

# **Gig Harbor City Council Meeting**

**June 25, 2007  
6:00 p.m.**



**AMENDED AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
June 25, 2007 - 6:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meeting of June 11, 2007 and Public Safety Workshop.
2. Correspondence / Proclamations: a) AWC Grant Award; b) Scandinavian Heritage Week.
3. Receive and File: No Finance / Safety Committee on 6/13.
4. Eddon Boat – Anchor Environmental Contract Amendment No. 8.
5. Resolution - Personnel Policies Amendment – Sick Leave Cash Out.
6. Resolution – Surplus Equipment.
7. Liquor License Renewals: The Keeping Room; Harbor Rock Café; Hunan Gardens; Kinza Teriyaki; Spiro's.
8. Liquor License Change of Corporate Officers – Tides Tavern.
9. Approval of Payment of Bills for June 25, 2007:
10. Checks #54501 through #54634 in the amount of \$436,175.54.

**RECOGNITION CEREMONY:** Blessing of the Fleet / Maritime Gig.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Two Ordinances Adopting Text Amendments Recommended in Phase 1b of the Design Review Process Improvements Initiative (Zone 07-0023 & 07-0024).

**NEW BUSINESS:**

1. First Reading of Ordinance – Public Disclosure Requests.
2. First Reading of Ordinance – Amendment to 8.30.010 – Prohibiting Use of Skateboards, Scooters and Roller Skates on City Streets.
- ~~3. Public Hearing and First Reading of Ordinance – Amending School Impact Fees.~~
4. Tides Tavern Tideland Lease.
5. Gig Harbor BoatShop Lease Agreement.
6. Planning Commission Work Program.
7. Request to Purchase City Property – Richards.
8. Resolution Rejecting Proposed Text Amendment to the PCD-BP Zone (ZONE 07-0019).
9. Emergency Resolution to Waive Competitive Bidding Process for Replacement of Traffic Signal Structure and Authorization of Construction Services Contract.
10. Interlocal Signal Agreement with WSDOT.
11. SR-16 Interchange Project Management and Consultant Oversight Contract.

**STAFF REPORT:**

1. Gig Harbor Police Department – May Report.
2. Marine Patrol Boat Grant Update.
3. Schedule of Retreat Action Items.
4. Briarwood Sidewalks Update
5. 45<sup>th</sup> Street Sidewalks Update
6. Olympic/56<sup>th</sup> Road Improvement Project Update

**PUBLIC COMMENT:**

**MAYOR’S REPORT / COUNCIL COMMENTS / COUNCIL COMMITTEE REPORTS:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. GH North Traffic Options Committee – Wednesday, June 27<sup>th</sup>, at 9:00 a.m. in Community Rooms A & B.
2. Bridge Opening Celebration – Skansie Brothers Park, July 10<sup>th</sup> , 5:00 – 8:00 p.m.
3. Finance & Safety Committee – July 12<sup>th</sup> at 4:00 p.m.
4. Operations and Public Projects Committee – Thursday, July 19<sup>th</sup>, at 3:00 p.m. in the Engineering/Operations Conference Room.
5. Council Budget Retreat – Monday, July 30<sup>th</sup> at 6:00 p.m.

**EXECUTIVE SESSION:** For the purpose of discuss potential litigation per RCW 42.30.110(1)(i).

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF JUNE 11, 2007

**PRESENT:** Councilmembers Young, Franich, Conan, Dick, Payne, and Kadzik. Councilmember Ekberg acted as Mayor Pro Tem.

**CALL TO ORDER:** 6:09 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 the City Council Meeting of May 29, 2007 and the Joint City Council / Parks Commission Worksession of May 21, 2007.
2. Receive and File: Operations and Public Projects Committee Minutes – 5/17/07; Intergovernmental Affairs Committee Minutes – 5/29/07.
3. Copier Maintenance Agreement.
4. 50<sup>th</sup> Street Improvements Final Plans, Specifications, & Estimate – Contract Services Contract.
5. Donkey Creek and Adjacent Estuary – Technical Review and Grant Support Services Contract Authorization.
6. NPDES Permit Water Quality Studies – Contract Authorization.
7. Approval of Payment of Bills for June 11, 2007:  
Checks #53843 through #54009 in the amount of \$768,208.02.
8. Approval of Payment of Payroll for May:  
Checks #4680 through #4710 and direct deposits in the amount of \$294,364.25.

**MOTION:** Move to approve the Consent Agenda as presented.  
**Franich / Young** - unanimously approved.

### **OLD BUSINESS:**

1. Public Hearing and Second Reading of Ordinance-Clarifying the Effect of a Transportation Capacity Reservation Certificate (CRC), and the Definition of an "Owner" and "Capacity". Steve Misiurak presented this ordinance to clarify various definitions.

Mayor Pro Tem Ekberg opened the public hearing at 6:03 p.m. No one came forward to speak and the hearing was closed.

**MOTION:** Move to adopt Ordinance 1091.  
**Kadzik / Conan** – unanimously approved.

2. Naming of Estuary Park. Rob Karlinsey, City Administrator, explained that at the May 29<sup>th</sup> meeting, Council requested additional information on the names submitted for consideration. He said that that information had been gathered and included in their packets. He also said that additional recommendations were received from the Parks



Commission, Design Review Board and citizens, all which were added to the packet of information.

Sandy Elkin – 11925 Creviston Drive. Mr. Elkin spoke in favor of naming the park after the Austin Family. He gave an in-dept history of the family’s presence surrounding the site of the park. He explained that his late wife, Nancy, was the daughter of Ruth and Howard Austin and granddaughter of C.O. Austin and urged Council to name the park “Austin Estuary Park.”

Terry Shaw – 4032 Whitman, Tacoma. Mr. Shaw said that his grandfather was C.E. Shaw, little known celebrity and Gig Harbor activist. Mr. Shaw shared the history of Rooster Racing, the Round Rock Contest, and the 4<sup>th</sup> of July Parade; all events that his grandfather started. He read a long list of publications in which his grandfather was mentioned. Mr. Shaw said that there is no street or park named for his grandfather, adding that he would like to see a recreation of Roosterville in the city park as a fun tourist attraction. He then said that he agreed with naming the Estuary Park after the Austin Family.

Gretchen Wilbert – 8825 No. Harborview Drive. Ms. Wilbert voiced support of two ideas to honor the history of the Donkey Creek Neighborhood. The first is to name the park “Austin Estuary Park” and then reconsider renaming Austin Street to Shaw Street.

MaryBeth Austin – 1823 9<sup>th</sup> Ave. W., Seattle. Ms. Austin, granddaughter of C.O. Austin, said that she was here to support the naming of the park “Austin Estuary Park.” She passed out family photos and gave additional history of the property, her grandfather’s civic involvement and the lumber mill.

Gene Pearson – 7305 Soundview Drive Unit 502. Mr. Pearson said at the Austin Mill was a fixture in Gig Harbor and provided many jobs. He asked Council to continue the tradition of naming things after early settlers rather than using a name that has no meaning to those around this area. He asked that the park be named “Austin Estuary Park.”

Councilmember Payne thanked everyone for coming to speak and said that it is apparent that there are several individuals that forged the city’s history adding that the city needs to pay attention to this. He said that there had been an oversight in not recognizing Mr. Shaw and his contributions and he believes that this Council intends to take some action to do so. He said that he was made aware that the Native American village in this area was more aligned with Donkey Creek and that he would be interested in a discussion of renaming the Donkey Creek Park accordingly. He voiced support of naming the estuary “Austin Estuary Park.”

**MOTION:** Move to name the estuary park “Austin Estuary Park.”  
**Payne / Conan –**

Councilmember Young explained that he would consider a better phonetic spelling of the name “Twa-wal-kut” if offered. He said that he feels strongly about using a Native American name for this estuary park to honor those who were here before us. He talked about how several of the Native American names around here are difficult to pronounce until you are used to them, adding that he would consider any of the proposed Native American names for this site.

Councilmember Franich said that naming the estuary Shaw or Austin would be more appropriate for the present, relevant history. He said that he supports the motion and likes the suggestion by Mayor Wilbert to rename Austin Street to Shaw Street.

Councilmember Payne said that in the beginning he was supportive of a relevant Native American name. He added that staff tried to elicit interest from the Puyallup Tribe, but very little was shown.

Councilmember Kadzik said that he too was inclined to go with a Native American name, but has been convinced that the Austin presence is more significant. He said that he supports naming the estuary “Austin Estuary Park.”

Councilmember Dick voiced appreciation for the additional information brought to Council. He shared Councilmember Young’s concern that the city has done nothing to honor those others who came before and contributed to the community. Groups of Native Americans shared this site, married other members of the community and this legacy is part of what we have become. He said that the Austin Estuary Park name is meaningful and appropriate, but he is more supportive of one of the Native American names.

Councilmember Conan added that he too wanted to find a Native American name for this site, but as he read more of the history, he realized that the seasonal village was located further back and closer to Donkey Creek Park. He said that he would like to reconsider renaming Donkey Creek Park as there was never a formal naming process, and acknowledge the Native American presence there with a display or marker. He said that the information shared by Mr. Elkin illustrates the Austin Family presence in that neighborhood and it would be a great opportunity to use that name for the park.

Councilmember Young agreed with the idea of renaming Donkey Creek Park for historical accuracy.

**RESTATED MOTION:** Move to name the estuary park “Austin Estuary Park.”  
**Payne / Conan** – six voted in favor. Councilmember Young voted no.

**NEW BUSINESS:**

1. Proposed 2007 UGA Amendment to the Pierce County Comprehensive Plan.  
John Vodopich presented the background information on this proposed expansion to the city’s Urban Growth Boundary to include just less than 25 acres of property in the

vicinity of the city shop. He explained that this same request was submitted by Paul Miller in 2003, and denied by Pierce County due to the presence of wetlands. He said that he has prepared a letter to Pierce County with a Council recommendation of either approval or denial.

Mike Krueger – Senior Planner for Pierce County Planning and Land Services – 2401 So. 35<sup>th</sup>, Tacoma. Mr. Krueger said that property in question has been in and out of the Gig Harbor UGA several times over the years. He explained that the reason this property was not included by Pierce County has to do with the extensive wetlands on both this and surrounding properties, and the considerable public testimony in opposition. In addition, the property would be zoned Employment District, and there is quite a bit of vacant employment land already in the city. He offered to work around this technical issue if Council wanted the parcels to be included. He said that another issue to consider is access to the property, which is through a proposed senior housing development. Mr. Krueger finalized by stressing that Pierce County would work with whatever decision Council makes.

Paul Miller. Mr. Miller gave the background for the attempts to have this property included in the city's UGA, explaining that the only access to this property is 90<sup>th</sup> Street which comes through an industrial zone in the city. He said that they will not develop anything that is incompatible with the proposed retirement center. He then addressed the wetlands, explaining that there is a ridgeline separating the four parcels from the property to the west, and that the wetlands will be appropriately dealt with in the planning process. He explained how in 2003 the City Council and the Peninsula Advisory Commission recommended these parcels be included back into the UGA, and he was originally part of an annexation effort until Superior Court held up the process. He said that when the Planning Commission discussed this, the discussion turned to the Buildable Lands Study and the tie-in with the Roby-Campen Annexation. These two factors weighed in on the decision to deny. Mr. Miller asked for a Council recommendation to include these parcels in the city's UGA.

Julia Martin Lombardy – 4910 Pt. Fosdick Drive. Ms. Lombardy read from a letter from Friends of Pierce County asking City Council to deny the U4 amendment proposal for the same reasons it was denied in 2003.

Councilmember Young commented that the real reason that this was opposed has little to do with the amount of different types of zoning capacity. He stressed that the property will develop whether in the UGA or not and the key issue is access through an industrial zone. The original denial focused on the properties to the north that would have access from Bujacich Drive which should remain more rural in character. Mr. Miller's property is not marketable for housing, but for expanding the Employment District. He said that it makes sense to include this property.

Councilmember Franich asked how the property got into the city's service area and whether the Growth Management Act prohibits the city from expanding into areas with wetlands as cited in the letter from Friends of Pierce County. Mr. Vodopich explained

that the property was included in the Urban Growth Area when it was first established in 1998 and is part of the service area. He then said that he is unfamiliar with the case cited in the letter. Carol Morris, City Attorney, also said that she was unfamiliar with this case, adding that she is unaware of any prohibition in the GMA.

Mayor Pro Tem Ekberg asked if this issue was time sensitive or if it could be delayed until this could be further researched. Mr. Vodopich said that the County needs a response before June 25<sup>th</sup>. Ms. Morris offered to research the case now and come back later in the meeting with the information. Council agreed.

Councilmember Franich then asked for clarification on the Buildable Lands report in regards to ED Zoning. Jennifer Kester, Senior Planner, responded that Pierce County is currently updating the report and so she can only address the 2002 report. At that time, the city was over capacity on commercial or employment zones and slightly under in residential.

Councilmember Franich continued to say that he understands the concern with access to these parcels, but he didn't think changing 24 acres of R-5 into more intensive use is the best thing for the community.

Mayor Pro Tem Ekberg announced that Council would move on to the next item and then come back to this when the City Attorney returns.

2. Resolution – Parks Naming. Rob Karlinsey introduced this resolution requested by Council establishing a policy for parks naming.

**MOTION:** Move to adopt Resolution No. 717.  
**Young / Payne** – unanimously approved.

3. Proposal for Public Meetings Calendar – Peninsula Gateway. Molly Towslee, City Clerk, explained that this proposal will facilitate a weekly public noticing of all the city's meetings and events in a high-profile, legal and efficient manner.

Councilmember Kadzik commented that this is an ideal way to announce openings on our boards and commissions as well.

**MOTION:** Move to authorize the Mayor to sign the attached agreement outlining the publication of a weekly Public Meetings Calendar.  
**Franich / Kadzik** – unanimously approved.

4. Public Hearing and First Reading of Ordinance – Two Ordinances Adopting Text Amendments Recommended in Phase 1b of the Design Review Process Improvements Initiative (Zone 07-0023 & 07-0024). Jennifer Kester presented the information on these two ordinances that will amend the current Design Review process and procedures to remove barriers to projects utilizing the DRB review, and allow the process to more closely align with the development process to facilitate earlier and

more meaningful review. She said that the amendments will also add administrative options to reduce permit processing times.

Councilmember Young asked if the date that the Design Review Board will review a project is moved up, but the applicant is not waiving the 120 day requirement, how the project will meet the deadline.

Ms. Kester explained that this will allow design review to run concurrently with the permit processing rather than waiting until the very end, which can result in limited input from the design review process.

Councilmember Payne asked how this could be tracked internally to stay within the 120 day time limit.

Tom Dolan, Planning Director, responded that this is a recognized challenge and that remaining compliant with the 120 timeframe requirement is paramount. He explained that the automated permit tracking system will help, and staff will be challenged to provide constant updates to the permit status. He reassured Council that there is a provision to come back in one year with an update on how the process is working. He further explained that there is a module to the permit-tracking software that will help them track time that they will implement. Until then, manual tracking is being used.

Councilmember Franich asked for an example of minor adjustments to Hearing Examiner decisions and the administrative review of alternative designs. Ms. Kester responded that a good example of a minor adjustment to previous DRB recommendations would be the Costco project and a retaining wall that had to be added due to the finished grade. Examples of alternative design solutions are the addition to Councilmember Franich's house and the finish on the tenant improvement at Olympic Plaza. Councilmember Franich then voiced concern that that could lead to subjective decisions, adding that he prefers a black and white code to be followed. He said that he would discuss this further with staff to get a better idea for when this process would be used.

Councilmember Dick asked that in the event staff is unable to complete the underlying permit in 120 days, what portion of the permit would be vested. Ms. Kester clarified that currently, design review administrative process doesn't require the 120 days waiver; it's only if a project goes before the Design Review Board. She said that the changes would allow the applicant to go to the Design Review Board early in the process and so there shouldn't be any issue with meeting the deadline.

Councilmember Kadzik asked the reason for removing the clause that the DRB shall not review applications that are not compliant with all other applicable codes. He voiced concern for two reasons. Recently, an applicant attempted to get a large project approved by the DRB that didn't meet the requirements of the underlying zoning, and then tried to use the design review as a legitimate stamp of approval. His second concern is the tremendous waste of staff and volunteer resources. He compared this to

a design that needs a variance, saying that it seems that a good argument would need to be made to allow that to go forward.

Ms. Kester responded that staff and the board members will clearly let the applicant know the extent of the board's authority for approval. She offered to work with the City Attorney to add language to the ordinance that the Design Review Board would not be able to review projects in which the uses aren't allowed.

Councilmember Young agreed that the time spent is a significant waste, using a project on Point Fosdick as an example of an applicant that wanted the DRB to give approval in order to take that to the Hearing Examiner as an indication that the project was okay. He then asked about the time module for the permit tracking software, stressing that this is a priority and he would be uncomfortable passing these amendments without this feature.

Tom Dolan said that he would research the program's current capabilities and report back.

Mayor Pro Tem Ekberg opened the public hearing at 7:26 p.m.

Chuck Carlson – 3505 Harborview Drive. Mr. Carlson, member of the Design Review Board for two years, spoke in favor of the amendments. He explained that an applicant is going to utilize their architect in order to maximize the property, and so by the time it reaches design review, a lot of money has already been expended and the board's hands are tied. If an application were able to be reviewed at an earlier stage, it would give the opportunity to make it a better project.

Councilmember Young asked if the pre-application meetings were being used. Mr. Carlson responded that yes, and they are very helpful.

There were no more public comments and the hearing closed at 7:29 p.m.

Councilmember Kadzik said that other than the underlying zoning concerns, he thinks these are great amendments and the design review process has gone through tremendous evolutionary process to become a more professional document. He shared a few housekeeping items to correct before the next reading of the ordinances. On page 4 of 16, 17.78.030 – Landscape Plans, the language "significant vegetation plan and tree retention plan" should be capitalized. He then said that he could not find 17.78.050(B) which is referenced in this same section. Ms. Kester said that this was adopted in the recent Phase I-A text amendments.

Councilmember Kadzik then mentioned that if these amendments are adopted, there would be additional methods of approval and he would like to see them all listed in 17.99.030. Ms. Kester agreed to add this language.

Carol Morris returned at this time with the information on the proposed UGA amendment. She explained that the decision cited was 67 pages long, but she could not find the language referenced in the letter. She said that it refers to allowing urban type development in UGAs, which are supposed to be designated urban which according to the Growth Board is four dwelling units per acre. The exception is where there are environmentally sensitive areas. They are asking "Is this consistent with a UGA?"

Councilmember Young said that their concern is making sure that you do not put rural development into a city versus urban development into a rural area. Ms. Morris agreed and added that the letter does not exactly state the holding of the board. She further clarified that the letter is saying that GMA prohibits expanding urban growth areas into lands with extensive critical areas. That language doesn't appear in the decision that was cited in the letter. The decision says that you shouldn't expand UGA into areas that are not going to be characterized by urban growth, defined as four dwelling units per acres, unless there are environmental constraints on the property.

Councilmember Young said that any extension of the UGA is going to be into rural zoning. He also said that what should be considered is whether the wetlands are a big deal.

Councilmember Franich asked for further clarification on the original approval of this property for inclusion in the UGA by Pierce County and whether the GMA requirement that urban development shouldn't intrude into rural areas was considered.

Mr. Krueger responded that there are county-wide planning policies that affect the location of Urban Growth Boundaries and cities participate in the process. The County has adopted policies in the Comprehensive Plan that specifically address issues in terms of when it's appropriate for cities to expand. Primarily they look at a demonstrated need for capacity for the types of uses that would be added. Another policy addresses critical areas. When there are constraints, they become the lowest priority for inclusion. He then said that they also find it important to coordinate with cities because they understand there are needs and desires in terms of future municipal growth. He said that he would have no problem saying that inclusion of this property is the direction that the city would like to grow. He then addressed the letter from The Friends of Pierce County, saying that the case cited particularly pertains to this. He agreed that any time that a city expands their UGA, they are moving into a rural area, which is expected. The big question is where are the most appropriate places for the expansion to occur and a demonstrated need.

Mayor Pro Tem Ekberg said that he disagrees that the city needs to expand the UGA into critical areas for more Employment District zoned property.

Councilmember Dick said that he too shares that view point. May be at some time the development around this property will justify the expansion into an area that is predominantly wetland.

**MOTION:** Move to ask the Mayor Pro Tem to sign the letter to Pierce County recommending that they accept the amendment U-4.  
Young / Conan – roll call vote.

Councilmember Young – yes; Franich – no; Ekberg – no; Conan – yes; Dick – no; Payne – no; and Kadzik – yes. The motion failed four to three.

John Vodopich asked for clarification on whether to send the letter recommending that Pierce County deny the amendment.

**MOTION:** Move to authorize the Mayor Pro Tem to sign the letter to Pierce County to deny the amendment U-4.  
**Franich / Dick** – motion passed four to three. (Same as previous roll call vote)

5. Plan Review Services – Building Division – Contract Authorization(s). Dick Bower, Building Official / Fire Marshal, presented these contracts that will allow them to have help reviewing building plans when staff is overwhelmed with applications. This will also help to meet the goals for turnaround time. He addressed questions on whether this would equate into a request for another FTE in the next budget cycle. He explained that the services might equate to one-quarter of a full-time plan review position. He further explained that this will allow them help with some of the more complex commercial projects so that current staff can concentrate on inspections.

**MOTION:** Move to approve contracts with Eagle Eye Consulting Engineers and CWA Consultants for on-call plan review services.  
**Payne / Conan** – unanimously approved.

6. Request for Reconsideration of Hearing Examiner’s Decision #SUB 05-116. Carol Morris explained that the Hearing Examiner had a typo in her decision and this requests her to correct the error. She said that there would be a proposed amendment to the ordinance so that these types of mistakes can be corrected without having to come before Council.

**MOTION:** Move to approve the filing of the Request for Reconsideration attached hereto with the Hearing Examiner for SUB 05-1116.  
**Franich / Payne** – unanimously approved.

**STAFF REPORT:**

Richards Request to Purchase City Property. John Vodopich, Community Development Director, explained that there has been a request to purchase 6300 square feet of property that the city owns in fee in the vicinity of the old State Patrol office. He said Carol Morris is recommending a competitive bidding process if Council is inclined to sell.



Councilmembers discussed whether to keep the property for a future pocket park or for open space rather than using it as a potential revenue source. Staff was directed to come back with more information on the valuation of the property and what options are available. A suggestion was made to ask a commercial agent rather than paying for an appraisal.

Mr. Vodopich then explained that a traffic accident severely damaged a traffic pole and a resolution will come before Council at the next meeting waiving the competitive bidding process based on an emergency declaration. Rob Karlinsey added that the City Engineer has the authority to move forward with the repairs for safety reasons.

Rob Karlinsey said Council tabled a Downtown Parking Strategy a couple of months ago, and because there is \$30,000 budgeted for Downtown Parking, staff developed another strategy more in line with Council's wishes. He suggested approaching the owner of vacant property near Pioneer and Harborview to discuss a lease to use the site for public parking. He said that he will come back with a lease proposal for Council review. Council concurred.

Mr. Karlinsey announced that the Association of Washington Cities Conference is being held in Tacoma this week and is tailored for elected officials. He said that the agenda has several useful courses and strongly encouraged Councilmember to attend.

**PUBLIC COMMENT:** No one came forward to speak.

**MAYOR'S REPORT / COUNCIL COMMENTS / COUNCIL COMMITTEE REPORTS:**

Mayor Pro Tem Ekberg said that he hopes that everyone had a great time at the Maritime Gig. He said that the city looked outstanding and complimented Dave Brereton, the Public Works crew, and the other city employee for always making it such a wonderful event.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. GH North Traffic Options Committee – Wednesday, June 27th at 9:00 a.m. in Community Rooms A & B.
2. Community Coffee Event – Tuesday, June 12<sup>th</sup> at 6:30 p.m. in the Council Chambers.
3. Finance and Safety Committee – Wed., June 13<sup>th</sup> at 4:00 p.m.
4. Operations and Public Projects Committee – Thurs. June 21<sup>st</sup> at 3:00.

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

Rob Karlinsey asked if the Executive Session could be postponed until the next meeting. Council agreed.

Mayor Pro Tem Ekberg announced that Council would adjourn this meeting and go into the Community Rooms to hold the Public Safety Workshop.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:06 p.m.  
**Franich / Payne** – unanimously approved.

CD recorder utilized:  
Disk #1 Tracks 1- 37  
Disk #2 Tracks 1- 20

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Charles L. Hunter, Mayor

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Molly Towslee, City Clerk

**GIG HARBOR CITY COUNCIL**  
**Public Safety Workshop**  
**June 11, 2007 5:00 p.m. – Community Rooms A&B**

**PRESENT:**

Councilmembers: Paul Conan, Bob Dick, Tim Payne and Paul Kadzik. Councilmembers Young and Franich were absent. Councilmember Ekberg acted as Mayor Pro Tem.

Staff: Rob Karlinsey, Dick Bower, Mike Davis, Paul Nelson, Stacy Colberg, and Molly Towslee. Judge Michael Dunn and City Prosecutor, Stan Glisson, were also present.

Mayor Pro Tem Ekberg opened the meeting at 8:10 p.m. He explained that the purpose of the workshop was to gain understanding of the city's public safety programs. He asked Dick Bower, Building Official / Fire Marshal, to present the first item.

1. Emergency Management

Mr. Bower gave an introduction and brief history of Emergency Preparedness. He explained that recent events have brought about changes in how Government handles disasters. He talked about emergency management at the Federal Level and the National Incident Management System that has been implemented for standardization through all levels of government. He gave an overview of the training and planning requirements to meet these standards that allow us to qualify for emergency and non-emergency funding.

Mr. Bower presented an overview of the lengthy list of programs that he has been working on here in Gig Harbor, and talked about the partnerships with Pierce County Department of Emergency Management and other agencies.

Mr. Bower discussed the list of accomplishments that have been achieved during 2006-07 and the proposed programs for 2008 such as identifying community-based shelters that are animal friendly.

Rob Karlinsey praised Dick's efforts, commenting that the city is lucky to have him here. He described Dick as a Regional Expert who shares his expertise by teaching Emergency Response. He said that the city will continue to be involved with NIMS Training and practice events. Mr. Karlinsey also explained that he worked with Mr. Bower to develop a matrix and organizational chart for the city's response to an event. The next step is for the Section Chiefs to train people on what to do when the EOC is activated.

Mr. Bower addressed questions about grant opportunities and coordination efforts with Kitsap County.

Councilmember Payne stressed the importance of a succession plan for Mr. Bower.

## 2. Municipal Court

Paul Nelson, Court Administrator, introduced Judge Dunn, Stan Glisson, and Stacy Colberg. He gave a brief history of the court system and handed out their mission statement.

Mr. Nelson gave an overview of the caseload. He stressed that court revenues have increased due to an aggressive approach by the Prosecutor, more aggressive collection actions, and the installation of a credit card machine for paying fines.

Mr. Nelson talked about the Judge's philosophy of social service, and talked about the outreach programs that are in place. He talked about the plans for the next five years. He said that there would be a proposal for a Video Arraignment system in the 2008 Budget and described the benefits of the system.

## 3. Police

Chief Davis distributed a booklet on the history of service from 1946-2006. He reported that the performance and workload measures illustrate an increase in calls for service, infractions, criminal citations, traffic accidents and DUI arrests.

Chief Davis discussed the move towards a new Police Training Officer Program of problem-oriented policing which will create an exceptional police department. He described how the program is already at work in the department.

Chief reported that the take home car program is a huge success, and will be helpful in recruitment of future officers. He said that the cameras have been installed at the Skatepark and BAC Room. He said that he is researching a video stream system for the Skatepark with a pan/zoom lens.

Councilmember Dick commented that the Police Department should work with Pierce Transit to have cameras installed at the Park and Ride to deter vandalism.

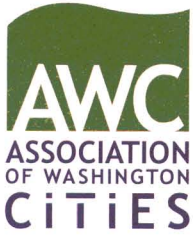
Chief Davis gave an overview of what is happening the department and said that he will be supporting the Courts request for the Video Arraignment System and Emergency Management Communications Systems in the 2008 Budget. In addition he will be requesting three new vehicles, another full time detective to work on white-collar crime, and a new patrol boat, utilizing a Homeland Security Grant funding.

There were no further comments and the worksession ended at 9:50 p.m.

Respectfully submitted:

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Molly Towslee, City Clerk



June 18, 2007

Molly Towslee  
City Clerk  
City of Gig Harbor  
Gig Harbor, WA 98335

Re: **AWC RMSA Loss Control Grant Confirmation Letter**

Dear Molly,

Congratulations! Your application for our annual 2007 Loss Control Grant has been approved. The following information outlines the provisions of the grant:

**Grant Recipient:** Gig Harbor                      **Amount of Grant:** \$1,000

**This grant is for:** Police car video camera (we did not approved request of security camera for civic center)

This grant money must be completely expended by **October 15, 2007** or the city/town agrees to forfeit the entire grant. Requests for reimbursement must be made by **October 31, 2007** and must contain a statement describing the results of the grant and an itemized list of expenses incurred. (Photos would be appreciated too.) **We will send a check for the full amount of the grant when the project as described in your application has been fully completed and a receipt for work done is received in our office.**

The complete list of participants and winning projects will be published in the next issue of *Managing Your Risk* newsletter.

Please indicate by your signature and your mayor's signature (or city administrator or town manager) that you understand these provisions and intend to use the grant for the purpose as described in your grant application. Again, congratulations. If you have any questions, please call me.

Sincerely,

Fred Crumley, MS, ARM-P  
Risk Manager

I hereby agree to the terms and conditions of the grant as outlined above:

Mayor: \_\_\_\_\_ Grant Administrator: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

**This document** (or copy with original signatures) **must be signed and returned to Fred or Rene at the AWC RMSA.**  
*A copy should be kept on file with the clerk-treasurer.*

**PROCLAMATION OF THE MAYOR  
OF THE CITY OF GIG HARBOR**

WHEREAS, between the years of 1880 and 1920 numerous people from Norway, Sweden, Denmark, Iceland and Finland settled in Gig Harbor; and

WHEREAS, people from these Nordic countries made up more than 14 percent of the adult population in Gig Harbor in 1920; and

WHEREAS, the newly arrived settlers found fertile soil in Gig Harbor's Crescent Valley, Artondale, Cromwell and Midway neighborhoods; and

WHEREAS, the settlers arrived in the Gig Harbor area in search of warmer winters and more opportunity discovering how Gig Harbor reminded them of their homeland and found great opportunity here; and

WHEREAS, soon many family and friend followed the original settlers to Gig Harbor; and

WHEREAS, these settlers quickly became an important part of the Gig Harbor community and remain so;

NOW, THEREFORE, I, Chuck Hunter, Mayor of the City of Gig Harbor, do hereby proclaim

***Scandinavian Heritage Week July 10<sup>th</sup> – 15<sup>th</sup>, 2007,***

in the City of Gig Harbor, and I urge all citizens to join me in this special observance.

\_\_\_\_\_  
Steven K. Ekberg, Mayor Pro Tem

\_\_\_\_\_  
Date



Business of the City Council
City of Gig Harbor, WA

Subject: Amendment to Consultant Services Contract

Proposed Council Action: Authorize the Contract Amendment with Anchor Environmental, LLC in the amount of \$36,260.00

Dept. Origin: Community Development Dept.

Prepared by: Stephen Misiurak, P.E. City Engineer

For Agenda of: June 25, 2007

Exhibits: Contract Amendment

Concurred by Mayor:

Approved by City Administrator: PPK 6/20/07

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head: Dan 6/20

Initial & Date

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and values: \$36,260.00, \$750,000.00, 0.

INFORMATION / BACKGROUND

The proposed Contract Amendment #8 in the amount of \$36,260.00 provides for the completion of additional soil characterization from DOE to finalize the extent of the isolated cap and dredge area and the necessary funding to complete a cultural resources assessment and a critical areas review with a background report, construction and permit documents prepared by a qualified wetland biologist.

FISCAL CONSIDERATION

Previous contract amendments one through seven amounted to \$390,180.00. Adequate funds exist from the Seller's Clean-up Remediation Escrow Account to fund this amendment. The Sellers have been notified and have agreed with the amended scope and use of remediation funds. Approval of this contract amendment revises the total contract amount to Anchor Environmental, LLC in the amount not to exceed \$426,440.00.

BOARD OR COMMITTEE RECOMMENDATION

RECOMMENDATION / MOTION

Move to: Authorize the contract amendment with Anchor Environmental in the amount of Thirty Six Thousand Two Hundred Sixty Dollars and No Cents (\$36,260.00).

**EIGHTH AMENDMENT TO CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
ANCHOR ENVIRONMENTAL, LLC**

THIS EIGHTH AMENDMENT is made to the AGREEMENT, dated December 13, 2004, subsequent AMENDMENT #7, dated February 12, 2007, AMENDMENT #6, dated December 11, 2006; AMENDMENT #5, dated October 9, 2006; AMENDMENT #4, dated July 24, 2006; AMENDMENT #3, dated October 10, 2005, and subsequent AMENDMENT #2, dated April 25, 2005, and subsequent AMENDMENT #1, dated February 14, 2005 by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Anchor Environmental, LLC, a limited liability corporation organized under the laws of the State of Washington, located and doing business at 1423 Third Avenue, Suite 300, Seattle, Washington 98101 (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the environmental assessment and remediation services for the property commonly known as Eddon Boatyard and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agreed to perform the services, and the parties executed an Agreement on December 13, 2004, (hereinafter the "Agreement"); and

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

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

Section 1. **Amendment to Scope of Work.** Section I of the Agreement is amended to require the Consultant to perform all work described in **Exhibit A, B and C – Scope of Work (3 of them)**, attached to this Amendment, which Exhibit is incorporated herein as if fully set forth.

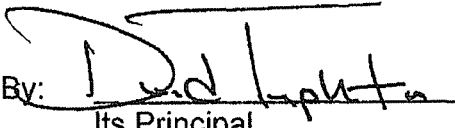
Section 2. **Amendment to Compensation.** Section II(A) of the Agreement is amended to require the City to pay compensation to the Consultant for the work described in **Exhibit A and Table 2 dated June 10, 2007, Exhibit B dated 6/15/07 and Table 2 dated 6/15/07 and Exhibit C dated 6/1/07 and Table 2 dated 6/1/07** to the Amendment in the amount of Thirty Six Thousand Two Hundred Sixty Dollars and Zero Cents (\$36,260.00). This Amendment shall not modify any other of the remaining terms and conditions in Section II, which shall be in effect and fully enforceable.



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

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

THE CITY OF GIG HARBOR

By:   
Its Principal

By: \_\_\_\_\_  
Mayor

Notices to be sent to:

CONSULTANT  
Anchor Environmental, LLC  
Attn: David Templeton, Partner  
1423 Third Avenue, Suite 300  
Seattle, Washington 98101  
(206) 287-9130

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF KING            )

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 \_\_\_\_\_ LLC, 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: \_\_\_\_\_



Anchor Environmental, L.L.C.  
1423 3<sup>rd</sup> Avenue, Suite 300  
Seattle, Washington 98101  
Phone 206.287.9130  
Fax 206.287.9131

June 10, 2007

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

Mr. William Joyce  
Salter Joyce Ziker, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, WA 98101-1686

**Re: Exhibit A – Addendum No. 8 to Scope of Work  
Eddon Boatyard Property  
Task 6c. Supplemental Permitting: Section 106 Cultural Survey  
Task 6d. Supplemental Permitting: Critical Areas Review**

Dear Mr. Misiurak and Mr. Joyce:

The purpose of this letter is to provide the City of Gig Harbor (City) with Anchor Environmental L.L.C.'s (Anchor) request for additional funding for work on the Eddon Boatyard Property (Site). On April 25, 2007, the City participated in a meeting with the various regulatory agencies to discuss the various permits required for implementation of the sediment cleanup plan (and associated activities). The objectives of this meeting, arranged by the Washington State Department of Ecology (Ecology) Office of Regulatory Assistance, was to coordinate the various requirements and develop an efficient permit process. During this and subsequent meetings, two additional activities were identified to finalize the permit process. These include:

- National Historic Preservation Act-Section 106 – A cultural resources assessment
- City of Gig Harbor – A Critical Areas Review of the effects to the Category II Estuarine wetland's buffer, as identified by Eric Mendenhall, per City of Gig Harbor Municipal Code 18.08.140

These two activities are detailed below.

**Task 6c. Cultural Resources Assessment**

Western Shore Heritage Services, Inc., as a subconsultant to Anchor, will provide a cultural resources assessment to satisfy Section 106 requirements. The cultural resources assessment will include documentation of historic structures and archaeological resources within the project area. A detailed description of these tasks is included in Attachment A – Project Scope and Fee Agreement. We have allowed for permit coordination and general project administration. The total estimated cost for Task 6c is summarized in Table 1, and described in detail in Table 2 (included as an attachment to this letter).

**Task 6d. Critical Areas Review**

A meeting was held with the City Community Development Planning Department on May 11, 2007 to discuss State Environmental Policy Act (SEPA) requirements for the Eddon Boatyard Sediment Cleanup Project. During that meeting, Jennifer Kester clarified that the City is required (City Municipal Code 18.08.140) to document the effects to Wetland A (as identified by Eric Mendenhall for the City of Gig Harbor<sup>1</sup>) and the associated buffer. Though no materials will be excavated or filled within the Category II Estuarine wetland and the buffer would ultimately be enhanced by the action, the City will require that this be documented by a qualified wetland biologist. If, as a result of this documentation, the City determines that an adverse effect were to result to the wetland buffer, a conceptual mitigation plan would need to be prepared.

As part of this scope of work, a qualified Anchor wetland biologist will review available background reports, construction and permit documents, and other available information to prepare a brief written Wetland Buffer Memorandum (Memo) describing possible impacts to wetlands and wetland buffers related to Site cleanup. This Memo will clarify that the sediment cleanup work will have no direct impacts (temporary or permanent) to Wetland A. The Memo will also explain that project-related impacts to the buffer of Wetland A will not have any adverse effects on the function of Wetland A, temporary adverse impacts to the buffer of Wetland A will be minimal, and furthermore, the project is expected to have a long-

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<sup>1</sup> Mendenhall, Eric. An Analysis of the Distribution and Jurisdictional Status of Waters of the United States, Including Wetlands, at the Eddon Boat City Park Located at 3805 Harborview Dr, Gig Harbor, WA. May 19, 2006

term beneficial impact to the buffer. The Memo will conclude that based on these findings, a conceptual wetland mitigation plan, as well as a final wetland mitigation plan, will not be required for the project. This conclusion will need to be formalized by the City.

This scope includes preparation of one draft Memo for review and comment prior to formal submittal of the final Memo which will be suitable for inclusion in permit applications or other submittals to the City Community Development Planning Department. Following submittal of the Final Memo, Anchor has allowed for one additional revision of the Memo to address any City Community Development Planning Department comments.

Assumptions

- Based on our knowledge of the project, we expect that that the sediment cleanup will have no direct wetland impacts and all impacts to the buffer will occur below the lowest extent of wetland vegetation
- A conceptual wetland mitigation plan or a final wetland mitigation plan will not be required.

The total estimated cost for Task 6d is summarized in Table 1, and described in detail in Table 2 (included as an attachment to this letter).

**Table 1  
Budget Summary**

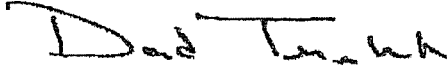
<b>Task</b>	<b>Description</b>	<b>Current Request</b>	<b>Duration</b>
6c	Supplemental Permitting: Section 106 Cultural Survey	\$13,822	June 2007 to July 2007
6d	Supplemental Permitting : Critical Areas Review	\$4,100	June 2007 to July 2007
<b>TOTAL CURRENT AUTHORIZATION</b>		<b>\$17,922.00</b>	

If this Scope of Work meets the City's needs, we will assume that the City will prepare the necessary contract amendments. We propose to continue to perform these tasks on a time and material and not to exceed basis, as an amendment to our existing Consultant Services Agreement with the City originally dated December 13, 2004. If the project conditions change outside the assumptions discussed above, Anchor will work with you to re-scope the necessary project elements.

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Please feel free to contact me at (206) 910-4279 or [dtempleton@anchorenv.com](mailto:dtempleton@anchorenv.com) if you have any questions or would like additional information on this scope of work.

Sincerely,

A handwritten signature in black ink that reads "David Templeton". The signature is written in a cursive style with a large, sweeping initial "D".

David Templeton

Partner, Anchor Environmental

Attachments

Table 2 – Detailed Estimated Cost Summary

Attachment A – Project Scope and Fee Agreement

Cc: Bud Whitaker, Inspectus, Inc.

**ANCHOR ENVIRONMENTAL, L.L.C.**  
**2007 PROJECT COST ESTIMATING FORM**

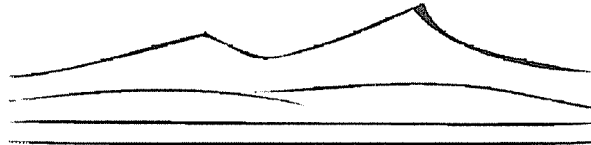
Table 2 - Detailed Estimated Cost Summary

Proposal/Project Name: Eddon Boatyard Number: 040289-02  
 06/10/07 City of Gig Harbor Prepared by: David Templeton

Task 6c Cultural Resources Assessment  
 Task 6d Critical Areas Review

Labor Categories	Billing Rate	Task 6c	Task 6d	Task	Task	Total Hours	Total Dollars
Principal Engr/LA/Plan/Sci	\$ 180	0	0			0	\$ -
Consulting Engr/LA/Plan/Sci	\$ 165	0	0			0	\$ -
Senior Engr/LA/Plan/Sci	\$ 145	0	0			0	\$ -
Engr/LA/Plan/Sci	\$ 125	0	12			12	\$ 1,500
Senior Staff Engr/LA/Plan/Sci	\$ 105	0	0			0	\$ -
Staff 2 Engr/LA/Plan/Sci	\$ 95	4	24			28	\$ 2,660
Staff 1 Engr/LA/Plan/Sci	\$ 85	0	0			0	\$ -
Senior Design/GIS/Dbase/IT	\$ 90	0	0			0	\$ -
Design/GIS/Dbase/IT	\$ 80	0	0			0	\$ -
Project Assistant	\$ 70	4	4			8	\$ 560
Administrative	\$ 65	0	0			0	\$ -
Field Technician	\$ 65	0	0			0	\$ -
		0	0			0	\$ -
<b>Total Hours</b>		<b>8</b>	<b>40</b>			<b>48</b>	
<b>Total Labor</b>		<b>\$ 660</b>	<b>\$ 4,060</b>				<b>\$ 4,720</b>
<b>Average Hourly Rate</b>	<b>\$ 98</b>						
<b>Subconsultants</b>							
Western Shore Heritage Services		\$ 11,966	\$ -				\$ 11,966
<b>Total Cost</b>		<b>\$ 11,966</b>	<b>\$ -</b>				<b>\$ 11,966</b>
<b>Markup on Subs</b>	10.0%	\$ 1,197	\$ -				\$ 1,197
<b>Reimbursables</b>							
CAD/Computer (\$/hr)	\$10.00	\$ -	\$ -				\$ -
Mileage (\$/mile)	\$0.485	\$ -	\$ -				\$ -
Copies (\$/copy)	\$0.10	\$ -	\$ 35				\$ 35
Anchor boat (\$/day)		\$ -	\$ -				\$ -
Faxes (\$/fax)	\$1.00	\$ -	\$ 5				\$ 5
<b>Total Cost</b>		<b>\$ -</b>	<b>\$ 40</b>				<b>\$ 40</b>
<b>Outside Exp Markup</b>	10.0%	\$ -	\$ -				\$ -
<b>TOTAL COSTS</b>		<b>\$ 13,822</b>	<b>\$ 4,100</b>				<b>\$ 17,922</b>





WESTERN SHORE HERITAGE SERVICES, INC.

## PROJECT SCOPE AND FEE AGREEMENT

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CLIENT:	Anchor Environmental, LLC
PROJECT:	Eddon Boatyard
LOCATION:	Gig Harbor, Washington
ANTICIPATED PROJECT DATES:	May - August 2007

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The Eddon Boat Park site is on the shore of Gig Harbor and includes the properties at 3711 and 3805 Harborview Drive (and adjacent properties), in the City of Gig Harbor, Washington. The site includes an uplands area and both subtidal and intertidal sediments. Primary use of the north part of the site was for a boat repair facility and residence. The south part formerly contained two buildings (demolished in 2006) that were used as a city maintenance shop and an office for a gravel loading operation that operated at the site. The boat repair facility included two marine railways, a boat repair building, and a dock (facilities still present but not actively in use). Anchor Environmental is contracting with the City of Gig Harbor to complete The Eddon Boatyard Sediment Cleanup project that will include the following elements:

- Demolish the marine railways and pier (including creosoted pilings)
- Remove gangway and floating dock (will be re-installed after work is complete)
- Remove contaminated sediments to a depth of 2 to 3 feet below the existing surface in the vicinity of the marine railway and pier, with backfill of clean material to existing grade
- Remove contaminated sediments to a depth of 2 to 3 feet below the existing surface in the vicinity of sample locations AS-1 and AS-4/SG-4, with backfill of clean material to existing grade
- Remove contaminated sediments to a depth of 2 to 3 feet below the existing surface in the outer marine railway and pier areas, without backfill to existing grade
- Performance sampling in dredged areas that will not receive backfill to ensure that cleanup levels are achieved
- Construction of an engineered cap consisting of 1 foot thickness of sand covered by 6 inches of a habitat-suitable gravel, to the south of the pier/floating dock structure, and east and northeast of the dredged area near the floating dock
- Remove creosoted bulkhead and re-grade slope
- Rebuild marine railway and pier

Anchor Environmental is requesting a cultural resources assessment to satisfy Section 106 requirements and documentation of historic structures within the project area. Western Shore Heritage Services, Inc. (WSHS) will provide the following project components as part of this cultural resources assessment.

8001 DAY ROAD WEST, SUITE B, BAINBRIDGE ISLAND, WA 98110  
PHONE 206.855.9020 FAX 206.855.9081  
info@wshsinc.com

**Background Research:** WSHS will conduct a recorded sites files search at the Washington Department of Archaeology and Historic Preservation (DAHP); review of relevant correspondence between the project proponent, stakeholders and DAHP; and, review of pertinent environmental, archaeological, ethnographic and historical literature appropriate to the project area. WSHS will review geotechnical data and examine core logs.

**Tribal Contact:** WSHS will contact the cultural resources staff of the affected Tribes on a technical staff-to-technical staff basis for relevant project information. It is the responsibility of the governmental lead agency to consult with any involved tribes and to coordinate with tribal representatives regarding archaeological and cultural resources in or near the project area.

**Field Identification:** WSHS will provide a field inventory of the project location for identification of archaeological and historical resources and, if necessary, excavation of shovel test probes or other exploratory excavations in environments that might contain buried archaeological deposits. Field methods will be consistent with DAHP guidelines.

**APE Determination:** WSHS will assist Anchor with the determination of the Area of Potential Effect (APE) according to DAHP guidelines.

**Documentation of Findings:** WSHS will review historic site forms currently filed with DAHP. WSHS will document and record any additional historic properties within the project area, including preparation of Washington State archaeological and/or historic site(s) forms and National Register of Historic Places Determination of Eligibility forms (as appropriate). Documentation will be consistent with DAHP standards.

**Cultural Resources Assessment Report:** WSHS will prepare a report describing background research, field methods, results of investigations, and management recommendations. The report will provide supporting documentation of archaeological findings, including maps and photographs, and will conform to DAHP reporting standards.

**Field Monitoring:** WSHS will provide archaeological field monitoring during removal of contaminated soils, as required, with 48 hours notice. Due to the environmental contaminants, monitoring will be provided by a HAZWOPER certified archaeologist.

**Monitoring Report:** WSHS will prepare a monitoring report after all required monitoring is completed.

If extensive archaeological deposits are encountered within the project area it may be necessary to modify this agreement to accommodate additional investigations for purposes of site identification (i.e., additional shovel testing and/or evaluative excavations).

WSHS will complete the field investigation within 30 days of this signed contract. A cultural resources assessment report will be submitted within 30 days of fieldwork completion. Field Monitoring will be scheduled according with the project schedule and with 48 hours notice of required monitoring.

In order to provide Anchor Environmental with the most effective services, WSHS requires the following information prior to commencing work on this project:

- Description of the project scope in plain English. This should include a statement defining the overall goal of the project; expected dates of initiation and completion; general methodologies proposed for ground disturbing/construction operations; and projected means to address any environmental mitigation requirements.
- Relevant project plans, blueprints, maps, construction drawings, and as-built schematics, as appropriate. Preferably in PDF format, if available.
- Indication of locations ancillary to the specific project area, but which will be used for any construction equipment staging, utility conduits, refuse disposal, or project environmental mitigation sites.
- Name of the federal, state, or local agency that grants funds, issues permits, or provides government oversight over the project.
- Documentation of communication with the Washington State Department of Archaeology and Historic Preservation.
- Documentation of consultation with affected Indian Tribe(s) and other Stakeholders. Consultation must be initiated by the project proponent, lead government agency, and/or local municipality.
- Name of project area land management agency and contact information (if public property); name of land owner and contact information (if private property).

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**FEE**

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The fee for services described above is anticipated to be less than \$11,975.00.

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**Western Shore Heritage Services, Inc.**

\_\_\_\_\_  
Name/Title \_\_\_\_\_

\_\_\_\_\_  
Glenn D. Hartmann,  
President/Principal Investigator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Activity	Name	Hourly Rate	# of Hours	Cost	Total Hrs /Activity	Total Cost /Activity	Assumptions
<b>Archival Review</b>	Glenn Hartmann	\$ 109.25		\$ -	16	\$ 990.20	Conduct a recorded sites files search at the DAHP. Review of relevant correspondence between the project stakeholders and DAHP. Review environmental, archaeological, ethnographic and historical literature.
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
	Graphic Supplies	\$0.15/copy	100	\$ 15.00			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			
<b>Tribal and Agency Coordination</b>	Glenn Hartmann	\$ 109.25	12	\$ 1,311.00	20	\$ 1,860.55	Contact the CR staff of affected Tribes for relevant project information. Coordinate and meet with DAHP regarding Treatment Plan and Mitigation.  Assumes 2 (4 hour) meetings with Stakeholders.
	Jim Schumacher	\$ 60.95	8	\$ 487.60			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy	25	\$ 3.75			
	Travel Expenses	\$0.485/mile	120	\$ 58.20			
	Other Direct Costs			\$ -			
<b>Determination of APE</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	9	\$ 596.85	Assist with the determination of the APE according to DAHP guidelines.
	Jim Schumacher	\$ 60.95	8	\$ 487.60			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy		\$ -			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			
<b>Field Identification</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	17	\$ 1,230.70	Provide field inventory for identification of archaeological and historical resources. Excavate in environments that may contain buried archaeological deposits. Field methods will be consistent with DAHP guidelines.  Assumes 2 Days of Field Identification
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy		\$ -			
	Travel Expenses	\$0.485/mile	250	\$ 121.25			
	Other Direct Costs			\$ 25.00			
<b>Documentation of Findings</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	17	\$ 1,088.20	Review historic site forms currently filed with DAHP. Document and record additional historic properties within the APE, as necessary. Deliverable would be site forms, if necessary. Documentation will be consistent with DAHP standards.
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy	25	\$ 3.75			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			
<b>Cultural Resources Assessment Report</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	17	\$ 1,088.20	Prepare a CRA Technical Report Describe research, field methods, results of investigations, and recommendations. Provide supporting documentation of archaeological findings, including maps and photographs. Deliverable would be a Technical Report. Documentation will be consistent with DAHP standards.
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy	25	\$ 3.75			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			

Activity	Name	Hourly Rate	# of Hours	Cost	Total Hrs /Activity	Total Cost /Activity	Assumptions
<b>Treatment Plan</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	17	\$ 1,084.45	Prepare a Treatment Plan to describe Mitigation Measures for NRHP-Eligible Properties. Deliverable would be a Technical Memo.
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy		\$ -			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			
<b>Mitigation Documentation</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	33	\$ 2,124.03	Mitigation would be archival quality Photo Documentation and an associated Technical Memo.
	Jim Schumacher	\$ 60.95	32	\$ 1,950.40			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy	25	\$ 3.75			
	Travel Expenses	\$0.485/mile	125	\$ 60.63			
	Other Direct Costs			\$ -			
<b>Field Monitoring &amp; Summary Report</b>	Glenn Hartmann	\$ 109.25	1	\$ 109.25	17	\$ 1,234.45	Monitor ground breaking activities. Deliverable would be a Summary Technical Memo. Monitoring Archaeologist will be HAZWOPER Certified.  Assumes 2 Days of Monitoring if Monitoring is necessary.
	Jim Schumacher	\$ 60.95	16	\$ 975.20			
	Teresa Peterson	\$ 54.05		\$ -			
				\$ -			
	Graphic Supplies	\$0.15/copy	25	\$ 3.75			
	Travel Expenses	\$0.485/mile	250	\$ 121.25			
	Other Direct Costs			\$ 25.00			
<b>Project Management</b>	Glenn Hartmann	\$ 109.25	4	\$ 437.00	8	\$ 668.20	
	Jim Schumacher	\$ 60.95		\$ -			
	Teresa Peterson	\$ 54.05	4	\$ 216.20			
				\$ -			
	Graphic Supplies	\$0.15/copy	100	\$ 15.00			
	Travel Expenses	\$0.485/mile		\$ -			
	Other Direct Costs			\$ -			
<b>PROJECT TOTAL:</b>	Glenn Hartmann	\$ 109.25	23	\$ 2,512.75	171	\$ 11,965.83	WSHS reserves the right to substitute staff as needed to accomplish the work as specified in this Scope of Services within the maximum budget.
	Jim Schumacher	\$ 60.95	144	\$ 8,776.80			
	Teresa Peterson	\$ 54.05	4	\$ 216.20			
				\$ -			
	Graphic Supplies	\$0.15/copy	325	\$ 48.75			
	Travel Expenses	\$0.485/mile	745	\$ 361.33			
	Other Direct Costs		0	\$ 50.00			



Anchor Environmental, L.L.C.  
1423 Third Avenue, Suite 300  
Seattle, Washington 98101  
Phone 206.287.9130  
Fax 206.287.9131

June 15, 2007

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

Mr. Bud Whitaker  
Inspectus, Inc.  
P.O. Box 401  
Gig Harbor, WA 98335

**Re: Exhibit B – Addendum No. 8 to Scope of Work  
Eddon Boatyard Property  
Task 4b. Additional Field Investigations – Sediment**

Dear Mr. Misiurak and Mr. Whitaker:

Anchor Environmental L.L.C. (Anchor) has submitted a final sediment cleanup plan for the Eddon Boatyard Property (Site) that received a positive opinion letter from the Department of Ecology (Ecology). Based on this final sediment cleanup plan, the various required permits have been prepared and submitted. The final step in implementing the final sediment cleanup plan is to prepare construction documents, select a contractor, and complete construction. Anchor's proposed scope and cost estimate for services necessary to complete these activities have been submitted in a separate request.

### Summary of Current Project Status

Anchor submitted a Sediment Cleanup Study Report and Analysis of Brownfields Cleanup Alternatives (ABCA), collectively referred to as Revised Technical Memorandum No. 2, in February 2007. Based on discussions with Ecology, a revised preferred cleanup alternative was presented to Ecology in March 2007. This preferred cleanup alternative was the basis of Ecology's April 17, 2007 Opinion Letter and the basis of permit documents submitted to the various agencies in late May 2007.

Designed to establish an efficient and coordinated review of the permit applications, the multi-agency meeting held in April 2007 established the following schedule milestones for implementation of the cleanup plan. The scope included herein is intended to fulfill the work requirements to meet those milestones:

- Submit Permit Package – May 2007 (DONE)
- Prepare Construction Package – June to September 2007
- Permits Received – November 2007
- Contractor Selection – December 2007
- Construction – January to March 2008

In order to develop the construction plans and specifications for these activities on schedule, immediate initial steps will include some limited bathymetry surveys (covered under separate request), and additional surface sediment sampling as required by Ecology (Task 4b). To this end, Anchor is currently requesting authorization to amend the budget for Task 4b – Additional Field Investigations – Sediment, summarized in Table 1 and described in detail in Table 2 (included as an attachment to this letter).

**Table 1**  
**Budget Summary**

<b>Task</b>	<b>Description</b>	<b>Current Request</b>	<b>Duration</b>
4b	Additional Field Investigations - Sediment	\$10,728	July – September 2007
<b>TOTAL CURRENT AUTHORIZATION</b>		<b>\$10,728</b>	

## Detailed Scope of Work

### ***Task 4b. Additional Field Investigations – Sediment***

Ecology's April 17, 2007 Opinion Letter required additional characterization to finalize the extent of the cap proposed east of the dredge area. To meet this objective, four surface sediment samples (0 to 10 cm) will be collected in accordance with Ecology accepted project Sampling and Analysis Plans.

#### Scope

- Four surface sediment samples will be obtained by van Veen methods. Two Anchor personnel will spend one day in the field collecting and processing these samples. Costs for these tasks include staff labor, boat rental, and sample analysis.
- The sediment samples will be submitted to a local laboratory for testing of the following chemical constituents:
  - Butyltins (Bulk and Porewater)
  - Total solids
  - Total organic carbon

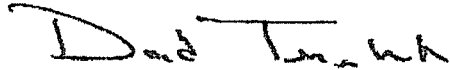
Following the sampling and analysis, we will prepare a brief data summary technical memorandum that documents the results. We have allowed for one round of comments from the City prior to review by Harbor Cove and submittal of a final to Ecology. These results will be integrated into the construction drawings. We will provide the results to Ecology but will not request an Opinion Letter.

If this Scope of Work meets the City's needs, we will assume that the City will prepare the necessary contract amendments. We propose to continue to perform these tasks on a time and material and not to exceed basis, as an amendment to our existing Consultant Services Agreement with the City originally dated December 13, 2004. If the project conditions change outside the assumptions discussed above, Anchor will work with you to re-scope the necessary project elements.



Please feel free to contact me at (206) 910-4279 or [dtempleton@anchorenv.com](mailto:dtempleton@anchorenv.com) if you have any questions or would like additional information on this scope of work.

Sincerely,

A handwritten signature in black ink that reads "David Templeton". The signature is written in a cursive style with a large, prominent "D" and "T".

David Templeton  
Partner, Anchor Environmental

Attachments

Table 2 - Detailed Estimated Cost Summary

Cc: William Joyce, Salter, Joyce, Ziker, PLLC

**ANCHOR ENVIRONMENTAL, L.L.C.**  
**2007 PROJECT COST ESTIMATING FORM**

Table 2 - Detailed Estimated Cost Summary

Proposal/Project Name:  
 06/15/07

Eddon Boatyard Sediment Cleanup  
 City of Gig Harbor

040289-02  
 Michael Whelan

**Task 4b. Additional Field Investigations - Sediment**

Labor Categories	Billing Rate	Task 4b	Task	Task	Total Hours	Total Dollars
Principal Engr/LA/Plan/Sci	\$ 180	8	0	0	8	\$ 1,440
Consulting Engr/LA/Plan/Sci	\$ 165	0	0	0	0	\$ -
Senior Engr/LA/Plan/Sci	\$ 145	3	0	0	3	\$ 435
Engr/LA/Plan/Sci	\$ 125	0	0	0	0	\$ -
Senior Staff Engr/LA/Plan/Sci	\$ 105	12	0	0	12	\$ 1,260
Staff 2 Engr/LA/Plan/Sci	\$ 95	26	0	0	26	\$ 2,470
Staff 1 Engr/LA/Plan/Sci	\$ 85	0	0	0	0	\$ -
Senior Design/GIS/Dbase/IT	\$ 90	3	0	0	3	\$ 270
Design/GIS/Dbase/IT	\$ 80	0	0	0	0	\$ -
Project Assistant	\$ 70	4	0	0	4	\$ 280
Administrative	\$ 65	0	0	0	0	\$ -
Field Technician	\$ 65	0	0	0	0	\$ -
		0	0	0	0	\$ -
<b>Total Hours</b>		56	0	0	56	
<b>Total Labor</b>		\$ 6,155	\$ -	\$ -		\$ 6,155
<b>Average Hourly Rate</b>	\$ 110					
<b>Subconsultants</b>						
Hydro Surveyor		\$ -	\$ -	\$ -		\$ -
KPFF		\$ -	\$ -	\$ -		\$ -
Analytical Resources Inc		\$ 3,500	\$ -	\$ -		\$ 3,500
List subconsultants here		\$ -	\$ -	\$ -		\$ -
List subconsultants here		\$ -	\$ -	\$ -		\$ -
List subconsultants here		\$ -	\$ -	\$ -		\$ -
<b>Total Cost</b>		\$ 3,500	\$ -	\$ -		\$ 3,500
<b>Markup on Subs</b>	10.0%	\$ 350	\$ -	\$ -		\$ 350
<b>Reimbursables</b>						
CAD/Computer (\$/hr)	\$10.00	\$ -	\$ -	\$ -		\$ -
Mileage (\$/mile)	\$0.485	\$ 73	\$ -	\$ -		\$ 73
Copies (\$/copy)	\$0.10	\$ 20	\$ -	\$ -		\$ 20
Anchor boat (\$/day)		\$ 300	\$ -	\$ -		\$ 300
Faxes (\$/fax)	\$1.00	\$ -	\$ -	\$ -		\$ -
<b>Outside Expenses</b>						
Airfare		\$ -	\$ -	\$ -		\$ -
Hotel		\$ -	\$ -	\$ -		\$ -
Car Rental		\$ -	\$ -	\$ -		\$ -
Repro/Plotting		\$ -	\$ -	\$ -		\$ -
Mail/Fedex/Courier		\$ -	\$ -	\$ -		\$ -
Other expenses		\$ -	\$ -	\$ -		\$ -
<b>Total Cost</b>		\$ 393	\$ -	\$ -		\$ 393
<b>Outside Exp Markup</b>	10.0%	\$ -	\$ -	\$ -		\$ -
<b>Field Equip. and Supplies Summary</b>						
		\$ 300	\$ -	\$ -		\$ 300
<b>Markup</b>	10.0%	\$ 30	\$ -	\$ -		\$ 30
<b>TOTAL COSTS</b>		\$ 10,728	\$ -	\$ -		\$ 10,728



Anchor Environmental, L.L.C.  
1423 3<sup>rd</sup> Avenue, Suite 300  
Seattle, Washington 98101  
Phone 206.287.9130  
Fax 206.287.9131

June 1, 2007

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

Mr. William Joyce  
Salter Joyce Ziker, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, WA 98101-1686

**Re: Exhibit C – Addendum No. 8 to Scope of Work  
Eddon Boatyard Property  
Task 4b. Additional Field Investigations – Sediment**

Dear Mr. Misiurak and Mr. Joyce:

The purpose of this letter is to provide the City of Gig Harbor (City) with Anchor Environmental L.L.C.'s (Anchor) request for additional funding for sediment investigation and reporting work on the Eddon Boat Park environmental assessment and remediation (Task 4b). This request is for preparation of an unexpected supplemental memo to Technical Memorandum No. 2 (Revised Sediment Cleanup Study Report, February 2007) and additional negotiation meetings with Ecology to facilitate preparation of an opinion letter.

Following submittal of Revised Technical Memorandum No. 2, Ecology presented us with an unanticipated request for a supplemental memo. Ecology indicated that this memo would speed the process of preparing the opinion letter. The details of the requirements for this memo were outlined in an email from Joyce Mercuri dated Friday, March 16, 2007. Preparation of a new dredge/cap alternative, reanalysis of TBT exceedances, preparation of a memo, and additional meetings with Ecology were not included in the original scope submitted to you in 2006. Therefore, we are currently requesting authorization to amend the budget to

accommodate for work performed to accomplish these tasks. The budget required is summarized in Table 1 and described in detail in Table 2.

**Table 1 - Budget Summary**

Task	Description	Current City Authorization	Current Request	New Task Budget
4b	Sediment Cleanup Plan	\$127,972.00	\$7,610.00	\$135,582.00

**Task 4b – Additional Sediment Investigation and Reporting (2007)**

Preparation of a supplemental memo will include:

- Reanalysis of TBT exceedances
- Development of a Revised Dredging/Capping Alternative B
- Development of figures for new alternative
- Development of cost tables for new alternative
- Supplemental text for memo
- Additional meetings with RETEC
- Additional meetings with Ecology
- Cost estimate and feasibility for bulkhead removal

If this Scope of Work meets the City's needs we will assume that the City will prepare the necessary contract amendments. We propose to continue to perform these tasks on a time and material and not to exceed basis, as an amendment to our existing Consultant Services Agreement with the City dated December 13, 2004. If the project conditions change outside the assumptions discussed above, Anchor will work with you to re-scope the necessary project elements.

Please feel free to contact me (206) 903-3312 or [dtempleton@anchorenv.com](mailto:dtempleton@anchorenv.com) if you have any questions or would like additional information on this scope of work.

Sincerely,



David Templeton

Partner, Anchor Environmental

Attachments: Table 2 – Detailed Estimated Cost Summary

**ACCEPTED BY:**

---

David Templeton, Partner  
Anchor Environmental, L.L.C.

Date

---

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

City of Gig Harbor

cc: Bud Whitaker, Inspectus, Inc.

**ANCHOR ENVIRONMENTAL, L.L.C.**  
**2006 PROJECT COST ESTIMATING FORM**

Table 2 - Detailed Estimated Cost Summary

Proposal/Project Name: Eddon Boatyard Sediment Characterization City of Gig Harbor  
 06/01/07 040289-02 David Templeton

**Task 4b Additional Field Investigations and Reporting - Sediment**

Labor Categories	Billing Rate	Task 4b	Task	Task	Task	Total Hours	Total Dollars
Principal Engr/Plan/Sci	\$ 175	20	0	0	0	20	\$ 3,500
Consulting Engr/Plan/Sci	\$ 160	0	0	0	0	0	\$ -
Senior Engr/LA/Plan/Sci	\$ 140	15	0	0	0	15	\$ 2,100
Engr/Plan/Sci	\$ 120	0	0	0	0	0	\$ -
Senior Staff Engr/LA/Plan/Sci	\$ 100	0	0	0	0	0	\$ -
Staff 2 Engr/Plan/Sci	\$ 90	0	0	0	0	0	\$ -
Staff 1 Engr/Plan/Sci	\$ 80	0	0	0	0	0	\$ -
Senior Design/GIS/Dbase/IT	\$ 90	5	0	0	0	5	\$ 450
Design/GIS/Dbase/IT	\$ 80	0	0	0	0	0	\$ -
Project Assistant	\$ 70	20	0	0	0	20	\$ 1,400
Administrative	\$ 65	0	0	0	0	0	\$ -
Human Resources	\$ 65	0	0	0	0	0	\$ -
		0	0	0	0	0	\$ -
<b>Total Hours</b>		<b>60</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>60</b>	
<b>Total Labor</b>		<b>\$ 7,450</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ 7,450</b>
<b>Average Hourly Rate</b>	<b>\$ 124</b>						
<b>Subconsultants</b>							
Severn Trent Laboratories		\$ -	\$ -	\$ -	\$ -		\$ -
Data Validation		\$ -	\$ -	\$ -	\$ -		\$ -
Vibracore Materials		\$ -	\$ -	\$ -	\$ -		\$ -
Vessel		\$ -	\$ -	\$ -	\$ -		\$ -
List subconsultants here		\$ -	\$ -	\$ -	\$ -		\$ -
List subconsultants here		\$ -	\$ -	\$ -	\$ -		\$ -
<b>Total Cost</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ -</b>
<b>Markup on Subs</b>	<b>10.0%</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ -</b>
<b>Reimbursables</b>							
CAD/Computer (\$/hr)	\$10.00	\$ 50	\$ -	\$ -	\$ -		\$ 50
Mileage (\$/mile)	\$0.445	\$ -	\$ -	\$ -	\$ -		\$ -
Copies (\$/copy)	\$0.10	\$ -	\$ -	\$ -	\$ -		\$ -
Anchor boat (\$/day)	\$300	\$ -	\$ -	\$ -	\$ -		\$ -
Faxes (\$/fax)	\$1.00	\$ -	\$ -	\$ -	\$ -		\$ -
<b>Outside Expenses</b>							
Airfare		\$ -	\$ -	\$ -	\$ -		\$ -
Hotel		\$ -	\$ -	\$ -	\$ -		\$ -
Ferry Fare		\$ -	\$ -	\$ -	\$ -		\$ -
Repro/Plotting		\$ 50	\$ -	\$ -	\$ -		\$ 50
Mail/Fedex/Courier		\$ 50	\$ -	\$ -	\$ -		\$ 50
Other expenses		\$ -	\$ -	\$ -	\$ -		\$ -
<b>Total Cost</b>		<b>\$ 150</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ 150</b>
<b>Outside Exp Markup</b>	<b>10.0%</b>	<b>\$ 10</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ 10</b>
<b>Field Equip. and Supplies Summary</b>							
		\$ -	\$ -	\$ -	\$ -		\$ -
<b>Markup</b>	<b>10.0%</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ -</b>
<b>TOTAL COSTS</b>		<b>\$ 7,610</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ 7,610</b>



**Business of the City Council  
City of Gig Harbor, WA**

**Subject: Personnel Policy Amendment – Sick Leave**

**Proposed Council Action:**

Approve the attached resolution increasing payment of sick leave accruals for employees who are laid off or leave employment with the City due to position elimination.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** **June 25, 2007**

**Exhibits:** Attached Resolution & Page 26 of the Personnel Policies

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** PK 6/20/07

**Approved as to form by City Atty:** \_\_\_\_\_

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** PK 6/20/07

Expenditure Required	See Fiscal Note Below	Amount Budgeted	Appropriation Required

**INFORMATION / BACKGROUND**

In order to provide an additional benefit for employees who might be laid off from City employment or leave City employment due to position elimination, the City may want to consider increasing the cash out of unused sick leave upon separation.

Currently, the City allows employees who leave employment with the City in good standing and who have been with the City for five or more years to cash out their accrued but unused sick leave at 25%. For employees who are laid off or leave the City due to position elimination, the attached resolution would allow the first 250 hours of accrued sick leave to be cashed out at 100%. Any remaining sick leave would be cashed out at 25%. The five year minimum service rule would still apply.

**FISCAL CONSIDERATION**

Increasing the sick leave cash out from 25% to 100% will cost the City more, but it would depend on the number of employees laid off and their salaries. For an employee with a \$4,000 per month salary, the additional cost to the City would be approximately \$4,900.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Approve the attached resolution increasing payment of sick leave accruals for employees who are laid off or leave employment with the City due to position elimination.



**CITY OF GIG HARBOR  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING AN AMENDMENT, RELATED TO PAYMENT OF SICK LEAVE ACCRUALS UPON SEPARATION, TO THE 2006 PERSONNEL REGULATIONS MANUAL FOR CITY EMPLOYEES.**

---

**WHEREAS**, the City of Gig Harbor Personnel Regulations Manual is updated on an as-needed basis; and

**WHEREAS**, the City's personnel regulations currently allow employees with 5 or more years of employment to cash out 25% of their accrued but unused sick leave; and

**WHEREAS**, an amendment to the manual is needed to provide for additional payment of sick leave accruals for employees who are laid off or whose positions are eliminated; and

**WHEREAS**, the inclusion of this minor policy adjustment in the manual is chiefly necessary for the efficient operation of the City; now, therefore,

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

Section 1. The City Council hereby adopts an amendment to the 2006 City of Gig Harbor Personnel Regulations, attached hereto as Exhibit A and incorporated herein by this reference.

RESOLVED by the City Council this 25<sup>th</sup> day of June, 2007.

APPROVED:

\_\_\_\_\_  
Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM;  
PERSONNEL ATTORNEY:

BY: \_\_\_\_\_

Filed with the City Clerk:  
Passed by the City Council:

## Exhibit A

### PERSONNEL REGULATIONS AMENDMENT

#### EMPLOYEE BENEFITS

##### C. SICK LEAVE

Upon retirement, death, or mutually-agreed-upon termination, twenty-five percent of unused sick leave shall be paid to an employee with five years or more of city employment. For employees with five years or more of city employment who are laid off or leave employment with the city due to position elimination, one hundred percent of the first 250 hours of unused sick leave may be cashed out upon separation. This benefit may be eliminated by the City Council at any time in the future. Nothing herein shall be interpreted as a vested benefit. Any remaining sick leave above the first 250 hours would be paid at twenty-five percent, within the accrual limit set forth above.

New general employees may use accumulated leave following their six (6) month probation and law enforcement officers following their twelve (12) month probation.

A request for vacation leave shall be approved by the department director prior to the first day of leave. Employees with greater seniority have priority if a conflict of requested leave periods occurs.

Employees leaving city employment shall be paid at a current rate of pay for all unused accumulated vacation leave.

### C. SICK LEAVE

Sick leave with pay shall accrue at the rate of one working day of leave for each month of continuous full-time service. Leave accrued which is unused in any year shall accumulate for succeeding years for all regular full-time employees to a maximum of 180 days. Upon retirement, death, or mutually-agreed-upon termination, twenty-five percent of unused sick leave shall be paid to an employee with five years or more of city employment.

Employees are eligible for sick leave with pay for the following reasons:

1. Personal illness or physical incapacity resulting from causes beyond the employee's control.
2. Quarantine of an employee by a physician.
3. Illness within the immediate family necessitating the employee's absence from work. Immediate family shall be defined as husband, wife, children, step-children, mother, father, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparents, grandparents-in-law, brother or sister, or grandchildren if immediate dependents of the employee.
4. Medical or dental treatment of the employee or his/her dependents.
5. Maternity or paternity purposes relating to childbirth or related circumstances.

An employee who cannot report to work for any of the aforementioned reasons shall report the reason(s) to his/her immediate supervisor by 8:30 a.m. of the initial day of sick leave, to provide the reason(s) for the leave and to arrange a common understanding for the period of absence. Unreported sick leave shall be leave without pay. After two consecutive days of sick leave a department director may require a physician's statement to verify the reason(s) for leave.





Business of the City Council
City of Gig Harbor, WA

Subject: Resolution – Surplus Equipment

Dept. Origin: Admin

Proposed Council Action:

Prepared by: Molly Towslee, City Clerk

Adopt Resolution No. \_\_\_ to Rescind Resolution No. 715 and to establish a new list of surplus equipment.

For Agenda of: June 25, 2007

Exhibits: Resolution Initial & Date

Concurred by Mayor: \_\_\_\_\_

Approved by City Administrator: \_\_\_\_\_

Approved as to form by City Atty: \_\_\_\_\_

Approved by Finance Director: \_\_\_\_\_

Approved by Department Head: \_\_\_\_\_

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

At the meeting of May 29, 2007, the Gig Harbor City Council adopted Resolution No. 715 listing several items of city-owned equipment that were going to be replaced with new equipment.

The list of surplus equipment in Resolution No. 715 must be amended to reflect the actual copiers / faxes that are being surplusd .

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. \_\_\_ rescinding Resolution No. 715 and establishing a new surplus equipment list.

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF GIG HARBOR  
RESCINDING RESOLUTION NO. 715 AND ADOPTING  
A NEW LIST OF CITY SURPLUS EQUIPMENT  
ELIGIBLE FOR SALE.**

**WHEREAS**, at their regular meeting of May 29, 2007, the Gig Harbor City Council adopted Resolution No. 715 listing several items of city-owned equipment that were surplus to the City's needs; and

**WHEREAS**, due to budget and equipment placement restraints, several of the copiers that were going to be replaced will remain in service until other options have been explored; and

**WHEREAS**, the list of surplus equipment adopted in Resolution No. 715 must be rescinded and a new list adopted that will reflect the actual copiers / faxes that are being surplus;

**NOW, THEREFORE**, the City Council of the City of Gig Harbor hereby resolves to declare as surplus:

	<b>EQUIPMENT</b>		<b>SERIAL / ID NUMBER</b>		<b>MODEL INFO.</b>
1	Savin Copy Machine – CD	1	P6020300424	01075	Savin 38CS
2	Savin Fax Machine - Admin	1	A3720700361	01069	Savin 3799
3	Savin Copy Machine – Police	1	47022660064	01073	Savin 2535

PASSED ON THIS 25th day of June, 2007.

APPROVED:

\_\_\_\_\_  
MAYOR PRO TEM STEVEN K. EKBERG

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 06/21/07  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO.

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 6/04/07

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 20070930

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 THE CAPTAIN'S MATE, INC.	THE KEEPING ROOM, CANDLES & WINE 7811 PIONEER WAY GIG HARBOR WA 98335 0000	086515	BEER/WINE SPECIALTY SHOP
2 STILE, INC.	HARBOR ROCK CAFE' 6565 KIMBALL DR GIG HARBOR WA 98335 0000	081255	BEER/WINE REST - BEER/WINE
3 PANDA INC.	HUNAN GARDEN RESTAURANT 5500 OLYMPIC DR GIG HARBOR WA 98335 0000	076567	SPIRITS/BR/WN REST SERVICE BAR
4 JU, SUN WOO	KINZA TERIYAKI 6820 KIMBALL DR A-1 GIG HARBOR WA 98335 0000	077031	BEER/WINE REST - BEER/WINE
5 SPIRO'S BELLA NOTTE', INC.	SPIRO'S BELLA NOTTE' PIZZA & PASTA 3108 HARBORVIEW DR GIG HARBOR WA 98335 0000	363055	SPIRITS/BR/WN REST LOUNGE +

JUN - 4 2007



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 6/15/07

TO: MOLLY TOWSLEE, CITY CLERK
RE: CHANGE OF CORPORATE OFFICERS/STOCKHOLDERS APPLICATION

UBI: 600-108-772-001-0001

License: 356387 - 1U County: 27
Tradename: TIDES TAVERN
Loc Addr: 2925 HARBORVIEW DR
GIG HARBOR WA 98335-1910
Mail Addr: P.O. BOX 208
GIG HARBOR WA 98335-0208
Phone No: 206-858-3982 PHILIP STANLEY

APPLICANTS:
DYLAN ENTERPRISES INC.
STANLEY, PHILIP T
1947-04-20

Privileges Applied For:
TAVERN - BEER/WINE
OFF PREMISES

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

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

DATE

SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE





**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Second Reading of two ordinances adopting text amendments recommended in Phase 1b of the Design Review Process Improvements Initiative (ZONE 07-0023 and 07-0024)

**Proposed Council Action:** Adopt ordinances at second reading

**Dept. Origin:** Community Development

**Prepared by:** Jennifer Kester *JK*  
Senior Planner

**For Agenda of:** June 25, 2007

**Exhibits:** Two Ordinances and Minutes of Joint Planning Commission and DRB meetings

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** JK 6/18/07

**Approved as to form by City Atty:** CA 6/18/07

**Approved by Finance Director:** N/A

**Approved by Department Head:** JPK 6/12

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

**INFORMATION / BACKGROUND**

Attached for the Council's consideration are two draft ordinances, which if approved, will adopt the recommendations identified in Phase 1b of the Design Review Process Improvements Initiative.

Since the first reading, the staff has updated the ordinance to include in the Design Manual text describing all five process options (changes can be found on page 14 of 16 of the second ordinance). In addition, the staff and Kurt Latimore, Latimore Company, have reviewed your concerns expressed at the first reading and will address those concerns at the second reading.

The two ordinances will make the following amendments:

- 1) Allow the clearing of underdeveloped portions of approved site plans once civil plans for the development of that area have been approved.
- 2) Reduce and amend the application requirements for design review and landscape plans to align with a typical project development process undertaken by an applicant.
- 3) Allow the Design Review Board to review applications prior to the submittal of an underlying project permit application; remove the requirement to waive Title 19 permit procedures if they request DRB review; and, remove the process for preliminary category review.

- 4) Create a process by which the Planning Director can review and approve minor adjustments to Hearing Examiner decisions on Design Review.
- 5) Create a process by which the Planning Director can review and approve alternative design solutions to specific requirements of the Design Manual for single-family, duplex dwelling and tenant improvement applications.

These amendments to the current process and procedures of Design Review will remove barriers to projects wanting and needing DRB review. In addition, the design review process is amended to more closely align with an applicant's design development process and therefore provided better opportunities for early and meaningful conversations between the City and an applicant. Finally, the amendments add administrative review options to reduce permit processing times.

The Planning Commission held a public hearing on the proposed ordinances on May 7, 2007. There was no testimony at the public hearing. The Planning Commission voted unanimously to recommend approval of the Timing of Clearing ordinance on May 7, 2007. The DRB recommended approval of the Design Review Procedures ordinance on May 10, 2007. The Planning Commission voted unanimously to recommend approval of the Design Review Procedures ordinance on May 17, 2007. A copy of the minutes for the five (5) Planning Commission meetings and one DRB meeting related to Phase 1b are attached.

### **POLICY CONSIDERATIONS**

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (GHMC 19.01.003).

### **Staff/Planning Commission Analysis:**

The proposed text amendments for Phase 1b of the Design Review Process Improvement Initiative consist of two ordinances:

1. **Timing of clearing:** The following process problems and improvements related to clearing have been identified:

#### *Identified Problem:*

Current codes states that no clearing of a portion of a site can occur before a building permit is issued for that portion of the site. This requirement does not acknowledge multi-building site plans with interconnected utilities; in addition, this requirement does not reflect the need to clear land and construct infrastructure prior to building structures. Most developers need civil plan approval before submitting building permits to keep construction on schedule.

#### *Proposed Process Improvement:*

Clearing of a site plan can occur once civil plans have been approved to align with typical construction timelines.

**2. Design review procedures:** There are four main process problems and improvements related the current design review procedures and landscape plan requirements:

**A. Design review complete application and landscape plan requirements**

*Identified Problem:*

The current application requirements for design review and landscape plans are more extensive and detailed than an applicant would normally present at the land use phase of the design development process. The level of detail in the application requirements requires an applicant to make final design/build decisions, thus invest significant time and money, prior to any assurance of approval. This investment in the project often discourages the applicant from modifying the project when required by staff or the Design Review Board.

*Proposed Process Improvement:*

The requirements for application will be amended to align with the typical design development process. Applicants will be asked to provide enough detail, through descriptions and conceptual details, to show the ability and intent of the applicant to comply with the standards of the Design Manual and the landscape code.

**B. Early DRB Review**

*Identified Problem:*

The current design review procedures require that a project comply with all public works standards, zoning use and dimensional requirements, and critical area standards prior to the DRB review of the project. The DRB has limited opportunities to review the project at its early design phase when major project revisions could occur. Those options for early review, pre-app and preliminary category review, do not yield a binding recommendation.

Due to this late review by the DRB, the DRB cannot easily require major project changes without costing the applicant significant time and money. In addition, due to the late review, the applicant is required to waive typical permit processing procedures (120-day review clock) to go to the DRB. This late review and requirement to waive timelines significantly decreases applicants' desire to use the DRB process.

*Proposed Process Improvement:*

Modify procedures so that DRB review of a project can be scheduled at the first available meeting after a notice of complete application has been issued. Review of the design review application would occur prior to or concurrent with zoning, engineering and critical area review, allowing the applicant to make project revisions knowing the full extent of city comments. The DRB could request major project revisions, when needed, without costing the applicant significant time and money. In addition, the amendment would remove the allowances for preliminary category review as it is no longer needed with early DRB review. Finally, the requirement of an applicant to waive typical permit processing procedures (120-day clock) would be removed due to the early processing.

### **C. Minor adjustments to design review decisions**

#### *Identified Problem:*

The current process does not allow minor adjustments to a Hearing Examiner decision on Design Review at building permit without a return to the DRB. The development of detailed construction drawings often reveals the need for minor revisions to the project. Under the current process, if the minor revisions do not meet the exact plans approved through the DRB process, the project must return to the DRB, increasing the building permit process from 6 weeks to 3 months. The site plan process allows for minor adjustments at the building permit phase without a return to the hearing examiner; a similar process could be used for DRB recommendations.

#### *Proposed Process Improvement:*

Provide an administrative review and approval process for minor adjustments to Design Review decisions.

### **D. Administrative approval of alternative design for small projects**

#### *Identified Problem:*

The current design review process does not distinguish between small projects and large projects. While large projects go through the land use permitting process (site plan review, preliminary plat), many small projects require only a building permit and design review application. Typical small projects include: single-family and duplex dwellings on lots of record; accessory residential structures, such as fences and, decorative lighting; and, tenant improvements to existing nonresidential development. Under the current process, if such small project does not meet the specific language of Design Manual, the proposal must be reviewed by the DRB. This increases the review process from approximately 6 weeks to 3 months.

#### *Proposed Process Improvement:*

Provide an administrative review and approval process for small projects which do not meet the specific language of the Design Manual.

### **ENVIRONMENTAL ANALYSIS**

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) on May 16, 2007, for the timing of clearing amendment. The appeal period ends on June 13, 2007. The City's SEPA Responsible Official issued a determination that the Design Review Procedures amendment is merely procedural and is therefore exempt from SEPA under WAC 197-11-800(20).

### **FISCAL CONSIDERATION**

None

### **BOARD OR COMMITTEE RECOMMENDATION**

The Planning Commission is recommending adoption of the two ordinances. The Design Review Board members are invited to attend and participate in the Planning Commission meetings on the Design Review Process Improvements Initiative. Those DRB members that attended the public hearing on these two ordinances were in support of their adoption. In

addition, at their May 10, 2007 meeting, the DRB passed a motion to recommend approval of the Design Review Procedures ordinance.

**RECOMMENDATION / MOTION**

**Move to:** Adopt ordinances at second reading.

DRAFT ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING THE CLEARING OF UNDERDEVELOPED PORTIONS OF APPROVED SITE PLANS ONCE CIVIL PLANS FOR THE DEVELOPMENT OF THAT AREA HAVE BEEN APPROVED; AMENDING SECTION 17.99.240 OF THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, Section 17.99.240(B) of the Design Manual states that no clearing of a portion of a site can occur before a building permit is issued for that portion of the site; and

WHEREAS, the typical development review process requires the review and approval of civil plans, detailing utilities and traffic infrastructure, prior to issuance of building permits; and

WHEREAS, the current limitation to clearing often means an applicant will have approval to install infrastructure, but cannot clear the site because building permits have not yet been issued; and

WHEREAS, site plans with multiple buildings and interconnected utilities must often install all approved infrastructure in order to serve only one of the buildings, even when the building permits for the other buildings have not been issued; and

WHEREAS, an applicant must invest significant time and money into a project in order to receive approved civil plans; therefore, limiting the City's risk of an applicant clearing a site after civil plan approval and not following through with the construction of buildings; and

WHEREAS, the City desires to allow clearing of sites once civil plans have been approved in order to align with typical construction timelines; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Community, Trade and Economic Development on April 23, 2007 pursuant to RCW 36.70A.106; and

WHEREAS, the City's SEPA Responsible Official issued a DNS for the proposed amendments on May 16, 2007 pursuant to WAC 197-11-350, which was not appealed; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on May 7, 2007 and made a recommendation of approval to the City Council; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on June 11, 2007; and

WHEREAS, the Gig Harbor City Council voted to \_\_\_\_\_ this Ordinance during the second reading on \_\_\_\_\_; and

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

Section 1. Section 17.99.240 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.99.240 Natural site conditions.**

\* \* \*

**B. Retain natural vegetation on underdeveloped portions of sites with approved site plan.**

~~Clearing of underdeveloped portions of approved site plans is not permitted until building permits shall only be permitted once civil plans for development of those areas have been issued-approved.~~

\* \* \*

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2007.

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: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_



DRAFT ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE DESIGN REVIEW PROCESS; REDUCING AND AMENDING THE APPLICATION REQUIREMENTS FOR DESIGN REVIEW AND LANDSCAPE PLANS TO ALLOW MORE CONCEPTUAL AND DESCRIPTIVE APPLICATIONS; ALLOWING THE DESIGN REVIEW BOARD TO REVIEW APPLICATIONS PRIOR TO THE SUBMITTAL OF AN UNDERLYING PROJECT PERMIT APPLICATION; REMOVING THE REQUIREMENT FOR AN APPLICANT TO WAIVE TITLE 19 PERMIT PROCEDURES IF THEY REQUEST DESIGN REVIEW BOARD REVIEW; REMOVING THE PROCESS FOR PRELIMINARY CATEGORY REVIEW; CREATING A PROCESS BY WHICH THE PLANNING DIRECTOR CAN REVIEW AND APPROVE MINOR ADJUSTMENTS TO HEARING EXAMINER DECISIONS ON DESIGN REVIEW; CREATING A PROCESS BY WHICH THE PLANNING DIRECTOR CAN REVIEW AND APPROVE ALTERNATIVE DESIGN SOLUTIONS TO SPECIFIC REQUIREMENTS OF THE DESIGN MANUAL FOR SINGLE-FAMILY, DUPLEX DWELLING AND TENANT IMPROVEMENT APPLICATIONS; AMENDING CODE REFERENCES IN OTHER CHAPTERS TO IMPLEMENT THIS ORDINANCE; AMENDING THE TYPES OF PROJECT PERMIT APPLICATIONS CHAPTER TO IMPLEMENT PROCESS AMENDMENTS IN THIS ORDINANCE; REPEALING SECTION 17.98.050; AMENDING SECTIONS 17.78.030, 17.98.040, 17.98.080, 17.97.040, 17.98.037, 17.98.060, 17.99.030, 17.99.050, 19.01.003 AND 19.02.004; ADDING NEW SECTIONS 17.98.045, 17.98.050, 17.98.055, 17.98.056 AND 17.98.058 TO THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, the City desires to amend the design review process to align with the typical design development process, both in application requirements and procedures; and

WHEREAS, the City desires to encourage early and meaningful conversation with the Design Review Board (DRB) prior to significant investment in detailed site and architectural design by the applicant; and

WHEREAS, the current application requirements for design review and landscape plans are more extensive than an applicant would typically submit at the land use application phase of design development.

WHEREAS, these current application requirements for design review and landscape plans require an applicant to make final design/build decisions prior to any assurance of approval; often discouraging applicants from modifying the project when required by staff or the DRB; and

WHEREAS, the City desires to amend the application requirements for design review and landscape plans by reducing some submittal requirements to descriptions and conceptual details, rather than final design/build plans. The applicants will be required to provide enough detail to show their ability and intent to comply with the standards of the Design Manual and landscape code; and

WHEREAS, the current design review procedures require that a project comply with all public works standards, zoning standards, and critical area standards prior to the DRB review of the project; and

WHEREAS, due to this timeline, the Board cannot easily require major project changes without costing the applicant significant time and money; and

WHEREAS, due to this timeline, an applicant is required to waive Title 19 permit processing procedures if they request DRB review and such waiver may discourage applicants from using the DRB process; and

WHEREAS, the City desires to allow review of design review applications, by staff or the Board, prior to the submittal of an underlying project permit application to allow early and meaningful conversations between the City and applicant; and

WHEREAS, the City desires to remove the requirement of an applicant to waive Title 19 permit procedures if they request DRB review so as to encourage DRB review; and

WHEREAS, early Board and staff review of design review applications will allow the applicant to make needed design revisions without significant time and money costs; and

WHEREAS, under the proposed procedures, review of the design review applications would occur prior to or concurrent with zoning, engineering and critical area review, allowing the applicant to make project revisions knowing the full extent of city comments; and

WHEREAS, the current preliminary category review process outlined under GHMC Subsection 17.98.050(B)(5) is no longer needed with the allowance for early DRB review and the reduced application requirements;

WHEREAS, the current Design Review Board process does not allow minor adjustments to a Hearing Examiner decision on Design Review at building permit without a return to the DRB; and

WHEREAS, the development of detailed construction drawings often reveals the need for minor revisions to a project; and

WHEREAS, under the current process, if minor revisions to a project which received DRB review, do not meet the exact plans approved through the DRB process, the project must return to the DRB, increasing the building permit process from 6 weeks to 3 months and filling up the DRB schedule with small projects; and

WHEREAS, the City desires to create a process by which the Planning Director can review and approve minor adjustments to hearing examiner decisions on design review to reduce processing time for the applicant and allow the DRB's schedule to accommodate larger projects; and

WHEREAS, the current design review process does not distinguish between small projects and large projects. While large projects go through the land use permitting process (site plan review, preliminary plat), many small projects (single-family, duplex and tenant improvements) require only a building permit and design review application; and

WHEREAS, under the current process, if small projects do not meet the specific language of Design Manual, the proposal must be reviewed by the DRB, increasing the building permit process from 6 weeks to 3 months and filling up the DRB schedule with small projects; and

WHEREAS, the City desires to create a process by which the Planning Director can review and approve alternative design solutions to specific requirements of the Design Manual for single-family, duplex dwelling and tenant improvement applications to reduce processing time for the applicant and allow the DRB's schedule to accommodate larger projects; and

WHEREAS, the City's SEPA Responsible Official has determined that the adoption of this Ordinance is merely procedural and is therefore exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Community, Trade and Economic Development on April 23, 2007 pursuant to RCW 36.70A.106; and

WHEREAS, the Design Review Board recommended approval of the proposed text amendments at their May 10, 2007 meeting; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on May 7, 2007 and made a recommendation of approval to the City Council at their May 17, 2007 work-study session; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on June 11, 2007; and

WHEREAS, the Gig Harbor City Council voted to \_\_\_\_\_ this Ordinance during the second reading on \_\_\_\_\_; and

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

Section 1. Section 17.78.030 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.78.030 Landscape plans.**

A plan of the proposed landscaping and screening shall be ~~provided as an adjunct to or~~ incorporated into plans submitted for site plan review or ~~projects which require~~ hearing examiner review. The plans shall be drawn to scale and contain the following, ~~in addition to the Significant Vegetation Plan and Tree Retention Plan required by GHMC 17.98.040:~~

- ~~A. Identification of existing trees and tree canopies in the project;~~
- ~~B. Significant trees and vegetation to remain;~~
- ~~C. A. Parking and vehicle use areas, driveways and walkways;~~
- ~~D. B. Buildings or structures, existing and proposed;~~
- ~~E. Soil mix and amendments;~~
- ~~F. C. All proposed new landscaping. Landscape plan shall include the location, species, diameter or size of materials using both botanical and common names. Drawings shall reflect the ultimate size of plant materials. Alternatively, a schematic landscape plan can be submitted showing planting zones. Each planting zone shall include typical shrub and groundcover species and typical size and spacing at planting. All landscape plans shall include the location, species, and diameter or size of all proposed trees;~~
- ~~D. Schematic irrigation plan showing irrigation zones and proposed irrigation techniques within each zone or a xeriscape plan as set forth in GHMC 17.78.045(B).~~
- ~~G. E. Identification of tree protection techniques.~~

Section 2. Section 17.98.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.98.040 Design review application requirements.**

~~Projects which require design review in one or more of the categories listed under subsections A through E of this section shall be reviewed~~

~~under one application addressing each category under review, or under a separate application for each individual category. To be considered complete, a completed application form along with required design review fees must be submitted to the city community development department. The application must identify the requested categories of design review. In addition, the following information must be submitted with applications for each category of requested design review. A complete design review application shall contain the following information:~~

~~A. Site Plan Review.~~

~~1. A. Site Layout Plan. A site plan, drawn to scale no smaller than one inch equals 30 feet showing location and size of all structures, critical areas, required buffer areas, required yards, landscape areas, open spaces, common areas or plazas, walkways, retaining wall locations, storm water retention facilities, and parking and vehicle maneuvering areas.~~

~~2. B. Significant Vegetation Plan. A significant vegetation plan which accurately identifies the species, size and location of all significant vegetation within the buildable area and within five feet of all setback lines the property subject to the application.~~

~~3. C. Landscape Tree Retention Plan. A preliminary landscape plan showing the species, size and location of all significant natural vegetation to be retained on the property.~~

~~4. D. Preliminary Site Section Drawings. Section drawings which illustrate existing and proposed grades in specified areas of concern that may be identified by the staff. Alternatively, a topographic map of the property, delineating contours, existing and proposed, at no greater than five-foot intervals and which locates existing streams, marshes and other natural features may be submitted.~~

~~5. E. Preliminary Grading and Drainage Plan. An accurate grading and drainage plan which indicates all cuts, fills and required areas of disturbance necessary to construct all retaining walls and structures. A topographic map of the property, delineating contours, existing and proposed, at no greater than five-foot intervals. The plan shall indicate all proposed cuts, fills and retaining wall heights and include areas of disturbance necessary to construct all retaining walls, structures and impervious surfaces.~~

~~6. F. Preliminary Utilities Plan. A utilities plan showing the location of utilities in relation to landscape and buffer areas, including, but not limited to, the size and capacity of all vaults, transformers, and any on-site fixtures, structures or supports related to the utility, and the location of all lines, pipes or linear conductors or transporters, and the width of the area of disturbance required to install and maintain said utilities (utility plan must be consistent with proposed areas of nondisturbance). A utilities plan showing the location and type of any utilities proposed in critical areas, critical area buffers and natural vegetation retention areas.~~

~~B. Landscaping and Paving Review.~~

~~1. Final Landscape Plan. A final landscape plan showing type, size, species, and spacing of all retained and new vegetation.~~

~~2. Irrigation Plan. Showing irrigation of all domestic vegetation.~~

~~3. G. Paving Materials. Description of all pedestrian and vehicular paving materials. Descriptions must specify type, color and texture. A description of proposed pedestrian and vehicular paving materials; include proposed type (asphalt, concrete, pavers, etc.), color, scoring and texture.~~

~~C. Architectural Design Review.~~

~~4. H. Elevation Drawings. Complete elevation drawings of all buildings showing all trim details, dimensions and proposed materials including roofing, siding, windows and trim. Drawings shall include conceptual trim and cornice design, and roof pitch. If landscaping is proposed to soften or mitigate architectural modulation or details, additional elevation drawings showing proposed landscaping shall be provided.~~

~~2. I. Sign Plan. A master sign plan or individual sign plans showing the general location, type and size of signage on buildings, consistent with Chapter 17.80 GHMC.~~

~~3. Architectural Lighting Details. Details on all lighting proposals which affect architectural detailing (e.g., indirect lighting), or which are for architectural enhancement.~~

~~4. J. Equipment Screening Details. A description on of how all mechanical and utility equipment will be screened.~~

~~D. Color and Material Review.~~

~~4. K. Color and Material Palette. A schematic color and material palette of the building's exterior including roof, siding, trim siding, trim, cornice, windows, and roofing. If Design Review Board review is requested, material and color samples shall be provided.~~

~~2. Material Samples. Sample colors of all factory finished materials including roofing and masonry materials.~~

~~3. L. Fencing Details. Color, type and specification of all fencing materials. The location and description of any proposed fencing.~~

~~E. Outdoor Lighting and Accessories Review.~~

~~4. M. Light Fixture Details. The type, model, color, location, height, wattage and area of illumination for all outdoor light fixtures. A cutsheet showing typical parking and building lighting which includes pole height and mounting height. If proposed fixtures are near critical areas or natural vegetation retention areas, shielding shall be shown.~~

~~2. N. Accessoryies Details. The type, model, color, and location of all outdoor furniture, trash receptacles and accessories.~~

~~O. Design Review Board review. A request for review by the Design Review Board shall include a written statement addressing the criteria for approval as set forth in GHMC 17.98.055 or GHMC 17.98.060, as applicable.~~

Section 3. A new Section 17.98.045 is added to the Gig Harbor Municipal Code, which shall read as follows:

**17.98.045 Design review process.**

A. The applicant shall follow the appropriate review process contained within this Chapter based upon the project and whether or not the application or portions thereof strictly conform to the specific requirements of Chapter 17.99 GHMC.

B. An application for design review may be submitted prior to the submission of an underlying project permit application for a development on the same property; however, a complete underlying project permit application shall not be processed without a complete design review application.

C. Design review is a Type II application and shall be processed as set forth in GHMC Title 19 as supplemented by the procedures set forth in this Chapter.

D. A notice of application shall be issued for a complete design review application, as set forth in GHMC Title 19 for a Type III project permit application.

E. The notice of application for the following types of development shall be forwarded to all members of the design review board (DRB) pursuant to GHMC 19.02.004:

1. Nonresidential development;
2. Multifamily residential development as defined in GHMC 17.04.290;
3. Subdivisions;
4. Public projects, except for normal maintenance and repair.

Section 4. Section 17.98.050 of the Gig Harbor Municipal Code is repealed.

Section 5. A new Section 17.98.050 is added to the Gig Harbor Municipal Code, which shall read as follows:

**17.98.050 Administrative approval.**

An applicant may request administrative processing of a design review application or portions thereof if it conforms to the specific requirements of Chapter 17.99 GHMC. The director shall process a request for administrative review as follows:

A. Applications for all projects will be available at the community development department and the DRB members may independently review any application outside of their public meeting. Within two weeks after the date of the notice of application, individual DRB members may submit written comments to the director, identifying design elements that they believe do not comply with the specific requirements of the design manual.

B. If the director receives comments from DRB members that certain design elements of an application do not comply with the specific requirements of the design manual, the director shall re-evaluate whether the application should be processed administratively or through the design

review board process. If the director finds that the application or portion of application should follow the design review board recommendation process because it does not conform to the specific requirements of design manual, the director shall notify the applicant. The applicant may then choose to amend the application or request review by the design review board.

C. The application shall be reviewed by the director for compliance with the specific requirements of Chapter 17.99 GHMC. The director shall issue a decision approving the application or portions thereof if he/she finds that the application or portions of the application satisfy the specific requirements of Chapter 17.99 GHMC, Design Standards or deny the application if such codes and standards are not satisfied. The director shall render the decision as set forth in Section 17.98.070 of this chapter and GHMC Section 19.05.009.

Section 6. A new Section 17.98.055 is added to the Gig Harbor Municipal Code, which shall read as follows:

**17.98.055 Design Review Board recommendation.**

An applicant may request review by the design review board (DRB) of an application or portions thereof which do not strictly conform to the specific requirements of Chapter 17.99 GHMC, Design Manual. A request for review by the DRB for an alternative design shall be processed as follows:

A. The board may recommend approval of alternative design solutions to specific requirements only if all of the following criteria are met:

1. The alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements; and

2. The alternative design meets the intent of the general requirements of Chapter 17.99 GHMC, Design Manual.

B. The DRB shall not consider or recommend approval of any deviation from dimensional or numeric standards stated within the text of any general requirements, or from minimum setback standards, maximum height standards or zone transition building size standards stated in specific requirements of Chapter 17.99 GHMC. Approval to deviate from these standards must be obtained through the variance process defined in Chapter 17.66 GHMC and not through the design review board recommendation process.

C. Design Review Board meeting. The board shall hold a public meeting on the application or portions thereof at the earliest available DRB meeting after the notice of application and public meeting has been published.

1. The public meeting shall be noticed as follows:

a. Not less than 14 days prior to the meeting date, the planning staff shall send notice of a public meeting to property owners within 300



feet of the subject property and to others who have submitted comments and/or requested notice.

b. Notice of the public meeting shall be posted on the subject property not less than 7 days prior to the meeting date. Notice shall be posted in the manner required by GHMC 19.03.001(A)(1).

c. Notice of the public meeting shall be published in the city's official newspaper not less than 7 days prior to the meeting date.

d. The notice of the public meeting shall contain all items listed in GHMC 19.03.003(A).

2. The applicant shall have an opportunity to make a presentation on the proposed alternative designs at the public meeting.

3. The public shall be allowed to comment on the application.

4. The DRB shall deliberate on the application and presentation and shall make findings and a recommendation on the application or portions thereof as per GHMC 17.98.070.

5. After the public meeting, the city staff shall draft the board's findings and recommendation on the application or portions thereof.

D. Public Hearing. Once the board makes a recommendation on a complete application, an open public hearing before the hearing examiner shall be scheduled for the application, which shall include the board's recommendation, or both the application and the underlying permit application. Notice of the public hearing before the hearing examiner shall be sent as provided in GHMC 19.03.003.

Section 7. A new Section 17.98.056 is added to the Gig Harbor Municipal Code, which shall read as follows:

**17.98.056 Minor adjustments to Hearing Examiner decisions.**

Minor adjustments to a final, approved Hearing Examiner decision may be considered by the director prior to building permit issuance.

A. The director may not consider changes to the Hearing Examiner's decision involving any deviation from dimensional or numeric standards stated within the text of any general requirements, or from minimum setback standards, maximum height standards or zone transition building size standards stated in specific requirements of Chapter 17.99 GHMC. Approval to deviate from these standards must be obtained through the variance process defined in Chapter 17.66 GHMC.

B. The director shall have the authority to approve a minor adjustment if all of the following criteria are met:

1. The minor adjustment does not substantially modify the final Hearing Examiner decision; and

2. The minor adjustment does not substantially modify the approved architecture, site layout, natural vegetation retention areas and grading; and

3. The minor adjustment represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements; and

4. The minor adjustment meets the intent of the general requirements of Chapter 17.99 GHMC, Design Manual.

C. The director shall render a decision on a minor adjustment as set forth in Section 17.98.070 of this chapter and GHMC Section 19.05.009.

D. Notice of the director's decision on the minor adjustment shall be sent to all parties of record for the final Hearing Examiner decision and to the Design Review Board members, in addition to those parties required to be noticed by GHMC 19.05.008.

Section 8. A new Section 17.98.058 is added to the Gig Harbor Municipal Code, which shall read as follows:

**17.98.058 Administrative review of alternative designs.**

An applicant may request review by the director of an application or portions thereof which do not strictly conform to the specific requirements of Chapter 17.99 GHMC, Design Manual for certain underlying project permit applications.

A. Only the following underlying project permit applications are eligible for administrative review of an alternative design:

1. Single-family (detached only) and duplex dwelling building permit applications for remodel or new construction on lots of record, and their accessory structures;

2. Tenant improvement applications.

B. The director shall have the authority to approve, or approve with conditions, alternative design solutions to specific requirements only if all of the following criteria are met:

1. The alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements; and

2. The alternative design meets the intent of the general requirements of Chapter 17.99 GHMC, Design Manual.

C. The director shall not approve any deviation from dimensional or numeric standards stated within the text of any general requirements, or from minimum setback standards, maximum height standards or zone transition building size standards stated in specific requirements of Chapter 17.99 GHMC. Approval to deviate from these standards must be obtained through the variance process defined in Chapter 17.66 GHMC.

D. The director shall render a decision on an alternative design as set forth in Section 17.98.070 of this chapter and GHMC Section 19.05.009.

E. Notice of the director's decision shall be sent to property owners within 300 feet of the subject property in addition to those parties required to be noticed by GHMC 19.05.008.

Section 9. Section 17.98.080 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.98.080 Design review process and decision chart.**

<b>Design Review <u>Process and Decision Chart</u></b>				
	<b>Categorical Review</b>		<b>Full Review</b>	
	<b>Admin.<sup>4</sup></b>	<b>DRB<sup>2</sup></b>	<b>Administrative<sup>2</sup></b>	<b>DRB<sup>1</sup></b>
Notice of Complete Application	No	No	Yes	Yes
Notice of Application	No	No	Yes	Yes
Public Meeting	No	Yes	No	Yes
Preliminary Recommendation	Yes	Yes	No	No
Final Recommendation	No	No	No	Yes (To HEX <sup>3</sup> )
Preliminary Decision	Yes	No	No	No
Final Decision	No	No	Yes	Yes (By HEX)
Appealable Decision	No	No	Yes (To HEX)	Yes (To Superior Court or SHB)
<sup>1</sup> DRB = Design review board recommendation option (GHMC 17.98.055) and Exceptions (GHMC 17.98.060) <sup>2</sup> Administrative = Administrative approval option (GHMC 17.98.050); Administrative review of alternative designs (GHMC 17.98.058); and, Minor adjustments (GHMC 17.98.056) <sup>3</sup> HEX = Hearing examiner				

Section 10. Subsection 17.97.040(B)(3) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.97.040 Register of historic places.**

\* \* \*

B. Process for Designating Properties to the City Register of Historical Properties.

1. Property owners may nominate a building, structure, site, or object for inclusion in the city register of historical properties. Members of the DRB or the DRB as a whole may generate nominations and may sponsor nominations submitted by members of the public. In its designation recommendation, the DRB shall consider the city's historic property inventory and the city comprehensive plan, and shall recommend inclusion on the register only if the owner is willing to have his/her property included on the register.

2. In the case of individual properties, the designation shall include the tax parcel number, a full legal description of the property, references and all features, interior and exterior, and outbuildings that contribute to its designation.

3. The DRB shall consider the merits of the nomination, according to the criteria in subsection A of this section at a public meeting. Notice shall be provided to the public and the owner(s) of the property, and the authors of the nomination, as provided in ~~GHMC 17.98.050(B)(5)(a)~~ GHMC 17.98.055(C)(1). If the DRB finds that the nominated property is eligible for the city’s register of historical properties, the DRB shall make recommendation to the city council that the property be listed in the register with the owner’s consent. The city council shall make a final determination according to the criteria in subsection A of this section. The property owners and the authors of the nomination, if different, shall be notified of the listing.

4. Properties listed in the city’s register of historical properties shall be recorded on official zoning records with an “HR” (for “historic register”) designation. This designation shall not change or modify the underlying zone classification.

\* \* \*

Section 11. Subsection 17.98.037(D) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.98.037 Optional design review preapplication meeting.**

\* \* \*

D. DRB preapplication review is limited to one meeting. Applicants may request one preapplication meeting with the DRB, which will be at no charge for any project that will require design review under the site plan review category specified in ~~GHMC 17.98.040(A)~~. The meeting shall be held within 28 days of receipt of the request.

\* \* \*

Section 12. Subsection 17.98.060(A) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.98.060 Exceptions.**

A. Processing. An exception requested under this section shall be processed in conjunction with a design review application, and shall follow the procedures for permit processing by the board as set forth in ~~GHMC 17.98.050(B)~~ GHMC 17.98.055. An exception is used in those situations in which an applicant does not provide an alternative design to the requirements of Chapter 17.99 GHMC, Design Manual.

\* \* \*

Section 12. Section 17.99.030 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.99.030 Design review options.**

The design standards of this chapter shall be observed for building and site design within the city of Gig Harbor. Design standards include both GENERAL REQUIREMENTS and SPECIFIC REQUIREMENTS.

“General requirements” include all **BOLD UNDERLINED** text in this chapter. “Specific requirements” include the more detailed text which immediately follows general requirements. This differentiation allows proponents to select from ~~two~~ the design review options described in Chapter 17.98 GHMC, including:

**A. ADMINISTRATIVE APPROVAL**

Design review for projects or portions of projects which conform to the SPECIFIC REQUIREMENTS may be approved administratively by the city of Gig Harbor community development department planning staff as described in GHMC 17.98.050(A). This method provides for a reasonable degree of flexibility while minimizing review time.

**B. DESIGN REVIEW BOARD RECOMMENDATION**

The design review board (DRB) option as described in ~~GHMC 17.98.050(B)~~ GHMC 17.98.055 encourages a creative approach to design by providing a more flexible review standard than that which is allowed in the administrative approach. The DRB can recommend alternative design solutions to SPECIFIC REQUIREMENTS if it finds that:

1. An alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements, and
2. The alternative design meets the intent of each general requirement.

To determine the general requirement’s intent, the DRB shall consider the specific requirements as appropriate examples of compliance. The staff or the DRB may request that the proposed structures be demarcated with rods, netting and/or balloons to better review mass, scale and/or location.

The DRB shall not consider or recommend approval of any deviation from dimensional or numeric standards stated within the text of any general requirements, or from minimum setback standards, maximum height standards or zone transition building size standards stated in specific requirements. Approval to deviate from these standards must be obtained through the variance process defined in Chapter 17.66 GHMC and not through the design review board process.

**C. MINOR ADJUSTMENTS TO HEARING EXAMINER DECISIONS**

The Planning Director may review minor adjustments to a final, approved Hearing Examiner decision prior to building permit issuance as described in GHMC 17.98.056. The minor adjustment process can be used only after the Design Review Board has made a recommendation and the Hearing Examiner has ruled on the recommendation. The director can approve a minor adjustment if all of the criteria set forth in GHMC 17.99.056(B) are met.

**D. ADMINISTRATIVE REVIEW OF ALTERNATIVE DESIGNS**

The Planning Director will review alternative design solutions to SPECIFIC REQUIREMENTS, as described in GHMC 17.99.058, for single-family (detached only) and duplex dwelling building permit applications for remodel and construction as well as tenant improvement applications. The director can approve alternative designs for such application if all of the criteria set forth in GHMC 17.99.058(B) are met.

**E. EXCEPTIONS**

An exception is used in those situations when a project does not meet the SPECIFIC REQUIREMENTS and the applicant does not provide an alternative design solution. A request for an exception is reviewed by the Design Review Board and the Board issues a recommendation to the Hearing Examiner. The DRB can recommend approval of an exception if the board finds that all of the criteria set forth in GHMC 17.99.060(D) are met.

*The design review board (DRB) may recommend approval of proposed alternatives to SPECIFIC REQUIREMENTS if the DRB finds that alternative design solutions meet the intent of the GENERAL REQUIREMENTS in any section of this chapter.*

*The design review board cannot waive or recommend approval of designs that do not comply with the underlying zone requirements.*

Section 13. Section 17.99.050 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.99.050 Application requirements.**

~~Applications for either option of design review shall be accepted for only those proposals which conform to current city codes. There are five categories of design review:~~

- ~~• Site plan review;~~
- ~~• Landscaping and paving review;~~
- ~~• Architectural review;~~
- ~~• Color and materials review;~~
- ~~• Outdoor lighting and accessories review.~~

~~Application requirements for each category of design review are defined in GHMC 17.98.040.~~

Section 14. Subsection GHMC 19.01.003(B) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**19.01.003 Project permit application framework.**

\* \* \*

**B. Decisions.**

TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	TYPE V
Permitted uses not requiring site plan review	Short plat	Plat vacations and alterations	Preliminary plats	Final plats	Comprehensive plan amendments
Boundary line adjustments	Sign permits	Site plan/major amendments to site plans	Preliminary PRD/PUD	Final PRD/PUD	Development regulations
Minor amendments to PUD/PRD	Design review <sup>1</sup>	CUP, general variances, sign permit variances, and site specific rezones			Zoning text amendments; area-wide zoning map amendments
Special use permits	Land clearing/grading	Shoreline substantial development, shoreline variance			Annexations
Temporary construction trailers	Revisions to shoreline management permits	Major amendments to PRD and PUD			
	Administrative variances	Amendment to height restriction area map			
	Administrative interpretations	Mobile/manufactured home park or subdivision			
	Home occupation permit	Performance-based height exception			
	Hardship variance, sign code				
	Modification to landscape plans				
	Minor amendment to PRD or PUD				

<sup>1</sup> In addition to the procedures in Title 19, applications for Design review shall follow the procedures set forth in Chapter 17.98 GHMC.

Section 15. Subsection GHMC 19.01.003(B) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**19.02.004 Notice of application.**

A. Generally. A notice of application shall be provided to all city departments and agencies with jurisdiction of all Type III and IV project permit applications. In addition, a notice of application for all (1) nonresidential development, (2) multifamily residential development as

defined in GHMC 17.04.290, (3) ~~planned residential development (PRD)~~ as described in Chapter 17.89 GHMC subdivisions, and (4) public projects, except for normal maintenance and in-kind replacement and repair, shall be sent to all members of the design review board as set forth in ~~GHMC 17.98.050(B)(1)(d)~~ GHMC 17.98.045(E).

Section 16. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 17. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2007.

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: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_





## ADMINISTRATION

**To:** Mayor and City Council, City of Gig Harbor  
**From:** Carol A. Morris, City Attorney  
**Date:** June 5, 2007  
**Re:** Amendments to the Design Review Process

### **Background:**

The Regulatory Reform Act (chapter 36.70B RCW) required cities and counties to adopt an “integrated and consolidated project permit process” that included a number of elements, including but not limited to, a review process that “provides for no more than one consolidated open record hearing and one closed record appeal” (RCW 36.70B.060(3)), and “a notice of decision as required by RCW 36.70B.130 and issued within the time period provided in RCW 36.70B.080” (RCW 36.70B.060(7)). The time period for issuing the final decision on a project permit application in RCW 36.70B.080 is not more than “one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit application types. (RCW 36.70B.080)(1).) State law allows the City to exempt certain types of project permit applications from these requirements, under certain limited circumstances. (RCW 36.70B.140.)

The City incorporated the requirements of the Regulatory Reform Act in Title 19 of the Gig Harbor Municipal Code. However, the City exempted the process for Design Review Board review of applications from these two requirements, and allowed the Board to hold a “public meeting” as opposed to a “public hearing” on the application. (The differences are addressed in RCW 36.70B.020(5).) So that the applicants would understand the effect of this exemption, applicants were required to sign a waiver from these requirements before the application would be forwarded to the Design Review Board.

### **Proposed Action:**

As you are aware, one of the amendments to the Design Review process in the attached proposed ordinances is the elimination of the applicant’s waiver of Title 19 processing. If the Council passes the ordinance amending the process, the City will be required to process the design review application, as well as the underlying project permit application, within 120 days after issuance of the determination of a complete application. (Preliminary plats must be processed

within 90 days after the determination of a complete application, short plats and final plats within 30 days.)

**Potential Consequences:**

Failure to process applications within the deadlines established in the City's code and state law could have significant adverse consequences. Under RCW 64.40.020:

Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful or exceed lawful authority, or relief from a failure to act within time limits established by law; . . .

In such a lawsuit, the property owner could request damages for untimely project permit processing, which include:

reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020.

RCW 64.40.010(4). In addition, the prevailing party in an action under chapter 64.40 RCW may be entitled to reasonable costs and attorneys' fees. RCW 64.40.020(2).

**Recommendation:**

If the Council desires to adopt this ordinance, the Council should ask the staff to provide information regarding the manner in which a project permit application will be tracked internally so that the final decision issues on or prior to the deadline.



Business of the City Council
City of Gig Harbor, WA

Subject: Ordinance – Public Disclosure Requests.

Proposed Council Action:

Adopt the attached Ordinance at the Second Reading

Dept. Origin: Administration

Prepared by: Rob Karlinsey

For Agenda of: June 25, 2007

Exhibits: Ordinance

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature] 6/19/07

Approved as to form by City Atty: CAM 6/19/07

Approved by Finance Director: \_\_\_\_\_

Approved by Department Head: \_\_\_\_\_

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and dollar amounts (\$0).

INFORMATION / BACKGROUND

The City is required by law to establish procedures to provide full public access to non-exempt public records. The City Attorney drafted the attached ordinance to adopt rules for handling public disclosure requests.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt the attached Ordinance at the second reading.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING RULES FOR HANDLING PUBLIC DISCLOSURE REQUESTS, DEFINING A PUBLIC RECORD, DESIGNATING THE CITY'S PUBLIC RECORDS OFFICER, DESCRIBING THE PROCESSING OF A PUBLIC DISCLOSURE REQUEST, DESCRIBING THE INTERNAL REVIEW OF A DENIAL OF A REQUEST, LISTING THE COSTS ASSOCIATED WITH COPYING AND PROCEDURES FOR INSPECTION, ADDING A NEW CHAPTER 2.52 TO THE GIG HARBOR MUNICIPAL CODE.

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WHEREAS, the City is required by law to establish procedures to provide full public access to non-exempt public records, to protect public records from damage or disorganization, to prevent excessive interference with agency functions, to ensure timely action on requests (RCW 42.17.290); and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of non-significance for this Ordinance on June 14, 2007; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of June 25, 2007; and

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

Section 1. A new chapter 2.52 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**Chapter 2.52  
Disclosure of Public Records**

- 2.52.010 Authority and Purpose.**
- 2.52.020 Scope of Coverage of Public Records Act and Definitions.**
- 2.52.030 Non-liability for Disclosure.**
- 2.52.040 Agency Description – Contact Information – Public Records Officer.**
- 2.52.050 Availability of Public Records.**
- 2.52.060 Retention of Records.**
- 2.52.070 Processing of Public Records Requests – General.**
- 2.52.080 Obligations of Requestors.**
- 2.52.090 Exemptions.**
- 2.52.100 Costs of Providing Public Records.**
- 2.52.110 Review of Denials of Public Records.**

### **2.52.010. Authority and purpose.**

A. RCW 42.17.260(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. RCW 42.17.260(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency. In addition, the Act requires that the City adopt and enforce reasonable rules and regulations to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the City. RCW 42.17.290.

B. The purpose of this chapter is to establish the procedures the City of Gig Harbor will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the City and establish processes for both requestors and City of Gig Harbor staff that are designed to best assist members of the public in obtaining such access.

### **2.52.020. Scope of Coverage of Public Records Act and Definitions.**

A. The Act applies to an "agency." RCW 42.17.260(1). "Agency" includes all state agencies and all local agencies. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." RCW 42.17.020(2). The City should coordinate responses to records requests across departmental lines. RCW 42.17.253(1) (Agency's public records officer must "oversee compliance with the Act.")

B. Court files and judges' files are not subject to the act. These rules do not address access to court records.

C. "Public record" defined. The City shall use the court's three-part test to determine if a record is a "public record." The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used or retained" by an agency.

D. "Writing" defined. A "public record" can be any writing "regardless of physical form or characteristics. A list of examples appears in RCW 42.17.020(41). An e-mail is a writing.

E. Relating to the conduct of government. To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41).

F. Prepared, owned, used or retained. A “public record” is a record “prepared, owned, used or retained” by an agency. A record can be “used” by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process it is a “public record.” Home computer documents of employees relating to agency business are “public records” unless they are exempt from disclosure. Employees should keep agency-related documents on home computers in separate folders and to routinely blind carbon copy (bcc) work e-mails back to the employee’s agency e-mail account.

**2.52.030. Non-liability for disclosure.** RCW 42.17.258 provides: “No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply” with the act.

**2.52.040 Agency description--Contact information—Public records officer.**

A. The City of Gig Harbor Civic Center is located at 3510 Grandview Street, Gig Harbor, WA 98335.

B. Any person wishing to request access to public records of the City, or seeking assistance in making such a request should contact the public records officer of the City:

The City Public Records Officer is the City Clerk  
Of the City of Gig Harbor  
3510 Grandview Street, Gig Harbor, WA 98335  
(253) 851-8136  
(253) 851-8267 fax

Information is also available at the City of Gig Harbor’s web site at [www.cityofgigharbor.net](http://www.cityofgigharbor.net).

C. The public records officer will oversee compliance with the act but another City staff member may process the request. Therefore, these rules will refer to the public records officer “or designee.”

D. The City is required by RCW 42.17.250(1) to publish its public record policies, organizational information and methods for requestors to obtain public records. These rules will be available in the Gig Harbor Municipal Code and on the City’s official website.

**2.52.050. Availability of public records.**

A. Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the City, e.g., Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays). Records must be inspected at the offices of the City.

B. Records index. The City finds that maintaining an index is unduly burdensome and would interfere with agency operations. The requirement would unduly burden or interfere with the City of Gig Harbor's operations in the following ways: the magnitude and diversity of four City departments with an even greater number of divisions/subdivisions, has resulted in the creation and use of as many different computer systems. The diversity in programs and information retaining systems would be extremely difficult, if not physically impossible, to compile into a single index. The performance of the City's overall mission does not allow for the addition to, or the revision or reassignment of duties for existing personnel so that a current index may be developed and maintained without additionally-required staff, and anticipated City revenue do not allow for additional staff members for the sole purpose of creating and maintaining such an all-inclusive index.

C. Organization of records. The City will maintain its records in a reasonably organized manner. The City will take reasonable actions to protect records from damage and disorganization. A requestor shall not take City records from City premises. A variety of records is available on the City web site at [www.cityofgigharbor.net](http://www.cityofgigharbor.net). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

D. Making a request for public records.

1. Any person wishing to inspect or copy public records of the City should make the request in writing on the City's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

2. If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or any required deposit and/or postage to mail such records. Pursuant to Resolution No. 498, standard photocopies will be provided at \$ .15 cents per page.

3. A form is available for use by requestors at the office of the public records officer and on-line at [www.cityofgigharbor.net](http://www.cityofgigharbor.net). Oral requests are accepted, but are problematic because an oral request does not memorialize the exact records sought and therefore prevents a requestor or agency from later proving what was included in the request. Furthermore, as described in WAC 44-14-04002(1), a requestor must provide the agency with reasonable notice that the request is for the disclosure of public records;

oral requests, especially to agency staff other than the public records officer or designee, may not provide the agency with the required reasonable notice. Therefore, requestors are encouraged to provide written requests. If the City receives an oral request, the City staff person receiving it should immediately reduce it to writing and then verify in writing with the requestor that it correctly memorializes the request.

4. The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

5. The City may ask a requestor to prioritize the records he or she is requesting so that the City is able to provide the most important records first. The City is not required to ask for prioritization, and the requestor is not required to provide it.

6. The City cannot require the requestor to disclose the purpose of the request with two exceptions. RCW 42.17.270. First, if the request is for a list of individuals, an agency may ask the requestor if he or she intends to use the records for a commercial purpose. The City's request for public records form includes a statement that the City is not authorized to provide public records consisting of a list of individuals for commercial use, and there is a blank for the requestor's signature. This is to acknowledge that the requestor understands the prohibition on the use of such lists, but the requestor is not required to sign in order to obtain the records.

Second, the City may seek information sufficient to allow it to determine if another statute prohibits disclosure. For example, some statutes allow an agency to disclose a record only to a claimant for benefits or his/her representative. In such cases, the City is authorized to ask the requestor if he/she fits the criterion.

**2.52.060. Retention of records.** The City is not required to retain every record it ever created or used. The state and local records committees approve a general retention schedule for state and local agency records that applies to records that are common to most agencies. Individual agencies seek approval from the state or local records committee for retention schedules that are specific to their agency, or that, because of particular needs of the agency, must be kept longer than provided in the general records retention schedule. The retention schedules for state and local agencies are available at [www.secstate.wa.gov/archives/gs.aspx](http://www.secstate.wa.gov/archives/gs.aspx).

The City has a retention policy in which employees save retainable documents and delete nonretainable ones. The lawful destruction of public records is governed by retention schedules.

An agency is prohibited from destroying a public record, even if it is about to be lawfully destroyed under a retention schedule, if a public records request has been made for that record. RCW 42.17.290. Additional retention requirements might apply if the records may be relevant to actual or anticipated litigation. The agency is required to retain



the record until the record request has been resolved. An exception exists for certain portions of a state employee's personnel file. RCW 42.17.295.

### **2.52.070. Processing of public records requests--general.**

A. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

B. Within five business days of receipt of the request, the public records officer will do one or more of the following:

1. Make the records available for inspection or copying;
2. If copies are requested and payment of a deposit, for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
3. Provide a reasonable estimate of when records will be available;
4. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
5. Deny the request.

C. Consequences of failure to respond. If the City does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

D. Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

E. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the City believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted.

F. Inspection of records.

1. Consistent with other demands, the City shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

2. The requestor must claim or review the assembled records within thirty days of the City's notification to him or her that the records are available for inspection or copying. The City will notify the requestor by telephone, e-mail or in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the City may close the request and re-file the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

G. Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

H. Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

I. Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the City has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

J. Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the City has closed the request.

K. Later discovered documents. The City has no obligation to search for records responsive to a closed request. If the City discovers responsive records after a request has been closed, the City should provide the later-discovered records to the requestor.

M. No duty to create records. The City is not obligated to create a new record in order to satisfy a record request.

N. Searching for records. The City must conduct an objectively reasonable search for responsive records. Such a search usually begins with the public records officers for the City deciding where the records are likely to be and who is likely to know where they are. The records officer should also e-mail staff members selected as most likely to have responsive records. Staff are required to promptly respond to inquires regarding responsive records from the records officer.

#### **2.52.080. Obligations of requestors.**

A. Reasonable notice that request is for public records. A requestor must give an agency reasonable notice that the request is being made pursuant to the act. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.

B. Identifiable record. A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. RCW 42.17.270 and 42.17.340(1). An "identifiable record" is one that agency staff can reasonably locate. Public records requests are not interrogatories. An agency is not required to conduct legal research for a requestor. When an agency receives a request for records "relating to" or similar request, it should seek clarification of the request from the requestor.

C. "Overbroad" requests. An agency cannot "deny a request for identifiable public records based solely on the basis that the request is overbroad." RCW 42.17.270. However, if such a request is not for identifiable records or otherwise is not proper, the request can still be denied. When confronted with a request that is unclear, an agency should seek clarification.

D. Documenting compliance. The City may number-stamp or number-label paper records provided to a requestor to document which records were provided. The City may also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided. If memorializing which specific documents were offered for inspection is impractical, the City may document which records were provided for inspection by making an index or list of the files or records made available for inspection.

#### **2.52.090. Exemptions.**

A. The Public Records Act provides has a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. The City must describe why each withheld record or redacted portion of a record is exempt from disclosure. Requestors should be aware of exemptions, outside the Public Records Act, that restrict the availability of some documents held by the City of Gig Harbor for inspection and copying. These are attached at Appendix A to this Ordinance, and are incorporated herein by this reference.

### **2.52.100. Costs of providing copies of public records.**

A. Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for \$.15 cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The (name agency) will not charge sales tax when it makes copies of public records.

B. Costs for electronic records. The cost of electronic copies of records shall be \$1 for information on a floppy disk and \$1 for information on a CD-ROM.

C. Costs of mailing. The City may also charge actual costs of mailing, including the cost of the shipping container.

D. Payment. Payment may be made by cash, check, debit, credit, or money order to the City.

E. Other statutes govern charges for particular kinds of records. As examples, RCW 46.52.085 (charges for traffic accident reports), RCW 10.97.100 (copies of criminal histories), RCW 3.62.060 and 3.62.065 (charges for certain records of municipal courts).

F. The City has the discretion to waive copying charges. For administrative convenience, many agencies waive copying charges for small requests.

G. The City may charge a deposit of up to ten percent of the estimated copying costs of an entire request before beginning to copy the records. RCW 42.17.300. The estimate must be reasonable. The City can require the payment of the deposit before copying an installment of the records or the entire request. The deposit applies to the records selected for copying by the requestor, not all the records made available for inspection. Any unused deposit must be refunded to the requestor. When copying is completed, the City can require the payment of the remainder of the copying charges before providing the records.

H. If the City provides records in installments, the City may charge and collect all applicable copying fees (not just the ten percent deposit) for each installment. RCW 42.17.300.

### **2.52.110. Review of denials of public records.**

A. Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition

shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

B. Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to (public records officer's supervisor or other agency official designated by the agency to conduct the review). That person will immediately consider the petition and either affirm or reverse the denial within two business days following the City's receipt of the petition, or within such other time as the City agreed to by the City and the requestor.

C. Judicial review. Any person may obtain court review of denials of public records request pursuant to RCW 42.17.340 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2007.

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: 06/13/07  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:

## Appendix A

# Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW

### **RCW 42.56.070(2):**

For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

### Washington State Statutes

Citation	Records
RCW 2.64.111	Documents regarding discipline/retirement of judges
RCW 2.64.113	Confidentiality - violations
RCW 4.24.550	Information on sex offenders to public
RCW 5.60.060	Privileged communications
RCW 5.60.070	Court-ordered mediation records
RCW 7.68.140	Victims' compensation claims
RCW 7.69A.030(4)	Child victims and witnesses – protection of identity
RCW 7.69A.050	Rights of child victims and witnesses – addresses
RCW 7.75.050	Records of Dispute Resolution Centers
RCW 9.51.050	Disclosing transaction of grand jury
RCW 9.51.060	Disclosure of grand jury deposition
RCW 9.02.100	Reproductive privacy
RCW 9A.82.170	Financial institution records – wrongful disclosure

Citation	Records
RCW 10.27.090	Grand jury testimony/evidence
RCW 10.27.160	Grand jury reports – release to public only by judicial order
RCW 10.29.030	Organized crime special inquiry judge
RCW 10.29.090	Records of special inquiry judge proceedings
RCW 10.52.100	Records identifying child victim of sexual assault
RCW 10.77.210	Records of persons committed for criminal insanity
RCW 10.97.040	Criminal history information released must include disposition
RCW 10.97.050	Conviction and criminal history information
RCW 10.97.060	Deletion of certain criminal history record information, conditions
RCW 10.97.070	Disclosure of identity of suspect to victim
RCW 10.97.080	Inspection of criminal record by subject
RCW 13.32A.090	Crisis residential centers notice to parent about child
RCW 13.34.115	Court dependency proceedings
RCW 13.40.217	Juveniles adjudicated of sex offenses – release of information
RCW 13.50.010	Maintenance of and access to juvenile records
RCW 13.50.050	Juvenile offenders
RCW 13.50.100	Juvenile/children records not relating to offenses
RCW 13.60.020	Missing children information
RCW 13.70.090	Citizen juvenile review board – confidentiality
RCW 18.04.405	Confidentiality of information gained by CPA
RCW 18.19.060	Notification to clients by counselors
RCW 18.19.180	Confidential communications with counselors
RCW 19.215.020	Destruction of personal health and financial information
RCW 19.34.240(3)	Private digital signature keys
RCW 19.215.030	Compliance with federal rules
RCW 26.04.175	Name and address of domestic violence victim in marriage records



Citation	Records
RCW 26.12.170	Reports of child abuse/neglect with courts
RCW 26.23.050	Child support orders
RCW 26.23.120	Child support records
RCW 26.26.041	Uniform Parentage Act – protection of participants
RCW 26.26.450	Confidentiality of genetic testing
RCW 26.33.330	Sealed court adoption records
RCW 26.33.340	Agency adoption records
RCW 26.33.343	Access to adoption records by confidential intermediary
RCW 26.33.345	Release of name of court for adoption or relinquishment
RCW 26.33.380	Adoption – identity of birth parents confidential
RCW 26.44.010	Privacy of reports on child abuse and neglect
RCW 26.44.020(19)	Unfounded allegations of child abuse or neglect
RCW 26.44.030	Reports of child abuse/neglect
RCW 26.44.125	Right to review and amend abuse finding – confidentiality
RCW 27.53.070	Records identifying the location of archaeological sites
RCW 29A.08.720	Voter registration records – place of registration confidential
RCW 29A.08.710	Voter registration records – certain information exempt
Chapter 40.14 RCW	Preservation and destruction of public records
RCW 42.23.070(4)	Municipal officer disclosure of confidential information prohibited
RCW 42.41.030(7)	Identity of local government whistleblower
RCW 42.41.045	Non-disclosure of protected information (whistleblower)
RCW 46.52.080	Traffic accident reports – confidentiality
RCW 46.52.083	Traffic accident reports – available to interested parties
RCW 46.52.120	Traffic crimes and infractions – confidential use by police and courts
RCW 46.52.130(2)	Abstract of driving record
RCW 48.62.101	Local government insurance transactions – access to information

Citation	Records
RCW 50.13.060	Access to employment security records by local government agencies
RCW 50.13.100	Disclosure of non-identifiable information or with consent
RCW 51.28.070	Worker's compensation records
RCW 51.36.060	Physician information on injured workers
RCW 60.70.040	No duty to disclose record of common law lien
RCW 68.50.105	Autopsy reports
RCW 68.50.320	Dental identification records – available to law enforcement agencies
Chapter 70.02 RCW	Medical records – access and disclosure – entire chapter (HC providers)
RCW 70.05.170	Child mortality reviews by local health departments
RCW 70.24.022	Public health agency information regarding sexually transmitted disease investigations - confidential
RCW 70.24.024	Transcripts and records of hearings regarding sexually transmitted diseases
RCW 70.24.105	HIV/STD records
RCW 70.28.020	Local health department TB records – confidential
RCW 70.48.100	Jail records and booking photos
RCW 70.58.055	Birth certificates – certain information confidential
RCW 70.58.104	Vital records, research confidentiality safeguards
RCW 70.96A.150	Alcohol and drug abuse treatment programs
RCW 70.123.075	Client records of domestic violence programs
RCW 70.125.065	Records of rape crisis centers in discovery
RCW 71.05.390	Information about mental health consumers
RCW 71.05.395	Ch. 70.02 RCW applies to mental health records
RCW 71.05.400	Information to next of kin or representative
RCW 71.05.425	Notice of release or transfer of committed person after offense dismissal
RCW 71.05.427	Information that can be released

Citation	Records
RCW 71.05.430	Statistical data
RCW 71.05.440	Penalties for unauthorized release of information
RCW 71.05.445	Release of mental health information to Dept. of Corrections
RCW 71.05.620	Authorization requirements and access to court records
RCW 71.05.630	Release of mental health treatment records
RCW 71.05.640	Access to treatment records
RCW 71.05.650	Accounting of disclosures
RCW 71.24.035(5)(g)	Mental health information system – state, county and regional support networks – confidentiality of client records
RCW 71.34.200	Mental health treatment of minors – records confidential
RCW 71.34.210	Court records for minors related to mental health treatment
RCW 71.34.225	Release of mental health services information
RCW 71A.14.070	Records regarding developmental disability – confidentiality
RCW 72.09.345	Notice to public about sex offenders
RCW 72.09.585(3)	Disclosure of inmate records to local agencies – confidentiality
RCW 74.04.060	Applicants and recipients of public assistance
RCW 74.04.520	Food stamp program confidentiality
RCW 74.09.900	Medical assistance
RCW 74.13.121	Financial information of adoptive parents
RCW 74.13.280	Children in out-of-home placements - confidentiality
RCW 74.20.280	Child support enforcement – local agency cooperation, information
RCW 74.34.095	Abuse of vulnerable adults - confidentiality of investigations and reports
RCW 82.32.330	Disclosure of tax information
RCW 84.36.389	Confidential income data in property tax records held by assessor
RCW 84.40.020	Confidential income data supplied to assessor regarding real property

Citation	Records
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**Selected Federal Confidentiality Statutes and Rules**

20 USC § 1232g	Family Education Rights and Privacy Act
42 USC 290dd-2	Confidentiality of Substance Abuse Records
42 USC 405(c)(2)(vii)(I)	Limits on Use and Disclosure of Social Security Numbers.
42 USC 654(26)	State Plans for Child Support
42 USC 671(a)(8)	State Plans for Foster Care and Adoption Assistance
42 USC 1396a(7)	State Plans for Medical Assistance
7 CFR 272.1(c)	Food Stamp Applicants and Recipients
34 CFR 361.38	State Vocational Rehabilitation Services Programs
42 CFR Part 2 (2.1 - 2.67)	Confidentiality of Alcohol and Drug Abuse Patient Records
42 CFR 431.300 - 307	Safeguarding Information on Applicants and Recipients of Medical Assistance
42 CFR 483.420	Client Protections for Intermediate Care Facilities for the Mentally Retarded
42 CFR 5106a(b)(2)(A)	Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
45 CFR 160-164	HIPAA Privacy Rule



Business of the City Council  
City of Gig Harbor, WA

**Subject: Revision of Ordinance 8.30.010 prohibiting the use of skateboards, scooters and roller skates on city streets.**

**Proposed Council Action: Approve the revision as proposed**

**Dept. Origin: Police Department**

**Prepared by: Chief Mike Davis**

**For Agenda of: June 25, 2007**

**Exhibits: See attached**

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** RJK 6/18/07

**Approved as to form by City Atty:** CAM 6/18/07

**Approved by Finance Director:** N/A

**Approved by Department Head:** RK fmd

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

After reviewing our current ordinance regulating the riding of skateboards, skates, scooters and other similar devices, it was determined we needed to broaden the types of city roadways where the riding of these devices should be restricted. This revision prohibits the riding of these devices from all city streets, including cross walks.

In this revision we also designate the specific civil infraction penalty for violation of this ordinance at \$50.00 or eight (8) hours of community service.

**FISCAL CONSIDERATION**

None

**RECOMMENDATION / MOTION**

**Move to: Approve the revisions to Ordinance 8.30.010**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SKATEBOARDS, SCOOTERS, ROLLER SKATES/IN-LINE SKATES, AMENDING THE PROHIBITION ON TRAVEL BY MEANS OF SKATEBOARDS, SCOOTERS, ROLLER SKATES/IN-LINE SKATES ON “ARTIERIAL STREETS” TO “STREETS” IN THE CITY, PROHIBITING USE OF SUCH DEVICES WHEN CROSSING STREETS AT ANY LOCATION, INCLUDING CROSSWALKS, CHANGING THE PENALTIES TO A MAXIMUM OF FIFTY DOLLARS OR, IN THE COURT’S DISCRETION, COMMUNITY SERVICE, AMENDING GIG HARBOR MUNICIPAL CODE SECTION 8.30.010 AND 8.30.060.**

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WHEREAS, since Gig Harbor Municipal Code Section 8.30.010 was adopted, the City has adopted street classification standards, which creates a separate classification for “arterials” among many different types of streets; and

WHEREAS, GHMC Sec. 8.30.010 prohibits travel by roller skates/in-line skates, coasters, skateboards, scooters or similar devices “upon the roadway of any arterial street” and

WHEREAS, the City Council intended the prohibition to extend to all City streets, not just arterial streets; and

WHEREAS, the penalty for violation of chapter 8.30 on the subject of travel by means of skateboards, scooters, roller skates/in-line skates has three levels, but the lowest penalty of \$100 is too high;

WHEREAS, the City Council considered this ordinance during its regular meeting of \_\_\_\_\_, 2007; Now, Therefore,

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

Section 1. Section 8.30.010 of the Gig Harbor Municipal Code shall read as follows:

**8.30.010 Skateboards, scooters and roller skates/in-line skates prohibited on ~~in certain~~ City streets.**

No person upon roller skates/in-line skates, or riding in or by means of any coaster, skateboard, scooter or similar device, shall move, go or travel upon the roadway of any ~~arterial-city~~ street or transit bus route, ~~except while crossing such street at a crosswalk;~~ or engage in any sport amusement or exercise or play in the roadway of such street. This prohibits any riding or travel with roller skates/in-line skates, coasters, skateboards, scooters or similar devices in order to cross the street, including the cross-walk.

Section 2. Section 8.30.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**8.30.060 Penalties.**

It is unlawful for any person to violate or fail to comply with any of the provisions of this chapter. With the exception of GHMC 8.30.050, any person who shall have committed a violation of this chapter shall, upon a finding by the municipal court that such a violation has been committed, shall be ~~subject to the civil infraction penalties as set forth in GHMC 1.16.010-~~ a civil infraction subject to a maximum penalty of Fifty Dollars (\$50.00). The municipal court may, in lieu of all or part of the penalty authorize the violator to provide up to eight (8) hours of community service.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 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: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: \_\_\_\_\_





Business of the City Council
City of Gig Harbor, WA

Subject: Lease of City tidelands to Peter Stanley

Proposed Council Action:

The Council may move to:

- 1. Refuse to lease the tidelands;
2. Modify lease terms and approve; or
3. Approve lease as presented.

Dept. Origin: City Attorney

Prepared by: City Attorney

For Agenda of: June 25, 2007

Exhibits: Lease and Exhibits

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature]

Approved as to form by City Atty: \_\_\_\_\_

Approved by Finance Director: \_\_\_\_\_

Approved by Department Head: \_\_\_\_\_

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values are 0, 0, 0.

INFORMATION / BACKGROUND

On March 14, 1988, the City granted Dylan Enterprises, dba the Tides Tavern, a twenty year easement for the placement of floats and docks which encroach on the City's tidelands adjacent to the street end on Harborview Drive. There is also a small storage shed placed by the Tides on the street end.

In 2006, Mr. Stanley requested that the City renew the easement for another twenty years. Apparently, he is negotiating with DNR for a renewal of the tidelands lying adjacent to the City-owned tidelands. At the time he originally made this request, I recommended that if the Council was willing to allow an extension of such use by the Tides, that an easement not be used.

Instead, I recommended that any use of the public right-of-way be authorized only by the existing process for encroachment permits (chapter 12.02 GHMC). Mr. Stanley has apparently submitted an application for an encroachment permit, and under GHMC Section 12.02.040(B), such permit would be valid for one year.

I also recommended that if the City chose to allow use of the tidelands adjacent to the street, that a lease be negotiated between the parties. Attached is a lease signed by Peter Stanley, negotiated by the attorneys for the City and Mr. Stanley.

There are a few issues for the Council to consider in executing a lease of this type. The lease allows placement of a float in the tidelands, so that Tides customers may access the restaurant. There is no public use associated with this lease, as Mr. Stanley's attorney has made it clear that Mr. Stanley retains the right to exclude anyone from use of the floats. Therefore, the Council should consider this to be a lease of public property for a private purpose.

Mr. Stanley desires a lease for a period of twenty years, to coincide with his lease of the adjacent DNR tidelands. While the City may have no use for the street end and tidelands now, this may change in the future. Nothing requires the City to execute a lease with Mr. Stanley for the tidelands, for one year or twenty. If the Council is interested in executing a lease, a shorter lease term may be more desirable, so that the City may re-evaluate options for public use of this area.

As the Council is aware, the Washington state legislature has identified street ends abutting bodies of fresh or salt water as valuable to the public for "port purposes, beach or water access purposes, boat moorage or launching sites, parks, public view, recreation, educational purposes or other public uses." RCW 35.79.035. The Council may decide to evaluate this property (now or in the future) to determine its suitability for these purposes.

Mr. Stanley proposes to pay the same amount under this lease that he would pay to DNR for lease of DNR tidelands, or forty cents a square foot. As far as I know, there has been no comparison of the value of tidelands immediately abutting waterfront property to determine whether this amount reflects fair market value.

### **FISCAL CONSIDERATION**

The City will receive very little in return for this lease of public property for private purposes. Mr. Stanley proposes that the City tie up the property for his private uses for another twenty years for very little consideration.

### **BOARD OR COMMITTEE RECOMMENDATION**

None. The City Attorney recommends that if the Council is interested in executing this lease with Mr. Stanley, that the lease term be substantially reduced, to allow for evaluation of public use of the property.

### **RECOMMENDATION / MOTION**

**Move to: 1. Reject the lease; 2. modify the terms of the lease and authorize the Mayor to sign; or 3. authorize the Mayor to sign the lease as presented.**



City of Gig Harbor

**CITY OF GIG HARBOR  
AND  
PETER STANLEY  
LEASE AGREEMENT**

SECTION I – PARTIES TO THE LEASE AGREEMENT

The parties to this lease agreement are the City of Gig Harbor, a municipal corporation of the State of Washington, (hereinafter referred to as “Lessor” or “City”), and PHILIP T. STANLEY, 602 North C Street, Tacoma, WA 98403, (hereinafter referred to as “Lessee”).

SECTION II – PURPOSE

1. Purpose. The purpose of this Agreement is to lease a portion of the City’s tidelands as depicted on a survey marked Exhibit A attached (hereinafter the “Property”), to allow private and public access activities, so that the public may arrive by boat and patronize the Tides Tavern and other merchants and amenities of Gig Harbor, upon the terms and conditions set forth herein.
2. Legal Description. The Property are legally described on the document identified as Exhibit A attached hereto and made a part of hereof by reference. In executing this Lease, the City is relying on the surveys, diagrams and legal descriptions provided by the Lessee.
3. Inspection. The City makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Lessee’s permitted use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Lessee has inspected the Property and accepts it “as is.”

SECTION III – THE USE

4. Permitted Use. Lessee shall use the Property for private access, limited public access activities, private storage and for no other purpose.
5. Restrictions on Use. Lessee shall not cause or permit any damage to natural resources on the Property. Lessee shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by the City.

The prohibitions in this Section against damage to natural resources, filling, deposition of any unapproved materials, and waste, shall also apply to protect any City or state-

owned aquatic lands adjacent to the Property from any of Lessee's activities related to Lessee's occupation of the Property. All obligations imposed by this section on Lessee to cure any violation of the prohibited activities in this Section shall also extend to City or state-owned aquatic lands adjacent to the Property when the violation arose from the Lessee's activities related to Lessee's occupation of the Property.

Lessee shall use the Premises only for the purposes and activities identified herein. The use of the Property by the Lessee shall not be of a religious or partisan political nature. Such use shall be made in a responsible and prudent manner continuously during the terms of the Lease. Lessee shall not use or permit the Property, or any part thereof, to be used for any purposes other than those set forth herein. Lessee shall neither permit on the Property any act or storage that may be prohibited under standard forms or fire insurance policies, nor use the Property for any such purpose.

Lessee shall not permit any waste, damage or injury to the Property, use the Property for anything that will increase the rate of insurance, maintain anything on the Property that may be hazardous to life or limb, permit any objectionable odor, permit anything to be done on the Property or use the Property in any way tend to create a public or private nuisance, or use or permit the Property to be used for lodging or sleeping purposes.

6. Conformance with Laws. The Lessee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes and other government rules and regulations regarding its use or occupancy of the Property.

7. Terms of Lease. This lease shall be for a term of twenty (20) years after the date this Lease is signed by both parties, unless terminated sooner under the terms of this Lease Agreement. Ninety (90) days prior to the expiration date, the Lessee may furnish a written notice of intent to renew this Lease to the Lessor. Nothing herein shall obligate the City to enter into any additional Lease Agreements with the Lessor in the future. If the Lessor receives a timely written notice of intent to renew this Lease, the parties may enter into a new Lease for another five (5) years, the terms of which may or may not be different from the terms of this Lease. If the Lessor does not receive a timely written notice of intent to renew, this Lease shall expire. Lessee shall not be entitled to renew this Lease if it is in default under the terms of this Lease at the time the option to renew is exercised. Upon the expiration or termination of this Lease (or any extended term), the Lessee shall surrender the Property to the City in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

8. Hold Over. If the Lessee remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days' notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If the

City provides notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Lessee fails to do so within the time set forth in the notice, then the Lessee shall be a trespasser and shall owe the City all amounts due under RCW 79.01.760 and all other applicable law.

9. Lease Payments/Considerations. Lessee shall pay Lessor the amount of fourteen (\$14.00) by the 20<sup>th</sup> day of January of each year for the lease of the Premises, without demand or billing. Payment is to be made to the City of Gig Harbor, Finance Director, 3510 Grandview Street, Gig Harbor, WA 98335.

10. Improvements. On the Commencement Date, the following improvements are located on the Property: a thirty-five square foot portion of the floating dock extending from the tidelands of the Department of Natural Resources onto the tidelands of the City of Gig Harbor. These improvements are not owned by the City and are maintained by the Lessee. So long as this Lease remains in effect, the Lessee shall retain ownership of all existing improvements identified in this paragraph (the "Lessee-Owned Improvements"). No Lessee-Owned improvements shall be placed on the Property without the City's written consent.

11. Services in Addition to Lessee Payment. The Lessee shall maintain all privately owned improvements on the Property in safe and clutter-free manner.

12. Signs. All signs or symbols currently placed by Lessee upon the Property are acceptable but any new signs or symbols placed by Lessee on part of the structures or Property shall be subject to Lessor's prior written approval. Lessor may demand the removal of signs which are not so approved, and Lessee's failure to comply with said request within forty-eight (48) hours after such demand will constitute a breach of this paragraph and will entitle Lessor to terminate this Lease or, in lieu thereof, to cause the sign to be removed and the building repaired at the sole expense of the Lessee. At the termination of this Lease, Lessee shall remove all signs placed by it upon the Property, and shall repair any damages caused by such removal. All signs must comply with applicable sign ordinances and be placed in accordance with required permits.

13. Alterations. Prior to any construction, alteration, replacement, removal or major repair of any improvements, the Lessee shall submit to the City plans and specifications which describe the proposed activity. Construction shall not commence until City has approved those plans and specifications in writing. The plans and specifications shall be deemed approved and the requirement for the City's written consent shall be treated as waived, unless the City notifies the Lessee otherwise within sixty (60) days. Upon completion of construction, the Lessee shall promptly provide the City with as-built plans and specifications. Lessee agrees to comply with all laws, ordinances, rules and regulations of any proper public authority in the construction of any improvements or repair, and to save the Lessor harmless from damage, loss or expense. After notice of termination of this Lease, and upon Lessor's request or Lessor's approval, the Lessee shall remove such improvements and restore the Property to its original condition not later than the termination date, at Lessee's sole cost and expense. Any improvements

not so removed may be removed by the Lessor at Lessee's expense. If the Lessee-Owned improvements remain on the Property after the termination date without the City's consent, they will become the property of the City, but the City may remove them and the Lessee shall pay the cost of removal and disposal upon the City's demand.

14. Inspection by Lessor. The Lessor may enter upon the Premises at any reasonable time during normal business hours or after hours with reasonable notice for the purpose of inspecting the same for compliance with the terms of this Lease.

15. Contractor's Bonds and Liens –

A. Lessee shall not suffer or permit any lien to be filed against the Premises or any part thereof or the Lessee's leasehold interest, by reason of work labor, services or materials performed or supplied to Lessee or anyone holding the Premises or any part thereof under the Lessee. If any such lien is filed against the Premises, Lessee shall hold the Lessor harmless from any loss by reason of the lien and shall cause the same to be discharged of record within thirty (30) days after the date of filing of same.

B. At the Lessor's option, Lessee shall require each contractor used by Lessee to perform any demolition or construction work in connection with any improvement, alteration, or addition to be made to the Premises, to secure and maintain, at no cost to the City, a contract or performance bond, payable to Lessee and the City, in the full amount of the contract, conditioned that all the provisions of the contract shall be faithfully performed by the contractor, or the surety if so required, and indemnifying the Lessee and the City against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the carrying out of the work of the contract, and conditioned as required by law for the payment of all laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such persons or subcontractors with provisions and supplies for the carrying on of such work.

16. Indemnification and Waiver. Lessee agrees to defend, indemnify, and hold harmless the Lessor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including costs and attorney's fees, arising out of or in connection with the performance of this Lease or Lessee's enjoyment of the Property, except for injuries or damages caused solely by the negligence of the Lessor, its officers, officials, employees and volunteers. In the event of liability for injuries or damages which are the result of the concurrent negligence of the Lessee and Lessor, each party shall be responsible only to the extent of their own negligence. Lessee agrees to defend, indemnify and hold harmless the Lessor, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits, including costs and attorneys' fees, which are caused by or arise out of any condition of the Premises arising after execution of this Lease. Lessee further agrees that in the event that any conditions affect its quiet enjoyment of the Property to such a degree that

the Lessee no longer wishes to occupy the Property, then the Lessor shall not be required to reimburse the Lessee for any amounts relating to the Lease term.

In addition to the above, Lessee shall provide a waiver of right of subrogation releasing and relieving the Lessor from responsibility and waiving the entire claim or right of recovery for any loss or damages to the Property, any of Lessee's improvements placed on the Property, any personal property located anywhere on the Property, or any other loss sustained by the Lessee, including earlier termination of this Lease by destruction of the Property through natural causes or reasons not the fault of Lessor, and whether any such loss is insured or not and irrespective of the cause of such loss.

Lessee's liability to the City for hazardous substances, and its obligation to defend and hold the City harmless for hazardous substances, shall be governed exclusively by Section 39. The provisions of this Indemnification Section shall survive the termination or expiration of this Lease Agreement.

17. Insurance.

At its own expense, the Lessee shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Section. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to the City. If non-admitted or non-rated carriers are used, the policies must comply with chapter 48.15 RCW.

A. Types of Required Insurance.

1. Commercial General Liability Insurance. The Lessee shall procure and maintain Commercial General Liability Insurance and if applicable, Marina Operator's Legal Liability Insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of the Lessee's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

The City may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon a material change in the condition of the Property or any improvements;



- (iii) Upon any breach of the Sections in this Lease relating to Hazardous Substances;
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by the City.

2. Property Insurance. The Lessee shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.

3. Builder's Risk Insurance. As applicable, the Lessee shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to the City during construction, replacement, or material alteration of the Property or improvements on the Property. Coverage shall be in place until such work is completed and evidence of completion is provided to the City.

B. Terms of Insurance. The policies required under Subsection A shall name the City of Gig Harbor as an additional insured. Furthermore, all policies of insurance described in this Section shall meet the following requirements:

1. Policies shall be written as primary policies not contributing with and not in excess of coverage that the City may carry;

2. Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to the City except upon forty-five (45) days prior written notice from the insurance company to the City;

3. To the extent of the City's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to the City and the Lessee;

4. All liability policies must provide coverage on an occurrence basis; and

5. Liability policies shall not include exclusions for cross liability.

C. Proof of Insurance. The Lessee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the City accompanied by a checklist of coverages provided by the City, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in this Section, and, if requested, copies of policies to the City. The Certificate of Insurance shall reference the City of Gig Harbor and this lease. Receipt of such certificates or policies by the City does not constitute approval by the City of the terms of such policies. The Lessee acknowledges

that the coverage requirements set forth herein are the minimum limits of insurance the Lessee must purchase to enter into this Lease Agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Lessee from liability for losses and settlement expenses greater than these amounts.

18. Condemnation. If during the Term of this Lease there shall be a condemnation or a taking of all or a portion of the Property and/or any improvements thereon under the power of eminent domain (either by judgment or settlement in lieu of judgment), the leasehold estate of the Lessee in the Property shall terminate as of the date of the taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by the Lessee to the City and attributable to the Property taken shall be paid by the Lessee up to the date of the taking. If Lessee has pre-paid rent, then Lessee shall be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking.

19. Assumption of Risk. The placement and storage of personal property or other improvements on the Premises by Lessee shall be the responsibility, and at the sole risk of the Lessee.

20. Leasehold Taxes. Lessee shall pay promptly, and before they become delinquent, all taxes on this Lease, merchandise, personal property or improvements on the Premises, whether existing on the Property at the time of execution of this Lease or at any time during the term of this Lease. This includes leasehold excise taxes, assessments, governmental charges, of any kind whatsoever, applicable or attributable to the Property, Lessee's leasehold interest, the improvements or Lessee's use and enjoyment of the Property. Lessee may contest any tax or assessment at its sole cost and expense. At the request of the City, Lessee shall furnish reasonable protection in the form of a bond or other security, satisfactory to the City, against any loss or liability by reason of such contest.

21. Default and Remedies.

A. The Lessee shall be in default of this Lease upon the occurrence of any of the following:

1. Failure to pay annual rent or expenses when due;
2. Failure to comply with any law, regulation, policy or order of any lawful governmental authority;
3. Failure to comply with any other provision of this Lease;
4. Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by the Lessee; or

5. Proceedings are commenced by or against the Lessee under any bankruptcy act or for the appointment of a trustee or receiver of the Lessee's property.

B. A default shall become an Event of Default if the Lessee fails to cure the default within thirty (30) days after the City provides the Lessee with written notice of default, which specifies the nature of the default.

C. Upon an Event of Default, the City may terminate this Lease and remove the Lessee by summary proceedings or otherwise. The City may also, without terminating this Lease, relet the Property on any terms and conditions as the City in its sole discretion may decide are appropriate. If the City elects to relet, rent received by it shall be applied: (i) to the payment of any indebtedness other than rent due from the Lessee to the City; (ii) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by the City and applied to the Lessee's future rent as it becomes due. The Lessee shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. The City's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless the City gives a written notice of termination to the Lessee or termination is decreed by legal proceedings. The City may, at any time after reletting, elect to terminate this Lease for the previous Event of Default.

22. Disclaimer of Quiet Enjoyment. This Lease is subject to all valid recorded interests of third parties, as well as the rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. The City believes that its grant of this Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect the Lessee's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. The Lessee and City expressly agree that the Lessee shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, the City expressly disclaims and the Lessee expressly releases the City from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of the City and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands and shorelands. In the event that the Lessee is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, the Lessee's rent obligations shall abate as of the date of the

partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

23. Termination. In the event Lessee defaults in the performance of any of the terms, provisions, covenants and conditions to be kept, observed or performed by Lessee, and such default is not corrected within thirty (30) days after receipt of notice thereof from Lessor, or such shorter period as may be reasonable under the circumstances; or if Lessee shall abandon, desert, vacate or otherwise leave the Premises; then, in such event, Lessor, at its option, may terminate this Lease together with all of the estate, right, title or interest thereby granted to or vested in Lessee, by giving notice of such election at least twenty (20) days prior to the effective date thereof, and as of such effective date, this Lease and all of the estate, right, title and interest thereby granted to or vested in the Lessee shall then cease and terminate, and Lessor may re-enter the Premises using such force as may be required.

Lessor shall not be in breach of any obligation to perform under this Lease unless Lessor fails to perform an obligation within a reasonable time, which time shall not extend more than thirty (30) days after notice by the Lessee to Lessor specifying the particular obligation that Lessor has failed to perform; PROVIDED, HOWEVER, that if the Lessor is informed by the Lessee in advance that the nature of the remedial action requires more than thirty (30) days for performance, the Lessor agrees to the additional time and the Lessee performs within the additional time specifically granted by the City, then the Lessee shall not be in default.

If this Lease shall be terminated as herein provided, the Lessor may immediately or at any time thereafter reenter the Premises and remove any and all persons and property there from, by any suitable proceeding at law or otherwise, without liability therefore, and reenter the Premises, without such reentry diminishing Lessee's obligation to pay rental for the full term hereof, and Lessee agrees to pay Lessor any deficiency arising from reentry and reletting of the Premises at a lesser rental than provided herein. Lessor shall apply the proceedings of any reletting first to the payment of such reasonable expenses as Lessor may have incurred in recovering possession of the Premises, and removing persons and property there from, and in putting the same in good order or condition or preparing or altering the same for reletting, and all other expense incurred by Lessor for reletting the Premises; and then to Lessee's obligation to pay rental.

24. Notices. All notices required or desired to be given under this lease shall be personally served or given by mail. If mailed, they may be sent by certified mail to the following respective address:

To the City: City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

To the Lessee: Philip T. Stanley  
602 North C Street  
Tacoma, Washington 98403

25. Assignment and/or Subletting. Lessee shall not, under any circumstances whatsoever, assign or sublet this Lease or any part of the Premises, unless the Lessee has obtained the Lessor's prior written agreement to such assignment or subletting. The Lessor's agreement to such assignment or subletting shall be at the Lessor's sole discretion. In determining whether to consent, the City may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge or otherwise affect the liability of the Lessee. If Lessee is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Lessee shall be deemed to be an assignment of this Lease. If the Lessee is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in the Lessee shall be deemed an assignment of this Lease. The acceptance by the City of the payment of rent following assignment or transfer shall not constitute any assignment or transfer.

26. Terms of Subleases. All subleases shall be submitted to the City for approval and shall meet the following requirements:

- A. The sublease shall be consistent with and be subject to all the terms and conditions of this Lease;
- B. The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- C. The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- D. The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by the City, surrender or for any other reason;
- E. The subtenant shall receive and acknowledge receipt of a copy of this Lease;

- F. The sublease shall prohibit prepayment to the Lessee by the subtenant of more than one month's rent;
- G. The sublease shall identify the rental amount to be paid to the Lessee by the subtenant;
- H. The sublease shall confirm that there is no privity of contract between the subtenant and the City;
- I. The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and
- J. The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.
27. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their heirs and assigns.
28. Employees and/or Agents. The employees or agents of the Lessee shall not be considered employees or agents of the Lessor.
29. Entire Agreement. This document contains the entire and integrated agreement of the parties and may not be modified except in writing signed and acknowledged by both parties.
30. Dispute Resolution, Legal Fees and Costs. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Lease which cannot be resolved between the parties within a reasonable period of time, 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 party's expenses and reasonable attorney's fees.
- In addition, the Lessee agrees to pay all of the Lessor's attorneys' fees and costs necessitated by the Lessee's failure to comply with any of the provisions of this Agreement, including but not limited to notices, legal fees and costs arising from third party actions against the Lessor arising from acts or omissions of the Lessee related to this Agreement. The rights and remedies of the City under this Lease are cumulative and in addition to all other rights and remedies afforded to the City by law or equity or otherwise.
31. Time is of the Essence. Time is of the essence as to each and every provision of this Lease.

32. Discrimination Prohibited. The Lessee agrees not to discriminate based upon race, color, religion, creed, national origin, sex, age, handicap, membership in a class (such as unmarried mothers or recipients of public assistance), in all activities relating to the Lessee's use of the Premises.

33. No Relationship. In no event shall the Lessor be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of Lessee or any party associated with Lessee in the conduct of Lessee's business or otherwise. This Lease does not make Lessee the agent or representative of the City for any purpose whatsoever.

34. Non-Waiver of Breach. The failure of either party to insist on 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.

35. Severability. If any section or provision of this Lease shall be held by a court of competent jurisdiction to be unenforceable, this Lease shall be construed as though such section or provision had not been included in it, and the remainder of the Lease shall be enforced as the expression of the parties' intentions. If any section or provision of this Lease is found to be subject to two constructions, one of which would render such section or provision invalid and one of which would render such section or provision valid, then the latter construction shall prevail.

36. Recordation. The City shall record this Lease at the Lessee's cost, with the Pierce County Auditor.

37. Modification. Any modification of this Lease must be in writing and signed by the parties. The City shall not be bound by any oral representations or statements.

#### SECTION IV ENVIRONMENTAL LIABILITY/RISK ALLOCATION

38. Environmental Liability/Risk Allocation.

A. Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.* and Washington's Model Toxic Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

B. Use of Hazardous Substances. Lessee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed,

transported, handled, released or disposed of in, on, under or above the Property, except in accordance with applicable laws.

C. Current Conditions, Duty of Utmost Care and Duty to Investigate. The City makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under or above the Property. With regard to any Hazardous Substances that may exist in, on, under or above the Property, the City disclaims any and all responsibility to perform investigations, or to review any City records, documents or files, or to obtain or supply any information to the Lessee.

The Lessee shall use the utmost care with respect to both Hazardous Substances in, on under or above the Property, and any Hazardous Substances that come to be located in, on, under or above the Property during the term of this Agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection includes, but is not limited to:

1. Lessee shall not undertake any activities that will cause, contribute to or exacerbate contamination on the Property;
2. Lessee shall not undertake any activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;
3. Lessee shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
4. If requested, the Lessee shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
5. If requested, the Lessee shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. The Lessee's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.

It shall be the Lessee's obligation to gather sufficient information concerning the Property and the existence, scope and location of Hazardous Substances on the Property, or adjoining Property, that allows the Lessee to effectively meet its obligations under this lease.



D. Notification and Reporting. The Lessee shall immediately notify the City if the Lessee becomes aware of any of the following:

1. A release or threatened release of Hazardous Substances in, on, under or above the Property, any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Property;

2. Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under or above the Property, any adjoining property subject to use by the Lessee in conjunction with its use of the Property;

3. Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property or any other property subject to use by the Lessee in conjunction with its use of the Property;

4. Any lien or action with respect to any of the foregoing; or

5. Any notification from the U.S. Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

Upon request, the Lessee shall provide the City with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for the Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development Permit.

39. Indemnification -- Hazardous Substances.

A. The Lessee shall fully indemnify, defend and hold the City harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, clean-up costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs and expenses (including attorney's fees and disbursements), that arise out of or are in any way related to:

1. The use, storage, generation, processing, transportation, handling or disposal of any Hazardous Substance by the Lessee, its subtenants, contractors, agents, employees, guests, invitees or affiliates in, on, under or above the Property, any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Property, during the Term of this Lease or during any time when the Lessee occupies or occupied the Property or any such other property;

2. The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under or above the Property, any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when the Lessee occupies or occupied the Property or any such other property, and as a result of:

(i) Any act or omission of the Lessee, its subtenants, contractors, agents, employees, guests, invitees or affiliates; or,

(ii) Any foreseeable act or omission of a third party unless the Lessee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

3. In addition to the indemnifications provided in this Section, the Lessee shall fully indemnify the City for any and all damages, liabilities, costs or expenses (including attorney's fees and disbursements) that arise out of or are in any way related to the Lessee's breach of the obligations of this Section. This obligation is not intended to duplicate the indemnity provided within this Section, and applies only to damages, liabilities, costs or expenses that are associated with a breach of this Section and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances. This Indemnification Section shall survive termination or expiration of this Lease Agreement.

40. Cleanup. If a release of Hazardous Substances occurs in, on, under or above the Property, or any other City-owned property, arising out of any action, inaction, or event described or referred to in Section ~~17~~<sup>38</sup> above, the Lessee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. The Lessee's obligation to undertake a cleanup under this Section ~~18~~ shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. The Lessee shall also be solely responsible for all cleanup, administrative and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection ~~17~~ above. The Lessee may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) any cleanup plans shall be submitted to the City for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and the Lessee must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by the City that the voluntary cleanup complies with any laws or with the provisions of this Lease.

41. Sampling by City, Reimbursement and Split Samples.

A. The City may conduct sampling, tests, audits, surveys or investigations ("Tests") of the Property at any time to determine the existence, scope or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Lessee in conjunction with its use of the Property, or any natural resources. If such tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described to referred to in Section ~~17~~ or ~~18~~ above, the Lessee shall promptly reimburse the City for all costs associated with such tests.

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B. The City's ability to seek reimbursement for any tests under this Section shall be conditioned on the City providing the Lessee with written notice of its intent to conduct any tests at least thirty (30) calendar days prior to undertaking such tests, unless such tests are performed in response to an emergency situation in which case the City shall only be required to give such notice as is reasonably practical.

C. The Lessee shall be entitled to obtain split samples of any test samples obtained by the City, but only if the Lessee provides the City with written notice requesting such samples within twenty (20) calendar days of the date the Lessee is deemed to have received notice of the City's intent to conduct any non-emergency tests. The additional cost, if any, of split samples shall be borne solely by the Lessee. Any additional costs incurred by the City by virtue of the Lessee's split sampling shall be reimbursed to the City within thirty (30) calendar days after a bill with documentation for such costs is sent to the Lessee.

D. Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection ~~19(B)~~ above, either party to this Lease shall provide the other party with validated final data, quality assurance/ quality control information, chain of custody information, associated with any tests of the Property performed by or on behalf of the City or the Lessee. There is no obligation to provide any analytical summaries of expert opinion work product.

38 (D)

42. Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Sections ~~16, 17, 18~~ and ~~19~~. With respect to those environmental liabilities covered by the indemnification provisions of Section ~~17~~, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Property, that either party may have against the other under federal, state or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity or defense either party may have against third

38, 39, 40

41

38

parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities and defenses. The allocations of risks, liabilities and responsibilities set forth above do not release either party from or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year below written.

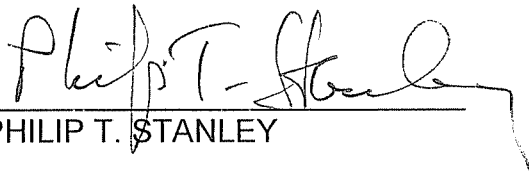
DATED this 16 day of MAY, 2007.

LESSOR:

CITY OF GIG HARBOR

\_\_\_\_\_  
Charles L. Hunter, Mayor

LESSEE:

  
\_\_\_\_\_  
PHILIP T. STANLEY

ATTEST:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol A. Morris, City Attorney

State of Washington     )  
   ss.  
 County of Pierce        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Charles L. Hunter, to me known to be the Mayor of the City of Gig Harbor, a Washington municipality, that he executed the foregoing instrument, and acknowledged that the said instrument to be the free and voluntary act and deed of said municipality, for the uses and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

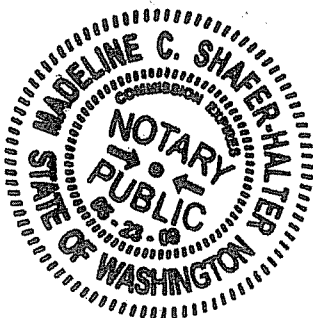
WITNESS my hand an official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
 \_\_\_\_\_  
 (print name)  
 NOTARY PUBLIC for the State of  
 Washington, residing at \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

State of Washington     )  
   ss.  
 County of Pierce        )

On this 16<sup>th</sup> day of May, 2007, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Philip T. Stanley, to me known to be the lessee, that he executed the foregoing instrument, and acknowledge that the said instrument to be the free and voluntary act and deed of said organization, for the uses and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand an official seal hereto affixed the day and year first above written.



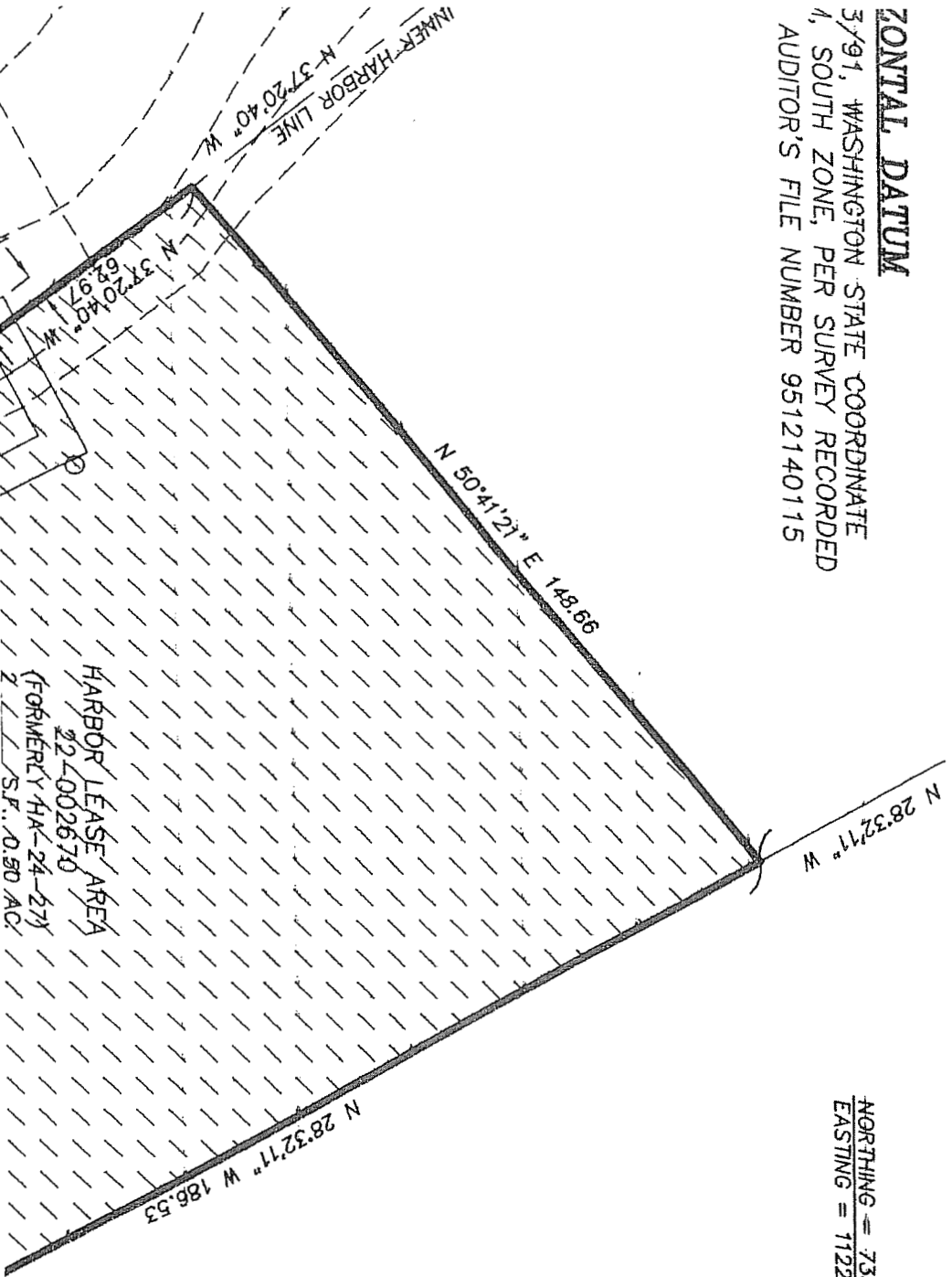
Madeline C. Shafer-Halter  
 \_\_\_\_\_  
 MADELINE C. SHAFER-HALTER  
 (print name)  
 NOTARY PUBLIC for the State of  
 Washington, residing at Allyn WA  
 My commission expires: 5-23-09

# AMENDED AQUATIC LEASE NO. 22-002670

ON OF THE NW1/4 OF THE NE1/4 OF  
 TOWNSHIP 21 NORTH, RANGE 2 E., W.M.  
 WIERCE COUNTY, WASHINGTON

## HORIZONTAL DATUM

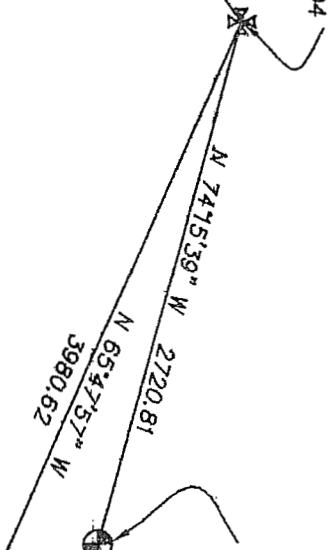
3/91, WASHINGTON STATE COORDINATE  
 4, SOUTH ZONE, PER SURVEY RECORDED  
 AUDITOR'S FILE NUMBER 9512140115



HARBOR LEASE AREA  
 22-002670  
 (FORMERLY HA-24-27)  
 2 A.C. / S.F.. 0.50 AC.

NORTHING = 735278.37  
 EASTING = 1122361.06

FD, BRASS MON.  
 NE COR, SEC  
 8-21-2E  
 Y.L.V. = 2004



NORTHING =  
 EASTING = 71

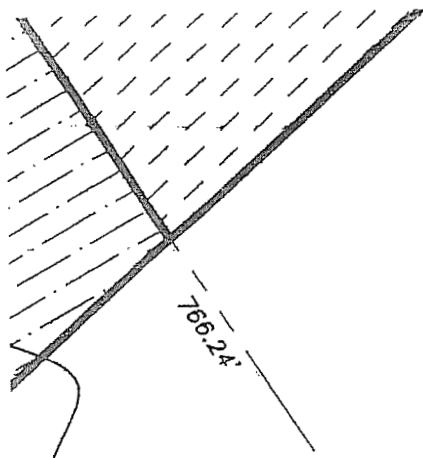
TIES TO  
 COORDINATE

## REFERENCE SURVEYS

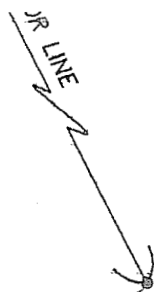
A.F.N. 9512140115 AMENDED PLAT OF GIG  
 A.F.N. 8504170121 RECORD OF SURVEY

VERTICAL DATUM

VERTICAL DATUM = M

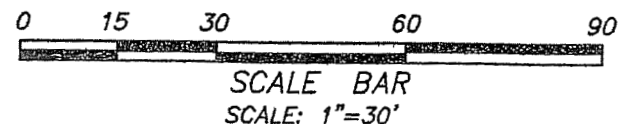


CLASS TIDELANDS  
AN ENTERPRISES  
— S.F., 0.17 AC.



MOST SOUTHERN POINT  
(PER AMENDED PLAT OF GIG  
HARBOR TIDELANDS AND  
HARBOR LINES A.F.N.  
9512140115)

MOST SOUTHERN POINT  
(PER AMENDED PLAT OF GIG  
HARBOR TIDELANDS AND  
HARBOR LINES A.F.N.  
9512140115)



GOV'T. MEANDER LINE

1/2" I.P.

041103LEASE-1.DWG 05-12-2005

SHEET 1 OF 2

**Anton Land Surveying, Inc.**

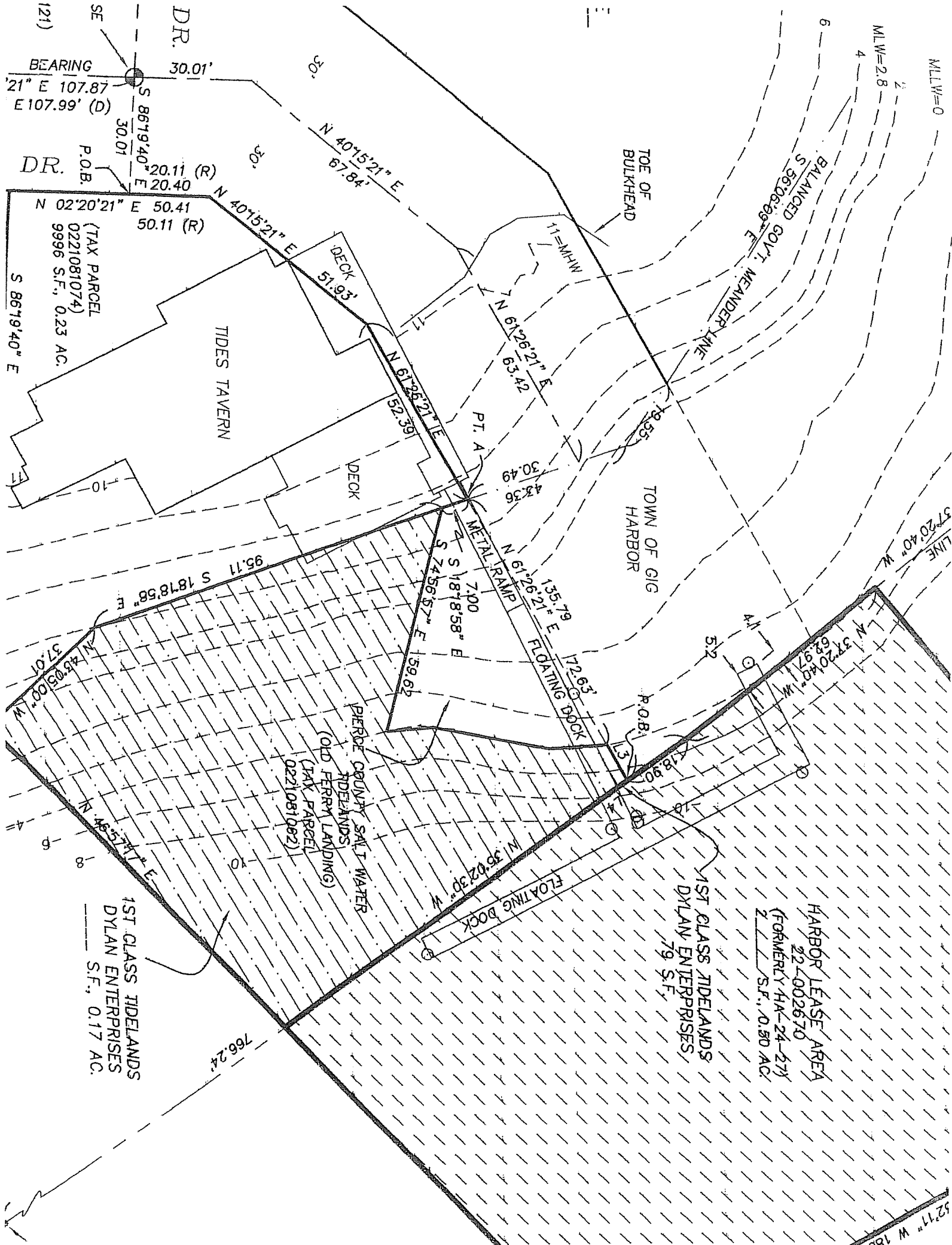
P.O. BOX 249

GIG HARBOR, WASHINGTON 98335

PHONE (253) 858-8106 / FAX 858-7466

RECORD OF SURVEY FOR & REQUESTED BY  
*D Y L A N E N T E R P R I S E S*  
IN A PORTION OF THE NW1/4 OF THE NE1/4 OF  
SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 E., W.M.  
PIERCE COUNTY, WASHINGTON

DRAWN JEC	DATE 01-17-2005	FIELD BOOK 308
CHECKED GAP	SCALE 1" = 30'	JOB NUMBER 041103



DR. 30.01'  
 BEARING 21° E 107.87'  
 E 107.99' (D)  
 S 86°19'40"  
 30.01'

DR. P.O.B.  
 N 02°20'21" E 50.41  
 E 50.11 (R)  
 (TAX PARCEL 0221081074) 9996 S.F., 0.23 AC.  
 S 86°19'40" E

TIDES TAVERN

DECK 51.93'

DECK

PT. A

METAL RAMP

700

S 74°56'57" E 59.82'

S 18°18'38" E

N 61°26'21" E 135.79'

N 61°26'21" E 172.63'

N 61°26'21" E 63.42'

N 61°26'21" E 63.42'

N 61°26'21" E 63.42'

TOE OF BULKHEAD

TOWN OF GIG HARBOR

P.O.B.

P.O.B.

P.O.B.

P.O.B.

P.O.B.

P.O.B.

BALANCED GOVT MEANDER LINE

11=MHW

135.79'

172.63'

63.42'

63.42'

63.42'

63.42'

HARBOR LEASE AREA  
 22,002,670  
 (FORMERLY HA-24-27)  
 2 S.F., 0.50 AC.

1ST CLASS TIDELANDS  
 DYLAN ENTERPRISES  
 79 S.F.

1ST CLASS TIDELANDS  
 DYLAN ENTERPRISES  
 S.F., 0.17 AC.

PIERCE COUNTY SALT WATER  
 TIDELANDS  
 (OLD FERRY LANDING)  
 (TAX PARCEL 0221081082)

MLW=2.8  
 4  
 6

LINE 37°20'40" W

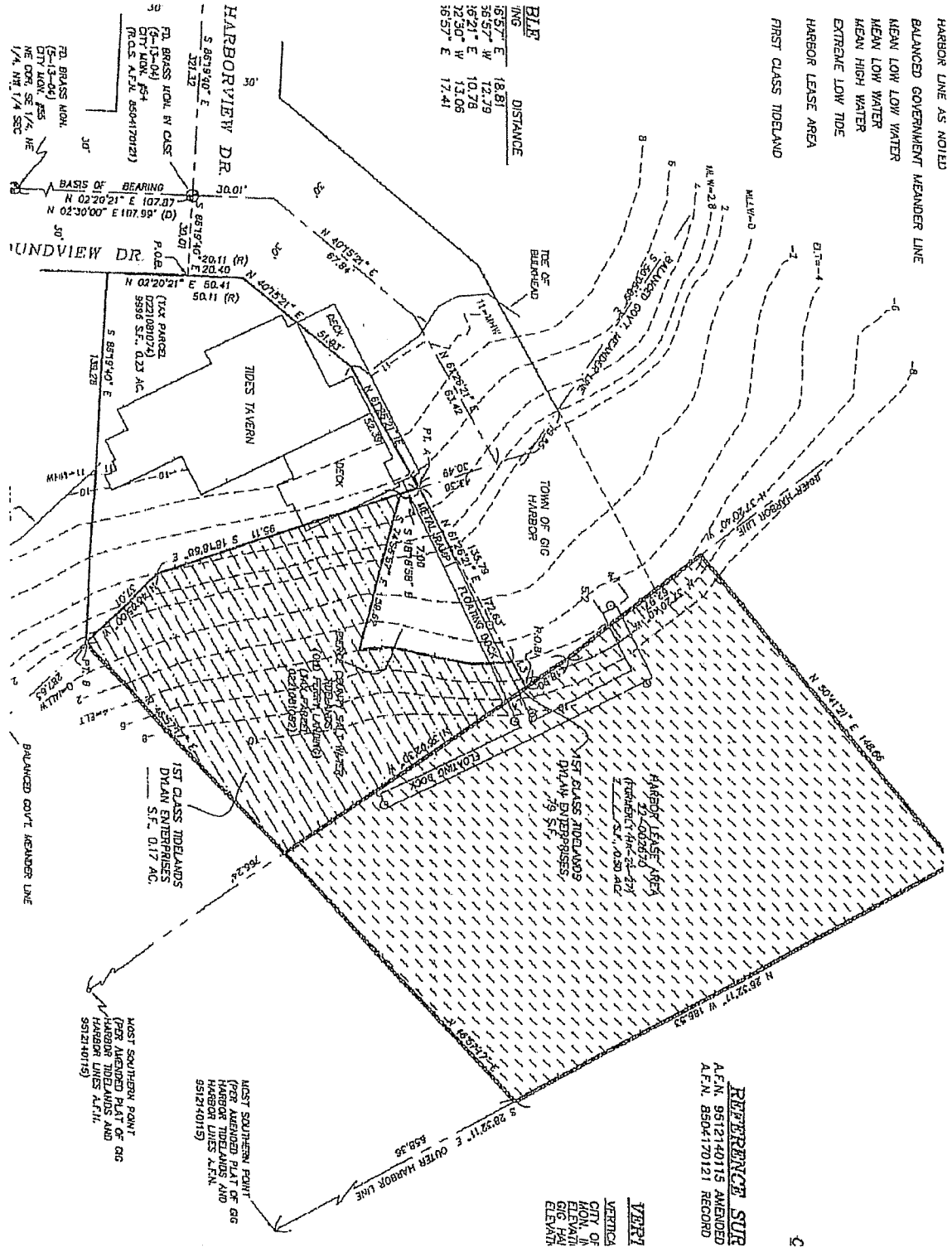
52°11" W 188.5'



h

HARBOR LINE AS NOTED  
 BALANCED GOVERNMENT MEANDER LINE  
 MEAN LOW WATER  
 MEAN LOW WATER  
 MEAN HIGH WATER  
 EXTREME LOW TIDE  
 HARBOR LEASE AREA  
 FIRST CLASS TIDE LAND

Bearing	Distance
N 85° 57' E	18.81
S 85° 57' W	12.79
S 62° 21' E	10.78
N 23° 30' W	13.06
S 85° 57' E	17.41



**REFERENCE SUR**  
 A.E.N. 9512140115 AMENDED  
 A.E.N. 8504170121 RECORD

**VER-1**  
 VERNEA  
 CITY OF  
 MON. IN  
 ELEVATION  
 GIG HARBOR  
 ELEVATION

**MOST SOUTHERN POINT**  
 (PER AMENDED PLAT OF GIG HARBOR TIDE LANDS AND HARBOR LINES A.E.N. 5912140115)

**MOST SOUTHERN POINT**  
 (PER AMENDED PLAT OF GIG HARBOR TIDE LANDS AND HARBOR LINES A.E.N. 5912140115)

**HARBORVIEW DR.**  
 S 85° 57' 40" E 371.12

**DUNDVIEW DR.**  
 N 02° 20' 21" E 107.87  
 N 02° 30' 00" E 117.99 (D)

**PL. BRASS MON. BY CASE**  
 (5-13-04)  
 CITY MON. #24  
 (C.S. A.F.N. 8504170121)

**PL. BRASS MON.**  
 (5-13-04)  
 CITY MON. #55  
 NE COR. SE 1/4, NE 1/4, NE 1/4 SEC.

**TIDES TAVERN**

**TOWN OF GIG HARBOR**

**ROCK BLIND**

**BLANKED GOVT. MEANDER LINE**

**HARBOR LEASE AREA**  
 12,400 S.F.  
 (FRAGMENT 44-24-24)  
 S.F. 1,030 AC

**FIRST CLASS TIDE LANDS**  
 DYLAN ENTERPRISES  
 S.F. 0.17 AC.

**PL. BRASS MON. BY CASE**  
 (5-13-04)  
 CITY MON. #24  
 (C.S. A.F.N. 8504170121)

**PL. BRASS MON.**  
 (5-13-04)  
 CITY MON. #55  
 NE COR. SE 1/4, NE 1/4, NE 1/4 SEC.

**HARBORVIEW DR.**  
 N 02° 20' 21" E 107.87  
 N 02° 30' 00" E 117.99 (D)

**DUNDVIEW DR.**  
 N 02° 20' 21" E 107.87  
 N 02° 30' 00" E 117.99 (D)

**TIDES TAVERN**

**TOWN OF GIG HARBOR**

**ROCK BLIND**

**BLANKED GOVT. MEANDER LINE**

**HARBOR LEASE AREA**  
 12,400 S.F.  
 (FRAGMENT 44-24-24)  
 S.F. 1,030 AC

**FIRST CLASS TIDE LANDS**  
 DYLAN ENTERPRISES  
 S.F. 0.17 AC.

**PL. BRASS MON. BY CASE**  
 (5-13-04)  
 CITY MON. #24  
 (C.S. A.F.N. 8504170121)

**PL. BRASS MON.**  
 (5-13-04)  
 CITY MON. #55  
 NE COR. SE 1/4, NE 1/4, NE 1/4 SEC.

**HARBORVIEW DR.**  
 N 02° 20' 21" E 107.87  
 N 02° 30' 00" E 117.99 (D)

**DUNDVIEW DR.**  
 N 02° 20' 21" E 107.87  
 N 02° 30' 00" E 117.99 (D)



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR HUNTER AND CITY COUNCIL,**  
**FROM: JOHN P. VODOPICH, AICP**  
**SUBJECT: COMMUNITY DEVELOPMENT DIRECTOR**  
**DATE: TIDELAND EASEMENT - PETER STANLEY**  
**NOVEMBER 13, 2006**

**INFORMATION/BACKGROUND**

The City Council, on March 14, 1988 granted Dylan Enterprises, dba the Tides Tavern (Peter Stanley), a twenty (20) year easement for floats and docks which encroach on the City Tidelands. This easement will expire on May 12, 2008.

Mr. Stanley is in the process of entering into a new lease with the Washington State Department of Natural Resources (DNR) for tidelands between the inner and outer harbor line in front of the Tides Tavern (Harbor Lease Area No. 22-002670). As part of this process, DNR is requiring that Mr. Stanley obtain a new easement from the City that runs until March 1, 2017 at a minimum.

Mr. Stanley has requested that the City Council renew the Tideland Easement for a period of twenty (20) years.

The City Attorney has recommended that the Council not execute the same easement, but proposes that a lease agreement would be the appropriate vehicle for this request. The City may grant private use of public property, but the City Attorney does not recommend that the City do it for free as this is a gift of public funds. The "consideration" described in the old (1988) easement is not consideration; it is just a usual requirement of a grant of an easement.

In checking with the Washington State Department of Natural Resources (DNR), staff found that the rent for 2007-2008 billing year for Mr. Stanley's 31,331 square foot DNR lease area is \$0.46 per square foot.

In addition to the encroachment over the City owned tidelands, there is a small storage shed that encroaches on the City right-of-way. As shown on the survey provided by Mr. Stanley the deck/walkway is estimated to be 440 square feet and the portion of the floating dock that encroaches onto City tidelands is estimated to be 34 square feet.

**RECOMMENDATION**

If the Council desires to consider leasing this tideland area to Dylan Enterprises, I would suggest that the City Attorney be directed to prepare a lease agreement.

## Peter Stanley

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**From:** WRIGHT, WYNNAE [WYNNAE.WRIGHT@dnr.wa.gov]  
**Sent:** Monday, December 11, 2006 5:06 PM  
**To:** Peter Stanley  
**Subject:** RE: Tides Tavern

Hi Peter,

I think they are basing their calculation off next years rent since that is what the new lease from both the City and DNR will cover. Your new lease with DNR will start March 1, 2007 and will be based on the Thornton survey recorded on 09/13/2005. The square footage on that survey shows 31,331 square feet of lease area (5,743 of tideland and 25,588 of harbor area). Your rent for March 1, 2007- Feb 28, 2008 is going to be: \$12,666.66 plus leasehold tax of \$1626.40 for a total of \$14,293.06. ( $\$14,293.06 / 31,331 = \$0.456/\text{square foot}$ )

I don't think the City should count the leasehold tax into the calculation, especially if they are going to be charging leasehold tax. It should be based on the base rent of \$12,666.66 which would equal=  $\$0.40/\text{square foot}$ .

PS- Also remember you are paying quarterly payments so your rent will be billed at \$3,573.27 every 3 months.

I attached the rent calculation sheet FYI. Please feel free to call or email me if you have any questions.  
206-909-1304

Thanks,  
Wynnae

---

**From:** Peter Stanley [mailto:pstanley@tidestavern.com]  
**Sent:** Monday, December 11, 2006 3:58 PM  
**To:** WRIGHT, WYNNAE  
**Subject:** Tides Tavern

Hi Wynnae:

I have received a draft lease from the city attorney, and met with my attorney today to review it. We have some changes to propose and some housekeeping. The next city council meeting is not until January 8<sup>th</sup>, 2007, and the lease must be finalized and signed by Jan. 2, 2007 so it can be scheduled for the Jan. 8<sup>th</sup> city council meeting.

The city claims that I am leasing 31,331 square feet from the DNR, and that the per square foot lease rate is \$0.46 per square foot. That would make it \$14,421.26 per year rent; is that correct?

Peter

5/15/2007

EXHIBIT A  
LEGAL DESCRIPTION



**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Gig Harbor BoatShop Lease agreement at the Eddon Boatyard Building on Harborview Drive.

**Proposed Council Action:**

Authorize the Mayor to sign a 20-year lease Agreement with Gig Harbor Boatshop at the Eddon boatyard building on Harborview Drive.

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** June 25, 2007

**Exhibits:** Lease Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** RJK 6/21/07

**Approved as to form by City Atty:** \_\_\_\_\_

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** RJK 6/21/07

Expenditure	Amount	Appropriation	
Required: \$1 million	Budgeted: \$1 million	Heritage Grant	Required: \$0

**INFORMATION / BACKGROUND**

When the City acquired the Eddon Boat park property in 2004, the site included a building that has been historically used for the construction of boats. This building still exists on the property, is vacant, and is need of repair.

In 2006 the City sent out a request for proposals for potential uses for the building. Of the proposals that came in, the City Council selected Gig Harbor BoatShop's (GHB) proposal. GHB proposes to use the building as a place for historical boat building and maritime education for the public's benefit. The following list summarizes GHB's proposed activities in the building:

1. Boat building, repair, and restoration workshops and apprenticeship programs, (e.g. building small crafts, oars, and models, or participation in on-going large-vessel restoration or building projects). Such activities are to be limited to the confines of the building described in this lease.
2. Maritime skills programs (e.g. navigation, power vessel handling, marine photography)
3. Public presentations (e.g. skills demonstrations)
4. Craft-on-the-water skills and field trip programs
5. Vessel documentation projects
6. School outreach programs (e.g. tours, apprentice-for-a-day)

In addition, GHB proposes to provide the following for public access and benefit:

1. Year round interpretive signs and displays
2. Observation area(s) where the public can view boat building and educational activities from the interior of the building, such as a mezzanine or raised viewing platform. Such observation areas shall be open to the public when boat building and educational activities are occurring
3. Public presentations (e.g. boat building skills demonstrations) – at least one per year
4. Retail sales of items related to maritime heritage activities

In return for GHB's services for public access and enjoyment as well as restoring and maintaining the site's maritime heritage, the attached lease would allow GHB to occupy the building for 20 years at one dollar per year. A summary of the terms of the lease is as follows:

### **Term**

20 years, ending June 30, 2027

### **Premises Included in the Lease**

The leased portion includes what is commonly known as the Eddon Boat Building. The lease also includes the non-exclusive right to use the parking areas and driveway. When/if they become available, the restrooms in the adjacent house will be available for use by GHB and its program participants. Until these restrooms become available, the City will provide portable restroom facilities.

### **Consideration**

GHB will provide the public services listed above and pay \$1 per year plus all utilities and taxes.

### **Maintenance**

GHB will be responsible for incidental maintenance. HVAC/Heating maintenance, fire sprinkler system maintenance, plumbing, electrical, pest control, roof maintenance, exterior painting, foundation, furnace maintenance and any general maintenance repairs the sum for which exceeds \$1,000 annually will be paid by the City.

### **Building Renovation and Restoration**

The City will use the proceeds of the \$1 million heritage grant to renovate the building. The City will also construct a "secondary impervious containment barrier" by the end of October to separate renovation activities from the environmental cleanup.

### **Future Negotiation for Additional Portions of the Property**

Once the environmental cleanup is complete, GHB may want to request that other portions of the Eddon Boat property, such as the dock and marine railways, be added to the lease. The lease does not commit the City or GHB to add additional portions, but the lease does say that if the City and GHB fail to agree to the terms of leasing additional portions of the property, then GHB may terminate the lease.

### **FISCAL CONSIDERATION**

This year the City received a state heritage grant of \$1 million to renovate the building. The lease does not commit the City to spend additional funds beyond the grant for renovation. The assumption here is that the City will work within the \$1 million budget; therefore, the most necessary improvements will take place first (code compliance, fire sprinklers, etc.), and any additional improvements that bring the cost over the \$1 million budget would not get done.

The City will also be responsible for major system maintenance (HVAC, roof, etc.), plus any other repairs over \$1,000, and the City needs to budget accordingly. However, much of these costs would have been incurred regardless of whether GHB occupied the building.

As stated previously, GHB will be responsible for incidental building maintenance plus utilities and taxes.

### **BOARD OR COMMITTEE RECOMMENDATION**

N/A

### **RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to sign a 20-year lease agreement with Gig Harbor Boatshop at the Eddon boatyard building on Harborview Drive.

**LEASE AGREEMENT  
BETWEEN THE CITY OF GIG HARBOR  
AND GIG HARBOR BOATSHOP**

THIS LEASE AGREEMENT, entered into by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter referred to as "Lessor" or the "City") and the Gig Harbor BoatShop, a State of Washington 501(C)(3) non-profit corporation (hereinafter referred to as "Lessee" or the "GHB").

**WITNESSETH:**

WHEREAS, the City owns the property located at 3805 Harborview Drive, Gig Harbor, WA (hereinafter referred to as the "Property") which includes the building commonly known as the Eddon Boat Building; and

WHEREAS, the Eddon Boat Building was used in the past for boatbuilding; and

WHEREAS, GHB has proposed that it lease the Eddon Boat Building to perpetuate the historic function of the boatyard; and

WHEREAS, GHB also proposes to use the Eddon Boat Building as a gathering place where maritime history comes alive through direct experience and where the historical and contemporary working waterfront is enjoyed, preserved and passed along to future generations; and

WHEREAS, GHB proposes to use the Eddon Boat Building to provide opportunities for the public to experience artisan and vocationally-based maritime educational programming; and

WHEREAS, the City reserves the right to use the facility at no cost for special events in coordination and consideration of GHB's schedule of events and programming; and

WHEREAS, the benefits derived by the public from GHB's activities (as specifically detailed in Section 5 herein) are sufficient that the City is willing to lease the Premises to the GHB for one dollar per year; and



WHEREAS, there is an ongoing environmental remediation action proceeding on the remainder of the Eddon Boat Property not included in the portion of the Property to be leased by GHB, and such remediation must continue unhindered by GHB or any third party; and

WHEREAS, a floor or "impervious secondary containment barrier" must be constructed in the Eddon Boat Building prior to the possession of the premises by GHB so that the activities of GHB do not interfere with the environmental remediation of the entire Property or result in the release of any hazardous substance into the environment; and

WHEREAS, the City has obtained funding from the Washington State Heritage Resource Center for the restoration of the Eddon Boat Building, in an amount not to exceed one million dollars; and

WHEREAS, the City intends to hire consultants to assist in the authentic restoration of the Building, and GHB plans to apply to the City to serve as a consultant for this purpose; and

WHEREAS, given the limitations on the use of the premises as generally described above and more specifically described in the Terms Section of this Lease, the parties hereto agree as follows:

## T E R M S

1. Purpose and Identification of the Premises. The purpose of this Agreement is to lease the portion of the Eddon Boat property outlined on the map marked Exhibit A, which is attached hereto and incorporated herein by this reference. The tax/legal description of the Property is:

Section 05 Township 21 Range 02 Quarter 33 : COM AT MC AT NW COR LOT 7 TH S 41 DEG 03 MIN E 75.21 FT ALG ML TH S 26 DEG 03 MIN E 200 FT TO TRUE POB TH CONT S 26 DEG 03 MIN E 125.5 FT TH S 19 DEG 49 MIN W 79 FT TH S 50 DEG 55 MIN W 162.65 FT TO HWY TH NLY ALG ELY LI HWY TO PT S 54 DEG 48 MIN W FROM POB TH N 54 DEG 48 MIN E 145 FT TO POB TOG/W TDLDS ABUTT

The leased portion includes what is commonly known as the Eddon Boat Building. In addition to the Eddon Boat Building, this Lease shall include the non-exclusive right to use the parking areas and driveway shown on Exhibit A, along with reasonable entry and egress to the Eddon Boat Building. The area shown in the outline in Exhibit A is defined to be the "Premises." The leased area does not include the tidelands adjacent to the Premises.

2. Conditions Precedent to Possession. In the event of the City's inability to deliver possession of the Premises as described herein, neither Lessor nor any of its officers, employees or agents shall be liable for any damage caused thereby.

A. Secondary Impervious Containment Barrier. The City will cause to be constructed the secondary impervious containment barrier in the Eddon Boat Building ("Building") at the City's cost. The full scope, materials, and extent of the barrier will be at the City's sole discretion. The parties acknowledge that the Lessee cannot occupy the Premises, and that Lessee is not entitled to possession of the Premises under this Lease until the City notifies GHB that construction of the barrier has been completed. In the event the secondary impervious containment barrier has not been fully constructed by October 31, 2007, GHB, at its sole option and in its sole discretion, may terminate this Lease Agreement. If GHB chooses to terminate the Lease under this section, this Lease shall be null and void, and neither party shall have any obligation to perform.

Subsequent to the completion of the construction of the barrier, GHB has the right to non-exclusive possession of the Premises, which will begin with the site set-up for its programs. The set-up process may occur simultaneously with the restoration of the Building.

B. Restoration of the Building. The City will be committing to the expenditure of one million dollars (\$1,000,000.00) from the Heritage Grant Fund for the restoration of the Eddon Boat Building. GHB acknowledges that the City has not budgeted, and has no plans to commit any additional funds toward the restoration of the Eddon Boat Building, and that the programs and activities described in Section 5 of this Lease can be accomplished by GHB regardless of additional funding. GHB acknowledges that the City shall be in charge of the restoration, and that during the restoration period, the City's contractors, employees and other authorized personnel shall occupy the Premises. GHB agrees that such restoration activities do not interfere with the purpose of this Lease.

3. Addendum to Lease. GHB desires to lease the remainder of the Eddon Boat Property not included in this Lease. However, at this point in time, the City does not know when the environmental remediation of the remainder of the Property will be complete. Nothing in this Lease obligates the City to complete the remediation, or to accomplish it by any particular date. However, once the remediation is complete, GHB will request that the City Council negotiate an addendum to this Lease to include other portions of the Eddon Boat Property, such as the dock, float, and marine railways, under such terms as the parties may agree upon. If the parties are unable to agree on the terms of an addendum to include other portions of the Eddon Boat Property, then GHB may terminate this existing Lease, after providing the City with 60 days' written notice.

4. Inspection. Other than set forth to the contrary herein, the City makes no representation regarding the condition of the Premises, improvements located on the Premises, the suitability of the Premises for Lessee's permitted use, or the existence of hazardous substances on the Premises. Lessee has inspected the Premises as it exists at the time of the signing of this document and accepts it "as is", provided that the parties hereto recognize that the City will construct the "impervious secondary containment barrier" and that the condition of the Premises will change as a result of the restoration of the building.

5. USE.

A. GHB shall commit to a minimum of 900 hours (one hour equals one hour of programming for one participant) per year to pursue for the public's benefit the interpretation of the historic and contemporary working waterfront/maritime heritage activities that shall include, but not be limited to, any combination of three or more of the following maritime heritage programs (free or for a fee), unless the City otherwise approves other activities.

1. Boat building, repair, and restoration workshops and apprenticeship programs, (e.g. building small crafts, oars, and models, or participation in on-going large-vessel restoration or building projects). Such activities are to be limited to the confines of the building described in this lease.
2. Maritime skills programs (e.g. navigation, power vessel handling, marine photography)
3. Public presentations (e.g. skills demonstrations)
4. Craft-on-the-water skills and field trip programs
5. Vessel documentation projects
6. School outreach programs (e.g. tours, apprentice-for-a-day)

B. GHB will also provide the following for public access and benefit:

1. Year round interpretive signs and displays
2. Observation area(s) where the public can view boat building and educational activities from the interior of the building, such as a mezzanine or raised viewing platform constructed by the City during the restoration. Such observation areas shall be open to the public when boat building and educational activities are occurring.
3. Public presentations (e.g. boat building skills demonstrations) – at least one per year
4. Retail sales of items related to maritime heritage activities.

D. Record keeping. GHB promises to provide the City with a written report and supporting documentation of the activities performed by GHB during the prior year by March 31 of each year. GHB shall review and reevaluate with the City, at 5-year increments, the GHB's performance of the activities described in Subsection A. In the

event that GHB does not perform as required by this section, the City may institute the procedures set forth in Section 25 to demand remedy of the default and terminate the Lease.

6. Rent and Consideration for Lease. GHB's Lease is specifically conditioned on its performance of the activities described in Section 5, "Use", as the consideration for the rent of the Premises, and GHB's failure to timely perform those activities may result in termination of the Lease. The parties acknowledge that the activities described in Section 5 will not be able to begin until the complete restoration of the Building has been accomplished, under the budget established by the City in Section 2(B).

The City agrees to lease the Premises to GHB for one dollar per year, in exchange for GHB's agreement to perform the activities specifically described in Section 5 "Use" above, on the deadlines set forth therein.

7. Term.

A. The term of this Lease shall commence on the date this Lease Agreement is executed by both of the duly authorized representatives of the parties. This Lease shall terminate on June 30, 2027, unless terminated sooner pursuant to the terms and conditions of this Lease. Nothing herein shall obligate the City to enter into any additional Lease Agreements with the Lessee in the future.

B. Hold Over. If the Lessee remains in possession of the Premises after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which hold-over occupancy may be terminated by either party on thirty (30) days' notice.

8. Restrictions on Use. Lessee agrees that the following activities may occur on the Premises and no others and shall be conducted in compliance with all applicable regulations. In the event Lessee desires to conduct an activity that is not identified below, Lessee shall make written application to be able to conduct such activity to the City. The City's decision shall be final.

- a) woodworking
- b) working with modern materials including, but not limited to epoxys, resins, structural cloth, glues and solvents
- c) metalworking
- d) joinery
- e) sanding
- f) rigging
- g) wiring
- h) coating and painting

- i) use of power and hand tools
- j) boatbuilding-related retail sales

The prohibitions in this Section against damage to natural resources, filling, deposition of any unapproved materials, and waste, shall also apply to protect any City, private, or state-owned aquatic lands adjacent to the Premises from any of Lessee's activities related to Lessee's occupation of the Premises. All obligations imposed by this Section on Lessee to cure any violation of the prohibited activities in this Section shall also extend to City, private, or state-owned aquatic lands adjacent to the Premises when the violation arose from the Lessee's activities related to Lessee's occupation of the Premises.

Lessee shall use the Premises only for the purposes and activities identified herein. The use of the Premises by the Lessee shall not be of a religious or partisan political nature. Such use shall be made in a responsible and prudent manner continuously during the terms of the Lease. Lessee shall neither permit on the Premises any act or storage that may be prohibited under standard forms of fire insurance policies, nor use the Premises for any such purpose.

Lessee shall not intentionally cause or permit any damage to the Premises or any other portion of the Property. Lessee shall also not cause or permit any release of a hazardous substance or any filling activity to occur on the Property. This prohibition includes any deposit or spill of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other hazardous substances or pollutants, or other matter in or on the Property, except as approved in writing by the City.

Lessee shall not permit any waste, damage or injury to the Premises, use the Premises for anything that will increase the rate of insurance, maintain anything on the Premises that may be hazardous to life or limb, permit any objectionable odor, permit anything to be done on the Premises or use the Premises in any way that tends to create a public or private nuisance not in keeping with the waterfront commercial zoning, or use or permit the Premises to be used for lodging or sleeping purposes.

9. Conformance with Laws. The Lessee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes and other government rules and regulations regarding its use or occupancy of the Premises. Lessee acknowledges that certain uses relating to boatbuilding may require separate permits from state, local or federal agencies. At the time this Lease was drafted, the definition of "boatbuilding" which would trigger a permit from the Department of Ecology is:

*"A boatyard is a commercial business engaged in the construction, repair and maintenance of small vessels, 85% of which are 65 feet or less in length, or revenues from which constitute more than 85% of gross receipts. Services*

*typically provided include, but are not limited to: pressure washing hulls, painting and coating, engine and propulsion system repair and replacement, hull repair, joinery, bilge cleaning, fuel and lubrication system repair and replacement, welding and grinding of hull, buffing and waxing, marine sanitation device (MSD) repair and replacement, and other activities necessary to maintain a vessel. This includes mobile facilities. Activities that require DOE permitting include operating a boatyard with a discharge of pressure wash water to a sanitary sewer or discharge of stormwater to surface waters”*

Lessee agrees that it will not perform any activity on the Premises without obtaining the necessary permits from the agency(ies) with jurisdiction. Lessee agrees that the performance of such activities without the required permits may cause a breach of this Lease and render the Lessee liable in any resulting enforcement action, which may include penalties, costs or attorney’s fees. The City makes no warranties concerning permit requirements. Lessee is solely responsible for determining permit requirements and conformance with such permits.

10. Environmental Liability/Risk Allocation.

A. Definition. “Hazardous Substance” means any substance which now or in the future becomes regulated or defined under any federal, state or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. 9601 et seq. and Washington’s Model Toxics Control Act (“MTCA”), RCW 70.105D.010 et seq.

B. Use of Hazardous Substances. Lessee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released or disposed of in, on, under or above the Premises, except in accordance with applicable laws.

C. Current Conditions, Duty of Utmost Care and Duty to Investigate. The City makes no representation about the condition of the Property or Premises. The City will provide a copy of Anchor Environmental’s Revised Technical Memo No. 2 (February, 2007) to the Lessee. Hazardous Substances may exist in, on, under or above the Premises. With regard to any Hazardous Substances that may exist in, on, under or above the Property, the City disclaims any and all responsibility to perform investigations, or to review any City records, documents or files, or to obtain or supply any information to the Lessee.

The Lessee shall use the utmost care with respect to both Hazardous Substances in, on under or above the Premises, and any Hazardous Substances that are discovered to be located in, on, under or above the Premises during the term of this Lease, along

with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts and omissions. The obligation to exercise utmost care under this Subsection includes, but is not limited to:

- 1) Lessee shall not undertake any activities that will cause, contribute to or exacerbate contamination on the Property;
- 2) Lessee shall not undertake any activities that damage or interfere with the operation of remedial or restoration activities on the Property under the current Washington State Department of Ecology supervised remedial action or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;
- 3) Lessee shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
- 4) If requested, the Lessee shall allow reasonable access to the Premises by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
- 5) If requested, the Lessee shall allow reasonable access to potentially liable or responsible parties to perform cleanup or investigation activities which require access to the Property and Premises.

It shall be the Lessee's obligation to gather sufficient information concerning the Property and the existence, scope and location of Hazardous Substances on the Property, or adjoining Property, that allows the Lessee to effectively meet its obligations under this Lease. Such obligation shall be met when the Lessee obtains the Anchor Environmental's Revised Technical Memo No. 2 (February, 2007) and the Washington State Department of Ecology final report following completion of remedial actions at the Eddon Boatyard site (as defined by the Department of Ecology).

D. Notification and Reporting. The Lessee shall immediately notify the City if the Lessee becomes aware of any of the following:

- 1) A release or threatened release of Hazardous Substances in, on, under or above the Property, any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Premises;
- 2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under or above the Property, any adjoining property subject to use by the Lessee in conjunction with its use of the Property;
- 3) Any actual or alleged violation of any federal, state or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Premises, or Property, any adjoining property or any other property subject to use by the Lessee in conjunction with its use of the Premises;

- 4) Any lien or action with respect to any of the foregoing; or
- 5) Any notification from the U.S. Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property or concerning alleged permit violations.

Upon request, the Lessee shall provide the City with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for the Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development Permit.

E. Indemnification – Hazardous Substances.

1. The Lessee shall fully indemnify, defend and hold the City harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, clean-up costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs and expenses (including attorney's fees and disbursements), that arise out of or are in any way related to:

(i) The use, storage, generation, processing, transportation, handling or disposal of any Hazardous Substance by the Lessee, its contractors, agents, employees, guests, invitees or affiliates in, on, under or above the Premises or any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Premises, during the Term of this Lease or during any time when the Lessee occupies or occupied the Premises;

(ii) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under or above the Premises or any adjoining property, or any other property subject to use by the Lessee in conjunction with its use of the Premises, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when the Lessee occupies or occupied the Premises or the Property.

2. In addition to the indemnifications provided in this Section, the Lessee shall fully indemnify the City for any and all damages, liabilities, costs or expenses (including attorney's fees and disbursements) that arise out of or are in any way related to the Lessee's breach of the obligations of this Section and Sections 8 and 9 herein. This obligation is not intended to duplicate the indemnity provided within this Section and applies only to damages, liabilities, costs or expenses that are associated with a breach of such Sections and which are not characterized as a release, threatened release or exacerbation of Hazardous Substances. The Lessee and City acknowledge



that this indemnification section is not intended to indemnify the City for any pre-existing conditions or for any discharges related to the City's storm water drainage system or any other third party releases. The City and Lessee anticipate that a final report will be prepared for submittal to the Washington State Department of Ecology following completion of remedial actions at the Eddon Boatyard Site (as defined by Ecology). The content of this final report, along with other available environmental data from environmental investigations performed to date, will be considered, but will not be determinative, in defining pre-existing conditions for purposes of this paragraph. This Indemnification Section 10 shall survive termination or expiration of this Lease Agreement.

F. Cleanup. If a release of Hazardous Substances occurs in, on, under or above the Premises or any other City-owned property arising out of any action or inaction of Lessee, the Lessee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. The Lessee shall also be solely responsible for all cleanup, administrative and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described herein.

G. Sampling by City, Reimbursement and Split Samples. The City may conduct sampling, tests, audits, surveys or investigations ("Tests") of the Premises or the Property at any time to determine the existence, scope or effects of Hazardous Substances on the Premises, the Property, or any adjoining property in conjunction with its use of the Premises, or any natural resources. If such tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action or inaction of Lessee, the Lessee shall promptly reimburse the City for all costs associated with such tests.

11. Assumption of Risk. The placement and storage of personal property on the Premises by Lessee shall be the responsibility, and at the sole risk, of Lessee.

12. Restroom Facilities. The parties acknowledge that the Premises has minimal restroom facilities and they are not ADA compliant and that the Premises restroom facilities cannot be expanded as part of the building-restoration process. Expansion of the existing restroom facilities would detract from the historic nature of the Premises. The parties acknowledge that suitable restrooms will likely be constructed in the house on the Property that will be available for use by GHB and the program participants, but the construction date is not certain. Until such time as suitable restrooms are constructed in the house that are ADA compliant, the City will procure, fund and maintain suitable portable restroom facilities sited on the Property for use by GHB and its program participants.

13. Utilities. Lessee hereby covenants and agrees to pay all charges for heat, electricity, water, sewer, phone, refuse, natural gas, cable and all other public utilities, which shall be used in or charged against the Premises during the term of this Lease.

14. Leasehold Taxes. Lessee shall pay promptly, and before they become delinquent, the leasehold excise tax and all other taxes on merchandise and personal property, whether existing on the Premises at the time of the execution of this Lease or at any time during the term of this Lease.

15. Liens. Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall not suffer or permit any lien to be filed against the Premises or any part thereof or the Lessee's leasehold interest, by reason of work, labor, services or materials performed or supplied to Lessee or anyone holding the Premises or any part thereof under the Lessee. If any such lien is filed against the Premises, Lessee shall hold the Lessor harmless from any loss by reason of the lien and shall cause the same to be discharged of record within thirty (30) days after the date of filing of same.

16. Indemnification and Waiver. In addition to the indemnification obligations in Section 10 herein, Lessee agrees to defend, indemnify, and hold harmless the Lessor, its officers, elected officials, employees and volunteers harmless from any and all claims, injuries, penalties, damages, losses or suits, including costs and attorney's fees, arising out of or in connection with the performance of this Lease or Lessee's enjoyment of the Premises, except for injuries or damages caused solely by the negligence of the Lessor, its officers, officials, employees and volunteers. In the event of liability for injuries or damages which are the result of the concurrent negligence of the Lessee and Lessor, each party shall be responsible only to the extent of its own negligence.

In addition to the above, Lessee shall provide a waiver of right of subrogation releasing and relieving the Lessor from responsibility and waiving the entire claim or right of recovery for any loss or damages to the Premises, any of Lessee's improvements placed on the Premises, any personal property located anywhere on the Premises, or any other loss sustained by the Lessee, including earlier termination of this Lease by destruction of the Premises through natural causes or any other reason, and whether any such loss is insured or not and irrespective of the cause of such loss.

Lessee hereby agrees and acknowledges that any loss of Lessee's property, including personal property or any improvements made to the Premises by the Lessee, is the responsibility of the Lessee. If, for any reason, the Lessee's personal property/improvements or the leased improvements on the Premises are destroyed or otherwise become uninhabitable, Lessor shall not be obligated to make any payments to Lessee related to such loss.

It is further specifically and expressly understood that the indemnification provided

herein and in Section 10 constitute Lessee's waiver of immunity under RCW Title 51, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section and Section 10 survive the expiration or termination of this Lease.

17. Insurance Purchased by Lessee. At its own expense, the Lessee shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Section. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to the City. If non-admitted or non-rated carriers are used, the policies must comply with chapter 48.15 RCW.

A. Types of Required Insurance.

(1) Commercial General Liability Insurance. The Lessee shall procure and maintain Commercial General Liability Insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of the Lessee's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

*Description*

Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

The City may impose changes in the limits of liability:

- (i) Upon a material change in the condition of the Premises or any improvements;
- (ii) Upon any breach of the Sections in this Lease relating to Hazardous Substances;
- (iii) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by the City.

B. Terms of Insurance. The policies required under Subsection A shall name the City of Gig Harbor as an additional insured. Furthermore, all policies of insurance described in this Section shall meet the following requirements:

- 1) Policies shall be written as primary policies not contributing with and not in excess of coverage that the City may carry;

- 2) Policies shall expressly provide that such insurance may not be canceled or non-renewed with respect to the City except upon forty-five (45) days prior written notice from the insurance company to the City;
- 3) To the extent of the City's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to the City and the Lessee;
- 4) All liability policies must provide coverage on an occurrence basis; and
- 5) Liability policies shall not include exclusions for cross liability.

C. **Proof of Insurance.** The Lessee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the City accompanied by a checklist of coverages provided by the City, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in this Section, and, if requested, copies of policies to the City. The Certificate of Insurance shall reference the City of Gig Harbor and this Lease. Receipt of such certificates or policies by the City constitute approval by the City of the terms of such policies. The Lessee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Lessee must purchase to enter into this Lease Agreement.

These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Lessee from liability for losses and settlement expenses greater than these amounts.

18. **Care of Premises.** At the completion of the restoration of the Premises, GHB and the City shall conduct a walk-through of the Premises to memorialize its condition. Both parties are encouraged to photograph and video-record the walk-through. The condition of the Premises at the time of the walk-through shall constitute the baseline by which GHB must maintain the Premises, normal wear and tear excepted. GHB shall not be responsible for any defects in the Premises or non-conformance with any applicable code, statute, ordinance or regulation that preexisted the completion of the restoration of the Premises. Lessee shall at all times during the term of the Lease, maintain the Premises to substantially comply with any applicable code, statute, ordinance or regulation governing its maintenance or operation, and make all repairs and arrangements necessary to put and keep the Premises in good condition, except as noted in the following paragraph. Lessee shall undertake these responsibilities at its own cost and expense, and the Lessor shall not be called upon to pay for any repairs, alterations, additions or improvements to the Premises, other than as stated in this Lease Agreement and in the next paragraph. Lessee shall not permit any waste, damage or injury to the Premises; use the Premises for anything that will increase the rate of fire insurance; maintain anything on the Premises that may be hazardous to life or limb; overload the floors; permit any objectionable noise or odor, if not in keeping with the historical waterfront commercial boat building activities and applicable state

and local laws, to escape or to be emitted from the Premises; permit anything to be done on the Premises that may in any way tend to create a nuisance, or use or permit the Premises to be used for lodging or sleeping purposes.

HVAC/Heating maintenance, fire sprinkler system maintenance, plumbing, electrical, pest control, roof maintenance, exterior painting, foundation, furnace maintenance and any general maintenance repairs the sum for which exceeds \$1,000 annually will be paid by the City. The City shall have the discretion to determine which activities shall be done, when they shall be done and the extent of such repair and/or maintenance.

19. Contractor's Bonds. At the City's option, Lessee shall require each contractor used by Lessee to perform any demolition or construction work in connection with any improvement, alteration, or addition made to the Premises solely by GHB, to secure and maintain, at no cost to the City, a contract or performance bond, payable to Lessee and the City, in the full amount of the contract, conditioned that all the provisions of the contract shall be faithfully performed by the contractor, or the surety if so required, and indemnifying the Lessee and the City against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the carrying out of the work of the contract, and conditioned as required by law for the payment of all laborers, mechanics, subcontractors and material-men, and all persons who shall supply such person or persons or subcontractors with provisions or supplies for the carrying on of such work.

20. Alterations. Prior to the Lessee's construction, alteration, replacement, removal or major repair of any improvements on the Premises, the Lessee shall submit to the City plans and specifications which describe the proposed activity. Construction shall not commence until the City has approved those plans and specifications in writing. The plans and specifications shall be deemed approved and the requirement for the City's written consent shall be treated as waived, unless the City notifies the Lessee otherwise within sixty (60) days. At the time the Lessee submits the proposed plans and specifications, the Lessee will declare if the Lessee intends for the improvements to remain at the Premises at the conclusion of the Lease. If the Lessee makes such declaration, the City shall declare that the Lessee must remove the improvements upon the termination of the Lease at the Lessee's expense or that the improvements shall remain at the Premises at no removal-expense to Lessee. Upon completion of construction, the Lessee shall promptly provide the City with as-built plans and specifications. Lessee agrees to comply with all laws, ordinances, rules and regulations of any proper public authority in the construction of any improvements or repair, and to save the Lessor harmless from damage, loss or expense. After notice of termination of this Lease, and upon Lessor's request or Lessor's approval, the Lessee shall remove such improvements and restore the Premises to its original condition not later than the termination date, at Lessee's sole cost and expense. If the Lessee-Owned improvements remain on the Premises or Property after the termination date without the City's consent, they will become the property of the City, but the City may

remove them and the Lessee shall pay the cost of removal and disposal upon the City's demand.

21. Access. Lessee shall allow Lessor, its officials, employees and agents free access at all reasonable times to the Premises in addition to the access required for environmental matters in Section 10. Nothing herein shall prevent the City's access or free use of the remainder of the Eddon Boat Property. Areas of public access are shown in Exhibit B, attached hereto and incorporated herein by this reference.

22. Condemnation. In the event of the taking of the Premises by condemnation or otherwise by any governmental, state or local authority, this Lease shall be deemed terminated as of the date the condemning authority elects to take possession. Lessee shall have no claim to, nor shall it be entitled to, any portion of any condemnation award for damages to the Premises or relocation costs.

23. Fire and Other Casualty. In the event that the Premises are destroyed or damaged by fire, earthquake or other casualty not the fault of the Lessor, and any damage is to such an extent as to render the Premises untenable by the Lessee in whole or substantial part, Lessor shall have the option to terminate this Lease immediately without any further liability or obligation to Lessee. The decision whether the Premises are untenable shall be made by the Lessor, after discussion with Lessee on the feasibility of repair.

24. Signs. All signs or symbols placed on the Premises by Lessee shall be in coordination with the Lessor and shall be subject to the prior approval of Lessor. Lessor reserves the right to co-locate its signs and/or logos on the interior and exterior of the building. In the event Lessee shall place signs or symbols on the Premises not acceptable to Lessor, Lessor may demand immediate removal of such signs or symbols and Lessee shall remove such signs or symbol within 24 hours of notice from Lessor. Any signs placed on the Premises shall be removed on termination of this Lease and any resulting damage to the Premises caused by such sign or symbol shall be repaired by Lessee.

25. Default and termination. In the event Lessee defaults in the performance of any of the terms, provisions, covenants and conditions to be kept, observed or performed by Lessee, and such default is not corrected within thirty (30) days after the receipt of notice thereof from Lessor, or such shorter period as may be reasonable under the circumstances; or if Lessee shall abandon, desert, vacate or otherwise leave the Premises; then, in such event, Lessor, at its option, may terminate this Lease together with all of the estate, right, title and interest thereby granted to or vested in Lessee, by giving notice of such election at least twenty (20) days prior to the effective date thereof, and as of such effective date, this Lease and all of the estate, right, title and interest thereby granted to or vested in the Lessee shall then cease and terminate, and Lessor may re-enter the Premises using such force as may be required.

Lessor shall not be in breach of any obligation to perform under this Lease unless Lessor fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the Lessee to Lessor specifying the particular obligation that Lessor has failed to perform; Provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for performance, then Lessor shall not be in breach if Lessor commences performance within the 30 day period, and thereafter diligently prosecutes the same to completion.

26. No Relationship. In no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of Lessee or any party associated with Lessee in the conduct of Lessee's business or otherwise. This Lease does not make Lessee the agent or legal representative of the City for any purpose whatsoever.

27. Surrender of Premises. Upon expiration or termination of this Lease, including any extensions thereof, Lessee shall quit and surrender the Premises without notice, and in as good condition as received at commencement of the term, except for changes due to ordinary wear and tear, damage or destruction by fire or other casualty or circumstances uncontrollable by the Lessee.

28. Modification, Waiver. No waiver, alteration or modification of any of the provisions of this Lease shall be binding unless in writing and signed by a duly authorized representative of the parties.

29. Entire Agreement. The written provisions of this Lease shall supersede all prior verbal statements of any officer or representative of the Lessor, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any manner whatsoever, this Lease. The entire agreement between the parties with respect to the subject matter of this Lease is contained herein.

30. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement or option, or any other covenant, agreement or option.

31. Assignment and Subletting. The Lessee shall not, under any circumstances whatsoever, assign this Lease or sublet Premises.

32. Disputes, Governing Law. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Lease which cannot be resolved between the parties within a reasonable period of time, 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.

33. Time is of the Essence. Time is of the essence as to each and every provision of this Lease.

34. Attorney's Fees. The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorney's fees, costs and expenses in connection with such action or proceeding from the other party. In addition, the Lessee agrees to pay all of the Lessor's attorneys' fees and costs necessitated by the Lessee's failure to comply with any of the provisions of this Agreement, including but not limited to notices, legal fees and costs arising from third party actions against the Lessor arising from acts or omissions of the Lessee related to this Agreement. The rights and remedies of the City under this Lease are cumulative and in addition to all other rights and remedies afforded to the City by law or equity or otherwise.

35. Notices. Notices required to be in writing under this Lease shall be sent by registered or certified mail as follows:

Gig Harbor BoatShop  
8402 Goodman Drive NW  
Gig Harbor, WA 98332  
Attn: Guy Hoppen,  
GHB President

City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335  
Attn: City Administrator

36. Severability. If any section or provision of this Lease shall be held by a court of competent jurisdiction to be unenforceable, this Lease shall be construed as though such section or provision had not been included in it, and the remainder of the Lease shall be enforced as the expression of the parties' intentions. If any section or provision of this Lease is found to be subject to two constructions, one of which would render such section or provision invalid and one of which would render such section or provision valid, then the latter construction shall prevail.

IN WITNESS WHEREOF, the parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**LESSOR:**  
CITY OF GIG HARBOR

**LESSEE:**  
The Gig Harbor BoatShop

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_



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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

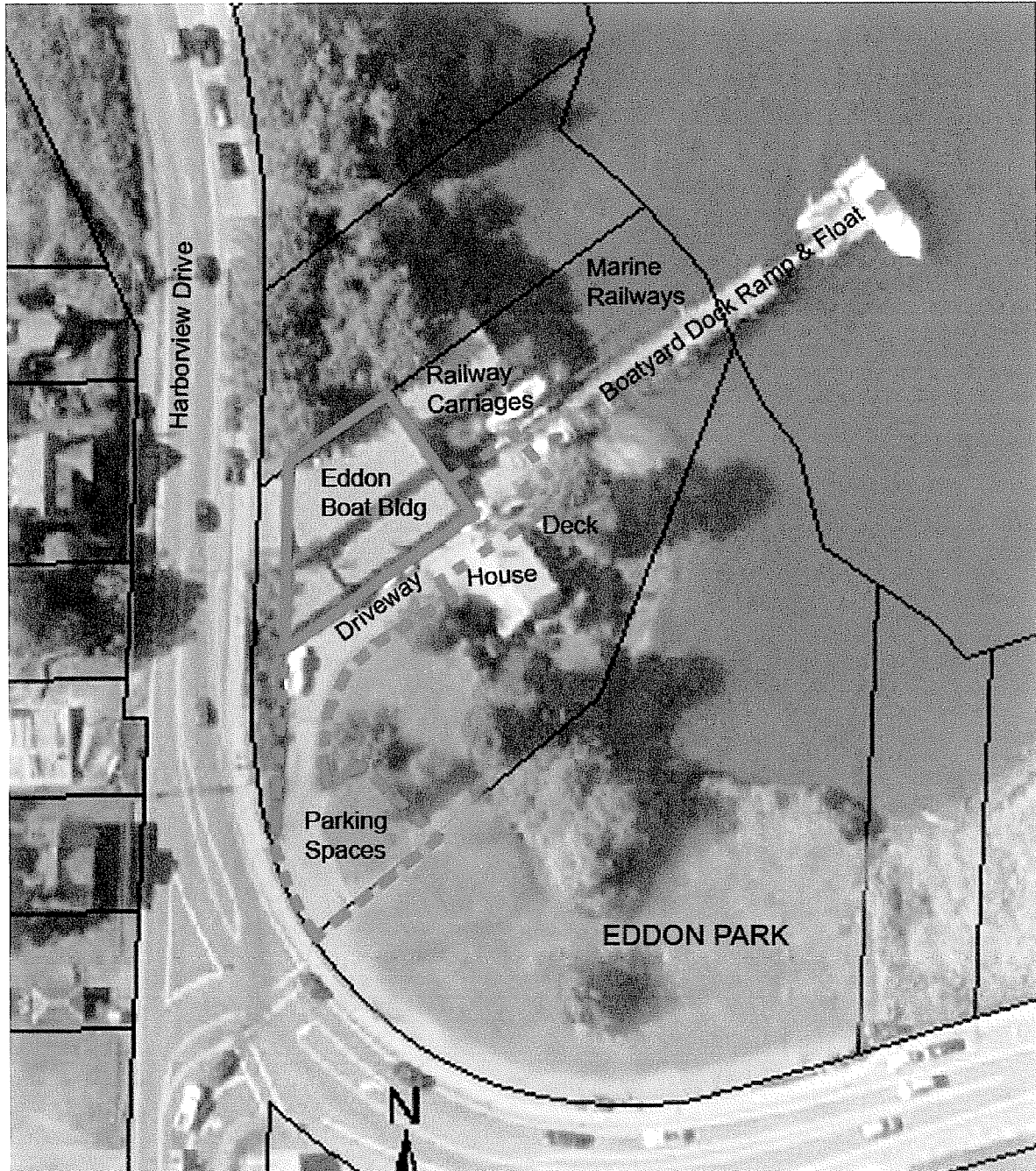
STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the Gig Harbor BoatShop, a State of Washington 501(C)(3) non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

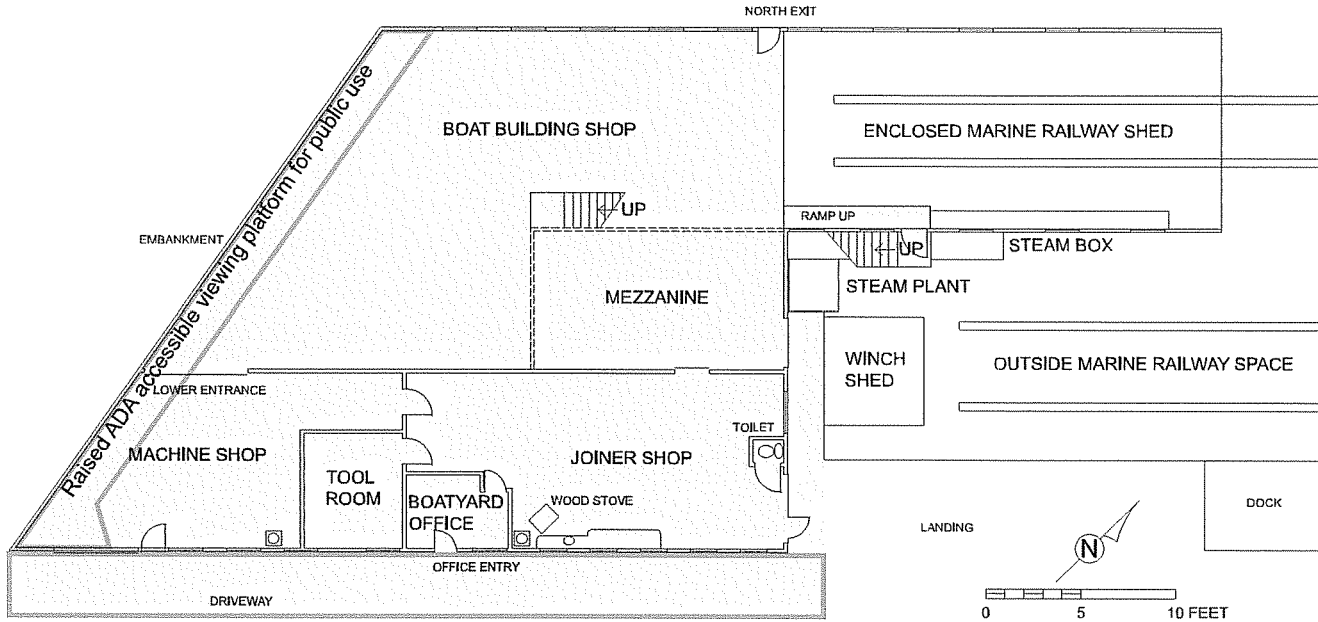
\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

# EXHIBIT A

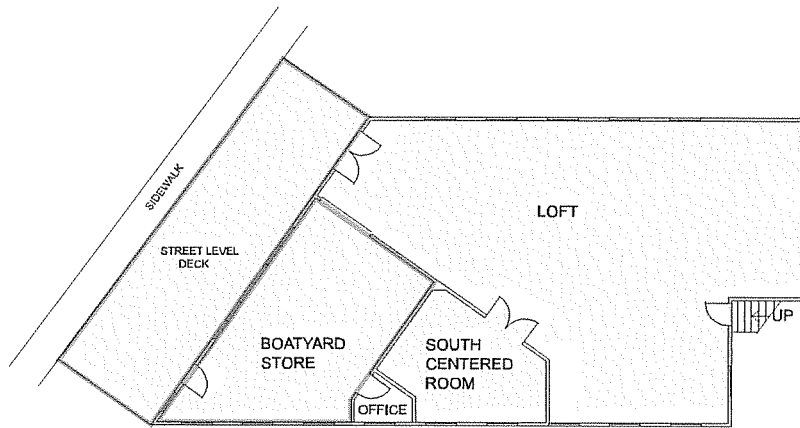


Map of Eddon Boat Building and Driveway located at 3805 Harborview Drive, Gig Harbor

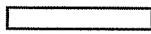
# EXHIBIT B



**DIAGRAM A: BOAT BUILDING - LOWER FLOOR**



**DIAGRAM B: BOAT BUILDING - UPPER FLOOR**



Leased space.

Access to GHB staff & certified GHB program participants as follows:

Lower floor: Boat building shop, joiner shop, machine shop: Boat building, repair & restoration activities, classes

Mezzanine: Storage

Boatyard Office: Programming staff activities/management

Tool room: Tool storage

Upper floor: Loft & South Centered Room: Lofting, boat building, repair & restoration activities, classes

Office: Boatyard Store office activities

Boatyard Store: Retail sales activities



Limited public access



**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Planning Commission Work Program

**Dept. Origin:** Community Development Department

**Proposed Council Action:** Move to accept Planning Commission Work Program as proposed

**Prepared by:** Jennifer Kester *JK*  
Senior Planner

**For Agenda of:** June 25, 2007

**Exhibits:** Two proposed text amendments  
Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** PAK 6/19/07

**Approved as to form by City Atty:** CAW 6/19/07

**Approved by Finance Director:** N/A

**Approved by Department Head:** JR 6/18

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

**INFORMATION/BACKGROUND**

The Council last updated the Planning Commission's work program in February of this year. Since this time, the Planning and Building Committee has reviewed and discussed the following text amendments and recommended them for the Planning Commission's work program:

- Appropriateness of RB-1 zoning district locations and allowed uses
- ED and PCD-BP Intent and Allowed Uses
- Height Restriction Area Special Exception
- C-1 Height Amendment
- Grandfathering Nonconforming Structures Inside and Outside the Waterfront Zones

Planning and Building Committee has also reviewed amendments to the SEPA ordinance and the boundary line adjustment process for nonconforming lot combination. Both will likely receive direct consideration by the Council.

Finally, the Planning Commission has reviewed and made recommendations on the following text amendments since February. These are no longer on the work program.

- TPU Right-of-Way Landscaping Requirements
- Zone Transition Buffer Location

**BOARD OR COMMITTEE RECOMMENDATION**

After review of all the text amendments, the Planning and Building Committee recommended the work program below. The Council can accept this work program or modify the program. The Planning Commission is currently reviewing the amendments included in Tier 1.

## **Planning Commission Work Program:**

### **Tier 1:**

- Design Review Process Improvement Initiative
- Underground Garages/Gross Floor Area/Parking Maximums/Etc.

### **Tier 2:**

- Appropriateness of RB-1 zoning district locations and allowed uses
- ED and PCD-BP Intent and Allowed Uses
- Suggested Changes to Land Use Matrix
- Height Restriction Area Special Exception

### **Tier 3:**

- C-1 Height Amendment
- Application of Mixed Use District Overlay
- Limiting Office Uses in Waterfront Millville
- Zoning Code Definitions Consolidation

**Research Tier:** *(These amendments need some additional research and/or text development before they can be reviewed by the Planning Commission. The staff will continue to work on these while other amendments are being reviewed.)*

- Minimum Residential Densities
- Nonconforming Lot Adjustments
- Grandfathering Nonconforming Structures Inside and Outside the Waterfront Zones

## **RECOMMENDATION / MOTION**

**Move to:** Accept Planning Commission Work Program as proposed

## **DESCRIPTION OF TEXT AMENDMENTS**

**Design Review Process Improvement Initiative**, City-sponsored, Based on findings from the Latimore Report that the Design Review process is the constraint in the permitting system, the Council has contracted with the Latimore Company to conduct a year-long update of the Design Review process.

**Underground Garages/Gross Floor Area/Parking Maximums/Etc.**, City Council-sponsored, submitted January 23, 2006: The Council directed the Planning Commission to consider amendments to Ordinance 1008, including amending the definition of gross floor area; creating definitions for underground parking, basement, finished grade, original grade; amending parking requirements to include maximum number of parking spaces for uses, including single-family residential; and reconsider the maximum building sizes for WC, WM and WR zones.

**Appropriateness of RB-1 zoning district locations and allowed uses**, City-sponsored, recommended by Planning and Building Committee on March 14, 2007: The Planning Commission recommended denial of a text amendment that would change the building size

limitations on RB-1 parcels. The Commission felt it was important to review the appropriateness of the location of the RB-1 zones first. On February 12, 2007, the Council reviewed the Commission's recommendation but decided to move forward with the building size amendment. However, the Council encourages the Planning Commission go ahead with the review of the locations of the RB-1 zones. After review by the Planning and Building Committee to determine the amendment's placement in the work program, the Committee recommended that the Planning Commission also review the allowed uses in the RB-1 zone.

**ED and PCD-BP Intent and Allowed Uses**, Planning and Building Committee-sponsored, recommended by Committee on April 16, 2007: After a review of the intent statements for the ED and PCD-BP zones, the committee noticed that some uses allowed or conditionally allowed in those zones may not be consistent with the intent statement. Uses such as family day care provider, adult family home, community recreation halls, clubs, personal services, product services level 1, independent and assisted living facilities, skilled nursing homes, houses of religious worship, and indoor and outdoor recreation are allowed or conditionally allowed in the either the ED and/or PCD-BP zones. The committee recommended the Planning Commission review the intent and compatibility of allowed uses in the BP and ED zones.

**Suggested Changes to the Land Use Matrix**, Planning Commission-sponsored: Because of their work on the Land Use Matrix, the Planning Commission would like to recommend text amendments to make the uses allowed within the City and certain zones more consistent with the intent of the zoning code.

**Height Restriction Area Special Exception**, Halsan Frey LLC, originally submitted September 12, 2005; revised on May 25, 2007: This proposal has been modified to provide a special exception process by which a parcel may be excepted out of height limitations if certain criteria is met.

**C-1 Height Amendment**, WWR Properties, Inc., submitted January 25, 2007: The proposed text amendment would increase the allowed height of structures within the C-1 zone from 35 feet to 45 feet. The proposal would not modify the height limitation for those parcels with a C-1 zoning classification in the Height Restriction Area.

**Application of Mixed Use District Overlay**, City Attorney-sponsored: The City Attorney is proposing an amendment to Chapter 17.91 which will define when and how the MUD overlay can be utilized. The current code's silence on this issue has led to confusion for developers desiring to implement this overlay; it is unclear whether a rezone is required to utilize the standards in this chapter.

**Limiting Office Uses in Waterfront Millville**, Carol Davis, submitted June 24, 2005: The amendment would limit professional offices to incidental uses in existing structures in the Waterfront Millville zone. (GHMC 17.48.020(G))

**Zoning Code Definitions Consolidation**, City Staff-sponsored: A text amendment is needed to consolidate all the definitions used in the Zoning Code into one Chapter. Currently, definitions can be found throughout Title 17. In many cases there are multiple definitions for one term, making application of the development standards difficult for the staff and

customers. This amendment is intended to organize, clarify and simplify the zoning code for better customer service.

**Minimum Residential Densities**, City Council-sponsored, submitted January 23, 2006: The Council directed staff to make a recommendation for minimum densities in all residential zones.

**Nonconforming Lot Adjustments**, Planning Commission-sponsored, requested February 16, 2006: After discussing the nonconforming lot combination amendment, the Planning Commission moved that the "City Council direct the Planning Commission to look at having staff draft a proposal to modify the Boundary Line Adjustment section to allow nonconforming lots to become less nonconforming." Recent case law may not allow such adjustments through the boundary line adjustment process; staff is working with Carol to determine the viability of this amendment. Staff suggests this amendment move to the research tier.

**Grandfathering Nonconforming Structures Inside and Outside the Waterfront Zones**, City Council-sponsored at 2007 Council Retreat: After reviewing this Council retreat item at their May 7, 2007 meeting, Planning and Building Committee decided to put this item on the research tier. Staff will review current provisions for grandfathering and bring back to the Planning and Building Committee draft text amendment language for further review at a later date.

***The following text amendment is included in the Design Review Process Improvement Initiative:***

**Significant Tree Standards**, Mayor-sponsored, June 25, 2006: The Planning Commission has been asked to review the City's standards for the retention of significant trees. During the Design Review Process Improvement Initiative, the Planning Commission will review the goals and policies of the Comprehensive plan to determine if appropriate policies exist for significant tree retention. Text amendments will follow which implement the tree retention policies and goals of the Comprehensive Plan.





Business of the City Council  
City of Gig Harbor, WA

**Subject: Request to Purchase  
City Property - Richards**

**Proposed Council Action:**

Council should decide if they want to sell the property and if so if a competitive process should be followed or if the sale price should be based upon an appraisal.

**Dept. Origin:** Community Development

**Prepared by:** John P. Vodopich, AICP  
Community Development  
Director

**For Agenda of:** June 25, 2007

**Exhibits:** Vicinity Map; Aerial Photograph; Letter of May 22<sup>nd</sup> from David Freeman; Letter of April 26<sup>th</sup> from John Vodopich; Legal Description; and MRSC Information regarding the sale of surplus property

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** PKK 6/20/07

**Approved as to form by City Atty:** CAM 6/19/07

**Approved by Finance Director:**

**Approved by Department Head:** JPV 6/18

Expenditure	Amount	Appropriation
Required \$0	Budgeted \$0	Required \$0

**INFORMATION / BACKGROUND**

David Freeman, on behalf of Jim Richards has requested that the City sell approximately 6,300 square feet of property near the old Washington State Patrol (WSP) office in the vicinity of Olympic Village shopping center. Research into this request has determined that this property is owned by the City in Fee and is not subject to the normal street vacation process.

Additional research has found that the adjacent 1.26 acre parcel (the old WSP site, #0221174080) was purchased by the Bergen Richards LLC in January 2007 for \$1,407,700.00 - approximately \$25.65 per square foot.

Utilizing this recent sale as a comparable for determining fair market value, the City owned property is estimated to be valued at \$161,595.00.

**FISCAL CONSIDERATION**

Should the Council choose to sell the property in question, the City Attorney has suggested that a competitive bidding process be employed in order to ensure that the City receive the fair market value of the property.



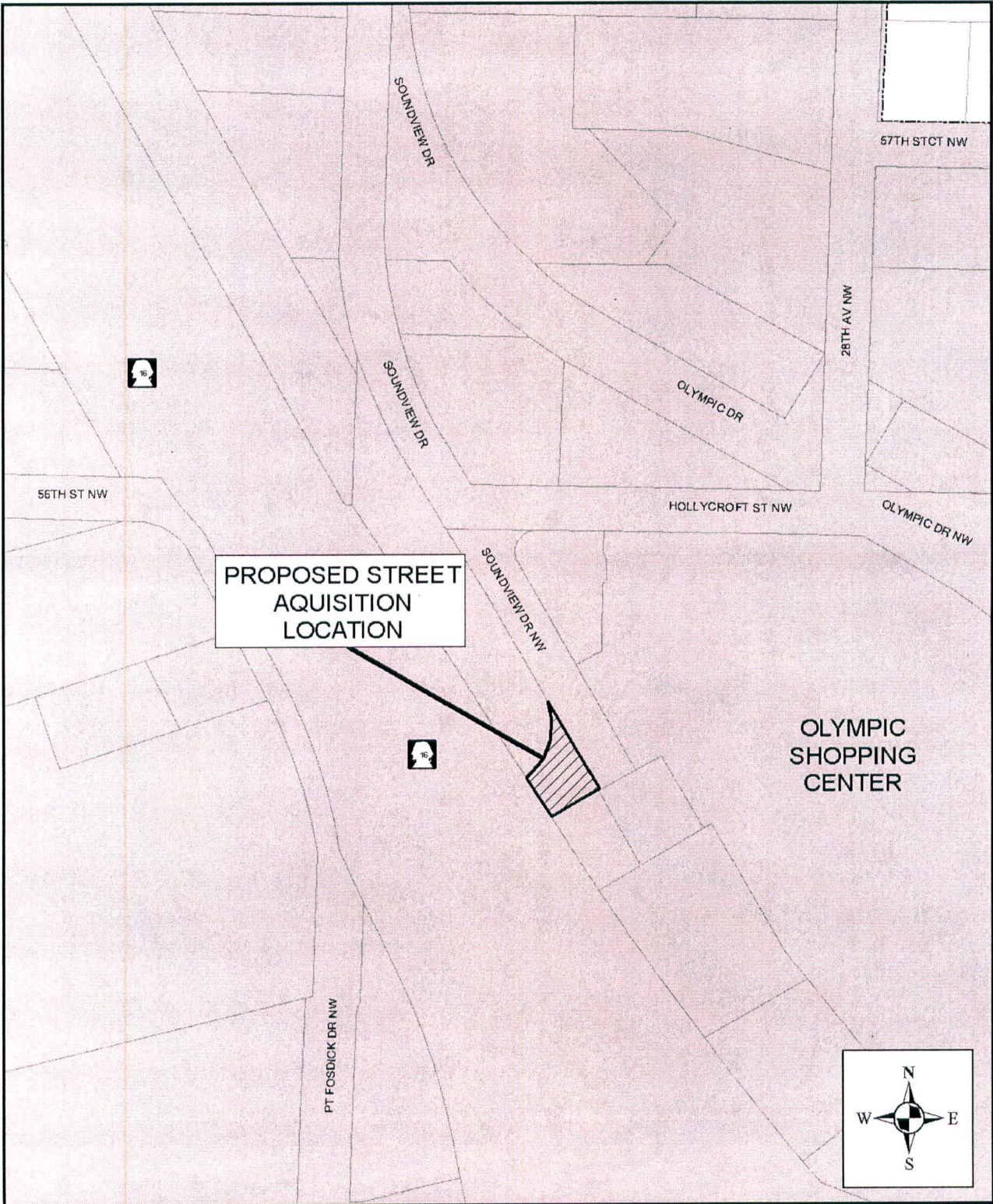
**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

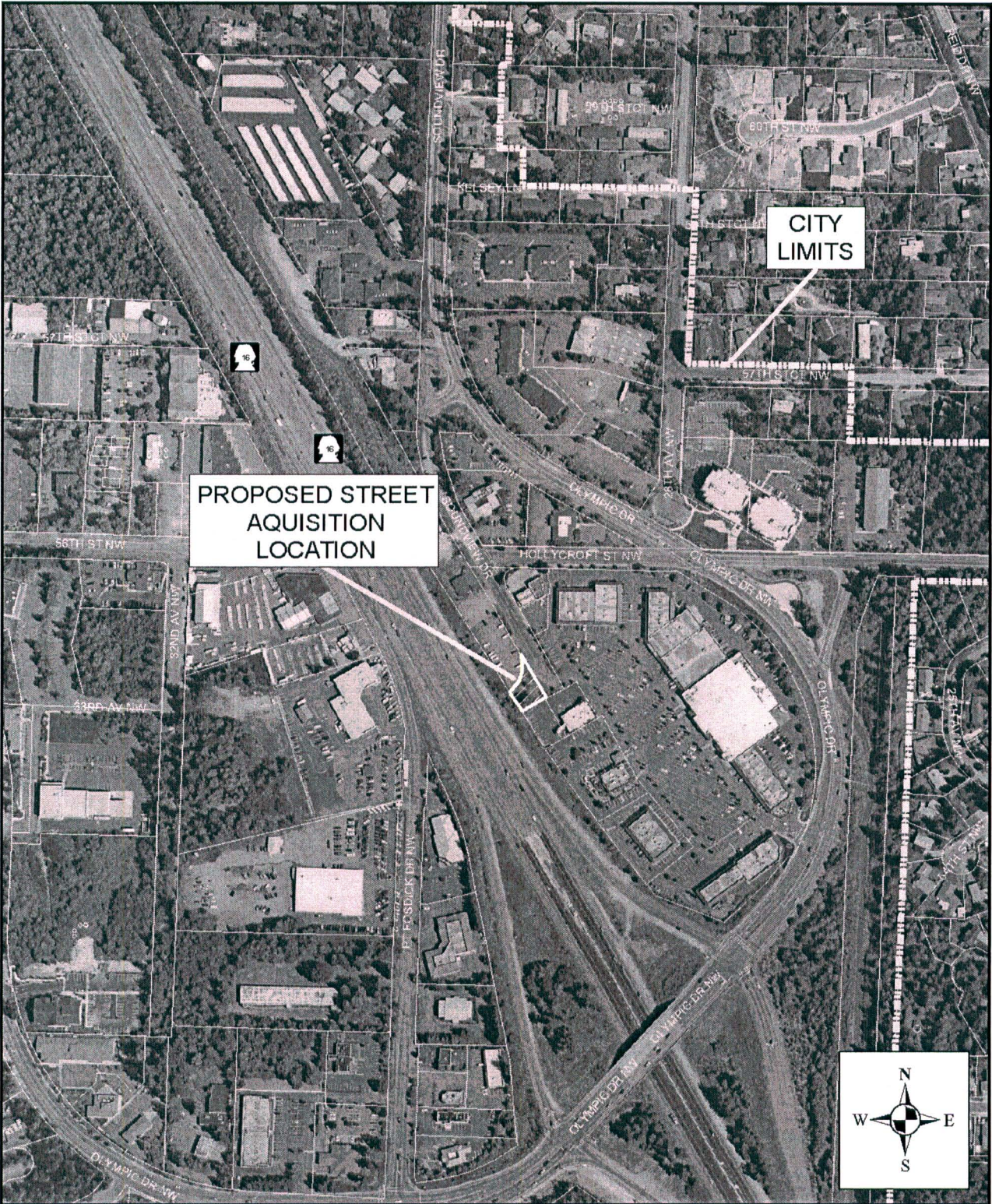
**Move to:** Council should decide if they want to sell the property and if so if a competitive process should be followed or if the sale price should be based upon an appraisal.





RICHARDS STREET AQUISITION  
VICINITY MAP





PROPOSED STREET  
AQUISITION  
LOCATION

CITY  
LIMITS



RICHARDS STREET AQUISITION  
VICINITY MAP



**SFA**

SNODGRASS FREEMAN ASSOCIATES, ARCHITECTS

May 22, 2007

RECEIVED  
CITY OF GIG HARBOR

MAY 22 2007

COMMUNITY  
DEVELOPMENT

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

RE: Petition for property vacation or sale

Dear John,

My client, Mr. Jim Richards, had requested that I petition the City of Gig Harbor for the acquisition of a small parcel of City property located between my client's property on Wickersham Road and The Wells Fargo Bank adjacent to The Olympic Village Shopping Center.

The 6300 SF (approx.) parcel lies between Wickersham Road and State Route 16 (see attached legal description).

Mr. Richards is prepared to pay fees for an appraisal if Staff and The City Council is interested in either selling the parcel at the appraised value or if need be, auctioning the parcel.

Please contact me with your recommendations.

Respectfully,  
Snodgrass Freeman Associates

David Freeman, A.I.A.



CC: Jim Richards

3019 JUDSON STREET  
SUITE D  
GIG HARBOR, WA 98335  
(253) 851-8383 (FAX) 851-8395

ARCHITECTURE  
PLANNING  
COMPUTER  
GRAPHICS



COMMUNITY DEVELOPMENT DEPARTMENT

April 26, 2007

Mr. James Richards  
Bergen Richards LLC  
1231 50<sup>th</sup> Ave. Ct. N.W.  
Gig Harbor, WA 98332

Re: Your request for a street vacation of parcel No. 0221174081

Dear Mr. Richards:

The City of Gig Harbor received your street vacation request for the above parcel. Our initial research into the ownership of this parcel has led us to conclude that the City owns the property in fee, and does not merely have an easement for public travel over the parcel.

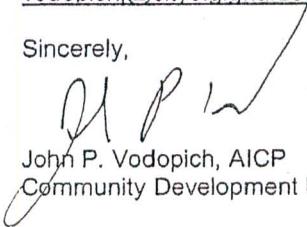
The street vacation process is initiated when the City has an easement for public travel, and the underlying fee is retained by the abutting property owners. In this situation one of the abutting property owners may request that the easement for public travel be lifted, as long as the street is no longer needed for the City's transportation system. However, if the City owns the property in fee, the street vacation process cannot be used.

If you are interested in acquiring the property, please let me know at the address set forth below. If I receive a letter from you indicating interest in purchasing the property, I will take your request to the appropriate committee to see if there is any interest in selling the property. Keep in mind that the Council may want to retain the property for future use and decline to sell.

If the City decides to sell the property, the Council will decide on the procedure to be employed. In the past, the City has sold property after following a competitive bidding process.

Please feel free to contact me should you have any questions regarding this correspondence. I can be reached by telephone at (253) 851-6170 or by E-mail at [vodopichj@cityofgigharbor.net](mailto:vodopichj@cityofgigharbor.net).

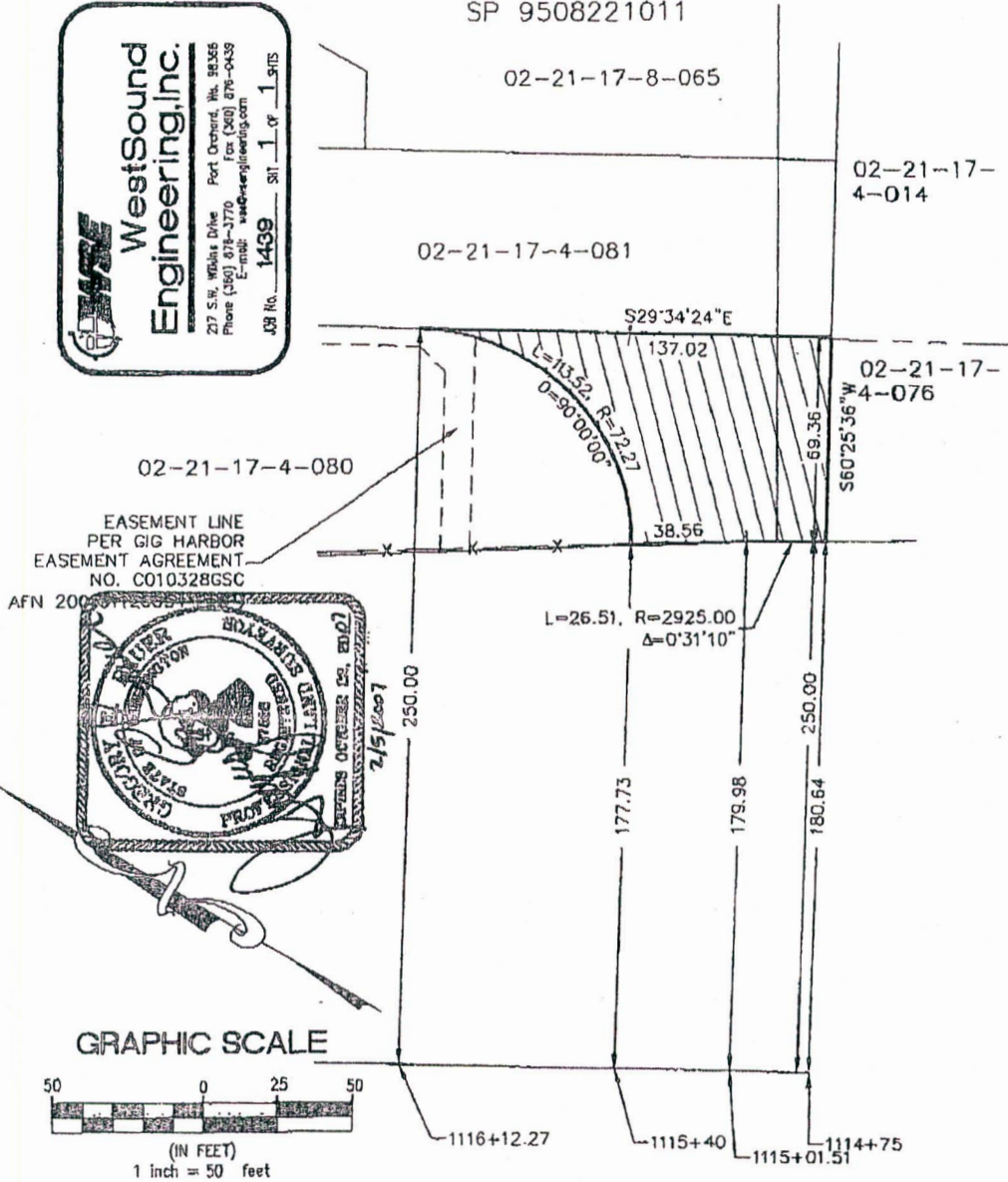
Sincerely,



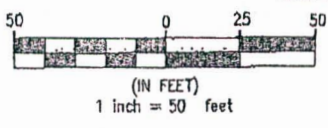
John P. Vodopich, AICP  
Community Development Director

LOT 4  
SP 9508221011

**WestSound Engineering, Inc.**  
 217 S.W. Wolcott Drive Port Orchard, WA 98366  
 Phone (360) 876-2770 Fax (360) 876-0439  
 E-mail: westsoundengineering.com  
 JOB No. 1439 SITE 1 OF 1 SITS



GRAPHIC SCALE



S.R. 16 (P.S.H. NO. 14)

A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERLY LINE OF WICKERSHAM ROAD AND A LINE DRAWN PARALLEL TO AND 150 FEET NORTHEASTERLY MEASURED AT RIGHT ANGLE FROM THE SB LINE SURVEY OF THE SR 16, NARROWS BRIDGE TO OLYMPIC DRIVE IN SECTION 17 TOWNSHIP 21 NORTH RANGE 2 EAST OF THE W.M. IN PIERCE COUNTY, WASHINGTON; THENCE SOUTHEASTERLY ON A LINE PARALLEL WITH SAID SB SURVEY LINE TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION 1120+30; THENCE SOUTHEASTERLY TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION SB 1115+40 AND LYING 177.73 FEET NORTHEASTERLY THEREFROM TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG AN ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 72.27 FEET, A DISTANCE OF 113.52 FEET TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION SB 1116+12.27 ON SAID SB SURVEY LINE, AND LYING 250 FEET NORTHEAST THEREFROM; THENCE SOUTHEASTERLY TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION SB 1114+75 ON SAID SB SURVEY LINE AND LYING 250 FEET NORTHEAST THEREFROM; THENCE SOUTHWESTERLY TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION 1114+75 ON SAID SB SURVEY LINE AND LYING 180.64 FEET NORTHEAST THEREFROM; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2925.00 FEET, A DISTANCE OF 26.51 FEET TO A POINT OPPOSITE HIGHWAY ENGINEER'S STATION 1115+01.51 AND LYING 179.98 FEET NORTHEASTERLY THEREFROM; THENCE NORTHWESTERLY TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION;

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.





## **Sale of Surplus City Property**

- 1. Do all classes of cities have legal authority to sell real and personal property owned by the city?**

Yes. The state statutes for every class of city contain specific authority for the city or town to sell or dispose of both real and personal property. This authority would include city-owned land and buildings, as well as equipment.

- 2. What procedure is required in the state laws for the sale of property by a city or town?**

This is an area in which the state in most cases has not required that a certain procedure be followed before property may be sold. We do recommend that the city or town council expressly declare that the property is surplus to the needs of the city and that its disposal will be for the common benefit. This may be done by ordinance, resolution or motion.

- 3. Must a bid procedure be utilized for the sale of property?**

No. The state statutes do not require that a competitive bid procedure be used to sell property. Nor is it necessary to hold an auction. These requirements would only be necessary if they were contained in a local ordinance or policy relating to the sale of property.

- 4. May the city enact a local ordinance containing specific requirements for the sale of property?**

Yes. The city council may wish to provide procedures for the sale of municipal property. These procedures could require that an auction be held or a bid procedure followed, if this is desired.

- 5. Must fair market value be received for property?**

If the sale is to a private party, the fair market value must usually be received in order to avoid the possibility of the Office of the State Auditor considering the sale to be a gift of public property to a private party. This would be in violation of the state Constitution. For example, if an expensive piece of equipment is sold for a nominal amount, such as one dollar, this could raise this issue. However, if the city has made a good faith attempt to find a buyer of a piece of property at the appraised value and no one is interested, that should justify accepting a lower amount.



**6. Who can purchase surplus property?**

In most cases, any public or private entity may purchase surplus property. However, the mayor and councilmembers may not purchase property from the city, regardless of the value, because of a specific statutory restriction. RCW 42.23.030.

**7. May city officers and employees purchase property from the city?**

It is clear that the mayor and city councilmembers cannot purchase property from the city. City employees in most cases may purchase surplus property as long as they pay fair value. State law does not prohibit the purchase of property by city employees. However, some cities have restricted this practice in order to avoid raising an appearance of fairness issue. If an auction or bid procedure is utilized, then the city employees may bid on the property but may not be given any advantage in regard to the sale that other members of the public do not have.

**8. Is an exchange of property legal?**

If the value of the properties being exchanged is approximately equal then the city may exchange one piece of property for another.

**9. May a county sell surplus computers on eBay?**

Though the statutes were not written with online auctions (e.g., eBay) in mind, it appears that a county may use them or other online auction sites as a "privately operated consignment auction" referred to in RCW 36.34.080.

The county must publish notice of the intended auction(s) "once during each of two successive weeks in a newspaper of general circulation in the county" (see RCW 36.34.090). The published notice of the auction(s) must be specific (see RCW 36.34.100); a county would need to list the items to be auctioned and provide the date and time that each auction will be started.

We recommend that county officials review this issue with their prosecutor.

Updated 01/05

## Sale of Surplus City Property

Cities and towns frequently need to sell or convey equipment or property which is no longer needed for municipal purposes. There are relatively few statutes concerning procedures for sale of surplus property. Cities and towns should be familiar with those listed in the Statutes section (under "Reference Sources" below), and you should keep these points in mind:

1. Prior to sale, always determine the fair market value of the item to be sold. If you sell it for less, you may be violating Article VIII, 7 of the state constitution, the "gift clause." But see RCW 39.33.010, listed in the Statutes section (under "Reference Sources" below).
2. Hold a public hearing, if required by RCW 39.33.020 or RCW 35.94.040, listed in the Statutes. AGO 1997 No. 5 concludes that the public hearing requirement in RCW 39.33.020 only applies to intergovernmental transfers of property.
3. Pass a resolution declaring the property to be surplus, and specifying how the property is to be sold, or delegating that task to a particular administrative official.
4. Proceed with sale as required by the town or city council, or in any commercially reasonable way. Sale can be by auction, private sale, sealed bid, through a broker or agent, etc.
5. Keep in mind that city officials and certain administrative officers may be restricted from purchasing surplus property due to conflict of interest concerns. The general rule is that those who are involved in the decision to surplus property (the council) and those in charge of administering the sale (mayor, city manager, or other city officer responsible for the sale) should not purchase the property. General city employees can purchase surplus city property.
6. Consider adopting policies concerning sale of city property. See the Documents section, below.

### Reference Sources

- Statutes
- MRSC Inquiries

### Documents--Code Provisions and Policies

- Sample Disposal of Surplus City Assets Policy
- Bellevue - Chapter 4.32, Sale of City Property
- Bellingham - Chapters 4.84, Disposition of Surplus Real Property and 4.86, Disposal of Property Other Than Real Estate
- Bellingham - Policy - ADM 10.07.01, Disposal of Surplus Property Other Than Real Estate (136 KB)
- Edmonds - Chapter 3.01, Sale of City Property
- Fife - Chapter 1.28, Disposal of Surplus Real and Personal Property of the City
- Kirkland - Chapter 3.86, Sale and Disposal of City Property
- Langley - Chapter 3.80, Disposal of Surplus Property
- Medical Lake - Resolution No. 296 - a resolution setting guidelines for the disposal of surplus city assets, 1996
- Medical Lake - Sample Disposal of City Assets Policy [based upon policy drafted by the City of Medical Lake]
- Olympia
  - Disposal of Surplus Items Outside of the Annual Citywide Auction (128 KB)
  - Guidelines for Auction Surplus (199 KB)
- Pasco - Chapter 2.46, Sale of City Property
- Port Angeles - Chapter 2.60, Disposal of Surplus Real and Personal Property (116 KB)

- Poulsbo - Chapter 3.68, Disposition of Property
- Puyallup - Resolution No. 1727 (15 KB) declaring certain property as surplus and authorizing its sale, 2002
- Renton - Surplus Real Property Policy and Procedure (23 KB), June 10, 2004
- Seattle - Ordinance No. 119145 - authorizes the development and implementation of a process for the non-cash transfer of surplus computer equipment, 1998
- Vancouver - Policy and Procedure for Disposal of Surplus Supplies, Furniture and Equipment (13 KB), August 11, 2004
- Woodland - Resolution No. 451 (27 KB) providing for the disposal of certain inventory items deemed to be surplus to the reasonably foreseeable needs of the City of Woodland, 2001





**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Resolution rejecting proposed text amendment to the PCD-BP zone (ZONE 07-0019)

**Proposed Council Action:** Move the approval of the resolution as presented.

**Dept. Origin:** Community Development Department

**Prepared by:** Jennifer Kester, Senior Planner *JK*

**For Agenda of:** June 25, 2007

**Exhibits:** Resolution, Planning and Building Committee minutes, proposed text amendment  
Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** ROK 6/13/07

**Approved as to form by City Atty:** Case 6/12/07

**Approved by Finance Director:** N/A

**Approved by Department Head:** JM 6-11

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION/BACKGROUND**

On March 12, 2007, Dale Pinney of SHDP Associates, LLC. requested a zoning code text amendment (ZONE 07-0019) to modify the land use matrix to allow independent living facilities, assisted living facilities and skilled nursing facilities as permitted uses in the Planned Community Development Business Park District (PCD-BP). The Planning and Building Committee reviewed that request at their April 16, 2007 meeting.

**POLICY CONSIDERATIONS**

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). The applicable land use policies and codes are as follows:

**A. Gig Harbor Comprehensive Plan:**

**Goal 2.2.3.f.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."



**B. Gig Harbor Municipal Code:**

**PLANNED COMMUNITY DEVELOPMENT BUSINESS PARK DISTRICT (PCD-BP)**

**17.54.010 Intent.**

“The business park district 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.

The business park district is intended to be devoid of nuisance factors, hazards and potentially high public facility demands. Retail uses are not encouraged in order to preserve these districts for major employment opportunities and to reduce the demand for vehicular access.”

**17.04.439 Living facility, independent.**

“Independent living facility” means a multiunit establishment which provides living quarters and a variety of social, housekeeping, and transportation services to senior citizens who choose to live in a congregate setting. Individual dwelling units are of a barrier-free design with separate bathroom facilities and may contain a full kitchen, partial kitchen, or no kitchen. Communal areas include a dining room in which at least one meal per day is served, social and activity areas, laundry facilities, and open space.

**17.04.438 Living facility, assisted.**

“Assisted living facility” means a multiunit establishment which provides living quarters and a variety of supportive personal care, limited health care, housekeeping, and transportation services to individuals who are unable to live independently due to infirmity of age or physical handicap, but who do not need the medically oriented care of a skilled nursing facility. Individual dwelling units are of a barrier-free design with separate bathroom facilities and a mini-kitchen without range. Communal areas include a dining room in which three meals per day are served, social and activity areas, laundry facilities, and open space. Assisted living facilities are licensed under Chapter 388-110 WAC.

**17.04.630 Nursing facility, skilled.**

“Skilled nursing facility” means a care facility or a distinct part of a facility licensed or approved as a skilled nursing facility or nursing home, infirmary unit of a retirement complex, or a governmental medical institution.

**FISCAL CONSIDERATION**

N/A

**BOARD OR COMMITTEE RECOMMENDATION**

The Planning and building Committee recommended at their April 16, 2007 meeting that the proposed text amendment be rejected for further processing. The Committee felt that the proposed residential uses were neither consistent nor compatible with the intent of the PCD-BP zoning district and land use designation and the uses allowed within the PCD-BP district.

**RECOMMENDATION / MOTION**

Move the approval of the resolution as presented.



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON, ACCEPTING THE RECOMMENDATION OF THE PLANNING AND BUILDING COMMITTEE TO REJECT FOR FURTHER PROCESSING THE PROPOSED TEXT AMENDMENT TO ALLOW INDEPENDENT LIVING FACILITIES, ASSISTED LIVING FACILITIES AND SKILLED NURSING FACILITIES AS PERMITTED USES IN THE PCD-BP ZONING DISTRICT (ZONE-07-0019).**

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WHEREAS, the Planning and Building Committee considered a text amendment proposed by Dale Pinney of SHDP Associates, LLC to allow independent living facilities, assisted living facilities and skilled nursing facilities as permitted uses in the Planned Community Development Business Park District (PCD-BP) zoning district during its April 16, 2007 meeting; and

WHEREAS, the Planning and Building Committee determined that the text amendment should not be processed further based on GHMC 17.100.025 and/or GHMC 17.100.035; Now, Therefore,

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

Section 1. The City Council hereby adopts the minutes of the April 16, 2007 meeting of the Planning and Building Committee, and the recommendation of the Committee to reject the proposed text amendment to allow independent living facilities, assisted living facilities and skilled nursing facilities as permitted uses in the PCD-BP zoning district.

Section 2. The City Council finds that the text amendment should not be sent to the planning commission for a public hearing for the following reasons:

- A. The text amendment does not further the goals and policies of the comprehensive plan because: The proposed residential uses are not compatible with nor further the goal of the Planned Community Development Business Park land use designation to be preserved for major employment opportunities which are devoid of high public facility and vehicular access demands and nuisance factors. The proposed residential retirement uses are not included in the list of uses intended for the PCD-BP land use designation. The PCD-BP land use designation is intended to provide for the location of high quality design development and operational standards for technology research and development facilities, light assembly, and warehousing, associated support services and retail uses, business

and professional office uses, corporate headquarters and other supporting enterprises;

- B. The text amendment is not in the public's health, safety or welfare because the addition of residential uses in a zone which is intended for major employment and industrial uses may cause those major employment and industrial uses to locate elsewhere due to the impact an employment use's noise, lights, hours of operation and truck traffic may have on residents living in the PCD-BP zone.

RESOLVED by the City Council this \_\_ day of \_\_\_\_\_, 2007.

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:  
Passed by the City Council:  
Resolution No.



# SHDP ASSOCIATES, LLC

8129 Lake Ballinger Way, Suite #104, Edmonds, Washington 98026

(425) 329-0848

Fax: (425) 329-0849

RECEIVED  
CITY OF GIG HARBOR

MAR 12 2007

COMMUNITY  
DEVELOPMENT

March 9, 2007

Cindy Andrews  
City of Gig Harbor Planning  
3510 Grandview Street  
Gig Harbor, Washington 98335

**PROJECT:** *Gig Harbor North  
Gig harbor, Washington*

**SUBJECT:** *Text Amendment Application  
Assisted Living in the PCD-BP Zone*


Dear Cindy:

Enclosed please find the application for a Zoning Code Text Amendment that would allow Assisted Living and related uses to occur on PCD-BP zoned properties. The availability of quality Assisted Living has become a significant issue in the Gig Harbor community and communities across the country. We feel the requested text amendment would provide the City with an excellent opportunity to increase the availability of this use inside the City.

If you have any questions or concerns, please contact our office at (425) 329-0848.

Sincerely,

SHDP Associates, LLC



Dale Pinney

Enclosures

cc: John Vodopich, City of Gig Harbor with enclosures  
Greg Elderkin, Capital Management Group, Inc. with enclosures

RECEIVED  
CITY OF GIG HARBOR  
MAR 12 2007  
COMMUNITY  
DEVELOPMENT

RECEIVED  
CITY OF GIG HARBOR  
MAR 12 2007  
PLANNING & BUILDING SERVICES  
TEXT AMENDMENT

# CITY OF GIG HARBOR ZONING CODE TEXT AMENDMENT APPLICATION

The use of this application is appropriate when a change in the specific text in the adopted City of Gig Harbor Zoning Code is desired.

PI-Zone-07-0019

(Please Print)

Owner/ Applicant: SHDP ASSO. LLC/Capital Management TIC

Mailing Address: 8129 Lake Ballinger Way Suite 104

City: Edmonds. State: WA Zip: 98026

Phone: (425) 329-0848 Fax: (425) 329-0849

Agent/ Contact: Dale Pinney

Mailing Address: - same -

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (425) 329-0848

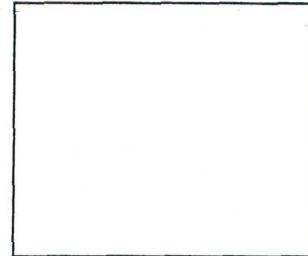
If Applicable, Name of General Area/ Location/ Site which would be affected by this proposed change in text (attach additional sheets if necessary)

PCD-BP zoned parcels in the Gig Harbor North area.

Section: Various Township: \_\_\_\_\_ Range: \_\_\_\_\_

FOR OFFICE USE ONLY

Application Received (stamp)



Received by: CA

Assigned to: \_\_\_\_\_

Minimum Application Fee \$ \_\_\_\_\_

SEPA Checklist & Fee\* 4 \_\_\_\_\_  
if required

Site Map 4 \_\_\_\_\_

Questionnaire 4 \_\_\_\_\_

Assessor's Map 4 \_\_\_\_\_

Pre-Submittal Review 4 \_\_\_\_\_

Date  / /

Staff \_\_\_\_\_

Application Complete\* 4 \_\_\_\_\_

Date  / /

Staff \_\_\_\_\_

The applicant agrees to pay a minimum application fee of \$275.00, in accordance with the approved fee schedule on file with the City of Gig Harbor Department of Planning and Building Services. If the application is approved 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. Acceptance of this application and/or payment of fees does not guarantee final approval.

Owner/ Applicant Signature: Dale Pinney Date: 3/9/07

## Text Amendment Questionnaire

SHDP Associates LLC  
PCD-BP Text Amendment  
March 9, 2007

In reviewing the allowed uses in the PCD-BP zone we have noted what appears to be an incompatible use with regard to adult elder care. In the PCD-PB zone Adult Family Home is an allowed use. Generally Adult Family Homes are located in single family residential structures, single family homes are not an allowed use in the PCD-BP zone; therefore it is fairly unlikely that this use would ever occur in this zone. Assisted Living Facilities are typically located in office/multi family type buildings which are specifically allowed in the PCD-BP zone. Assisted Living facilities operate very similarly to office buildings in that they have larger parking demands, people entering/exiting the building through out the day, the type of building construction and the overall look of the facility. With the recent approval of the Hospital in the Gig Harbor North area, more medical uses and medical providers will be moving into this area. Locating adult elder care in this area makes good sense; you just need to have the correct elder care use allowed. The Assisted Living, Independent Living and Skilled Nursing uses are all interrelated and more often are occurring in the same facility. These types of facilities are the future of elder care and are appropriate uses in the PCD-BP.

*1. Please provide a detailed description and explanation of the proposed text amendment.*

1. Modify Land Use Matrix, Sec 17.14.020 as follows:

Add a "P" (permitted) designation to the PCD-BP zoning column for,

	<u>PCD-BP</u>
Living facility, independent	P
Living facility, assisted	P
Nursing facility, skilled	P

2. Modify Code section 17.54.025 Sec. B Category II uses

ADD To Category II uses the following:

9. Living facility, independent
10. Living facility, assisted
11. Nursing facility, skilled



*2. Has there been a change in circumstances pertaining to the Zoning Code text or public policy?*

The major change in the zoning code was the modification to allow hospitals in the PCD-BP zone as a conditional use. This triggered the ultimate approval of the hospital project and the subsequent draw of other medical related services into this area. There has been a major shift in city council and public policy from the time the PCD-BP zoning was adopted in the early 90's. The development capacity of the PCD comprehensive plan area has almost quadrupled over the last 4-5 years. Public policy has set up the PCD as an area where the public should expect to find services from Heat Surgery to a single family residence and everything in between.

*3. What do you anticipate will be the impacts caused by the change in text, including the geographic area affected and the issues presented.*

We do not envision any impacts due to the change in text. The only area affected would be the limited amount of PCD-BP zoned property in the Gig Harbor North area. The Assisted Living use is similar in nature but less intense than the office projects that would otherwise be located in these zones. The amendment would allow some very compatible uses to locate together, such as medical office and elder care. The physical size and scope of the building projects would be very similar; there would be lessened demand on traffic.

*4. How would the proposed text amendment comply with the community vision statements, goals, objectives, and policies of the Comprehensive Plan?*

The zoning and land use modifications approved by the city in the PCD over the past few years have not necessarily followed the vision, goals and objectives of the original comprehensive plan for the Gig Harbor North area. The city has had a unique opportunity to use the PCD to provide a wide variety of services to the city. We feel that the changes have been positive and are a valuable addition to the city.

This text amendment would support the vision and goals of the comprehensive plan by allowing an appropriate use, that is compatible with other recently approved uses in the Gig Harbor North area. Also this amendment would help to add a residential component in to the primary activity center, potentially with a mixed use type of project.

*5. Is there public support for this proposed text amendment (i.e. have you conducted community meetings, etc.) ? Note: All applications will be subject to full public participation, notice and environmental review.*

There is support in the Gig Harbor area for additional elder care services. The need for quality elder care services is an issue that is affecting communities all across the country. As the need for this service grows more and more jurisdictions are finding new innovative ways to bring these uses into their communities. We discussed this concept informally with staff and received positive feed back. We have also had informal

discussions with some members of the Gig Harbor business community which also indicated support. At this time we have not conducted any public community meetings. We would hope to gauge support through the amendment process.

End of Questionnaire

Dale Pinney  
SHDP Associates LLC



**City of Gig Harbor Planning and Building Committee of the City Council**  
**Meeting Minutes**  
**Wednesday, April 16th, 2007**  
**Gig Harbor Civic Center**

**Present:** Paul Kadzik, Paul Conan, Bob Dick, Jennifer Kester and Diane Gagnon.

**Call to Order: 5:20 pm**

**1. Assignment to Planning Commission - Proposed text amendment (ZONE 07-0019) to allow assisted living in the PCD-BP zone.**

Senior Planner Jennifer Kester went over the proposal and the need for findings for the recommendations.

Councilmember Bob Dick asked if text amendments will be acted upon by the Planning Commission. Ms. Kester said yes, unless it is considered directly by the City Council. She then explained the process for text amendments.

Councilmember Paul Kadzik asked if restrictions are allowed on where assisted living is permitted. It was clarified that adult family homes cannot be restricted but that assisted living was different. Ms. Kester read the definition out of the code for assisted living and adult family homes. She then read what the current uses were in the PCD-BP and the intent of the zone. She pointed out that this zone was identified by the Planning Commission as needing review since many of the allowed uses do not meet the intent of the zone.

Ms. Kester noted that the applicant has proposed adding independent living facilities and nursing facilities to the allowed uses as well. Mr. Kadzik asked what other zones assisted living was allowed and Ms. Kester listed those zones where assisted living was allowed and where they were conditionally allowed. She noted that the city currently has enough land to provide for their residential projections. Mr Dick said that since it was part of the matrix perhaps it should be sent to the Planning Commission as part of the matrix update and the zoning code update. Ms. Kester said that there has been a recommendation to look at the RB-1 uses and the matrix and that it could be added that the Planning Commission look at the PCD-BP as a whole. Mr. Dick said that it seemed that since there were a lot of these types of residences in the planning process currently he wasn't sure that it was as high a priority. Councilmember Kadzik noted that the only reason that it was coming up now was that Mr. Pinney has a development he wants to do. Ms. Kester noted that there was an independent living facility that is a 292 unit plat in the ED area of Bujacich that will be going to the Hearing Examiner. She noted that the RB-1 changes were in tier two.

Discussion followed on the best way to approach the use analysis and that it may be better to look at the use and where it was appropriate. Councilmember Conan agreed that it was not really a high priority and that he was not comfortable with a Conditional Use Permit for independent living in the Employment District. Ms. Kester noted that staff did not believe that the proposed uses met the intent of the zone so unless the Planning Commission wanted to change the intent she didn't feel that it met the intent. She asked if they wanted to change the intent or ask the



Planning Commission to change the intent. Councilmember Conan noted that the intent language for ED and BP were almost the same. Councilmember Dick suggested that perhaps both zones be looked at. Mr. Conan agreed that both needed to be looked at. Ms. Kester suggested that they ask the Planning Commission to look at the two districts and decide what the difference was between the two zones that would make the uses different. Ms. Kester asked if they would support a change of intent to allow the proposed new uses and everyone said no.

Ms. Kester clarified their recommendation to reject this amendment based on the fact that it does not meet the intent of the BP zone; however the issue it raises ought to go the Planning Commission to examine the compatibility of the intent and allowed uses in the BP and ED zones. She further stated that the Planning Commission would look at what is consistent and appropriate for that area. Everyone agreed. It was decided that this should be placed in Tier 2. Ms. Kester went over the tiers and the status of various items on the tiers.

Councilmember Dick asked if Gig Harbor North was in need of change as much as some of the other areas. Ms. Kester said that it is some of our last large areas of vacant land; therefore they should be really comfortable with what is allowed there. Mr. Dick said that it seemed that changes to zones that are smaller and may be more like infill development were more important, so perhaps the review of the intent and uses in the ED and BP zones should be added to Tier 2 following RB-1. Ms. Kester pointed out on the zoning map where the BP zones were located.

Mr. Kadzik suggested that perhaps it made sense to look at all the zones in Gig Harbor North. Ms. Kester said that she had heard from DRB and Planning Commission that the larger concern was with the standards in the residential zones. She went over the density limitation in each of the residential zones in Gig Harbor North. She noted that neither the RLD nor the RMD allowed assisted living facilities. Mr. Kadzik noted that for all practical purposes there would be no zones in Gig Harbor North that would allow assisted living and Ms. Kester stated that the area north of the hospital would allow it and also R-2. Mr. Dick said that there was logic in having independent living facilities within walking distance to services. Ms. Kester noted that the MUD zone would also allow it.

Ms. Kester asked if they wanted to look at these specific uses in all the PCD zones. Mr. Conan noted that it was a big endeavor. Mr. Dick said that he felt that it was important to have uses within walking distance to help alleviate traffic issues. Mr. Kadzik noted that since assisted living facilities were residential uses, it would be more appropriate in a residential zone. Ms. Kester stated that most provide shuttle service as it is part of the definition. She said that perhaps the RMD should allow it. Mr. Conan asked if he was saying that there is not enough space for them and Mr. Dick said no, he wasn't saying that. Ms. Kester said that she felt that the bigger issue of priority was the ED and BP zones and their uses and intent rather than where assisted living facilities are allowed since there are zones that allow them.

Discussion followed on the conditional use of assisted living in the ED and they all agreed that was a higher priority. They decided that it was more important than RB-1. Ms. Kester explained the RB-1 text amendment and what the Planning Commission would consider. Mr. Kadzik noted that the three of these zones are of equal importance. Mr. Dick noted that some of the RB-1 was in the view basin. Mr. Conan said he was happy with the tier they were in as they will be discussed close together. Everyone agreed.



## **2. Findings for rejection of C-1 Height amendment**

Ms. Kester explained that the applicant had asked to make a presentation on the merits of the C-1 text amendment. She pointed out where the C-1 zoning districts were located within the city. Discussion was held on the fire flow in that area. Ms. Kester said she could get some facts from engineering and bring suggested findings back at the next meeting on May 7<sup>th</sup>. Mr. Dick asked if they should allow the applicant to present at the next meeting. Mr. Conan noted that he will not be at the meeting on the 7<sup>th</sup>. Ms. Kester said that if they agreed she would run it by the City Attorney. Mr. Kadzik stated that the Planning Commission had noted some time ago that there was a problem with the C-1 zones since there were so dissimilar. He noted that if the Stroh's property was developed there would be some real problems and there has been some suggestion about having two commercial zones. Mr. Dick said that with this particular application they need to know the information regarding fire flow. Mr. Kadzik noted that it could be said that you can increase your height if the required fire flow is provided. There was discussion on the areas abutting the freeway and how they are important areas to protect. Ms. Kester clarified that they would like the applicant to present if the City Attorney has no objections.

## **3. Repealing of non-conforming lot ordinance**

Ms. Kester stated that she had talked with the City Attorney about briefing the Planning Building on the case law regarding this issue and the City Attorney had stated that she would rather brief the committee once a solution had been developed. The committee voiced their desire to have a discussion prior to repealing the ordinance. Ms. Kester then said she would go back to the City Attorney and explain that the committee would still like to know why and perhaps she could come to the meeting on June 4<sup>th</sup>. Mr. Dick stated that he understood that the case more narrowly constrained boundary line adjustments but it didn't say anything about lot combinations so he would rather amend the ordinance. He also felt that it was vital to reserve the right to permit lot combinations. It was decided that the City Attorney would come to discuss this issue at the June 4<sup>th</sup> meeting and if that didn't work for her she could bring it up at a City Council meeting. Mr. Dick said that he would want to be advised if some things needed to be discussed at executive session.

## **4. Affordable Housing (Continued to May 7<sup>th</sup>)**

## **5. Transfer of Development Rights (Continued to May 7<sup>th</sup>)**

## **6. Contract work**

Ms. Kester stated that the Planning and Building Committee had recommended contracting for a half time planner; however, the person offered the job had declined. City Administrator Rob Karlinsey will be putting together a larger work resources plan for the entire Community Development Department.

**UPCOMING MEETINGS** - Next meeting on the 7<sup>th</sup> of May at 5:00 p.m..

**ADJOURNMENT** - The meeting was adjourned at 6:45 p.m.





Business of the City Council
City of Gig Harbor, WA

Subject: Emergency Resolution declaring to waive the competitive bidding process for replacement of the traffic signal structure at Wollochet/ Hunt Intersection and authorization of a Construction Services Contract.

Proposed Council Action: Authorize the Emergency Resolution to waive the competitive bidding requirements and approve and authorize the construction services contract with Totem Electric of Tacoma, Inc. for the removal and replacement of the damaged traffic signal pole for a lump sum amount of approximately \$17,000.00.

Dept. Origin: Community Development Dept.

Prepared by: Stephen Misiurak, P.E. [Signature]
City Engineer

For Agenda of: June 25, 2007

Exhibits: Resolution and Construction Services Contract with Totem Electric of Tacoma, Inc.

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature]

Approved as to form by City Atty: [Signature]

Approved by Finance Director: [Signature]

Approved by Department Head: [Signature]

Table with 2 columns: Expenditure Required (0) and Amount Budgeted (0) on the left; Appropriation Required (\$17,000) on the right.

INFORMATION / BACKGROUND

The traffic signal pole at the intersection of Wollochet and Hunt was struck by a vehicle on June 1, 2007. A subsequent investigation conducted by the Engineering staff revealed that this pole is compromised structurally and needs to be immediately removed and replaced with a new assembly.

The City Engineer requests that Council waive the competitive bidding requirements for this work and authorize Totem Electric of Tacoma, Inc., a traffic signal contractor, to perform the removal and replacement of the traffic signal pole assembly.

FISCAL CONSIDERATION

The City will seek reimbursement from the driver's automobile insurance company. Costs are estimated to be approximately \$17,000.00.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Emergency Resolution to waive the competitive bidding requirements and approve and authorize the construction services contract with Totem Electric of Tacoma, Inc. for the removal and replacement of the damaged traffic signal pole for a lump sum amount of approximately \$17,000.00.

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DECLARING THE EXISTENCE OF AN EMERGENCY NECESSITATING THE WAIVER OF COMPETITIVE BIDDING REQUIREMENTS TO ADDRESS THE REPLACEMENT OF A TRAFFIC SIGNAL POLE AND SUBSEQUENT ROADWAY RESTORATION AT HUNT STREET AND WOLLOCHET DRIVE, AFTER A RECENT TRAFFIC ACCIDENT, ALSO WAIVING RCW 39.04.190, RCW 39.04.155, AND CITY OF GIG HARBOR RESOLUTION NO. 411, AS ALLOWED BY RCW 39.04.280.**

---

WHEREAS, on June 1, 2007, the existing traffic signal pole at the Hunt Street and Wollochet Drive intersection was hit and impacted by a drunk driver; and

WHEREAS, the City Engineer and Washington State Department of Transportation Engineers inspected the damaged traffic signal pole and concluded from their inspections that it is structurally compromised and needs to be removed immediately.

WHEREAS, because of this emergency, the City is unable to comply with the City's Resolution applicable to minimum bidding procedures; NOW THEREFORE,

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

Section 1. Finding and Declaration of Emergency. The City Council hereby declares that an emergency exists requiring the immediate action by the City Engineer in order to preserve the public health, safety, property and welfare. The Council further declares that the delay necessitated by compliance with the procedures for procurement of equipment and construction of public works found in City Resolution No. 411, RCW 39.04.190 and RCW 39.04.155, will prevent the City from coping with the emergency in time to minimize impact to the City's infrastructure. This declaration of emergency is based upon the following findings of fact:

- A. The City will seek reimbursement for all costs from the automobile insurance company.
- B. On June 1, 2007, the City Engineer contracted with Totem Electric to perform the removal and replacement of the severely damaged traffic signal pole on a lump sum cost of approximately \$17,000.00. The final contract total will be calculated on the actual time of project completion.

C. The City Engineer requires Council ratification of the utilization of Totem Electric on a lump sum cost basis to perform the removal and replacement of the damaged traffic signal pole.

Section 2. Authorization to Contract. The City Council hereby ratifies and approves the City Engineer contracting with Totem Electric on a lump sum cost of approximately \$17,000.00 for the removal and replacement of the damaged traffic signal located at the intersection of Hunt/Wollochet.

Section 3. Posting and Recording. Pursuant to RCW 39.04.280, this Resolution has been passed within two weeks after the City Engineer's action authorizing the contractor to begin work. The City shall post a description of work to be performed by the contractor for the work at Hunt/Wollochet.

RESOLVED by the City Council this 25th day of June, 2007.

APPROVED:

\_\_\_\_\_  
MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

BY: \_\_\_\_\_

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO.

**AGREEMENT FOR CONSTRUCTION SERVICES  
BETWEEN CITY OF GIG HARBOR AND TOTEM ELECTRIC of TACOMA, INC.**

THIS AGREEMENT, is made this 18th day of June, 2007, by and between the City of Gig Harbor (hereinafter the "City"), and Totem Electric of Tacoma, Inc. a Washington corporation, located and doing business at 2332 So. Jefferson Ave, Tacoma, WA 98401, (hereinafter "Contractor").

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

WHEREAS, in the process of selection of the Contractor and award of this contract, the City has utilized the procedures in RCW 39.04.280;

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

**I. Description of Work.** The Contractor shall perform all work as described below, which is attached hereto and incorporated herein by this reference, in a workman-like manner according to standard construction practices. The work shall generally include the furnishing of all materials and labor necessary to install a temporary wood strain pole, back guying done with ecology blocks, the installation of a temporary service cabinet, temporary signal conductors and splicing, the installation of Pedestrian heads and push buttons, the attachment to the existing span wire system with a bull ring set up, and removal/disposal of the existing strain pole. The Contractor shall not perform any additional services without the express permission of the City.

**II. Payment.**

A. The City shall pay the Contractor per section 1-09.6 of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction 2006, and shall include Washington State sales tax, for the services described in Section 1 herein.

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

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

M:\DATA\City Projects\Projects\0708 Hunt-Wollochet Traffic Signal Pole Emergency Repair\Vendor-Service provider Contract-Bonding NOT

Required doc

Rev. June 15, 2007

CAM48197.1AGR/00008.900000

entirely responsible for its acts and for the acts of the Contractor's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs hereunder.

**IV. Duration of Work.** The City and the Contractor agree that work will begin on the tasks described in section 1 herein immediately upon execution of this Agreement by both parties. The Contractor shall perform all work required by the Agreement on or before June 22, 2007. The indemnification provisions of Section IX shall survive expiration of this Agreement.

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

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

**VI. Waiver of Performance Bond and Retainage: Limited Public Works Process.** As allowed in RCW 39.04.155(3) for limited public works projects, the City has waived the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW for the work described in section 1.

#### **VII. Termination.**

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

B. Termination for Cause. If the Contractor refuses or fails to complete the tasks described in section 1, to complete such work by the deadline established in Section IV, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to the Contractor, give notice of its intention to terminate this Agreement. On such notice, the Contractor shall have five (5) days to cure to the satisfaction of the City or its representative. If the Contractor fails to cure to the satisfaction of the City, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor's address as stated below.

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

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

**VIII. Discrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, the Contractor, its subcontractors or any person acting on behalf of the Contractor shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates.

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

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

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

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

**X. Insurance.**

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

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

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

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

- D. The City of Gig Harbor shall be named as an additional insured on the Contractor's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Contractor's insurance policies.
- E. It is the intent of this contract for the Contractor's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.
- F. The Contractor shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Contractor's coverage.

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

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

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

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



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

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

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

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

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

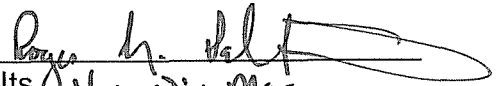
**XVIII. Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements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

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

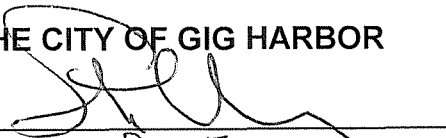
If any dispute arises between the City and the Contractor under any of the provisions of this Agreement which cannot be resolved by the City's determination in a reasonable time, or if the Contractor does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation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

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

**Totem Electric of Tacoma, Inc.**

By:   
Its Ops Div Mgr.

**THE CITY OF GIG HARBOR**

By:   
Its Mayor Pro Tem

**Notices should be sent to:**

Totem Electric of Tacoma, Inc. P.O. Box 1093 Tacoma, WA 98401 Phone: (253) 383-5022 Fax: (253) 272-5214	City of Gig Harbor Attn: Steve Misiurak City Engineer 3510 Grandview Street Gig Harbor, Washington 98335 (253) 851-6170
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**Approved as to form:**

By: \_\_\_\_\_  
City Attorney

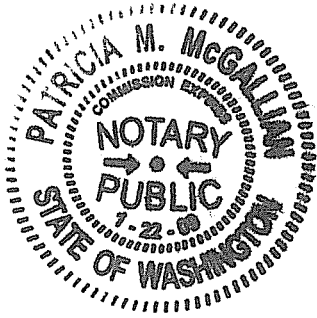
**Attest:**

By:   
Molly M. Towslee, City Clerk

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

I certify that I know or have satisfactory evidence that Roger L. Palfenier 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 Hwy Div. Manager of Totem Electric of Tacoma, Inc to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 6/18/2007



Patricia M. McGallan  
Notary Public in and for the  
State of Washington,  
Residing at Kitsap County  
My appointment expires: 1-22-2009

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

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

DATED: 6-15-07

*Molly M Towselee*

Notary Public in and for the  
State of Washington,

Residing at: Gig Harbor

My appointment expires: 12/2/07





**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Interlocal Signal Agreement with WSDOT

**Proposed Council Action:** Authorize Council to approve and the Mayor to sign the Signal Agreement with WSDOT for the Olympic Drive and 50<sup>th</sup> Street Signal and the 46<sup>th</sup> Street Court NW and Point Fosdick Drive Signal.

**Dept. Origin:** Community Development Dept.

**Prepared by:** Stephen Misiurak, P.E.  
City Engineer

**For Agenda of:** June 25, 2007

**Exhibits:** Agreement with WSDOT Signal Assignment No. 2

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:**

6/20/07

**Approved as to form by City Atty:**

\_\_\_\_\_

**Approved by Finance Director:**

\_\_\_\_\_

**Approved by Department Head:**

6/20

Expenditure Required	Amount Budgeted	Appropriation Required	See Fiscal Consideration Below

**INFORMATION / BACKGROUND**

Currently the City has Traffic signal Agreements with WSDOT for the maintenance and operation of the following City owned traffic signals:

- Kimball Drive/Pioneer Way
- Pioneer Way/Grandview Street
- Olympic Drive/Hollycroft Street
- Olympic Drive/Point Fosdick

This agreement will add the following new traffic signals to this list of WSDOT maintained signals. They include Point Fosdick Drive/46<sup>th</sup> Street Court NW and the to be constructed Olympic Drive/50<sup>th</sup> Street signal. The content of this agreement is the same as the current signal agreement in effect.

**FISCAL CONSIDERATION**

The City will reimburse WSDOT in accordance with a time and material fee schedule currently in effect.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize Council to approve and the Mayor to sign the Agreement with WSDOT Signal Assignment No. 2 Agreement No. GMW-0008.

**AGREEMENT NO. GMW-0008  
SIGNAL ASSIGNMENT No. 2**

This Signal Assignment, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between The **State of Washington**, Department of Transportation, by virtue of Title 47 RCW, hereinafter designated as the “**STATE**” and the **City of Gig Harbor**, 3510 Grandview Street, Gig Harbor, Washington 98335, hereinafter called the “**CITY**”.

**WHEREAS**, Master Agreement Number **GMW-0008**, entered into between the **STATE** and the **CITY** is incorporated and by this reference, made a part of this Signal Assignment or Deletion as if fully set forth herein.

**NOW THEREFORE**, it is mutually agreed as follows:

**Signal Assignment**

The work proposed under this Signal Assignment includes the maintenance of signal systems which have been constructed at the following locations:

1. Olympic Drive and 50<sup>th</sup> Street
2. 46<sup>th</sup> Street Court NW and Point Fosdick Drive

**Effective Date**

The effective date to start the above noted Signal Assignment work is \_\_\_\_\_, \_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties hereto have executed this Signal Assignment or Deletion as of the day and year first above written.

**CITY OF GIG HARBOR (Pierce Co.)**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Asst. Region Administrator for Operations



Business of the City Council
City of Gig Harbor, WA

Subject: Consultant Services Contract

Proposed Council Action: Authorize Consultant Services Contract for Stephen B. Lovell & Associates for the City project management and consultant oversight for the SR-16/ Interchange Project.

Dept. Origin: Community Development Dept.

Prepared by: Stephen Misiurak, P.E. City Engineer

For Agenda of: June 25, 2007

Exhibits: Consultant Services Contract

Initial & Date

Concurred by Mayor:

Approved by City Administrator: [Signature]

Approved as to form by City Atty: [Signature]

Approved by Finance Director: [Signature]

Approved by Department Head: [Signature]

Table with 4 columns: Expenditure Required, See Fiscal Below, Amount Budgeted \$ 0, Appropriation Required \$ 0

INFORMATION / BACKGROUND

This contract will provide City project management and consultant oversight for this complex Interchange Project. In order to keep the City's design consultant on track and on budget, assistance is required at this time. Similar to the current City contract with Bill Stalzer, who provides City/Hospital oversight and facilitation, this contract will do the same.

FISCAL CONSIDERATION

Franciscan Health Systems (FHS) will be funding this expenditure in its entirety.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Consultant Services Contract for Stephen B. Lovell & Associates for preparation of the Documented Categorical Exclusion (DCE) for the SR-16 Interchange Project for the not-to-exceed amount of Thirty Thousand Eight Hundred Fifteen Dollars and No Cents (\$30,815.00).



**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
STEPHEN B. LOVELL & ASSOCIATES**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Stephen B. Lovell & Associates, a corporation organized under the laws of the State of Washington, located and doing business at 1614 40<sup>th</sup> Avenue, Seattle, Washington 98122, (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the final design for the SR-16 Interchange Project and desires that the Consultant perform services necessary to provide project management assistance, engineering services, and consultant oversight; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated June 18, 2007, 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 Thirty thousand eight hundred fifteen dollars and zero cents (\$30,815.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall also be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

### III. Relationship of Parties

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

### IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2007; provided however, that additional time shall be granted by the City for extra work.

### V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the

amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

## **VI. Discrimination**

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

## **VII. Indemnification**

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

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

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

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

### **VIII. Insurance**

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

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

1. Business auto coverage for any auto no less than a \$350,000 each accident limit, and

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. 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.

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

### **IX. Exchange of Information**

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

## **X. Ownership and Use of Records and Documents**

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

## **XI. City's Right of Inspection**

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

## **XII. Consultant to Maintain Records to Support Independent Contractor Status**

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

## **XIII. Work Performed at the Consultant's Risk**

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

#### **XIV. Non-Waiver of Breach**

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

#### **XV. Resolution of Disputes and Governing Law**

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

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be 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 prevailing parties' expenses and reasonable attorney's fees.

#### **XVI. Written Notice**

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

CONSULTANT  
Stephen B. Lovell  
Stephen B. Lovell & Associates  
1614 40<sup>th</sup> Avenue  
Seattle, Washington 98122  
(206) 329-9463

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

#### **XVII. Assignment**

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

**XVIII. Modification**

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

**XIX. Entire Agreement**

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

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

CONSULTANT  
By: Stephen B. Lovell  
Its Principal

CITY OF GIG HARBOR  
By: \_\_\_\_\_  
Mayor

Notices to be sent to:  
CONSULTANT  
Stephen Lovell  
Stephen B. Lovell & Associates  
1614 40<sup>th</sup> Avenue  
Seattle, Washington 98122  
(206) 329-9463

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

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

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (print or type name)

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

\_\_\_\_\_

My Commission expires: \_\_\_\_\_



STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

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

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(print or type name)

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

\_\_\_\_\_

My Commission expires: \_\_\_\_\_

**Borgen/SR-16/Canterwood Interchange Project**  
**City of Gig Harbor, Washington**

The City of Gig Harbor has requested a scope of services and fee from Stephen Lovell Associates (SLA) to provide project management assistance and consultant oversight for the SR-16 Interchange Project. Included in this Scope of Work is the Traffic Model Reality Check. The engineering and technical studies for the project will be prepared by DEA.

The following scope of work details the project work by task, and lists the deliverables and assumptions for each task. SLA has identified the following tasks needed to be complete for the project:

Task 1 - Traffic Model Reality Check (SLA)	80 Hours
Task 2 - Meetings/Coordination	60 Hours
Task 3 - Project Management	175 Hours

The scope of work, budget and associated schedule details the overall timeline, cost, and tasks for the completion of the process to facilitate construction of the interchange beginning in the spring of 2009.

## **Task 1 - Traffic Model Reality Check**

This work includes an independent review of the various reports that DEA has prepared for the City related to the traffic model and capacity analyses. This would include reviewing and critiquing the following reports:

- Citywide Capacity Availability Report – 2006
- Traffic Model Documentation Report
- Pipeline Traffic for Model
- Comp Plan and Comp Plan Amendment EISs
- Selected Synchro Analyses assumptions (I assume that the City has Synchro that I can use if necessary.)
- Traffic Impact Studies listed in Emily's email.
- Probable consultation with VISSUM colleague

Deliverables:

- One (1) Draft Preliminary Recommendation Memo that includes the consultant's conclusions.
- One (1) Final Recommendation Memo that includes the consultant's conclusions.

Assumptions:

- The City will review one (1) draft of the Preliminary Recommendation Memo.
- The Consultant will receive one set of consolidated comments.
- The Consultant will prepare one (1) final Recommendation Memo.

## **Task 2 - Meetings/Coordination**

- SLA will manage and attend bi-weekly meetings (2 hours) with the City and DEA staff.
- SLA will coordinate with WSDOT and DEA on project direction.
- SLA will manage the coordination with the City on SEPA and local permits.

## **Task 3 - Project Management**

Provide Project Management - SLA will provide management, coordination, and direction to complete the project on time and within budget.

Monthly Project Reports and Invoices - SLA will prepare monthly progress reports to be included with invoices.

Quality Management Program - SLA will establish a quality management program and be responsible for review of environmental work.

Prepare a Project Schedule and Revise as Necessary - SLA will prepare and submit an activities list and schedule to the City. The schedule will show appropriate milestones for the project. SLA will revise the schedule to reflect changes in the project milestones and timelines.

Project File Management (Administrative Record) - SLA will develop project file management protocols and set up and maintain an electronic and paper filing system. DEA will be responsible for sending copies of all correspondence to SLA at the City of Gig Harbor on a weekly basis.

Prepare Out of Scope Log - SLA will prepare additional work scopes as directed by the City, if the project changes direction or additional work is necessary to complete any of the tasks in the original scope.

## Hours and Budget

### Tasks and Hours

<u>Tasks</u>	<u>Hours</u>
Task 1 - Traffic Model Reality Check (SLA)	80 Hours
Task 2 - Meetings/Coordination	60 Hours
Task 3 - Project Management	175 Hours
<b>Total Hours</b>	<b>315 Hours</b>

### Budget

315 Hours @ \$95.00 per hour = \$29,925.00

#### Expenses:

Travel – 1 trip per week to/from Gig Harbor @ \$0.445 per mile for 100 miles per week.  
100 miles \* 20 \* \$0.445 = \$890.00

**Grand Total** **\$30,815.00**

## **Assumptions for Hours and Cost Estimate**

### Task 1 - Traffic Model Reality Check (SLA)

(Based upon the number of documents to review and having compared modeling results for other projects)

### Task 2 - Meetings/Coordination

Assume the DCE can be prepared in six months (26 weeks) @ 2 hours meeting per week plus coordination with City, WSDOT and FHWA.

### Task 3 - Project Management

Assume one day (7 hours) per week for 25 weeks.



Business of the City Council  
City of Gig Harbor, WA

**Subject: May 2007 GHPD Council Report**

**Proposed Council Action: Review**

**Dept. Origin: Police Department**

**Prepared by: Chief Mike Davis** 

**For Agenda of June 25, 2007**

**Exhibits: See attached**

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** PKK 6/13/07

**Approved as to form by City Atty:** \_\_\_\_\_

**Approved by Finance Director:** N/A

**Approved by Department Head:** PKK for MD

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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POLICE

TO: MAYOR CHUCK HUNTER AND CITY COUNCIL  
 FROM: CHIEF OF POLICE MIKE DAVIS  
 SUBJECT: GHPD MONTHLY REPORT FOR MAY 2007  
 DATE: JUNE 25, 2007

DEPARTMENTAL ACTIVITIES

May 2007 YTD *calls for service* when compared to May 2006 YTD *calls for service* show an increase of 373 dispatched calls. During this time frame we have seen 87 fewer *reports written* by our officers. *DUI arrests* for 2007 YTD are up by eight compared to 2006. Our *infractions* are up by 149 this year; and our criminal citations are up by 71. Statistics show our May 2007 YTD *traffic accidents* have decreased by seventeen accidents when compared to May 2006 YTD. May 2007 YTD statistics indicate our *misdemeanor and felony arrests* are down by 27 and seven arrests respectively when compared to the same time period in 2006.

Category	May 2007					
	May 2006	May 2007	Change	YTD 2006	YTD 2007	Change
Calls for Service	351	469	118	1735	2108	373
General Reports	172	169	-3	828	741	-87
Criminal Traffic	7	30	23	40	81	41
Infractions	81	193	112	435	584	149
Criminal Citations	0	20	20	8	79	71
Warrant Arrests	6	13	7	29	43	14
Traffic Reports	17	13	-4	86	69	-17
DUI Arrests	3	7	4	15	23	8
Misdemeanor Arrests	30	34	4	167	140	-27
Felony Arrests	11	14	3	51	44	-7
FIR's	2	3	1	9	5	-4

Attached you will find several graphs that track 2007 monthly statistics. I have left data from the last two years on several graphs to provide a baseline with which to compare our current activity levels as we progress through 2007 (remember some of the graphs contain cumulative numbers).



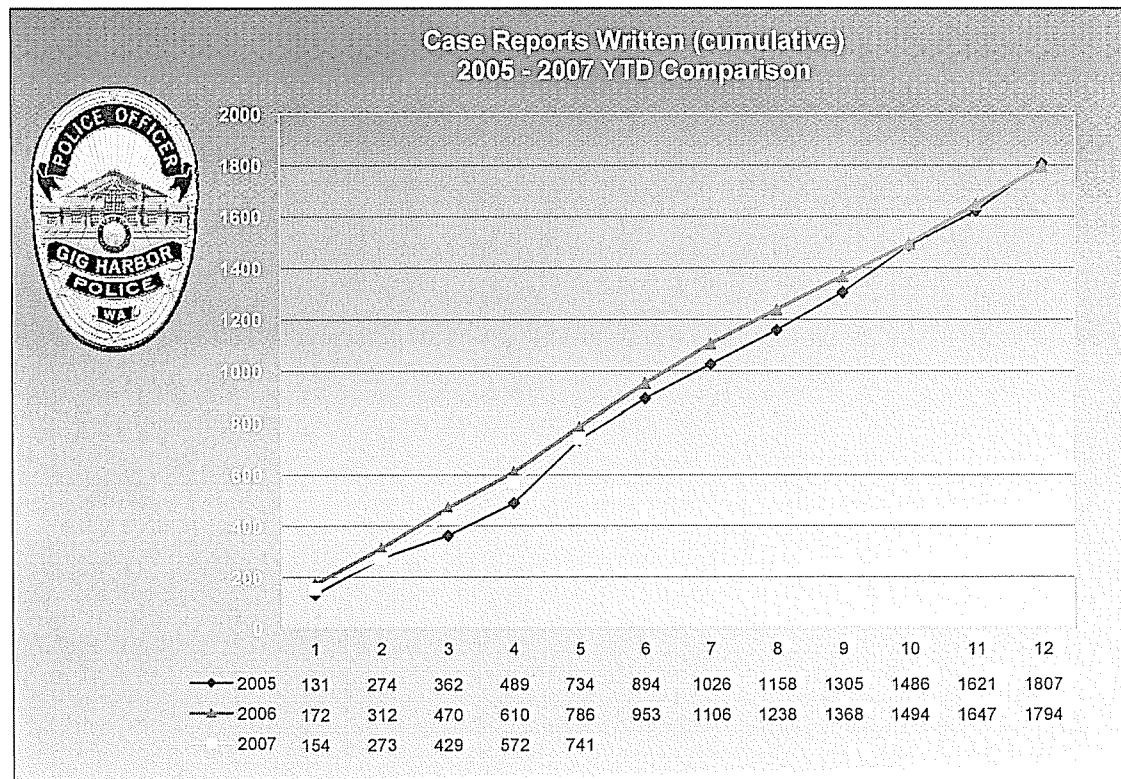
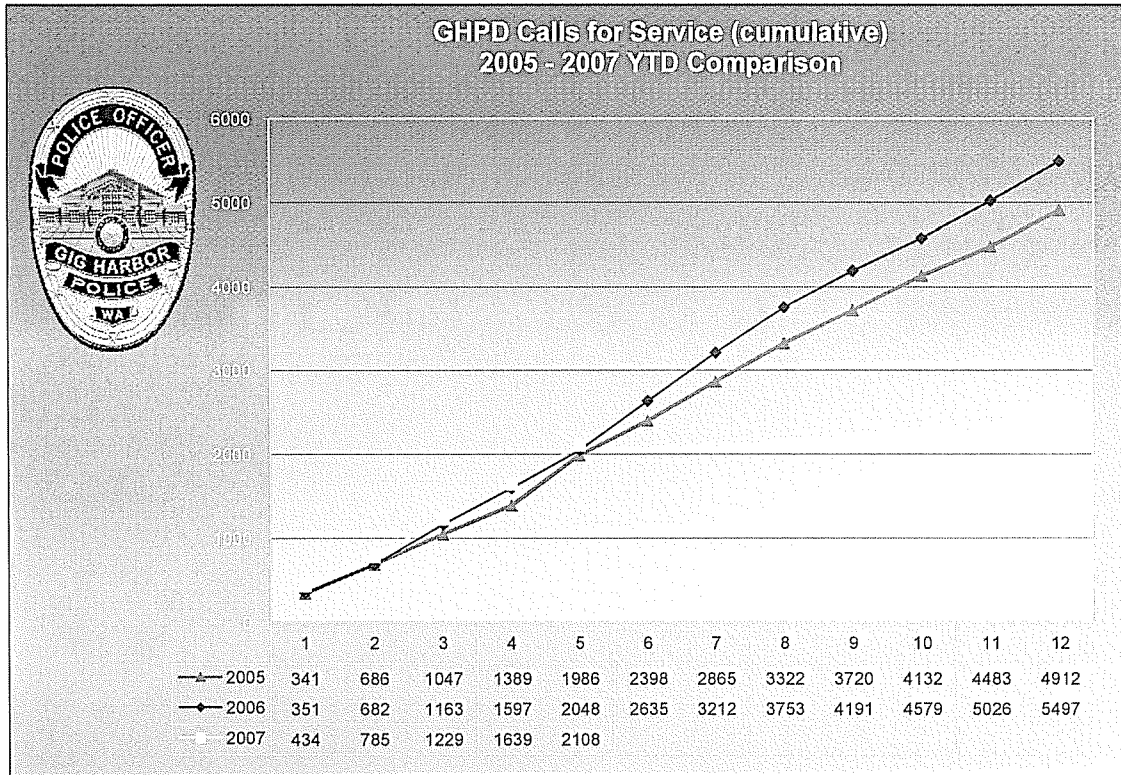
**The Reserve Unit** supplied 54 hours of volunteer time assisting our officers in May. Our newest reserve candidate, Ed Santana was officially sworn in by Mayor Hunter at the May 28<sup>th</sup> Council meeting.

**The COPS (Citizens on Patrol)** program was active in May, setting the speed trailer out on Verhardson, Briarwood, Soundview and the 4200 block of Harborview. Our COPS volunteer Ken McCray advised us that there were a lot of vehicles going 10+ over the 25 MPH limit on Harborview. TSO Mike Allen worked the area and cited four violators for speeding. Ken donated 43 hours of volunteer time in May.

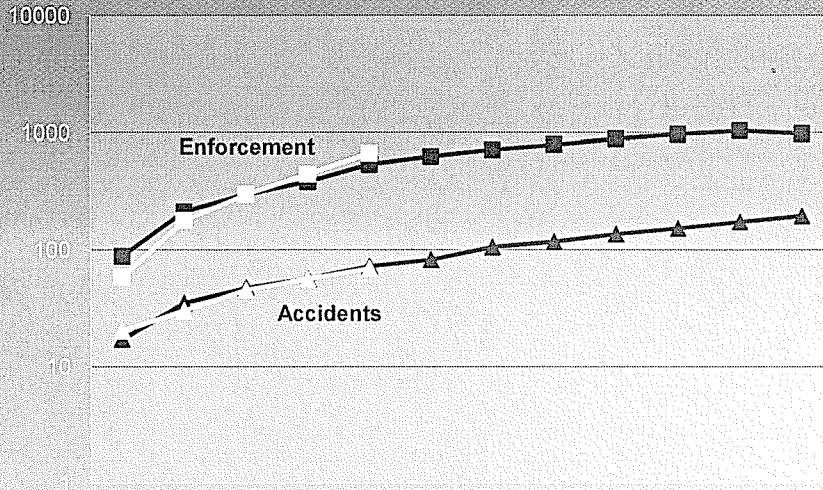
**The Marine Services Unit** is working regular hours. We just received a Wave Runner on the governmental loan program. This is the third year we have been utilizing this vehicle to patrol the Harbor. Our attempt to acquire a Homeland Security grant for a new patrol/fire boat was not successful. We are now looking at other grants and programs. Sergeant Kelly Busey will present an overview of our efforts at the June 25, 2007 Council meeting.

TRAFFIC ACCIDENTS FOR MAY 2007					
DATE	TIME	LOCATION	TYPE	CASE#	AGE
5/1/2007	18:15	5100 Olympic Dr.	Non	GH070539	16
5/1/2007	14:30	5101 Rosedale St.	H&R P-Lot	GH070538	N/A
5/3/2007	8:00	Skansie & Rosedale	Non	GH070545	18
5/7/2007	6:30	Olympic Dr & Pt.Fosdick Dr.	Non	GH070566	59
5/7/2007	14:20	Rosedale & Skansie	Non	GH070570	16
5/7/2007	17:15	Wollochet & Wagner Way	Non	GH070572	22
5/9/2007	13:45	6521 43rd Ave. Ct.	H&R	GH070578	N/A
5/10/2007	22:43	36th St. & Pt. Fosdick Dr.	Non	GH070585	41
5/13/2007	15:03	Olympic Dr. & Hollycroft	Non	GH070597	63
5/14/2007	16:52	5100 Blk Rosedale St.	Non	GH070600	18
5/15/2007	12:07	5010 Olympic Dr.	INJ	GH070602	78
5/15/2007	18:02	Stinson Ave. & Foster St.	INJ	GH070603	53
5/15/2007	15:12	11400 51st Ave.	H&R P-Lot	GH070609	N/A
5/17/2007	12:00	Hollycroft & Soundview	H&R P-Lot	GH070611	N/A
5/19/2007	0:56	10300 Blk Burnham Dr.	INJ	GH070619	22
5/21/2007	18:15	11400 51st Ave. NW	H&R	GH070635	31
5/22/2007	8:25	Pt. Fosdick Dr. & 45th St. Ct.	INJ	GH070637	43
5/22/2007	10:45	5100 Rosedale St.	P-Lot	GH070639	17
5/26/2007	20:20	Borgen Blvd. & Burnham Dr.	R/A - Non	GH070664	17

## MAY 2007 YTD MONTHLY ACTIVITY GRAPHS

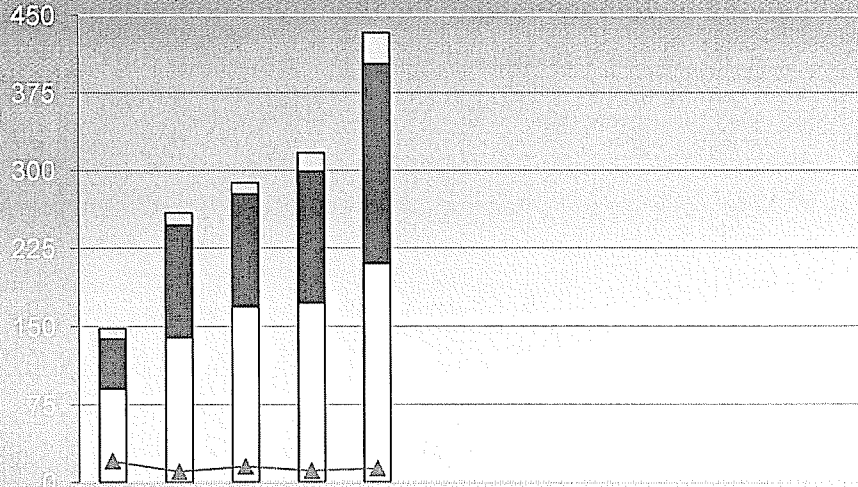


### Trends: Traffic Enforcements vs. Accidents 2006 - 2007 YTD Comparison (cumulative)



	1	2	3	4	5	6	7	8	9	10	11	12
2006 Infractions + Citations	88	211	297	382	536	628	717	788	888	970	1038	985
2007 Infractions + Citations	58	178	297	442	665							
2006 Reportable Accidents	17	35	47	56	72	82	105	117	136	152	173	194
2007 Reportable Accidents	20	30	45	56	69							

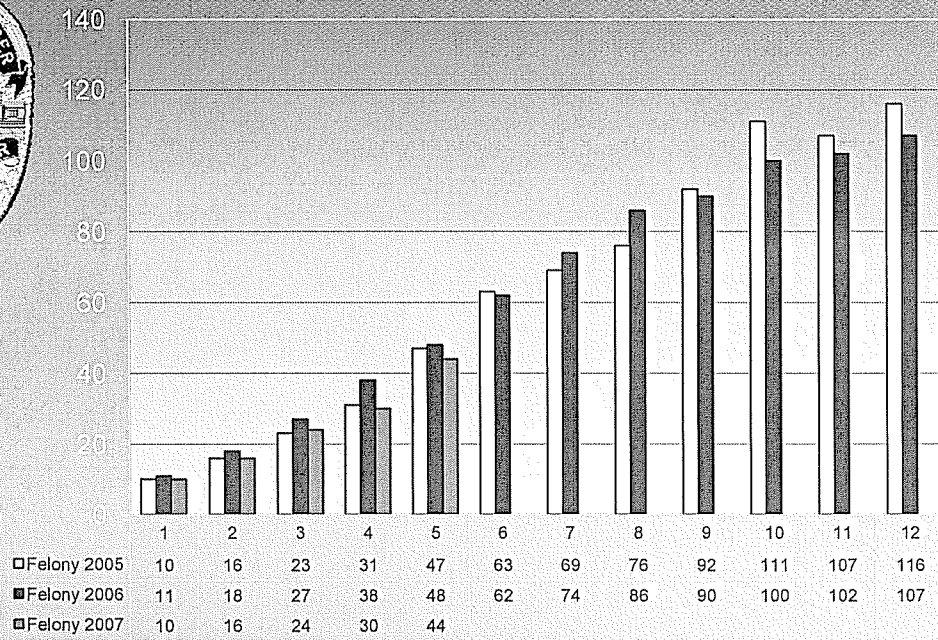
### 2007 Traffic Enforcement vs. Accidents Comparison Monthly Totals



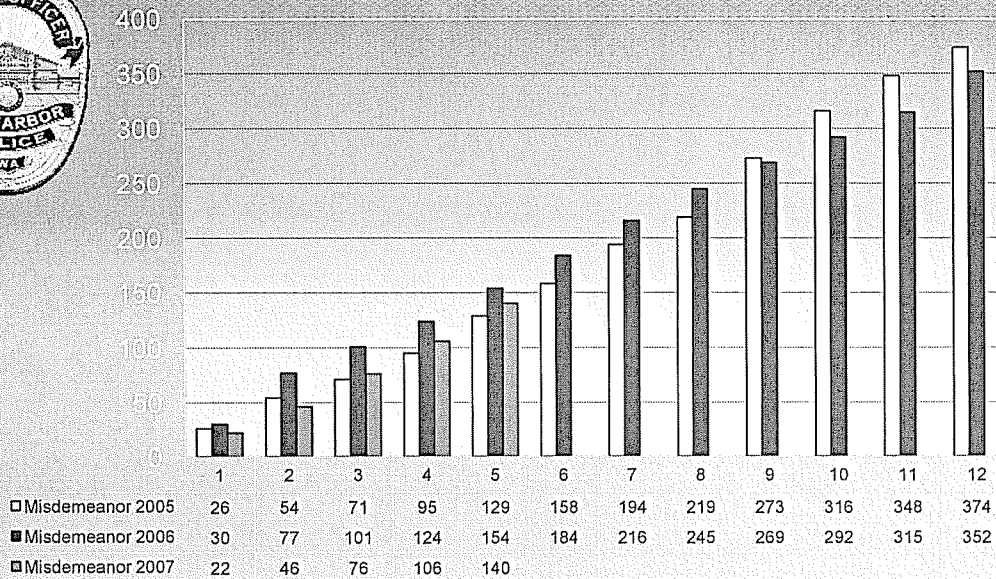
	1	2	3	4	5	6	7	8	9	10	11	12
Criminal Traffic Citations	10	12	11	18	30	0	0	0	0	0	0	0
Infractions	48	108	108	127	193	0	0	0	0	0	0	0
Verbal Warnings	90	139	169	172	210	0	0	0	0	0	0	0
Accidents	20	10	15	11	13							



### Felony Arrests (cumulative) 2005 - 2007 YTD Comparison

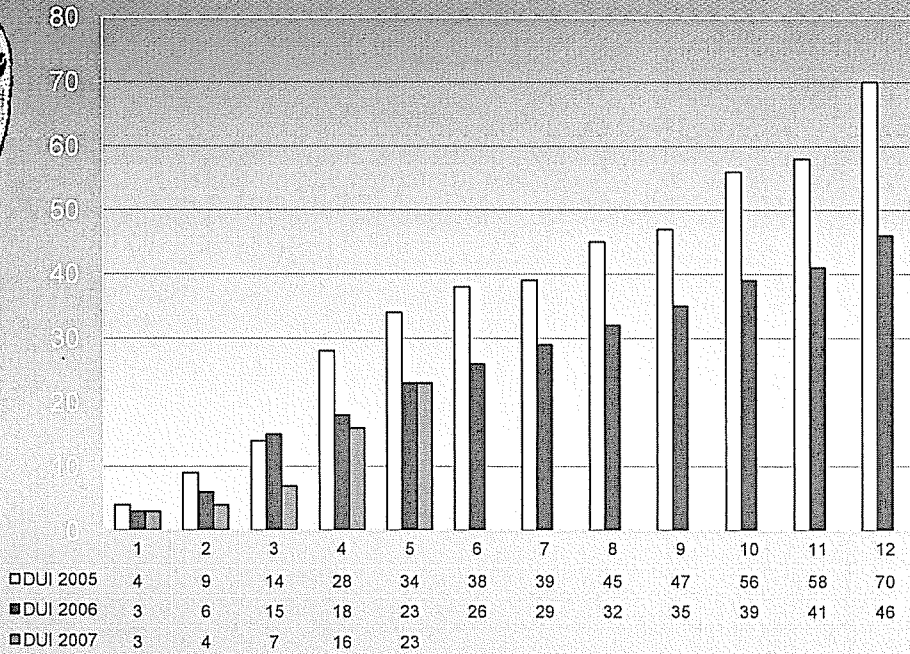


### Misdemeanor Arrests (Cumulative) 2005 - 2007 YTD Comparison

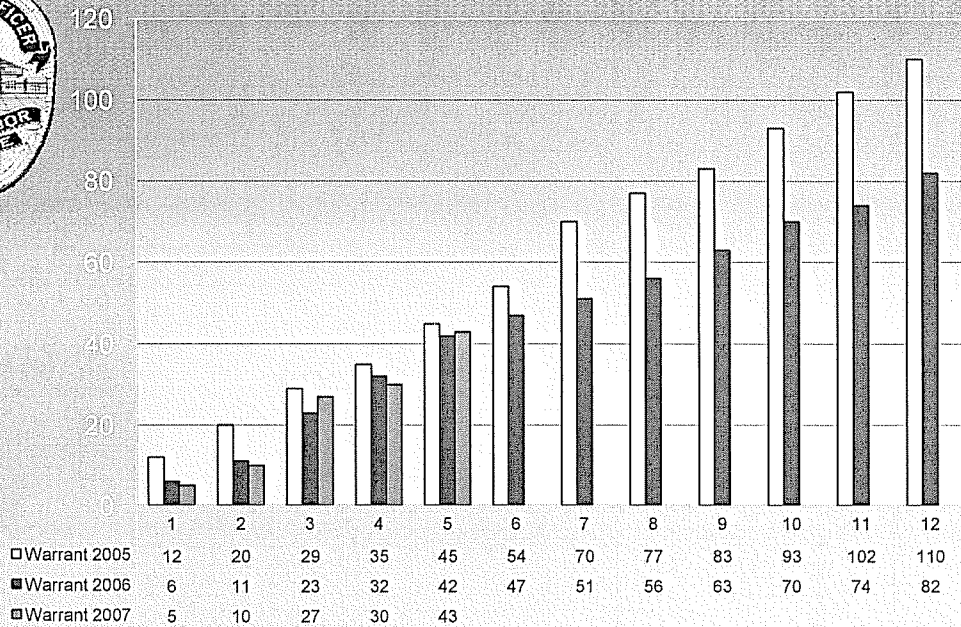




**DUI Arrests (cumulative)  
2005 - 2007 YTD Comparison**



**Warrant Arrests (cumulative)  
2005 - 2007 YTD Comparison**





Business of the City Council  
City of Gig Harbor, WA

**Subject: Staff Report on the status of the grant to replace the GHPD patrol boat**

**Proposed Council Action: Review**

**Dept. Origin: Police Department**

**Prepared by: Sergeant Kelly Busey** *(KB)*

**For Agenda of: June 25, 2007**

**Exhibits: See attached**

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:** *RJK 6/20/07*

**Approved as to form by City Atty:** \_\_\_\_\_

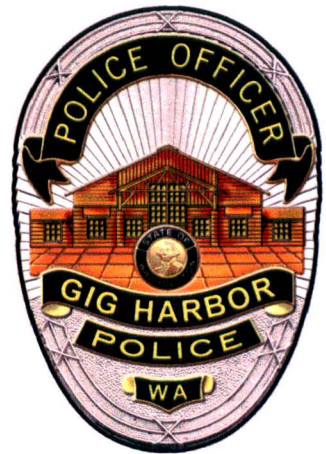
**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** *DH1*

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**Gig Harbor Police and Fire**  
**REGIONAL RESPONSE VESSEL**







## Gig Harbor

- 1400+ Recreational and Commercial Vessels
- Over 15 Marinas
- Many Waterfront Homes and Businesses

## Fire and Rescue

- Five Significant Marina Fires Since 1994
- Numerous Waterborne Medical Aid Calls
- Approximately 15 Search and Rescue Calls per Year



## Pollution

- Four Significant Pollution Responses since 2005 Requiring Boom Deployment
- Numerous Minor Pollution Responses



## Current Resource



### 2001 18-Foot Zodiac Rigid Hull Inflatable Boat (RHIB)

- 100 hp Outboard Engine
- Range: 25 Miles
- Crew: 1-2 (Exposed)
- Towing: Limited/Protected Water
- Firefighting Capability: None
- Medical Aid Response Capability: Very Limited
- Serviceable Lifespan: 6-7 Years (Due for replacement)

**Operated Seasonally by the Gig Harbor Police Department**



## Resource Required

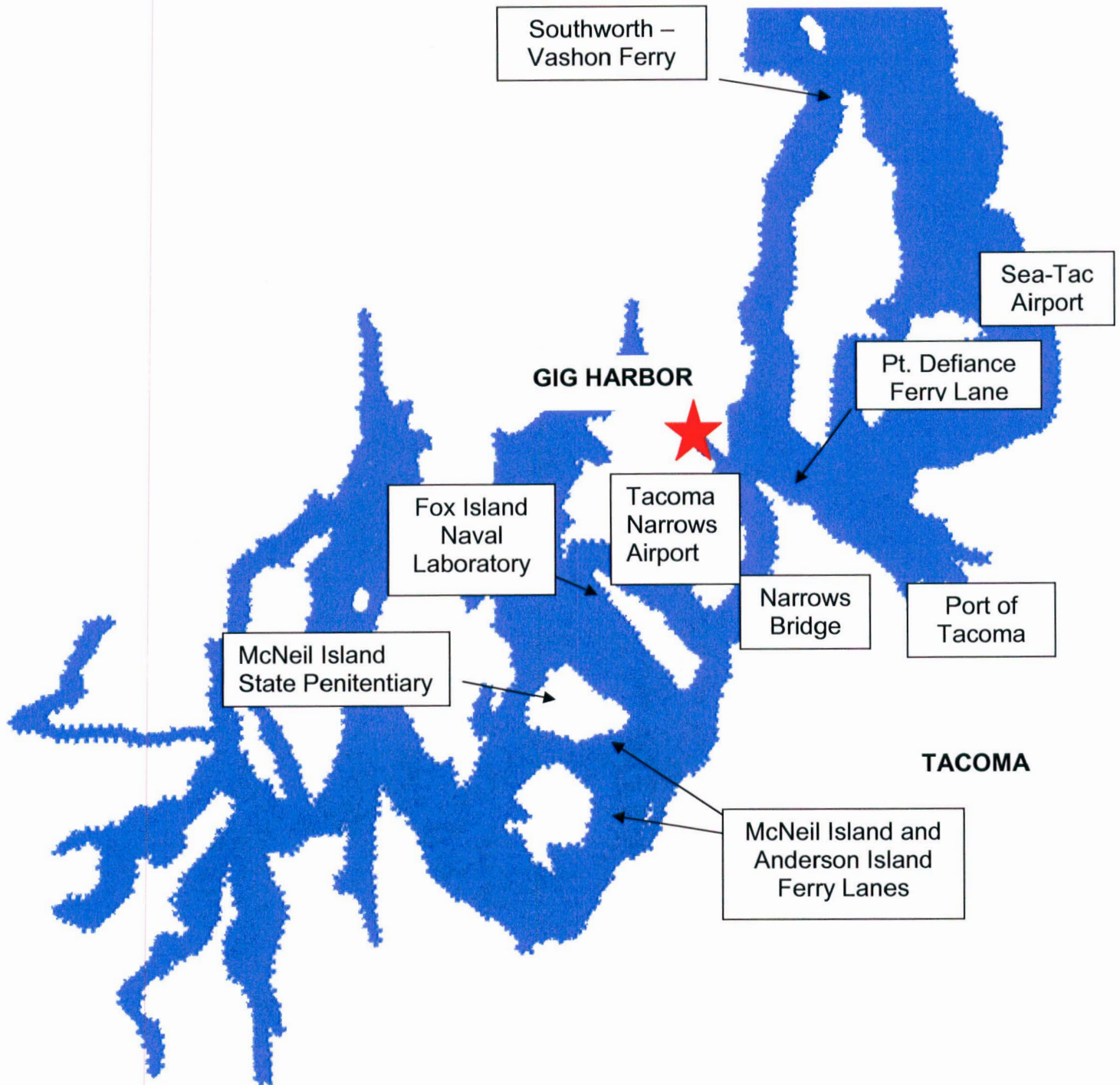


### **23-Foot SAFE Boat Rigid Collar Boat**

- 300 hp Outboard Engines
- Range: 100+ Miles
- Crew: 1-6 (Weather Protected)
- Towing: +/- 25 Tons
- Firefighting Capability: 550 gal/min Fire Monitor with Additional Pumping/Dewatering Capability
- Medical Aid Response Capability: Paramedic Capable
- Serviceable Lifespan: 12+ Years

**Jointly Operated Year-Round by the Gig Harbor Police Department and Pierce County Fire District 5**

## Regional Security and Safety Response



### Within 12 Mile Radius

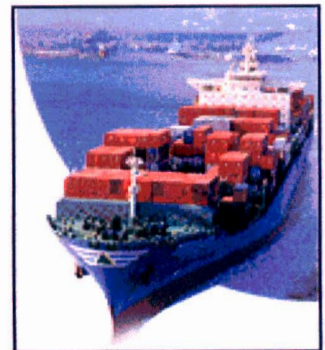
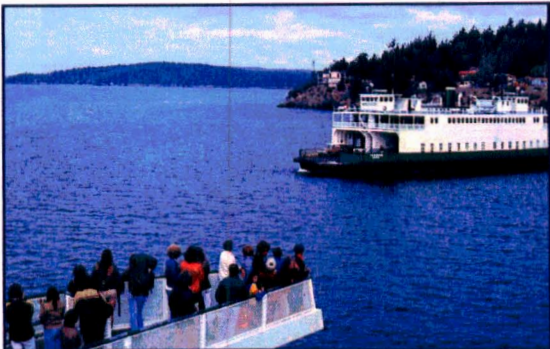
- Four Ferry Lanes
- Two Airport Flight Paths
- Port of Tacoma
- Naval Research Laboratory
- Four Bridges (Including Narrows Bridge)
- Commercial Shipping Lanes
- Numerous State Parks and Recreational Areas
- Major Seaport





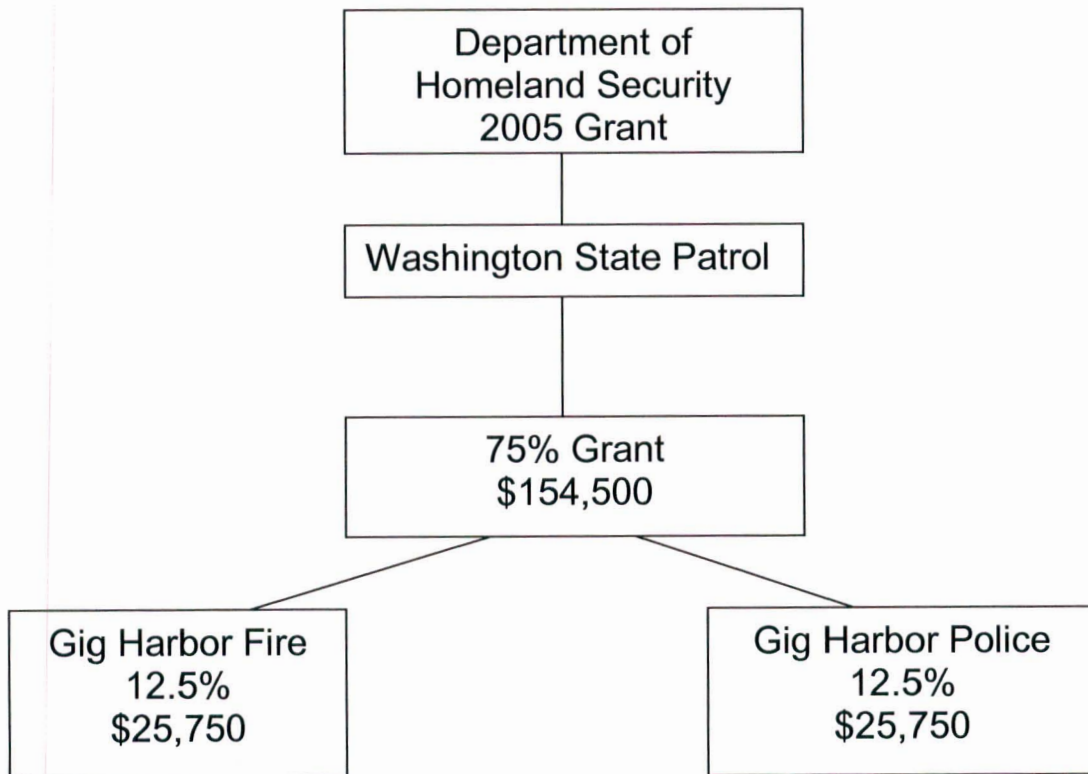
## Gig Harbor Police and Fire Regional Response Vessel

- 23' T-Top SAFE Boat
- 550 gpm Fire Pump and Monitor
- Complete Electronics Package
- Galvanized Trailer
- Sales Tax
- FOB Port Orchard, Washington
- **Estimated Cost     \$205,995.56**



**Gig Harbor Police and Fire**  
**REGIONAL RESPONSE VESSEL**

Funding Source



**City Council and Council Committees:  
Proposed Schedule of Retreat Action Items**

As of June 19, 2007

**City Council**

April 2	(Meeting Cancelled) Joint Meeting with Finance/Safety and Operations Committees re: Eddon Boat Lease. <b>Gig Harbor BoatShop lease negotiations are underway.</b>
April 9	Regular Meeting
April 16	No Meeting
April 23	Regular Meeting
April 30	Council Ad Hoc Committee: Maritime Pier <b>Council approved Ad Hoc Committee recommendation on May 29.</b>
May 7	No Meeting
May 14	Regular Meeting
May 21	Joint Meeting with Parks Commission <b>Done. Next joint meeting scheduled for October 3<sup>rd</sup>.</b>
May 29 (Tues)	Regular Meeting Workshop: Mainstreet Program <b>Moved to July 9.</b>
June 4	No Meeting
June 11	Regular Meeting Workshop: Public Safety (Court, Police, Emergency Management) <b>Done.</b>
June 18	No Meeting
June 25	Regular Meeting <del>Workshop: Strategic Visioning Process and Options</del> <b>Move to October 22.</b>
July 2	No Meeting
July 9	Regular Meeting & <b>Workshop: Main Street Program</b>
July 16	No Meeting
July 23	Regular Meeting
October 1	Joint Meeting w/Planning Commission and Design Review Board
October 3	Joint Meeting w/Parks Commission
October 22	Regular Meeting & <b>Workshop: Strategic Visioning Process and Options</b>

## **Planning & Building Committee**

- March 14 Land Use Process Improvements  
**Recommendation will come to Council as part of proposed staffing plan in July (council committees in June).**
- April 16 Affordable Housing Options  
**Report to Council on July 9.**  
Transfer of Development Rights  
**Planning & Building Committee recommends not pursuing further. Existing PRD already provides density bonus. In addition, the PCD district in GHN already has density transfer.**
- May 7 Grandfathering Non-Conforming Structures Outside Waterfront Zones  
**To Planning Commission Work Plan – Research Tier.**  
Grandfathering Building Size in Waterfront Zone  
**To Planning Commission Work Plan – Research Tier.**
- June 4 Street Vacations: One-Time Blanket Waiver for Non-User Statute  
**Send to Operations Committee October 18.**
- July 2 No Meeting
- August 6 Annexations – Streamline Process  
Endangered Species – changes in case law, regulations  
**Define problem, scope of staff work needed for this.**
- September 3 No Meeting
- October 1 No Meeting (Joint CC/Plng/DRB that Night)
- November 5 Vertical Zoning
- December 3 Low Impact Development  
**Define scope of staff work needed for this.**



## Operations & Public Projects Committee

- March 26            Impact Fees – Interim Changes  
**Done.**
- April 2             (This meeting was cancelled)  
Joint Meeting with Finance/Safety Committee re: Eddon Boatyard Building Lease. (This meeting was cancelled)  
**Gig Harbor Boatshop Lease Negotiations Currently Under Way.**
- April 19            Shore Acres Water – To full Council in July.  
Existing Infrastructure Needs – Streets. **To be incorporated into 5-year Capital Improvement Plan (CIP).**  
Existing Infrastructure Needs – Water. **To be incorporated into 5-year Capital Improvement Plan (CIP).**
- Capital & Development Services Staffing Plan. **To Planning & Building Committee on June 4; To Operations Committee on June 21; Full Council in July.**
- May 17             Street Connections – **Refine map; return & report; then include in CIP.**  
Sidewalk/Trails Inventory and Connections - **Refine map; return & report; then include in CIP.**
- Wastewater Treatment Plant Expansion & Outfall Extension Update  
**Update given. Design underway.**
- Eddon Boat Park Update  
**Update given. Clean-up permit application is in; upland sidewalk design and shoreline application underway.**
- June 21            Vehicular Speed Dampening Downtown  
Park Impact Fees  
Community Development Staffing Plan
- July 19             Infrastructure Financing: CIP, Replacement Reserves, etc.  
Weekend Code Enforcement Progress Report
- August 16          WSDOT Progress Report  
Impact Fee Update: 20-year plan
- September 20     Infrastructure Needs: Wastewater Lift Stations & Conveyance  
Unsewered Areas Strategy

October 18      City/County Coordination of Cross-Boundary Impacts  
Downtown Parking Strategy  
Street Vacations: One-Time Blanket Waiver for Non-User Statute

November 15    Traffic Modeling: Report on Methodology Improvements  
Wastewater System Comprehensive Plan

## Finance and Safety Committee

- April 2 (This meeting was cancelled)  
Joint Meeting with Operations/Public Projects Committee re: Eddon Boatyard Building Lease.  
**Gig Harbor BoatShop lease negotiations currently underway.**
- May 9 (this meeting was cancelled)  
Grants Report  
**Move to August Committee Meeting.**  
City Hall Telephone Direct Dial  
**Implemented.**  
Five-Year Financial Forecast  
**Move to August Committee Meeting.**  
Drug & Alcohol Testing Policy & Procedures for CDLs  
**Bring to Full Council in the Fall.**
- June 13 (this meeting did not have a quorum)  
Quarterly Consultant Report  
Report provided.  
Personnel Policies Update  
**Committee asked to review personnel policies; comprehensive review will take place over the next 6-12 months.**
- July 12 Budget Policies  
2008 Budget Process & Schedule  
Capital Improvement Plan Financing Strategy
- August 20 Grants Report  
Five-year financial forecast  
Performance Measures
- September 17 Cooperative Training Opportunities with Other Jurisdictions  
2008 Budget Process & Schedule

## **Intergovernmental Affairs Committee**

May 14

Regional Partnerships

**Greater Peninsula Partnership formed.**

Legislative Session Recap

**Done. Strategy for next session has begun.**

Federal Earmark Requests

**Still progressing.**

PenMet/City Tax Overlap

**Include language in future annexations that excludes PenMet taxation. Work with PenMet board and City Council to agree on resolving tax overlap of recent annexations by June 1, 2008.**

## **For Council Appointed Commissions/Boards**

Big Box Development: DRB- **Fall?**

5-Year Parks Plan: Parks Commission – **July Parks Commission Meeting**

Waterfront Millville Office Use: Planning Commission (already in Tier 3)