant's proposed facilities.

D. The capacity of the right-of-way to accommodate additional utility, cable, and telecommunications facilities if the Master Use Permit is granted.

E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Master Use Permit is granted.

F. The public interest in minimizing the cost of the disruption of construction within the right-of-way.

G. The effect, if any, on public health, safety and welfare if the Master Use Permit is granted.

H. The availability of alternate routes and/or locations for the proposed facilities.

I. Applicable federal and state laws, regulations and policies.

J. Such other factors as may demonstrate that the grant to use the right-of-way will serve the community interest.

12.18.120 Written Master Use Permit required.

No Master Use Permit shall be deemed to have been granted hereunder until the City has issued a written permit setting forth the particular terms and provisions under which the permittee has been granted the right to occupy and use right-of-way of the City and all preconditions thereto, such as bonding, have been satisfied.

12.18.130 Nonexclusive grant.

No Master Use Permit granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use the right-of-way of the City for delivery of telecommunications, cable television services, or any other services or purposes.

12.18.140 Rights granted.

No Master Use Permit granted under this article shall convey any right, title or interest in the right-of-way, but shall be deemed a permit only to use and occupy the right-of-way for the limited purposes and term stated in the permit. Further, no Master Use Permit shall be construed as any warranty of title.

12.18.150 Terms of Master Use Permit.

A Master Use Permit granted under this article shall be limited to a grant of specific right-of-way and defined portions thereof for the period specified therein.

12.18.160 Service to City users - franchise required.

A person shall be allowed to offer or provide cable television or telecommunications services to persons or areas within the City upon approval of a franchise. Where State or federal law prohibits the City from requiring a franchise, only a business license and Master Use Permit are required.

12.18.170 Compensation to the City.

Each Master Use Permit granted pursuant to this article is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such permits; provided, nothing in this Chapter shall prohibit the City and a permittee from agreeing to the compensation to be paid. State and federal prohibitions or preemptions may apply, and this provision shall be interpreted to conform to such state or federal restrictions.

12.18.180 Amendment of Master Use Permit.

A new Master Use Permit application shall be required of any service provider that desires to extend or locate its facilities in rights-of-way of the City which are not included in a use permit previously granted under this Chapter or in its franchise. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted use permit, the City shall grant a Master Use or Encroachment Permit amendment without further application.

12.18.190 Renewal of Master Use Permit.

A permittee that desires to renew its Master Use Permit under this article shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the city for renewal of its Master Use Permit which shall include the following:

- A. The information required pursuant to GHMC 12.18.100.

B. Any information required pursuant to the prior master use agreement between the City and the permittee. (This requirement may be satisfied through information previously required of a franchisee.)

C. All deposits or charges required pursuant to this Chapter.

D. An application fee which shall be set by the City Council by resolution and any deposits or charges established by ordinance, resolution or franchise.

12.18.200 Standards for renewal of Master Use Permits.

Within 90 days after receiving a complete application for Master Use Permit renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this article, the City Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal:

A. The financial and technical ability of the applicant.

B. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities.

C. The applicant's compliance with the requirements of this Chapter and the expired Master Use Permit.

D. Applicable federal, state and local telecommunications laws, rules and policies.

E. Such other factors as may demonstrate that the continued grant to use the right-of-way will serve the community interest.

12.18.210 Obligation to cure as a condition of renewal.

No Master Use Permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the Master Use Permit, or of the requirements of this Chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

12.18.220 Notification - Transportation Improvement Plan Element Comprehensive Plan.

The City maintains a Transportation Improvement Plan element as a part of its comprehensive plan addressing a six year planning horizon. All franchisees and applicants for Master Use Permits are notified that the plan contains a list of City street improvements, sidewalk and other utility projects in the rights-of-way. Franchisees and holders of Master Use Permits as well as any service provider who files notice with the City Clerk of their intent to place facilities in the City are hereby notified and placed on inquiry notice with respect to the existence of the Transportation Improvement Plan (TIP).

A. Annually, the City Clerk shall provide notice regarding the hearing on the Transportation Improvement Plan to telecommunications and cable television service providers as well as all service providers who have provided written notice of intent to the Clerk within the past twelve (12) months of their intent to place facilities within the City.

B. Cable televisions and telecommunications service providers and those wishing to place facilities within the City's rights-of-way shall then be on notice of the City's intent and may participate in any public hearing regarding the City's Transportation Improvement Plan. Upon publication of notice of the adoption of an ordinance regarding the Transportation Improvement Plan, cable television and telecommunications service providers and others desiring to establish facilities within the City's rights-of-way shall commence the process of consultation with the City regarding the placement of their facilities within their public right-of-way.

C. Upon adoption of the Transportation Improvement Plan, the City through its City Engineer or his designee, shall notify service providers as soon as practicable thereafter of the need for relocation of service providers' facilities, specifying the date by which relocation shall be completed. The City shall consult with the affected service providers regarding the date the relocation must be

completed. When a project is listed on the City's TIP, such notice is secondary. Service providers are placed on inquiry and record notice through the adoption of the City's annual update to the six-year TIP regarding the nature and extent of facilities to be constructed by the City. The service provider shall, at its earliest convenience, provide information to the City in appropriate written format, outlining the extent of facilities to be relocated, the service requirements and the construction sequence for the relocation. The City shall utilize this information through a consulting process to establish the City's overall construction sequence and constraints, and the construction sequence shall be designed to safely complete the relocation. After the consultation, the City Engineer shall establish a final relocation date.

D. Service providers shall complete the relocation by the date specified by the City Engineer unless a reviewing court establishes a later date for completion. The standard for review by the City Engineer and by any reviewing court shall be based upon a showing, by substantial and competent evidence by the service provider, that the relocation cannot be completed by the date specified using best efforts in meeting safety and service requirements.

12.18.230 Notice and liability.

The City is not liable for damages for failure to provide notice under the preceding section. Where the City has failed to provide notice of plans to open a right-of-way consistent with the previous section, the City may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another City project. No service provider may claim a lack of notice where a project has been included on the City's annually amended Transportation Improvement Plan and notice of the Transportation Improvement Plan element of the comprehensive plan has been published in accordance with the provisions of state statute.

12.18.240 Location within an open right-of-way.

In order to locate facilities within a right-of-way opened by a public or private construction project, a service provider shall:

A. Obtain either all use permits and city-required bonds, including but not limited to, an encroachment permit under Chapter 12.02 of the GHMC or Master Use Permit for the installation, maintenance, repair, or removal of facilities in the designated rights-of-way;

B. Comply with applicable ordinances, construction codes, regulations and standards applicable to the installation of facilities and the restoration of the right-of-way, subject to verification by the City of compliance with such standards, regulations and ordinances;

C. Cooperate with the City by complying with all traffic control measures and other requirements designed to ensure that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety and welfare;

D. Provide information and plans as reasonably necessary following notification of projects through publication of the City's Transportation Improvement Plan. The provision of advance planning information shall conform to requirements established by the City Engineer;

E. Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;

F. Construct, install, operate and maintain its facilities solely at its own expense; and

G. Comply with applicable federal and state safety laws and standards.

H. Nothing herein shall be deemed to create, expand or extend any liability of the City to a third-party user of the facilities or a third party beneficiary. The City Engineer shall require provision of an indemnity agreement and certifications of insurance as conditions of a service provider's right for a facility to occupy the City's right-of-way, provided, however, that these requirements shall be met by holders of franchises, and Encroachment Permit or Master Use Permits if they provide the indemnity and insurance required by such use permits or franchises.

12.18.250 Relocation of facilities; cost.

Service providers may not seek reimbursement for relocation expenses from the City following the City's request to relocate under Section 12.18.220, except in the following circumstances:

- A. Where the service provider paid for the relocation costs of the same facilities at the request of the City within the past five (5) years. In this case, the service provider's share of the cost of relocation shall be paid by the City.
- B. Where the aerial to underground relocation of authorized facilities is required by the City, service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City.
- C. Where the City requests relocation solely for aesthetic purposes, unless otherwise agreed to by the parties.

12.18.260 Relocation for private benefit.

Where the City has requested a service provider to relocate a project primarily for private benefit, the private party or parties shall reimburse the cost of relocation to the service provider or providers. Service providers shall not be precluded from recovering their costs associated with relocation, provided that the recovery is consistent with this chapter and other applicable laws and ordinances.

12.18.280 Emergency relocation.

The City may require relocation facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public, safety, or welfare.

12.18.290 Additional ducts or conduits -- the City may require.

The City may require that a service provider that is constructing, relocating or placing ducts or conduits in public rights-of-way provide the City with additional duct or conduit and related structures necessary to access the conduit, provided that:

- A. The City enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental cost to the service provider. If the

City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated cost of the service provider. The service provider shall state both contract rates in the contract. The City or town shall inform the service provider of the use, and any change in use of the requested duct or conduit and related access structures in order to determine the applicable rate to be paid by the City.

B. Except as otherwise agreed by the service provider and the City, the City agrees that the requested additional duct or conduit space and related access structures shall not be used by the City to provide telecommunications or cable television service for hire, sale or resale to the general public.

C. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.

D. The value of the additional duct or conduit requested by a city or town shall not be considered a public works construction contract.

E. This section shall not affect the provision of an institutional network by a cable television service provider under federal law.

Section 2. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM;

W. SCOTT SNYDER

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO: _____

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the _____ day of _____, 2006 the City Council of the City of Gig Harbor, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REPEALING AND REENACTING A NEW CHAPTER 12.18 RIGHT--OF-WAY USE - MASTER USE PERMITS AND UTILITY RELOCATION, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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

DATED this _____ day of _____, 2006.

CITY CLERK, MOLLY TOWSLEE

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- §2.01 Terms

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- Exhibit C – Potential Locations for I-Net

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO COMCAST OF PUGET SOUND, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF FIVE YEARS, TO ERECT, MAINTAIN, AND OPERATE A CABLE SYSTEM IN THE CITY OF GIG HARBOR, WASHINGTON; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; INSTALLATION, UPGRADE, MAINTENANCE, AND OPERATION OF SAID SYSTEM AND BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, by Ordinance No. 566 passed and approved on November 13, 1989, the City of Gig Harbor, Washington ("City"), granted to Comcast of Puget Sound, Inc. the right, privilege, and franchise to erect, maintain, and operate for a term of fifteen (15) years a cable system in said City with an effective date of December 11, 1989; and

WHEREAS, Grantee has provided cable services within the City under such franchise; and

WHEREAS, Grantee has requested renewal of its franchise in accordance with Section 626 of the Cable Act to allow continued operation of its cable system in the City; and

WHEREAS, the City Council finds from all the evidence that Grantee meets the legal, financial, and technical qualifications, as well as other qualifications, necessary to assure that the residents of the City of Gig Harbor will receive the best available cable service provided in accordance with this franchise; and

WHEREAS, following proper notice, the City Council of the City of Gig Harbor held a public hearing on Grantee's request for renewal, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the

City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be renewed with Grantee; now, therefore

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

SECTION 1 ENACTMENT

§1.01. Recitals. The facts and recitations set forth in the preamble of this Ordinance are hereby adopted, ratified, and confirmed.

§1.02. Short Title. This Ordinance shall be known and may be cited as “The City of Gig Harbor Cable Service Franchise Ordinance.” Within this document, it shall be referred to as the “Franchise.”

SECTION 2 DEFINITIONS

§2.01. Terms. Terms, phrases, words, and abbreviations not defined herein shall be construed in accordance with the Cable Act, and if not therein defined, then in accordance with the ordinances of the City or their customary usage and meaning. When not inconsistent with the context, words used in the singular shall include the plural, words in the plural shall include the singular, and words used or defined in one tense or form shall include other tenses or derivative forms. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words “shall,” “will,” and “must” are mandatory, and the word “may” is permissive or directory.

A. Affiliate. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. Basic Cable Service. The Cable Service tier, which includes the retransmission of local television broadcast signals, as well as the PEG Channels required by this Franchise.

C. Cable Act. The Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).

D. Cable Operator. Any Person or group of Persons (i) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in the Cable System, or (ii) who otherwise Controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

- E. Cable Service. The transmission to Subscribers of Video Programming, or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.
- F. Cable System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes, but is not limited to, Video Programming and which is provided to multiple Subscribers within a community, but such term does not include facilities that qualify under the exceptions put forth in 47 U.S.C. §522(7). Unless otherwise specified, "Cable System" is used in this Franchise to refer to the particular cable system authorized under the Franchise and operated by the Grantee or any Affiliate who is a Cable Operator within the Franchise Area.
- G. Channels. A portion of the frequency band capable of carrying a video programming service or a combination of video programming services, whether by analog or digital signal.

City Engineer. The Gig Harbor City Engineer or his/her designee.
- H. Control. The actual working control of Grantee in whatever manner exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in Control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Grantee; or (ii) an agreement of the holders of voting stock or rights of the Grantee which effectively vests or assigns policy decision-making in any Person other than the Grantee.
- I. Days. Calendar days unless otherwise specified.
- J. Drop. An aerial or underground portion of the Cable System which extends from the tap to the ground block of the Subscriber's residence or business.
- K. Educational Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for educational users and used in accordance with the rules and procedures established by the City or its designee.
- L. Expanded Basic Cable Service. The tier of cable programming services which is offered for an additional monthly charge over and above the charge for Basic Cable Service.
- M. Federal Communications Commission or FCC. The agency as presently constituted by the United States Congress or any successor agency with jurisdiction over Cable Service matters.

- N. Franchise Area. The incorporated area of the City and such additional areas as may be included in the corporate limits of the City during the term of this Franchise.
- O. Government Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for government users and used in accordance with the rules and procedures established by the City or its designee.
- P. Grantee. Comcast of Puget Sound, Inc., also known as Comcast, or its lawful successor.
- Q. Gross Revenue. Any and all revenue as determined in accordance with generally accepted accounting principles (GAAP) derived by the Grantee or any Cable Operators of the Cable System, including an Affiliate of Grantee, from the operation of the Cable System to provide Cable Services within the Franchise Area.

By way of illustration and not limitation, Gross Revenue includes all fees charged Subscribers for any and all Cable Services provided by Grantee over the Cable System such as Basic Cable Service revenues, Expanded Basic Cable Service revenues, Premium Cable Service revenues, revenues resulting from connection or reconnection to the Cable System in order to receive Cable Services, revenues resulting from the lease, rental, or use of Cable System equipment used to provide Cable Service, revenues from late, delinquent, or other administrative fees applied to Cable Services, and Franchise fees assessed on Cable Services which are collected from Subscribers.

Gross Revenues shall also include advertising sales and home shopping revenues to the extent consistent with GAAP, revenues resulting from the lease of Channels to provide Cable Services.

Gross Revenues shall not include (i) any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (ii) unrecovered bad debt, and (iii) those payments described in subsection 14.08 of this Franchise.

- R. Institutional Network. A portion of the Cable System constructed and maintained by Grantee and which is only available for private, non-commercial use by governmental and/or educational entities pursuant to agreement between the Grantee and the City.
- S. Other Programming Service. Information that a Cable Operator makes available to all Subscribers generally.

- T. Master Use Permit Ordinance. Chapter 12.18 of the Gig Harbor Municipal Code enacted contemporaneously with the adoption of this Franchise ordinance.
- U. Normal Operating Conditions. Those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, labor strikes or slowdowns, civil disturbances, telephone network outages which are not caused by Grantee or its Affiliate, commercial power outages, and severe or unusual weather conditions. Those conditions which are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, changes in rates, regular or seasonal demand periods, changes in the billing cycles, changes in channel lineups that are within the Grantee's control, backup power during power outages, and maintenance or upgrade of the Cable System.
- V. Premium Cable Services. The delivery over the Cable System of programming to Subscribers for a fee or charge over and above the charge for Basic Cable Service or Expanded Basic Cable Programming Service on a per program, per-Channel, per connection or per-time period of connection basis.
- W. PEG Channels. All Public Access Channels, Educational Access Channels and Government Access Channels, collectively.
- X. PEG Programming. Non-commercial programming produced for cable casting over the PEG Channels.
- Y. Person. Any natural person, firm, partnership, association, corporation, company, joint stock company, trust corporation, governmental entity, or organization of any kind.
- Z. Public Access Channel. The non-commercial Channel(s) on the Cable System which are reserved for public users and used in accordance with the rules and procedures established by the City, or its designee.
- AA. Public Rights-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, freeway, land path, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Cable System. No reference in this Franchise to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a

Cable System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give.

AB. Subscriber. Any Person lawfully receiving Cable Service delivered by means of the Grantee's Cable System.

SECTION 3 GRANT OF AUTHORITY

§3.01. Use of Public Rights-of-Way. There is hereby granted to Grantee the right, privilege, and Franchise to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Cable System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public Rights-of-Way of the City all necessary or desirable poles, towers, anchors, wires, cables, electronic conductors, underground conduits, manholes, and other structures and appurtenances necessary for the construction, maintenance, and operation of a Cable System in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

§3.02. Additional Services/Compensation. By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Cable System which are not Cable Services. Upon request, Grantee shall inform City of any non-Cable and/or Cable Services offered over the Cable System of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Cable Services.

§3.03. Responsibility for Costs. Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at its cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within forty-five (45) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing rates.

§3.04. Publication Costs. Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee, subject to the five percent (5%) limit established by Section 622 of the Cable Act. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

§3.05. Franchise Non-Exclusive. The rights, privileges, and Franchise granted hereby are not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Video Programming and/or Cable Services to enter into the Public Rights-of-Way in any part of the City on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

§3.06. Disputes. In the event that the City is considering the grant of a franchise to another Person to provide Video Programming and/or Cable Services in the City, and the City provides a copy of the final negotiated franchise to Grantee, Grantee shall have forty-five (45) days to notify the City, in writing, of any alleged discrimination between this Franchise and the burdens and rights provided in such other franchise. If the City does not provide a copy of the franchise to Grantee, Grantee shall have three (3) months from the date Grantee receives a copy of the final negotiated franchise to notify the City, in writing, of any alleged discrimination between this Franchise and the burdens and rights provided in such other franchise. In either event, failure to notify the City shall stop Grantee from any further action related to allegations of discrimination regarding the granting of such franchise. This subsection is not intended to prevent Grantee from any action related to the City's actual administration of such franchise that the Grantee believes is discriminatory.

SECTION 4 SERVICE AVAILABILITY

§4.01. Service Availability. The Grantee shall provide Cable Service throughout the entire Franchise Area, subject to the provision below.

§4.02. Annexations. If the City annexes any contiguous area which is being provided Cable Service by the Grantee or its Affiliates, the annexed area will be subject to the provisions of this Franchise upon the effective date of the annexation; provided, however, that Grantee shall be allowed a reasonable time under the circumstances to make any required modifications to the Cable System, Cable Services, billing system, etc., as may be required to accommodate such change, and provided that if the area is serviced by an Affiliate, a transfer of ownership of the Cable System in that area to the Grantee shall not be required by the City. If the annexed area is being provided Cable Service by another provider, Grantee shall have the right, but not the requirement, to extend its Cable System to the annexed area. If the annexed area is not being provided Cable Services, the Grantee shall be required to provide service within one (1) year of the annexation.

§4.03. Installation and Extension Policy

- A. In general, except as otherwise provided herein, Grantee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:
- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.
 - (2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot aerial or sixty (60) foot Underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to subsection B below.
- B. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) aerial feet or sixty (60) underground feet of distance from distribution cable to connection of service to Customers, or a density of less than twenty-five (25) residences per cable-bearing mile of aerial trunk or distribution cable or sixty (60) residences per cable-bearing mile of underground trunk or distribution cable, service shall be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service shall be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per cable-bearing mile of its trunk or distribution cable and whose denominator equals twenty-five (25) for an aerial extension or sixty (60) for an underground extension. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

SECTION 5 TERM, EVALUATION, AND RENEWAL

§5.01. Term of Franchise. This Franchise shall be in full force and effect for a term and period, commencing after the effective date of this Franchise and in accordance with written acceptance as required by Section 28 of this Franchise, of five (5) years, which may be extended by mutual acceptance of the Grantee and City for an additional five (5) years for a total of ten (10) years.

§5.02. Performance Evaluations. In order to assure that the Grantee is complying with the terms of this Franchise and with the character, quality, and efficiency of service to be rendered, given, performed, and furnished under this Franchise, and in order to promote a sharing of information between the City Council and the Grantee, the City may schedule a performance evaluation once during any five (5) year term of the Franchise, subject to subsection 5.03 below, in accordance with the following process:

- A. At least one hundred twenty (120) days prior to each performance evaluation, the City shall notify the Grantee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Grantee pursuant to paragraph B below. Unless specifically waived by the City Council, attendance of Grantee's duly authorized representative at these meetings shall be mandatory.
- B. Within sixty (60) days from receipt of such notification, the Grantee shall file a report with the City that is certified by a representative of the Grantee knowledgeable of the operations of Grantee within the City, in reasonable detail, specifically addressing, at a minimum, the following areas:
 - (1) compliance with the requirements regarding technical performance and testing, as provided in subsection 12.02 of this Franchise;
 - (2) compliance with the PEG Channel requirements, as provided in subsections 14.01 and 14.02;
 - (3) compliance with Institutional Network ("I-Net") requirements, as provided in Section 11.06 of this Franchise;
 - (4) compliance with the FCC customer service standards.
 - (5) a comparison of rates to any benchmarks or standards set by federal, state, or local agencies having jurisdiction; and
 - (6) any other topic deemed material or relevant by the City for its enforcement of this Franchise, subject to the confidentiality provisions in subsection 18.03.
- C. All reports to be prepared under this subsection and submitted by Grantee shall be based on information since the previous performance evaluation up to and inclusive of the most current quarter available and not data that ends more than twelve (12) months before the time of the performance evaluation.
- D. Following receipt of the report, but not less than thirty (30) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for

inclusion in the performance evaluation. Grantee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, Grantee shall notify the City, in writing, explaining the reasons for such delay.

- E. The City Council shall hear any interested Persons during such performance evaluation. The Grantee shall be entitled to all the rights of due process consistent with the City proceedings including, but not limited to, the right to present evidence and the right to be represented by counsel.

§5.03. Renewal. Grantee and City agree that the Cable Act shall govern Franchise renewal proceedings at the time of renewal.

SECTION 6 COMPLIANCE WITH CITY, STATE, AND FEDERAL LAWS

§6.01. Compliance with Applicable Laws. Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public Rights-of-Way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.

§6.02. Subject to Police Power of the City. Construction, maintenance, and operation of Grantee's Cable System and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents.

§6.03. Notification in the Event of Preemptive Law. Grantee shall use its best efforts to notify the City of any change in law that materially affects Grantee's rights or obligations under this Franchise.

SECTION 7 CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY

§7.01. Use. All structures, wires, cables, equipment, and facilities erected or maintained by Grantee within the City shall be located as to cause minimum interference with the proper and intended use of the Public Rights-of-Way and with the rights or reasonable convenience of the owners or occupants of property which adjoins any of

such Public Rights-of-Way. The location of all poles, towers, anchors, wires, cables, electronic conductors, conduits, manholes and other structures and appurtenances in, over, under, along, and across the present and future Public Rights-of-Way in the City shall be fixed under the supervision of the City or an authorized agent appointed by the City. Grantee agrees to comply with all other City laws, rules, or ordinances that govern the use of Public Rights-of-Way that may be lawfully promulgated by the City during the franchise term. In the event that there is substantial conflict between the requirements of this Franchise and any newly enacted Public Rights-of-Way standards, the franchise shall govern.

§7.02. Excavation. Grantee may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its facilities used to provide Cable Service under this Franchise. In the event a permit may ordinarily be required for any excavation, a permit shall not be required for the installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring. Grantee shall provide the City written notice within fifteen (15) days of any proposed breaking of pavement, excavation, or boring on any Public Rights-of-Way other than for the purposes of installation of facilities to initiate service to a customer's property, or repair or maintenance of existing facilities, prior to the commencement thereof.

Grantee shall provide the City with notice following any emergency maintenance that required the breaking of pavement, excavation, or boring on the Public Right-of-Way. Property owners or occupants of adjoining property shall be given reasonable notice. No Public Rights-of-Way shall be encumbered by construction, maintenance, removal, restoration, or repair work by Grantee for a longer period than shall be necessary to execute such work. When the Grantee shall make or cause to be made excavations or shall place obstructions in any Public Rights-of-Way, the public shall be protected by barriers and lights placed, erected, and maintained by the Grantee in accordance with any existing or future City, state, or federal requirements.

§7.03. Restoration. Grantee shall warrant any restoration work performed by or for Grantee in the Public Rights-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after a 48-hour notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall reimburse the City in a manner agreeable to both parties.

§7.04. Relocation. Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, or lowering of the grade of any Public Rights-of-Way by the City or by the location or manner of construction, reconstruction, maintenance, or repair of any public property, structure, or facility by the City, it shall be deemed necessary by the City for Grantee to move, relocate, change,

alter, or modify any of its facilities or structures, such change, relocation, alteration, or modification shall be promptly made by Grantee upon thirty 30 days' written notice by the City. If the City requires Grantee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-of-Way. Reasonable effort shall mean a review by the City Engineer of the available construction space in or under the Public Rights-of-Way. After making provision for the foreseeable future capacity requirements for City owned utilities and other public infrastructure of the City, the City Engineer shall allot any available excess among the City's franchisees on a first come, first serve basis with Grantee being given preference along with any other franchisee with similar right to relocation consideration. In the event that limited space is available for multiple relocated franchised facilities, and all franchisees have an equal right to be considered for relocation, all available space shall be allotted in the same proportion as space was allotted in the Public Rights-of-Way from which the facilities are to be removed. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way for reimbursement of such costs, in which case Grantee shall be entitled to its share of such funding. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee, if Grantee cannot make such application itself. In the event Grantee, after such notice, fails or refuses to commence, pursue, or complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to remove or abate such structures or facilities and to require Grantee to pay to the City the reasonable cost of such removal or abatement, all without compensation or liability for damages to Grantee unless such damage was caused by the willful misconduct of the City or its agents.

§7.05. Temporary Removal of Wire for Building Moving. Upon written request of any Person holding a building moving permit issued by the City, Grantee shall remove, raise, or lower its wires and cables temporarily to permit the moving of houses, buildings, or other bulky structures. The reasonable expense of such temporary removal, raising, or lowering shall be paid by the benefited Person, and Grantee may require such payment in advance, Grantee being without obligation to remove, raise, or lower its wires and cables until such payment shall have been made. Grantee shall be given written notice, at least five (5) business days in advance, to arrange for such temporary wire and cable adjustments.

§7.06. Tree Trimming. The Grantee shall have the authority to trim trees or other natural growth overhanging any of the Cable System in the Franchise Area to prevent branches from coming into contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own expense, replace all trees or shrubs damaged as a result of such trimming in a mutually agreed manner with the property owner. From time to time, the City may pass ordinances regulating tree trimming or removal on or along City property, and Grantee shall comply with these ordinances.

§7.07. Approval of Plans and Specifications. In accordance with the City's right-of-way use regulations, Grantee shall provide complete plans and specifications for all construction (with the exception of individual drops) within Public Rights-of-Way. Approval of plans and specifications shall not be unreasonably delayed or denied. In the event of rejection, Grantee shall submit revised plans and specifications for approval. This provision shall apply to each construction sequence if the construction is accomplished in phases.

§7.08. Underground Installation.

- A. In those portions of the City where telephone lines and electric utility lines are both located underground, Grantee's lines, cables, and wires shall also be placed underground. Grantee's lines, cables, wires, and similar facilities located above ground prior to the effective date of this Franchise shall be relocated underground by Grantee at the same time that all other above-ground utility lines (e.g., electric and telecommunications lines) located on the poles with Grantee's facilities are required to be placed underground. Grantee shall pay the cost of relocating its facilities unless there are funds generally available to affected users of the Public Rights-of-Way. It shall be the policy of the City that existing poles for electric and communications purposes be utilized by Grantee whenever possible.
- B. Whenever feasible and when a pathway is needed by Grantee, and at Grantee's sole discretion, City shall allow Grantee to place conduit and conduit appurtenances in trenches provided by City for City projects. The costs of providing and installing conduits and associated appurtenances shall be the sole responsibility of Grantee. With respect to City projects, the costs of City trenching, including side trenching and excavation for vault and equipment placement, backfill, and restoration, shall be the sole responsibility of the City.

§7.09. Facilities Location.

- A. From time to time, the City, or its representatives, may request identification of the specific location of certain Grantee Cable System facilities. The Grantee agrees to respond, if possible, to such request within forty-eight (48) hours of the receipt of the request. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City to alert them. If Grantee fails to notify the City of its facilities locations within forty-eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the willful misconduct of the City or its agents.
- B. Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Cable System located within

the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Cable System.

- C. Grantee agrees to obtain facilities location information from other users of the Public Rights-of-Way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Cable System facilities.

SECTION 8 INDEMNIFICATION AND LIABILITY

§8.01. Indemnification. It is the intent of this Section and by its acceptance of this Franchise, Grantee specifically agrees, that Grantee for itself and its agents, employees, subcontractors, and the agents and employees of said subcontractors, shall indemnify and hold the City, its officers, agents, employees, and elected officials harmless from all liability actions, causes of action, lawsuits, judgments, claims, damages, penalties, costs or fees, including attorney's fees and costs of defense, for any injury to or the death of any Person or damage to or destruction of any property arising out of, resulting from or based upon, in whole or in part, any negligent act or omission of Grantee under this Franchise related to the construction, reconstruction, upgrade, operation, or maintenance of its Cable System. In the event that any action, suit or proceeding is brought or claim is made against the City based upon or arising out of any such negligent act or omission of the Grantee under this Franchise, the City shall give timely notice in writing of such action, suit, proceeding and tender such claim to the Grantee. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section.

The City shall not and does not by reason of granting this Franchise, or any failure to act by the City which may impact the Grantee's performance under this Franchise, assume any liability of Grantee whatsoever for injury or death to Persons, damage to property, or penalties of any kind whatsoever. The provisions of this Section shall survive the expiration or early termination of this Franchise.

§8.02. Damages and Penalties. By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the Cable System, except as referenced in §14 of this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

§8.03. Expenses. If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the

investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

§8.04. Separate Counsel. The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel if representation of both the Grantee and the City by the same attorney would be inconsistent with accepted canons of professional ethics and if separate counsel is employed with the approval and consent of the Grantee, which shall not be unreasonably withheld.

SECTION 9 INSURANCE REQUIREMENTS

§9.01. Minimum Coverage. Grantee shall maintain throughout the term of this Franchise:

- A. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Cable System in the minimum amount of One Million Dollars (\$1,000,000) per incident and Two Million Dollars (\$2,000,000) aggregate.
- B. An automobile liability insurance policy and, if necessary, a commercial umbrella liability insurance policy with a limit of not less than One Million Dollars (\$1,000,000) per accident. Such insurance shall cover liability arising out of any Grantee motor vehicle (including owned, hired, and non-owned vehicles).

§9.02. Increased Coverage. The City Council reserves the right to require Grantee to increase the minimum amounts of liability insurance coverage up to a maximum of Four Million Dollars (\$4,000,000) per incident if such increased coverage is deemed by City Council to be reasonably based on changes in statutory law, court decisions, or the claims history of the industry or the Grantee. Such requirement shall be expressed by resolution or ordinance.

§9.03. Endorsements. Grantee agrees that with respect to the insurance requirements contained in subsection 9.01, all insurance certificates will contain the following required provisions:

- A. Name the City of Gig Harbor and its officers, employees, and elected representatives as additional insureds.

- B. Provide for thirty (30) days' notice to the City for cancellation, non-renewal or material change, or ten (10) days notice to the City in the event of non-payment of the premium.
- C. Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

§9.04. Workers' Compensation. The Grantee shall maintain throughout the term of this Franchise workers' compensation and employers liability insurance in the amount required by all applicable federal and state laws.

§9.05. Certificate of Insurance. Upon acceptance of the Franchise, Grantee shall provide to the City and maintain on file throughout the term of the Franchise a certificate of insurance evidencing coverage as required in this Section.

§9.06. Insurance Term. The insurance required by subsection 9.01 shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Cable System, should such removal be required by City Council or undertaken by Grantee.

§9.07. Issuing Companies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

SECTION 10 PERFORMANCE BONDING

§10.01. Amount. Upon acceptance of the Franchise, Grantee shall furnish and file with the City a performance bond in the amount of Seventy-Five Thousand Dollars (\$75,000.00). The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the Franchise.

§10.02. Reservation of Rights. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

§10.03. Endorsement. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled without notice to the City and issuance of a replacement bond. The City must be given thirty (30) days written notice by certified mail, return receipt requested, of intent to cancel or not to renew."

SECTION 11
CABLE SYSTEM CHARACTERISTICS

- §11.01. Channel Capacity. Grantee's Cable System shall have the potential of providing no fewer than one hundred (100) Channels throughout the term of this Franchise. All Channels being offered to Subscribers within the Franchise Area will adhere to the technical standards set forth in paragraph 12.02 (A).
- §11.02. New Construction. Any areas of the City where Grantee constructs new Cable System facilities, such facilities shall be built, at a minimum, to the same technical specifications as the Cable System existing in the City as of the effective date of this Franchise.
- §11.03. Cable System Capabilities. Prior to the effective date of this Franchise, Grantee completed an upgrade of its Cable System. Concurrently, the Grantee modified its Cable System from a traditional "Christmas tree architecture" to a hybrid fiber coaxial, fiber-to-the-node system architecture, with fiber-optic cable deployed from the headend to the node and coaxial cable deployed from the node to Subscriber's homes. Active and passive devices are capable of passing a minimum of 550MHz and capable of delivering more than 100 Channels of high quality analog or digital video signals, meeting or exceeding FCC technical quality standards. Emergency standby power is rated at a minimum of twelve (12) hours at the headend, two (2) hours at each fiber optic node located throughout the Cable System. During this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.
- §11.04. Equal and Uniform Service. The Franchisee shall provide access to equal and uniform Cable Service offerings throughout the Franchise Area.
- §11.05. Institutional Network
- A. Upon written request from the City at any time during this Franchise, Grantee shall construct, in accordance with the provisions set forth herein and the terms and conditions of mutually acceptable I-Net Service Agreements as required, an Institutional Network for non-commercial private network communications between schools, libraries and governmental agencies. The City shall determine, at its sole discretion, the I-Net design specifications.
 - B. Within one hundred twenty (120) days of receipt of the City's written request for an I-Net proposal, to include the City's I-Net design specifications and complete list of I-Net sites, Grantee shall provide a design and cost estimate for the I-Net. The City may request a proposal for either of the following I-Net models:

- (1) A fiber-optic cable I-Net infrastructure constructed, maintained and owned by Grantee over which the City may operate and manage an Institutional Network (“City Managed Network”).
 - (2) A managed Institutional Network, owned, maintained and administered by the Grantee (“Grantee Managed Network”).
- C. The City shall have one hundred twenty (120) days from receipt of Grantee’s I-Net design and cost estimate to respond to Grantee with an acceptance or rejection of the proposal. If the City accepts Grantee’s proposal, Grantee will proceed with construction.
- (1) City Managed Network Model. If the City chooses the City Managed Network model, the City will be invoiced for construction costs upon completion of construction, in an amount not to exceed the estimate, due and payable to Grantee within one hundred twenty (120) days. Additionally, ongoing maintenance of the I-Net infrastructure shall be performed by the Grantee as part of an annual maintenance fee, initially established at Five Hundred and No One Hundredths Dollars (\$500.00) per strand mile per year, and fully defined in an I-Net Maintenance Agreement.
 - (a) Construction and Termination. I-Net infrastructure will be constructed and terminated by Grantee in accordance with Grantee’s standard practices, including but not limited to practices concerning connectorization, and the City agrees to grant Grantee all necessary rights of entry, easements and licenses to accomplish the construction to the I-Net sites. Each fiber I-Net site connection will be terminated at an internal point of demarcation in a standard fiber termination panel, unless the City provides another means of termination, in which case the City will provide all necessary fiber termination equipment. At each fiber termination location the City will provide wall mount backboards and a power source for the basic termination, or such equipment as chosen by the City as a replacement.
 - (b) Administration, Maintenance and Management. The City shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment located on the City side of the I-Net fiber termination panel at each I-Net site, and the internal site network itself. All maintenance conducted by the City shall be performed in accordance with industry standards, and any equipment owned and used by the City shall comply

in all respects with applicable governmental codes, laws, ordinances or regulations and the National Electrical Code and the National Electric Safety Code.

- (c) City I-Net Users to Provide Electronics. Grantee shall be responsible for supplying and installing the I-Net infrastructure to the specified fiber termination panel locations only, providing a pathway for I-Net communications between sites. NOTWITHSTANDING, GRANTEE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GRANTEE SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR ANY DAMAGES SUFFERED BY THE CITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT. IN NO EVENT SHALL GRANTEE BE LIABLE TO THE CITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORSEEABLE. Any “active” equipment or components, including but not limited to computers, network cards, optronics, electronics, and equipment racks, required for I-Net use shall be provided at the City’s sole expense.

- (2) Grantee Managed Network Models. The City may elect one (1) of two (2) options for a Grantee Managed Network:

Option 1: Grantee’s high-speed cable Internet service activated to City buildings and potential designated I-Net users.

Option 2: Capacity on Grantee’s fiber infrastructure designed and constructed for use by the City and potential designated I-Net users.

- (a) Monthly Service Fee. The City will pay a recurring monthly per site service fee in accordance with a fully executed I-Net Service Agreement negotiated in good faith by the parties. Ongoing maintenance and repair of the I-Net and fiber infrastructure, whether scheduled or prompted by an emergency, shall be performed by the Grantee at no additional charge to the City.
- (b) Construction and Termination. Grantee’s infrastructure

will be constructed and terminated by Grantee in accordance with standard practices, including but not limited to practices concerning connectorization, and the City agrees to grant Grantee all necessary rights of entry, easements and licenses to accomplish the construction to the I-Net sites.

- (c) Grantee to Provide Equipment, Optronics and Electronics. Grantee shall provide I-Net system and site equipment, optronics and electronics in accordance with a fully executed I-Net Service Agreement.
 - (d) Administration, Maintenance and Management. Grantee shall be responsible for the ongoing administration, maintenance and management of the I-Net equipment in accordance with a fully executed I-Net Service Agreement. All maintenance shall be performed in accordance with industry standards, and all I-Net equipment shall comply in all respects with applicable governmental codes, laws, ordinances or regulations and the National Electrical Code and the National Electric Safety Code.
 - (e) At the discretion of the City, I-Net costs, up to but not exceeding \$0.30 per month per Subscriber when aggregated with the PEG Capital Contribution, may be treated as external costs under 47 CFR 76.922.
- D. Ownership and Right of Use. The City shall have an exclusive right of use of the I-Net for non-commercial private network communications, so long as the City has met its financial obligations to Grantee, which right cannot be revoked by Grantee, or successor companies, if any, during the term of the Franchise or any renewals thereof. However, Grantee shall at all times own in fee the fiber optic and/or coaxial cable infrastructure and associated facilities and equipment up to termination points where physically connected to City-owned optronics or electronics, if any.
- E. Private Network Status. The I-Net is a private communication network governed by this Franchise and I-Net Service Agreement, if any, and the City will use the I-Net solely for non-commercial applications in accordance therewith. To-wit, the City shall not lease, resell or grant access privileges to I-Net capacity or services to a third party, for any purpose whatsoever. The City will not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality and the normal operation of Grantee's Cable System, and Grantee reserves the right to suspend until rectified the

City's rights granted hereunder in the event such interference should occur. Such unilateral suspension shall not place Grantee in violation of the Franchise. The City's use of the I-Net contemplated herein shall not qualify the Grantee as a common carrier, and City agrees to forebear its rights hereunder indefinitely in the event of inquiry into same by a state or federal agency with oversight.

- F. Force Majeure. Neither the City nor the Grantee shall be in default or liable to the other for any failure or performance under this Section 11.6 due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood or other catastrophes; adverse weather conditions; national emergencies; insurrections; riots, wars; or strikes, lock-outs, work stoppages or other labor difficulties; provided, however, the party that is unable to perform its obligations shall promptly notify the other party of such delay and the time period shall be extended for the actual amount of time said party is so delayed.

SECTION 12 OPERATIONAL STANDARDS

§12.01. Compliance with Applicable FCC Rules. Grantee shall comply with present and future applicable rules and regulations of the FCC including, but not limited to, technical standards, testing requirements, consumer protection standards and consumer electronics compatibility regulations and all other present and future rules and regulations of the FCC in connection with and relating to the operation of Grantee's Cable System.

§12.02. Technical Performance.

- A. Grantee's Cable System within the City shall meet or exceed all FCC and other applicable technical and signal quality standards for cable systems, including any such standards or regulations as hereinafter may be amended or adopted to the extent that compliance with such amended standards is mandated by law or regulation.
- B. Antennas, supporting structures, headend and associated equipment, outside plant used in the Cable System shall comply with any applicable federal, state or generally applicable City law.
- C. Grantee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical or telephone system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.

- D. If the City contacts Grantee prior to the next FCC required test period (e.g., those generally conducted in February and August of each year), a City representative may be present during the testing. Upon request, Grantee shall provide written summary reports of the results of such tests to the City.
- E. Grantee shall maintain all of its facilities and outside plant in a safe condition. Copies of the plant maintenance procedure manuals will be available for inspection at Grantee's office in Bremerton, Washington on written request, within thirty (30) days.
- F. Grantee shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable System. Grantee shall maintain or otherwise have available a work force of skilled technicians for Cable System repair and maintenance.
- G. Upon request, Grantee shall provide the City copies of all correspondence with the FCC related to technical performance of the Cable System in the Franchise Area. In the event that any complaints are filed with the FCC related to the Cable System operations, Grantee shall provide copies of such complaints as well as the resolution thereof to the City upon request.

§12.03. Parental Guidance Control. Upon request of a Subscriber, Grantee shall provide by sale and/or lease a device by which the Subscriber can prohibit viewing or use of a particular Cable Service(s) during periods selected by that Subscriber. Subscribers shall be notified in writing, by the Grantee of the availability of the device at least once per year.

§12.04. Customer Service. The Grantee shall provide customer service in accordance with the FCC standards set forth in 47 CFR 76.309(a-c). If City enters into a subsequent franchise with any other competing cable operator and affords them more favorable terms relating to customer service standards Grantee shall be entitled to the benefit of the more favorable terms as well. Additionally, if the City subsequently adopts a Customer Service Standards ordinance the terms of that subsequent ordinance shall govern.

SECTION 13 SIGNALS TO BE CARRIED

§13.01. Required Programming Categories. To the extent they are reasonably available, Grantee shall carry the following general programming categories:

- A. News, Information and Government
- B. Movies
- C. Sports
- D. General Entertainment, Music and the Arts

- E. Children, Family
- F. Educational, Science, Foreign language

§13.02. Service for the Hearing Impaired. Grantee shall comply with any FCC requirements regarding altering or adapting programming for the hearing impaired. Grantee shall not take any action to remove or alter closed captioning provided for the hearing impaired as a part of any programming. Grantee shall deliver intact such closed captioning in the manner in which it arrives at the headend or from another origination source to the Cable System.

SECTION 14 PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS

§14.01. Initial Channels. Within forty-five (45) of written request, Grantee shall dedicate one (1) Channel for the carriage of PEG Programming. The Grantee shall ensure that such PEG Channel is of a technical quality comparable to any other Channel offered over the Cable System. To the extent allowed by law, the City agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the City's use of the PEG Channels required herein.

§14.02. Additional Channels.

- A. Grantee shall make available up to two (2) additional PEG Channels (for a total of 3 PEG Channels) based on demonstrated community need and subscriber support for additional channels.
- B. If all the Video Programming Services offered by Grantee on the Cable System are in a digital format, Grantee shall likewise make the PEG Channels available in a digital format.

§14.03. Delivery of PEG Programming. PEG Programming may be in analog or digital format, so long as it is compatible with the technology utilized by the Cable System for delivery to Subscribers on the Basic tier of service.

§14.04. Management and Control of PEG Channels. The City may, at its discretion, allocate and reallocate the PEG Channels amongst Public, Educational and Government Access Programming. The City may authorize a third party(ies) to control and manage the use of any or all PEG Channels dedicated for City use, and their related facilities. The City, or its designee, may formulate rules for the operation of PEG Channels consistent with this Franchise and federal law.

§14.05. Relocation of Access Channels. Grantee will use reasonable efforts to minimize the movement of PEG Channel assignments. Grantee shall provide the City with at least forty-five (45) days' notice, prior to the time

any PEG Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the City the maximum notice possible. Grantee shall notify customers of the Access Channel's relocation in the form of a bill message. Any new Channel designations for the PEG Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

§14.06. PEG Channels on Basic Cable Service. All PEG Access Channels provided for under this Section shall be part of Basic Cable Service.

§14.07. PEG Capital Support. Effective sixty (60) days after written request and continuing during the term of this Franchise, Grantee shall pay to City a Capital Contribution for PEG Access capital expenditures in the amount of fifteen cents (\$.15) per Subscriber per month. If City chooses to construct an Institutional Network, then the Capital Fee shall be raised to thirty cents (\$.30) per Subscriber per month. Any increase in the Capital Fee shall be payable by Grantee to City after sixty (60) days notice to Subscribers of such increase; and (b) the collection of the Capital Fee from such Subscribers. Grantee shall make Capital Contribution payments quarterly, no later than thirty (30) days following the end of the quarter. The City agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the Capital Contribution to the price of Cable Services and to collect the Capital Contribution from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Capital Contribution may be separately stated on Subscriber's bills as a Government Access capital equipment fee.

§14.08. Technical Assistance. Within four (4) hours of receipt of a request from the City regarding a problem with a PEG Channel, Grantee shall commence research to determine whether or not the problem with the PEG Channel is the result of matters for which Grantee is responsible and, if so, Grantee will take prompt corrective action. Such assistance will be at no charge to the City. Grantee is responsible for all maintenance, repair and replacement of the return lines and associated equipment from Grantee's side of the fiber termination panel at the PEG origination sites to the headend. The City is responsible for all maintenance, repair and replacement of facilities and equipment on the City-side of the fiber termination panel at the PEG origination sites. Grantee agrees to install equipment provided by the City at the PEG origination sites and provide technical support for the installation for six months after the date of installation.

SECTION 15 EMERGENCY USE OF THE CABLE SYSTEM

§15.01. Emergency Alert Capability.

- A. Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and at the time required by the provisions of federal laws, including FCC regulations.
- B. The City shall only permit appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Grantee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.
- C. Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Grantee will advise the City of the testing schedule and the City and/or its authorized representative may be present for the tests.

SECTION 16 FREE DROPS AND SERVICE

§16.01. Free Drops and Service. Free drops and service provided pursuant to this section are a voluntary initiative of Grantee and Grantee agrees to continue the service throughout the term of the Franchise to existing city owned and occupied buildings, schools and public libraries. Complimentary service is defined as standard installation, one outlet per building per campus and basic service. For purposes of this section, "school" means all State-accredited public and private K-12 schools. In addition, Grantee shall provide, at no cost to the City or other entity, throughout the term of this Franchise, one outlet of Basic Cable Service to new buildings that are owned or leased and occupied by the City, schools and public libraries where service is not being provided as of the effective date of this Franchise. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

The complimentary Cable Service described herein shall be limited to those locations where the drop line from the feeder cable to such building does not exceed one hundred twenty-five aerial feet (125') or sixty feet (60') underground unless the City or other entity agrees to pay the actual incremental cost of such drop line in excess of one hundred twenty-five aerial feet (125') or sixty feet (60') underground.

This complimentary service is provided for the benefit of the Community and shall only be accessible to the employees of the receiving institutions. This complimentary service shall not be made available to the general public such

as on a commercial basis. The City shall guarantee that its use will not conflict with Grantee's general policies regarding commercial contracts. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service provided under this section.

SECTION 17 PAYMENT TO CITY

- §17.01. Amount and Time. As compensation for the right, privilege, and Franchise herein conferred, Grantee shall pay to City each year during the term of this Franchise a sum equal to five percent (5%) of the Grantee's Gross Revenues. Such payments shall be made quarterly within forty-five (45) days after the expiration of each calendar quarter. Accompanying the payment, Grantee shall submit a written report verified by an authorized representative of Grantee, containing an accurate statement of Grantee's Gross Revenues by category, and the computation thereof.
- §17.02. Annual Financial Report. Grantee shall file with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect, a certified statement of Gross Revenues, prepared according to generally accepted accounting principles, showing Gross Revenues by significant category used in the computation of Franchise fee payments for the previous year.
- §17.03. Right of Inspection of Records. The City shall have the right to inspect Grantee's records showing the Gross Revenues from which payments to the City are computed and to recompute any and all amounts paid under this Franchise. The City's right to audit and the Grantee's obligation to retain records related to a Franchise fee audit shall expire six (6) years after each Franchise fee payment has been made to the City. The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of the Grantee. If after a financial audit it is agreed that the Grantee has under paid amounts owed to the City in excess of ten percent (10%) then the City may require the Grantee to reimburse the City for the actual cost of the audit, such cost not to exceed Five Thousand Dollars (\$5,000) for each year of the audit period.
- §17.04. Late Payment Interest Charge. In the event any payment due quarterly is not received within forty-five (45) days from the end of the preceding quarter, Grantee shall pay interest on the amount due in accordance with IRS specified interest amounts for corporate under-payments for the applicable period.

- §17.05. Acceptance. Payments received from the Grantee under this Section shall not in any way limit or impair any of the privileges or rights of the City, whether under this Franchise or otherwise. No acceptance of any payment shall be construed as an accord that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim the City may have for additional amounts payable under the provisions of this Section, subject to the limitations in subsection 17.03.
- §17.06. Acts of Non-Collection. Any transaction or arrangement made for the purpose of evading Franchise fees payable under this Franchise is prohibited.
- §17.07. Additional Commitments Not Franchise Fees. The Franchise fee payable hereunder shall be exclusive of and in addition to all taxes, fees for municipal improvements, the PEG Capital Fee and other lawful obligations of Grantee to City, subject to applicable law.

Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any annual period, Grantee agrees that the additional commitments herein are neither Franchise fees as defined under any federal law in effect as of the effective date of this Franchise, nor are the additional payments to be offset or credited against any Franchise fee payments due to the City.

**SECTION 18
RECORDS AND REPORTS**

- §18.01. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by the Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered, or five (5) business days after having been posted in a properly sealed and correctly addressed envelope and sent by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

Office of the Mayor
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, Washington 98335

With a copy to:
 City Clerk
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, Washington 98335

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Puget Sound, Inc.
Attention: General Manager
1225 Sylvan Way
Bellingham, WA 98310

With a copy to:
Comcast of Puget Sound, Inc.
Attention: Franchising and Local Government Relations
19909 – 120th Avenue NE
Bothell, Washington 98011

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

§18.02. Books of Account. Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise and its exhibits. All such books of accounts and records related to enforcement of the Franchise shall be made available for inspection by the City at Grantee's office in Bothell, Washington, during normal business hours upon thirty (30) days' advance notice. If Grantee elects to move the books of accounts and records relating to the enforcement of this Franchise elsewhere, Grantee must make said books and records available and pay the travel costs, lodging, meals and any copying expenses or a City representative to visit the site where the books and records may be found, if such a review is requested by the City. Grantee shall maintain the books and records for Franchise compliance purposes for a period of five (5) years. If Grantee maintains books and records related to enforcement of the Franchise for a period greater than five (5) years, City shall have access to those records.

§18.03. Confidentiality. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is considered confidential. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a request from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of

competent jurisdiction, the City agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person.

§18.04. Quarterly Reports. A report shall be filed by Grantee with the City within forty-five (45) days following the end of each calendar quarter, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. Grantee shall notify the City of such a change thirty (30) days in advance. The material substance of the report shall be in a form reasonably acceptable to the City. The information contained within the quarterly report shall include, but not be limited to:

A. The Gross Revenue report required by subsection 17.01.

§18.05. Annual Report. A report shall be filed by Grantee with the City within ninety (90) days following the end of each calendar year, or portion thereof during which the Franchise is in effect. At the Grantee's option, the measurements and reporting above may be changed from calendar years to billing or accounting years. Grantee shall notify the City of such a change thirty (30) days in advance. The information contained within the annual report shall include, but not be limited to:

A. Total number of Subscribers and Basic Service only Subscribers, subject to subsection 18.03.

B. The Gross Revenue report required by subsection 17.02.

C. A summary of any Grantee activities regarding an I-Net.

D. A summary of any new services being offered.

E. A PEG capital support recovery report.

Such report shall be certified by a representative of the Grantee knowledgeable of the operations of the Grantee within the City. Grantee shall also provide the City a copy of the publicly-available annual report of the Grantee's parent company, when available.

SECTION 19 REGULATION OF RATES

§19.01. City Regulation of Grantee's Rates. All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

§19.02. Notice of Rates. Upon request, Grantee shall provide a copy of its rates and charges for any and all of its Cable Services in the City and shall notify the City of any changes to such rates and charges in compliance with any timing requirements prescribed in FCC regulations.

§19.03. Customer Billing. Customer billing shall be itemized by service(s) per FCC regulation 76 CFR 309 (B)(ii)(A).

SECTION 20 EMPLOYMENT REQUIREMENTS

§20.01. Equal Opportunity in Employment. Grantee shall afford equal opportunity in employment to all qualified Persons. No Person shall be discriminated against in employment because of race, color, religion, national origin, or gender.

SECTION 21 PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES

§21.01. No Rate Discrimination. All Grantee rates and charges shall be published in the form of a publicly-available rate card, made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law. Grantee shall permit Subscribers to make any in- residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by Grantee. Nothing herein shall be construed to prohibit:

- A. The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- B. The offering of rate discounts for Cable Service to governmental agencies or educational institutions; or
- C. Offering of bulk discounts for Multiple Dwelling Units.

SECTION 22 ASSIGNMENT OF FRANCHISE

§22.01. City Approval of Assignment Required. This Franchise shall not be assigned, sold or transferred, or otherwise encumbered, to any third party that does not possess the legal, technical or financial qualifications to operate the Cable System without the prior consent of the City expressed by resolution

or ordinance, and then only under such conditions as may be lawfully prescribed therein. Within thirty (30) days of receiving the request for transfer, the City shall notify the Grantee, in writing, of the information it requires to determine whether the FCC Form 394 (the transfer application) is complete so that the City can ascertain the legal, financial, and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving a complete FCC Form 394, consent by the City shall be deemed given. No assignment to any Person shall be deemed effective until the transferee has filed with the City an instrument in writing, duly executed, reciting the fact of such assignment, accepting the terms of this Franchise, and agreeing to comply with all lawful provisions hereof, subject to applicable law.

§22.02. City Approval of Change of Control Required. The Grantee shall promptly notify the City of any proposed change of Control of the Grantee. For the purpose of determining whether the City shall consent to such change of Control, the City may inquire into the legal, financial, and technical qualifications of the prospective controlling party, but shall do so within thirty (30) days of receipt of the requested change of Control from the Grantee. Grantee shall assist the City in such inquiry and will respond within ten (10) days unless a longer time is reasonably necessary to respond or allowed by law.

SECTION 23 FRANCHISE VIOLATIONS, NOTICE AND LIQUIDATED DAMAGES

§23.01. Notice of Default; Opportunity to Cure; Public Hearing.

- A. Notice of Default. The City shall notify the Grantee, in writing, of any alleged failure to comply with a provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to:
1. respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or
 2. cure the default; or
 3. notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City, in writing and in detail, as to the exact steps that will be taken and the projected completion

date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

- B. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with subsection (A)(2), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting, in writing, and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.
- C. If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or violation within fifteen (15) days or within such other reasonable timeframe as the City shall determine.
- D. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

§23.02. City Action in Event of Violation. Subject to the City's compliance with the cure notice and procedures given in §23.01 and in the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

- A. Seek liquidated damages pursuant to §23.03;
- B. In the case of violation of a material provision of the Franchise or other material violation as set forth in §24.01 and §24.02, seek to revoke the Franchise pursuant to §24.03;
- C. Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

Notwithstanding the foregoing, the City may not pursue monetary damages or liquidated damages in addition to the interest specified in §17.04 for late payment of Franchise fees; or monetary damages or liquidated damages in addition to the interest specified in §14.08 (B) for late payment of the PEG Capital Fee.

§23.03. Liquidated Damages.

- A. If Grantee remains in violation following this cure period, the City may charge to and collect from Grantee the liquidated damages set forth in subsection (E) below, with liquidated damages beginning to accrue no earlier than the day following the end of the cure period set forth in §23.01 above. If the City pursues liquidated damages, the Grantee may elect, in response, to request to enter into arbitration pursuant to §23.04 below. If the Grantee enters into arbitration, liquidated damages shall be tolled from the date of Grantee's election for a period of ninety (90) days before accruing again. If Grantee prevails at arbitration liquidated damages shall be waived, if the City prevails in arbitration liquidated damages shall accrue until Grantee corrects the violation.
- B. The parties agree that actual damages that might be sustained by the City by reason of Grantee's violation of the Franchise provisions below, are uncertain and difficult to ascertain, and that the sums set forth below are reasonable compensation for such violation, and Grantee promises to pay, and the City agrees to accept, such sums as liquidated damages, and not as a penalty, in the event of such violation.
- C. Additionally such sums of money shall be considered liquidated damages due the City by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other City administrative time and involvement which resulted in the expenditure of public funds due to Grantee's failure to comply with certain provisions in this Franchise.
- D. Grantee covenants that any such sums paid to the City under this Franchise provision shall not be included in the development of any rate, change, or price for services charged to Subscribers.
- E. The specific amounts of liquidated damages are as follows:
 - (1) For failure of Grantee to provide any report, certificate or map to the City as required by this Franchise, Fifty Dollars (\$50) per day.
 - (2) For failure to comply with the service availability requirements set forth in Section 4, the greater of Fifty Dollars (\$50) per day or One Dollar (\$1.00) per day per impacted Subscriber.
 - (3) For failure of Grantee to respond, restore or repair the Public Rights-of-Way within forty-eight (48) hours of notice by City under §7.03, Two Hundred Fifty Dollars (\$250) per day for

every day following forty-eight (48) hours after Grantee's receipt of the notice.

- (4) Should the City adopt any lawful and generally applicable ordinance governing the Public Rights-of-Way which includes administrative fees for City-performed relocation of Grantee facilities, such fees in the ordinance shall apply to the Grantee and supersede the ability of the City to collect liquidated damages under the Franchise for relocation violations.
- (5) For failure of Grantee to provide a cable system in accordance with Section 11, One Thousand Dollars (\$1000) per day.
- (6) For failure of Grantee to provide the PEG Channels as required by Section 14, Two Hundred Fifty Dollars (\$250) per day.
- (7) For failure of Grantee to provide the notice of rates as required by §19.02, Twenty-Five Dollars (\$25) per day.
- (8) For departure of fifteen percent (15%) measured over a quarterly period from FCC Customer Service Standards, Fifty Dollars (\$50) per day.
- (9) For failure to comply with any other material breaches of the Franchise, Two Hundred Fifty (\$250) per day.

§23.04 Arbitration.

- A. All disputes relating to the interpretation, application or enforcement of liquidated damages under § 23.03 may be arbitrated as provided below.
- B. Either party may initiate arbitration by sending written notice to the other.
- C. In the event an arbitration is initiated, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.

- D. The City and Grantee shall mutually select an arbitrator from the list within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon an arbitrator within the time specified herein, then an arbitrator shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the Pierce County Superior Court.
- E. After an arbitrator has been selected, he or she shall take an oath to serve neutrally and impartially. The arbitrator shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than sixty (60) days and not more than one hundred (100) days after the appointment of the arbitrator unless the parties mutually agree to a different schedule or an extension is granted by the arbitrator for good cause shown. The arbitrator shall make a written report to the City and the Grantee on their final determination within thirty (30) days after completion of the hearing. The determination of the arbitrator shall constitute a final arbitration determination, appealable to a court of competent jurisdiction by either party.
- F. The arbitration shall be conducted in Seattle, Washington, in accordance with the existing rules of the American Arbitration Association, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrator may be entered by the state or federal court having jurisdiction.
- G. Each party shall be responsible for its own costs of arbitration.

§23.05. Force Majeure. Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to City required by this Franchise, Grantee shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

§23.06. Reservation of Rights. The rights reserved to the City under this Section are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right shall affect any other right the City may have.

§23.07. Venue and Jurisdiction. Venue and jurisdiction for any action for breach or default of this agreement will lie in Pierce County, Washington.

**SECTION 24
REVOCATION OF FRANCHISE**

§24.01. General. In addition to all rights and powers of the City by virtue of this Franchise or otherwise, the City reserves, as an additional and as a separate and distinct power, the right to revoke the Franchise in accordance with the procedures specified herein if any of the following events occur or for any of the following reasons:

- A. Grantee by act or omission violates any material term, condition, or provision of this Franchise and fails or refuses to effect material compliance following the notice and opportunity to cure specified under §23.01.
- B. Grantee knowingly or willingly attempts to evade any material provision of this Franchise.
- C. Grantee knowingly makes a false entry or statement regarding any material provision under this Franchise in any reports or records provided to the City.
- D. Repeated and substantial violation or willful disregard of:
 - (1) the City's lawful ordinances and regulations related to the Public Rights-of-Way; or
 - (2) the Customer Service Standards in Exhibit A; or
 - (3) the Cable System technical performance requirements in Section 12.
- E. The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or non-judicial sale of all or any material part of the Cable System.
- F. Grantee becomes insolvent or is adjudged bankrupt or all or any part of Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within thirty (30) days from the date of such sale; provided, however, this shall not be an event of termination or cancellation in the event of bankruptcy proceeding and the trustee, receiver, or debtor in possession agrees in writing to be bound by the terms of this Franchise.
- G. Grantee has been found by a court of law to have practiced any fraud or deceit in its conduct or relations under this Franchise with the City, Subscribers or potential Subscribers.

§24.02. Material Provisions. Material terms of this Franchise include, but are not limited to:

The indemnification required by Section 8.

- A. The insurance required by subsection 9.01.
- B. The Cable System Capabilities required by section 11.03.
- C. The I-Net required by subsection 11.06, if requested.
- E. The PEG Channels as required by subsections 14.01 and 14.02.
- F. The PEG Capital Fee required by subsection 14.07.
- G. The EAS required by subsection 15.01.
- H. Payment of Franchise fees as required by subsection 17.01.
- I. The reporting requirements of Section 18.02.
- J. Nondiscrimination in rates and services as required by Section 21.
- K. City approval of transfers and changes of control required by subsections 22.01 and 22.02.

§24.03. Method of Revocation. Should the City Council determine, following the process set forth in §23.01 and §23.02 (to the extent applicable,) that its selected course of action shall be to seek revocation of the Franchise, the City shall give Grantee written notice of such intent. The notice shall set forth the causes and reasons for the proposed revocation, shall advise Grantee that it will be provided an opportunity to be heard by City regarding such proposed action before any such action is taken, and shall set forth the time, date, and place of the hearing. In no event shall such hearing be held less than thirty (30) days following delivery of such notice to Grantee. At the hearing, the Grantee shall be entitled to all rights of due process consistent with the City procedures including, but not limited to, the right to present evidence, examine witnesses and the right to be represented by counsel. Any such revocation of this Franchise shall be by ordinance.

§24.04. Grantee May Appeal City's Decision. The Grantee may appeal the City's decision to revoke the Franchise to an appropriate court, which shall have the power to review the City's decision de novo and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

SECTION 25 VALUATION

§25.01. Purchase Price of Cable System. If the Franchise is revoked for cause and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at an equitable price. If renewal of the Franchise is lawfully denied and the parties agree that the City may purchase the Cable System, the City may purchase the Cable System at fair market value, determined on the basis of the Cable System valued as a going concern but

with no value allocated to the Franchise itself. Should the parties fail to agree upon the equitable price or the fair market value of the Cable System, the same shall be determined in an appropriate proceeding filed in any court having jurisdiction.

SECTION 26 FAILURE OF CITY TO ENFORCE FRANCHISE

- §26.01. No Waiver of Terms. The Grantee shall not be excused from complying with each and all of the terms, conditions, and provisions of this Franchise even though the City should upon one or more occasions fail to insist upon, to require, or to seek compliance with any such term, condition, or provision.

SECTION 27 RECOURSE, UNDERSTANDING, CONSTRUCTION, AND SEVERABILITY

- §27.01. Requirements and Enforcement. Except as expressly provided herein, Grantee shall have no monetary recourse whatsoever against City of any loss, cost, expense, or damage arising out of the provisions or requirements of this Franchise or because of the enforcement thereof by City or because of the lack of City's authority to grant all or any part of this Franchise.
- §27.02. Grantee's Understanding. Grantee expressly acknowledges that in accepting this Franchise, it relied solely upon its own investigation and understanding of the power and authority of City to grant this Franchise and that Grantee was not induced to accept this Franchise by any understanding, promise, or other statement, verbal or written, by or on behalf of City or by any third Person concerning any term or condition not expressed herein.
- §27.03. This Franchise, including all Exhibits, embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.
- §27.04. Construction of Franchise. By acceptance of this Franchise, Grantee acknowledges that it has carefully read the provisions hereof and is willing to and does accept all of the risks of the meanings of such provisions.
- §27.05. Provisions Severable. If any provision, section, subsection, paragraph, sentence, clause, or phrase of this Franchise is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Franchise. It is the intent of City in adopting this Franchise that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise are declared to be severable.

**SECTION 28
ACCEPTANCE OF FRANCHISE**

§28.01. Method of Acceptance. Within thirty (30) days from the publication date of this Franchise, Grantee shall file with the City Clerk a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, in the following form signed in its name and behalf:

“To the Honorable Mayor and City Council of the City of Gig Harbor, Washington: For itself, its successors, and assigns, Comcast of Puget Sound, Inc., duly authorized to do business in the State of Washington, hereby accepts the attached Franchise and agrees to be bound by all of its terms, conditions, and provisions, subject to applicable law.

COMCAST OF PUGET SOUND, INC.

By: _____

Its: _____

Dated this _____ day of _____, 2006.”

§28.02. Acceptance of Franchise Not a Waiver. Acceptance of this Franchise by Grantee shall not constitute a waiver by it of any of its rights.

§28.03. Effective Date. Subject to the acceptance by Grantee, this Franchise shall be effective five (5) days after its publication and passage as required by law.

BY THE CITY COUNCIL AND APPROVED BY ITS MAYOR ON THIS _____ day of _____, 2006.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 7/7/06

PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

**SUMMARY OF ORDINANCE NO.
of the City of Gig Harbor, Washington**

On July 24, 2006 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. ___, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO COMCAST OF PUGET SOUND, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF FIVE YEARS, TO ERECT, MAINTAIN, AND OPERATE A CABLE SYSTEM IN THE CITY OF GIG HARBOR, WASHINGTON; TO ERECT, MAINTAIN, AND OPERATE ITS POLES, TOWERS, ANCHORS, WIRES, CABLES, ELECTRONIC CONDUCTORS, CONDUITS, MANHOLES, AND OTHER STRUCTURES AND APPURTENANCES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY IN THE CITY; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INsofar AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; INSTALLATION, UPGRADE, MAINTENANCE, AND OPERATION OF SAID SYSTEM AND BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

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

APPROVED by the City Council at their regular meeting of July 24, 2006.

BY: *MOLLY M. TOWSLEE, CITY CLERK*