

Gig Harbor City Council

**July 23, 2012
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, July 23, 2012 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Jul 9, 2012.
2. Receive and File: a) Parks Commission Minutes Jun 6, 2012;
3. Liquor License Action: a) Renewals: JW Restaurant, Mizu Japanese Restaurant, Bartell Drug Co, Galaxy Uptown, and Safeway Store; b) Application: Bluesteele Coffee & Wine;
4. KGHP Radio Station Support Agreement with Peninsula School District.
5. Utility Billing Agreement.
6. Rainier/Cascade Water Main Project – Materials Testing Contract.
7. Crescent Creek Park Tennis Court Resurfacing – Contract Authorization.
8. Resolution No. 906 - Sole Source Equipment Pump Station 3A.
9. Resolution No. 907 – Indigent Defense Standards.
10. Sehmel Right Turn Lane Addition Project – Public Works Contract Award and Materials Testing Contract Authorization.
11. Donkey Creek Project Utility Relocations Survey Services – Consultant Services Contract.
12. Approval of Payment of Bills Jul 23, 2012: Checks #70132 through #70259 in the amount of \$628,830.16.

PRESENTATIONS:

1. 2011 Wastewater Treatment Plant Outstanding Performance Award.
2. Recognition of Public Service - Kae Paterson.

OLD BUSINESS:

1. Second Reading of Ordinance – 2012 Housekeeping Code Amendments.

NEW BUSINESS:

1. SEPA Exemption Levels.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Donkey Creek Project: Open House / Harbor History Museum, Wed. Jul 25th 5:00 - 7:00 p.m.
2. Downtown Planning / Visioning Committee: Wed. July 25th at 4:00 p.m.
3. Special City Council Meeting: Mon. Aug 6th at 5:30 p.m. in Community Rooms A&B.
4. Planning / Building Committee: Mon. Aug 6th at 5:45 p.m. (*following Special City Council Meeting*)
5. No City Council Meetings on August 13th or 27th.
6. Operations Committee: Thu. Aug 16th at 3:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing potential litigation per RCW 42.30.110(1)(i) and property acquisition per RCW 42.30.110(1)(b).

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – July 09, 2012

PRESENT: Councilmembers Perrow, Malich, Payne, Kadzik and Mayor Hunter. Councilmember Young came at the end of the meeting. Councilmembers Ekberg and Guernsey were absent.

CALL TO ORDER: 5:34 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes June 25, 2012.
2. Liquor License Action: Assumption – The Wine Studio.
3. Re-appointment / Appointment to Design Review Board.
4. Salary Commission Report and Recommendation.
5. Second Reading of Ordinance No. 1242 – Amendment to 2012 Personnel Salary Schedule.
6. Second Reading of Ordinance No. 1243 – Allowing Schools in the PCD-BP Zoning District.
7. Rainier/Cascade Water Main Replacement – Public Works Contract.
8. City Facilities/Roof Maintenance – Contract Authorization.
9. Approval of Payment of Bills Jul 9, 2012: Checks #70016 through #70131 in the amount of \$368,831.45.
10. Approval of Payroll for June: Checks #6506 through #6533 and direct deposit transactions in the total amount of \$517,742.07.

MOTION: Move to adopt the Consent Agenda as presented.
Payne / Malich – unanimously approved.

PRESENTATIONS:

Recognition of Judy Oke for donation of Photo of Narrows Bridge. Mayor Hunter presented Mrs. Judy Oke with a certificate of appreciation and city pin for the donation of the photo.

Judy Oke described the devotion to the safety of the citizens shown by her husband, the late Senator Bob Oke, during his quest to implement the second Narrows Bridge. She said that sadly, Senator Oke passed away two months before the bridge was opened.

OLD BUSINESS:

1. Settlement Agreement – Gig Harbor Marina lawsuit (Pierce County Superior Cause No. 09-2-15098-8). City Attorney Angela Belbeck presented the background information on the proposed settlement agreement, explaining that if approved, she can move forward with getting the lawsuit dismissed.

Councilmember Malich voiced his opposition against settling, but said he understands that it's the most practical solution.

MOTION: Move to approve and authorized the Mayor to execute the Settlement Agreement in connection with Gig Harbor Marina and Stanley and Judith Stearns v. City of Gig Harbor.
Kadzik / Payne – unanimously approved.

NEW BUSINESS: None Scheduled.

STAFF REPORT: None.

PUBLIC COMMENT:

Charlee Glock-Jackson – 8450 SE Willock Road, Olalla. Ms. Glock-Jackson said that the 28th Annual Gig Harbor Summer Arts Festival is coming up on July 21st and 22nd. She passed out invitations to the Opening Reception of the PAL Summer Art Show on Saturday the 21st from 6-8 pm at KeyBank and encouraged the Mayor and Council to attend.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Young joined the meeting at 5:48 p.m.

Councilmember Perrow said that it was good news to hear that the city was working with the Orthopedic Guild through the challenges of rebuilding the Thrift Store.

Councilmember Payne encouraged the Mayor and Council to attend the upcoming Gig Harbor Maritime Playzone Salon, non-solicitation event at John and Carole Holmaas on Thursday for the unveiling of the final design of the playzone at City Park. He then reported that there will be money coming from the Transportation Reauthorization to both the State DOT as well as PSRC.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Operations Committee: Thu. Jul 19th at 3:00 p.m.
2. Boards and Candidate Review Committee: Mon. Jul. 23rd at 4:30 p.m.
3. Downtown Planning/Visioning Committee: Wed. Jul 26th at 4:00 p.m.

ADJOURN:

MOTION: Move to adjourn at 5:52 p.m.
Kadzik / Malich – unanimously approved.

CD recorder utilized: Tracks 1002 – 1020

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

**CITY OF GIG HARBOR
COMMITTEE OUTLINE MINUTES**

Parks Commission

Date: June 6, 2012 Time: 5:30 p.m. Location: Community Rooms A&B Scribe: Terri Reed

Commission Members and Staff Present: Commissioners Nick Tarabochia, Kyle Rohrbaugh, Rahna Lovrovich and Stephanie Payne; Staff Members: Public Works Superintendent Marco Malich, Planning Director Tom Dolan, Senior Engineer Jeff Langhelm, Special Projects Coordinator Lita Dawn Stanton and Community Development Assistant Terri Reed.

Others Present: _____

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
APPROVAL OF MINUTES:	Approval of May 2, 2012 Meeting Minutes	MOTION: Move to approve May 2, 2012 minutes as presented. Tarabochia / Payne - unanimously approved
OLD BUSINESS:		
Wilkinson Farm Park Barn – Gary Williamson/Dave Wheeler (FWF)	Lita Dawn Stanton gave a presentation on the Wilkinson Farm Barn, covering the history and the involvement of the Friends of Wilkinson Farm (FWF) group. She listed the projects that have been completed with the assistance of FWF, such as the community garden and new greenhouse structure. The FWF group is asking that the City look into and budget for structural repairs to the barn and cupola to prevent further deterioration and help provide for future public access. Pierce County has grants available for up to \$5,000 that could help provide better estimates for the structural stabilization, roof and cupola repairs. The group is asking the Parks Commission for support in requesting that City Council budget \$200,000 in 2013 funds towards this project.	MOTION: Move to endorse a budget fund request of \$200,000 towards the Wilkinson barn stabilization project. Tarabochia / Payne - unanimously approved
Gig Harbor Boatshed	Planning Director Tom Dolan explained to the Parks Commission that City Council has asked them to draft some guidelines for allowing private use of City properties and distributed some suggestions for consideration. Alan Anderson, Gig Harbor Kayak Club,	To be discussed at next Parks Commission meeting.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	3225 Shawnee Drive, clarified that the Kayak Club has raised funds to build the Boatshed at Skansie Park and Rotary is ready to build the structure. He feels that any lessee of City buildings should provide public programming.	
Harbor Hill Park Property – Park Development Process/Schedule	Lita Dawn Stanton provided a handout defining the terms active vs. passive, as they relate to park use. She also detailed a potential timeline for design and grant application for the park property. Commission Member Payne felt that a consultant should be brought on board to lead the design process prior to any public meetings being held on park uses.	MOTION: Move to institute a subcommittee to report to the Parks Commission. Lovrovich / Rohrbaugh - unanimously approved. MOTION: Move to hire a consultant to lead the design process Tarabochia / Rohrbaugh - unanimously approved
Old Burnham Drive/Clarity on Uses Allowed	Senior Engineer Jeff Langhelm, provided some clarity on uses that could be allowed on these properties that would protect the natural environment. Commission Member Tarabochia asked if the encumbrances in the Quit Claim Deed had been reviewed by the City Attorney. Mr. Langhelm stated that they would be.	
Crescent Creek Playground Project	Commission Member Payne gave up update on the project. The group is still working with the designer on the proposed layout. The final design should be available by July 1 st . She explained that the upper area, where the swings currently are, is being re-designed for preschool age children.	Commission Member Payne will send the draft design to the Parks Commission when it becomes available.
NEW BUSINESS:		
Field Reservation Policy	The desire for developing a field reservation policy for KLM Veterans Memorial Park was discussed. Commission Member Tarabochia would like to find out what the public demand is. Commission Member Payne suggested having field reservations on a trial basis.	Commission Member Tarabochia will solicit policies from other areas. To be discussed at next Parks Commission meeting.
Crescent Creek Park Usage/Master Plan	The Parks Commission discussed identifying issues that need to be addressed at Crescent Creek Park by a master plan, such as parking and the addition of the	To be discussed at next Parks Commission meeting. Staff will provide map of the park parcels and some photos.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up <i>(if needed)</i>
	adjacent Rohwer property.	
PUBLIC COMMENT:		
NEXT PARKS MEETING:		July 11, 2012 @ 5:30 p.m.
ADJOURN:		MOTION: Move to adjourn @ 7:25 p.m. Payne / Tarabochia - unanimously approved

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 07/06/2012

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20121031

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. JW RESTAURANT, LLC	JW RESTAURANT 4107 HARBORVIEW DR GIG HARBOR WA 98332 1080	402061	TAVERN - BEER/WINE TAVERN - BEER/WINE
2. JJ & JU CORPORATION	MIZU JAPANESE STEAKHOUSE 3116 JUDSON ST GIG HARBOR WA 98335 1222	085495	SPIRITS/BR/WN REST LOUNGE +
3. THE BARTELL DRUG COMPANY	BARTELL DRUG COMPANY #39 5500 OLYMPIC DR GIG HARBOR WA 98335 1487	077055	GROCERY STORE - BEER/WINE SPIRITS RETAILER
4. GALAXY THEATRES, LLC	GALAXY UPTOWN 4649 POINT FOSDICK DR NW GIG HARBOR WA 98335 1707	402683	BEER/WINE REST - BEER/WINE
5. SAFEWAY INC.	SAFEWAY STORE #2949 4831 PT FOSDICK RD NW GIG HARBOR WA 98335 1732	360178	GROCERY STORE - BEER/WINE BEER AND WINE TASTING

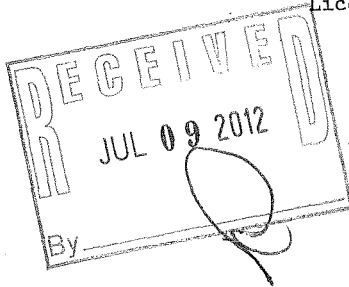


NOTICE OF LIQUOR LICENSE APPLICATION

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



TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 7/06/12

UBI: 602-990-107-001-0002

License: 404390 - 1U County: 27
Tradename: BLUESTEELE COFFEE & WINE
Loc Addr: 5275 OLYMPIC DR NW STE 101
GIG HARBOR WA 98335-2306

APPLICANTS:
MARSHALL FAMILY LLC

Mail Addr: 11401 STEELE ST S STE 108
TACOMA WA 98444-1436

MARSHALL, OLIVER J 1977-09-11
MARSHALL, COURTNEY J 1980-07-15

Phone No.: 253-228-9566 COURTNEY MARSHALL

Privileges Applied For:
BEER/WINE REST - BEER/WINE
OFF PREMISES

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

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

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



Subject: Approval of an Agreement between the City of Gig Harbor and the Peninsula School District allowing the distribution of \$2,500.00 in the form of a city grant to support the operations of the KGHP Radio Station.

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *(Signature)*

For Agenda of: July 23, 2012

Exhibits:

Initial & Date

Concurred by Mayor: *CH 7/17/12*

Approved by City Administrator: *R-7/17/12*

Approved as to form by City Atty: *Via Email*

Approved by Finance Director: *P 7/17/12*

Approved by Department Head: *(Signature) 7/17/12*

Proposed Council Action: Approve the attached Agreement.

Expenditure	Amount	Appropriation
Required \$2,500.00	Budgeted \$2,500.00	Required

INFORMATION / BACKGROUND

The attached agreement authorizes a grant in the amount of \$2,500 to support the continued operation of our local KCHP Radio station which is managed by the Peninsula School District.

The KCHP Radio Station is a critical communications link for public service announcements and notices dealing with inclement weather, disasters and emergencies.

FISCAL CONSIDERATION

Contributing \$2,500 to KGHP Radio Station in return for public service announcements and emergency warnings and notification is a budgeted objective in the 2012 Building and Fire Safety Emergency Management budget.

RECOMMENDATION / MOTION

Move to: Approve the attached Agreement between the City of Gig Harbor and the Peninsula School District allowing the distribution of \$2,500.00 to support the operations of the KGHP Radio Station.

**AGREEMENT BETWEEN CITY OF GIG HARBOR
AND PENINSULA SCHOOL DISTRICT
FOR DISTRIBUTION OF
GRANT FUNDS**

THIS AGREEMENT is made and entered into by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and Peninsula School District/KGHP Radio Station, (referred to as the "Recipient"), for the distribution of grant funds for the express purposes described in this Agreement.

WHEREAS, the Recipient has requested funding assistance to perform certain services for public benefit; and

WHEREAS, the City desires to provide grant funds to Recipient for the public benefit to be received from such services as set forth in this Agreement;

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

Section 1. Term. This Agreement shall commence upon execution by the duly authorized representatives of both parties and shall terminate on December 31, 2012 unless sooner terminated as provided herein. Sections 4, 5, 7 and 9 of this Agreement shall survive the termination of this Agreement.

Section 2. Scope of Services. The Recipient agrees to complete the services set forth on Exhibit A, attached hereto and incorporated herein by this reference, during the calendar year 2012 (the "Services").

Section 3. Grant. The City agrees to provide to Recipient a grant in the amount of Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) for performing the Services.

Section 4 Final Report. After the Services are completed and not later than January 15, 2013, the Recipient agrees to submit to Laureen Lund, City Administrator, a Final Report. The Final Report shall include: (i) a copy of the funding request to the City; (ii) a summary of the Services provided; and (iii) an itemization of the expenditures of the funds to be granted under this Agreement, supported by copies of receipts, cancelled checks, and other applicable documentation substantiating expenses.

Section 5. Auditing of Records, Documents and Reports. The Recipient shall maintain books, records, documents and other materials that sufficiently and properly reflect all expenditures made pursuant to this Agreement. The City Finance Director and any of his/her representatives shall have full access and the right to examine and copy, during normal business hours, all of the records of the Recipient with respect to matters covered in this Agreement. Such rights shall last for six (6) years from the date the disbursement is made hereunder.

Section 6. Compliance with Federal, State and Local Laws. The Recipient agrees to abide by all applicable federal and state statutes and regulations prohibiting employment discrimination, and any other statutes and regulations pertaining to the subject matter of this Agreement.

Section 7. Recapture and Noncompliance. In the event the City determines that the Recipient has failed to expend the grant funds in accordance with state law and this Agreement, the Recipient shall return such funds upon request, and the City reserves the right to commence an action against the Recipient to recover said funds, in addition to all of the City's other available remedies at law.

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

Section 9. Indemnification. The Recipient agrees to be responsible for and assumes liability for its own negligent acts or omissions, and those of its officers, agents, officials, employees or volunteers while performing work or expending funds pursuant to this Agreement to the fullest extent provided by law, and agrees to save, indemnify, defend and hold the City harmless from any such liability. This indemnification clause shall apply to any and all causes of action arising out of performance of services or expenditures of funds under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination.

Section 10. 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:

PENINSULA SCHOOL DISTRICT

Kristine Nyberg, Career & Tech. Program Admin.
14015 62nd Avenue NW
Gig Harbor, WA 98332
(253) 530-1077

CITY OF GIG HARBOR

Laureen Lund, Marketing Director
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-8136

Section 11. Severability. If any phrase, sentence or provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remainder of this Agreement.

Section 12. Entire Agreement. This document contains all covenants, agreements and stipulations of the parties on the subject matter expressed herein. No changes, amendments or modifications of the terms of this Agreement shall be valid


unless reduced to writing and signed by the duly authorized representatives of both parties as an amendment to this Agreement.

DATED this _____ day of _____, 20__.

THE CITY OF GIG HARBOR

PENINSULA SCHOOL DISTRICT

By: _____
Mayor Charles L. Hunter

By: 
Its: _____

ATTEST:

Molly Towslee, City Clerk

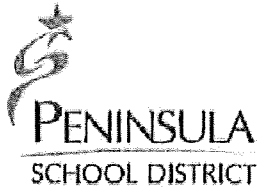
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Angela S. Belbeck

EXHIBIT A

Peninsula School District/KGHP Radio Station shall:

- Work with the City of Gig Harbor's marketing staff and accept press releases when appropriate for news items for the greater Gig Harbor region.
- Run City public service announcements at the request of the City's marketing and/or emergency management staff particularly for emergency management issues and notices pertaining to inclement weather periods, disasters, and emergencies. The length and frequency of these emergency messages will be at the City's discretion, provided that other government entities on the Gig Harbor and Key Peninsulas are not precluded from broadcasting their emergency messages.



Kristine Nyberg, Career & Technical Education Program Administrator
14015 62nd Ave NW
Gig Harbor, WA 98332

253-530-1077 fax 253-530-1085 nybergk@psd401.net

Special Presentation - 3
Page 1 of 4

September 21, 2011

To Our Partners in the Gig Harbor – Key Peninsula Community:

The Peninsula School District has been conducting a review of the KGHP Radio Station. As part of that review, we have invited representatives from local government agencies, parks and recreation entities, corporations, and emergency management groups to be part of a KGHP Community Forum. Upon their advice we ran a survey to gather feedback on whether or not this community wants a radio station. Results showed a very strong “yes” with over 50% rating it as “essential” to this community. Emergency management and disseminating news to the community were at the top of the rating list. After establishing the need for local radio, the forum next addressed how to establish a sustainable funding model and one that reflects the original goals of community involvement. A sub-committee was tasked with drafting a Cooperative Agreement to facilitate this process.

KGHP is public radio and provides a public service. When KGHP first started operating in 1988, a Citizens Start-Up Task Force formed to pledge financial support. The total committed that year was \$20,028 (documentation is attached). Former station manager, Leland Smith, has described a more detailed history, which I am also attaching for your reference. Underwriting efforts to collect funds in the past few years, however, have only been in the ballpark of \$3-5,000. The Peninsula School District is facing a budget crisis and needs to ask you, as a community, to revisit the commitment to pledging financial support through an Inter-local Cooperative Agreement. This agreement is representative of approximately 50% of the annual maintenance and operating costs to keep KGHP on the air. These run about \$45-50,000/year and include licensing fees, web streaming, engineer oversight, legal counsel, and retaining the station manager. Ten partners each contributing \$2,500 would get us in that ballpark of a 50/50 partnership (for maintenance alone). These costs do not include the educational radio broadcast program, nor do they account for replacement and upgrade for technology equipment and transmitter replacement, or any other long range planning. Underwriting efforts by the station manager and by the KGHP-PC foundation would still continue for those goals.

Peninsula School District cannot fund the operational costs of KGHP alone; the only other options are to go dark or sell the station, which could be detrimental in the event of a major emergency. In the ice storm of 1996, KGHP was the only point of contact in this area to disseminate local information to members of this community. It is apparent that our local businesses, parents, and government agencies see a critical value to have a local voice through community radio. We now need to move forward with a reasonable budget model that allows us to plan responsibly, and we hope you will be a part of that with a minimum annual contribution of \$2,500!

If you have questions, please contact Superintendent Terry Bouck, Technology Director JB Fitzpatrick, or myself; and please let us know if you would like us to come personally speak to your organization.

Sincerely,

Kristine Nyberg
Peninsula School District
Career & Technical Education Program Administrator
(253) 530-1077
nybergk@psd401.net



Subject: Utility billing services contract

Proposed Council Action: Approve and authorize the Mayor to execute the contract with Moonlight BPO for provision of utility billing services.

Dept. Origin: Finance
Prepared by: David Rodenbach
For Agenda of: July 23, 2012
Exhibits:

Initial & Date

Concurred by Mayor: CLH 7/18/12
Approved by City Administrator: R 7/18/12
Approved as to form by City Atty: by email
Approved by Finance Director: DR 7/18/12
Approved by Department Head: _____

Expenditure Required	\$1,500	Amount Budgeted	\$1,500	Appropriation Required	0
----------------------	---------	-----------------	---------	------------------------	---

INFORMATION / BACKGROUND

This agreement provides for monthly utility bill printing and mailing services.

Under this agreement Moonlight BPO will print the utility bills within 24 hours of receiving the billing data file. The bills will be printed, folded, inserted and mailed with a return envelope.

This contract is for a one year period with provision for two subsequent one-year renewals.

FISCAL CONSIDERATION

This service is expected to cost about \$3,200 per year. This is a \$0.03 per unit savings (\$500 per year) over our current vendor, CSG Inc.

BOARD OR COMMITTEE RECOMMENDATION

NA

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the contract with Moonlight BPO for provision of utility billing services.



PRODUCTION AGREEMENT

This Production Agreement (this "Agreement") is made and entered into as of 30 July, 2012 (the "Effective Date") by and between Brenn Park, Inc., an Oregon corporation, dba Moonlight BPO ("Moonlight") and the undersigned ("Customer"). The parties agree as follows:

1. **Scope of Work.** Moonlight agrees to provide Customer the services and products described in the attached Proposal which is incorporated herein by reference. Customer agrees that Moonlight shall be its exclusive provider of the described services and products during the Term of this Agreement. Customer has agreed to have Moonlight process and mail each month not less than the number of statements and daily mail items described on the Proposal as the Minimum Commitment. If Customer has Moonlight process and mail less than the Minimum Commitment in any given month then Customer shall pay Moonlight a Minimum Processing Fee for that month equal to the shortfall multiplied by the Minimum Commitment rate described on the Proposal. If Customer is a city, county or other government entity ("Government Entity") and funds to pay Moonlight become subject to future appropriations, Customer may suspend this Agreement without termination for a period not to exceed 120 days. Customer will continue to pay any charges for statements and daily mail pieces actually processed and mailed by Moonlight while the Agreement is suspended and while the Agreement is suspended Moonlight may decline to process and mail less than the Minimum Commitment in any given month.

2. **Term.** The initial term of this Agreement shall begin on the Effective Date and end on 30 July, 2013, unless earlier terminated pursuant to the terms of this Agreement. Unless written notice is given by a party at least 60 days prior to the end of the initial term or any renewal term, beginning on the first day after an expiring initial or renewal term this Agreement shall automatically renew for a term of 12 months or up to two additional 12-month terms

3. **Postage.** Concurrent with the execution of this Agreement by Customer, Customer will deliver to Moonlight a postage deposit. The initial deposit shall be as stated in the Proposal. Moonlight may apply the deposit to pay the cost of postage or other charges that Customer fails to pay within the time required, but such application by Moonlight shall not waive Moonlight's other remedies nor be the exclusive remedy for Customer's default. If Moonlight applies the deposit as set forth herein, Customer will pay upon demand all sums necessary to restore the deposit to its original amount, or if applicable, the amount then required by Moonlight. Customer will not have the right to apply the deposit or any part thereof to any postage or other sums due under this Agreement. If Customer is not in default of this Agreement, within 30 days after the expiration or termination, Moonlight will return the unapplied portion of this deposit to Customer. Moonlight may commingle the deposit with other funds. Moonlight will not be obligated to pay interest on the deposit. Moonlight may increase the amount of the deposit in the event that US postage rates increase or Customer's actual volume in any two consecutive months exceeds the Minimum Commitment. Should client owe a balance greater than the amount needed to process and mail statements, including postage, Moonlight may suspend processing and mailing of statements until which times all amounts due are made available by client to Moonlight, to use for the processing and mailing requested by client.

4. **Charges.** Customer shall pay Moonlight pursuant to the rates described on the Proposal. The rate will not increase during the initial term except that any increase in US Postal rates will be passed on to Customer. Upon not less than 90 days' written notice before the beginning of a renewal term, Moonlight may increase its rates for some or all of the services and products provided under this Agreement. At all times charges for services or products requested by Customer and not described on the Proposal will be subject to agreement between Moonlight and Customer. **Invoicing-** Moonlight will provide an invoice to Customer for actual quantities processed by the 5th day of each month following the month in which service is performed. Customer shall pay the full amount of the projected estimated postage deposit requested for that month plus any balance due for the invoiced month no later than the 15th day of such month. Moonlight reserves the right to hold processing and mailing if deposits and any balances due are not received by the 15th. Any amounts remaining unpaid after the 20th-30th day of any month shall bear interest at the rate of 12% per annum from the due date of the invoice and until paid in full.

Any amount remaining unpaid 20-30 days after the date of invoice shall bear interest at the rate of 12% per annum. MOONLIGHT RESERVES THE RIGHT TO HOLD PROCESSING AND MAILING AND TO STOP WORK AND MAY CONTINUE THE SAME AS LONG AS ANY INVOICE IS NOT FULLY PAID BY THE 20TH-30TH DAY AFTER THE DATE OF THE INVOICE.

5. **Expenses.** When provided for in the Proposal, or as otherwise approved by Customer in writing, Customer will reimburse Moonlight for any cost or expense incurred by Moonlight to perform services for Customer, including but not limited to authorized overtime, design or other extraordinary services, travel, freight and delivery service. In addition, Customer will reimburse Moonlight for expenses, including reasonable attorney fees and court costs, incurred by Moonlight in responding to any subpoena, court order or third party demand regarding Customer or services and products Moonlight provides to Customer.

6. **Termination.** If a party fails to perform any of the terms of this Agreement, time of payment and performance of the essence, this Agreement may be terminated by the performing party after giving 10 days' written notice of default and an opportunity to cure to the nonperforming party. If Customer is a Government Entity and funds are not appropriated sufficient to meet Customer obligation to make full and timely payment, Customer may terminate this Agreement without cause upon 10 days' notice of



that funds are unavailable. Furthermore, if Customer is a Government Entity and Customer elects to suspend its performance, after performance is suspended for more than 120 days Moonlight may upon notice to Customer elect to terminate this Agreement.

7. **Excused Delay.** Neither party shall be responsible for delays or failure to perform resulting from acts or omissions beyond the reasonable control of such party (other than any obligation to pay money), including without limitation fire, explosion, power failure, flood, earthquake or other acts of God, civil unrest or terrorism, labor stoppage, including without limitation strikes, slowdowns, sickouts, any law, regulation or ordinance, any court order, decree or judgment. In the event of an excused delay, the party affected shall be excused from such performance on a day-to-day basis to the extent of such delay, and the other party shall likewise be excused from performance of its obligation on a day-to-day basis to the extent such party's obligations relate to the performance so interfered with.

8. **Status.** Moonlight is for all purposes an independent contractor.

9. **No Waiver.** The failure of a party to strictly enforce any term of this Agreement shall not be construed as a waiver of any rights or obligations stated in this Agreement, or prevent either party from demanding strict performance of any future condition, obligation or right under this Agreement.

10. **Confidentiality.** Each party agrees that any and all data, reports and documentation supplied by a disclosing party or on such party's behalf shall be confidential, subject only to the disclosure required for the performance of the receiving party's obligations hereunder, disclosure required by federal, state or local law (collectively "Law") and disclosure required by subpoena or court order. To the extent that disclosure is required by Law, subpoena or court order, a party shall make commercially reasonable efforts to give written notice to the other party before making disclosure.

11. **SSAE 16 Review.** Moonlight shall complete an annual SSAE 16 review, and will upon written request from Customer, provide a copy of any review within 30 days after the review is received by Moonlight.

12. **Warranty.** Moonlight shall provide services and products in a workmanlike manner in accordance with the terms of this Agreement. THIS WARRANTY IS THE ONLY WARRANTY WITH RESPECT TO THIS AGREEMENT AND THE SERVICES AND PRODUCTS PROVIDED FOR IN THIS AGREEMENT AND IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

13. **Indemnification.** Subject to 14, below, Moonlight agrees to indemnify, defend and hold Customer harmless from any and all claims, actions, damages, costs, including without limitation attorney fees and court costs (collectively, "Claims"), arising from Moonlight's gross negligence or willful misconduct. Customer agrees to indemnify, defend and hold Moonlight harmless from any and all Claims arising from Customer providing data, reports or other documentation to Moonlight, as well as Claims regarding or relating to Customer's gross negligence or willful misconduct.

14. **Limitation of Liability.** The liability of Moonlight and its officers, directors, employees or agents for failure to provide services or products or otherwise perform pursuant to the terms of this Agreement shall be limited to compensation paid to Moonlight for the defective service or product. IN NO EVENT SHALL MOONLIGHT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR INCOME) OR PUNITIVE DAMAGES, EVEN IF MOONLIGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. CUSTOMER HAS ACCEPTED THIS LIMITATION OF LIABILITY AS PART OF ITS BARGAIN WITH MOONLIGHT AND CUSTOMER ACKNOWLEDGES THAT MOONLIGHT'S CHARGES FOR IT'S SERVICES AND PRODUCTS WOULD BE HIGHER IF MOONLIGHT WERE REQUIRED TO BEAR RESPONSIBILITY OF CUSTOMER'S INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

15. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties' successors and assigns.

16. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

17. **Notices.** All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other party):

If to Moonlight:
Moonlight BPO
2491 NE Twin Knolls Suite 102
Bend, OR 97701
Attention: Brenda Grigsby, President
Fax No.: (541) 617-1831

If to Customer:
City of Gig Harbor
3510 Grandview-View—Street
Gig Harbor, WA 98335
Attention: Mr. Dave Rodenbach
Fax No. _____



Any notice or other communication will be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the 5TH day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

- 18. **Amendments.** This Agreement may be amended only by an instrument in writing executed by all the parties.
- 19. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same Agreement.
- 20. **Facsimile Signatures.** Facsimile transmission of any signed Agreement, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original Agreement.
- 21. **Further Assurances.** Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Agreement.
- 22. **Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
- 23. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.
- 24. **Attorney Fees.** If any suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such suit, or action as determined by the trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.
- 25. **Venue.** Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Deschutes County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- 26. **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be impaired in any way.
- 27. **Entire Agreement.** This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

MOONLIGHT BPO

CUSTOMER

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Fees for Services & Products

Paper Bill (Includes: data processing, laser imaging, 8.5x11 form, perforated at 3.5" from bottom, #10 jumbo security window env., #9 single security window reply env., folding, inserting, presorting and delivery to USPS) Minimum Commitment: 1000 per month and 1cycle.	\$0.19 \$0.2	One-sided Two-sided Per Bill
Search & ViewBill (Includes: data processing, pdf creation, search & access capabilities & hosting of pdf files for 3 months from creation date)	\$0.02	Per Bill
Additional Search & ViewBill Storage beyond 3 months (As requested by client)	\$0.005	Per Bill
Cd Rom of statements and daily mail after 180 days	\$100.00	Per CD/DVD
ViewBill Transmission (Includes: ftp transmission to client site OR files copied to CDROM)	\$100.00	Per Transmission/CDROM
Additional Disks (If more than one CDROM disk is required for ViewBill Transmission (described above))	\$10.00	Per Additional CDROM
NCOA Link (address update)	\$0.50	Per Reported Change
Additional Impressions	\$0.05	Per Impression
Bill Suppression (data processing only – Group Y & Z)	\$0.05	Per Bill
Oversized Surcharge (6-99 page bills – Group C)	\$0.55	Per Bill
Oversized Surcharge (100+ page bills – Group D & E)	\$4.00	Per Bill
Additional Inserts – supplied inserts	\$0.02	Per Insert
Insert – 8.5"x11" simplex printed, folded and inserted by MBPO	\$0.15	Per Insert
Insert – 8.5"x11" duplex printed, folded and inserted by MBPO	\$0.25	Per Insert
Insert 1/3 page laser simplex printed and inserted by MBPO	\$0.10	Per Insert
Hand Folding	TBD	Per Piece
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)	\$185.00	Per Hour
Freight, Courier & Air Delivery	TBD	Per Request
Minimum Monthly Charge or per piece, whichever is greatest- not including postage	\$200.00	Per Month
Minimum Daily Processing/Production Fee or per piece, whichever is greatest	\$150.00	Per Day- days files sent
Initial Set-up Charge (limited to 2 revisions after 1 st proof, thereafter changes will be charged the Technical Services rate per hour).	\$500	One-time set-up
Postage (1 oz.) – Unless rates increase by USPS	Actual	Per Bill

Estimated Postage Deposit: Estimated Postage Deposit must be maintained at all times. Should the estimated postage deposit drop below the required amount to mail, statement mailing(s) will be held for processing and mailing until funds are replenished and made available to MBPO for use.

Estimated Permanent Postage Deposit (Based on two (2) months estimated volume of 2,200)	\$990.00	(2 mos. Volume * .45
---------------------------------------------------------------------------------------------	----------	-------------------------



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

Subject: Rainier-Cascade Ave Water Main Replacement – Consultant Services Contract

Proposed Council Action: Approve and authorize the Mayor to execute a Consultant Services Contract with GeoResources, LLC, for materials testing related to the Rainier/Cascade Ave. Water Main Replacement Project in an amount not to exceed \$4,070.00 and authorize the City Engineer to approve additional expenditures up to \$500 to cover any costs increases.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm *[Signature]*

For Agenda of: July 23, 2012

Exhibits: Consultant Services Contract with Scope and Fee

Initial &
Date

Concurred by Mayor: *CLH 7/18/12*

Approved by City Administrator: *R-7/18/12*

Approved as to form by City Atty: *VIA EMAIL 7/13/12*

Approved by Finance Director: *CP 7/18/12*

Approved by Department Head: *[Signature] 7/18/12*

Expenditure Required	\$ 4,070.00	Amount Budgeted	\$ 677,000.00	Appropriation Required	\$0
-----------------------------	-------------	------------------------	---------------	-------------------------------	-----

INFORMATION/BACKGROUND

The City of Gig Harbor routinely budgets for the improvement and replacement of existing water mains throughout the City in accordance with the adopted Water System Plan. For the 2012 Budget, the City Council identified the replacement of the existing asbestos cement water main in Rainer Ave. and Cascade Ave. to improve the City's water system.

At the July 9 Council Meeting the City awarded a public works contract to Henderson Partners, LLC, for both the base bid schedule (A - Rainier/Cascade Ave Water Mains) and the additive bid schedule (B – Snug Harbor Pressure Reducing Valve (PRV) Vault Improvements). The work identified in the attached scope provides for materials testing of the previously awarded public works contract for the Rainier/Cascade Ave. Water Main Replacement Project.

FISCAL CONSIDERATION

The 2012 City of Gig Harbor Budget includes funding for the proposed work in the Water Division Capital fund. The budget summary for this item is provided in the table below:

2012 Budget for Water Division – Capital, Objective No. 5	\$ 677,000.00
Requested 2012 Expenses:	
<i>Base Bid (Schedule A)</i>	(\$ 473,880.26)
<i>Additive Bid (Schedule B)</i>	(\$ 65,122.79)
<i>Change Order Authority for Public Works Contract</i>	(\$ 50,000.00)
Materials Testing Contract	(\$ 4,070.00)
Change Order Authority for Materials Testing Contract	(\$ 500.00)
Remaining 2012 Budget =	\$ 83,426.95

Note: *Italicized* expenses indicate previously awarded items.

BOARD OR COMMITTEE RECOMMENDATION

This contract work was based on recommendations provided in the City’s Water System Plan and the adopted 2012 Budget adopted by City Council. This contract work was not based on a separate board or committee recommendation.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute a Consultant Services Contract with GeoResources, LLC, for materials testing related to the Rainier/Cascade Ave. Water Main Replacement Project in an amount not to exceed \$4,070.00 and authorize the City Engineer to approve additional expenditures up to \$500 to cover any costs increases.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GEORESOURCES, LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and GeoResources, LLC, a limited liability corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in material testing for the Rainier/Cascade Water Main Replacement Project, CWP-1202 and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

1. **Retention of Consultant - Scope of Work.** The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Four Thousand Seventy Dollars and No Cents (\$4,070.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2012; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The

{ASB983053.DOC;1\00008.900000\}

Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

9. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

10. City's Right of Inspection. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules,

{ASB983053.DOC;1100008.900000\}

and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

11. **Records.** The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

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

13. **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.

14. **Resolution of Disputes and Governing Law.**

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

15. **Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the

{ASB983053.DOC;1\00008.900000\ }

addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
GeoResources, LLC
ATTN: Keith S. Schembs, LEG, Principal
5007 Pacific Hwy. E., Ste. 16
Fife, WA 98424-2649
(253) 896-1011 FAX (253) 896-2633

City of Gig Harbor
ATTN: Jeff Langhelm, P.E.
Senior Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170 FAX (253) 853-7597

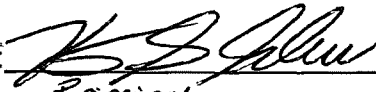
16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

17. 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 this 18th
day of July, 2017.

CONSULTANT

CITY OF GIG HARBOR

By: 
Its: Principal

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Ph. 253-896-1011
Fx. 253-896-2633

GeoResources, LLC
5007 Pacific Hwy. E., Ste. 16
Fife, Washington 98424-2649

July 5, 2012

City of Gig Harbor
Department of Public Works
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 853-7661

Attention: Mr. Jeff Olsen

Proposal for Construction
Monitoring Services
Rainier/Cascade Avenue – WaterMain
Replacement Project (CWP-1202)
Gig Harbor, Washington
Job: CityofGigHarbor.RainierCascadeAv.P

As requested, we are pleased to submit this proposal for geotechnical construction monitoring and inspections services for earthwork activities associated with Rainier/Cascade Avenues WaterMain Replacement Project CWP 1202. According to the plans and specifications obtained, the project includes the replacement of 1900 lineal feet of water main, trench backfill, crushed rock placement and asphalt placement.

According to our discussions with the City of Gig Harbor, we understand our involvement will be related to testing the compaction of the trench backfill, final asphalt layer, and laboratory testing of the backfill material. Based on our experience on similar projects and a review of the plans we anticipate that the required testing will occur on a part time basis lasting over a period of 2 to 3 weeks. Our construction monitoring and testing would consist of on-call site visits requested by you (the owner) and/or the contractor.

Our services will be provided in accordance with the terms presented in our Schedule of Charges and General Conditions, a copy of which is attached at the end of this proposal.

Unit	Unit Price
Principal	\$125/hr
Sr Engineer	\$105/hr
Technician	\$65/hr
Mileage	\$0.58/mile
Proctor (ASTM D:1557)	\$150/test
Sieve (ASTM D-6913-04)	\$85/test

Our total fee for the services provided will be determined on a time-and-expense basis (hourly plus expenses), in accordance with the attached Schedule of Charges. We anticipate that the specific day and time of our site visits will be based on requests from the City or the Contractor, and that the duration of each visit will be determined according to the specific inspection or testing requested.

For budgeting purposes, we anticipate 4 hour site visits (time on site and travel) for the first 3 to 4 days to verify adequate compaction procedures are utilized. Additional testing will be as needed. Our field technical rate for construction monitoring service is \$65/hour. In addition to the labor time, we also charge mileage to and from the site. We estimate that the site is 16 miles from our office. As such, a daily rate for our inspector would be \$285. We also anticipate

1 hour per week of principal (project manager time) to review field reports and answer questions by the contractor. We do not have minimum charges, nor do we charge a rental rate for the Radioactive Densometer or other equipment.

In addition to the hourly time on site and project manager review time, we expect that there may be some additional costs related to laboratory testing using the rates outlined above. For a project of this size and scope we anticipate 2 proctors and 2 sieves will be adequate to characterize the trench backfill material. The Rice value for compaction should be provided by the batch plant producing the asphalt.

Our field personnel are instructed to leave copies of the daily field reports on site on a daily basis. Our project manager will review the reports weekly, depending on the frequency of inspections and if deficiencies are noted. The reviewed and signed field reports will then be transmitted electronically to the City and the contractor. At the end of the project, GeoResources will prepare a final letter and will attach a complete set of the field reports, as well as provide an electronic copy.

The estimated projected cost does not include attending project meetings. Any meeting or additional service will be billed on a time and materials basis using the rates shown on the attached Schedule of Charges.

We budget daily inspection during the first three days of trench backfilling followed by intermittent visits, as needed. We anticipate a total of 6 visits will be required to adequately test the utility trench backfill. For subgrade preparation and asphalt paving monitoring, we assume a total of 4 visits will be necessary. Assuming four week project duration and the part time observation is sufficient; we anticipate the total cost (including field work and lab testing) to be:

<u>Construction Monitoring</u>	<u>Cost</u>
Utility Trench Backfill (6 visits).....	\$1,710
Laboratory tests (2 proctor, 2 sieves).....	\$470
Subgrade preparation & Asphalt testing (4 visits).....	\$1,140
Project Management (1 hr per week x 4 weeks).....	\$500
Addendum preparation.....	\$250
Anticipated Total	<u>\$4,070</u>

We anticipate that this proposal will be included as Exhibit A on a City of Gig Harbor Consultant Services Contract.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions regarding the scope of work or budget of this proposal, please contact our office.

Yours very truly,
GeoResources, LLC



Keith S. Schembs, LEG
Principal



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

Subject: Crescent Creek Park Tennis Court Resurfacing – Contract Authorization

Dept. Origin: Public Works/Operations

Proposed Council Action:

Award and authorize the Mayor to execute a Small Public Works Contract with Center Court Surfacing in the amount of \$5,804.75 for Tennis Court Resurfacing and Restriping at the Crescent Creek Park.

Prepared by: *Marco Malich*
Marco Malich
Public Works Superintendent

For Agenda of: July 23, 2012

Exhibits: Public Works Contract

Concurred by Mayor: *CLM 7/18/12*
Approved by City Administrator: *R 7/18/12*
Approved as to form by City Atty: *OK via email 7/17/12*
Approved by Finance Director: *Q 7/18/12*
Approved by Department Head: _____

Initial &
Date

Expenditure Required	\$5,804.75	Amount Budgeted	\$12,000.00	Appropriation Required	\$0
-----------------------------	------------	------------------------	-------------	-------------------------------	-----

INFORMATION/BACKGROUND

A group interested in having pickleball courts in Gig Harbor presented some background information to the Parks Commission in 2008. Funds were budgeted for the resurfacing/restriping of the courts in 2009. This project was not completed due to funding and staff cutbacks.

In accordance with the City's Limited Public Works Process (Resolution No. 884), staff solicited quotes from Athletic Surfacing Systems contractors from the Small Works Roster and the following two quotes were received for this work:

ITEM	DESCRIPTION	Center Court Surfacing	Cascade Sport Courts
1	Crescent Creek Park Tennis Court Resurfacing	5,804.75	5,859.00

FISCAL CONSIDERATION

The 2012 Parks Operating budget, Objective #12 provides \$12,000 to resurface, restripe, purchase a new net and replace the fencing at the tennis courts at Crescent Creek Park.

BOARD OR COMMITTEE RECOMMENDATION

Parks Commission supported the request to restripe the tennis courts to include pickleball lines.

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Small Public Works Contract with Center Court Surfacing in the amount of \$5,804.75 for Tennis Court Resurfacing and Restriping at the Crescent Creek Park.

**CITY OF GIG HARBOR
SMALL PUBLIC WORKS CONTRACT**

THIS CONTRACT is made and entered into this 18 day of July, 2012, by and between the City of Gig Harbor, Washington (the "City"), and Donald Macarthur, a sole proprietor, d/b/a Center Court Surfacing (the "Contractor").

FOR AND IN CONSIDERATION of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope of Work.

The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, etc. necessary to perform and complete in a workmanlike manner the work set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

2. Time of Performance and Completion.

The work to be performed under this Contract shall commence as soon as the Contractor has received a Notice to Proceed from the City and in accordance with the schedule set forth in the Scope of Work. All work to be performed under this Contract shall be completed no later than 45 days from the date of Notice to Proceed.

3. Payments.

The Contractor agrees to perform all work called for at the rate of Five Thousand Three Hundred Fifty Dollars and Zero Cents (\$5,350.00), plus applicable Washington State Sales Tax. Said sum shall constitute full compensation for all labor, materials, tools, appliances, etc. required to perform the required services. Total compensation shall not exceed Five Thousand Eight Hundred and Four Dollars and Seventy-Five Cents (\$5,804.75).

4. Retainage. [This section intentionally left blank.]

5. Performance and Payment Bond. [This section intentionally left blank.]

6. Warranty/Maintenance Bond. [This section intentionally left blank.]

7. Indemnity.

A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's 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.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees or volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

8. Insurance.

A. The Contractor shall secure and maintain in force throughout the duration of this Contract, business auto coverage for any auto no less than a \$1,000,000 each accident limit.

B. The Contractor shall secure and maintain in force throughout the duration of this Contract, comprehensive general liability insurance with a minimum coverage of not less than a limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury, including death, and property damage. The insurance will be written on an occurrence basis, by an 'A' rated company licensed to conduct business in the State of Washington. The general liability policy shall name the City as an additional insured and shall include a provision prohibiting cancellation, changes and reductions of coverage under said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this Section shall be delivered to the City with the signed Contract. Under this Agreement, the Contractor's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

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

D. In addition, the Contractor shall secure and maintain workers' compensation insurance pursuant to the laws of the State of Washington.

9. Prevailing Wage.

A. The prevailing rate of wage to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are attached hereto and by reference made a part of this Contract as though fully set forth herein.

B. On or before the date of commencement of the work, the Contractor shall file a statement under oath with the City and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workmen, or mechanics employed upon the work by the Contractor or any Subcontractor, which shall not be less than the prevailing rate of wage. Such statement and any subsequent statement shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

10. Termination.

A. Termination for Contractor's Default. If the Contractor refuses or fails to make adequate progress of the work, or to prosecute the work or any separable part thereof with such diligence that will insure its completion within the time specified in this Contract, or defaults under any provision or breaches any provision of this Contract, the City may serve notice upon the Contractor and its surety of the City's intention to terminate by default the right of the Contractor to perform the Contract, and unless within ten (10) days after the serving of such notice, the Contractor shall satisfactorily arrange to cure its failure to perform and notify the City of the corrections to be made, the right of the Contractor to proceed with the work shall terminate. In the event of any such termination, the City shall serve notice thereof upon the Surety and the Contractor, provided, however, that if the Surety does not commence performance thereof within twenty (20) days from the date of the mailing to such Surety of the notice of termination, the City may take over the work and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor. In the case of termination for default, the Contractor shall not be entitled to receive any further payment until the work is finished.

B. Termination by City for Convenience. The performance of work under this Contract may be terminated by the City in accordance with this paragraph in whole or in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a Notice of

{ASB983054.DOC;1\00008.900000\ }

Termination specifying the extent to which performance or work under the Contract is terminated, and the date upon which such termination becomes effective. The Contractor shall stop work on the project upon the date set forth in the Notice of Termination and shall take such actions as may be necessary, or as the City may direct, for the protection and preservation of the work. After receipt of a Notice of Termination, the Contractor shall submit to the City its termination claim, in the form and with the certification prescribed by the City. Such claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination. Upon approval by the City, the termination claim shall be paid.

C. Termination by Contractor. If the work should be stopped under an order of any court, or other public authority, for a period of thirty (30) days, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the City, terminate this Contract and recover from the City payment for all work executed and any proven loss sustained. Should the City fail to pay to the Contractor, within the payment period provided for in this Contract, any sum due and owing, then the Contractor may, upon seven (7) days written notice to the City, stop the work or terminate this Contract.

11. Compliance with Laws. The Contractor shall at all times comply with all applicable state and local laws, rules, ordinances and regulations.

12. Nondiscrimination. Except to the extent permitted by a bona fide occupational qualification, the Contractor agrees that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

13. Independent Contractor. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this contract.

14. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of the Contractor shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. In the performance of the work, the Contractor is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to

{ASB983054.DOC;100008.900000\}

the employees, agents, representatives, or subcontractors of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Contractor performs

15. Legal Action. In the event that either party shall bring suit to enforce any provision of this Contract or to seek redress for any breach, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorneys' fees.

16. Entire Agreement. This Contract, together with all attachments, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and agreements, whether written or oral. This Contract may be amended only by written change order, properly signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first written above.

CITY OF GIG HARBOR

CONTRACTOR

MAYOR CHARLES L. HUNTER
Date: _____

Center Court Surfacing
By: Ronald MacArthur
Title: Owner
Date: 7-18-12

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
Office of the City Attorney

**CRESCENT CREEK PARK
TENNIS COURT RESURFACING/STRIPING
QUOTE FORM**

JUL - 2 2012

COMMUNITY
DEVELOPMENT

9:25 a.m.

M6

For consideration for this project, price quotations must be received on this form by 10:00 a.m., Monday July 2, 2012 at:

Mail/Hand-Deliver to: City of Gig Harbor
Public Works/Operations
Attn: Terri Reed
3510 Grandview Street
Gig Harbor, WA 98335

Or email to: reedt@cityofgigharbor.net

Questions: Contact Terri Reed at (253) 853-7640 or reedt@cityofgigharbor.net

<u>BID ITEM</u>	<u>DESCRIPTION:</u>	<u>AMOUNT</u>
	The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, etc. necessary to perform and complete in a workmanlike manner the work set forth in the Scope of Work, dated June 25, 2012 for:	
BASE BID	CRESCENT CREEK PARK TENNIS COURT RESURFACING/STRIPING	\$ <u>5350.00</u>
	WA State Sales Tax (8.5%)	\$ <u>454.75</u>
	TOTAL	\$ <u>5804.75</u>

Signature: Donald MacArthur Date: 7-2-2012
 Printed Name: Donald MacArthur Title: owner
 Company Name: Center Court Surfacing
 Address: 3617 44th St Ct NW
Gig Harbor, WA 98335
 Phone: 851-6774 Fax: _____
 Email address: CenterCourtSurfacing@gmail.com
 UBI Number: 603 109 094
 WA Contractor License No.: CENTECS891L9

EXHIBIT A
CRESCENT CREEK PARK
TENNIS COURTS RESURFACING/STRIPING
SCOPE OF WORK
June 25, 2012

PROJECT REQUIREMENTS:

Quote Due Date - For consideration for this project, price quotations must be received by **10:00 a.m., Monday July 2, 2012** at City of Gig Harbor, Public Works/Operations, Attn: Terri Reed, 3510 Grandview Street, Gig Harbor, WA 98335 or email to: reedt@cityofgigharbor.net.

City Contract (attached) – Sample contract to perform this work provided for reference as to City requirements, *including insurance and prevailing wage requirements*.

Before submitting a price quotation proposal, prospective respondents shall be responsible to examine the site of the work and determine for themselves all of the physical conditions in relation to this project.

PROJECT DESCRIPTION:

Resurface existing 60' x 120' tennis courts at Crescent Creek Park, 3303 Vernhardson Street, Gig Harbor, WA, as follows:

- Pressure wash and scrape the existing surface
- Remove all debris and vegetation
- Fill all cracks with a court patch sand and cement mixture
- Apply two coats of Plexipave 100% Black Acrylic Resurfacing material
- Apply two coats of Plexipave 100% Florida Green Acrylic surfacing material
- Accurately layout, tape, prime and apply two coats of textured white line paint per USTA regulations; white lines for standard tennis courts and red lines for pickleball courts
- Completely clean up jobsite



Business of the City Council
City of Gig Harbor, WA

Subject: Resolution No. 906 – Sole Source Purchase of Equipment

Proposed Council Action: Approve the Resolution waiving competitive bidding for the purchase one WEMCO Prerostal Pumping system, with APSCO, LLC as the sole source supplier, and authorize the Mayor to execute a purchase order necessary to Purchase the WEMCO Prerostal Pumping System for Lift Station #3A.

Dept. Origin: Public Works/WWTP

Prepared by: Darrell Winans *DW 7-18-12*
Supervisor

For Agenda of: July 23, 2012

Exhibits: Resolution No. 906 & Exhibit A

Concurred by Mayor: *CUH 7/18/12*
Approved by City Administrator: *R 7/18/12*
Approved as to form by City Atty: *ok'd by email*
Approved by Finance Director: *DR 7/18/12*
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ 78,035.37	Budgeted \$ 2,606,000.00	Required \$0

INFORMATION / BACKGROUND

The APSCO WEMCO Prerostal Pumping System is budgeted for in the 2012 City of Gig Harbor Budget. This new Prerostal Pumping System will replace the existing jockey pump at Lift Station #3A. The Diesel Powered Dri-Prime Screw Centrifugal Pumps are currently used at other lift stations within the City and have provided pumping of large and fibrous materials with great success over standards centrifugal impeller-type pumps. APSCO, LLC is the sole source supplier of the product, as there is no known equal.

FISCAL CONSIDERATION

The cost for this Wemco Prerostal Pumping system is \$78,035.37 (including 8.5% sales tax), which will be funded by the 2012 Budget.

The 2012 City of Gig Harbor Budget includes funding for this replacement in the Wastewater Division Operating and Capital budgets. The budget summary for this item is provided in the table below:

(1) APSCO WEMCO Prerostal Pumping System	\$ 71,922.00
8.5% Sales Tax	\$ 6,113.37
TOTAL	\$ 78,035.37

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve the Resolution waiving competitive bidding for the purchase one WEMCO Prerostal Pumping system, with APSCO, LLC as the sole source supplier, and authorize the Mayor to execute a purchase order necessary to Purchase the WEMCO Prerostal Pumping System for Lift Station #3A.

RESOLUTION NO. 906

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS FOR PURCHASE OF ONE WEMCO PREROSTAL PUMPING SYSTEM FOR LIFT STATION #3A FROM APSCO, LLC.

WHEREAS, the City of Gig Harbor is in need of replacing the jockey pump at Lift Station #3A; and

WHEREAS, the Wemco Prerostal Pumping System will replace existing pump and provide needed low end and mid range pumping capacity at Lift Station #3A; and

WHEREAS, the Wemco Prerostal Pumping System would eliminate the need for existing mixer and mechanical grit removal; and

WHEREAS, the Wemco Prerostal Pumping System will help reduce electrical demand charges; and

WHEREAS, APSCO, LLC is the sole source supplier for this product and there is no known equal; and

WHEREAS, the City's purchasing policy set forth in Resolution No. 593 authorizes the waiver of competitive bidding in the event the product comes from a sole supplier; Now, therefore,

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

Section 1. Waiver of Competitive Bidding. As authorized by Section 2 of Resolution No. 593, competitive bidding is hereby waived for the purchase of one Wemco Prerostal Pumping System, as APSCO, LLC is the sole supplier of the product.

RESOLVED this 23th day of July, 2012.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL: 07/23/12
RESOLUTION NO. 906

**APSCO, LLC**

PO Box 2639 • Kirkland, WA 98083-2639

Ph: (425)822-3335 • Fax: (425)827-6171

E-mail: apSCO@apSCO-inc.com

ORDER AGREEMENT

TO:	Mr. Darrell Winans	FROM:	Joe Kernkamp
Email:	winansd@cityofgigharbor.net	PHONE:	425-822-3335
Phone:	253-851-8999	DATE:	7/9/12
COMPANY	City of Gig Harbor	PAGES:	1 of 13
Customer Ref:		APSCO REF:	LS #3A retrofit

The City of Gig Harbor Wishes to order From APSCO, LLC. One (1) Wemco Prerostal Pumping System as Describe in quote dated July 5th for installation at lift station 3A to replace the jockey pump designed for 1000 gpm at 55 ft TDH. System includes Prerotation basin, Hidrostal pump and motor, variable frequency drive and required ultrasonic level control sensor.

This Order Agreement between the City of Gig Harbor, with offices located at 3510 Grandview St. Gig Harbor, WA 98335, and APSCO, LLC, with offices at 1120 8th st. Kirkland, WA 98033, establishes the terms and conditions of sale as follows:

1. Purchase Price: \$71,922.00 Lump Sum (includes freight, excludes taxes). Washington State Sales tax can be collected by APSCO, LLC at a rate of 8.5%
2. Shipping Terms: FOB Origin, Freight Included and allowed to the jobsite.
3. Payment Terms: 30% upon Order Placement, 60% upon delivery and 10% upon start up and training.
4. Warranty: The Seller warrants the unit until 24 months after the Owner acceptance of the product or until 30 months after delivery of such product to Buyer, whichever is earlier, that each product will be free of defects in material and workmanship. Seller will cause any products whose defect is covered under this warranty to either be replaced or be repaired at no cost to the Owner. Any

replacement Products will be warranted only for any remaining term of the original limited warranty period and not beyond that term.

5. Ship to Address: City of Gig Harbor WWTP

4216 Harborview Dr.

Gig Harbor, WA

98335

6. The attached APSCO terms and conditions of Sale shall apply to this order and are fully incorporated for reference.

I acknowledge that the foregoing represents the Order Agreement and our Acceptance of that terms stated above. Further, I hereby certify that I am authorized to bind the agency to contractual matter.

City of Gig Harbor

By: _____ DATE: _____

Print

Name: _____

Title: _____

Note: Your signed Order Agreement must be returned with 30% payment in order for us to commence with production. Thank you for your cooperation in this matter, please reply by email to jkernkamp@apsco-llc.com

Sincerely,

Joe Kernkamp
Vice President



APSCO, LLC
PO Box 2639 • Kirkland, WA 98083-2639
Ph (425)822-3335 • Fax: (425)827-6171
E mail: apSCO@apSCO.llc.com

APSCO LLC TERMS AND CONDITIONS OF SALE

1. **SCOPE:** Unless otherwise agreed in writing, Seller's (APSCO, LLC) acceptance of Purchaser's purchase order is conditioned upon Purchaser accepting these terms and conditions. Seller sells its equipment in accordance with the following provisions.

2. **PRICES:** Prices are F.O.B. Seller's or its supplier's plant. Prices do not include any federal, state or local sales, use or other taxes and taxes will be added to the sale price for Purchaser's account.

3. **TERMS:** Unless otherwise agreed, all invoices are due and payable 100% net 30 days from date of shipment or notification of readiness to ship. All credit terms are offered subject to Purchaser's credit worthiness with said worthiness to be determined solely by the Seller. Full payment is due as indicated and late payment may be subject to a specified service charge. Purchaser shall pay the full invoiced amount to Seller, regardless of any payment schedule between Purchaser and the Owner, or others. If Purchaser is in default in any payment, Seller may offset any monies of Purchaser available to Seller or in Seller's possession; declare all payments for work completed immediately due and payable; stop all further work until payments are brought current and/or require advance payment for future shipments.

4. **ITEMS INCLUDED:** Each sale includes only the equipment described in the order. Responsibility for proper operation of equipment if not installed or operated in accordance with Seller's instructions, rests entirely with Purchaser. Seller shall supply only those safety devices, if any, described in the order or in its proposal and drawings, and shall comply with those provisions of the federal Occupational Health and Safety Act of 1970 which Purchaser and Seller have identified as specifically applicable to the manufacture of Seller's equipment hereunder. Seller shall not be responsible for compliance with state or local safety and health statutes of special application unless it has accepted such responsibility in writing.

5. **SECURITY INTEREST:** Seller retains a security interest in and right of repossession to the equipment until the full purchase price has been paid. Purchaser will not encumber nor permit others to encumber said equipment by any liens or security instruments. In the event legal action is necessary to enforce Purchaser's obligations under this order, Seller shall be entitled to recover its court costs and reasonable attorney's fees if it prevails. Purchaser shall provide insurance for Seller's benefit to protect Seller's interest against loss or damage until invoice is fully paid.

6. **SHIPMENTS AND DELIVERY:** Seller shall use its reasonable efforts to meet all shipment or delivery dates recited herein or in Purchaser's order, but any such dates are estimates only and are not guaranteed. Seller shall have no liability to Purchaser for damages or penalties, direct or indirect, for any delay in shipment or delivery, whether such delay is minor or substantial, nor shall Purchaser have the right to declare a breach of contract because of any such delay. Delivery of schedules are subject to prompt receipt by Seller of all necessary information and instructions from Purchaser, including any required approval of drawings, and establishment of agreed terms of payment. Unless otherwise agreed, all shipments are F.O.B. Seller's factory and all claims for damage, delay, or shortage arising from any shipment shall be made directly against the carrier by the Purchaser. When shipments are specified F.O.B. destination, Purchaser shall inspect the equipment, and notify Seller of any damage or shortage within seven days of receipt. Failure to so notify Seller shall constitute acceptance by Purchaser, relieving Seller of liability for damages or shortages. Unless prohibited by Purchaser, Seller shall make partial shipments of completed items for payment under terms of order.

7. **WARRANTY:** Seller warrants equipment of its manufacture only in accordance with its current applicable Seller's Product warranty against defects in workmanship and materials, which warranty is incorporated by reference and made a part hereof.

8. **PATENTS:** Seller agrees that it will defend and indemnify Purchaser against damages arising from proceedings, alleging that Seller's equipment infringes any apparatus claim of a patent existing as of date of order, provided Seller is given prompt written notice of such proceeding or threat thereof under a patent, and Purchaser

accords Seller full control of the defense, applicable patent/fraud counterclaims, settlement or compromise thereof and any recoveries thereunder. Purchaser agrees that it shall furnish Seller, on request, all needed information, assistance and authority to enable Seller so to defend. Seller will reimburse Purchaser for actual out-of-pocket expenses, exclusive of legal fees, incurred in rendering assistance at Seller's request. The foregoing states the entire liability of Seller with respect to patent infringement. Purchaser agrees that it shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses to which the Seller may become liable by reason of any infringement or alleged infringement of a patent or patents arising out of performance of this order if the equipment is constructed in accordance with Purchaser's detailed drawings or designs submitted to Seller.

9. **CANCELLATION, SUSPENSION OR DELAY:** If Purchaser requests or causes a cancellation, suspension or delay of Seller's work, Purchaser shall pay Seller all appropriate charges incurred up to date of such cancellation, suspension or delay, plus Seller's overhead and reasonable profit. Additionally, all charges related to and risks incident to storage, disposition, and/or resumption of work shall be borne solely by Purchaser.

10. **LIMITATION OF LIABILITY:** Seller shall not be liable to Purchaser for any consequential or incidental damages of any nature for any reason whatsoever, whether such damages are based in contract or in tort, including strict liability or negligence. The remedies stated in Seller's warranty attached hereto constitute the sole and exclusive remedy of Purchaser for any defect in material and workmanship or performance failure of Seller's equipment. Seller's liability for direct damages shall not exceed the material portion of the contract price for the defective equipment.

11. **CHANGES AND BACKCHARGES:** Seller shall not be obligated to make any changes in or additions to the scope of the work unless Seller agrees thereto and an equitable adjustment is made to price and/or delivery. Seller will not approve or accept returns of or backcharges for labor, materials or other costs incurred in modification, adjustment, service or repair or equipment unless previously approved in writing by an authorized employee of Seller.

12. **CHANGES IN DESIGN:** With proper notification in writing to Purchaser, Seller reserves the right to modify the design and construction of equipment in order to incorporate improvements or to substitute material equal or superior to that originally specified. No charge shall be made to Purchaser for modifications made to Seller's option.

13. **PROPRIETARY INFORMATION:** All information furnished by Seller is solely for Purchaser's use in connection with the equipment purchased herein, and shall not be disclosed to any third party without Seller's prior written consent, unless required by law.

14. **FORCE MAJUERE:** The Seller shall be relieved of its obligations hereunder and of any liabilities contained herein whenever and to the extent to which the fulfillment of such obligations is prevented, frustrated or impeded by conforming to any statute or any rule, regulation, order or requisition made thereunder, or any consequence thereof, by state, federal, national or international prohibition or sanction, by war (whether declared or not), military activity, terrorism, acts of public enemies, accidents, fire, flood, nuclear fallout, acts of God or any cause of like or different kind beyond its control, or by reason of any industrial dispute, or any consequence thereof.

15. **GOVERNING LAW:** This agreement shall be interpreted in accordance with the laws of the State of Washington, U.S.A., which laws shall be deemed to be the governing law of this contract with regard to any disputes or questions of interpretation between the parties.

16. **ENTIRE AGREEMENT:** This proposal expresses the entire agreement between the parties hereto and supersedes any previous communications, representations, or agreements, whether oral or written, and is not subject to modification except in writing, signed by an authorized officer of each party.



Business of the City Council
City of Gig Harbor, WA

Subject: Standards for Indigent Defense

Dept. Origin: Court

Proposed Council Action: Approve Resolution No. 907 Adopting Standards for Indigent Defense

Prepared by: Stacy Colberg

For Agenda of: July 23, 2012

Exhibits: Proposed Resolution
Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

clerk 7/19/12
R - 7/19/12
apprvd email
[Signature]
[Signature]

Expenditure Required	Fiscal Consideration	Amount Budgeted	Appropriation Required
0	\$0		\$0

INFORMATION / BACKGROUND:

On June 15, 2012 the Washington State Supreme Court issued an order adopting new minimum standards for indigent defense services and a system to certify compliance. All but one standard are effective September 1, 2012.

The City of Gig Harbor contracts with Pierce County Department of Assigned Counsel (DAC) for its defense services. The Supreme Court order requires that all defense counsel certify compliance with the standards by quarterly reports to the court. RCW 10.101.030 requires each city/county to adopt standards for public defense services. Once these standards are adopted the next step is to negotiate a contract with Pierce County DAC that incorporates the standards and establishes a certification and compliance directive. The current public defender contract is due to expire December 31, 2012.

FISCAL CONSIDERATION:

None.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 907 Adopting Indigent Defense Standards.

RESOLUTION NO. 907

**A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON;
ADOPTING STANDARDS FOR INDIGENT DEFENSE, REQUESTING
STAFF TO DEVELOP REPORTING WITH PIERCE COUNTY REGARDING
THE PROVISION OF SERVICES.**

WHEREAS, RCW 10.101.030 requires each City to adopt standards for delivery of public defense services, whether provided by contract, assigned counsel, or a public defender office, and

WHEREAS, the Washington State Bar Association has adopted a standard for indigent defense services approved by the Board of Governors on June 3, 2011. and

WHEREAS, the Washington State Supreme Court pursuant to Order No. 25700-A-1004 has adopted a new standard for indigent defense services requiring a certificate of compliance for defense counsel, and

WHEREAS, such Supreme Court standards, with the exception of Standard 3.4 become effective on September 1, 2012, and

WHEREAS, new Standard 3.4 relating to caseload limits and weighting methodology shall become effective on September 1, 2013, and

WHEREAS, the City of Gig Harbor contracts with Pierce County Washington for the provision of defense services, now, therefore,

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

Section 1. Pursuant to the requirements of RCW 10.101.030 and the requirements of Order No. 25700-A-1004 of the Washington State Supreme Court, the indigent defense standards set forth in the Supreme Court Order are hereby adopted and incorporated by this reference as fully as if herein set forth. These adopted standards shall be deemed amended, from time to time, upon amendment of the standard by the State Supreme Court. The standards shall be effective and implemented in accordance with the timeframes established in the Court's order.

Section 2. The Standard For Indigent Defense Services adopted by the Washington State Bar Association as approved by its Board of Governors on June 3, 2011 shall serve as a guideline in the interpretation and application of these defense standards,.

Section 3. The City hereby requires that Pierce County and all counsel assigned by or hired by Pierce County comply with the Supreme Court Rule as interpreted pursuant to the Washington State Bar Association guidelines. The staff is requested and directed to enter into negotiation with Pierce County regarding contract amendments necessary to incorporate such standards in the parties' contract and to provide for an annual reporting system to confirm implementation of these guidelines as set forth by the Washington State Supreme Court. Such report shall include case count information relating to Gig Harbor cases as well as confirmation of compliance by defense counsel with the certification requirements of the court rule. Such negotiation shall also address indemnity, costs and any other relevant considerations.

Section 4. Ratification and Confirmation. All acts consistent with and prior to the effective date of this Resolution-are hereby ratified and confirmed.

Section 5. Effective Date. This Resolution shall be effective the 23rd day of July, 2012.

RESOLVED this 23th day of July, 2012.

CITY OF GIG HARBOR

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

FILED WITH THE CITY CLERK: 07/18/12
PASSED BY THE CITY COUNCIL: 07/23/12
RESOLUTION NO. 907



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

Subject: Sehmel/Burnham Right Turn Lane Addition Project – Public Works Contract Award and Consultant Services Contract Authorization

Dept. Origin: Public Works/Engineering

Proposed Council Action:

1. Approve and authorize the Mayor to award a Public Works Contract with Henderson Partners, LLC, in the not-to-exceed amount of \$159,731.57 and authorize the City Engineer to approve additional expenditures up to \$10,000 to cover any cost increases that may result from contract change orders.
2. Approve and authorize the Mayor to execute a Consultant Services Contract with Krazan and Associates, Inc., for related materials testing in an amount not to exceed \$2,673.20.

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

For Agenda of: July 23, 2012

Exhibits: Public Works Contract, and Consultant Services Contract with Scope and Fee

Initial &
Date

Concurred by Mayor: *CLH 7/19/12*
Approved by City Administrator: *R-7/19/12*
Approved as to form by City Atty: *by email 7/19/12*
Approved by Finance Director: *SP 7/19/12*
Approved by Department Head: *7/19/12*

Expenditure Required	\$162,404.77	Amount Budgeted	\$ 210,000.00	Appropriation Required	\$0
-----------------------------	--------------	------------------------	---------------	-------------------------------	-----

INFORMATION/BACKGROUND

The adopted Interchange Justification Report recommended the addition of a right turn lane at the intersection of Sehmel and Burnham Drive. The addition of this lane will improve the overall intersection Level of Service in that it will promote a free right turn movement for right turning vehicles.

BID RESULTS

The Sehmel / Burnham Drive Right Turn Lane Addition Project was bid using the City's Public Works bidding process. The Engineer's Opinion of Probable Cost for Bid Schedules A and B was \$162,887.80. A total of six bid proposals were received by the City on July 19, 2012. Bid results from each bidder are summarized below showing the bid amount for the recommended award of the Public Works Construction Contract.

BIDDER	TOTAL BID AMOUNT
1. Henderson Partners, LLC	\$ 159,731.57
2. Active Construction, Inc.	\$ 160,376.17
3. Looker and Associates, Inc.	\$ 160,402.51
4. Talbot Excavating Co., LLC	\$ 161,212.30
5. RV Associates, Inc.	\$ 166,437.68
6. Pivetta Bros. Construction, Inc.	\$ 228,375.86

FISCAL CONSIDERATION

Funding for this project is provided by Hospital Benefit Zone (HBZ) Funds. The budget summary for this item is provided in the table below:

2012 HBZ Projects (Sehmel – Right Turn Lane Addition)	\$ 210,000.00
Requested 2012 Expenses:	
Engineering/ Design Contract / H.W. Lochner (previously awarded)	\$ 12,271.28
Construction Services Contract / H.W. Lochner (previously awarded)	\$ 14,867.53
Public Works Construction Contract / Henderson Partners, LLC	\$ 159,731.57
Change Order Authority for Public Works Contract	\$ 10,000.00
Materials Testing Contract – Krazan & Associates, Inc.	\$ 2,673.20
Remaining Budget =	\$ 10,456.42

BOARD OR COMMITTEE RECOMMENDATION

The Operations Committee was apprised of this project at the February 16, 2012 Committee meeting and Council formally adopted the HBZ list at the June 25, 2012 Council meeting.

RECOMMENDATION/MOTION

1. Approve and authorize the Mayor to award a Public Works Contract with Henderson Partners, LLC, in the not-to-exceed amount of \$159,731.57 and authorize the City Engineer to approve additional expenditures up to \$10,000 to cover any cost increases that may result from contract change orders.
2. Approve and authorize the Mayor to execute a Consultant Services Contract with Krazan and Associates, Inc., for related materials testing in an amount not to exceed \$2,673.20.

CITY OF GIG HARBOR PUBLIC WORKS CONTRACT
Sehmel Drive NW / Burnham Drive NW Right Turn Lane Addition Project
CSP-1009

THIS AGREEMENT, made and entered into, this ____ day of _____, 201_, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and Henderson Partners, LLC, organized under the laws of the State of Washington, located and doing business at 11302 Burnham Drive, Gig Harbor, WA 98332 hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary to complete the work under this contract generally consisting of widening of an existing roadway; construction of new curb and gutter; installation of storm drainage pipes, structures; striping; permanent signing; traffic control; grading; temporary erosion and sediment control measures; and other work, all in accordance with the attached Contract Documents called "Sehmel Drive NW / Burnham Drive NW Right Turn Lane Addition, CSP-1009", these Special Provisions, and the Standard Specifications which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Proposal," the sum of One Hundred Fifty-nine Thousand Seven Hundred Thirty-one Dollars and Fifty-seven Cents (\$ 159,731.57), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.

1. The Notice to Proceed will be given within 21 days after the contract has been executed BY BOTH PARTIES. The Contractor shall commence construction activities on the project site within ten (10) calendar days of the Notice to Proceed date, unless otherwise DIRECTED BY THE OWNER in writing. Contract time shall begin on the first working day following the Notice to Proceed Date. Work shall be substantially complete in accordance with Section 1-08.5 of the Special Provisions in the Contract Documents.
2. The Contractor agrees to pay the City for liquidated damages incurred according to Standard Specification 1-08.9 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
3. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
4. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Bid Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Special Provisions," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2012 Standard Specifications for Road, Bridge, and Municipal

Construction," including the American Public Works Association (APWA) General Special Provisions.

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

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

CITY of GIG HARBOR:

CONTRACTOR:

 Charles L. Hunter, Mayor
 City of Gig Harbor
 Date: _____

 (Signature of Official)

 (Print Name)

 (Title)

ATTEST:

 City Clerk

Date: _____

APPROVED FOR FORM:

 City Attorney

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
KRAZAN AND ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Krazan and Associates, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction of the Sehmel / Burnham Drive Right Turn Lane Addition Project and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Two Thousand Six Hundred Seventy-three Dollars and Twenty Cents (2,673.20) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by September 15, 2012; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The

Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

9. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

10. City's Right of Inspection. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules,

{ASB983053.DOC;1\00008.900000\}

and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

11. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

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

13. 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.

14. Resolution of Disputes and Governing Law.

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

15. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the

addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
Krazan and Associates, Inc.
ATTN: Jeffrey Bowers
1230 Finn Hill Rd NW, Suite A
Poulsbo, WA 98370
(360) 598-2126

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

16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

[The remainder of this page left intentionally blank]

17. **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 this _____ day of _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: *M. Bowry*
Its: DEPUTY MANAGER

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

17 July 2012

KA Proposal No. T12137WAKR2
 Page 1 of 1

Ms. Maureen Whitaker
CITY OF GIG HARBOR
 3510 Grandview Street
 Gig Harbor, WA 98335

Tel: (253) 853-7661
 Fax: (253) 853-7597
 E-Mail: whitakerm@cityofgigharbor.net

RE: CONSTRUCTION TESTING AND INSPECTION SERVICES FOR:
Sehmel Drive NW / Burnham Drive NW Right Turn Lane Addition, Bid Schedule A & B

Dear Ms. Whitaker:

We greatly appreciate and thank you for the opportunity to submit this Proposal and Agreement for Testing and Inspection services for the above referenced project, which is based off of our review of the plans, Plotted-dated Jan. 2011. Should you have any questions, please feel free to contact our office. We look forward to working with you.

The fee charges for projects under this Agreement are:

Scope: Testing & Inspection Project Services	UNIT	RATES	Hr./Ea.	Estimated Cost
Soils Inspection	6	\$55.00	hr.	\$330.00
Nuclear Densometer Rental/Security Fee	3	\$15.00	ea.	\$45.00
Asphalt Inspection	4	\$55.00	hr.	\$220.00
Reinforced Concrete Inspection	4	\$55.00	hr.	\$220.00
Project Management	1	\$95.00	hr.	\$95.00
Report Preparation/Processing	0.5	\$50.00	hr.	\$25.00
Mileage/Trip	24	\$0.55	ea.	\$13.20
Sample Pick Up	2	\$45.00	hr.	\$90.00
Moisture Density Relationship {ASTM D1557}	4	\$200.00	ea.	\$800.00
Soil Sieve Analysis {ASTM C136}	4	\$100.00	ea.	\$400.00
Compressive Strength Samples	5	\$20.00	ea.	\$100.00
Asphalt Rice Analysis	1	\$110.00	ea.	\$110.00
Asphaltic Content Hot Mix by Ignition Method (ASTM D6307)	1	\$225.00	ea.	\$225.00
TOTAL ESTIMATED PROJECT BUDGET:				\$2,673.20

- Prices are subject to change if this Agreement is not executed within thirty (30) calendar days.
- Services will be performed on a “time and materials” basis. Mileage will be charged from the Kitsap/ Pierce county line only. All inspections performed will be billed on a portal to portal basis unless specifically noted otherwise.
- Additional services requested in addition to the above will be billed at our current rates.

Respectfully submitted,
KRAZAN & ASSOCIATES, INC.

Jeffrey M. Bowers
 Peninsula Division
 Construction Services Manager



Business of the City Council
City of Gig Harbor, WA

Subject: Donkey Creek Estuary Restoration and Road Improvements – Surveying Services for Franchise Utility Relocations – Consultant Services Contract.

Proposed Council Action: Approve and authorize the Mayor to execute a Consultant Services Contract with Parametrix, Inc. in the not-to-exceed amount of \$4,500.00.

Dept. Origin: Public Works/Engineering

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

For Agenda of: July 23, 2012

Exhibits: Consultant Services Contract
Scope of Work

	Initial & Date
Concurred by Mayor:	<u>SLH 7/19/12</u>
Approved by City Administrator:	<u>R 7/19/12</u>
Approved as to form by City Atty:	<u>byomaw 7/19/12</u>
Approved by Finance Director:	<u>DF 7/12</u>
Approved by Department Head:	<u>7/20/12</u>

Expenditure Required	\$4,500.00	Amount Budgeted	\$1,961,000.00	Appropriation Required	0
----------------------	------------	-----------------	----------------	------------------------	---

INFORMATION / BACKGROUND

In order to avoid potential and costly interferences with City utilities associated with the Donkey Creek Improvement project, the contract will provide the location and depth of key utility crossings.

FISCAL CONSIDERATION

The 2012 Storm Water Capital Division Objective Fund has allocated funds for the Donkey Creek Estuary and Road Improvements project. This expense has been considered in the total project budget as a "Miscellaneous Cost".

BOARD OR COMMITTEE RECOMMENDATION

N/A.

RECOMMENDATION/MOTION

Move to: Approve and authorize the Mayor to execute the Consultant Services Contract with Parametrix, Inc. in the not-to-exceed amount of \$4,500.00.

**PROFESSIONAL SERVICES CONTRACT
(Architects, Engineers, Land Surveyors, Landscape Architects)
BETWEEN THE CITY OF GIG HARBOR AND
PARAMETRIX, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Parametrix, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the surveying the utility relocations for the Donkey Creek Restoration and Transportation Improvements project and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Four Thousand Five Hundred Dollars and Zero Cents (\$4,500.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by November 1, 2012; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The

Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees or volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

9. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

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

11. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided

without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

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

13. 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.

14. Resolution of Disputes and Governing Law.

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

15. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
Parametrix, Inc.
ATTN: Shannon Thompson
4660 Kitsap Way, Ste. A
Bremerton, WA 98311
(360) 271-9207

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

16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

17. 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 this _____ day of _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

SCOPE OF WORK

**City of Gig Harbor
Austin Street Utilities**

Objective

Parametrix surveyor will staking improvements along Austin Street at the Donkey Creek Project for the purpose of providing utility purveyors a horizontal and vertical position of new improvements in an effort to avoid conflicts.

Improvements to be staked

Parametrix surveyors will provide one set of stakes for each of the following improvements.

1. Construction base line of Austin St. from Harborview Dr. (10+00) to North Harborview Dr. (16+78). Stakes will be set at 50 foot stations including point of curve, (PC) point of tangent (PT) and street intersections (SI).
2. Stake back of sidewalk on south side of Austin St. Stakes will be set at 50 foot stations including PC and PT of curves.
3. Stake top back of curb on north side of Austin St. Stakes will be set at 50 foot stations including PC and PT of curves.
4. Provide two sets of stakes defining the alignment and vertical positions for future storm lines at crossings of reclaimed waterline and 12" water main along Austin St.
5. Stake centerline of waterline at 50 foot stations along Harborview Dr. and Austin St.
6. Provide survey staking for possible utility conflicts as directed by the City.
7. Stake radius point for roundabout intersection at Austin St. and Harborview Dr.

Assumptions

- Survey stakes will be set at the centerline of all improvements.
- Vertical values will be based upon finish grade or top of pipe.
- Survey control points are available and have not been damaged.
- The above referenced scope is based upon field work consisting of two (2), ten (10) hour days, with support from office staff.

Fee – Time and material not to exceed

Labor, material and expenses.....\$4,500.00

EXHIBIT A

SCOPE OF WORK

**City of Gig Harbor
Austin Street Utilities**

FIELD WORK:

Crew rate at \$175 per hour two 10 hour days3,500.00
Equipment and Vehicle charges \$150 per day.....300.00
Total Field Work \$3,800.00

OFFICE WORK:

Survey Technician providing office calculations from CAD drawing 5 hours at \$85 per hour.....425.00
Survey Supervisor PLS Project Manage and crew direction 2 hours at \$141 per hour.....282.00

Total Office Work \$707.00

Estimated cost \$4507.00

Written estimate is not to exceed \$4,500.00.

RECEIVED

MAY 29 2012

CITY OF GIG HARBOR



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 23, 2012

The Honorable Chuck Hunter
Mayor of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Dear Mayor Hunter:

Congratulations! The Gig Harbor Wastewater Treatment Plant is receiving the 2011 "Wastewater Treatment Plant Outstanding Performance" award. The Washington State Department of Ecology (Ecology) will issue a news release recognizing the 2011 award recipients that will include the Gig Harbor Wastewater Treatment Plant.

My staff evaluated wastewater treatment plants in Washington for compliance with the effluent limits, monitoring and reporting requirements, spill prevention planning, pretreatment, and overall operational demands of the National Pollutant Discharge Elimination System (NPDES) permit. Of approximately 300 wastewater treatment plants statewide, yours is one of 108 that achieved full compliance with its NPDES permit in 2011.

It takes diligent operators and a strong management team, working effectively together, to achieve this high level of compliance. It's not easy to operate a wastewater treatment plant 24 hours a day, 365 days a year, without violations. Ecology appreciates the extraordinary level of effort your plant operators demonstrated throughout 2011. Talented and proficient operators are critical to successful plant operations and protecting the health of Washington's waters. This is the sixth consecutive year the Gig Harbor Wastewater Treatment Plant has received this award. Your excellent record proves that dedicated operators run the Gig Harbor Wastewater Treatment Plant and their combined efforts lead to outstanding compliance.

Please call Amy Jankowiak at 425-649-7195 if you have any questions or comments about your award.

Thank you for the excellent service you provide. Congratulations!

Sincerely,

Kelly Susewind, P.E., P.G.
Water Quality Program Manager

cc: Darrell Winans, WWTP Supervisor
Steve Misiurak, City Engineer
Norine Landon, Senior Operator



In recognition and sincere appreciation of

Kae Paterson

The City of Gig Harbor would like to thank you for your
years of dedication and service

Gig Harbor Planning Commission
1972 - 1982; 1984 - 1996; and 1997 – 2003

Gig Harbor Design Review Board
2007 – 2012



Business of the City Council
City of Gig Harbor, WA

Subject: Second Reading of Ordinance -
2012 Housekeeping Amendments

Proposed Council Action: Adopt ordinance with either Section 19a OR Section 19b on portable signs.

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner *JK*

For Agenda of: July 23, 2012

Exhibits: Draft ordinance;
Summary of amendments.

Initial & Date

Concurred by Mayor: *CLH 7/17/12*
Approved by City Administrator: *R-7/17/12*
Approved as to form by City Atty: *email 6/29/12*
Approved by Finance Director: *N/A*
Approved by Department Head: *JK 7/17/12*

Expenditure	Amount	Appropriation	
Required 0	Budgeted 0	Required	0

INFORMATION / BACKGROUND

Over the last decade, the Planning Department has been documenting text amendments necessary to clarify permitting procedures, correct errors and omissions, reduce the need for interpretations and improve customer service. Over 100 such efficiency amendments have been identified. In 2010, many were resolved as part of our efficiency amendments and updated permit processing ordinance.

In order to keep up with the growing list, staff has proposed a set of housekeeping amendments for 2012. Most resolve reference errors, omissions, conflicts in code, or further improve permit processing. In addition, a few minor substantive issues have arisen in the last year which have been included, such as fireplace chimneys in setbacks and portable sign regulations.

At the public hearing on this ordinance, the Council directed staff to develop two alternatives for portable signs: one which allows any material, such as paper, and changeable copy on portable signs and one which prohibits changeable copy and non-durable materials, such as paper. These alternatives can be found in Sections 19a and 19b, respectively.

The enclosed summary sheet explains the proposed amendments. The ordinance shows the actual code changes in numerical order.

ENVIRONMENTAL ANALYSIS

The City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on May 18, 2012.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

The Planning and Building Committee reviewed an initial set of housekeeping amendments at their February 6, 2012 meeting. Furthermore, the Planning Commission agreed that a set of housekeeping amendments could be directly considered by the City Council.

RECOMMENDATION / MOTION

Adopt ordinance with either Section 19a OR Section 19b on portable signs.

SUMMARY OF PROPOSED AMENDMENTS:

1. **General** – update references; clarify processing procedures; correct errors and omissions.
2. **Encroachment Permit and legislative SEPA appeals** – Change hearing body from City Council to Hearing Examiner.
3. **Complete Application Requirements** – Amend the complete application requirements to meet current policies and procedures.
4. **Plat Expirations** – Update the final plat provisions to meet the permanent extension of plat approvals (varies from 5 to 9 year depending on submittal or recording dates) to meet Chapter 92 Laws of 2012 of the Washington State Legislature.
5. **Sign Definitions** – Remove duplicative definitions for signs. Use the definitions in the sign code chapter.
6. **Fireplace Chimneys** – Allow up to 18 inches of a fireplace chimney encroach into the setback area consistent with the current allowances for roof eaves, bump-out windows and decks/balconies.
7. **Communication Facilities** – Allow co-location of wireless antennas to be Type I permits to make co-locations easier than constructing a new monopole (consistent with the statements at the beginning of the chapter).
8. **Portable Signs** - Amend regulations to clarify that portable signs must relate to the business displaying the signs.
9. **Planning Director** – Change references to Community Development Director in the Environment title to Planning Director.
10. **Critical Areas** – Amend applicability section of critical area review to meet the goals of the chapter and best available science guidelines; and update references to Department of Ecology manuals and guidelines.
11. **Comprehensive Plan** – Require a resolution with findings of fact when Council decides not to process a proposed amendment after the docket hearing.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, CORRECTING ERRORS AND OMISSIONS, AND CLARIFYING PROVISIONS TO AID IN INTERPRETATION AND IMPLEMENTATION OF TITLES 12, 16, 17, 18 AND 19; ALLOWING UP TO 18 INCHES OF A FIREPLACE CHIMNEY IN ALL SETBACKS; AMENDING PORTABLE SIGN REGULATIONS; RENAMING CHAPTER 17.66; REPEALING SECTIONS 17.04.730, 17.04.740, 18.10.080 AND 18.10.090; ADDING NEW SECTIONS 17.89.035, 17.90.035 AND 18.08.193; AND AMENDING SECTIONS 12.02.060, 16.03.001, 16.05.001, 16.06.001, 16.06.003, 16.06.006, 17.04.225, 17.04.890, 17.04.900, 17.04.910, 17.61.020, 17.66.030, 17.78.060, 17.80.030, 17.80.060, 17.80.100, 17.89.030, 17.89.040, 17.90.030, 17.90.040, 17.98.037, 17.98.058, 17.99.340, 18.04.230, 18.08.030, 18.08.034, 18.08.040, 18.08.090, 18.08.150, 18.08.192, 18.08.196, 18.10.060, 19.02.008 AND 19.09.140 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City has documented land use and processing code amendments necessary to correct errors and omissions, reduce the need for interpretations and improve implementation of the regulations by the City; and

WHEREAS, the City desires to correct these errors and omissions and clarify the code to reduce interpretation and improve customer service; and

WHEREAS, the City desires to correct and update references and remove conflicting provisions in Titles 17 and 18; and

WHEREAS, the City desires to have appeals of encroachment permits and legislative SEPA determinations heard by the City's Hearing Examiner rather than the City Council; and

WHEREAS, many of the requirements for a complete application for multiple project permits need to be updated to meet current policies and procedures; and

WHEREAS, under chapter 92, Laws of 2012, the Washington State Legislature provided for limited extensions relating to plat approvals, and the City Council desires to amend sections 16.06.003 and 16.06.006 of the Gig Harbor Municipal Code to comply with the new requirements; and

WHEREAS, the co-location permit process for communication facilities should be streamlined to meet the purpose and general guidelines of Chapter 17.61 Communication Facilities; and

WHEREAS, the City desires to allow up to 18 inches of a fireplace chimney in all setbacks; and

WHEREAS, amended regulations concerning portable signs are intended to clarify that portable signs must relate to the business displaying the signs; and

WHEREAS, because the City no longer has a Community Development Director position, all references to that position in the environment title should be changed to Planning Director; and

WHEREAS, the critical area review applicability section should be updated to include all development and all permit types which lead to development in order to be meet the goals of the Critical Areas chapter (GHMC 18.08) and best available science provisions; and

WHEREAS, the code reference to Washington State Department of Ecology's wetland identification, delineation, rating and analysis report manuals should be updated to meet current Ecology guidance; and

WHEREAS, the City desires to add a formal resolution process for those comprehensive plan amendments applications which are not forwarded to the Planning Commission for further processing after a docket hearing; and

WHEREAS, the proposed amendments were forwarded to the Washington State Department of Commerce on May 18, 2012, pursuant to RCW 36.70A.106, and were granted expedited review on June 6, 2012; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on June 6, 2012; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on June 25, 2012; and

WHEREAS, on _____, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. Section 12.02.060 in the Encroachment Permits chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

12.02.060 Appeal.

Any decision of the director of public works or the director's designee, with respect to the issuance, refusal to issue, or revocation or refusal to revoke a permit may be appealed to the city council hearing examiner by

filing a notice of intent to appeal such decision with the city administrator/clerk within 10 days of the date of issuance of the decision being appealed. If an appeal from any such decision is taken, the appellant shall be required to pay a nonrefundable appeal fee in an amount of not less than \$100.00. The appeal shall include a complete statement of the reason or reasons that form the basis of the appeal. The decision of the ~~city council~~ hearing examiner shall be final, binding and conclusive, ~~the decision being solely within the discretion of the legislative body.~~

Section 2. Section 16.03.001 in the Boundary Line Adjustments chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

16.03.001 Requirements for a complete application.

~~An applicant for a boundary line adjustment shall submit five copies of the following:~~

- A. A map at a scale of not less than one inch equal to 100 feet which depicts the existing property configuration, including all lot line dimensions.
- B. A map which depicts the proposed property configuration, including all lot line dimensions.
- C. A legal description of the existing property configuration and proposed property configuration, prepared by a licensed professional land surveyor.
- D. Completed application form, as described in GHMC 19.02.002.

Section 3. Section 16.05.001 in the Preliminary Plats chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

16.05.001 Requirements for a complete application.

~~A. Number of copies: 10.~~

~~B. Application Contents:~~ In addition to the requirements for a complete application as set forth in GHMC 19.02.002, an applicant for a preliminary plat shall submit the following:

- 1. ~~A.~~ A map or sketch using a scale of 100 feet to one inch or larger, showing:
 - a. 1. Topographical and other data depicting:
 - i. a. Boundary lines including bearing and distance;
 - ii. b. Easements, including location, width and purpose;
 - iii. c. Streets on and adjacent to the tract, including name and right-of-way width and location; type, width and elevation of surfacing, walks, curbs, gutters, culverts, etc.;
 - iv. d. Ground elevations on the tract, based on a datum plane approved by the city engineer; for land that slopes less than approximately two percent, show spot elevations at all breaks in grade, along all drainage channels or swales, and all selected points not more than 100 feet apart in all directions; for land that slopes more than

approximately two percent, either show contours with an interval of not more than five feet if ground slope is regular and such information is sufficient for planning purposes, or show contours with an interval of not more than two feet if necessary because of irregular land or need for more detailed data for preparing plans and construction drawings;

v. e. Other conditions on adjacent land, including approximate direction and gradient of ground slope, including any embankments or retaining walls; character and location of buildings, railroads, power lines, towers, and other nonresidential land uses or platted land within 300 feet of the subject property. Refer to subdivision plat by name, recording date, volume and page number, and show lot size, and dwelling units;

b. 2. Utilities on and adjacent to the tract, including location, size and invert elevation of sanitary, storm and combined sewers; location and size of water mains; location of gas lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the direction and distance to, and size of nearest ones, showing invert elevation of sewers;

e. 3. Other conditions on the tract including critical areas and/or their buffers, watercourses, marshes, rock outcrop;

d. 4. Zoning district designations, on and adjacent to the tract;

e. 5. Proposed public improvements, including highways or other major improvements planned by public authorities for future construction on or near the tract;

f. 6. Vicinity showing location of the tract;

g. 7. Sites, if any, to be reserved or dedicated for parks, playgrounds, or other public uses;

h. 8. Sites, if any, for multifamily dwellings, shopping centers, churches, industry or other nonpublic uses exclusive of single-family dwellings;

i. 9. Minimum building setback lines;

j. 10. Site data, including number of residential lots, typical lot size, and acres in parks, etc.;

k. 11. Plat name, scale, north arrow and date;

l. 12. Typical cross-sections of the proposed grading, roadway and sidewalk;

m. 13. Proposed sanitary, storm water and water systems plan with points of connection, grades and sizes indicated;

2. B. Title and certificates, including a legal description according to official records in the office of the county auditor; pertinent survey data compiled as a result of a survey made by or under the supervision of a land surveyor registered in the state and engaged in land surveying which contains notation stating acreage, scale, north arrow, datum, bench marks, certification of registered civil engineer or surveyor, date of survey;

3. C. Draft of proposed covenants, if any.

Section 4. Subsections 16.06.001(A) and (B) in the Final Plats chapter of the Gig Harbor Municipal Code are hereby amended, to read as follows:

16.06.001 Requirements for a complete application.

A. Five-c Copies of construction drawings, if requested.

B. Work done by city or county in connection with the checking, computing and correcting of the plat, and for plan checking, inspecting, and testing as to all plat improvements including water lines, sanitary sewer lines, storm water retention and drainage systems, streets, curbs, gutters and sidewalks, if requested.

* * *

Section 5. Section 16.06.003 in the Final Plats chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

16.06.003 Time frame for submission of final plat.¹

A. For preliminary plats approved on or after January 1, 2008 and through December 31, 2014. A final plat meeting all requirements of Chapter 58.17 RCW and this title shall be submitted to the city for approval within seven years of the date of preliminary plat approval.

B. For preliminary plats approved on or after January 1, 2015. A final plat meeting all requirements of Chapter 58.17 RCW and this title shall be submitted to the city for approval within five years of the date of preliminary plat approval.

C. For preliminary plats approved on or before December 31, 2007. A final plat meeting all requirements of Chapter 58.17 RCW and this title shall be submitted to the city for approval within nine years of the date of preliminary plat approval, unless the plat is subject to the requirements adopted under Chapter 90.58 RCW. For plats subject to Chapter 90.58 RCW, subsection A of this section applies.

D. Extensions. provided, however, that the An applicant may submit an application to the city at least 30 days prior to the expiration of the preliminary plat approval for a one-time extension of one year. Such extensions may be granted by the city only if:

A. 1. The applicant agrees to construct the development in conformance with the zoning, design review, subdivision, public works standards and other development regulations in place at the time of the application for an extension; and

B. 2. The applicant provides its consent to allow any agency providing a recommendation under RCW 58.17.150 to reconsider and modify its recommendation, and after such reconsideration, each recommendation is unchanged and supports such extension.

Section 6. The code reviser is hereby directed to update the footnote for GHMC 16.06.003 for consistency with ordinance.

Section 7. Section 16.06.006 in the Final Plats chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

16.06.006 Effect of final plat approval.¹

A. For final plats filed for record with the county auditor on or after January 1, 2008 and through December 31, 2014. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of seven years after final plat approval unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

B. For final plats filed for record with the county auditor on or after January 1, 2015. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of five years after final plat approval unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

C. For final plats filed for record with the county auditor on or before December 31, 2007 and not subject to Chapter 90.58 RCW. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of nine years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances and regulations in effect at the time of approval under RCW 58.17.150(1) and (3) for a period of nine years after final plat approval unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

D. For final plats subject to Chapter 90.58 RCW and filed for record on or before December 31, 2007, subsection A of this section applies.

Section 8. The code reviser is hereby directed to update the footnote for GHMC 16.06.006 for consistency with ordinance.

Section 9. Section 17.04.225 in the Definitions chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.04.225 Co-location.

“Co-location” means the placement and arrangement of multiple antennas and equipment on an existing-single support structure and or existing equipment pad area.

Section 10. Section 17.04.730 in the Definitions chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 11. Section 17.04.740 in the Definitions chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 12. Section 17.04.890 in the Definitions chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.04.890 Yard, front.

“Front yard” means a yard extending the full length of the front lot line and its depth is measured horizontally at right angles to the front lot line from midpoint of the front lot line to the midpoint of the front building line, except roof eaves, bump-out windows, fireplace chimneys and decks/balconies may encroach up to a maximum of 18 inches into the yard.

Section 13. Section 17.04.900 in the Definitions chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.04.900 Yard, rear.

“Rear yard” means a yard extending the full length of the rear lot line and its depth is measured horizontally at right angles to the rear lot line from midpoint of the rear lot line to midpoint of the rear building line, except roof eaves, bump-out windows, fireplace chimneys and decks/balconies may encroach up to a maximum of 18 inches into the yard.

Section 14. Section 17.04.910 in the Definitions chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.04.910 Yard, side.

“Side yard” means a yard extending from the front yard to the rear yard and its depth is measured horizontally at right angles to the side lot line from the midpoint of the side lot line to the midpoint of the side building line except roof eaves, bump-out windows, fireplace chimneys and decks/balconies may extend up to 18 inches into the yard.

Section 15. Subsections 17.61.020(C) and (D) in the Communications Facilities chapter of the Gig Harbor Municipal Code are hereby amended, to read as follows:

17.61.020 General guidelines and permit requirements.

* * *

C. General Requirements for Co-location. For new antenna and wireless communications facilities, co-location on existing towers and wireless support structures is preferred. Where co-location has been demonstrated to be impracticable, new towers are most appropriately located as stated in the order of preference in subsection B of this section. Communication facilities being co-located shall comply with all applicable development standards of this chapter.

Co-location on existing support structures is encouraged by fewer standards and a simplified permit procedure. Attachment of antennas to existing nonresidential structures and buildings primarily within business parks, employment districts and commercial districts is preferable to installation of new wireless support structures, broadcast and relay towers or monopoles. The city may request that the applicant perform feasibility studies associated with applications for communications facilities in order to demonstrate that locations on existing structures have been explored as the preferred siting alternative, or that a conditional use permit or a variance from the development standards in this chapter, as requested by the applicant, is necessary in order to provide wireless communications, television, radio or other broadcast services.

If the city requests such a feasibility study of an applicant, the study shall demonstrate:

a. That the applicant has: (i) contacted the owners of structures in excess of 30 feet within a one-quarter mile radius of the proposed site and from which a location standpoint could provide part of a network for transmission of signals; (ii) asked for permission to install the antenna on those structures; and (iii) received a denial of permission to install the antenna on those structures, together with the reason for such denial.

The information submitted by the applicant shall include (i) a map of the area to be served by the tower or antenna; (ii) its relationship to other cell sites in the applicant's network; and (iii) an evaluation of existing buildings taller than 30 feet, within one-quarter mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

In addition to the above, an applicant desiring to locate a new antenna support structure in a residential or waterfront district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

D. Permit Processing Requirements.

1. Permit Type.

a. Co-location. Co-location shall be processed as a Type I permit.

a. b. Small Satellite Dish Antenna. Small satellite dish antennas shall comply with all International Building Code requirements, and Chapter 15.06 GHMC, but are otherwise exempt from the permit application procedures of GHMC Title 19.

b. c. Large Satellite Dish Antenna. Large satellite dish antennas and other antenna applications shall be processed as a Type I permit. A building permit shall also be required.

c. d. Amateur Radio Towers. Amateur radio tower applications shall be processed as a Type I permit. A building permit shall also be required.

d. e. Wireless Communication Facilities. A conditional use permit shall be required for wireless communication facilities in residential, waterfront district and downtown business districts, which shall be processed as a Type III permit. For all other districts, wireless communication facilities shall be processed as a Type II permit. A building permit shall also be required.

e. f. Broadcast and Relay Towers. Broadcast and relay tower applications shall be processed as a Type I permit. A building permit shall also be required.

Section 16. Chapter 17.66 of the Gig Harbor Municipal Code is hereby renamed to Variances and Interpretations.

Section 17. Section 17.66.030 in the Variances and Interpretations chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.66.030 General variances.

A. A general variance is a Type III application and shall be processed as set forth in GHMC Title 19. The hearing examiner shall have the authority to grant a variance from the requirements of this title, except as identified in GHMC 17.66.020(A), administrative variances, after considering the matter at a public hearing.

B. Before any variance can be granted, the examiner shall make findings of fact setting forth and showing that the following circumstances exist:

1. The proposed variance will not amount to a rezone nor authorize any use not allowed in the district;

2. Special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other land in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

3. The special conditions and circumstances do not result from the actions of the applicant;

4. Granting of the variance requested will not confer a special privilege that is denied other lands in the same district;
5. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
6. The hearing examiner shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land;
- ~~7. The decision of the hearing examiner shall be final. Appeals of the examiner's decision may be made to the city council in accordance with the appeal procedures established under GHMC 17.10.160.~~

Section 18. Subsection 17.78.060(A) in the Landscaping and Screening chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.78.060 Requirements for residential landscaping.

A. Perimeter Areas.

1. Notwithstanding other regulations found in this chapter, perimeter areas shall be landscaped. The required width of perimeter areas to be landscaped shall be at least the depth of the required yard or setback area. Areas to be landscaped shall be covered with live plant materials which will ultimately cover 75 percent of the ground area, within three years. One deciduous tree a minimum of two-inch caliper or one six-foot evergreen or three shrubs which should attain a height of three and one-half feet within three years shall be provided for every 500 square feet of the area to be landscaped.

2. A minimum of 40 percent of the required plantings shall be evergreen trees a minimum of six feet in height. ~~For~~ For properties located within the boundaries of the height overlay district referenced in Chapter 17.62 GHMC, ~~the~~ trees shall be of a species that will ultimately grow to the height of the planned building. In the selection of trees and shrubs, consideration should be given to overall aesthetic impacts at maturity.

* * *

Section 19a. Subsection 17.80.030 (39) in the Sign Code chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.80.030 Definitions.

The following definitions shall apply for the purpose of this code:

* * *

39. "Portable sign" means a freestanding sign made of any material, which by its design is readily movable and is not permanently affixed to the ground. The intent of a portable sign used for commercial purposes is

to advertise a business, a service or a product that is customarily provided at the business displaying the portable sign.

* * *

OR

Section 19b. Subsection 17.80.030 (39) in the Sign Code chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.80.030 Definitions.

The following definitions shall apply for the purpose of this code:

* * *

39. "Portable sign" means a freestanding sign made of ~~any material~~ durable materials that does not allow changeable copy, which by its design is readily movable and is not permanently affixed to the ground. Temporary materials including but not limited to paper shall not be used in connection with a portable sign. The intent of a portable sign used for commercial purposes is to advertise a business, a service or a product that is customarily provided at the business displaying the portable sign.

* * *

Section 20. Subsection 17.80.060(H) in the Sign Code chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.80.060 General regulations.

* * *

H. Portable Signs. Portable signs shall not exceed six square feet per side and shall not exceed 12 square feet total. Portable signs shall not exceed four feet in height, ~~and not~~ Not more than one such portable sign may be displayed per business. Portable signs and must be located on the premises to which they relate, except real estate signs and for those signs allowed under GHMC 17.80.100(F). Any business displaying a portable sign may not advertise a service or product that is not customarily provided at the business displaying the sign, nor may any business utilize the portable sign of another business to advertise a service or product that it provides. Portable signs may be displayed during business hours only. See GHMC 17.80.100(F) for additional regulations on portable signs in Area 2.

* * *

Section 21. Subsection 17.80.100(F) in the Sign Code chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.80.100 Sign standards for Area 2.

The following sign standards shall apply:

* * *

F. Portable Sign. One portable sign per customer building entrance (not to exceed one sign per 30 feet of building frontage) may be permitted subject to the following:

1. Location. Signs shall be located on the premises or directly in front of the sponsoring business at a point ~~not on the right-of-way~~ which is closest to the building entrance. No sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant, or any other type of street furniture, or otherwise create a hazard, including a tripping hazard.

~~2. Hours of Display. Signs may be displayed during business hours only.~~

3. 2. Allowed Height. Maximum height of portable sidewalk signs shall be three feet. All other size requirements of portable signs described in GHMC 17.80.060(H) shall apply.

4. 3. Right-of-Way Permit. In order to place a portable sign in the public right-of-way, the sign owner must comply with the requirements of this chapter as well as the requirements of Chapter 12.02 GHMC, Encroachment Permits.

* * *

Section 22. Section 17.89.030 in the Planned Residential Development Zone (PRD) chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.89.030 Preliminary PRD Ppermit application procedures.

A. Type of Permit. A preliminary PRD application shall be processed according to the procedures set forth in GHMC Title 19 for Type III-A project permit applications. ~~Final PRD applications shall be processed according to the procedures in GHMC Title 19 for Type III A project permit applications.~~

B. Duration of Approval and Expiration of Preliminary PRD. The duration of preliminary PRD approval and expiration shall be governed by GHMC 19.02.008 and be subject to the timeframes in GHMC 19.02.008(A), unless the preliminary PRD is associated with a preliminary plat; in that case, the underlying preliminary plat approval and expiration shall govern the preliminary PRD.

C. Concurrent Applications. Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with a PRD, to the extent that procedural requirements allow simultaneous processing. If an applicant requests that a preliminary PRD application be processed prior to the time a preliminary plat application is submitted or without a preliminary plat, the preliminary PRD

application shall not be considered to be vested, i.e., such application shall not be considered under the subdivision, zoning or other land use control ordinances in effect at the time the fully completed application for a preliminary PRD has been submitted to the city.

D. Phasing. If a proposed PRD is to be developed in phases, the entire PRD shall be portrayed in the preliminary PRD application, and each phase shall individually receive final PRD approval within the time periods established in subsection B of this section.

E. Design Review. The applicant shall submit an application for design review approval concurrent with the preliminary PRD application.

Section 23. A new section 17.89.035 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

17.89.035 Final PRD permit application procedures.

A. Type of Permit. A final PRD application shall be processed according to the procedures set forth in GHMC Title 19 for Type IV project permit applications.

B. Duration of Approval and Expiration of Final PRD. An approved final PRD shall not expire. A final PRD may be amended through the process described in GHMC 17.89.120.

C. Concurrent Applications. A final PRD application shall be processed concurrently with a final plat if the preliminary PRD had an associated preliminary plat.

Section 24. Subsection 17.89.040(B) in the Planned Residential Development Zone (PRD) chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.89.040 Contents of complete PRD application.

* * *

B. Final PRD. In addition to the applicable requirements of GHMC 19.02.002, a complete application for final PRD approval shall consist of the following information:

1. A copy of the approved preliminary PRD plans, if required by the director; and

2. Final PRD plans drawn to a scale no smaller than one inch equals 30 feet showing the items required by GHMC 17.89.040(A)(5) through (9); ~~and~~

3. A written statement on how the final PRD complies with the approved preliminary PRD and any conditions of preliminary PRD approval; and

4. A legal description and map of the area subject to the final PRD.

Section 25. Section 17.90.030 in the Planned Unit Development chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.90.030 Preliminary PUD Ppermit application procedures.

A. Type of Permit. A preliminary PUD application shall be processed according to the procedures set forth in GHMC Title 19 for Type III-A project permit applications. ~~Final PUD applications shall be processed according to the procedures in GHMC Title 19 for Type IV project permit applications.~~

B. Duration of Approval and Expiration of Preliminary PUD. The duration of preliminary PUD approval and expiration shall be governed by GHMC 19.02.008 and be subject to the timeframes in GHMC 19.02.008(A), unless the preliminary PUD is associated with a preliminary plat or binding site plan; in that case, the underlying preliminary plat or binding site plan approval and expiration shall govern the preliminary PUD.

C. Concurrent Applications. ~~Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat or binding site plan shall be processed simultaneously with a PUD, to the extent that procedural requirements allow simultaneous processing. If an applicant requests that a preliminary PUD be processed prior to the time a preliminary plat application or binding site plan is submitted or without a preliminary plat or binding site plan, the preliminary PUD application shall not be considered to be vested, i.e., such application shall not be considered under the subdivision, zoning or other land use control ordinances in effect at the time the fully completed application for a preliminary PUD has been submitted to the city.~~

D. Phasing. If a proposed PUD is to be developed in phases, the entire PUD shall be portrayed in the preliminary PUD application, and each phase shall individually receive final PUD approval within the time periods established in subsection B of this section.

E. Design Review. The applicant shall submit an application for design review approval concurrent with the preliminary PUD application.

Section 26. A new section 17.90.035 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

17.90.035 Final PUD permit application procedures.

A. Type of Permit. A final PUD application shall be processed according to the procedures set forth in GHMC Title 19 for Type IV project permit applications.

B. Duration of Approval and Expiration of Final PUD. An approved final PUD shall not expire. A final PUD may be amended through the process described in GHMC 17.90.120.

C. Concurrent Applications. A final PUD application shall be processed concurrently with a final plat if the preliminary PUD had an associated

preliminary plat. A final PUD shall be approved prior to the approval of a binding site plan if the preliminary PUD had an associated binding site plan.

Section 27. Subsection 17.90.040(B) in the Planned Unit Development chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.90.040 Contents of complete PUD application.

* * *

B. Final PRD. In addition to the applicable requirements of GHMC 19.02.002, a complete application for final PRD approval shall consist of the following information:

1. A copy of the approved preliminary PUD plans, if required by the director; and
2. Final PUD plans drawn to a scale no smaller than one inch equals 30 feet showing the items required by GHMC 17.8990.040(A)(5) through (9); ~~and~~
3. A written statement on how the final PUD complies with the approved preliminary PUD and any conditions of preliminary PUD approval; and
4. A legal description and map of the area subject to the final PUD.

Section 28. Subsection 17.98.037(F) in the Design Standards and Review chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.98.037 Optional design review preapplication meeting.

* * *

F. Notice. Notice of a preapplication meeting with the DRB is not required; however, at the request of the applicant, notice will be mailed to the owner of all properties within 300 feet of the subject site. ~~The applicant shall provide preprinted labels bearing the names and addresses of the property owners of record within 300 feet of the project property.~~

* * *

Section 29. Subsection 17.98.058(A) in the Design Standards and Review chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.98.058 Administrative review of alternative designs.

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

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

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

2. ~~Tenant improvement applications~~ Tenant-specific alterations.

* * *

Section 30. Subsection 17.99.340(C) in the Design Manual chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.99.340 Fences.

The following standards are applicable to all uses and development:

* * *

C. Limit height of fences (IBE).

Fences are limited to a height of three feet along front yards (four feet for open rail fences) and six feet in rear and side yards; provided, that clear vision is retained for adjacent driveways and intersections (see clear vision provisions in the city's public works standards).

Section 31. Section 18.04.230 in the Environmental Review (SEPA) chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.230 Appeals.

The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter:

- a. Final threshold determination;
- b. Mitigation or failure to mitigate in the SEPA decision;
- c. Final EIS; and
- d. Project denials.

2. If the city does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in subsection (A)(1) of this section shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

1. In the notice of decision issued by the city pursuant to GHMC 19.02.007 and for every decision for which an appeal is available in this section, the SEPA responsible official shall give official notice of the date and place for commencing an appeal. The notice shall include:

a. Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;

b. The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;

c. Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the city's final decision on a proposed action. However, the SEPA appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals. Only one administrative appeal to the city is allowed of the decisions listed in GHMC 18.04.170(A).

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);

2. An appeal of a procedural determination made by the city when the city is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;

3. An appeal of a procedural determination made by the city on a nonproject action; and

~~4. An appeal to the city council under RCW 43.21C.060.~~

F. Timing of Appeal.

1. SEPA Decision Issues at the Same Time as Underlying Action. An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within 14 days after issuance of a notice of decision under GHMC 19.02.007 (or RCW 36.70B.130).

2. SEPA Decision Allows Public Comment. For a DNS or MDNS for which public comment is required (under this chapter), the appeal period shall be extended for an additional seven days.

3. SEPA Threshold Decision Issues Prior to Decision on Underlying Action. An appeal of a threshold decision issued prior to a decision on a project action shall be filed within 14 days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA responsible official shall be entitled to substantial weight by the hearing examiner ~~or city council~~ in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript. (The city may require that the appellant provide an electronic transcript.)

I. Exhaustion of Administrative Remedies. The city's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the city allows an appeal in this section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by resolution of the city council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
6. The specific relief sought;
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA responsible official shall forward the appeal to the hearing examiner ~~or city council (whichever is the hearing officer/body on the appeal)~~, who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. ~~Hearing Examiner Appeals.~~

1. ~~Jurisdiction. All administrative appeals relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the city council (pursuant to GHMC 19.01.003) shall be heard by the hearing examiner. The hearing examiner shall hear all administrative appeals of appealable decisions.~~

2. ~~Hearing. The hearing examiner shall hold an open record public hearing on the appeal, as provided in Chapter 19.05 19.06 GHMC.~~

3. ~~Date for Issuance of Decision. The hearing examiner shall issue a decision on the appeal within the time period set forth in~~

GHMC 19.05.008, unless a longer period is agreed to in writing by the applicant and hearing examiner.

4. Appeals of Hearing Examiner's Decision. The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the city. The hearing examiner's decision shall state that any appeal of the final decision shall be filed in Pierce County superior court (pursuant to Chapter 36.70C RCW), Growth Management Hearings Board, or the shorelines hearings board, as applicable.

5. Notice of Appeal. Notice of the appeal hearing shall be mailed to the appellant at least 10 days prior to the hearing. For SEPA project actions associated with a Type III project permit, a notice of a potential appeal hearing may be consolidated with the notice of public hearing required by GHMC 19.03.003. For SEPA nonproject actions, notice of the appeal hearing shall be published in the city's official newspaper at least 10 days prior to the hearing.

M. City Council Appeals.

~~1. Jurisdiction. The city council shall hear all administrative appeals relating to legislative actions and applications. In addition, the city council shall hear appeals relating to any other applications that are appealable to the city council (pursuant to GHMC 19.01.003).~~

~~2. Hearing. For all legislative actions and applications, the city council shall hold an open record hearing (Chapter 19.05 GHMC). For any appeals relating to applications appealable to the city council (pursuant to GHMC 19.01.003), the city council shall hold a closed record hearing (Chapter 19.06 GHMC).~~

~~3. Record on Appeal. There are no restrictions on the evidence and testimony received by the council for an appeal relating to legislative actions and applications. For any other type of appeal, the city council shall follow the requirements of Chapter 19.06GHMC for closed record appeals.~~

~~4. Appeals of City Council's Decision. The city council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the city. The city council's decision shall state that any appeal of the final decision may be filed in Pierce County superior court within 21 days of issuance or the Growth Management Hearings Board.~~

N. M. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This section and RCW 43.21C.075 establish the time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the city's final decision shall be filed in superior court, but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C RCW shall without exception be of

the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

Section 32. Subsection 18.08.030(D) in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

* * *

D. "Department" means the city planning department of community development.

"Designated wetland" means those lands identified through the classification process established by this chapter.

"Development" means alteration (see definition for alteration).

"Director" means the planning director or his/her designee.

"DRASTIC" means a model developed by the National Water Well Association and Environmental Protection Agency and which is used to measure aquifer susceptibility to contamination.

* * *

Section 33. Section 18.08.034 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.034 Applicability.

A. Critical Area Review. All development ~~proposals~~ in critical areas and their buffers, whether on public or private property, shall comply with the requirements of this chapter. The ~~community development~~ director or his/her designee shall utilize the procedures and rules established in the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC, Environmental Review (SEPA), and the applicable provisions of GHMC Title 16, 17 and 19 to implement the provisions of this chapter. Critical area review shall be required for all development and any of the following permits: ~~Development proposals include any development project which would require any of the following:~~

1. Building permit for any construction;
2. Clearing and gGrading permit as provided for in Chapter 14.40 GHMC;
3. Any shoreline management permit or exemption as authorized under Chapter 90.58 RCW;
4. Site plan review as provided for in Chapter 17.96 GHMC;
5. Subdivision, short subdivision or planned unit development;
6. Zoning variance or conditional use permit;
7. Land clearing as provided for in Chapter 17.94 GHMC.

B. Special Studies Required. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area is located on the site. The ~~community development~~ director or designee shall visit the site, and in conjunction with the review of the information provided by the applicant and any other suitable information, shall make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient to adequately evaluate a proposal, the ~~planning~~ director shall notify the applicant that additional studies as specified herein shall be provided.

C. Appeals. A decision of the ~~community development~~ director to approve, conditionally approve or deny a permit, or any official interpretation in the administration of this chapter may be appealed in accordance with the procedures established under GHMC Title 19.

Section 34. Section 18.08.040 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.040 Wetlands – Classification guidelines/ratings.

A. Wetland rating and classification shall be established based upon the completion of a delineation report prepared by a qualified wetland specialist to determine boundary, size, function and value. Guidelines for preparing a wetland delineation report are defined in GHMC 18.08.090 and the Department of Ecology ~~Wetland Identification and Delineation Manual (1997), which is consistent with the 1987 Federal Manual used by the U.S. Army Corps of Engineers~~ currently approved federal manual and applicable regional supplements.

B. Wetland Ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the most recent version of the Washington State Wetland Rating System for Western Washington, revised April 2004 (Ecology Publication No. 04-06-025). These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland Rating Categories.

a. Category I. Category I wetlands are those wetlands of exceptional resource value based on their functional value and diversity. Category I wetlands are:

- i. Undisturbed estuarine wetlands larger than one acre;
- ii. Wetlands designated by Washington Natural Heritage Program as high quality;
- iii. Bogs;
- iv. Mature and old-growth forested wetlands larger than one acre;
- v. Wetlands in coastal lagoons;

vi. Wetlands that perform high functions (wetlands scoring 70 points or more on the Ecology wetland rating form).

b. Category II. Category II wetlands are those wetlands of significant resource value based on their functional value and diversity. Category II wetlands are:

i. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre; or

ii. Wetlands scoring between 51 and 69 points on the Ecology wetland rating form.

c. Category III. Category III wetlands are those wetlands of important resource value based on their functional value and diversity. Category III wetlands are wetlands with a moderate to low level of functions (wetlands scoring 30 to 50 points on the wetland rating form).

d. Category IV. Category IV wetlands are those wetlands with the lowest level of functions scoring less than 30 points on the Ecology wetland rating form. Hydrologically isolated Category IV wetlands less than 1,000 square feet are exempt as per GHMC 18.08.202(H).

Section 35. Subsection 18.08.090(B) in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.090 Wetlands – Analysis report requirements.

* * *

B. The wetland analysis report shall be prepared in accordance with the methods outlined in the Ecology ~~1997 Wetland Identification and Delineation Manual~~ Publication #10-06-002 Wetlands and CAO updates – Guidance for Small Cities (Western Washington) or, if updated, a more recent version and submitted to the department for review for any proposals that are within 300 feet of a wetland.

* * *

Section 36. Section 18.08.150 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.150 Wetlands – Mitigation plan submittal requirements.

A. Following submittal of any proposed alterations to wetland and buffer areas, the applicant shall submit to the department a wetland mitigation plan substantially in the following form:

4. A. Conceptual Phase. A conceptual wetland mitigation plan shall be submitted to the department. In cases in which environmental review is required, a threshold determination may not be made prior to department review of the conceptual wetland mitigation plan. The conceptual wetland mitigation plan shall include:

- a. 1. General goals of the wetland mitigation plan, including an overall goal of no net loss of wetland function and acreage, and to strive for a net resource gain in wetlands over present conditions;
- b. 2. A review of literature or experience to date in restoring or creating the type of wetland proposed;
- c. 3. Approximate site topography following construction;
- d. 4. Location of proposed wetland compensation area;
- e. 5. General hydrologic patterns on the site following construction;
- f. 6. Nature of compensation, including wetland types (in-kind and out-of-kind), general plant selection and justification, approximate project sequencing and schedule, and approximate size of the new wetland buffer;
- g. 7. A conceptual maintenance plan;
- h. 8. Conceptual monitoring and contingency plan.

2. B. Detailed Phase. Following approval of the conceptual wetland mitigation plan by the department, a detailed wetland mitigation plan shall be submitted to the department. The detailed wetland mitigation plan shall contain, at a minimum, the following components, and shall be consistent with the standards in GHMC 18.08.160 and 18.08.180:

- a. 1. Text and map of the existing condition of the proposed compensation area, including:
 - i. a. Existing vegetation community analysis;
 - ii. b. Hydrological analysis, including topography, of existing surface and significant subsurface flows into and out of the area in question;
 - iii. c. Soils analysis providing both Soil Conservation Service mapping and data provided by on-site verified determinations;
 - iv. d. Detailed description of flora and fauna existing on the site;
 - v. e. Description of existing site conditions in relation to historic conditions for those sites which have been recently altered or degraded;
- b. 2. Text and map of the proposed alterations to the compensation area, including:
 - i. a. Relationship of the project to the watershed and existing water bodies;
 - ii. b. Topography of site using one-foot contour intervals;
 - iii. c. Water level data, including depth and duration of seasonally high water table;
 - iv. d. Water flow patterns;
 - v. e. Grading, filling and excavation, including a description of imported soils;
 - vi. f. Irrigation requirements, if any;
 - vii. g. Water pollution mitigation measures during construction;
 - viii. h. Aerial coverage of planted areas to open water areas (if any open water is to be present);
 - ix. i. Appropriate buffers;

The wetland mitigation plan shall include detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The wetland mitigation plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data;

e. 3. As part of the wetland mitigation plan, a landscaping plan shall be designed by a registered landscape architect or contractor working with a qualified wetland specialist, describing what will be planted where and when. The landscape plan shall include the following:

i. a. Soils and substrate characteristics;

ii. b. Specification of substrate stockpiling techniques;

iii. c. Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirement;

iv. d. Specification of where plant materials will be procured. Documentation shall be provided which guarantees plant materials are to be procured from licensed regional nurseries, or from wetlands on-site which are part of the wetland mitigation plan;

d. 4. A schedule shall be provided showing dates for beginning and completing the mitigation project, including a sequence of construction activities;

e. 5. A monitoring and maintenance plan, consistent with GHMC 18.08.180. The plan shall include all the following:

i. a. Specification of procedures for monitoring and site maintenance;

ii. b. A schedule for submitting monitoring reports to the department;

f. 6. A contingency plan, consistent with GHMC 18.08.180;

g. 7. A detailed budget for implementation of the wetland mitigation plan, including monitoring, maintenance and contingency phases;

h. 8. A guarantee that the work will be performed as planned and approved, consistent with GHMC 18.08.180;

i. 9. The wetland mitigation plan shall be signed by the qualified wetland specialist to indicate that the plan is according to specifications determined by the qualified wetland specialist. A signed original wetland mitigation plan shall be submitted to the department.

3. C. Following the approval of the detailed wetland mitigation plan by the department, the plan shall be signed and notarized by the applicant and ~~community development~~ director, and recorded with the Pierce County auditor.

4. D. Approval of the detailed wetland mitigation plan shall occur prior to the issuance of building permits or other development permits. No development activity shall occur on the site prior to approval. Required mitigation may also be required prior to issuance of permits or prior to

commencing development activity. Timing of required mitigation shall be determined on a case-by-case basis.

Section 37. Section 18.08.192 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.192 Landslide and erosion hazard areas.

Areas which are identified as landslide or erosion hazard areas shall be subject to the requirements established in this section.

A. Regulation. Applications for regulated activities proposed within designated landslide and erosion hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a civil engineer with the state. If it is satisfactorily demonstrated to the ~~community development~~ director that a landslide or erosion hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. A geotechnical report required under this section shall include, at a minimum, the following information:

1. Topographic data at a minimum scale of 1:240 (1 inch equals 20 feet). Slope ranges shall be clearly delineated in increments of 15 percent to 25 percent, 25 percent to 40 percent and greater than 40 percent;
2. Subsurface data, including boring logs and exploratory methods, soil and rock stratigraphy, ground water levels and any seasonal variations of ground water levels;
3. Site history, including description of prior grading and clearing, soil instability or slope failure.

If a geotechnical report has been prepared and accepted by the ~~community development~~ director within the previous two years for a specific site and the proposed land use development and site conditions have not changed, the report may be utilized without the requirement for a new report.

C. Development Standards. Upon submission of a satisfactory geotechnical report or assessment, site development may be authorized by the director subject to the following:

1. Buffers shall comply with the requirements of GHMC 18.08.190(A);
2. Approved erosion control measures are in place prior to, or simultaneous with, site clearing or excavation;
3. Such other conditions as deemed appropriate by the administrator to ensure compliance with the provisions of this chapter.

Section 38. A new section 18.08.193 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.08.193 Mudslide hazard.

The director shall require review of each permit application to determine whether the proposed site and improvements will be reasonably

safe from mudslide hazards; a further review must be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must be adequately protected against mudslide damage and not aggravate the existing hazard.

Section 39. Section 18.08.196 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.196 Flood hazard areas.

Areas which are prone to flooding and which are identified in the Federal Emergency Management Administration flood insurance rate maps for the city of Gig Harbor (September 2, 1981) shall be subject to the requirements of this section.

A. Regulation. All development within flood hazard areas shall be subject to the requirements of the city of Gig Harbor flood hazard construction standards (Chapter ~~15.04~~ 18.10 GHMC).

Section 40. Subsections 18.10.060(B) and (C) in the Flood Hazard Construction Standards chapter of the Gig Harbor Municipal Code are hereby amended, to read as follows:

18.10.060 Administration.

* * *

B. Application for Flood Hazard Permit. Application for a flood hazard permit shall be made on forms furnished by the ~~community development planning~~ director. A complete flood hazard permit shall include the following:

1. Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FEMA Form 81-31) with Section B completed by the local official;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet floodproofing criteria in GHMC 18.10.070;
- d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

C. Designation of the Local Administrator. The ~~community development planning~~ director or his/her designee is hereby appointed to

administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

* * *

Section 41. Section 18.10.080 in the Flood Hazard Construction Standards chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 42. Section 18.10.090 in the Flood Hazard Construction Standards chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 43. Subsection 19.02.008(C) in the Type I-IV Project Permit Processing chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

* * *

C. The duration of approval, expiration and extension of the following land use permits shall not be governed by this section, except that subsection B of this section shall apply:

1. Shoreline permits shall be governed by the city of Gig Harbor shoreline master program and WAC 173-27-090;

2. Subdivisions, short plats, binding site plans and boundary line adjustments shall be governed by GHMC Title 16 and Chapter 58.17 RCW;

3. Land use permits governed by a development agreement shall be pursuant to the development agreement;

4. Special use permits, land clearing permits, planned residential developments, planned unit development and temporary trailer permits shall be governed by the provisions in the specific zoning code chapter regulating those permits.

* * *

Section 44. Section 19.09.140 in the Amending the Comprehensive Plan chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

19.09.140 Selecting the applications for further processing during annual review.

The council shall consider each application separately under the criteria set forth in GHMC 19.09.130, and shall decide which applications will be processed during the current annual amendment process, and which will not be processed. ~~Any proposed amendment selected by the city council for further processing shall be processed as provided in this chapter. The processing of any proposed amendment not selected by the city council shall be terminated and the proposed amendment removed from the docket, unless otherwise directed by city council. The Council's findings and conclusions on the applications that will not be processed~~

shall be incorporated into a resolution. No findings and conclusions are required for those applications that are forwarded for further processing as provided in this chapter.

Section 45. Retroactive Application. The provisions of Sections 5 and 7 amending GHMC 16.06.003 and 16.06.006 shall be effective retroactively to June 7, 2012.

Section 46. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be 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 47. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of _____, 2012.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. 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:



Business of the City Council
City of Gig Harbor, WA

Subject: SEPA Exemption Levels

Proposed Council Action: Direct staff to maintain interim threshold levels and to develop any necessary amendments to implement that change.

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner

For Agenda of: July 23, 2012

Exhibits: None

Initial & Date

Concurred by Mayor:

CKH 7/17/12

Approved by City Administrator:

R - 7/17/12

Approved as to form by City Atty:

email 7/5/12

Approved by Finance Director:

N/A

Approved by Department Head:

JK 7/17/12

Expenditure	Amount	Appropriation	
Required 0	Budgeted 0	Required	0

INFORMATION / BACKGROUND

The State Environmental Policy Act (SEPA), Washington State's most fundamental environmental law, was enacted in 1971. SEPA's basic policy of maintaining and improving environmental quality is implemented primarily through extensive procedural requirements designed to insure that governmental agencies give proper consideration of environmental matters in making decisions on actions, whether proposed by private parties or the governmental entities themselves, that may impact the environment. If initial governmental review of a proposed action indicates that the action will have probable and significant adverse environmental impacts, preparation of a detailed environmental impact statement (EIS) will be required.

Not every project will yield probable and significant adverse impacts and, as such, the SEPA requirements of Chapter 197-11 WAC allow threshold determinations of nonsignificance (DNS or MDNS) and for some smaller projects, an exemption from threshold determination and EIS requirements. WAC 197-11-800 states that projects equal to or smaller than the following thresholds are exempt. The City has adopted the exemption levels below (GHMC 18.04.080). The WAC allows higher exemption levels, however the City has not adopted those.

WAC 197-11-800(1) Minor new construction

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage

or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.

(iv) The construction of a parking lot designed for twenty-automobiles.

(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

During the 2012 1st special session of the State legislature, Senate Bill 6406 passed which directed the Department of Ecology to modernize the rules for conducting SEPA reviews, in light of the increased environmental protections in place under GMA and SMA. Included was the direction to increase the exemption levels of minor construction projects. The Ecology rulemaking on minor new construction exemption levels must conclude by December 31, 2012. This bill went into effect on July 10, 2012.

In addition, the bill included the following in Section 301(2)(d):

Until the completion of the rule making required under this section, a city or county may apply the highest categorical exemption levels authorized under WAC 197-11-800 to any action, regardless if the city or county with jurisdiction has exercised its authority to raise the exemption levels above the established minimums, unless the city or county with jurisdiction passes an ordinance or resolution that lowers the exemption levels to a level below the allowed maximum but not less than the default minimum levels detailed in WAC 197-11-800.

This section means that as of July 10th, the minor new construction exemption levels above have been raised as shown below. These are interim levels until rulemaking is completed. The City can pass an ordinance to reduce the levels back to the pre-July 2012 levels; however, until/if that occurs, the new levels are in effect.

Given that the Department of Ecology has been directed by the legislation to undergo rulemaking to increase the exemption level for minor new construction, planning staff is not recommending lowering the exemption levels. We do not expect the rulemaking process to yield smaller exemption levels than the interim. However, with Council approval, the staff would like to review the city's codes to determine if any amendments are needed to implement the new levels throughout our development review process. Changes may be necessary to our concurrency, impact fee and/or land use permit processes due to the increase exemption levels. A draft ordinance of any necessary code amendments would come before the Council in the fall.

Interim minor new construction exemption levels (summarized):

Residential structures up to 20 dwelling units

Agricultural structure up to 30,000 square feet

Nonresidential structure up to 12,000 square feet with parking up to 40 stalls

Parking lots up to forty stalls

Landfill or excavation up to 500 cubic yards.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION / MOTION

Direct staff to maintain interim threshold levels and to develop any necessary amendments to implement that change.



1120 Pacific Ave., Suite 301, Tacoma, WA 98402
(253) 272-2112 Fax (253) 383-1047 info@mbapierce.com www.mbapierce.com

July 23, 2012

Mayor Chuck Hunter
City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335

Honorable Mayor Hunter and Members of the City Council,

This letter includes comments from the Master Builders Association of Pierce County (MBA) in regards to the proposed temporary increases to the SEPA exemption thresholds currently before the City Council. On behalf of the MBA, thank you for your consideration of these comments.

The MBA would like to express its support of the proposed temporary increases to SEPA exemption thresholds. SEPA has become increasingly out of date due to new regulations adopted since it was drafted. By amending SEPA thresholds to those recognized by state law, projects under those thresholds will be permitted without unnecessary and redundant SEPA review which is otherwise covered under other city and state regulations. This would allow for a more streamlined, and consistent with other jurisdictions, approach to permitting.

Recently Pierce County directly tied their SEPA thresholds to the maximum allowed by state law. This was done by referencing WAC 197-11-800(1)(c) directly in their own county code. If the City of Gig Harbor were to decide to go this route it would allow for SEPA thresholds to increase to the maximum allowances the state legislature sees fit. Also due to the passage of Senate Bill 6406 the City of Tacoma adopted the same thresholds Gig Harbor is proposing during the month of June.

Thank you once again for your consideration of these comments. If you have any questions feel free to contact me at 253-272-2112 ext. 101.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Hoey', written over a horizontal line.

Shawn Hoey
Government Affairs Manager

CC: Timothy Payne, Council Member
Steven Ekberg, Council Member
Derek Young, Council Member
Paul Kadzik, Council Member
Michael Perrow, Council Member

Jill Guernsey, Council Member
Ken Malich, Council Member
Jennifer Kester, Senior Planner
Molly Towslee, City Clerk
