

Gig Harbor City Council Meeting

**March 23, 2009
6:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
March 23, 2009 – 6:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Mar. 9, 2009.
2. Receive and File: a) Parks Commission Minutes of Jan. 7 and Feb. 4, 2009; b) GHPD Monthly Report. c) Salary Commission Minutes March 11, 2009.
3. Correspondence / Proclamations: a) Parks Appreciation Day; b) AWC Retro Refund Check.
4. Liquor Licenses: a) Renewals: GH Farmers Market Assoc.; Qdoba Mexican Grill; The Green Turtle; Harbor Greens; Gig Harbor Farmers Market; Maritime Inn. b) Application in Lieu of Current Privilege: The Inn at Gig Harbor.
5. Resolution No. 787– Surplus Equipment.
6. Hearing Examiner Services Contract – Second Amendment.
7. Re-appointment to Arts Commission.
8. Borgen Parcel for Cushman Trail Restroom Site – Property Purchase.
9. Public Art Placement – “Ring in the Salmon” Bell at Donkey Creek Park.
10. Hunt/Wollochet Signal Project – WA Water Right-of-Way Agreement.
11. Wastewater Treatment Plant Improvement Project - Change Order No. 1.
12. Approval of Payment of Bills for March 23, 2009: Checks #60505 through #60630 in the amount of \$585,966.28.

PRESENTATIONS: Parks Appreciation Day.

OLD BUSINESS:

1. Public Hearing and First Reading of Ordinance - Harbor Hill Water Tank and Mainline Extension Latecomers Agreement.
2. Second Reading of Ordinance – Burnham / Sehmel Annexation.

NEW BUSINESS:

1. First Reading of Ordinance – Creating a Federal Drug Investigation Fund.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning & Building Committee – Monday, Apr. 6th at 5:15 p.m.
2. Operations & Public Projects Committee – Thursday, Apr. 16th at 3:00 p.m.
3. Finance / Safety Committee: Mon. Apr. 20th at 4:00 p.m.
4. Council Workstudy Session- 2009 Workplan – Mon. Apr. 20th at 5:30 p.m.
5. Boards & Commission Candidate Review: Mon. Apr. 27th at 4:30 p.m.
6. Volunteer Appreciation Event: Mon. Apr. 27th at 5:00 p.m.
7. GH North Traffic Options Committee – Wednesday, May 20th, at 9:00 a.m.

EXECUTIVE SESSION: For the purpose of discussion potential litigation and enforcement action per RCW 42.30.110(1)(i).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF MARCH 9, 2009

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Malich, Payne, Kadzik and Mayor Hunter.

CALL TO ORDER: 6:01 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Feb.23, 2009.
2. Receive and File: a) Boards / Commission Candidate Review Feb. 23, 2009; b) Gig Harbor North Traffic Operations Committee Feb. 25, 2009; c) Operations Committee Minutes Feb. 19, 2009; d) Prudential Spirit of Community Letter.
3. Liquor License Actions: a) Change of Corporate Officers – Moctezumas; b) Added Privilege – Harbor Kitchen; c) Special Occasion – Prison Pet Partnership; d) Application – Sip at the Wine Bar & Restaurant.
4. Appointment to the Parks Commission.
5. Appointment to the Arts Commission.
6. WWTP Ph. 1 Improvement Project – Escrow Agreement for Retainage.
7. Sewer Outfall Extension – DNR Easement.
8. Eddon Boat – Oversight Remedial Action Grant Agreement.
9. Approval of Payment of Bills for March 9, 2009: Checks #60366 through #60504 in the amount of \$855,506.06.
10. Approval of Payroll for the month of February: Checks #5372 through #5393 and direct deposits in the amount of \$334,255.75.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Young – unanimously approved.

Councilmember Kadzik recognized Lane Landry, newest member of the Gig Harbor Arts Commission.

OLD BUSINESS:

1. Second Reading of Ordinance – Truck Weight Limits on Pioneer Way. David Stubchaer, Public Works Director, explained the changes made to the ordinance from the last meeting and the rationale behind the added language. He added that there would be signage, public outreach and an education process.

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty said that as a business owner on Pioneer he sees large trucks coming down that hill and so “teeth” are needed in the ordinance to ensure compliance. He added that he would appreciate something that he could hand out to delivery truck drivers explaining the alternate routes.

MOTION: Move to adopt Ordinance No. 1155 adding Chapter 10.16 Truck Weight Limits on Pioneer Way.
Payne / Conan -

AMENDMENT: Move to replace the word “if” with “when” in exemptions number 3, 5, and 6.
Young / Payne – unanimously approved.

Kit Kuhn – (no address given). Mr. Kuhn asked that the businesses that have produce deliveries be notified of the change to forward to the delivery truck drivers so they could avoid a fine.

MAIN MOTION: Move to adopt Ordinance No. 1155 as amended.
Payne / Conan – unanimously approved.

NEW BUSINESS:

1. First and Final Reading of Ordinance – Burnham Sehmel Annexation. Tom Dolan, Planning Director, gave a brief background for this annexation. He explained that this is the first and final reading of the ordinance adopting this area into the city. He noted that he passed out a map with the pre-annexation zoning designations.

Councilmember Malich pointed out that zoning designation P-I was not listed in the ordinance. Mr. Dolan acknowledged the error and said it would be corrected.

Councilmember Franich asked how the zoning was determined. Mr. Dolan responded that these zones were established several years ago when the Urban Growth Areas were formed. He commented that there is a pending Comp Plan Amendment for property owned by Walt Smith that would be reviewed in April. He then explained the reason that the annexation boundary doesn't match the Urban Growth Boundary line is because of a County requirement to prevent annexation of partial parcels.

Paul Garrison – 8306 131st – Wauna. Mr. Garrison explained a problem with the zoning designation of his property within the annexation area on Sehmel Drive. He said that property was listed as ED on the Comp Plan Map, but RB-1 on the annexation zoning map. He asked why they were being down-zoned.

Tom Dolan responded that there are inconsistencies between the Comp Plan Map and the Zoning Map. When the zoning for the property was established and a public meeting was held, Council indicated a desire to rezone the property in accordance with the previously established zoning of RB-1. He noted that this has been discussed with Mr. Garrison. He continued to explain that the annexation has gone through the entire process with the understanding that zoning would be RB-1, adding that he doesn't believe that Council has the ability to change the zoning at this point. He said that a rezone to ED is a strong possibility because the Comprehensive Plan indicates it is an appropriate zoning designation. He acknowledged that Mr. Garrison has a potential

tenant that requires the ED designation and said that staff would do what they can to expedite the rezone. He said that generally this would take six months.

Council had questions about the property and Mr. Dolan asked Mr. Garrison to respond.

Mr. Garrison responded that the total acreage on this particular parcel is 8.5 – 9 acres, and said that there are also two other property owners wishing for the same ED designation. He stressed that a RB-1 zoning designation would create a hardship in keeping his steel buildings occupied, and if a rezone effort is challenged it would cost both time and money. He explained that if the zoning isn't changed, any new tenants would have to meet the RB-1 criteria which would make it difficult to fill the building. He said he owes money on the property, and it isn't right to bankrupt somebody who has been here such a long time. He then said that he and Mr. Dolan discussed adding product services to the Employment District so that the prospective tenant could lease and if the zoning is changed to ED, the existing tenants would then be conforming uses. He finalized by saying if Council adopts the ordinance tonight all the existing uses would become non-conforming; and if someone leaves he wouldn't be able to find a tenant.

Councilmember Young said that he views this as a mistake and asked about a quick way to do an area-wide rezone. Angela Belbeck, City Attorney, explained that one approach would be to redo the pre-annexation zoning. Mr. Dolan voiced concern that surrounding property owners might take exception to the change. He said that a public process would be required which is the responsibility of the Hearing Examiner. He offered to research this and come back with information at the next meeting.

Mr. Garrison said that if this ordinance is passed the city would be rezoning his property and this is the only public meeting he has had the opportunity to attend.

Councilmembers asked about the notification process. Mr. Dolan said that all property owners within the annexation were notified of the public meeting. He said that although he didn't work for the city at the time, he assumed that the pre-annexation zoning was done through the public process as well.

Councilmember Franich asked about the need for a transition zone. Mr. Dolan explained that single-family residential is widely scattered at this area, and the parcels are quite large. He noted that Mr. Garrison's property has a County zoning designation similar to ED, but which doesn't allow boat repair. If it had, the space could have been leased.

Craig Campbell – 6225 Point Glover Lane, Pt. Orchard. Mr. Campbell explained that he owns the mini-storage on the corner of Sehmel and Burnham, one parcel away from Mr. Garrison's and with an existing use for approximately 30 years. He said that his property is coming into the city with an R-1 zoning designation. He pointed out that his property and those adjacent to his, back up to the on-ramp to the freeway and for this reason, no one would want to live there; it is silly to think it would be zoned R-1. He

said he has considerable debt on the property and would be hurt if not allowed to rezone to an appropriate designation.

Dino Foremiller – 2641 64th Street. Mr. Foremiller, owner of the two-acre piece between Mr. Garrison and Mr. Campbell adjacent to Highway 16, said there is no way for residences to be built there; this is commercial property and always has been. He said that the previous owner had a building permit for a large building that lapsed in 2005. He said if he had known this would be zoned residential he would never have bought it.

Barb Magnusson – proponent for the annexation. Ms. Magnusson explained that she is unsure of how long the petition signatures are good for. She said she made it clear for those signing the annexation petition to be careful to check the zoning, but guessed that some didn't know. She added that Mr. Garrison didn't sign the annexation petition but several others have. She then said that if they are not required to collect signatures again and the County approval is okay for a time, then she has no problem with postponing this for a month.

Tom Dolan addressed Council's questions. He explained that he met with Mr. Garrison in November and discussed an option for him to file for a rezone. He was unaware that there were other property owners in that triangle and so it now appears that an area-wide rezone is a more appropriate action.

Councilmember Young apologized to Ms. Magnuson, saying that the R-1 and RB-1 zoning doesn't seem to fit. He said that doesn't want to lose more ED property and so adoption of the ordinance tonight isn't appropriate. He then voiced suspicion that the pre-annexation zoning on these properties came about before the ED designation was ever developed.

After further discussion, Staff was directed to come back at the next meeting with a recommendation for a solution.

2. Public Hearing and First Reading of Ordinance – Height Restriction Area. Tom Dolan presented the background on this text amendment to the process to remove property from the height restriction area. He outlined several options for how Council could proceed including one similar to a comp plan amendment in which the Council makes the final decision. He explained that this text amendment is proposing that the process be handled as a Type 3 rather than a Type 4 process to address the current conflict in the code.

Mr. Dolan addressed questions. He explained that the recommendation by the Planning Commission to adopt this draft ordinance is an effort to rectify criteria which are inconsistent with the intent of the height restriction area discovered during the Historical Society project. He said that he pointed out process alternatives to address concerns with this proposed ordinance.

Councilmember Payne voiced concern with the lack of definition for the terms “block views” and “substantially block views.” Mr. Dolan said that the Planning Commission didn’t understand the previous term “restrict” and wanted to come up with a different description of view impairment. He said there is nothing in the code that defines that term and it would be left up to the decision maker.

Councilmember Young asked for clarification for why removal from the height restriction area needs to go to the Hearing Examiner rather than coming before Council, adding that he is reluctant to add this process to the Comp Plan procedure. Mr. Dolan said that it could come before Council, but questioned whether it would be a legislative or quasi-judicial decision. He pointed out that the difficulty in making quasi-judicial decisions was the reason that Council formally deferred those types of matters to the Hearing Examiner process. Ms. Belbeck clarified that it would remain a quasi-judicial matter because it affects property rights.

Mr. Dolan explained that the downside to changing this to a Comp Plan process; it could potentially take up to two years. Councilmember Young pointed out that it could also open up the door for future state involvement.

Councilmember Payne expressed concern for who would have the burden of proof in Section 17.62.040(B)(2) and what the term “any view” means. He agreed that the attempt to marry intent with criteria is very important.

Councilmember Kadzik said he is uncomfortable with the process for these types of decisions leaving City Council to go to the Hearing Examiner.

Mayor Hunter opened the public hearing at 7:05 p.m.

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty said he wanted to clarify the record for the Halsan application of two weeks ago. He said that the first meeting notification sent by Mr. Halsan only went to property owners on Butler Drive, not Shyleen or Lewis Street. He continued to say that his concern is this ordinance is another attempt by the proponents to get around the 27 foot height restriction at the top of the hill. Mr. Halsan’s application says “ideally, we would develop a single, multi-level structure where office and some limited retail uses would use the ground floor. Office uses would be located on the second floor and residential on the top floor.” Mr. Fogerty said that it would be back up to three stories; this ordinance is a way to get around the height restriction at the top of the view basin.

Mark Hoppen – 8133 Shirley Avenue. Mr. Hoppen stressed that the oldest issue in Gig Harbor is building height, citing an example from the 50’s. He said that there may need to be an exception to the code as it relates to residential. He explained that properties at the peak of town that don’t block other’s views will build daylight basements and shove the structures forward causing problems for side views from adjacent houses. He then addressed commercial property explaining that the problem is bulk and scale. He asked Council to first consider height, both in and out of the height overlay district, in transition

zones adjacent to residential to be consistent with the surrounding neighborhood. The second issue he asked Council to consider is keeping the bulk, scale and square footage consistency with the surrounding neighborhood; then lifting the height restriction in places that don't block views wouldn't be an issue.

Kit Kuhn – 3104 Shyleen Street. Mr. Kuhn said he is not in favor of raising the heights. He agreed with the comments made by Mr. Hoppen about bulk and scale. He said there is a reason that everything is terraced in Gig Harbor and if you raise the heights, then it's going to slowly get out of scale and be out of character with what's existing. He said that a change in the height restriction affects not only the downtown, but the whole city. He stressed that the height restriction is there for a reason.

Carl Halsan – applicant for the text amendment. Mr. Halsan stressed that the Council needs to focus on the Planning Commission's recommendation, explaining that when this effort began 3-1/2 years ago, it was simply to match the criteria with the intent of the code as a result of the process to remove the Historical Society property from the height restriction area. At that time, the Hearing Examiner pointed out that the criteria for removal doesn't match the intent of the code to protect people's view of the bay, the sound and Mount Rainier. He said that discussion on who should make the decision, whether it should be a Comp Plan Amendment and whether the view is up or down the hill should be saved for a later date and asked Council to adopt this Planning Commission recommendation to have the current criteria match the current intent, and which has been blessed by the City Attorney. He said to consider anything else under the guise of this process is not fair.

John McMillan – 98816 Jacobsen Lane. Mr. McMillan said that the community needs more time to look at this sensitive issue. He said that it is biased when an applicant conducts a forum to make the public aware that something may happen. He continued to say that there should be more information from someone other than the applicant, and more time for review with anything that has to do with heights in the view basin.

Guy Hoppen – 8402 Goodman Drive. Mr. Hoppen said that this draft ordinance leans heavily on views with regard to height restriction. He read a section from the ordinance taken from the city's comprehensive plan, adding that what was left out was the next phrase "the neighborhood design area policies that seek to maintain the design characteristics of these neighborhoods to preserve their character." Mr. Hoppen said that this means scale and balance; when you increase the bulk and size of a building it affects the balance of a neighborhood. He suggested that if you are going to define adjacent properties and what a view means, then you also have to define neighborhood character and design characteristics as well. He agreed that the community needs time to digest all the information then encouraged Council to inform the community well in advance of any action on the Paul Brothers' project. He explained that it is all about scale and balance, same as when Ordinance No. 995 was adopted four years ago and the citizens filled the Council Chambers to share how they felt about the BDR Building being out of scale with the downtown.

Kit Kuhn - 3104 Shyleen Street. Mr. Kuhn asked Council to not to get fooled that view is only about water or mountains; view can be what you see across from you.

Mayor Hunter closed the public hearing at 7:22 p.m.

Councilmember Franich said that he empathizes and agrees with a lot of what has been said, and that he also understands Mr. Halsan's desire to make the standards meet the intent. He said that he wonders about the reasoning behind Ordinance No. 537 designating the height restriction area and whether it was just about blocking views from adjacent property owners or if it was more about balance in the view basin area. He said that language may need to be added to the code to address balance, scale and character.

Councilmember Young clarified that the existing code predates the city's first comprehensive plan and doesn't address bulk, scale and character. He said that the height restriction area was passed to protect views, but what is being discussed is restricting height for other reasons as well. This draft ordinance amends the process to have property removed from the height restriction area if reasonable, but it doesn't mean that we don't need to think about height as it affects bulk and scale particularly in transition zones. He agreed that we need a sensible process and said he is going to do further research before the next meeting to determine, for example, whether or not this should be a quasi-judicial process heard by Council.

Councilmember Payne asked why this is just now coming to Council when the Planning Commission made their recommendation in April. Mr. Dolan clarified that Council held a first reading on an ordinance on May 27, 2008 and requested changes to the verbiage. Staff worked on those changes but the applicant chose not to provide revisions until after the first of this year. He then said that the revisions did not go back to the Planning Commission.

Councilmembers asked for clarification on what changes to the wording had been made and by whom.

Carl Halsan responded that the main change was in section 17.62.040(B) (2), adding that the city attorney worked with them to find less ambiguous language.

Councilmember Franich stressed that because this is a critical part of the code, it's important to keep it as tight as possible adding that he thinks the word "restrict" is better than "block" when addressing views. He recommended a review of the height restriction map to make sure all the parcels that should be are included.

Councilmember Conan said that he has the same concerns over the terms "block" and "restrict." He said that Ordinance 537 basically set up areas that *wouldn't* have to comply with height restrictions. This approach has now been switched to areas that *would* have to comply, resulting in an intent that doesn't meet the criteria. Unfortunately, much of the code has been reversed engineered like this. He said there is a big

difference between “restrict” and “block” and it would be difficult to define terms like “substantial”. He said that the criteria for blocked or restricted views are what need to be established.

Councilmember Malich said he would like to see the procedure changed to Type 4 in Chapter 19 as well. He commented that this issue is too important to let the Hearing Examiner decide. He said that scale and balance needs to be incorporated into the ordinance so that it doesn't just address views; it also should reflect the intent of the Comprehensive Plan.

Councilmember Franich read from Ordinance 537 then recommended that everyone decide whether some of the intent from this original ordinance has been left out of this proposed text amendment.

Councilmember Payne cited bulk, scale and view from the harbor as three things not being addressed. He shared the history of the original height restriction area when the original intent was protecting views and Mayor Jake Bujacich went around with a 16' board to determine if that would be an appropriate height limit. He stressed that bulk and scale is regulated elsewhere in the code. The task given the Planning Commission was to marry the criteria to intent, and whatever is needed should be done soon. He said he would be interested in the conversation on whether we change the process to be quasi-judicial by Council or leave it with the Hearing Examiner.

Tom Dolan suggested that workstudy session may be needed in order to review all the information. He reminded Council that this is a private text amendment and so there is no obligation to render a decision at the next meeting.

Councilmember Kadzik said that there aren't many differences in the existing code and these proposed changes; mostly this will make it easier for the Hearing Examiner. He said there seems to be two issues: 1) dissatisfaction with the underlying regulation and 2) loss of control. He said that direction to staff is necessary on whether to proceed with this draft ordinance or to change the regulations to reflect what has been discussed tonight.

Councilmember Payne responded that we may want to clean up the existing code then move forward to address the other concerns.

Councilmember Franich said that Ordinance 557 spells out the rationale for adoption but it isn't clearly reflected in the intent statement. He said that he agrees that these decisions should come to Council, adding that the height restriction area map needs to be reviewed to see if it reflects where we are trying to go with this. He expressed concern that the existing criterion makes it very hard for any property to be removed; but to change the language to say the parcel doesn't need to possess a view is huge.

After further discussion, Council agreed to discuss this at the Joint Planning Commission Workstudy session on March 16th.

3. Pioneer Way Brick Planter – Construction Contract and Materials Testing Contract Award. David Stubchaer presented the background information on this contract to reconstruct the planter at the end of Pioneer. He said that they anticipate construction to be completed by May and answered questions on the project design which is intended to dovetail with future improvements to that intersection.

Councilmember Young asked where the funding for this project is identified in the budget. Mr. Stubchaer responded that the funding is from the Harborview / Judson / Pioneer Improvement Project. He said that other options that are being considered for the remainder of this fund are the pedestrian crosswalk on Pioneer, reconstruction of Uddenberg Street, and improvements in front of Skansie Park.

Councilmember Young pointed out that the brick planter is a substantial financial commitment by the city to a single property owner.

Steven Lynn – 9014 Peacock Hill Avenue. Mr. Lynn said that this is a non-residential area with businesses open during the day. He suggested exploring the cost of doing the work at night instead.

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty said that boats on 20 or 30 foot trailers come around Harborview then up Pioneer to back around and get into the boatyard at that location; he cited one example that took 45 minutes and blocked all three lanes in the intersection. He asked Council to take this into consideration suggesting that the streetlight has to be moved.

Carl Moraldi – 8223 Goodman Drive NW. Mr. Moraldi addressed this concern. He explained that the shipyard will no longer have long trucks or trailers backing in that spot; there is an alternative entrance and a fence is being installed.

Councilmember Payne asked staff to explore the cost of night construction. Rob Karlinsey recommended keeping the cost to a minimum with daytime construction. He stressed that traffic will be allowed through and it is a relatively short construction period. Council still asked that staff bring back the information.

MOTION: Move to authorize the award and execution of a public works contract to RW Scott Construction in the amount of \$124,912.00 and authorize the Public Works Director to approve additional expenditures up to \$12,491 to cover any cost increases that may result from contract change orders.
Payne / Malich – unanimously approved.

David Stubchaer responded to questions about the need for materials testing. He said that this is to test the concrete strength to ensure that it meets state standards, and is part of quality control for this project.

MOTION: Move to authorize the award and execution of a consultant services contract to GeoResources LLC, for materials testing services in an amount not to exceed \$3,773.00 and approve additional expenditures up to \$377.00 to cover any cost increases that may result from necessary changes in the scope of work.

Payne / Malich – six voted yes. Councilmember Franich voted no.

STAFF REPORT:

1. Greater Peninsula Partnership. Rob Karlinsey referenced the brochure produced in-house by Lita Dawn Stanton. He said the city has been working in partnership with other agencies to unify transportation needs and this brochure was produced as an informational tool to make sure we aren't forgotten in Olympia.

2. Frontage Road Issue. Angela Belbeck, City Attorney reported that at the last meeting, Mr. Siegel presented information regarding a 1958 Warranty Deed wherein the state promised property owners to build a frontage road from Rosedale along Highway 16. She said that she has reviewed the document and agrees that the deed clearly requires the state to build the frontage road and concurred with what Mr. Siegel said about his meeting with members of WSDOT and the Attorney General's Office who agreed that the state has the obligation to build the road. Ms. Belbeck said that one potential issue is the deed says the road will be constructed "at a future date" with no pinpoint in time. She said that part of the transaction was the property owners' temporary right to access the existing road until the frontage road is built; that temporary right has been in existence for 51 years. Ms. Belbeck said that at this point it is between the property owners and the state, adding that the state has presented documentation showing construction costs of 2-4 million dollars for the road. She said that there isn't a lot the city can do to enforce this because we are not party to the agreement, but if Council would like to adopt any policy decisions to communicate with the state, the opportunity is there.

Rob Karlinsey announced that Senator Kilmer has submitted a Transportation Request for design of this project. He added that he would like the city's lobbyist to monitor this request and pointed out that the state would keep the lead on this project.

PUBLIC COMMENT:

Dawn Saddler – 7508 Pioneer Way. Ms. Saddler voiced concern for the property across from her on Pioneer that has three buildings that are decayed, rotten, and rodent infested. She said that the grounds are covered with garbage, saying nothing has been done in the 18 years she has been here. She saw a rat run into her yard from there and said she is concerned about things such as the Ebola Virus. She stressed that this is a dangerous condition and people looking to buy her house are concerned. She asked for an ordinance to condemn structures when they reach this level of decay.

Councilmembers discussed the need for a nuisance ordinance of our own to address public health issues such as this. Mr. Karlinsey reported that he has been in

discussions with the property owner who in ensuring the city that they plan to demolish the structures preparing the site for sale.

MAYOR’S REPORT / COUNCIL COMMENTS:

Mayor Hunter reported that the Canterwood Boulevard Ribbon Cutting Ceremony this afternoon went well.

Councilmember Young said that the Pierce County Regional Council was holding a special meeting to discuss a stimulus package that favors the Port of Tacoma. He said that there is a movement by other cities to support limitations on the amount going to the Port because they have bonding capacity and other ways to pay for their project. He described the ranking process. He asked if the other Councilmembers would like him to attend and vote in favor of the 1/3 limitation. Councilmembers responded that they are okay with it.

ANNOUNCEMENT OF OTHER MEETINGS:

1. St. Anthony’s Opening Celebration – Fri. March 13th 6:00 p.m.
2. Operations and Public Projects Committee – Thu. Mar. 19th at 3:00 p.m.
3. Finance Safety Committee – *Moved from Mar. 16th to Apr. 20th.*
4. Joint City Council / Planning Commission Worksession: Mon. Mar. 16th at 5:15 p.m.
5. Planning & Building Committee – Monday, Apr. 6th at 5:15 p.m.

EXECUTIVE SESSION: To discuss pending and potential litigation per RCW 42.30.110(1)(i).

MOTION: Move to go into Executive Session at 8:32 p.m. for approximately fifteen minutes

Kadzik / Payne – unanimously approved.

MOTION: Move to return to regular session at 8:47 p.m.

Malich / Conan – unanimously approved.

MOTION: Move to have legal counsel prepare a Motion to Reconsider for the Court of Appeals for the Courtyards at Skansie case.

Young / Conan – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 8:48 p.m.

Conan / Malich – unanimously approved.

CD recorder utilized:
Tracks 1001 – 1047

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

CITY OF GIG HARBOR COMMITTEE OUTLINE MINUTES

Parks Commission

Date: January 7, 2009 Time: 5:30 p.m. Location: Community Rooms A&B Scribe: Terri Reed

Commission Members and Staff Present: Commissioners: Michael Perrow, Nick Tarabochia, Jacquie Goodwill and Emily Cross;
Staff Members: David Stubchaer and Terri Reed.

Others Present: _____

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
Approval of Minutes	Approval of December 3, 2008 Minutes	Motion: Move to approve December 3, 2008 minutes as presented. Tarabochia / Cross – unanimously approved.
OLD BUSINESS:		
Wilkinson Farm Park Project	Gary Williamson, representing Friends of Wilkinson Farm (FWF), thanked City staff for removing the first row of holly and blackberries to make more room for the garden project. Mr. Williamson also mentioned all the work that Dave Wheeler has contributed and his success getting contributions for the projects. Bill Bowers from the YMCA explained their program plan for January and distributed a list of work to be performed by Friends & Servants staff, teen program participants and community volunteers.	The Parks Commission gave their support for the January projects and asked the group to forward a suggested project list to the Parks Commission for consideration each month.
Harborview Drive Street End Park (Old Ferry Landing Viewpoint)	A survey showing the end of Harborview Drive right-of-way was reviewed. Public Works Director David Stubchaer explained that the City will be expanding the road by moving the centerline stripe and legitimizing 5-6 parking spots near the street end. He also added that the Police Department has agreed to add patrols to the park area.	Motion: Move to recommend to City to continue with plan of creating pedestrian walkways on the waterside of Harborview Drive and as permissible remove the sidewalk to the west of the Harborview extension up to Green Turtle restaurant. Tarabochia / Cross – unanimously approved.

Topic / Agenda Item

Main Points Discussed

**Recommendation/Action
Follow-up (if needed)**

	<p>Some bench details provided by Park staff were distributed. The particular styles of the benches were chosen for ease of maintenance and repair due to vandalism.</p> <p>Commissioner Tarabochia asked for consideration of a few more items at the street end which included:</p> <ul style="list-style-type: none"> • Park lighting and street lights • Removing the concrete planters • Fencing alternatives • Preference parking for beach residents • Removable bollards 	
Parks Appreciation Day (PAD) 2009	Commission Chair Perrow discussed the possible park projects and the Commission came up with some community groups to contact about volunteering for PAD.	<p>City staff will ask that PAD information be provided again in City utility bills.</p> <p>Commissioners will seek support from community groups.</p>
NEW BUSINESS:		
Cushman Trail & Tie-In to Donkey Creek	Commission Chair Perrow mentioned that a tie in to the new Cushman Trail from the WWTP has been discussed in the past and would like to have that link considered for an informal trail.	City staff will provide Commission with a parcel map showing the area between the WWTP and the Cushman Trail property.
Parks No Smoking Policy	Commission Chair Perrow asked that City staff be reminded of the "No-smoking Policy" in the parks.	
KL Marvin Veterans Memorial Park	Public Works Director Stubchaer explained the changes that have been made to the plans for the restroom and shelter that will be constructed by City staff.	
2009 Budget Update	Public Works Director Stubchaer briefly reviewed the approved 2009 Parks budget.	Commissioner Goodwill asked that mitigations for budget cuts to summer help be discussed at the next Parks Commission meeting.
PARK UPDATES:		
PUBLIC COMMENT:		
None		
NEXT PARKS MEETING:		
February 4, 2009 @ 5:30 p.m.		

CITY OF GIG HARBOR COMMITTEE OUTLINE MINUTES

Parks Commission

Date: February 4, 2009 Time: 5:30 p.m. Location: Community Rooms A&B Scribe: Terri Reed

Commission Members and Staff Present: Commissioners: Michael Perrow, Nick Tarabochia, Jacquie Goodwill, Peter Hampl and Emily Cross; Staff Members: David Stubchaer and Terri Reed.

Others Present: _____

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
Approval of Minutes	Approval of January 7, 2009 Minutes	Tabled until March meeting due to draft of minutes not being available for review.
OLD BUSINESS:		
PROS Plan Update	<p>City Planner, Kristin Moerler, distributed a tentative timeline for the PROS Plan update. She has been assigned as the City staff lead to work on this project. She asked if the Commission preferred to have longer meetings or additional meetings in order to be able to cover the parks information as she has it available for their review.</p> <p>The proposed survey and methods of distribution were discussed. Member Goodwill talked about her concerns with getting a random population sample and public input.</p>	<p>The Parks Commission prefers that the regular first Wednesday of the month meeting be used for the PROS Plan work. The meetings can be lengthened, if necessary.</p> <p>Ms. Moerler will bring the draft survey before the Parks Commission at their March meeting.</p>
Parks Appreciation Day (PAD) 2009	<p>Commission Chair Perrow gave an update on the planning for PAD. A request for 100 Douglas Fir seedlings for Gig Harbor was made at the Metro Parks Tacoma meeting.</p> <p>Five City parks were selected for PAD project work.</p> <p>Wade Perrow Construction, LDS Church, Rotary and the volleyball group have been</p>	<p>City Park staff will be consulted for project priorities.</p> <p>Staff will find out possible location for seedlings.</p> <p>The Parks selected were:</p> <ul style="list-style-type: none"> • Wilkinson Farm Park • Austin Estuary Park • BMX/Volleyball/Crescent Creek Park

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	contacted for volunteers for PAD.	<ul style="list-style-type: none"> • Donkey Creek Park • Adam Tallman Trail
Cushman Trail & Donkey Creek Tie-in	Locations for a possible trail connection between the Cushman Trail and Donkey Creek Park through the Waste Water Treatment Plant property were reviewed.	Public Works Director Stubchaer will take a field trip with interested Commission members to check out the terrain of this area.
NEW BUSINESS:		
Mitigation for Summer Help Budget Cuts	Member Goodwill explained her idea for a request to citizens to supplement City flower planters and hanging baskets and maintenance of them. She mentioned something like an Adopt-A-Planter program.	<p>Member Goodwill will contact Laureen Lund about getting some press and public input for ideas.</p> <p>Staff will check with the City Attorney about possible program paperwork required.</p> <p>Staff will gather information on the number of planters and baskets the City has had in past years.</p>
PARK UPDATES:		
		The Parks Commission will send thank you letters to the Friends of Wilkinson Farm and YMCA Friends and Servants groups for their recent work in Wilkinson Farm Park.
	Commission Chair Perrow asked the status of the Wheeler Street End.	Staff will check with the City Attorney on the progress made to date on determining ownership of the property.
PUBLIC COMMENT:		
	None	
NEXT PARKS MEETING:		
ADJOURN		<p>March 4, 2009 @ 5:30 p.m.</p> <p>Motion to adjourn at 6:45 p.m.</p> <p>Hamp / Goodwill</p>



POLICE

TO: MAYOR CHUCK HUNTER AND CITY COUNCIL
 FROM: CHIEF OF POLICE MIKE DAVIS *[Signature]*
 SUBJECT: FEBRUARY 2009 MONTHLY REPORT
 DATE: MARCH 23, 2009

DEPARTMENTAL ACTIVITIES

- February 2009 YTD **calls for service** when compared to February 2008 YTD **calls for service** show an increase of six (6) dispatched calls in 2009. This is noteworthy when you take in consideration we had 83 fewer calls for service in January 2009 YTD. Demand for services is really picking up.
- February 2009 YTD we had 45 more **reports written** by our officers than in February 2008 YTD.
- DUI arrests** in February 2009 YTD were down by four (4) compared to February 2008 YTD. Our **traffic infractions** are up by 44 so far this year; and our **criminal traffic citations** are down by nine (9). Our **traffic accidents** in February 2009 YTD have decreased by 17 accidents when compared to February 2008 YTD. This is good news; thankfully, most of the accidents continue to be non-injury.
- 2009 YTD statistics show our **misdemeanor** arrests are up by six (6) and our **felony arrests** are up by four (4) when compared to the same period in 2008.

Category	February 2009					
	February 2008	February 2009	Change	YTD 2008	YTD 2009	Change
Calls for Service	575	664	89	1244	1250	6
General Reports	149	174	25	328	373	45
Criminal Traffic	33	31	-2	72	78	6
Infractions	123	101	-22	225	269	44
Criminal Citations	19	18	-1	39	30	-9
Warrant Arrests	2	0	-2	4	7	3
Traffic Reports	20	10	-10	41	24	-17
DUI Arrests	6	5	-1	18	14	-4
Misdemeanor Arrests	35	45	10	95	101	6
Felony Arrests	1	3	2	8	12	4

COPS (Citizens on Patrol): Coordinator Connie Easley worked 96 hours in February on the following projects: Website reconstruction, Volunteer Handbook, Handicap Parking Regulations, Jaycox Foundation, COPS meeting, assisted CSO Mock with presentations and Drug and Alcohol Forum, Intervention with an At Risk Teenager, and Party Patrol planning. Ken McCray worked 11 hours and Mort Altman started the Community Academy hosted by the Pierce County Sheriff's Office.

During the month of February the **Marine Services Unit (MSU)** had the following hours and activities:

- Maintenance: 4 hours transporting new boat to manufacturer to have warranty items repaired.
- Administrative: 3 hours providing informational tours with new boat

TRAFFIC ACCIDENTS FOR FEBRUARY 2009						
DATE	TIME	LOCATION		CROSS STREET	TYPE	INJURY
2/5/2009	16:00	Vernhardson St.	at	Peacock Hill Ave.	Damage To City Property	N
2/7/2009	13:00	Harborview Dr.	at	Rosedale St.		N
2/11/2009	16:30	Kimball Dr.	at	6750	H&R	N
2/12/2009	16:40	Olympic Drive	at	5500	P-Lot	N
2/12/2009	17:20	Olympic Drive	at	SR16		Y
2/13/2009	14:25	51st Ave.	at	11330	H&R - P-Lot	N
2/13/2009	15:15	Olympic Drive	at	5100	H&R	N
2/14/2009	10:35	Olympic Drive	at	5000	H&R	N
2/14/2009	12:57	Burnham Dr.	at	Borgen Blvd.	Roundabout	N
2/17/2009	7:32	Kimball Dr.	at	6575	H&R	N
2/18/2009	10:49	Judson St.	at	3120	H&R	N
2/20/2009	13:20	Pt. Fosdick Dr.	at	5010	N	P-Lot
2/24/2009	17:00	Skansie Ave.	at	8100		N
2/24/2009	20:53	Pt. Fosdick Dr.	at	4628	N	DUI
2/25/2009	19:15	Harbor Hill Rd.	at	10550	P-Lot	N
2/26/2009	15:30	Olympic Drive	at	SR16		Y
2/27/2009	15:00	Pt. Fosdick Dr.	at	4601	H&R	N
2/27/2009	19:37	Peacock Hill Ave.	at	11200	H&R	N

Below are the officer response times for our Priority 1, 2 and 3 calls for 2009 YTD. Priority 1 calls are the most serious calls and usually involve an in-progress crime. Our 2008 end of year average response time to all calls was 6.67 minutes. Our average

response time to all calls for February 2009 was 7.32 minutes (January was 7.60 minutes).

2009 February YTD
Response Times

	P1	P2	P3
January	4.6	6.6	11.6
February	4.4	6.5	10.2
March	0	0	0
April	0	0	0
May	0	0	0
June	0	0	0
July	0	0	0
August	0	0	0
September	0	0	0
October	0	0	0
November	0	0	0
December	0	0	0
Totals	9	13.1	21.8
YTD Response Times	4.50	6.55	10.90

Year-to-date through February 2009 there were 211 reported incidents within Gig Harbor tracked by our crime mapping service.

Kidnap/Child Lure					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
Child Luring	-	-	-	-	-
Kidnapping (restrain or abduct)	-	-	-	-	-
Kidnap/Child Lure Total:	0	0	0	0	0.0%
Violent Crimes					
	February 2008	February 2009	Year-To-Date (through	Year-To-Date (through	Percent Change

	2008	2009	(through February 2008)	(through February 2009)	Change
<u>Aggravated Assault</u>	-	-	1	1	0.0%
<u>Non Aggravated Assault</u>	1	4	8	5	- 37.5%
<u>Homicide</u>	-	-	-	-	-
<u>Robbery</u>	-	1	-	3	N.C.*
<i>Business:</i>	-	-	-	-	-
<i>Residential:</i>	-	-	-	1	N.C.*
<i>Street:</i>	-	1	-	1	N.C.*
<i>Other Robbery:</i>	-	-	-	1	N.C.*
Violent Crimes Total:	1	5	9	9	0.0%
Property Crimes					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
<u>Arson</u>	-	-	-	-	-
<i>Residential Arson:</i>	-	-	-	-	-
<i>Non-Residential Arson:</i>	-	-	-	-	-
<u>Motor Vehicle Theft</u>	3	3	4	4	0.0%
<u>Theft</u>	20	20	39	33	- 15.4%
<i>Gas Station Runouts:</i>	-	-	-	-	-
<i>Mail Theft:</i>	1	1	1	1	0.0%
<i>Shoplifting:</i>	6	7	11	14	27.3%
<i>Theft from Vehicle:</i>	8	8	13	12	- 7.7%
<i>Other Theft:</i>	5	4	14	6	- 57.1%
<u>Burglary</u>	3	3	4	5	25.0%
<i>Residential Burglary:</i>	2	1	3	2	- 33.3%
<i>Non-Residential Burglary:</i>	1	2	1	3	200.0%
<u>Vandalism</u>	14	12	26	19	- 26.9%
<i>Residential Vandalism:</i>	11	11	23	18	- 21.7%
<i>Non-Residential Vandalism:</i>	3	1	3	1	- 66.7%
Property Crimes Total:	40	38	73	61	- 16.4%
Drug Crimes					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
<u>Drug Possession (Methamphetamine)</u>	1	-	2	1	- 50.0%
<u>Drug Sale/Manufacture (Methamphetamine)</u>	-	-	-	1	N.C.*

Drug Possession (Other)	3	3	12	7	- 41.7%
Drug Sale/Manufacture (Other)	-	1	-	2	N.C.*
Drug Crimes Total:	4	4	14	11	- 21.4%
Warrant Arrests, Fraud, Traffic, and Other Incidents					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
Weapons Violations	-	-	-	2	N.C.*
Warrant Arrests	4	5	9	16	77.8%
Fraud or Forgery	10	6	12	18	50.0%
Criminal Traffic	38	34	85	85	0.0%
Liquor Law Violations	1	4	4	4	0.0%
Telephone Harassment	-	1	-	1	N.C.*
Intimidation	3	1	5	2	- 60.0%
Possession of Stolen Property	2	-	2	-	-100.0%
Warrant Arrests, Fraud, Traffic, and Other Incidents Total:	58	51	117	128	9.4%
Other Crimes					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
All Other Crimes	2	-	2	1	- 50.0%
<i>Criminal Trespass :</i>	2	-	2	1	- 50.0%
Other Crimes Total:	2	0	2	1	- 50.0%
Grand Total					
	February 2008	February 2009	Year-To-Date (through February 2008)	Year-To-Date (through February 2009)	Percent Change
Grand Total:	105	98	215	210	- 2.3%

*N.C. = Not Calculable

OUTLINE MINUTES Salary Commission

Date: March 11, 2009 Time: 8:00 a.m. Location: Executive Conf. Room Scribe: Molly Towslee

Members Present: Harris Atkins, Gregory Roberts, Richard Jasper, and Tony Michaelson Absent: Keith Hamilton

Staff Present: David Rodenbach, Finance Director, and Molly Towslee, City Clerk

Topic	Recommendation/Action	Follow-up (if needed)
Approval of Minutes	Move to approve Minutes of November 13, 2008 Jasper / Atkins – unanimously approved.	
Bylaws	Clerk Towslee explained that she had contacted several of the cities that have Salary Commissions to locate a copy of their Salary Commission Bylaws but found that the other cities have no formal bylaws. The Commission agreed the code is sufficient and there is no further need to pursue the adoption of bylaws.	
Future action on Council / Mayor Salaries	<p>The Commission discussed the economy and the city’s budget shortfalls. David Rodenbach gave an overview of the financial forecast and discussed alternatives to increase revenues. He also discussed the reasoning behind the comparison cities used in the city’s salary survey which include budget size, amenities and proximity to Gig Harbor (meaning whether the city would lose employees to surrounding, more competitive jurisdictions).</p> <p>It was unanimously agreed that the Mayor and City Councilmembers are underpaid for the job that they do but a decision was made to defer taking action due to the economic conditions.</p>	

Topic	Recommendation/Action	Follow-up (if needed)
	<p>It was agreed that this would be a perfect time to adjust the salaries being an election year in which four terms come due, but it was also noted that it would become a political issue because of the economy.</p> <p>They discussed how the workload has increased in complexity and time commitment since the salaries were frozen in 1996.</p> <p>Commission members agreed to move forward by assessing the Mayor and Councilmembers time commitment. This will enable them at some future time to recommend salaries that reflect the increased workload and to be more in step with other comparable cities.</p> <p>They also felt it is important for the citizens to know how much time their Councilmembers spend on city business.</p> <p>A point was made that the citizens expect their Council to participate in regional politics, and there should be financial incentives to do so.</p>	<p>Clerk Towslee was requested to do an informal survey of the Mayor and Councilmembers to determine how much time they spend on city business.</p> <p>Later in the year the Salary Commission will meet again for an update on the budget.</p>
Adjourn	Meeting adjourned at 9:15 a.m.	Next meeting to be scheduled in October, 2009.

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, parks, playgrounds, nature trails, open spaces, community and cultural centers, and historic sites make a community attractive and desirable places to live, work, play and visit to contribute to our ongoing economic vitality; and

WHEREAS, parks are a place where people can reflect, re-energize or socialize; a place where everyone is welcome; and a place that builds community; and

WHEREAS, parks, greenways and open spaces provide a welcome respite from our fast paced, high-tech lifestyles while protecting and preserving our natural environment; and

WHEREAS, numerous jurisdictions, cities and organizations have joined together to create an event that encourages citizens to celebrate the value and enhanced quality of life that parks bring to our communities; and

WHEREAS, many businesses, benefactors, organizations and donors have provided sponsorships and donations to support this event that will bring citizens together to support their local parks; and

WHEREAS, hundreds of people of all ages have pledged to volunteer their time to clean-up and beautify parks and open space throughout Gig Harbor and Pierce County on Saturday, April 18, 2009;

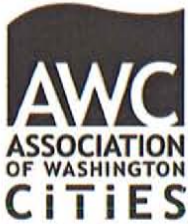
NOW, THEREFORE, I, Charles L. Hunter, Mayor of the City of Gig Harbor, hereby designate April 18, 2009, as

PARKS APPRECIATION DAY

and encourage all citizens to celebrate by participating in this event and visiting their local parks and other regional parks throughout Pierce County.

Chuck Hunter, Mayor

Date



1076 Franklin St. SE • Olympia, WA 98501-1346
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www.awcnet.org

March 11, 2009

Mayor Charles Hunter
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Dear Mayor Hunter,

We are pleased to announce that your city will receive an AWC Retro refund check in the amount of \$5,852 within the next few days. This latest payment relates to the 2005 and 2007 policy years. We have provided an explanation of the refund for each year at the end of this letter.

By way of history, a refund distribution and retention policy was established to insure that adequate member reserves exist to cover the consequence of an adverse claim year and to refund members when financially prudent. After making this refund, the total member reserves remaining are \$654,671 plus interest earnings. The balance will continue to earn interest on the members' behalf throughout the year.

As a final note, I want to thank you for your commitment to the program. Since inception in 2004, we have distributed member refund checks totaling nearly \$1,500,000! It is through all of your efforts to manage claims, implement loss control programs and trainings, and to return employees to work that has made the program so successful. Congratulations and we look forward to many years of continued success with your Retro program!

Sincerely,

A handwritten signature in black ink, appearing to read "Gayla Gjertsen", written in a cursive style.

Gayla Gjertsen
Director of Insurance Services

CC: Retro Contacts

2005 policy year refund: \$3,565

With the third and final L&I retrospective adjustment for 2005 policy year complete, we are returning 50% or \$179,216 of the 2005 L&I refunds from member reserves. In accordance with the AWC Retro agreement, all refunds exceeding service fees will be made on the basis of a merit rated formula based on performance. In other words, the allocation is based upon the actual claim costs attributable to your city/town compared to the standard premium that your city/town paid to L&I (as noted below). If your claim costs *are less than* the standard premium paid, you received a prorated share of the \$179,216 refund.

2005 Claim Costs	\$6,499
2005 L&I Standard Premium	\$55,924
Prorated Refund*	\$3,565

*If claim costs are greater than standard premium, then refund is \$0

2007 policy year refund: \$2,287

In November 2008, we received the first adjustment from L&I for policy year 2007 in the amount of \$264,799. This refund is equivalent to 4.9% of L&I standard premium. Because this is the first adjustment for 2007 and in order to maintain a balance in member reserves for 2007 we are refunding a total amount of \$203,832. This refund is equivalent to 50% of the service fee paid by members in 2007. There are two annual adjustments remaining for 2007. With this in mind, we anticipate that the remainder of the service fee will be refunded plus we are confident that a performance based refund will be made after the final adjustment for this policy year.

Total Refund: \$5,852

Below is a summary of the refunds that City of Gig Harbor has received from the AWC Retro program since inception in 2004:

November 2006	\$ 0	Return of 2004 Service Fees
November 2006	\$4,080	Return of 2005 Service Fees
February 2008	\$4,342	Return of 2006 Service Fees
July 2008	\$ 0	Return of 50% of 2004 member reserves
March 2009	\$3,565	2005 Performance-based refund
March 2009	\$2,287	Return of 50% of 2007 Service Fees
Total Refunds	\$14,274	

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 03/09/2009

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20090630

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. GIG HARBOR FARMERS MARKET ASSO	GIG HARBOR FARMERS MARKET ASSOCIATION 6808 KIMBALL DRIVE GIG HARBOR WA 98335 0000	085415	FARMERS MARKET FOR BEER/WINE
2. ZRC OPERATIONS COMPANY, INC.	QDOBA MEXICAN GRILL 4726 BORGEN BLVD STE A GIG HARBOR WA 98335 0000	403619	BEER/WINE REST - BEER/WINE
3. THE GREEN TURTLE LLC	THE GREEN TURTLE 2905 HARBORVIEW DR GIG HARBOR WA 98335 0000	078190	BEER/WINE REST - BEER/WINE
4. HARBOR GREENS, LLC	HARBOR GREENS 5225 OLYMPIC DR NW GIG HARBOR WA 98335 1763	400986	GROCERY STORE - BEER/WINE
5. GIG HARBOR FARMERS MARKET	GIG HARBOR FARMERS MARKET 3207 HARBORVIEW DR GIG HARBOR WA 98335 2125	402207	FARMERS MARKET FOR BEER/WINE
6. MARLTIME INN CORPORATION	MARLTIME INN 3212 HARBORVIEW DR GIG HARBOR WA 98335 2125	403597	MOTEL MOTEL



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 3/13/09

TO: MOLLY TOWSLEE, CITY CLERK

CORRECTED

RE: APPLICATION IN LIEU OF CURRENT PRIVILEGE

UBI: 601-776-254-001-0001
License: 358941 - 1U County: 27
Tradename: THE INN AT GIG HARBOR
Loc Addr: 3211 56TH ST NW
GIG HARBOR WA 98335
Mail Addr: 3211 56TH ST NW
GIG HARBOR WA 98335-1359
Phone No.: 253-851-6665 RANDALL FORTIER

APPLICANTS:
THE INN AT GIG HARBOR, L.L.C.
EDMAN, GEORGE W
1955-09-21
EDMAN, LAURA H
(Spouse) 1955-03-26
PERROW, WADE H
1949-05-06
PERROW, ELIZABETH A
(Spouse) 1950-07-23
TALLMAN SR, JAMES O
1931-11-05
TALLMAN, DIAN M
(Spouse) 1938-06-29

Privileges Upon Approval:
HOTEL

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



Subject: Resolution – Surplus Equipment

Dept. Origin: Public Works-Operations

Proposed Council Action:

Adopt Resolution No. 787 to Surplus a 1997 Ford F350 Super Duty with Utility Box.

Prepared by: David Stubchaer, P.E.
Public Works Director

For Agenda of: March 23, 2009

Exhibits: Resolution No. 787

Initial & Date

Concurred by Mayor:

alt 3/11/09

Approved by City Administrator:

Rbk 3/11/09

Approved as to form by City Atty:

std. form

Approved by Finance Director:

OR 3/11/09

Approved by Department Head:

Rbk 3/11/09

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
----------------------	-----	-----------------	-----	------------------------	-----

INFORMATION / BACKGROUND

Staff requests authorization to surplus the following equipment: One 1997 Ford F350 Super Duty with Utility Box, Serial #3FELF47F7VMA49124, Asset ID #3005.

The 1997 Ford F350 Super Duty is obsolete.

FISCAL CONSIDERATION

Proceeds from the auctioning of these items will go to the general fund.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 787 to Surplus a 1997 Ford F350 Super Duty with Utility Box.

RESOLUTION NO. 787

**A RESOLUTION OF THE CITY OF GIG HARBOR
DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE
FOR SALE.**

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

WHEREAS, the City may declare such equipment surplus and eligible for sale;

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

	EQUIPMENT		SERIAL / Asset ID number	Mileage
1	1997 Ford F350 Super Duty w/Utility Box		3FELF47F7VMA49124	38,658

PASSED ON THIS 23th day of March, 2009.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 03/10/09
PASSED BY THE CITY COUNCIL: 03/23/09
RESOLUTION NO. 787

Subject: Hearing Examiner Services Contract
Second Amendment

Proposed Council Action:

Approve Contract

Dept. Origin: Planning Department

Prepared by: Tom Dolan, Planning Director *Tom*

For Agenda of: 3/23/09

Exhibits: Proposed Contract

Initial & Date

Concurred by Mayor:

CHH 3/12/09

Approved by City Administrator:

ROK

Approved as to form by City Atty:

Approved via e-mail

Approved by Finance Director:

N/A

Approved by Department Head:

TD 3/16/09

Expenditure	Amount	Appropriation
Required	Budgeted	Required
0	0	

INFORMATION / BACKGROUND

In March of 2007 the City entered into a contract with Margaret Klockars to provide Hearing Examiner services. The contract was approved on a year to year basis and was extended for the first time in March of 2008. This second amendment would be for the period from March of 2009 to March of 2010. The terms of the contract including the billing rate would remain the same as for 2008.

FISCAL CONSIDERATION

In December of 2008 the City Council approved a master fee schedule that requires project applicants to pay the full cost of hearing examiner services. Therefore, there is no fiscal impact to the City for the extension of hearing examiner services.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt the second amendment to the contract with Margaret Klockars to provide hearing examiner services to the City.

**SECOND AMENDMENT
TO
LAND USE HEARING EXAMINER EMPLOYMENT AGREEMENT**

THIS SECOND AMENDMENT is made to that certain Land Use Hearing Examiner Employment Agreement, dated March 12, 2007 (the "Agreement"), by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and MARGARET KLOCKARS (the "Hearing Examiner").

RECITALS

WHEREAS, the original term of the Agreement expired on March 15 2008; and

WHEREAS, the parties amended the term of the Agreement to extend the term to March 15, 2009; and

WHEREAS, the parties desire to extend the term of the Agreement for another one-year term;

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 Term of Work. Section 7 of the Agreement is hereby amended to extend the term of the Agreement to March 15, 2010.

EXCEPT AS EXPRESSLY MODIFIED BY THIS SECOND AMENDMENT, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

DATED this _____ day of _____, 2009.

CITY OF GIG HARBOR

HEARING EXAMINER

By: _____
Mayor Charles L. Hunter

By: _____
Margaret Klockars

ATTEST/AUTHENTICATED:

By: _____
City Clerk Molly Towslee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Angela S. Belbeck



Subject: RE-APPOINTMENT TO GIG HARBOR ARTS COMMISSION

Proposed Council Action:

A motion to re-appoint Robert Sullivan to serve a three-year term on the Gig Harbor Arts Commission.

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: March 23, 2009

Exhibits: **Re-appointment Request**
Initial & Date

Concurred by Mayor: CH 3/17/09

Approved by City Administrator: RSK

Approved as to form by City Atty: _____

Approved by Finance Director: _____

Approved by Department Head: _____

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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INFORMATION / BACKGROUND

Robert Sullivan has completed his first term on the Gig Harbor Arts Commission and has asked to be re-appointed for a second term.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The following recommendation came from the Board and Commission Candidate Review Committee.

RECOMMENDATION / MOTION

Move to: Re-appoint Robert Sullivan to serve another three-year term on the Gig Harbor Arts Commission.

Towslee, Molly

From: RSulli8090@aol.com
Sent: Monday, March 16, 2009 5:08 PM
To: Hunter, Chuck
Cc: Towslee, Molly; Stanton, Lita
Subject: Gig Harbor Arts Commission

Dear Mayor Hunter:

My first term as a Gig Harbor Arts Commissioner is near it's end. I am requesting to continue serving a second term as an arts commissioner. Communities such as Gig Harbor are realizing that the arts and culture have a positive economic impact, creating and sustaining jobs, increasing quality of life, and attracting tourism. Thank you, City Council and staff for the continued support of the local arts.

Respectfully,
Bob Sullivan
Gig Harbor Arts Commission, Chair

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!



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

Subject: Borgen Parcel for Cushman Trail Restroom Site - Property Purchase

Proposed Council Action:

Approve the purchase of the Borgen parcel in the amount of \$19,500, plus applicable closing costs and authorize the Mayor to execute all real estate documents necessary for closing.

Dept. Origin: Public Works/Operations

Prepared by: David Stubchaer, P.E.
Public Works Director

For Agenda of: March 23, 2009

Exhibits: Quitclaim Deed
Survey

Concurred by Mayor:	Initial & Date <i>GLH 3/17/09</i>
Approved by City Administrator:	<i>PK</i>
Approved as to form by City Atty:	<i>email 3/3/09</i>
Approved by Finance Director:	<i>DF 3/16/09</i>
Approved by Department Head:	<i>DF 3/13/09</i>

Expenditure Required	\$19,500 plus applicable closing costs	Amount Budgeted	\$664,000	Appropriation Required	\$0
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INFORMATION / BACKGROUND

As part of the design of the Cushman Trail Phase 2 project, two trailheads with parking and restrooms were planned to improve trail accessibility. One trailhead was located next to Borgen Boulevard on Tacoma Public Utilities (TPU) right-of-way.

Due to TPU's requirements that no permanent structures be located on their right-of-way or under power transmission lines so to not interfere with their ability to operate the transmission lines, the restroom portion was legally segregated from the existing parcel. This was completed through the City's Short Plat process and recorded with the Pierce County Auditor creating two parcels where there was one. The new parcel's legal description and tax parcel number were created in order to transfer title to the City. As a condition of short plat approval, the parcel will be designated as right-of-way once acquired by the City.

The parcel was appraised at \$19,500 by Trueman Appraisal Company. Phase I and Phase II Environmental Assessments were performed in July 2008 for the adjacent wetland property that was transferred to the City from SHDP Associates. The reports showed no findings or environmental concerns.

The Tacoma Public Utility Board and the Tacoma City Council declared the parcel as surplus and approved the sale to the City of Gig Harbor at a cost of \$19,500 on December 10, 2008 and January 27, 2009, respectively.

FISCAL CONSIDERATION

The appraised value of the parcel is \$19,500, plus applicable closing costs. This property purchase is included in the adopted 2008 Parks Development budget, Objective #11 for the Cushman Trail project. The total purchase price will be paid by the City to transfer title. The cost will be pro-rated into the total project costs between Pierce County and the City, of which the City is responsible for 15%, which will result in a net expenditure of City funds of approximately \$3,000 plus 15% of closing costs. This expenditure is part of the City's \$664,000 budgeted funds for this project.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve the purchase of the Borgen parcel in the amount of \$19,500, plus applicable closing costs and authorize the Mayor to execute all real estate documents necessary for closing.

AFTER RECORDING RETURN TO:

City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

QUITCLAIM DEED

(BORGEN PARCEL)

Grantor: City of Tacoma, a Washington municipal corporation

Grantee: City of Gig Harbor, a Washington municipal corporation

Abbreviated Legal Description: Lot 2 of Short Plat recorded at AF# 200810285002, records of Pierce County, Washington.

Assessor's Property Tax Parcel Account Numbers: 0222316006

Reference to Related Documents: None.

QUITCLAIM DEED

(BORGEN PARCEL)

The Grantor, CITY OF TACOMA, a Washington municipal corporation, for and in consideration of ten dollars (\$10.00) and other valuable consideration in hand paid, conveys and quitclaims to the Grantee, CITY OF GIG HARBOR, a Washington municipal corporation, all interest the Grantor has on this date in the real property legally described as follows:

Lot 2 of Short Plat recorded under Auditor's File number 200810285002, records of Pierce County, Washington

situate in Pierce County, State of Washington, SUBJECT TO liens, encumbrances, easements, restrictions and reservations of record, together with all after-acquired title of Grantor.

Dated as of _____, 2009.

GRANTOR:

CITY OF TACOMA

By: _____
Mayor Bill Baarsma

ACCEPTED BY CITY OF GIG HARBOR

By: _____
Mayor Charles L. Hunter
Date: _____

ATTEST:

Molly Towslee, City Clerk

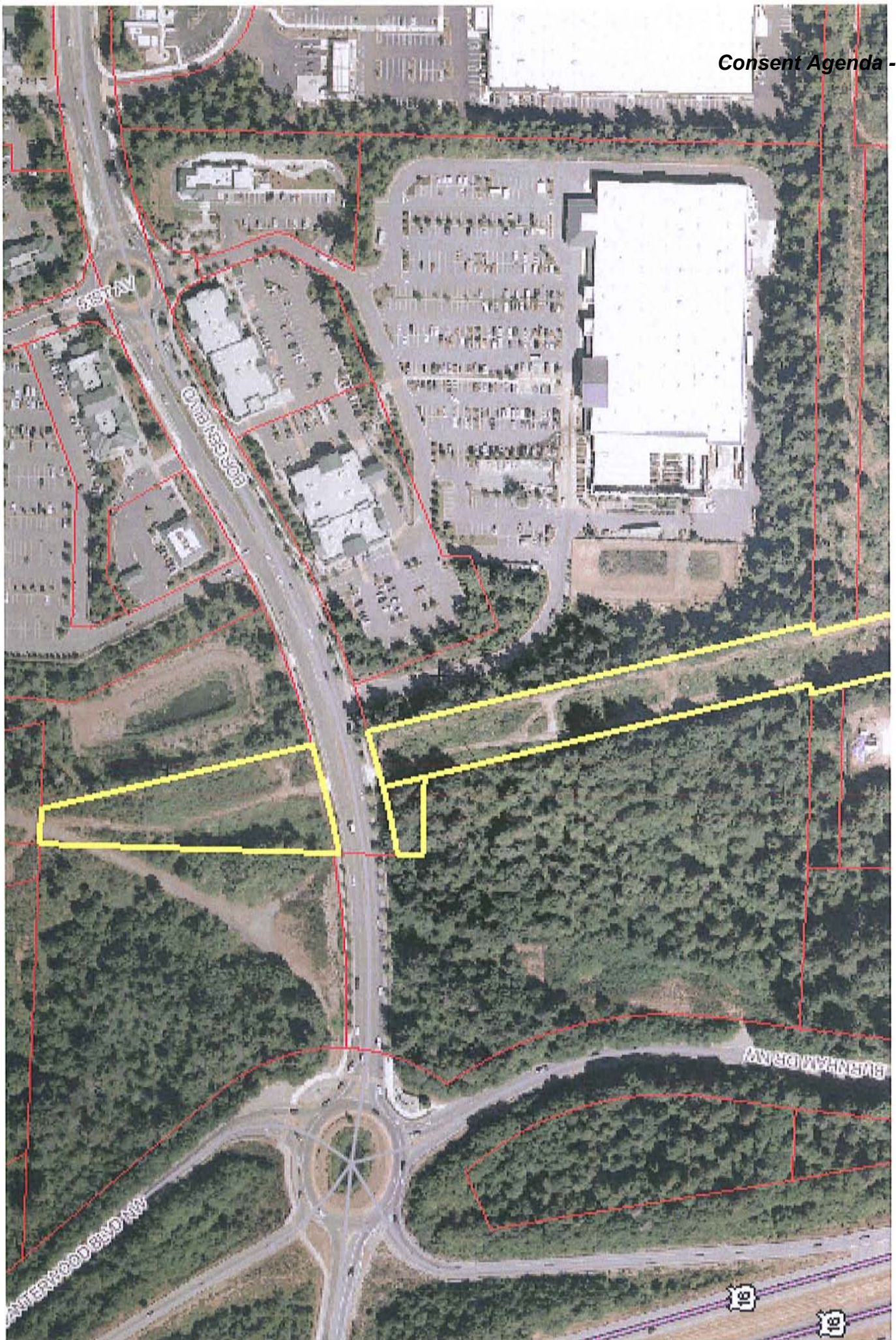
[NOTARY FOLLOWS ON NEXT PAGE]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that BILL BAARSMA 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 THE CITY OF TACOMA, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
Notary Public in and for Washington,
Residing at _____
My appointment expires: _____





Subject: "Ring In The Salmon" Bell at Donkey Creek Park Public Art Placement

Proposed Council Action: Approve and authorize the Mayor to execute the Artists Services contract with Tom Torrens Sculpture Design, Inc.

Dept. Origin: Administration
Prepared by: Lita Dawn Stanton
Special Projects
For Agenda of: March 23, 2009
Exhibits: Contract and Exhibits

Concurred by Mayor: CLH 3/18/09 Initial & Date
Approved by City Administrator: RJK
Approved as to form by City Atty: Belbeck/e-mail
Approved by Finance Director: DR 3/18/09
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ 8,491.25	Budgeted \$ 32,300.00	Required \$ -0-

INFORMATION / BACKGROUND

In 2008, the Gig Harbor Arts Commission (GHAC) approved the Tom Torrens "Ring In The Salmon" Bell sculpture as part of the Arts Commission Project Support Program. The 9½ feet tall fabricated steel bell with fiberglass fish will be installed near the sidewalk within the garden area (adjacent to the restrooms) at Donkey Creek Park. The installation will be completed by June 30, 2009.

FISCAL CONSIDERATION

The cost of for the Torrens Bell is identified in the 2009 Budget, Public Art Capital Projects Fund.

BOARD OR COMMITTEE RECOMMENDATION

The Parks Commission voted in favor of this project.

RECOMMENDATION / MOTION

Move to: Approve and authorize the contract with Tom Torrens Sculpture Design, Inc. for the "Ring In The Salmon" Bell.



**ARTIST SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
TORRENS SCULPTURE & DESIGN, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and TORRENS SCULPTURE & DESIGN, INC. a CORPORATION, organized under the laws of the State of Washington (hereinafter the "Artist").

RECITALS

WHEREAS, the City desires that the Artist perform services necessary to create and place a piece of artwork at DONKEY CREEK PARK (the "Site"); and

WHEREAS, the City does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of the Artist to provide the necessary services for the project; and

WHEREAS, the Artist has represented to the City that the Artist has the education, training and expertise to provide the necessary services for the project and has signified a willingness to furnish artistic services to the City;

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

Section 1. Retention of Artist - Scope of Work

The City hereby retains the Artist to provide the artistic services herein described, and the Artist agrees to provide artwork to the City, as described in **Exhibit A**, attached hereto and incorporated herein.

A. The Artist shall provide the City with the Artwork by performing all services and work on or before the deadlines established in **Exhibit B** attached hereto and incorporated herein.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the Gig Harbor Arts Commission, approved by the City and as described in **Exhibit A**.

C. The City may request revisions to the artwork for practical (non-aesthetic) reasons beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

D. The Artist reserves the right to make minor changes to the Artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such

as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City, shall be incorporated in this Agreement.

Section 2. Duration/Time for Completion

This Agreement shall commence upon execution by the duly authorized representatives of both parties and shall terminate on June 30, 2009, unless sooner terminated as provided herein. The Artist shall notify the City when the Artwork is completed and is ready for delivery and installation by the Artist. The Artist shall deliver and install the completed Artwork at the Site on or before June 30, 2009.

Section 3. Review of Work in Progress

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 4, Payment.

Section 4. Payment

A. The City shall pay the Artist eight thousand four hundred ninety-one dollars and twenty-five cents (\$8,491.25) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in **Exhibit B**. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Final payment will be made after the City determines that the Artwork is complete. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, a technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance, transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

Section 5. Warranty as Original; Prohibitions on Copies of Artwork

The Artist acknowledges that the City has commissioned the Artwork that is the subject of this Agreement. The Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist reserves the rights to remain the owner of drawings, molds, clay maquettes, and models of the work. The Artist gives permission to the City to reproduce photographs of the work for brochures, newsletters or other media as produced and distributed by the City. The Artist reserves all rights under copyright laws to the work, but shall make no exact duplications to full scale of the Artwork.

Section 6. 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 or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist 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 Artist 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 Artist. The Artist 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 Artist performs hereunder.

Section 7. Assignment, Transfer, Subcontracting

Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

Section 8. Termination

A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or such date stated in the City's notice, whichever is later. Such notice may be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist 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 4 above. After termination, the City may take possession of the Artwork and all supplies and materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

Section 9. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist or sub-consultant shall not, by reason of race, religion, color, sex, sexual orientation, 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.

Section 10. Indemnification

The Artist 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 Artist's own risk, and the Artist shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work. The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, 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 Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ARTIST'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 ARTIST'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE ARTIST'S EMPLOYEES DIRECTLY AGAINST THE ARTIST.

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

Section 11. Artist's Warranties

The Artist warrants that the installed Artwork shall be AS depicted in **Exhibit A** herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of inherent vice or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.

If any defects or faults appear during the warranty period, the Artist shall repair or replace the defect(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

Section 12. Ownership of the Artwork

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein.

Section 13. Repairs and Maintenance

A. The City recognizes that regular maintenance of the Artwork is essential to the integrity of the Artwork. The City shall reasonably assure that the Artwork is properly maintained and protected, taking into account the written instructions and recommendations of the Artist, and shall reasonably protect and maintain the Artwork against deterioration with time and abuse of vandals.

B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

Section 14. Insurance

A. The Artist 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 Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork. The responsibility for and risk of damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

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

D. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

E. It is the intent of this Agreement for the Artist'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.

F. The Artist shall request from his/her 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 Artist's coverage.

Section 15. Compliance with Law

The Artist 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.

Section 16. 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.

Section 17. 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's Public Works Director and the City shall determine the term or provision's true intent or meaning. The Public Works Director shall also decide all questions that 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 Artist under any of the provisions of this Agreement which cannot be resolved by the Public Works Director's determination in a reasonable time, or if the Artist does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

Section 18. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed below, 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 stated below:

ARTIST
Tom Torrens
TORRENS SCULPTURE & DESIGN, INC.
PO Box 1819
Gig Harbor, WA 98335
(800) 766-7736

CITY OF GIG HARBOR
David Stubchaer
Public Works Director
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

Section 19. 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 Artist.

Section 20. Severability

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

Section 21. Entire Agreement

This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

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

ARTIST:

THE CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**CITY OF GIG HARBOR
DONKEY CREEK ART PROJECT PROSSAL**

“RING IN THE SALMON”

by

Tom Torrens Sculpture Design, Inc.



TOM TORRENS SCULPTURE DESIGN, INC.

P.O. Box 1819, Gig Harbor, WA 98335

Copyrighted by Tom Torrens Sculpture Design, Inc. © 2007

**CITY OF GIG HARBOR
DONKEY CREEK ART PROJECT PROSSAL**

Page 2

“RING IN THE SALMON”

Dimensions: Approximately 9 ½ feet tall x 40” wide x 40” deep

Materials: Fabricated Steel
Stainless Steel Circular Base
Fiberglass Fish Image

Fabricated elements to be included are listed below.

1. A 30 inch flat diameter base made from 3/16 inch stainless steel plate to solve the concern of rust stains on the sidewalk.
2. Three holes to be drilled into the stainless steel base for the city’s installation of the sculpture to concrete.
3. Bell to be welded on the sculpture to prevent theft.
4. Chain attached to the bell sticker to prevent theft.
5. The hollow fiberglass salmon image to be filled with resin to provide a solid material for best possible protection against damage.
6. Locking collar with set screw device to prevent theft of the salmon image.
7. Steel and stainless steel elements to be finished with anti-graffiti powder coat surface in a weathered brown color.
8. Bolts in same color finish for installation will be provided to the city.
9. Assisting the city at time of installation.



TOM TORRENS SCULPTURE DESIGN, INC.

P.O. Box 1819, Gig Harbor, WA 98335
Copyrighted by Tom Torrens Sculpture Design, Inc.

EXHIBIT B

Consent Agenda - 9
PROFORMA INVOICE



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
33623- Revised #2

Invoice Date:

Feb 9, 2009

Duplicate

Page

1

Sold To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
1.00	CUSTOM	CUSTOM ITEM: PYRAMID BASE WITH FIBERGLASS FISH/ Weathered Brown Finish/ includes delivery to site.	5,500.00	5,500.00
1.00	MISC	3/16" Stainless Steel Base Revision W/ 3 holes, materials, in-bound delivery & labor.	650.00	650.00
1.00	MISC	Bell welded hook		
1.00	MISC	Chain welded to bell striker, materials & labor	50.00	50.00
1.00	MISC	Decorative Balls above Salmon, materials & labor	125.00	125.00
1.00	MISC	Salmon filled with foam Resin, materials & labor	150.00	150.00
1.00	MISC	Anti-Graffiti Powder Coated Paint /includes transportation to sub-contractor	750.00	750.00
1.00	MISC	Administration costs for contract revisions \$ copyright application to date	500.00	500.00

Subtotal
Sales Tax
Freight

Continued
Continued

Total Invoice Amount
Payment/Credit Applied

Continued

TOTAL

Continued

Check/Credit Memo No:

**Consent Agenda - 9
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
33623- Revised #2

Invoice Date:
Feb 9, 2009

Duplicate

Page
2

Sold To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
3510 GRANDVIEW STREET
GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
1.00	MISC	Installation assistance, not to exceed 2 hours		
1.00	MISC	Digita phtographghy & Design Services to date	50.00	50.00
3.00	MISC	Stainless installation bolts	19.42	58.26
<p>INSTALLATION DATE: May 19, 2009 or 60 days after contract in signed. Artist reserves the right to finish before 60 days and will notify the city.</p> <p>ORIGINAL WORK - Artist has notified the City of Gig Harbor, the Original Design was produced and sold in 2007 for the Charity Event "Salmon Enchanted Evening".The Copyright Registration was applied for using the original design in</p>				

	Subtotal	Continued
	Sales Tax	Continued
	Freight	
	Total Invoice Amount	Continued
Check/Credit Memo No:	Payment/Credit Applied	
	TOTAL	Continued

**Consent Agenda - 9
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Number
 33623- Revised #2

Invoice Date:
 Feb 9, 2009

Duplicate

Page
 3

Sold To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Ship To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
		2007. The City of Gig Harbor acknowledges this Sculpture is a slight variation of the original design and will have all the same rights and privileges of the original design if and when the copyright registration is issued. Copyright Application was sent to the US Copyright Office in September 2008. The Artist acknowledges no other variations of the original design will be created. CITY OF GIG HARBOR - must notify the Artist of any additional fees or costs of permits required by the City not included in the Performa Invoice so the Artist may include those fees in the final		

Check/Credit Memo No:

Subtotal	Continued
Sales Tax	Continued
Freight	
Total Invoice Amount	Continued
Payment/Credit Applied	
TOTAL	Continued

**Consent Agenda - 9
PROFORMA INVOICE**



TOM TORRENS SCULPTURE DESIGN, INC.
P.O. BOX 1819
GIG HARBOR, WA 98335

Voice: 800-786-7736
Fax: 253-265-2404

Duplicate

Number
 33623- Revised #2

Invoice Date:
 Feb 9, 2009

Page
 4

Sold To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
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Ship To: CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, WA 98335

Customer ID	Customer PO	Payment Terms	
RIS 09984	BOB SULLIVAN	1/3, 1/3, 1/3	
Sales Rep ID	Shipping Method	Ship Date	Due Date
TORRENS, DONNA	Tom to deliver	5/19/09	3/11/09

Quantity	Item	Description	Unit Price	Extension
		invoice for payment.		
		TERMS OF PAYMENT		
		1) 1/3 payment due at time of contract acceptance,.		
		2) 1/3 payment due after final fabrication inspection and before powdercoating begins.		
		3) Final payment due 30 days after installation date per contract.		

	Subtotal	7,833.26
	Sales Tax	657.99
	Freight	
	Total Invoice Amount	8,491.25
Check/Credit Memo No:	Payment/Credit Applied	
	TOTAL	8,491.25



Subject: Right-Of-Way Easement Agreement for Hunt/Wollochet Signal Repair Project and tree removal (CSP-0708)

Proposed Council Action: Approve the Right-Of-Way Easement Agreement as presented.

Dept. Origin: Engineering Division

Prepared by: Willy Hendrickson
Engineering Technician

For Agenda of: March 23, 2009

Exhibits: Right-Of-Way Easement Agreement

	Initial & Date
Concurred by Mayor:	<u>CLH 3/19/09</u>
Approved by City Administrator:	<u>PKK</u>
Approved as to form by City Atty:	<u>VIA EMAIL</u>
Approved by Finance Director:	<u>N/A</u>
Approved by Department Head:	<u>DS 3/19/09</u>

Expenditure Required	\$1,300	Amount Budgeted	0	Appropriation Required	0
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INTRODUCTION/BACKGROUND

On June 1, 2007, a vehicle struck a steel signal pole at the intersection of Hunt Street and Wollochet Drive. The signal pole was damaged beyond repair and the City immediately removed the signal pole and placed a temporary wood signal pole. The City is working with the driver's insurance company to provide for full reimbursement of the signal pole.

Due to changes in the National Electrical Safety Code the signal pole cannot be relocated to the original location. Therefore the City requested additional right of way from the adjacent property owner, Washington Water Service Company, to place the new signal pole. As equitable exchange for the proposed Right-Of-Way Easement Agreement the City will be removing two trees that have been identified as hazards to the right of way. The approximately 280 square foot area requested in the Easement Agreement is within the southwestern property corner of parcel number 7997000310 in the Sunnybrae subdivision.

The City's standard Right-Of-Way Easement Agreement has been reviewed and approved by City Attorney, Angela Belbeck.

FISCAL CONSIDERATIONS

The cost for removal of the two trees is approximately \$1,300. This amount will be part of the requested reimbursement by the driver's insurance company for replacement of the signal pole.

RECOMMENDATION / MOTION

Move to: Approve the Right-Of-Way Easement Agreement as presented.

AFTER RECORDING RETURN TO:

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

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

Right-of-Way Easement _____

Grantor(s) (Last name first, then first name and initials)

Washington Water Service Company _____

Grantee(s) (Last name first, then first name and initials)

City of Gig Harbor _____

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Section 07, Township 21, Range 02, Quarter 43 _____

Assessor's Property Tax Parcel or Account Number: 7997000310 _____

Reference Number(s) of Documents assigned or released: _____

RIGHT-OF-WAY EASEMENT

THIS EASEMENT, executed this date by Washington Water Service Company, a Washington corporation, whose mailing address is 14519 Peacock Hill Avenue (P.O. Box 336), Gig Harbor, Washington 98335-0336, as the "Grantor" herein:

WITNESSETH:

WHEREAS, Grantor owns a fee simple interest in the following real property, commonly known as Sunnybrae Tract 'A' Well Site, intersection of Hunt Street and Wollochet Drive, Gig Harbor, Washington and legally described in **Exhibit A** attached hereto and incorporated herein (the "Property"); and

WHEREAS, Grantor desires to grant to the City of Gig Harbor (the "City") an easement consisting of approximately two hundred eighty one (281) square feet to be utilized for right-of-way and traffic signal purposes;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged,

GRANTOR HEREBY GRANTS AND CONVEYS to the City, a perpetual, nonexclusive easement, to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, improve, replace and remove right-of-way and right-of-way related improvements and utilities under, over, on, through and across that portion of the Property described in **Exhibit B** attached hereto and incorporated herein (the "Easement"). The location of the Easement is shown on the Easement Location Map attached hereto as **Exhibit C** and incorporated herein.

[Remainder of page intentionally left blank.]

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 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: _____

Printed: _____
Notary Public in and for Washington,
Residing at _____
My appointment expires: _____

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

SECTION 07 TOWNSHIP 21 RANGE 02 QUARTER 43 SUNNYBRAE: SUNNYBRAE
TRACT 'A' WELL SITE (DCCAES 12-10-84)

**EXHIBIT B
RIGHT-OF-WAY EASEMENT LEGAL DESCRIPTION**

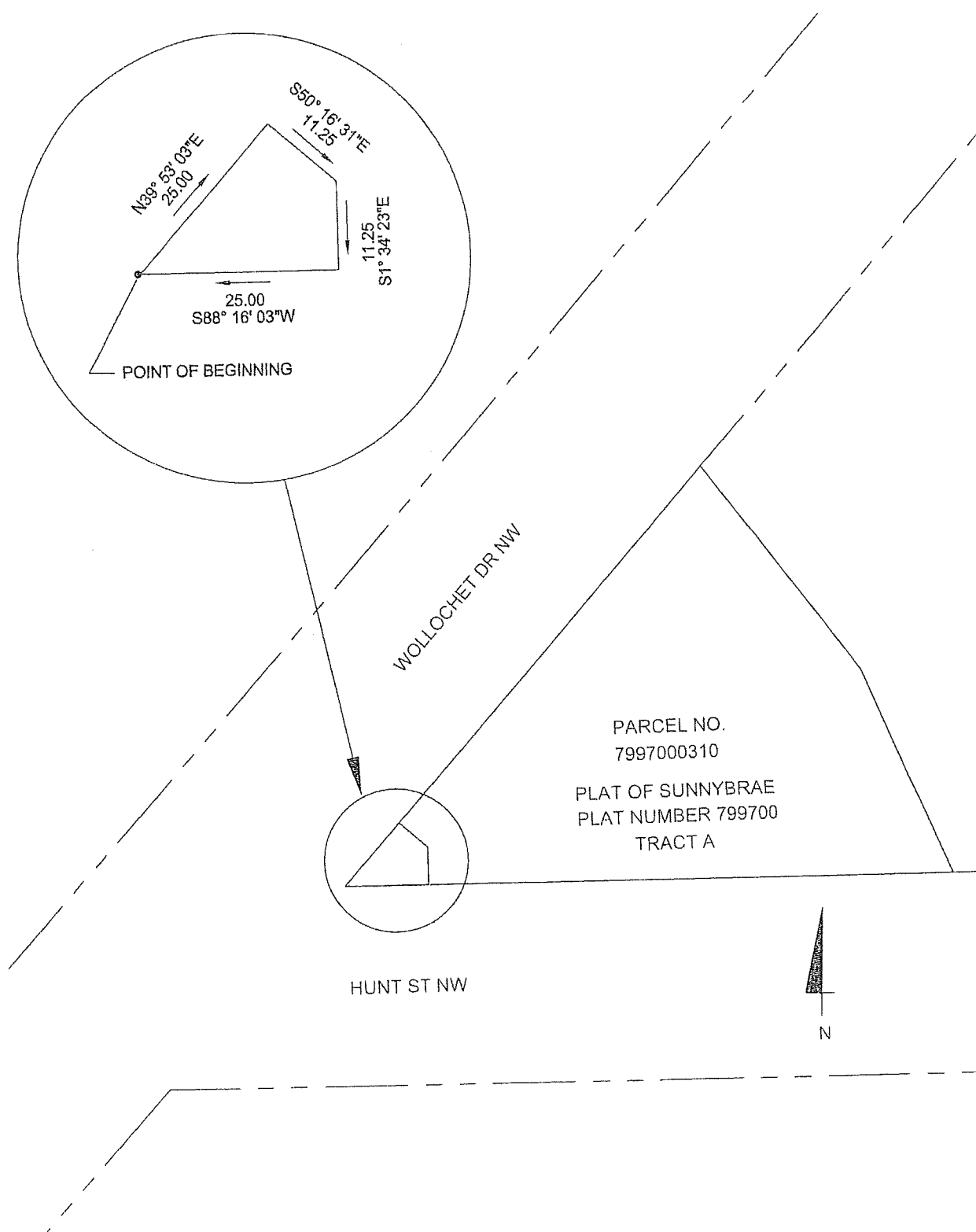
THAT PORTION OF SUNNYBRAE PLAT NUMBER 799700, TRACT 'A', PARCEL NUMBER 7997000310, RECORDED MARCH 31, 1969, RECORDS OF PIERCE COUNTY WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 'A', SAID SOUTHWEST CORNER BEING THE POINT OF BEGINNING;
THENCE N39°53'03"W ALONG THE NORTHWEST LINE OF SAID TRACT 'A' A DISTANCE OF 25.00 FEET;
THENCE CONTINUING S50°16'31"E A DISTANCE OF 11.25 FEET;
THENCE CONTINUING S01°34'23"E A DISTANCE OF 11.25 FEET;
THENCE S88°16'03"W ALONG THE SOUTH LINE OF SAID TRACT 'A' A DISTANCE OF 25.00 FEET AND RETURNING TO THE POINT OF BEGINNING.

SAID PORTION CONTAINS 281 SQUARE FEET MORE OR LESS.

ALL SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT C
RIGHT-OF-WAY EASEMENT LOCATION MAP





Business of the City Council
City of Gig Harbor, WA

Subject: Wastewater Treatment Plant (WWTP) Phase 1 Improvement Project – Chang Order No. 1

Proposed Council Action: Authorize the execution of Changer Order No. 1 with Prospect Construction Inc. for the City approved equal equipment selection and asbestos abatement for the hazardous material found in the onsite house to be demolished.

The selection of the approved equal equipment will result in a contract deduction of \$740.00 (\$802.16 with sales tax) and the asbestos abatement will result in an increase of \$1,671.00 (\$1,811.36 with sales tax) for a net increase in the contract price in the amount of \$931.00 (\$1,009.20 with sales tax).

Dept. Origin: Public Works Engineering

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

For Agenda of: March 23, 2009

Exhibits: Change Order No. 1

Initial & Date

Concurred by Mayor:

CLH 3/19/09

Approved by City Administrator:

PK

Approved as to form by City Atty:

approved by email

Approved by Finance Director:

DF 3/18/09

Approved by Department Head:

AD 3/18/09

Expenditure Required	\$1,009.20	Amount Budgeted	\$ 16,337,916.00	Appropriation Required	\$0
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INFORMATION / BACKGROUND

Equipment Selection

The City has the option to select equipment from the “Basis of Bid” or the “Approved Equal” manufacturer as outlined in Section 00320 of the Wastewater Treatment Plant (WWTP) Phase 1 improvement contract documents. Based on equipment performance and price considerations, the Design Team along with approval of the WWTP Operator have made the following changes:

11089 Aeration diffuser system – The City would like to use Aerostrip Corp Diffusers on the basis of an estimated 20% higher efficiency oxygen transfer rate than the diffusers currently specified in the bid documents. Aerostrip Diffusers were recently installed by the City in Aeration Basin #2. The higher efficiency diffusers should provide enough energy savings to earn the City a grant from Bonneville Power. Aerostrip Diffusers selection adds \$37,000 to the Contract.

15100 Gates: stop & slide – Recommend the City purchase Golden Harvest Gates. These gates appear to meet the specifications requirements after talking to the manager of Golden Harvest. Golden Harvest gates will save \$37,740 from the Contract.

The selection of both of the above “approved equals” results in a deduction of \$740.00, (\$802.16 with sales tax) from the base contract.

Asbestos Abatement

Asbestos was found in the house during a hazardous survey conducted on the house in the fall of 2008. Originally the Abatement of Hazardous materials was bid with demolition of the house under a separate contract. Only one bid was received and the City decided not to award. The City decided to add the abatement work to the successful bidder's contract after award of the WWTP contract. The work will be conducted by a Washington State certified asbestos abatement contractor that is responsible for all applicable fees, and permits. Abatement of hazardous materials in the residential house will be in accordance with Appendix K of Gig Harbor WWTP Phase 1 Improvements Project Manual. Prospect Construction Inc. provided a quote of \$1,671.00 (\$1,811.36 with sales tax) to perform the work, see attached proposal.

FISCAL CONSIDERATION

Total Project Budget	\$16,337,916
Amount Spent/Obligated	\$14,975,171
<u>CO #1</u>	<u>\$ 1,009</u>
Total Spent/Obligated	\$14,976,180
Budget Remaining	\$ 1,361,736

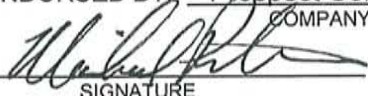
BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the execution of Change Order No. 1 for the WWTP with Prospect Construction, for net contract change in the amount \$931.00 excluding sales tax, \$1,009.20 with sales tax. The contract amended total will be \$10,884,957.81.

CITY OF GIG HARBOR
PUBLIC WORKS DEPARTMENT

Sheet <u>1</u> of <u>1</u>	CHANGE ORDER	Change Order Number <u>001</u>
Date <u>03 / 16 / 2009</u>	CONTRACT NO.: <u>CSSP - 0702</u> Waste Water Treatment Plant Phase 1 Improvement	
<input checked="" type="checkbox"/> ORDERED BY ENGINEER/CITY UNDER TERMS OF SECTION 1-04.4 OF THE STANDARD SPECIFICATIONS. <input type="checkbox"/> CHANGE PROPOSED BY CONTRACTOR. <input type="checkbox"/> OTHER: CHANGE MUTUALLY AGREED BETWEEN THE CITY AND THE VENDOR.	ENDORSED BY: <u>Prospect Construction Inc</u> <small>COMPANY NAME</small>  <small>SIGNATURE</small> <u>3/17/09</u> <small>DATE</small> TO: <u>Prospect Construction Inc</u> <u>116 23rd Street SE</u> <u>Puyallup, Washington, 98372</u>	
TITLE: _____ Consent Given by Surety (When required): BY: _____ <small>ATTORNEY IN-FACT</small> <small>DATE</small>		

DESCRIPTION OF WORK

THE CONTRACTOR / VENDOR SHALL PERFORM THE FOLLOWING UPON RECEIPT OF AN APPROVED COPY OF THIS CHANGE ORDER:

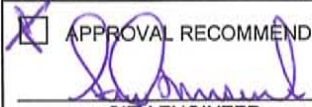
- A) The Contractor shall change the following:
 - a. Aeration Diffuser System (Section 11089) - from SSI to Aerostrip Corp. A cost increase of \$37,000. Aerostrip diffusers are selected on the basis of an estimated 20% higher efficiency oxygen transfer rate. Aerostrip diffusers are also selected to match recently installed aeration diffusers Aeration Basin #2.
 - b. Gates, Stop & Slide (Section 15100) - from Fontaine USA to Golden Harvest. A Cost decrease of \$37,740

Net Change to Contract Price is a deduction of (\$ 740.00), with sales tax (\$802.16).

- B) The Contractor shall remove all regulated asbestos containing material prior to demolition of the home as described in Work Change Directive (WCD) 002.

Net Change to the Contract Price is a addition of \$1671.00, with sales tax \$1,811.36.

ALL WORK, MATERIALS, AND MEASUREMENTS SHALL OTHERWISE BE IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT AS APPLICABLE.

ORIGINAL CONTRACT AMOUNT	CURRENT CONTRACT AMOUNT	NET CHANGE THIS ORDER	CONTRACT TOTAL AFTER CHANGE
\$ <u>10,883,948.61</u>	\$ <u>10,883,948.61</u>	\$ <u>1009.20</u>	\$ <u>10,884,957.81</u>
<input checked="" type="checkbox"/> APPROVAL RECOMMENDED:  <small>CITY ENGINEER</small>	<input type="checkbox"/> APPROVED: <u>3/16/09</u> <small>DATE</small>	<input type="checkbox"/> APPROVAL RECOMMENDED: _____ <small>CITY ADMINISTRATOR</small>	<input type="checkbox"/> APPROVED: _____ <small>DATE</small>
<input type="checkbox"/> APPROVED: _____ <small>MAYOR</small>		DATE: _____	

Note: Amounts include applicable Washington State Sales Tax. Final payment amount will vary from contract amount, and will be as set forth in the Final Progress Estimate and Reconciliation of Quantities.

WORK CHANGE DIRECTIVE

FIELD DIRECTIVE NUMBER: 001
 CONTRACT NUMBER: CSSP-0702
 DATE: 2/26/09

Project: Wastewater Treatment Plant Phase I Improvements
 Owner: City of Gig Harbor
 Contractor: Prospect Construction, Inc.
 Engineer: Cosmopolitan Engineering Group
 Construction Services Manager: Shannon Thompson

The following additions, deletions, or revisions to the Work have been ordered and authorized contingent upon City Council Approval of a Change Order:

DESCRIPTION OF ALTERATION:
 Specifications Section 00320 - Schedule of Major Equipment Items and Products: Basis of bid equipment items and products shall be changed to Column 2 'Approved Equal Manufacturer' for the following manufacturers:
 Section 11089 Aeration Diffuser System - Change from SSI to Aerostrip Corp. (Cost increase of \$37,000).
 Section 15100 Gates, Stop & Slide - Change from Fontaine USA to Golden Harvest. Cost decrease of \$37,740).
 Net Change to Contract Price is a deduction of \$740.00, with sales tax \$802.16


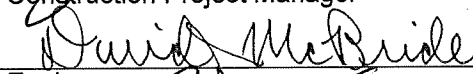
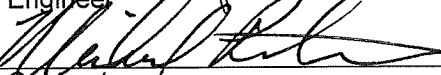
REASON FOR CHANGE:
 Design Team and WWTP Supervisor's recommendation to utilize equipment listed in the alternative list based on equipment performance, price and long term operation. Aerostrip diffusers are selected on the basis of an estimated 20% higher efficiency oxygen transfer rate. Aerostrip diffusers are also selected to match recently installed aeration diffusers in Aeration Basin #2.

METHOD OF PAYMENT:

Contract Unit Price: \$ _____
 Lump Sum: \$(740.00) with sales tax (\$802.16)
 Cost of Work (Time and Materials) \$ _____

REMARKS:

It is understood that this Work Change Directive will not change the Contract Price or Times but is evidence that the parties expect a Change Order to be subsequently issued reflecting any changes.

RECOMMENDED BY:  DATE: 3-17-09
 Construction Project Manager
 DATE: 3-17-09
 Engineer
 ACCEPTED BY:  DATE: 3/17/09
 Contractor
 APPROVED BY: _____ DATE: _____
 Owner

PARAMETRIX

WORK CHANGE DIRECTIVE

FIELD DIRECTIVE NUMBER: 002
 CONTRACT NUMBER: CSSP-0702
 DATE: 03/06/09

Project: Wastewater Treatment Plant Phase I Improvements
 Owner: City of Gig Harbor
 Contractor: Prospect Construction, Inc.
 Engineer: Cosmopolitan Engineering Group
 Construction Services Manager: Shannon Thompson

The following additions, deletions, or revisions to the Work have been ordered and authorized:

DESCRIPTION OF ALTERATION:
 Remove all regulated asbestos containing material prior to demolition of the home. \$1421.00
 Permits \$250.00

REASON FOR CHANGE:
 The residential house located at the Gig Harbor WWTP has known asbestos that needs to be removed before the demolition of the home.

METHOD OF PAYMENT:

Contract Unit Price: \$ _____
 Lump Sum: \$ 1,671.00 with sales tax \$1,811.36
 Cost of Work (Time and Materials) \$ _____

REMARKS:

The lump sum price provides payment for all labor, equipment, materials, permitting costs, and disposal of abated material. No additional payment shall be made. Abatement should be conducted by a Washington State certified asbestos abatement contractor. Applicable fees, permits, and waiting periods may apply. Contractor to file applicable permits and fees. Abatement of hazardous materials in the residential house will be in accordance with Appendix K of Gig Harbor WWTP Phase 1 Improvements Project Manual. No additional time will be added for this Work Change Directive.

The following agencies and applicable regulatory requirements should be followed during the abatement and/or demolition of the structures.

- Puget Sound Clean Air Agency
- Washington State Dangerous Waste Regulations (WAC 173-303)
- Washington State General Occupational Health Standards (WAC 296-62), including asbestos (WAC 296-62-077) and lead (WAC 296-62-07521)
- Washington State Asbestos Removal and Encapsulation Standards (WAC 296-65)
- Washington State Safety Standard for Lead in Construction (WAC 296-155-176)
- Washington State Respirator Standard (WAC 296-842)
- Washington State Hazardous Employer Chemical Hazard Communication (WAC 296-800-170)


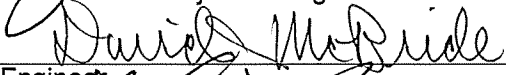
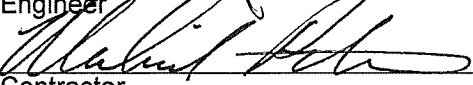
The following forms/permits may be required prior to an asbestos abatement or demolition project:

- Puget Sound Clean Air Agency Electronic Asbestos/Demolition Notification <https://secure.pscleanair.org/asbestos/>
- Department of Labor and Industries Notice of Asbestos Abatement Project

Paper copies of the Puget Sound Clean Air Agency notification forms are no longer available, all submittals are electronic. A copy of the Department of Labor and Industries form is attached for use.

PARAMETRIX

It is understood that this Work Change Directive will not change the Contract Price or Times but is evidence that the parties expect a Change Order to be subsequently issued reflecting any changes.

RECOMMENDED BY:	<u></u>	DATE:	<u>3-17-09</u>
	Construction Project Manager		
	<u></u>	DATE:	<u>3-17-09</u>
	Engineer		
ACCEPTED BY:	<u></u>	DATE:	<u>3/17/09</u>
	Contractor		
APPROVED BY:	_____	DATE:	_____
	Owner		



Business of the City Council
City of Gig Harbor, WA

Old Business - 1

Subject: Harbor Hill Water Tank and Mainline Extension Latecomer's Agreement & Ordinance (FIRST READING)

Proposed Council Action: Review an Ordinance establishing the pro rata shares and reimbursable expenses, providing for severability, and establishing an effective date for the Harbor Hill Water Tank and Mainline Extension Latecomer's Agreement and consider approval at second reading.

Dept. Origin: Public Works
Prepared by: Willy Hendrickson
Engineering Technician
For Agenda of: March 23, 2009
Exhibits: Ordinance
Latecomer's Agreement

Initial & Date

Concurred by Mayor: CLH 3/19/09
Approved by City Administrator: PK
Approved as to form by City Atty: apprv'd by email
Approved by Finance Director: DF 3/18/09
Approved by Department Head: DF 3/18/09

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

INFORMATION / BACKGROUND

Olympic Property Group (OPG) constructed approximately 4,800 feet of 16-inch diameter waterline, connecting to an existing City water main on Borgen Boulevard, and a 2.3-million gallon reservoir (improvements) that serves the Gig Harbor North area. The improvements to the City's water system constructed by OPG serve considerably more than the needs of OPG's proposed developments. Pursuant to RCW 35.91.020 and Chapter 13.35 GHMC, OPG has requested that the City bring the proposed Harbor Hill Water Tank and Mainline Extension Latecomers Agreement (Agreement) to Council for approval so that they may be reimbursed for costs of the improvements that they constructed which are over and above OPG's own needs by subsequent users.

Through consultation with the City Engineer, a method of calculating a property owner's fair pro-rata share of the improvements based on actual (if available) or calculated water usage based on land-use or structure use type. The total cost of the improvements was approximately \$3.043 million. Based on the calculations, OPG's share was approximately \$2.393 million, which leaves \$650,041.23 which may be reimbursed.

If this Agreement is approved, each property owner who has been determined to benefit from the improvements would pay a fair pro-rata share of the \$650,041.23, plus a 5% administrative fee as per Gig Harbor Municipal Code 13.35.070, if they have connected or were to connect to

the improvements within 15 years of the date of the Agreement, or longer if the Agreement was extended. If they do not connect within the 15-year period, their obligation under the Agreement would end. Each property and their pro-rata share amount are listed in the Agreement (attached).

A copy of the proposed Agreement and notification that the Agreement would be considered at the March 23, 2009 Gig Harbor City Council meeting was sent via certified mail to each of the affected property owners listed in the Agreement on March 12, 2009, and advertised in the Gateway Newspaper on March 11, 2009.

Council heard public testimony at the February 9th Council meeting from Mr. Pearson representing the Sportsman Club property objecting to inclusion in the Agreement. Other letters from property owners included in the Agreement are included as attachments.

Changes since February 9th and February 23rd, 2009 Council meetings

This Agreement was heard by Council at the February 9th and 23rd, 2009 Council meetings. Based on comments from the public and Council, and further review of the Agreement, staff worked with OPG to update the Agreement. Updates to the Agreement are described below.

Since the February 9th Council meeting, Franciscan Health Systems (FHS) has worked out an agreement to pay OPG directly their fair pro-rata share for the improvements constructed by OPG. As a result, there have been changes to the Latecomers Agreement to reflect said change. The separate agreement between OPG and FHS did not change any of the other affected property owners fair pro-rata share amounts in the Latecomers Agreement.

Staff met with Mr. Pearson to discuss the Agreement and performed additional water modeling to confirm that the Sportsman Club property would be relying on the OPG improvements to meet water system fire flow requirements. Based on the additional modeling with the parameters suggested by Mr. Pearson and agreed to by the City, the Sportsman Club property would still be relying upon the improvements made by OPG to meet water system fire flow requirements should the property develop.

Fire flow water system modeling was also done for additional properties not originally included in the earlier drafts of the Agreement to determine if those properties should be included in the Agreement. Based on the water system fire flow requirements and the water system modeling for same, 10 additional properties have been included in the Agreement (property numbers 51-60 as shown in exhibit D of the Agreement). However, some of those properties had no net usable areas, so the average daily water usage, which is the basis for the calculating the pro rata share, was zero. As a result of the properties being added, most assessments dropped by approximately 3.5%, although some did not drop because new calculations were performed using newer information on the land use of the property (e.g., preliminary plat map) instead of the previous estimate of land use based on allowable density based on zoning of a property. Of course the assessments for those properties that were not included in the earlier draft that were added to the current Agreement went up from zero to the amounts shown on exhibit D of the Agreement.

FISCAL CONSIDERATION

The City would collect the pro-rata shares as shown in the Agreement from each benefitted property owner on behalf of OPG. As per Gig Harbor Municipal Code 13.35.070, and as per section C of the Agreement, the City would also charge an additional 5% fee to the benefitted property owner to defray the City's administrative costs of billing, accounting, collecting, and disbursing to the developer the pro-rata shares.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Review an Ordinance ^(ATTACHED) establishing the pro rata shares and reimbursable expenses, providing for severability, and establishing an effective date for the Harbor Hill Water Tank and Mainline Extension Latecomers Agreement and consider approval at second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, DETERMINING THE FINAL ASSESSMENT REIMBURSEMENT AREA AND PRO RATA SHARES OF REIMBURSABLE COSTS IN CONNECTION WITH THE HARBOR HILL WATER TANK AND MAINLINE EXTENSION LATECOMERS AGREEMENT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, chapter 35.91 of the Revised Code of Washington authorizes cities to enter into latecomer agreements for the purpose of providing partial reimbursement of certain water and sewer improvement costs paid by a private party; and

WHEREAS, chapter 13.35 of the Gig Harbor Municipal Code authorizes the City to enter into latecomer agreements for water and sewer improvements; and

WHEREAS, OPG Properties LLC, a Washington limited liability company, performed certain improvements including construction of the Harbor Hill Water Tank and mainline extension in conjunction with development of its property;

WHEREAS, OPG Properties LLC applied to the City for a latecomer agreement for reimbursements of said water and sewer improvements; and

WHEREAS, the City Engineer determined that the application of OPG Properties LLC met the criteria set forth in chapter 35.91 of the Revised Code of Washington and chapter 13.35 of the Gig Harbor Municipal Code, and approved the application; and

WHEREAS, as authorized in GHMC 13.35.080, OPG Properties LLC proposed the method for determining the fair pro rata share assessment, as later adjusted and accepted by the City Engineer, and made a preliminary determination of the assessment reimbursement area and pro rata share of costs to affected property owners by selecting a method of cost apportionment based on the benefit of the improvements and the proportional share of the reserved tank volume for each of the affected property owners; and

WHEREAS, copies of the proposed latecomer agreement and pro rata share of costs were sent via certified mail to each affected property owner listed in the agreement on December 26, 2008, along with notice of the City Council's consideration on January 12, 2009, and the same was also advertised in the Gateway Newspaper on December 31, 2008; and

WHEREAS, since that time, the City found a need to adjust the pro rata share of costs and new documents and notice of the City Council's further consideration on February 9, 2009, were provided to affected property owners on January 29, 2009; and

WHEREAS, the City Council considered the latecomer agreement and pro rata share of costs on February 9, 2009; and

WHEREAS, based on comments received from affected property owners, the City further evaluated certain properties not included in the original proposed latecomer agreement by using the City's water system model to determine if said properties benefited from the water system improvements constructed by OPG to meet water system fire flow requirements; and

WHEREAS, based on said water system modeling, ten additional properties have been added to the agreement and fair pro rata shares adjusted accordingly; and

WHEREAS, copies of the revised proposed latecomer agreement and pro rata share of costs were sent via certified mail to each affected property owner listed in the agreement on March 12, 2009, along with notice of the City Council's consideration on March 23, 2009, and the same was also advertised in the Gateway Newspaper on March 11, 2009; and

WHEREAS, the City Council considered the latecomer agreement and pro rata share of costs on March 23, 2009, and again on April 13, 2009 and considered all testimony presented; now, therefore,

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

Section 1. Assessment Reimbursement Area. The City Council hereby adopts as its final determination the preliminary determination of the assessment reimbursement area as recommended by the City Engineer and as identified on **Exhibit C** attached hereto and incorporated herein by this reference.

Section 2. Reimbursable Costs. The City Council hereby adopts as its final determination the total cost calculations, allocations among the benefited properties, and pro rata shares of reimbursable costs as recommended by the City Engineer and as identified on **Exhibit D**.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a

court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 04/13/09
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

AFTER RECORDING RETURN TO:

The City of Gig Harbor
Attn: City Clerk
3510 Grandview St.
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

Harbor Hill Water Tank and Mainline Extension Latecomers Agreement

Grantor(s) (Last name first, then first name and initials)

OPG Properties LLC

Grantee(s) (Last name first, then first name and initials)

City of Gig Harbor

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Portions of Sections 25, Township 22 North, Range 1 East, and Sections 30 and 31, Township 22 North, Range 2 East, W.M., Pierce County, Washington

Complete legal description is at Exhibit C (pages 13 to 21) hereto

Assessor's Property Tax Parcel or Account number:

0122254090, 0222303002, 0122254073, 0122254051, 0122254072, 0222312029,
0222312027, 0222312028, 0222316001, 0222316002, 0222316003, 0222316004,
0222312023, 0222313023, 0222313044, 0222314016, 0222313008, 0222313069,
0222313070, 0222313024, 0222313012, 0222313020, 0222313027, 0222313018,
0222313063,

See Attachment #1 for Additional Account Numbers

Reference number(s) of documents assigned or released: None.

Attachment #1

Assessor's Property Tax Parcel or Account number (con't):

4002880010, 4002880020, 4002880030, 4002880040, 4002880050, 4002880060,
4002880070, 4002880080, 4002880090, 4002880100, 4002880110, 4002880120,
4002880130, 4002880140, 4002880150, 4002880160, 4002880170, 4002880180,
4002880190, 4002880200, 4002880210, 4002880220, 4002880230, 4002880240,
4002880250, 4002880260, 4002880270, 4002880280, 4002880290, 4002880300,
4002880310, 4002880320, 4002880330, 4002880340, 4002880350, 4002880360,
4002880370, 4002880380, 4002880390, 4002880400, 4002880410, 4002880420,
4002880430, 4002880440, 4002880450, 4002880460, 4002880470, 4002880480,
4002880490, 4002880500, 4002880510, 4002880520, 4002880530, 4002880540,
4002880550, 4002880560, 4002880570, 4002880580, 4002880590, 4002880600,
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4002881090, 4002881100, 4002881110, 4002881120, 4002881130, 4002881140,
4002881150, 4002881160, 4002881170, 4002881180, 4002881190, 4002881200,
4002881210, 4002881220, 4002881230, 4002881240.

**HARBOR HILL WATER TANK AND
MAINLINE EXTENSION LATECOMERS AGREEMENT**

THIS AGREEMENT is made this _____ day of _____, 2009, by and between OPG Properties LLC, a Washington Limited Liability Company, and the City of Gig Harbor, situate in Pierce County, Washington, the parties respectively referred to herein as "Owner" and "City".

WITNESSETH:

RECITALS

1. The City owns and operates a water system within and adjacent to its limits; and
2. The Owner has constructed, under agreement with the City, pursuant to the Municipal Water and Sewer Facilities Act, RCW 35.91.010, et seq., certain improvements to said system more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Improvements"), which Improvements are capable of serving areas now owned by the Owner or its affiliate Harbor Hill LLC and other real property; and
3. The Improvements are located within the area served by the City's water system and have been accepted by the City for maintenance and operation; and
4. The Owner has transferred to the City title to the Improvements free and clear of all encumbrances, by a Bill of Sale executed and delivered by Owner to the City on or after July 25, 2006, after acceptance of the Improvements for maintenance by the City; and
5. The cost of construction of the Improvements under the provisions of said Municipal Water and Sewer Facilities Act is Three Million Forty-three Thousand Three Hundred Eight Dollars and Sixty-three Cents (\$3,043,308.63) (the "Project Cost"), as detailed on **Exhibit "B"** attached hereto and by this reference incorporated herein, which amount includes without limitation all design, engineering, construction, carrying costs, and construction management and processing fees incurred by or on behalf of the Owner; and
6. The area intended to be served and directly benefited by the Improvements is 580.38 gross acres located within sixty (60) tax parcels (the "Benefited Property"). Of the Benefited Property, the Owner is liable to bear the fair share allocation of the Project Cost as to 411.49 gross acres located within thirty-one (31) tax parcels and other property owners are liable for the fair share allocation of the Project Cost as to 168.89 gross acres located within twenty-nine (29) tax parcels (the "Assessed Property"). The Assessed Property is described in **Exhibit "C"** attached hereto and by this reference incorporated herein. The term "tax parcel" as used in this Agreement means "tax parcel as described on **Exhibit "C"** attached hereto" or

as otherwise described and numbered by the Office of the Pierce County Assessor as of March 31, 2008, regardless whether such parcel subsequently was consolidated or divided; and

7. The City has determined and the Owner has agreed that the fair share allocation of the Project Cost is described in this Agreement and is set forth as to each tax parcel on **Exhibit "D"** attached hereto and by this reference incorporated herein (the "Fair Pro Rata Share"), to be collected from the owner or owners of any portion of the Assessed Property upon the first to occur of either the date that such owner records a final plat, binding site plan, or condominium declaration relating to the lot, tract, or parcel in the real property records of Pierce County or the date the owner taps into or connects to the City's water system; and

8. The City and Owner desire and intend by this Agreement to provide for collection of the Fair Pro Rata Share from the owners of the Assessed Property, under the provisions of the Municipal Water and Sewer Facilities Act, PROVIDED, that nothing contained herein shall be construed to affect or impair in any manner the right of the City to regulate the use of its said system of which the Improvements shall become a part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner of the Assessed Property in order to secure compliance with such requirements of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, it is agreed by and between the parties hereto as follows:

AGREEMENT

A. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

B. Owner warrants that it has conveyed to the City ownership of the Improvements described in **Exhibit "A,"** that it has neither permitted nor suffered any person or other entity to tap into or connect to said Improvements prior to the date of this Agreement, that the Fair Pro Rata Share is to be assessed against the owner of each parcel within the Assessed Property who taps into or connects to the City's water system, and does further warrant that there are no persons, firms, or corporations who have filed or have the right to file a lien against the Improvements pursuant to the provisions of Title 60 of the Revised Code of Washington, other than those heretofore filed that have been satisfied. In the event that any lien or other claim against said Improvements is asserted, Owner shall defend and save harmless the City from loss on account thereof, and in the event the City shall be put to any expense in defense of such claim or otherwise, then the City shall have a lien against any Fair Pro Rata Share funds then or thereafter deposited with it pursuant to this Agreement.

C. The City has accepted and hereby agrees to maintain the Improvements as part of its water system and further agrees to collect the Fair Pro Rata Share from the owners of the Assessed Property who tap into or use the same, and the Fair Pro Rata Share of the Improvements shall be conclusively presumed to be a fair pro rata charge against the Assessed Property. Each owner of any lot, tract, or parcel within the Assessed Property shall pay the City its Fair Pro Rata Share upon the first to occur of either the date that such owner records a final plat, binding site plan, or condominium declaration relating to the lot, tract, or parcel in the real property records of Pierce County or the date the owner taps into or connects to the City's water system. The City shall charge, in addition to its usual and ordinary charges made against persons applying for service from the City's water system and in addition to the Fair Pro Rata Share agreed to be collected by the City in this paragraph, a sum equal to five percent (5%) of the Fair Pro Rata Share, to be collected from owners of the Assessed Property, which sum shall be used by the City to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement.

D. The Project Cost for the Improvements, including costs eligible for reimbursement under this Agreement, is itemized on **Exhibit "B"** attached hereto. The Fair Pro Rata Share latecomer's assessment for tax parcels within the Assessed Property is set forth on **Exhibit "D"** attached hereto and shall be based upon the following formula:

The Fair Pro Rata Share assessment for each parcel is the current estimated gallons per day used by the parcel upon completion of development of the parcel, as set forth on Exhibit D, divided by the total estimated gallons per day used by all of the Assessed Property (391,085 gallons per day) upon completion of development, multiplied by the Project Cost (\$3,043,308.63).

For example, if the current estimated gallons per day to be used by a parcel upon completion of development of the parcel is 5,700, then 5,700 divided by 391,085 equals 0.014574837, multiplied by \$3,043,308.63 equals a Fair Pro Rata Share assessment of \$44,355.73.

The current estimated gallons per day used by the parcel upon completion of development of the parcel, as set forth on Exhibit D, is calculated as follows:

(1) Completed Developments. As to parcels on which development is complete as of the making of this Agreement, the current estimated gallons per day used by the parcel is based on the actual average daily use of water during the peak two-month period, except that where the development has been completed and in use for less than twelve months, the higher of the actual average daily use of water during the peak two-month period or the current estimated gallons per day using the formula for Future Nonresidential, Non-hospital Developments described below was used.

(2) Future Residential Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is residential based on current zoning regulations and other factors, then the current estimated gallons per day used by the parcel is based on the net usable area of the parcel, in acres, multiplied by the current estimated number of dwelling units per acre upon completion of development of the parcel, multiplied by the current estimated number of persons per dwelling unit, multiplied by the current estimated rate of water use per person per day, in gallons.

(3) Future Hospital Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is hospital based on current zoning regulations and other factors, then the current estimated gallons per day used by the parcel is based on the current estimated number of hospital beds within the parcel, multiplied by the current estimated rate of water use per hospital bed per day, in gallons.

(4) Future Nonresidential, Non-hospital Developments. As to parcels on which development is not complete as of the making of this Agreement, if the highest and best use of the parcel is nonresidential and non-hospital based on current zoning regulations and other factors, then the current estimated gallons per day used by the parcel is based on the net usable area of the parcel, in acres, multiplied by the current estimated number of persons per acre upon completion of development of the parcel, multiplied by the current estimated rate of water use per person per day, in gallons.

The Owner's share of the Project Cost is \$2,393,267.40 based upon the formula described above. The Fair Pro Rata Share of the Project Cost allocated to the Assessed Property is \$650,041.23. The Fair Pro Rata Share for each lot, tract, or parcel within the Assessed Property shall be based upon the formula described above. The Fair Pro Rata Share for each tax parcel within the Assessed Property is set forth on "Exhibit D" attached hereto and by this reference incorporated herein. . The parties acknowledge that on "Exhibit D" certain tax parcels, which were subdivided from former tax parcel number 0222303002, have been aggregated under the names of the two (2) current or former owners of such tax parcels which the Owner expects to pay the Fair Pro Rata Share on behalf of all current owners of such tax parcels, but that "Exhibit D" may in the future be amended to identify as the owners of such tax parcels the current (and not the former) owners of such tax parcels.

E. The City shall pay to the Owner the sums agreed by the City to be collected under this Agreement within sixty (60) days after receipt thereof at the address of the Owner as set forth hereinafter or at such other addresses as the Owner shall provide by Certified Mail. Every two (2) years after the effective date of this Agreement, the Owner shall provide the City with information regarding the current name, address, and telephone number of the Owner. If the Owner shall fail to comply with the notification requirements of this section within sixty (60) days after the specified time, then the City may collect and retain any reimbursements owed to

the Owner under this Agreement. Such funds shall be deposited in the capital fund of the City. The City shall not be responsible for locating the Owner or any successors or assigns.

F. The Owner agrees to indemnify and hold the City harmless from any liability for damages of any kind or nature whatsoever arising out of claims filed against the City as the result of any action taken by the City or the Owner pursuant to this Agreement and shall defend the City whenever the City is named in a lawsuit in which this Agreement is at issue and pay all costs of such defense, including but not limited to attorneys' fees and expert witness fees, except to the extent that the acts or omissions of the City, its officers, officials, employees, representatives and agents, constitute negligence or intentional misconduct. At the City's option, the City may elect to be defended in any such litigation by the City Attorney's Office, and in such event the Owner agrees to reimburse the City for all costs of such defense, including attorneys' fees and expert witness fees. In addition, the Owner hereby agrees to release, indemnify, defend and hold the City, its officials, officers, employees, agents and representatives, harmless from any and all claims, costs, judgments, awards, attorneys' fees or liabilities to any third persons asserting that the formula used to determine either the Assessed Properties or the amount of such Assessment is in error or does not amount to a fair pro rata charge.

The Owner agrees that the City shall not be liable for money damages to the Owner for failing to collect any Fair Pro Rata Share called for by the terms of this Agreement and shall not be obligated to make any payment to Owners until the Fair Pro Rata Share actually has been received by the City. If the City shall fail to collect the Fair Pro Rata Share from any owner of any lot, tract, or parcel within the Assessed Property who subsequently taps into or uses the Improvements, then the Owner may at its option collect the Fair Pro Rata Share from the owner, in which case the City shall not collect either the Fair Pro Rata Share or the administrative fee described in Section C above.

G. In the event of the assignment or transfer of the rights of the Owner voluntarily, involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after timely notice, to such successor of the Owner as the City, in its sole judgment, deems entitled to such benefits; and in the event conflicting demands are made upon the City for benefits accruing under this Agreement, then the City may, at its option, commence an action in interpleader joining any party claiming rights under this Agreement, or other parties the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable attorney's fees and cost, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

H. The City agrees not to allow an Owner or other user of any portion of the Assessed Property to tap into, connect to, or use the City's water system without such owner or user having first paid the Fair Pro Rata Share to the City.

I. The City shall be entitled to rely, without any resulting liability to the City, on the provisions of this Agreement with respect to the fairness of the Fair Pro Rata Share herein provided and upon the designation and description of the Assessed Properties set forth in **Exhibit "C"** attached hereto.

J. This Agreement shall become operative immediately after recording with the Auditor of Pierce County, at the expense of the Owner, and shall remain in full force and effect for a period of fifteen (15) years after the date of such recording, or until the Owner, or its successors or assigns, shall have been fully reimbursed as aforesaid, whichever event occurs earlier; provided, that in the event the Improvements shall, during the term of this Agreement, be rendered useless by the redesign or reconstruction of a portion of the City's water system, such determination of uselessness to be in the absolute discretion of the City Engineer, then the City's obligation to collect for the Owner the Fair Pro Rata Share pursuant to this Agreement shall cease.

K. 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 Owner.

L. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

City:
City of Gig Harbor
Attn: City Engineer
3510 Grandview Street
Gig Harbor, WA 98335

Owner:
OPG Properties LLC
Attn: President
19245 Tenth Avenue N.E.
Poulsbo, WA 98370

M. All of the provisions, conditions, regulations and requirements of this Agreement shall be binding upon the successors and assigns of the Owner, as if they were specifically mentioned herein.

N. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action shall be entitled to all other remedies provided herein, and to all costs and expenses, including attorneys' fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

O. Any invalidity, in whole or in part, of any of the provisions of this Agreement shall not affect the validity of any other of its provisions.

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

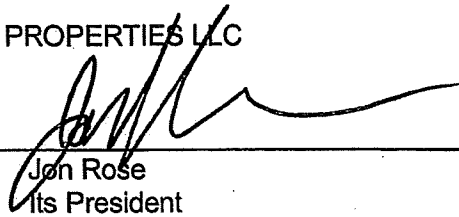
Q. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

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

CITY OF GIG HARBOR

OPG PROPERTIES LLC

By: _____
Its Mayor

By:  _____
Jon Rose
Its President

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

By: _____

EXHIBITS:

- A - Description of Improvements
- B - Project Cost Detail
- C - Legal Description of Assessed Property
- D - Fair Pro Rata Share Project Cost Allocation

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 signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

NOTARY PUBLIC, State of Washington,
Print Name: _____
Residing at: _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I certify that I know or have satisfactory evidence that JON ROSE 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 President of OPG PROPERTIES LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/11/09



Sarah J. Steffen
NOTARY
PUBLIC, State of Washington
Print Name: SARAH J. STEFFEN
Residing at: PULLISBO, WA
My Commission expires: 12/15/2010

**EXHIBIT A
DESCRIPTION OF IMPROVEMENTS**

1. 2.3-million-gallon ground supported standpipe water reservoir located on Harbor Hill, Gig Harbor, Washington, and
2. 16-inch diameter water line extension of 4,800 feet in length, connecting to existing City water main on Borgen Boulevard, Gig Harbor, Washington.

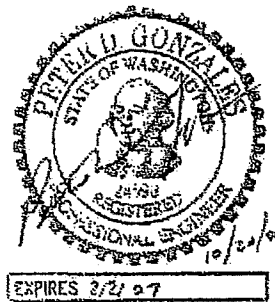
**EXHIBIT B
PROJECT COST DETAIL**

Water System Development Cost Summary

<u>Paid To:</u>	<u>Description:</u>	<u>Amount:</u>
Apex Engineering	Stake Tank Foundation	962.00
City of Gig Harbor	Tank Permit Fees	19,428.65
City of Gig Harbor	Tank Access Road Permit Fees	6,639.00
DEA	Tank Site Survey	11,035.00
DEA	Tank Access Survey	7,888.00
DEA	Access Road Water Main Design	28,091.50
DEA	Water Tank/Lines Bid Set	10,655.00
DEA	Water Tank Siting Assistance	8,442.50
HDR	Water Tank Design	84,232.61
HDR	Water Line Design	13,846.26
HDR	Water Tank Sizing	12,655.81
HDR	Tank Construction Management	54,989.26
Parker Smith Feak	Tank Maint. Bond	6,238.00
Parker Smith Feak	Tank Access Rd. Maint. Bond	1,067.00
PenLight	Power Service to tank	3,919.90
Pyramid	Water Tank Permitting Coord.	4,110.00
Pyramid	Water Tank Power Coordination	5,190.00
Pyramid	Water Tank Easement Prep	1,740.00
Pyramid	Lafecomers Agreement Prep	510.00
Pyramid	Water Main As-built Preparation	1,050.00
T Bailey Inc.	Water Tank Construction	2,252,510.59
Tucci	Tank Access Road/Water Main Construction	508,209.55
Total		3,043,308.63

Notes:

1. Copies of actual invoices available upon request.



Peter D. Gonzales, P.E.
Pyramid Engineering, LLC

**EXHIBIT C
LEGAL DESCRIPTION OF ASSESSED PROPERTY**

No. 1 - Parcel No. 0122254090

Swede Hill LLC

That portion of the Southeast Quarter of Section 25, Township 22 North, Range 1 East of the W.M. described by the Record of Survey recorded under recording number 200507215004, Records of Pierce County, Washington.

No. 4 - Parcel No. 0222303002

United Western Development Inc. and Quadrant Corp.

The East half of Southeast Quarter of Southwest Quarter of Section 30, Township 22 North, Range 2 East of W.M., excluding Borgen Boulevard, in Pierce County, Washington

**Quadrant Corporation portion includes lots 32, 35, 37-38, 40-44, 67-70, 81, 89, 100, 105, 114-116, and 120 of the subsequently recorded plat of The Ridge at Gig Harbor.

No. 9 - Parcel No. 0122254073

Gig Harbor North Annex LLC

That portion of the following described property lying westerly of the westerly line of the Tacoma-Lake Cushman transmission line right of way:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 01° 48' 52" East 660 feet;

Thence North 88° 01' 08" West 533.63 feet;

Thence South 31° 29' West 34.46 feet;

Thence North 88° 01' 08" West 188.04 feet to east line of tract conveyed to A.T. Snow and Marguerite Snow by Warranty Deed dated November 23, 1960 under Recording Number 1907316;

Thence South along said east line to southeast corner thereof;

Thence North 88° 01' 08" West to Easterly line of widened State Highway No. 14;

Thence southeasterly along said easterly line to south line of Section;

Thence along said south line east to beginning;

Except 100 foot right of way as appropriated by the City of Tacoma in Pierce County Superior Court Cause Number 51234.

Except the following described property:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M.;

Thence North 87° 24' 49" West along the south line of said section 717.00 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on

Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road for relinquishment to Pierce County;

Thence North 40° 04' 24" West along said frontage road line 192.83 feet to the True Point of Beginning;

Thence North 50° 53' 03" East 194.52 feet;

Thence North 04° 57' 18" East 103.76 feet;

Thence North 84° 02' 16" West 143.68 feet;

Thence South 63° 35' 31" West 112.21 feet;

Thence South 88° 45' 55" West 72.32 feet to the northeasterly line of said frontage road being a curve having a radius of 340 feet with said radius bearing North 57° 16' 11" East;

Thence southeasterly along said curve 43.57 feet;

Thence South 40° 04' 24" East 201.90 feet to the True Point of Beginning.

Also except that portion deeded to the State of Washington.

Also except Canterwood Boulevard NW.

Also except the following described property:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 87° 24' 49" West along the south line of said section 534.06 feet to the True Point of Beginning;

Thence North 87° 24' 49" West 182.94 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road, for relinquishment to Pierce County;

Thence North 40° 04' 24" West along said frontage road line 192.83 feet;

Thence North 50° 53' 03" East 194.52 feet;

Thence South 29° 14' 49" East 319.23 feet to the True Point of Beginning.

Also except that portion deeded to the State of Washington.

Also except Canterwood Boulevard NW.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 10 - Parcel No. 0122254051

Gig Harbor North Annex LLC

Commencing at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 01° 48' 52" East 660 feet;

Thence North 88° 01' 08" West 533.63 feet;

Thence South 31° 29' West 34.46 feet;

Thence North 88° 01' 08" West 188.04 feet;

Thence North 01° 59' East for a distance of 30 feet, being the True Point of Beginning;

Thence North 88° 01' 08" West 576.80 feet;

Thence South 01° 48' 58" West 209 feet;

Thence South 88° 01' 08" East 576.80 feet;

Thence North to the True Point of Beginning.

Except that portion deeded to Buchanan Lumber Company for road under Recording Number 1923631.

Also except that portion deeded to the State of Washington.

No. 11 - Parcel No. 0122254072

Gig Harbor North Annex LLC

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 87° 24' 49" West along the south line of said section 717.00 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road, for relinquishment to Pierce County;

Thence North 40° 04' 24" West along said frontage road line 192.83 feet to the True Point of Beginning;

Thence North 50° 53' 03" East 194.52 feet;

Thence North 04° 57' 18" East 103.76 feet;

Thence North 84° 02' 16" West 143.68 feet;

Thence South 63° 35' 31" West 112.21 feet;

Thence South 88° 45' 55" West 72.32 feet to the northeasterly line of said frontage road being a curve having a radius of 340 feet with said radius bearing North 57° 16' 11" East;

Thence southeasterly along said curve 43.57 feet;

Thence South 40° 04' 24" East 201.90 feet to the True Point of Beginning.

Except that portion thereof deeded to the State of Washington.

Also except Canterwood Boulevard NW.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

Together with the following described parcel:

Beginning at the southeast corner of Section 25, Township 22 North, Range 1 East, W.M., in Pierce County, Washington;

Thence North 87° 24' 49" West along the south line of said section 534.06 feet to the True Point of Beginning;

Thence North 87° 24' 49" West 182.94 feet to the easterly line of State Road #16 as per map thereof, Narrows Bridge to Olympic Drive, on Sheet 14 of 52 as approved March 19, 1970, and being the northerly line of frontage road, for relinquishment to Pierce County;

Thence North 40° 04' 24" West along said frontage road line 192.83 feet;

Thence North 50° 53' 03" East 194.52 feet;

Thence South 29° 14' 49" East 319.23 feet to the True Point of Beginning.

Except that portion thereof deeded to the State of Washington.

Also except Canterwood Boulevard NW.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 36 - Parcel No. 0222312029

McCormick Creek LLC

The North 330 feet of the West half of the Southeast Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M., except the North 60 feet thereof.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 37 - Parcel No. 0222312027

McCormick Creek LLC

The North 80 feet of that portion of the North half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way. And The North 60 feet of the North 330 feet of the West half of the Southeast Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 38 - Parcel No. 0222312028

McCormick Creek LLC

That portion of the North half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way, except the North 80 feet thereof. Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 39 - Parcel No. 0222316001

Loretta Laramore

Lot 1 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 40 - Parcel No. 0222316002

Loretta Laramore

Lot 2 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 41 - Parcel No. 0222316003

Loretta Laramore

Lot 3 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 42 - Parcel No. 0222316004

Loretta Laramore

Lot 4 of Short Plat, as recorded under recording number 8510020266, Records of Pierce County, Washington.

No. 43 - Parcel No. 0222312023

McCormick Creek LLC

That portion of the South half of the Southwest Quarter of the Northwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M. lying Easterly of the City of Tacoma's Lake Cushman Electric Power Line Right of Way. And All that portion of Government Lot 3 of Section 31, Township 22 North, Range 2 East of the W.M., described as follows:

Commencing at the Northeast corner of said Government Lot 3 of Section 31, Township 22 North, Range 2 East of the W.M.; Thence South 01°10'40" West along the East line of Government Lot 3, 496.36 feet to a point 833.20 feet North of the Southeast corner of said Government Lot 3, thence North 88°20'24" West 378.94 feet to a point on the easterly Right of Way line of Tacoma-Lake Cushman Transmission Line; thence North 13°26'07" West along said Easterly Right of Way Line 514.56 feet to a point on the East-West Centerline of said Section 31, thence along said East-West Centerline South 88°17'17" East 508.77 feet to the point of beginning.

Situate in the City of Gig Harbor, County of Pierce, State of Washington.

No. 48 - Parcel No. 0222313023

McCormick Creek LLC

The North 300 feet of the South 900 feet of the West half of the Northeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the W.M., in Pierce County, Washington.

No. 49 - Parcel No. 0222313044

Gig Harbor Sportsman's Club

Parcel "A" The East half of the Northeast quarter of the Southwest Quarter in Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Except the North half of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section. Situate in the County of Pierce, State of Washington.

Parcel "B" That portion of the East half of the Southeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian, lying East of the Gig Harbor Longbranch Highway. Except the South 660 feet thereof. Situate in the County of Pierce, State of Washington.

Parcel "C" That portion of the West 50 feet of the North 330 feet of the South 660 feet of the East half of the Southeast Quarter of the Southwest Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian lying East of the Gig Harbor Longbranch Highway.

Situate in the County of Pierce, State of Washington.

Parcel "D" The Southwest Quarter of the Southeast Quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Except the South 550 feet thereof. Also except the East 990 feet thereof.

Situate in the County of Pierce, State of Washington.

No. 50 - Parcel No. 0222314016

Gig Harbor Sportsman's Club

The South half of the West half of the West half of the Northwest quarter of the Southeast quarter of Section 31, Township 22 North, Range 2 East of the Willamette Meridian. Subject to and together with easements, conditions and/or restrictions of record.

Situate in the County of Pierce, State of Washington.

No. 52 - Parcel No. 0222313008

McCormick Creek LLC

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWESTERLY QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING EASTERLY OF THE GIG HARBOR - LONGBRANCH HIGHWAY AND WESTERLY OF THE CITY OF TACOMA TRANSMISSION LINE RIGHT OF WAY.

No. 53 - Parcel No. 0222313069

Cobean-Burnham Drive LLC

PARCEL "A" OF BOUNDARY LINE ADJUSTMENT 2006-12-07-5006 DESCRIBED AS

FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF GOVERNMENT LOT 3 THENCE ALONG THE EAST LINE OF SAID LOT 833.20 FEET, THENCE N 88° 36' 08" W 371.29 FEET TO THE EASTERLY RIGHT OF WAY OF THE TACOMA CITY LIGHT TRANSMISSION LINE RIGHT OF WAY, THENCE S 13° 41' 08" E ALONG SAID RIGHT OF WAY LINE 789.90 FEET TO THE NORTHERLY LINE OF GIG HARBOR-LONGBRANCH HIGHWAY AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 686.20 FEET WHOSE RADIUS CENTER BEARS N 44° 11' 30" E, THENCE SOUTHEASTERLY ALONG THE SAID NORTHERLY LINE AND COUNTERCLOCKWISE ALONG SAID CURVE 113.92 FEET THROUGH A CENTRAL ANGLE OF 9° 29' 42" TO THE SOUTH LINE OF SAID GOVERNMENT LOT 3 THENCE EASTERLY ALONG SAID SOUTH LINE 83.30 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THAT PORTION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWESTERLY 1/4 AND EASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE SOUTHWEST CORNER OF SAID WEST 1/2 THENCE NORTH 63.70 FEET, THENCE EAST 84 FEET, THENCE NORTH 207.92 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 227 FEET, THENCE CLOCKWISE ALONG SAID CURVE 185.31 FEET THROUGH A CENTRAL ANGLE OF 46° 46' 25", THENCE NORTH 47° 41' 21" E 41.26 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 173 FEET THENCE COUNTERCLOCKWISE ALONG SAID CURVE 146.55 FEET THROUGH A CENTRAL ANGLE OF 48° 32' 04" TO THE NORTH LINE OF THE SOUTH 600 FEET OF SAID WEST 1/2 & THE TERMINUS OF THE LINE DESCRIBED IN THE EASEMENT OF RECORD OUT OF 3-035 & 3-059 SEG 2007-0584 JU 1/18/07JU.

No. 54 - Parcel No. 0222313070

Kotel Point LLC

PARCEL "B" OF BOUNDARY LINE ADJUSTMENT 2006-12-07-5006 FURTHER DESCRIBED AS THE SOUTH 600 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, EXCEPT THAT PORTION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT THE SOUTHWEST CORNER OF SAID WEST 1/2, THENCE N 63.70 FEET, THENCE E 84 FEET, THENCE N 207.92 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 227 FEET, THENCE CLOCKWISE ALONG SAID CURVE 185.31 FEET THROUGH A CENTRAL ANGLE OF 46° 46' 25" THENCE N47° 41' 21" E 41.26 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 173 FEET, THENCE COUNTERCLOCKWISE ALONG SAID CURVE 146.55 FEET THROUGH A CENTRAL ANGLE OF 48° 32' 04" TO THE NORTH LINE OF THE SOUTH 600 FEET OF SAID WEST 1/2 AND THE TERMINUS OF THE LINE.

No. 55 - Parcel No. 0222313024

Northwest Commons Group LLC

THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING NORTH OF THE STATE HIGHWAY.

No. 56 - Parcel No. 0222313012

Cobean-Burnham Drive LLC

A PORTION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST LYING EASTERLY OF OLD STATE HIGHWAY # 14.

No. 57 - Parcel No. 0222313020

Metzdorf Burnham LLC

THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31 TOWNSHIP 22 NORTH, RANGE 02 EAST LYING WESTERLY OF THE GIG HARBOR LONGBRANCH COUNTY ROAD AND EASTERLY OF THE RIGHT OF WAY OF THE TACOMA TRANSMISSION LINE EXCEPT THE SOUTH 508.55 FEET THEREOF ACCORDING TO EASEMENTS AND RESERVATIONS OF RECORD; ALSO THAT PORTION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 31 TOWNSHIP 22 NORTH, RANGE 02 EAST LYING BETWEEN THE WESTERLY LINE OF THE GIG HARBOR - LONGBRANCH COUNTY ROAD AND THE EASTERLY LINE OF THE RIGHT OF WAY OF THE TACOMA TRANSMISSION LINE.

No. 58 - Parcel No. 0222313027

Ashdan Blake Investments LLC

THE NORTHERLY 100 FEET OF THE FOLLOWING DESCRIBED AREA, COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST, THENCE WEST 956.97 FEET TO THE EASTERLY LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE ALONG SAID RIGHT OF WAY N 21° 42' W 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 89° 46' E 426.69 FEET TO THE WEST LINE OF GIG HARBOR - LONGBRANCH HIGHWAY, THENCE NORTHERLY ALONG SAID WEST LINE TO THE INTERSECTION OF A LINE PARALLEL WITH THE SOUTH LINE OF THE SECTION AND DRAWN THROUGH A POINT 200 FEET NORTH OF THE POINT OF BEGINNING AS MEASURED AT RIGHT ANGLE OF SECTION LINE, THENCE WEST ALONG SAID LINE TO THE EAST LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING.

No. 59 - Parcel No. 0222313018

Dumpman Construction Inc.

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION

31, TOWNSHIP 22 NORTH, RANGE 02 EAST, THENCE ALONG THE SECTION LINE N 89° 36' W 956.97 FEET TO THE EASTERLY LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY, THENCE ALONG SAID RIGHT OF WAY N 21° 42' W 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 89° 46' E 426.69 FEET TO THE WEST LINE OF GIG HARBOR – LONGBRANCH ROAD, THENCE NORTHERLY ALONG SAID WEST LINE TO AN INTERSECTION OF A LINE PARALLEL WITH THE SOUTH LINE OF THE SECTION AND DRAWN THROUGH A POINT 200 FEET NORTH AS MEASURED AT RIGHT ANGLES OF THE SECTION LINE OF THE POINT OF BEGINNING, THENCE WEST ALONG SAID LINE TO THE EAST LINE OF THE TACOMA CITY LIGHT POWER LINE RIGHT OF WAY THENCE SOUTHERLY ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING, EXCEPT THE NORTHERLY 100 FEET THEREOF.

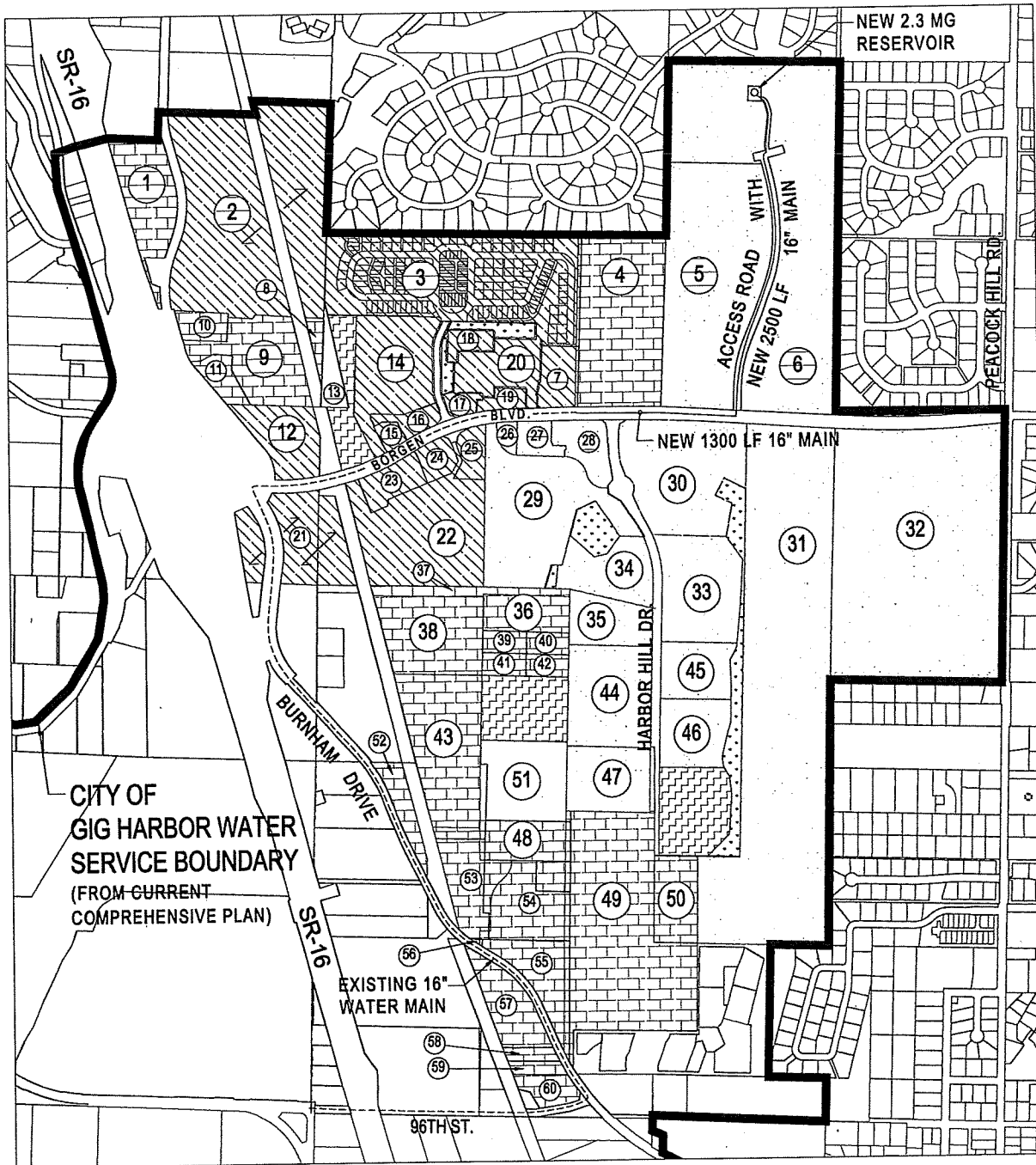
No. 60 - Parcel No. 0222313063

Richard Golden

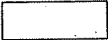
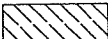
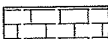
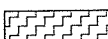
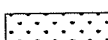
COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST SECTION OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 02 EAST; THENCE N 89° 46' W 964.54 FEET TO THE EASTERLY LINE OF THE TACOMA LAKE CUSHMAN TRANSMISSION LINE RIGHT OF WAY; THENCE N 21° 42' W ALONG SAID RIGHT OF WAY 332.63 FEET TO THE POINT OF BEGINNING; THENCE S 21° 42' E 118.34 FEET, THENCE S 81° 40' E 100 FEET, THENCE S 35° 32' 19" E 150 FEET TO THE NORTH LINE OF 96TH STREET NW, THENCE EASTERLY ALONG SAID NORTH LINE 268 FT, THENCE N 66° E 40 FEET ALONG SAID NORTH LINE, THENCE NORTH ALONG THE NORTH LINE OF 96TH STREET NW TO THE INTERSECTION WITH THE GIG HARBOR - LONGBRANCH COUNTY ROAD, THENCE NORTHWESTERLY ALONG SAID COUNTY ROAD TO THE INTERSECTION OF A LINE S 89° 46' E FROM THE POINT OF BEGINNING, THENCE N 89° 46' W 426.69 FEET TO THE POINT OF BEGINNING.

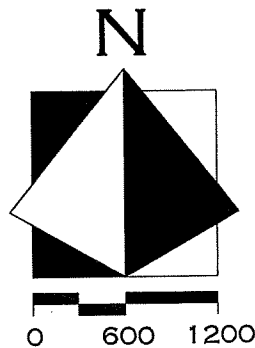
EACH PARCEL LEGALLY DESCRIBED ON EXHIBIT C IS GRAPHICALLY DEPICTED ON THE FOLLOWING DRAWING AND BEARS THE SAME NUMBER ON BOTH. FOR EXAMPLE, THE GRAPHICAL DEPICTION BELOW OF PARCEL "NO. 1" ON EXHIBIT C BEARS THE NUMBER "1" WITHIN A CIRCLE BELOW. NOTWITHSTANDING, NO WARRANTY IS MADE AS TO THE ACCURACY OF THIS DRAWING AND IT SHALL NOT ALTER OR MODIFY THE OTHER TERMS OF THE AGREEMENT.

[See attached page.]



LEGEND

-  OWNED BY HARBOR HILL
-  ASSESSMENT PAID BY HARBOR HILL UNDER PRIOR AGREEMENT
-  PARCELS
-  REGIONAL DRAINAGE CONTROL FACILITIES
-  WETLAND/OPEN SPACE TRACTS



**LATECOMERS
COVERAGE AREA**

03/11/09

**EXHIBIT D
FAIR PRO RATA SHARES**

[See attached page.]

EXHIBIT D
GIG HARBOR NORTH WATER RESERVOIR
LATECOMER AGREEMENT ASSESSMENT COMPUTATION

PARCEL	TAX PARCEL NUMBER	OWNER	ZONE	GROSS AREA (Acres)	NET USABLE AREA (Ac.)	DWELLING UNITS PER ACRE OR TOTAL BEDS	PERSONS PER UNIT OR Acre	WATER USE RATE (GPCD)	GALLONS USED PER DAY	FAIR SHARE CALCULATION	OPG Allocation	Assessed Property Allocation
1	0122254090	Swede Hill LLC	B-2	7.60	3.60	N/A	30.00	25.00	2,700	\$ 21,010.62	N/A	\$ 21,010.62
2	0122254083	Franciscan Health System West	Hospital	37.73	N/A	80.00	N/A	400.00	32,000	\$ 249,014.76	\$ 249,014.76	N/A
3	0222303010	Little Boat North Inc. (subdivided)	RMD	29.28	23.00	8.00	1.94	70.00	24,987	\$ 194,443.17	\$ 194,443.17	N/A
4	0222303002 (p/n)	United Western Development Inc	RMD	15.58	12.38	8.00	1.94	70.00	13,444	\$ 104,618.88	N/A	\$ 104,618.88
4	0222303002 (p/n)	Quadrant Corp.	RMD	3.3	2.63	8.00	1.94	70.00	2,852	\$ 22,191.88	N/A	\$ 22,191.88
5	0222304000	OPG Properties LLC (North RMD)	RMD	29.42	29.42	8.00	1.94	70.00	31,962	\$ 248,718.18	\$ 248,718.18	N/A
6	0222304000	OPG Properties LLC (North RLD)	RLD	49.04	49.04	4.00	2.40	70.00	32,955	\$ 256,445.36	\$ 256,445.36	N/A
7	0222303011	SHDP Assoc LLC & Capital Management Group Inc.	BP	2.84	2.04	N/A	30.00	25.00	1,526	\$ 11,878.47	\$ 11,878.47	N/A
8	0122254074	Gig Harbor North Annex LLC	RB-2	0.74	0.00	N/A	30.00	25.00	0	\$ -	N/A	\$ -
9	0122254073	Gig Harbor North Annex LLC	RB-2	9.02	0.47	N/A	30.00	25.00	353	\$ 2,743.05	N/A	\$ 2,743.05
10	0122254051	Gig Harbor North Annex LLC	RB-2	1.68	0.65	N/A	30.00	25.00	488	\$ 3,793.58	N/A	\$ 3,793.58
11	0122254072	Gig Harbor North Annex LLC	RB-2	2.00	0.15	N/A	30.00	25.00	113	\$ 875.44	N/A	\$ 875.44
12	0122361075	SHDP Assoc LLC & Capital Management Group Inc.	BP	5.95	2.98	N/A	30.00	25.00	2,231	\$ 17,362.94	\$ 17,362.94	N/A
13	0222303003	Tacoma City Light	RB-2	1.09	0.00	N/A	0.00	0.00	0	\$ -	\$ -	N/A
14	4002060011	Target Corporation	C	10.76			Avg Daily Use over peak 2 month period		2,926	\$ 22,769.29	\$ 22,769.29	N/A
15	4002060080	Gig Harbor North LLC (Washington Mutual)	C	0.80			Avg Daily Use over peak 2 month period		772	\$ 6,007.48	\$ 6,007.48	N/A
16	4002060050	Gig Harbor North LLC (Retail Bldg "C")	C	1.51			Avg Daily Use over peak 2 month period		2,281	\$ 17,750.08	\$ 17,750.08	N/A
17	4002060070	Gig Harbor North LLC (Key Bank)	C	0.91			Avg Daily Use over peak 2 month period		49	\$ 381.30	\$ 381.30	N/A
18	4002060030	Gig Harbor North LLC (Retail Bldg "A")	C	1.42			Avg Daily Use over peak 2 month period		6,082	\$ 47,328.37	\$ 47,328.37	N/A
19	4002060040	Gig Harbor North LLC (Retail Bldg "B")	C	1.11			Avg Daily Use over peak 2 month period		1,937	\$ 15,073.17	\$ 15,073.17	N/A
20	4002060020	New Albertsons, Inc	C	5.43			Avg Daily Use over peak 2 month period		5,735	\$ 44,628.11	\$ 44,628.11	N/A
21	0122361073	City of Gig Harbor	BP	10.49	0.00	N/A	N/A		0	\$ -	\$ -	N/A
22	4002070041	HD Development of Maryland, Inc. (Home Depot)	C	16.00			Avg Daily Use over peak 2 month period		5,107	\$ 39,741.20	\$ 39,741.20	N/A
23	4002070010	Gig Harbor South LLC (Office Depot & Petco)	C	2.70			Avg Daily Use over peak 2 month period		1,312	\$ 10,209.61	\$ 10,209.61	N/A
24	4002070020	Gig Harbor South LLC (Pier 1 Imports)	C	1.66			Avg Daily Use over peak 2 month period		197	\$ 1,533.00	\$ 1,533.00	N/A
25	4002070030	Gig Harbor South LLC (McDonald Corporation)	C	1.81			Avg Daily Use over peak 2 month period		2,934	\$ 22,891.54	\$ 22,891.54	N/A
26	4002520010	Northwest Capital Investors LLC	C	0.72	0.68	N/A	30.00	25.00	432	\$ 3,361.70	\$ 3,361.70	N/A
27	4002520020	Northwest Capital Investors LLC	C	1.77	1.42	N/A	30.00	25.00	1,062	\$ 8,264.18	\$ 8,264.18	N/A
28	4002520030	Northwest Capital Investors LLC	C	3.46	2.77	N/A	30.00	25.00	2,076	\$ 16,154.83	\$ 16,154.83	N/A
29	4002520040	Costco Wholesale Corporation	C	17.49	13.99	N/A	30.00	25.00	10,494	\$ 81,661.28	\$ 81,661.28	N/A
30	4002470060	Harbor Hill LLC - Lot 6	BP	16.06	12.85	N/A	30.00	25.00	9,636	\$ 74,984.57	\$ 74,984.57	N/A
31	0222311009	OPG Properties	RLD	65.67	65.67	4.00	2.40	70.00	44,130	\$ 343,408.76	\$ 343,408.76	N/A
32	0222311009	OPG Properties	RLD	55.88	55.88	4.00	2.40	70.00	37,551	\$ 292,213.84	\$ 292,213.84	N/A
33	4002470051	Harbor Hill LLC - Lot 5	BP	11.30	9.04	N/A	30.00	25.00	6,780	\$ 52,760.00	\$ 52,760.00	N/A
34	4002470011	Harbor Hill LLC - Lot 1A	BP	6.41	5.13	N/A	30.00	25.00	3,846	\$ 29,928.46	\$ 29,928.46	N/A
35	4002470012	Harbor Hill LLC - Lot 1B	BP	5.07	4.06	N/A	30.00	25.00	3,042	\$ 23,671.97	\$ 23,671.97	N/A
36	0222312029	McCommick Creek LLC	R-1/MUD	4.00	3.73	4.00	2.40	70.00	2,507	\$ 19,505.33	N/A	\$ 19,505.33
37	0222312027	McCommick Creek LLC	R-1/MUD	2.48	2.31	4.00	2.40	70.00	1,552	\$ 12,079.71	N/A	\$ 12,079.71
38	0222312028	McCommick Creek LLC	R-1/MUD	10.45	9.73	4.00	2.40	70.00	6,539	\$ 50,881.19	N/A	\$ 50,881.19

**EXHIBIT D
GIG HARBOR NORTH WATER RESERVOIR
LATECOMER AGREEMENT ASSESSMENT COMPUTATION**

PARCEL	TAX PARCEL NUMBER	OWNER	ZONE or Use	GROSS AREA (Acres)	NET USABLE AREA (Ac.)	DWELLING UNITS PER ACRE OR TOTAL BEDS	PERSONS PER UNIT or Acre	WATER USE RATE (GPCD)	GALLONS USED PER DAY	FAIR SHARE CALCULATION	OPG Allocation	Assessed Property Allocation
39	0222316001	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
40	0222316002	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
41	0222316003	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
42	0222316004	Loretta Laramore	R-1/MUD	1.25	1.13	4.00	2.40	70.00	756	\$ 5,882.97	N/A	\$ 5,882.97
43	0222312023	McCormick Creek LLC	R-1/MUD	15.30	14.25	4.00	2.40	70.00	9,576	\$ 74,517.67	N/A	\$ 74,517.67
44	4002470020	YMCA of Tacoma-Pierce County	BP	11.00	Avg Daily Use over peak 2 month period				22,353	\$ 173,944.59	\$ 173,944.59	N/A
45	4002470041	Harbor Hill LLC - Lot 4B	BP	5.34	4.27	N/A	30.00	25.00	3,204	\$ 24,932.60	\$ 24,932.60	N/A
46	4002470042	Intl. Church Foursquare Gospel	BP	6.18	4.94	N/A	30.00	25.00	3,708	\$ 28,854.58	\$ 28,854.58	N/A
47	4002470030	Harbor Hill LLC - Lot 3	BP	7.07	5.66	N/A	30.00	25.00	4,242	\$ 33,010.02	\$ 33,010.02	N/A
48	0222313023	McCormick Creek LLC	R-1/MUD	4.55	4.24	4.00	2.40	70.00	2,849	\$ 22,172.27	N/A	\$ 22,172.27
49	0222313044	Gig Harbor Sportsman's Club	R-1/MUD	30.36	27.32	4.00	2.40	70.00	18,362	\$ 142,885.66	N/A	\$ 142,885.66
50	0222314016	Gig Harbor Sportsman's Club	R-1/MUD	5.00	4.50	4.00	2.40	70.00	3,024	\$ 23,531.89	N/A	\$ 23,531.89
51	0222312013	Gig Harbor Little League Assoc.	PI	9.11	0.00	N/A	N/A	N/A	N/A	\$ -	N/A	N/A
52	0222313008	McCormick Creek LLC	R-1/MUD	2.40	0.00	4.00	2.40	70.00	0	\$ -	N/A	\$ -
53	0222313069	Cobean-Burnham Drive LLC	R-1/MUD	6.57	4.95	4.00	2.40	70.00	3,326	\$ 25,885.08	N/A	\$ 25,885.08
54	0222313070	Kotel Point LLC	R-1/MUD	7.56	7.04	4.00	2.40	70.00	4,731	\$ 36,814.34	N/A	\$ 36,814.34
55	0222313024	Northwest Commons Group LLC	R-1/MUD	5.17	4.65	4.00	2.40	70.00	3,127	\$ 24,331.98	N/A	\$ 24,331.98
56	0222313012	Cobean-Burnham Drive LLC	R-1/MUD	0.02	0.00	4.00	2.40	70.00	0	\$ -	N/A	\$ -
57	0222313020	Mezdorf Burnham LLC	R-2/MUD	5.44	2.85	6.00	2.40	70.00	2,873	\$ 22,355.30	N/A	\$ 22,355.30
58	0222313027	Ashdan Blake Investments LLC	R-2/MUD	0.92	0.43	6.00	2.40	70.00	433	\$ 3,372.90	N/A	\$ 3,372.90
59	0222313018	Dumpman Construction Inc.	R-2/MUD	0.92	0.30	6.00	2.40	70.00	302	\$ 2,353.19	N/A	\$ 2,353.19
60	0222313063	Golden, Richard	R-2/MUD	2.14	1.35	6.00	2.40	70.00	1,361	\$ 10,589.35	N/A	\$ 10,589.35
	TOTAL	Based on updated information		580.38					391,085	\$ 3,043,308.63	2,393,267.40	650,041.23

Notes

- Gross Areas from Assessor-Treasurer information unless otherwise provided.
- Net areas are Gross Area minus areas prohibited from development.
- Units, People per Acre, and gpcd are from Tank Sizing Calculations by HDR, and based on DOH Guidelines
- The Fair Share Factor is the Project Cost (\$3,043,308.63) divided by the estimated total Gallons Per Day (391,085) used by all of the Assessed Property upon completion of development.
- OPG Properties LLC and Harbor Hill LLC are affiliated companies. OPG is the "Owner" under the Latecomer Agreement.
- Assumes connection of all affected parcels.
- GPCD = Gallons Per Capita Per Day
- As to Parcel 4, the Quadrant Corporation portion (as subsequently created) are lots 32, 35, 37-38, 40-44, 67-70, 81, 89, 100, 105, 114-116, 120.

F A X

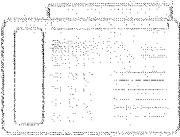
Thomas R. Sturgeon

PO Box 1800

Orting, WA 98360

253-381-0101

Sturgeon.t@comcast.net



To: Mr. Hendrickson

Fax number: 253 853-7597

From: Thomas R. Sturgeon

Fax number: 360-893-0987

Date: **March 23, 2009**

Regarding: McCormick Creek, LLC

Phone number for follow-up:

253-381-0101

Comments:

Latecomers Letter

McCormick Creek, LLC
PO Box 1800
Orting, Washington 98360
253 381-0101
sturgeon.f@comcast.net

March 23, 2009

Mr. Hendrickson
Engineering Technician
Community Development Department
City of Gig Harbor

Re: Latecomers Agreement

Dear Mr. Hendrickson,

I am in receipt of the updated Gig Harbor North Water Reservoir and Transmission Main Latecomers Agreement.

I can not attend to provide testimony on that date but would like to submit this letter on my behalf to the Council for their consideration.

Since my last briefing with Mr. David Stubchaer, Public Works Director I am a little confused.

Mr. Stubchaer indicated that the project referred to as North Creek would be exempt from the latecomers because it was residential, thus not requiring any fire flow for commercial use. This would allow them not to be part of any latecomers. Mr. Stubchaer went on to say that my project McCormick Creek has an underlying zoning of MUD which triggers commercial fire flow requirements and this would make my property be required to pay the pro-rated share per the charts in Exhibit "D".

The chart has all my properties showing the wrong net usable acreage. The wrong fair share calculations. McCormick Creek has several parcels and also several Limited Liability Companies who hold ownership of adjoining properties. They are Cobean-Burnham Drive, LLC, Kotel-Point, LLC and McCormick Creek, LLC. All of the listed companies represent McCormick Creek Residential Preliminary Plat which was approved last December 2008 except for the Church which will not be part of my ownership when the plat is final. These figures are all incorrect. Furthermore, I believe OPG used county records and maps to establish the acreage.

Page 2

McCormick Creek, LLC

Re: Latecomers Agreement

These maps are incorrect and I have new surveys showing all net useable acreage, wetlands and easements the City Public Works Department has them.

Secondly, my properties were approved as an R-1 Zoning and I was not allowed the MUD zoning benefits when I made application. So I get a little confused when now I am being classified as Commercial Zoning.

Please consider these comments and have the record corrected using correct calculations.

Furthermore, these costs are outrageous. I would like to know if the developer followed all the RCW's to be allowed the Latecomers. Construction Bids, etc. For the request submitted I could erect a water tower storage on my property to get fire flow as needed and at a much lower cost.

I would request the City retract my letter dated January 8, 2009 and I would like to be on record that all my properties in this Latecomers application be denied as submitted.

Thank you for this opportunity and if you have any questions you can contact me at 253 381-0101

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Sturgeon', with a long horizontal flourish extending to the right.

Thomas R. Sturgeon
McCormick Creek, LLC
Cobean-Burnham Drive, LLC
Kotel Point, LLC

Cc William Lynn, Attorney at Law



Subject: "Burnham/Sehmel Annexation"
(ANX 05-1151)

Proposed Council Action:

Second and final reading of an ordinance
approving the Burnham/Sehmel Annexation.

Dept. Origin: Planning Department

Prepared by: Tom Dolan
Planning Director

For Agenda of: March 23, 2009

Exhibits: Draft Ordinance

Initial & Date

Concurred by Mayor: [Signature] 3/19/09
Approved by City Administrator: [Signature]
Approved as to form by City Atty: [Signature] 3/19/09
Approved by Finance Director: [Signature] 3/19/09
Approved by Department Head: [Signature] 3/19/09

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

INFORMATION / BACKGROUND

On August 11, 2008 the City Council approved a resolution declaring its intent to approve the Burnham/Sehmel Annexation. Subsequent to the Council's action, Staff prepared a Notice of Intention which was transmitted to the Pierce County Boundary Review Board. The Chief Clerk of the Boundary Review Board determined that the Notice of Intention was complete on January 12, 2009. The 45 day appeal period for the Notice of Intention expired on February 26, 2009 and the Boundary Review Board issued a decision approving the annexation. State law provides that after the Boundary Review Board approves an annexation, the City must finalize the annexation by adopting an ordinance that formally accepts the annexed area into the City. This ordinance was considered at the March 9, 2009 Council meeting. At that time 3 citizens identified that the proposed zoning of their property after the annexation would be inconsistent with the map element of the Comprehensive Plan. The Council asked the staff to review the matter and report back with possible solutions. After consultations with the City Attorney, it appears that the pre-annexation zoning that was established in 2007 cannot be changed without starting the annexation process over again. The most viable solution appears to be to process an area wide zoning reclassification for the properties involved using an expedited schedule.

STAFF ANALYSIS

Staff recommends adoption of the ordinance.

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Adopt Ordinance _____ formally approving the Burnham/Sehmel Annexation.

EXHIBITS – Draft Ordinance

CITY OF GIG HARBOR
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, ANNEXING APPROXIMATELY 377 ACRES OF PROPERTY LOCATED TO THE WEST OF THE BURNHAM/BORGEN STATE ROUTE 16 INTERSECTION, BOUNDED BY SEHMEL DRIVE ON THE SOUTH AND THE PURDY DRIVE ONRAMP TO HIGHWAY 16 ON THE NORTH, (ANX 05-1151), ADOPTING SINGLE-FAMILY RESIDENTIAL (R-1) ZONING, (ED) EMPLOYMENT DISTRICT ZONING, (RB-1) RESIDENTIAL AND BUSINESS DISTRICT ZONING, (RB-2) RESIDENTIAL AND BUSINESS DISTRICT ZONING (B-2) GENERAL BUSINESS ZONING DISTRICT, (P-I) PUBLIC INSTITUTION DISTRICT, AND REQUIRING THE PROPERTY OWNERS TO ASSUME THEIR PROPORTIONATE SHARE OF INDEBTEDNESS.

WHEREAS, the City of Gig Harbor received a Notice of Intent to Annex approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits, within the City's Urban Growth Area (UGA), located in Pierce County; and

WHEREAS, the Notice of Intent was signed by the owners of not less than ten percent (10%) of the acreage of the property; and

WHEREAS, on May 14, 2007, the City Council met with the initiators of the petition and voted (Young/Ekberg, 7-0-0) to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation zoning (R-1, ED, RB-1, RB-2, P-I and B-2) as depicted on the Official Zoning Map of the City and requiring that the property owners assume all of the existing indebtedness of the area being annexed; and

WHEREAS, on June 10, 2008, the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B was received by the City; and

WHEREAS, on June 11, 2008, the Pierce County office of the Assessor-Treasurer certified the signatures on the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B; and

WHEREAS, the property described in Exhibit A and graphically depicted on Exhibit B proposed to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in December, 2004, established the land use map designation for this area as Residential Low, Residential Medium, Employment Center and Commercial Business along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed pre-annexation zoning (R-1, ED, RB-1, RB-2, P-1 and B-2) being applied to the property described in Exhibit A and graphically depicted on Exhibit B is consistent with the City of Gig Harbor Comprehensive Land Use Plan designations; and

WHEREAS, on August 11, 2008, the City Council, following a public hearing on the annexation petition, voted (Young/Conan, 6-0-0) to declare its intent to authorize and approve the annexation for the area described in

Exhibit A and graphically depicted on Exhibit B, subject to Boundary Review Board approval (Resolution No. 766); and

WHEREAS, on December 29, 2008, the Notice of Intention, together with supporting documentation, was submitted to the Chief Clerk of the Pierce County Boundary Review Board; and

WHEREAS, on February 2, 2009, the Chief Clerk of the Pierce County Boundary Review Board deemed the annexation proposal as complete, set the official filing date as January 12, 2009, initiated the forty-five (45) day review period, and noted that the period during which jurisdiction could be invoked would expire on February 26, 2009; and

WHEREAS, on February 27, 2009, the Pierce County Boundary Review Board issued a written decision approving the annexation of the property as described in Exhibit A and graphically depicted in Exhibit B; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings of March 9, 2009 and March 23, 2009; Now, Therefore,

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

Section 1. The Gig Harbor City Council hereby approves the annexation of approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits, located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation;
- B. All property within the area described in Exhibit A and graphically depicted on Exhibit B shall be zoned R-1, ED, RB-1, RB-2, P-I and B-2 as depicted on the Official Zoning Map of the City in accordance with the Gig Harbor Municipal Code, Title 17; and

Section 2. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established in Section 1.

Section 3. The Gig Harbor City Clerk hereby declares the property described in Exhibit A and graphically depicted in Exhibit B to be contiguous with the boundaries of the City of Gig Harbor.

Section 4. The City Clerk is hereby directed to record a certified copy of this ordinance with the Office of the Pierce County Auditor.

Section 5. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 23rd day of March, 2009.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
ANGELA BELBECK

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

Exhibit A
BURNHAM/SEHMEL ANNEXATION (ANX 05-1151)
LEGAL DESCRIPTION

PIERCE COUNTY BOUNDARY REVIEW BOARD PAGE 15 NOTICE OF
 INTENTION EXHIBIT

I.4

LEGAL DESCRIPTION OF PERIMETER BOUNDARIES

Those portions of Sections 25 and 36, Township 22 North, Range 1 East of the Willamette Meridian, in Pierce County, Washington, described as follows:
 Beginning at the Southeast Corner of the Northeast Quarter of Section 36, Township 22 North, Range 1 East of the Willamette Meridian, in Pierce County, Washington; thence North along the East Line of said Northeast Quarter to the Southwesterly Margin of Burnham Drive NW; thence Northwesterly along said southwesterly margin to the Easterly Margin of State Highway 16; thence Northwesterly along said easterly margin to the easterly prolongation of the southerly margin of Goodnough Drive NW in the Northwest Quarter of the Northeast Quarter of Section 25, Township 22 North, Range 1 East; thence West along said southerly margin to the easterly margin of State Route 302 (Purdy Drive NW); thence Southwesterly to the southeast corner of Lot 2, Pierce County Short Plat No. 8103020195; thence West along the south line of said Lot 2 to the shoreline; thence Southwesterly along the shoreline to McCormick Creek; thence Southeasterly along McCormick Creek to the south line of Lot 2, Pierce County Short Plat No. 8501250117; thence S 89°37'18" W along said south line, 94.32 feet; thence S 21°31'44" E, 134.41 feet to the south line of Lot 3 of said short plat; thence S 87°54'57" E along said south line to McCormick Creek; thence southeasterly along McCormick Creek to the north line of Lot 2, Pierce County Short Plat No. 77-696; thence N 87°54'58" W along said north line, 328 feet, more or less, to the northeast corner of Lot 4 of said short plat; thence S 2°05'02" W along the east line of said Lot 4 to the north line of the south half of Lot 2 of said short plat; thence S 87°53'45" E along said north line, 26.20 feet; thence S 5°06'14" W to the north line of Lot 4, Pierce County Short Plat No. 8902060256; thence N 87°54'58" W along said north line to the northwest corner of said Lot 4; thence S 8°51'58" E along the west line of said lot, 518.19 feet to the south line of the Northwest Quarter of said Section 25; thence East along said south line to the northwest corner of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section 25; thence South along the West Line of said Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section 25 to the South Margin of Wood Hill Drive NW; thence West along said south margin to the West Line of the Northeast Quarter of the Southwest Quarter of said Section 25; thence South along said west line to the South Line of said Section 25; thence East along said south line to the South Quarter-corner of said Section 25; thence South along the East Line of the Northeast Quarter of the Northwest Quarter of said Section 36 to the Southeast Corner of said northeast quarter; thence West along the South Line of said northeast quarter to the West Line of the East 440 feet of the Southeast Quarter of the Northwest Quarter of said Section 36; thence South along said west line to the Southerly Margin of Sehmel Drive NW; thence Easterly along said southerly margin to the Westerly Margin of Bujacich Road NW; thence Southerly along said westerly margin to the South Line of said northwest quarter; thence East along said south line and the South Line of the Northeast Quarter of said Section 36 to the Point of Beginning.



Subject: First reading of an Ordinance adding a new Chapter 3.31 to the Gig Harbor Municipal Code creating a Federal Drug Investigation Fund.

Proposed Council Action: Adopt the Ordinance at second reading

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *(Signature)*

For Agenda of: March 23, 2009

Exhibits:

Initial & Date

Concurred by Mayor: *CLH 3/11/09*
Approved by City Administrator: *P&K 3/11/09*
Approved as to form by City Atty: *via email*
Approved by Finance Director: *DF 3/11/09*
Approved by Department Head: *(Signature) 3/11/09*

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	0
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INFORMATION/BACKGROUND

Currently our Federal and State drug seizure monies are co-mingled in a fund called the Drug Investigation Fund. According to the Federal Asset Forfeiture Office in Washington DC, we need to separate these two funds and not co-mingle the money. Expenditures and interest earned on these two separate sources of revenue are required to be reported to different governmental agencies. We currently have \$60,740.22 that was seized through Federal statutes.

In our budget, we have two revenue line items called State Seizures and Federal seizures. It appears this money is then deposited into one fund called the Drug Investigation Fund. This arrangement does not allow us to track interest and expenditures associated with these two different sources of revenue separately.

This ordinance will create a second fund called the Federal Drug Investigation Fund.

FISCAL IMPACTS

There are no costs associated with this proposed ordinance

RECOMMENDATION

Move to adopt the Ordinance creating a fund called Federal Drug Investigation Fund.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON; RELATING TO DRUG ENFORCEMENT PROCEEDS; ADDING A NEW CHAPTER 3.31 TO THE GIG HARBOR MUNICIPAL CODE IN ORDER TO CREATE A SEPARATE DRUG ENFORCEMENT FUND FOR THE PROCEEDS OF FEDERALLY FORFEITED PROPERTY; AMENDING SECTION 3.30.010 OF THE GIG HARBOR MUNICIPAL CODE.; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, 21 U.S.C. § 881(e)(3) authorizes the United States Attorney General to share the proceeds of federally forfeited property with participating state and local law enforcement agencies; and

WHEREAS, state and local law enforcement agencies may equitably share in the proceeds of federally forfeited property when participating and cooperating in federal investigations to enforce federal criminal laws or when requesting a federal agency to adopt seized property and proceed with a federal forfeiture; and

WHEREAS, participating state and local law enforcement agencies must implement standard accounting procedures and internal controls to track equitably shared moneys and tangible property according to Appendix C of the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* published by the United States Department of Justice (the "Guide");

WHEREAS, Appendix C of the Guide requires the establishment of a separate revenue account for the proceeds of federally forfeited property, which must receive any interest income generated by the fund; Now, therefore,

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

Section 1. A new chapter 3.31 is hereby added to of the Gig Harbor Municipal Code to read as follows:

3.31.010 Fund Created.

There is created and established a special fund to be known as the "federal drug investigation fund" into which all moneys and proceeds from the sale of federally forfeited property seized during joint investigations with federal agencies or from federal forfeiture proceedings shall be deposited.

3.31.020 Purposes - Expenditures.

This fund has been established for the purpose of separately accounting for proceeds from federally forfeited property in accordance with the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, published by the United States Department of Justice. Moneys in this fund shall be expended only for permissible purposes identified in said Guide, as now existing or as later may be amended.

3.31.030 Unexpended funds.

Any unexpended funds remaining in the federal drug investigation fund at the end of any budget year shall not be transferred to the general fund or otherwise lapse. Such unexpended funds shall be carried forward from year to year until expended for the purposes set forth in GHMC 3.31.020.

Section 2. Section 3.30.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

3.30.010 Fund Created.

There is created and established a special fund to be known as the "drug enforcement fund" into which all moneys and proceeds from the sale of property seized during drug investigations and forfeited pursuant to RCW 69.50.505 and all other applicable state ~~and federal~~ laws shall be deposited after amounts are dedicated in accordance with state ~~and federal~~ laws.

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

Section 4. Effective Date. This Ordinance 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 _____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Angela S. Belbeck

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