

Gig Harbor City Council Meeting

**March 25, 2013
5:30 p.m.**



AMENDED AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
March 25, 2013

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Mar. 11, 2013.
2. Liquor License Action: a) Renewals: Morso, St. Anthony Hospital, Gig Harbor Yacht Club, The Green Turtle, Happy at the Bay Teriyaki, Harbor Greens, Gig Harbor Farmers Market, Maritime Inn, Greenhouse Restaurant, Gig Harbor Farmers Market at Uptown; b) New amended application: Netshed No. 9; c) Gourmet Burger Shop.
3. Receive and File: a) Parks Commission Minutes Feb. 13, 2013; b) Tacoma Narrows Airport Advisory Commission Minutes Jan. 10, 2013.
4. Correspondence / Proclamations: a) Pierce County Reads; b) Parks Appreciation Day;
5. Re-appointments to Gig Harbor Arts Commission.
6. 2013 Natural Yard Care Workshops – Interagency Agreement with Tacoma-Pierce County Health Department.
7. Second Reading of Ordinance No. 1260 – Extension of Interim Regulations – Medical Cannabis Collective Gardens.
8. Second Reading of Ordinance No. 1261 – Amendments to Fireworks Stand Permits.
9. Buffer Zone Protection Plan Grant Agreement – Washington State Military Dept.
10. Resolution No. 923 – Amendments to Flexible Spending Account.
11. Wollochet/Wagner Way Traffic Signal – Consultant Services Contract/WH Pacific.
12. Approval of Payment of Bills Mar. 25, 2013: Checks #72041 through #72133 in the amount of \$1,245,991.79.

SWEARING IN CEREMONY: Sergeant Fred Douglas

PRESENTATIONS:

1. Pierce County Reads – Presentation of Proclamation.
2. Pierce County Library Annual Report – Executive Director Neel Parikh.
3. Proclamation for Parks Appreciation Day – Rahna Lovrovich.

OLD BUSINESS: None.

NEW BUSINESS:

1. Public Hearing – 2013 Comprehensive Plan Amendment Docket.
2. Resolution No. 924 – Canterwood Sewer Utility Extension Agreement.
3. Marine Outfall Inspection – Consultant Services Contract Amendment.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Parks Commission: Wed. Apr 3rd at 5:30 p.m.
2. Intergovernmental Affairs: Mon. Apr 8th at 4:30 p.m.
3. Operations Committee: Thu. Apr 18th at 3:00 p.m.
4. Planning/Building Committee: Mon. May 6th at 5:30 p.m.

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – March 11, 2013

PRESENT: Councilmembers Young, Guernsey, Perrow, Malich, Payne, and Kadzik. Councilmember Ekberg served as Mayor Pro Tem.

CALL TO ORDER: 5:32 p.m.

PLEDGE OF ALLEGIANCE:

EXECUTIVE SESSION: For the purpose of discussing Guild Negotiations per RCW 42.30.140(4)(a)

MOTION: Move to go into Executive Session at 5:31 p.m. for approximately fifteen minutes to discuss Guild Negotiations per RCW 42.30.140(4)(a).
Payne / Kadzik – unanimously approved.

MOTION: Move to return to regular session at 5:45 p.m.
Malich / Perrow – unanimously approved.

CONSENT AGENDA:

1. Approval of City Council Minutes Feb. 25, 2013.
2. Liquor License Action: a) Assumption – Kelly’s Cafe and Espresso; b) Assumption – Albertson’s No. 406; c) Amended Application – Netshed No. 9.
3. Receive and File: a) GH Historic Waterfront Association Quarterly Progress Report – December 31, 2012;
4. Appointments to Parks Commission.
5. Resolution No. 922 – Amendments to Civic Center Facility Use Agreement.
6. Gig Harbor Police Guild Contract.
7. Skansie Netshed Moorage/Piling Replacement Project – Consultant Services Contract Amendment No. 1 - Sitts & Hill Engineers, Inc.
8. Eddon Boat Property - Long Term Monitoring Plan – Contract Amendment No. 1 -Anchor QEA, LLC.
9. Determination of the Preferred Harbor Hill Drive Extension Route and Park Improvements Project – Consultant Services Contract/David Evans and Associates.
10. WWTP U.V. Disinfection Alternatives Evaluation Project Consultant Services Contract - HDR Engineering, Inc.
11. Parks & Recreation Concerts on the Park Contracts.
12. Addendum to Interagency Agreement with Washington State Arts Commission.
13. Approval of Payment of Bills Mar. 11, 2013: Checks #71937 through #72040 in the amount of \$593,028.83.
14. Approval of Payroll for the month of February: Checks #6924 through #6936 and direct deposit transactions in the total amount of \$329,850.21.

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

PRESENTATIONS: Recognition of Lt. Bill Colberg's 32 years of Service to the Gig Harbor Police Department. Chief Mike Davis presented an overview of Lieutenant Colberg's 42 years in police work. Chief Davis explained that Lt. Colberg has been acting Chief three times over the years, but always chooses to work "in the trenches" rather than serving in the more public position. Chief Davis described many of the duties that Lt. Colberg performs, praising his work ethic and the fact that he takes extreme pride in his job and the reputation of the department. Chief Davis then recognized Faith Colberg and stressed how important the spouse is in any successful career in law enforcement. He asked everyone to join in congratulating Bill Colberg for his 32 years of exemplary service with the Gig Harbor Police Department and wishing him well on his upcoming retirement.

Mayor Pro Tem Ekberg presented Lt. Colberg with an appreciation plaque recognizing his employment with the city from December 7, 1981 to March 31st, 2013, and thanked him for his years of devoted service.

City Administrator Denny Richards said that Bill Colberg was an officer when he came to Gig Harbor as Chief of Police. Then, he had the privilege of promoting him to Sergeant, and then to Lieutenant. He presented Lt. Colberg with a money clip engraved with "Bill Colberg – Dedicated husband, father, friend and police officer."

Lt. Colberg then spoke about the difficult transition coming from California to Gig Harbor. He credited Denny Richards for bringing on more staff and moving this towards a more professional department.

OLD BUSINESS:

1. Second Reading of Ordinance - Implementing FEMA Option #3 – Permit-by-Permit Demonstration of Compliance under the Endangered Species Act. Senior Planner Peter Katich presented the second reading of this ordinance adopting Option #3 and explained that two clauses have been added to address the option for the City to submit its regulatory approach to FEMA once the Shoreline Master Program has been adopted and is in effect.

MOTION: Move to adopt Ordinance No. 1259 as presented.
Payne / Guernsey – five voted in favor. Councilmembers Malich and Perrow voted no.

NEW BUSINESS:

1. Public Hearing and First Reading of Ordinance No. 1258 – Extension of Interim Regulations Adopting FEMA Option #3 Permit-by-Permit Demonstration of Compliance under the Endangered Species Act. Senior Planner Peter Katich explained that due to an issue with timing of the ordinance just adopted to implement Option #3, it is necessary to extend the interim regulations currently in place in one reading.

Mayor Pro Tem Ekberg opened the public hearing at 6:00 p.m. No one came forward to speak and the hearing closed.

MOTION: Move to adopt Ordinance No. 1258 extending the interim regulations adopted under Ordinance No. 1248.
Young / Guernsey – unanimously approved.

2. Public Hearing and First Reading of Ordinance – Extension of interim Regulations – Medical Cannabis Collective Gardens. Planning Director Jennifer Kester explained that the current interim regulations will expire on April 11th. Due to the recent passage of Initiative 502 and the decision by King County Superior Court to uphold a ban on collective gardens by the City of Kent currently under appeal, the Planning Commission is asking Council to extend the interim regulations to allow more time for the outcome of the appeal and any further legislative action.

Mayor Pro Tem Ekberg opened the public hearing at 6:00 p.m. No one came forward to speak and the hearing closed. This ordinance will return on the Consent Agenda for adoption at the next meeting.

3. First Reading of Ordinance – Amendments to Fireworks Stand Permits. City Clerk Molly Towslee explained that with the repeal of the Temporary Business Licensing, amendments were needed to update the Fireworks Stand regulations as well. In addition to changing the wording from “license” to “permit,” the insurance requirements and submission dates were updated. She addressed questions. This will return on the Consent Agenda for adoption at the next meeting.

4. Well No. 5 Motor Removal and Analysis Project – Small Works Contract Award. Public Works Director Jeff Langhelm explained that the pump and motor assembly at Well No. 5 has an electrical fault that will need to be diagnosed. He said that a repair contract will be prepared for council review based on the analysis. He answered questions regarding the city’s water system.

MOTION: Move to authorize the Mayor to execute a Small Public Works Contract with Pump Tech, Inc. in an amount not to exceed \$4,112.15 for the award of the Well No. 5 Motor Removal and Analysis Project and authorize the Public Works Director to approve addition expenditures up to \$800 to cover any cost increases that may result from contract change orders.
Guernsey / Payne – unanimously approved.

5. Request to Add Additional Staff. City Administrator Denny Richards said that we haven’t been successful in filling the temporary Building Inspector position and requested approval to add a full-time position in lieu of the temporary status in order to be competitive in the market. He explained that permit approval time continues to creep upward due to increase in submittals and the lack of staff. He added that the increased permit fees will pay for the new position.

Building Official / Fire Safety Manager Paul Rice addressed questions regarding the levels of staffing, the types of inspections being required, and the reason that permit review time has increased. He was asked to identify the types of inspections in future Building Statistic Reports.

MOTION: Move to authorize the Mayor to request the city Administrator and Human Resource Analyst to begin a search for a full time Building Inspector.
Guernsey / Young – unanimously approved.

STAFF REPORT: None.

PUBLIC COMMENT: None.

MAYOR’S REPORT / COUNCIL COMMENTS:

Councilmember Perrow said that the e-mail notifying business owners and residents of the Donkey Creek Project road closures was great, but an additional effort needs to be made with the Harbor Ridge Middle School Principal and Athletic Staff to coordinate impacts.

Councilmember Malich thanked staff for the new chairs in the Council Chambers. He then said it would be nice to have web cams to advertise the city and so people can see what the weather is doing here. He suggested that the Parks Commission could take the lead on that project. It was mentioned that we already have a webcam pointed at Jerisich Dock.

Councilmember Young gave an update on the Pierce Transit adoption of an increase in vanpool fares implemented over several years. He said that the issue of grandfathering van pool services outside city limits eliminated with recent boundary changes was tabled. He said they are also discussing another ballot measure for a potential smaller district. He then reported that he attended the Cities and Towns meeting and learned of a proposal for a large increase in dues in order to become part of the Suburban Cities Association. It appears this group of mayors wants a larger role for Pierce County government and so they changed the bylaws to allow any elected to represent the towns.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Finance / Safety Committee – Mon. Mar 18th CANCELLED
2. Operations Committee: Thu. Mar 21st at 3:00 p.m.
3. Boards and Candidate Review: Mon. Mar 25th at 4:30 p.m.

ADJOURN:

MOTION: Move to adjourn at 6:30 p.m.
Malich / Payne – unanimously approved.

CD recorder utilized: Tracks 1002 – 1022

Steven K. Ekberg, Mayor Pro Tem

Molly Towslee, City Clerk

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 03/07/2013

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR (BY ZIP CODE) FOR EXPIRATION DATE OF 20130630

Consent Agenda - 2a Page 1 of 2

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. RICHARD LYLE JOHNSON	<i>Not city limits</i> GIG HARBOR BEACH BAY BED AND BREAKFAST 7223 120TH STREET CT NW GIG HARBOR WA 98332 0000	407028	BED & BREAKFAST
2. S SQUARED, LLC	MORSO 9014 PEACOCK HILL AVE GIG HARBOR WA 98332 1029	405678	TAVERN - BEER/WINE OFF PREMISES
3. FRANCISCAN HEALTH SYSTEM	ST ANTHONY HOSPITAL 11567 CANTERWOOD BLVD GIG HARBOR WA 98332 5812	404350	SERVE EMPLOYEES & GUESTS
4. THE GIG HARBOR YACHT CLUB	GIG HARBOR YACHT CLUB 8209 STINSON AVE GIG HARBOR WA 98335 0000	077100	PRIVATE CLUB - SPIRITS/BEER/WINE
5. THE GREEN TURTLE LLC	THE GREEN TURTLE 2905 HARBORVIEW DR GIG HARBOR WA 98335 0000	078190	SPIRITS/BR/WN REST SERVICE BAR
6. JKM INC.	HAPPY AT THE BAY TERIYAKI 4910 POINT FOSDICK DR NW STE B GIG HARBOR WA 98335 1713	083301	BEER/WINE REST - BEER/WINE
7. HARBOR GREENS, LLC	HARBOR GREENS 5225 OLYMPIC DR NW GIG HARBOR WA 98335 1763	400986	GROCERY STORE - BEER/WINE SPIRITS RETAILER
8. GIG HARBOR FARMERS MARKET	GIG HARBOR FARMERS MARKET 3207 HARBORVIEW DR GIG HARBOR WA 98335 2125	402207	FARMERS MARKET FOR BEER/WINE

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 03/07/2013

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130630

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
9 .	MARITIME INN CORPORATION	MARITIME INN 3212 HARBORVIEW DR GIG HARBOR WA 98335 2125	403597	MOTEL
10 .	GREENHOUSE RESTAURANT, LLC	GREENHOUSE RESTAURANT 4793 POINT FOSDICK DR NW #400 GIG HARBOR WA 98335 2315	403430	SPIRITS/BR/WN REST LOUNGE -
11 .	GIG HARBOR FARMERS MARKET AT U	GIG HARBOR FARMERS MARKET AT UPTOWN SHOP CNTR 4701 PT FOSDICK DR GIG HARBOR WA 98335 2319	407877	FARMERS MARKET FOR BEER/WINE



NOTICE OF LIQUOR LICENSE APPLICATION

Consent Agenda - 2b

Page 1 of 1

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: 3/04/13

AMENDED

UBI: 603-273-812-001-0002

License: 085944 - 1U County: 27
Tradename: NETSHED NO. 9
Loc Addr: 3313 HARBORVIEW DR
GIG HARBOR WA 98332-2126
Mail Addr: 3507 15TH AVENUE CT NW
GIG HARBOR WA 98335-1668
Phone No.: 925-683-8909 KATIE DOHERTY

APPLICANTS:
NETSHED, INC.
DOHERTY, CATHERINE L 1967-01-10
LYMAN, JILL M 1955-09-25
LYMAN, MICHAEL FRANCIS 1950-06-04
LYMAN, THADIUS MICHAEL 1972-08-19

Privileges Applied For:
DIRECT SHIPMENT RECEIVER-IN WA ONLY
BEER/WINE REST - BEER/WINE

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? YES NO
2. Do you approve of location? YES NO
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? YES NO
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.

3/12/13
DATE

[Signature]
SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

TB



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: 11/29/12

UBI: 603-254-214-001-0001

License: 410484 - 1U County: 27
Tradename: GOURMET BURGER SHOP
Loc Addr: 4120 HARBORVIEW DR
GIG HARBOR WA 98332-1080
Mail Addr: 14001 51ST AVE NW
GIG HARBOR WA 98332-9102
Phone No.: 253-853-5430 MICHAEL WAGNER

APPLICANTS:
GOURMET BURGER SHOP LLC
HIGHTOWER, TRAVIS 1973-02-22
WAGNER, MICHAEL ROBERT 1959-07-12

Privileges Applied For:
DIRECT SHIPMENT RECEIVER-IN/OUT WA
BEER/WINE REST - BEER/WINE
OFF PREMISES

RECEIVED
DEC 17 2012
LICENSING DIVISION

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? YES NO
2. Do you approve of location? YES NO
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? (See WAC 314-09-010 for information about this process)
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.

March 26, 2013
DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

**CITY OF GIG HARBOR
COMMITTEE OUTLINE MINUTES**

Parks Commission

Date: February 13, 2013 Time: 5:30 p.m. Location: Community Rooms A/B Scribe: Terri Reed

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

Others Present: Joyce Murray, Harbor Wildwatch

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
APPROVAL OF MINUTES:	Approval of December 5, 2012 Meeting Minutes	MOTION: Move to approve December 5, 2012 minutes as presented.
	Commission Chair Tarabochia mentioned that he had just attended the Ancich Maritime Committee meeting. He anticipates that the Mayor/City Council will be asking the Parks Commission to begin the public process for determining the use of this park property.	Tarabochia / Rohrbaugh - unanimously approved
OLD BUSINESS:		
Private Entity Use of City Park Property	Lita Dawn Stanton provided a draft memo and process document for review and comments by the Parks Commission. Commissioners Rohrbaugh and Payne pointed out the importance of #13, which is having a tangible, public benefit and contribution to the city. Commissioner Rohrbaugh mentioned that the term (#4) should be defined and that the proposed use not be allowed to compete with current businesses. Public Works Director Langhelm suggested that the process begin with the Parks Commission making a recommendation to move the conceptual idea forward.	MOTION: Move to amend the process so that step #1 includes a recommendation from the Parks Commission. Tarabochia / Rohrbaugh – unanimously approved
Trail Safety Program	Commission Chair Tarabochia shared a trail marking example from the Foothills Trail. Helmet safety ideas were discussed including working with the Fire	The trail marking information will be forwarded to Public Works Superintendent Malich for review as to size and frequency of placement.



TACOMA NARROWS AIRPORT ADVISORY COMMISSION

MEETING SUMMARY

January 10, 2013

The regular meeting of the Pierce County Tacoma Narrows Airport Advisory Commission (TNAAC) was held on Thursday, November 8, 2012 from 6:30 to 8:30 PM. The meeting was held at the Tacoma Narrows Airport Firehouse located at 1202 26th Ave. NW, Gig Harbor, WA 98335.

- I. **Chair Roger Gruener called the meeting to order at 6:32 PM and welcomed all attendees.**
- II. **Commission members, County staff, and guests introduced themselves.**

TNAAC Voting Members Present:

Roger Gruener	William Sehmel
Hal Cline	Brian Durham
Bob Felker	Laura Fox

TNAAC Non-Voting Members Present:

Deb Wallace, Airport and Ferry Administrator
Ken Malich, City of Gig Harbor

Pierce County Staff Present:

Jay Simons, Operations and Maintenance Supervisor
Warren Hendrickson, Aviation and Ferry Planner

Visitors:

Douglas Fratoni
Matthew Jones
Matt Johnson
Bonnie Malgarini

- III. **Approval of Prior Meeting Summary**

Motion to approve the November 8, 2012 Meeting Summary by: Hal Cline
Seconded by: Laura Fox
Approved unanimously.

IV. Election of Officers

Hal Cline moved to extend the term for the Chair for a second year

Bill Sehmel seconded

Approved unanimously

- a. Chair – Roger Gruener elected unanimously

Roger Gruener moved to nominate Laura Fox for Vice Chair

Hal Cline seconded

Approved unanimously

- b. Vice Chair – Laura Fox elected unanimously

- c. Secretary – Optional, not selected at this time

V. Visitors and Petitions

None

VI. Presentation: 2013 Wings & Wheels Aviation Event

Speaker: Doug Fratoni, Tacoma Events Commission

Date: July 6, 2013 from 11 am – 5 pm at TIW.

Expect crowd of about 4,000 people, similar to last year.

Events: Car show, food, entertainment, planes, tours

Looking for volunteers, and to display planes

VII. Pierce County Staff Reports

- **Deb Wallace**

- a. Budget/Grants – Standing Report:

2012 year-end budget distributed and explained some of categories.

Budgeted for revenue of about \$715,000. Improved billing system, and no corporate accounts behind. Deb would like Council authorization to allow the option to negotiate a lease (e.g., 13 month lease for price of 12 months). TNAAC could take action to support that authorization now or at a future meeting.

- b. NW Aviation Conference & Trade Show, TNAAC Participation:

Conference is February 22 – 24, 2013. Need TNAAC and TFAC to staff a booth. Deb will send information via e-mail. Opportunity for airport businesses to learn from each other. There's a part of the program for aviation businesses with marketing and a variety of forums. Aviation universities and schools bringing in students, and arranging tours of Thun Field for students.

- c. Aviation Day at the State Capital: March 26, 2013:

Opportunity for additional airport funding through state legislature. Aviation organizations and airports invited to meet and develop a relationship with their legislatures. WDOT has put a proposal forward for airport funding.

- d. 2013 Airport and Ferry Strategic Work Plan:

Deb distributed some initiatives they have been working on. Tracking assets being implemented for Airports.

- e. Other Items of Interest:
 - 2012 Accomplishments.
 - Deb thanked the TNAAC for their great work!
 - Striving to be the best regional airport.
 - Restaurant closing in January.

- **Jay Simons**

- a. Operations and Maintenance Report:
 - Asset Management – evaluation helps find needed repairs
 - Storm water projects
 - Resources – get bids from other departments and sometimes more cost effective for them to do a project
 - Snow removal plan: priorities established

- **Warren Hendrickson**

- a. TIW Master Plan Update
 - Kick-off meeting is January 30th. Same evening as public open house. Both meetings open to the public.
 - On January 23rd, meeting with Communications' Staff to review and plan the Master Plan update open house meetings.
 - Meeting with a homeowner association located near TIW on January 15th at 4:00 at Round Table Pizza. TNAAC is invited.
 - Total budget for the Master Plan Update is \$255,712, 90% of which is funded by the FAA and the remaining 10% by Pierce County. \$9,000 was expended in 2012.
- b. TIW CIP Submission to WDOT (DRAFT)
WDOT requirement to have all airports submit capital improvement projects to the state. Submitting for 2014-2018 to WDOT by the end of this month.
- c. Compass Rose Update
Brian Durham has volunteered to lead the Compass Rose effort on behalf of the TNAAC. The 99s have agreed to provide design and construction oversight personnel. The County will need to engage its consultant, WHPacific, to evaluate a suitable airport location that meets the requirements of the FAA Advisory Circular (AC 150/5300-13A, Appendix 6).
- d. Airport Rules and Regulations
Making good progress.
- e. (not on agenda) Non-directional beacon – radio station emits beacon can be used for guidance into airport. Three trees may need to be topped to improve visibility.

VIII. Commission Reports

Friends of Airport – four-member, non-profit group. First meeting at end of January. Purpose is to recruit volunteers for airport for various projects (i.e., cleanup at airport, Wings and Wheels, market to community). Community group; not airport user group. Fund raising for activities – such as play area for kids at TIW.

IX. New Business

- a. Airport Marketing Initiative
Bob Felker assisting with marketing.
- b. Commission Retreat
Plan a half-day retreat on a Saturday. Present some potential dates at the March meeting.
- c. Other Items
None

X. Confirmation of Action Items

1. Compass Rose:
 - a. Brian Durham will lead the Compass Rose installation and contact the 99s.
 - b. Pierce County will engage WHPacific to evaluate and recommend a specific TIW site location.
2. Runway Rehabilitation Project: County will provide a breakdown of the Runway Rehabilitation Project funding sources and amounts (FAA, ESDOT Aviation, DOE Grant, County funds).
3. Taxiway Lateral Separation: County will provide the both the existing and the required TIW runway-taxiway lateral separation.
 - a. **CLOSED:** Following the meeting, County informed the TNAAC that the required TIW runway-taxiway lateral separation is 400 feet and the existing separation is approximately 350 feet (and possibly as much as 358 feet). The taxiway will therefore need to be moved 42 to 50 feet to the east. This CIP item is planned for after 2018.
4. Retreat Agenda: County will provide a copy of the January 2012 TFAC Retreat Agenda and Meeting Summary to the TNAAC for its awareness and review.

XI. Meeting Adjourned at 8:20 PM

Motion to adjourn by: Hal Cline
Seconded by: Bob Felker
Approved unanimously.

Next Meeting:

Date: Thursday, March 14, 2013
Time: 6:30 – 8:30 p.m.
Location: Goodman Middle School
Commons Area,
3701 38th Ave NW
Gig Harbor, WA 98335

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

WHEREAS, Pierce County READS seeks to engage, involve, and connect people throughout Pierce County; and

WHEREAS, Pierce county READS is the largest community reading event in the county, when people read an award-winning book, participate in free events, join with groups to discuss the book, and attend a free event to meet the nationally known, best-selling author on May 17th, 2013, at 7 p.m.; and

WHEREAS, the Pierce County Library is offering this community-wide program in collaboration with numerous community partners; and

NOW, THEREFORE, I, Steven K. Ekberg, Mayor Pro Tem of the City of Gig Harbor, do proclaim March 18th through May 17th, 2013 as

Pierce County READS

in recognition of Pierce County Library System and The News Tribune's Pierce County READS, sponsored by KeyBank Foundation and Pierce County Library Foundation, and invite all citizens of Gig Harbor to join me in this special observance. In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 25th of March, 2013.

Mayor Pro Tem, City of Gig Harbor

Date

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

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

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

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

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

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

WHEREAS, hundreds of people of all ages have pledged to volunteer their time to clean-up and beautify parks and open space throughout Gig Harbor and Pierce County on Saturday, April 20, 2013;

NOW, *THEREFORE*, I, Steven K. Ekberg, Mayor Pro Tem of the City of Gig Harbor, hereby designate April 20, 2013, as

PARKS APPRECIATION DAY

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

Steven K. Ekberg, Mayor Pro Tem

Date



Subject: Re-appointments to Gig Harbor Arts Commission

Proposed Council Action:

A motion to re-appoint Charlee Glock-Jackson, Neil Sampson, and Dale Strickland to serve three-year terms on the Gig Harbor Arts Commission.

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: March 25, 2013

Exhibits:

Initial & Date

Concurred by Mayor:

SE 3/13/13

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

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

Terms for three members of the Gig Harbor Arts Commission expire on March 31, 2013. All three members submitted a letter of interesting in being re-appointed.

We have advertised for all vacant positions, but have not received any new applications. The one vacant position will remain open until filled.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

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

RECOMMENDATION / MOTION

Move to: Re-appoint Charlee Glock-Jackson, Neil Sampson, and Dale Strickland to serve three-year terms on the Gig Harbor Arts Commission.



Business of the City Council
City of Gig Harbor, WA

Subject: 2013 Natural Yard Care Workshops
- Interagency Agreement with Tacoma-Pierce
County Health Department

Proposed Council Action: Approve and
authorize the Mayor to execute an Interagency
Agreement with TPCHD for an amount not to
exceed \$5,000.00.

Dept. Origin: Public Works/Engineering

Prepared by: Wayne Matthews *WM*
Engineering Technician

For Agenda of: March 25, 2013

Exhibits: Tacoma-Pierce County Health
Department Interagency
Agreement

	Initial & Date
Concurred by Mayor:	<i>SE</i> 3/11/13
Approved by City Administrator:	<i>R</i> 3/11/13
Approved as to form by City Atty:	<i>approval via email</i> 3/7/13
Approved by Finance Director:	<i>DF</i> 3/11/13
Approved by Public Works Director:	<i>PH</i> 3/11/13
Approved by City Engineer:	<i>CE</i> 3/7/2013

Expenditure Required	\$5,000 (Grant Reimbursable)	Amount Budgeted	See Fiscal Consideration below	Appropriation Required	0
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INFORMATION / BACKGROUND

One of the outreach requirements under the City's current NPDES permit is for the City to provide an active public education and outreach component. The City has offered Natural Yard Care Workshops to the public over the past three years. The workshops have been well attended, reaching up to over 60 people at each workshop. The attached Interagency Agreement with Tacoma-Pierce County Health Department (TPCHD) will continue these workshops.

The Gig Harbor workshops promote environmental stewardship and sustainable maintenance practices for yards and landscapes, resulting in minimizing potential impacts upon surface water resources. The workshops promote the five steps to natural yard care directly to Gig Harbor homeowners. The Natural Yard Care Workshops have specialist guest speakers with power point presentations and hands-on activities.

FISCAL CONSIDERATION

Funding for this project cost of \$5,000 are 100% reimbursable by the Gig Harbor Stormwater Capacity Grant from Department of Ecology.

2013 Budget for NPDES Phase 2 Municipal Stormwater Permit	\$ 50,000
Anticipated 2013 Expenses:	
2013 Natural Yard Care Workshops (reimbursable)	\$ (5,000)
Remaining 2013 Budget =	\$ 50,000

Note: Expenses in *italics* are estimated.

BOARD OR COMMITTEE RECOMMENDATION

The Interagency Agreement Tacoma-Pierce County Health Department – Natural Yard Care – 2011 was reviewed at the Operations and Public Projects Committee Meeting in February of 2011. Committee members present were supportive of continuing these workshops with the understanding that this expense would be fully reimbursed by the Ecology Stormwater Capacity Grant.

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the Interagency Agreement with Tacoma-Pierce County Health Department for a not to exceed amount of \$5,000.00.

**Interagency Agreement
Tacoma-Pierce County Health Department - City of Gig Harbor
Natural Yard Care – 2013**

The City of Gig Harbor seeks to reduce pollutants in and the impact of storm water to local surface water bodies through public education as directed by its National Pollution Discharge Elimination System (NPDES) permit. The goal of this project is to increase adoption of natural yard care practices in Gig Harbor through education and outreach efforts in 2013. This approach will complement other existing and planned efforts and will result in the adoption of natural yard care practices by targeted residential. Results will be accessed via a project-end report.

The Tacoma-Pierce County Health Department (Health Department) shares an interest in reducing pollutant discharges to the environment, minimizing potential impacts upon surface water resources, and seeks to safeguard and enhance the health of communities in Pierce County.

The City of Gig Harbor and the Health Department have determined that it is mutually beneficial that the Health Department provide to the City certain services in 2013, as described in this agreement.

The Health Department will partner with the City of Gig Harbor to produce homeowner-targeted workshops promoting environmental stewardship and sustainable maintenance practices for yards and landscapes. The Health Department will promote the “Five Steps to Natural Yard Care” approach: *Build healthy soil, Plant right for your site, Practice smart watering, Think twice before using pesticides, and Practice natural lawn care*, as described below:

- Build healthy soil** - Covers the basic components of soil and benefits of adding organic matter. Talk will include instruction about backyard composting emphasizing troubleshooting and the benefits of recycling nutrients on-site.
- Plant right for your site** - Practical landscape design for matching plants with the proper environmental conditions to encourage healthy plants and reduce reliance on pesticide use.
- Practice smart watering** - Covers water conservation by encouraging irrigation efficiency through a variety of techniques, grouping plants with like water needs together, and encouraging deep, infrequent watering for plant health.
- Think twice before using pesticides** - Emphasizes proper plant placement and plant health as the first step in avoiding pest incidence; cover cultural, mechanical, and biological control techniques before using less-toxic pesticides as a last resort; the importance of and how to read a pesticide label and emphasizing proper usage and disposal of pesticide products.
- Natural lawn care** - Covers differences among grass species common to the area, ‘grass-cycling’ for organic waste diversion and nutrient cycling, proper irrigation and fertilization practices, and emphasizing techniques to reduce weed incidence and pesticide usage.

The workshop program brings these messages directly to City of Gig Harbor homeowners via a series of three lectures and hands-on demonstrations. Follow-up surveys will be conducted to assess changes in participant behaviors and practices occurring as a result of the program.

GOALS

Increase participants' adoption of natural yard care practices, including:

- reduced inappropriate use of pesticides and fertilizers to reduce potential impacts to surface/storm water
- reduced generation of organic waste/increased backyard composting
- increased use of slow-release fertilizers
- reduced water use

ACTIVITIES

The Health Department proposes a program of one Natural Yard Care Workshop series to be scheduled in coordination with the City of Gig Harbor and conducted in May 2013, comprised of the following specific elements:

- Three community evening meetings covering the five steps listed above, as well as information pertinent to preserving stormwater and surface water quality in Gig Harbor. Responsible party: **Health Department**
- Email and telephone follow-up to remind pre-registered residents of the upcoming meetings. Responsible party: **Health Department**
- Distribution of printed materials to each attendee covering the topics in the five steps to Natural Yard Care and conduct pre-workshop/baseline yard care practices survey. Responsible party: **Health Department**

OUTPUTS

- At least 40 Gig Harbor residents are trained in natural yard care practices via the Natural Yard Care workshop series.
- Report summarizing participation, the survey instrument and resulting data, an assessment of the knowledge gained from the workshops, and conclusions regarding the effectiveness of this approach.

OUTCOMES

Workshop participants will show increased knowledge of natural yard care practices and resulting progress toward the task goals, as listed above. Outcomes will be assessed via a survey of workshop participants before and following each workshop.

PROPOSED SCHEDULE AND DELIVERABLES

- Feb. Apr. 2013- Workshop advertising including City of Gig Harbor newsletter; direct mail invitations to utility customers; inclusion in City of Gig Harbor website and other city-sponsored advertising means.
- May 7, 14, 21, 2013 -- Conduct NYC workshops series at City of Gig Harbor City Civic Center. Conduct post-workshop evaluation survey.
- Conduct pre and post workshop surveys to measure knowledge gained by attending the classes.

- December, 2013 - Summary report detailing advertising methods, attendance records, topics discussed at workshops, qualitative workshop feedback from attendees, workshop survey analyses. Provide City of Gig Harbor with copies of primary workshop materials and workshop surveys, and associated outreach/education materials.

PROJECT COST & BILLING

In consideration for the services described herein the City of Gig Harbor shall pay the Health Department a total of **\$5,000**. The Health Department shall bill not more frequently than monthly or less frequently than quarterly unless otherwise agreed to by the City and the Health Department. Payment shall be made within 30 days of receipt of an invoice from the Health Department. Invoices from the Health Department shall be accompanied by progress reports describing activities and results for that billing period.

The City of Gig Harbor will be invoiced prior to June 30th, 2013.

PROJECT CONTACTS

City of Gig Harbor
Wayne Matthews
3510 Grandview St.
Gig Harbor, WA 98335
Phone: 253-853-2646
Fax: 253-853-7597
matthewsw@cityofgigharbor.net

Tacoma-Pierce County Health Department
Walt Burdsall/John Sherman
3629 South D St., MS: 1049
Tacoma, WA 98418
Phone: 253-798-4708/253-798-6523
Fax: 253-798-6498
wburdsall@tpchd.org/jsherman@tpchd.org

Date of Signature

Date of Signature

Authorized Signature

Authorized **Department** Signature

Printed Name

Printed Name

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

Tacoma-Pierce County Health
Department
3629 South D Street
Tacoma, WA 98418-6813

Contractor Address

Department Address

\$5,000
Dollar Amount for this **Agreement**



Business of the City Council
City of Gig Harbor, WA

Subject: Second Reading - Extension of Interim Regulations re: Medical Cannabis Collective Gardens

Dept. Origin: Planning/Legal

Prepared by: Jennifer Kester/Angela Belbeck *JK*

Proposed Council Action: Adopt ordinance.

For Agenda of: March 25, 2013

Exhibits: Draft ordinance, ORD 1218 and ORD 1222, Planning Commission Recommendation

	Initial & Date
Concurred by Mayor:	<i>JK</i> 3/18/13
Approved by City Administrator:	<i>R</i> 3/13/13
Approved as to form by City Atty:	<i>email</i> 3/5/13
Approved by Finance Director:	N/A
Approved by Department Head	<i>JK</i> 3/13/13

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

Enclosed for your review is an ordinance that would extend the interim regulations for medical cannabis collective gardens an additional six months. The interim regulations presently allow collective gardens in the Employment District as a conditional use, subject to separation and other health and safety requirements. The interim regulations will remain in effect until April 11, 2013 unless the interim regulations are extended or new regulations are adopted. No known gardens have been established since Ordinance No. 1218 became effective.

On July 11, 2011, the City Council approved Ordinance No. 1218 establishing interim regulations for medical cannabis collective gardens. On July 25, 2011, the City Council held a public hearing on the regulations and adopted Ordinance No. 1222, making additional findings of fact and amending Ordinance No. 1218. Due in large part to uncertainties in the law, the City has extended the interim regulations by way of Ordinance Nos. 1236 and 1247. Ordinance No. 1247 directed the Planning Commission to review the regulations and any changes in the law and provide a recommendation to the council. After considering the regulations and pending legislation and litigation as discussed in the section below, the Planning Commission recommended extending the interim regulations again. See attached recommendation.

Two major events have taken place since the adoption of Ordinance No. 1247: the passage of Initiative 502 and a decision from the King County Superior Court (currently on appeal) upholding a ban on collective gardens adopted by the City of Kent.

Initiative 502, approved by voters last November, decriminalized certain use, production, processing and possession of marijuana for adult recreational purposes. It also established the framework for administration and licensing through the Washington State Liquor Control Board.

The state anticipates issuance of processing and retailer licenses which will become effective on December 1, 2013. Before the initiative was approved, it was unclear how it may affect the regulation of collective gardens. As it turns out, the regulation of collective gardens is wholly separate from regulation under Initiative 502, and the provisions of chapter 69.51A RCW (Medical cannabis) control.

The second major event involved a challenge to the City of Kent's ban on collective gardens, adopted in June of 2012. In *Cannabis Action Coalition v. City of Kent*, the King County Superior Court upheld the City of Kent's ordinance. The Court determined that the city had the authority to prohibit collective gardens through its general zoning powers and RCW 69.51A.140, which expressly permits the city to enact zoning controls in relation to medical cannabis uses. While no appellate precedent has been established, the Kent decision affirmed a city's ability to prohibit collective gardens under zoning and police powers. One of the plaintiffs in that case, however, appealed the decision directly to the state Supreme Court. While the state Supreme Court has not yet accepted the matter on direct review, the commissioner of the Supreme Court issued a temporary stay of the superior court decision, in effect temporarily lifting the ban. It may be another month before we learn whether the Supreme Court will take this appeal directly, or whether they will send it down to the Court of Appeals. Either way, it will probably be at least a year before we have precedent. Note the legislature is considering changes to the provisions relating to medical cannabis collective gardens under Substitute Senate Bill 5528, but this bill does not affect RCW 69.51A.140, the section relating to local government authority and under appeal in the *City of Kent* matter.

FISCAL CONSIDERATION: None.

BOARD OR COMMITTEE RECOMMENDATION: On February 21, 2013, the Planning Commission recommended that the interim regulations be extended.

RECOMMENDATION/MOTION: Adopt ordinance.

ORDINANCE NO. 1260

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, RELATING TO LAND USE AND ZONING;
EXTENDING INTERIM ZONING CODE AMENDMENTS
RELATING TO MEDICAL CANNABIS COLLECTIVE
GARDENS; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998 and now codified as chapter 69.51A RCW, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana (cannabis); and

WHEREAS, in 2011 the Washington State Legislature considered a bill (E2SSB 5073) that would have authorized the licensing of medical cannabis dispensaries, production facilities, and processing facilities; and

WHEREAS, on April 29, 2011, Governor Gregoire vetoed the portions of E2SSB 5073 that would have provided the basis under state law for legalizing and licensing medical cannabis dispensaries, processing facilities and production facilities, thereby making these activities illegal; and

WHEREAS, in order to provide qualifying patients with access to an adequate, safe, consistent and secure source of medical quality cannabis, E2SSB 5073 also contained a provision, now codified as RCW 69.51A.085, authorizing “collective gardens” which would authorize qualifying patients the ability to produce, grow, process, transport and deliver cannabis for medical use, and that provision was approved by Governor Gregoire, effective on July 22, 2011; and

WHEREAS, E2SSB 5073, as approved and now codified at RCW 69.51A.140 authorized cities to adopt and enforce zoning requirements regarding production and processing of medical cannabis; and

WHEREAS, as authorized under RCW 35A.63.220 and RCW 36.70A.390, the Gig Harbor City Council approved Ordinance No. 1218 on July 11, 2011 adopting interim regulations for Medical Cannabis Collective Gardens that were effective and in full force immediately for a period of nine months, as amended by Ordinance No. 1222 approved after a public hearing on July 25, 2011; and

WHEREAS, the federal Controlled Substances Act and state laws regarding marijuana and cannabis are contradictory and those contradictions are unresolved so there are uncertainties in the area of local regulation of medical cannabis operations; and

WHEREAS, federal law enforcement actions against medical cannabis operations in the State of Washington and a 2011 decision from the California Court of Appeal (*Pack v. City of Long Beach*, 199 Cal.App.4th 1070 (October 4, 2011), petition for state supreme court review granted, 268 P.3d 1063, but dismissed in August of 2012 because the appeal was withdrawn) that a city's ordinance establishing a permit system for medical marijuana is preempted by the federal Controlled Substances Act further illustrate the uncertainty local governments must deal with; and

WHEREAS, as authorized under RCW 35A.63.220 and RCW 36.70A.390, after a public hearing, the Gig Harbor City Council approved Ordinance 1236 on March 26, 2012 extending the interim regulations for a period of six months and adopting findings justifying the same; and

WHEREAS, the Planning Commission considered the interim regulations in April and May of 2012 and held a public hearing on May 3rd, 2012; and

WHEREAS, the Planning Commission recommended that the interim regulations be extended until after the November 2012 general election when Washington voters will consider Initiative 502. The initiative would decriminalize the licensed production, processing and possession of marijuana by Washington adults. The State Liquor Control Board would be authorized to administer the licensing program and develop rules and regulations; and

WHEREAS, the City was concerned that the Employment District along Bujacich Drive may not be the appropriate permanent location for medical cannabis collective gardens within the city given the intent of the zone to enhance the city's economic base by providing suitable areas to support the employment needs of the community. Medical cannabis collective gardens, by definition, are not businesses; and

WHEREAS, as authorized under RCW 35A.63.220 and RCW 36.70A.390, after a public hearing, the Gig Harbor City Council approved Ordinance 1247 on September 24, 2012 extending the interim regulations for a period of six months and adopting findings justifying the same; and

WHEREAS, Ordinance 1247 called for the Planning Commission to review the interim regulations in the fall of 2012 and winter of 2013, to consider recommendations of the city attorney in response to changes in law, and to make a recommendation on whether the regulations, or some modification thereof, should be permanently adopted; and

WHEREAS, in November 2012, Washington voters approved Initiative 502; however, the regulation of collective gardens is wholly separate from regulation under Initiative 502; and

WHEREAS, the matter of *Cannabis Action Coalition v. City of Kent* has been directly appealed to the Washington State Supreme Court (if direct appeal is not

accepted, the appeal would be heard by the state Court of Appeals) after the King County Superior Court determined the City of Kent had the authority to prohibit collective gardens in its jurisdiction, and an appellate decision would provide much-needed precedent on the issue; and

WHEREAS, during the 2013 session, the Washington State Legislature is considering SB 5528 which could also provide clarity on the state regulations on collective gardens; and

WHEREAS, on February 21, 2013, the Planning Commission considered the existing interim regulations and the events that have taken place since the adoption of Ordinance 1247 and recommended that the interim regulations be extended; and

WHEREAS, it is premature to set permanent regulations for medical cannabis collective gardens given the pending *City of Kent* appeal and state legislation; and

WHEREAS, the City Council deems it to be in the public interest to extend the interim zoning regulations but to not codify permanent regulations due to the uncertainties; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to extend interim regulations for a period of six months after a public hearing and adoption of findings justifying the same; and

WHEREAS, the Gig Harbor City Council held a public hearing on March 11, 2013, to take public testimony relating to this ordinance; and

WHEREAS, at the public hearing on March 11, 2013, no members of the public testified on this ordinance; and

WHEREAS, nothing in this Ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law;

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

Section 1. Purpose. The purpose of this ordinance is to extend the interim regulations set forth in Ordinance No. 1218 as further amended by Ordinance No. 1222 and extended under Ordinances No. 1236 and No. 1247, for a period of six months.

Section 2. Findings in Support of Extending Interim Regulations. In addition to the findings previously made as set forth in Ordinance No. 1218, Ordinance No. 1222, and Ordinance No. 1236, and Ordinance No. 1247, the Gig Harbor City Council makes the following additional findings:

1. The City Council adopts the recitals set forth above in support of extending the interim regulations originally adopted under Ordinance No. 1218 and as amended by Ordinance No. 1222 and as extended under Ordinances No. 1236 and No. 1247.

Section 3. Extension of Interim Zoning Regulations. The duration of the interim zoning regulations shall remain in effect for an additional period of six months, and shall automatically expire at that time unless the same are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to that date, or unless the same are repealed or superseded by permanent regulations prior to that date.

Section 4. Planning Commission Work Plan. The City of Gig Harbor Planning Commission is hereby directed to conduct another review the interim regulations in the summer of 2013, to consider any recommendations of the city attorney in response to changes in law, and to make a recommendation on whether the regulations, or some modification thereof, should be permanently adopted. The Gig Harbor Planning Commission is directed to complete its review, to conduct such public hearings as may be necessary or desirable, and to forward its recommendation to the Gig Harbor City Council by August 22, 2013.

Section 5. Transmittal to Department. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. 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 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall be published and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of March, 2013.

CITY OF GIG HARBOR

Mayor Pro Tem Steven K. Ekberg

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

FILED WITH THE CITY CLERK: 03/06/13
PASSED BY THE CITY COUNCIL: 03/25/13
PUBLISHED: 03/27/13
EFFECTIVE DATE: 04/01/13
ORDINANCE NO: 1260



Subject: Ordinance Amending GHMC
Chapter 8.20 relating to
Fireworks

Proposed Council Action:

Consider the Ordinance and adopt at
this second reading.

Dept. Origin: Administration

Prepared by: Laurelyn Brekke

For Agenda of: March 25, 2013

Exhibits: Draft Ordinance

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Handwritten initials and date: 8/16 3/18/13

Handwritten initials and date: R-3-13-13

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

INFORMATION / BACKGROUND

Ordinance No. 1255 approved by City Council on January 28, 2013, repealed GHMC Chapter 5.16 Temporary Businesses. A temporary business license was an integral piece of the temporary fireworks stand permit's terms and conditions. Contact was made with three other cities, one of whom shares a fireworks provider. After review of municipal codes relating to fireworks in Marysville, Port Orchard, and Sequim, it seemed prudent to review our entire code relating to fireworks and update as necessary.

The words license and licensee have been changed to permit and permittee; reflecting the trend for licenses to be issued by the state and permits issued by local jurisdiction.

Compliance with the amended GHMC Chapter 5.01 Business Licensing is included as well as specific reference to payment of the permit fee allowed by RCW 70.77.555.

Insurance coverage has not been updated since 1983 and the amounts listed in this draft are industry standard as indicated on certificates of insurance provided by 2012 fireworks providers.

The existing code allows applications to be submitted April 15 - July 4. The July 4th date does not allow sufficient time for processing the application and performing timely inspections. The recommended time frame for submitting applications is April 15 - June 1 of the year for which the permit is sought.

The Washington State Fireworks License is now issued by the Washington State Patrol. City inspection of temporary fireworks stands are completed by the Building Official/Fire Marshal or designee.

FISCAL CONSIDERATION

No change.

STAFF RECOMMENDATION

Building Official/Fire Marshal concurs with the proposed amendments.

RECOMMENDATION / MOTION

Move to: Adopt the Ordinance at this second reading.

ORDINANCE NO. 1261

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO FIREWORKS; AMENDING CHAPTER 8.20 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, on March 14, 1983, the City of Gig Harbor City Council passed Ordinance No. 418, which adopted provisions for regulating the sale and use of fireworks; and

WHEREAS, on January 28, 2013, the Gig Harbor City Council passed Ordinance No. 1255, which amended Chapter 5.01 of the Gig Harbor Municipal Code relating to Business Licensing and Exemptions, and repealed Chapter 5.16--Temporary Businesses; and

WHEREAS, as amended Chapter 5.01 GHMC requires all businesses to obtain a city business license; and

WHEREAS, the repealed temporary business license for fireworks sales will be replaced by a temporary fireworks stand permit fee as provided by RCW 70.77.555; and

WHEREAS, the City of Gig Harbor desires to better develop its guidelines for the regulation and permitting of temporary fireworks stands, providing sufficient time for permit application processing, ensuring insurance requirements consistent with industry standard, and reflecting current departmental supervision of terms and conditions;

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

Section 1. Chapter 8.20 GHMC – Amended. Chapter 8.20 of the Gig Harbor Municipal Code is hereby revised as follows:

**Chapter 8.20
FIREWORKS**

Sections:

- 8.20.010 Intent.
- 8.20.020 Applicability.
- 8.20.030 Compliance with licensing provisions.
- 8.20.040 ~~License Permit~~– Application.
- 8.20.050 License Permit – Use requirements.
- 8.20.060 License Permit – Maximum number.
- 8.20.070 License Permit – Terms and conditions.

- 8.20.080 License Permit – Granting limitations.
- 8.20.090 Temporary stands – Standards and conditions.
- 8.20.100 Temporary stands – Safe and sane fireworks only.
- 8.20.110 Time limit – Sale of fireworks.
- 8.20.120 Time limit – Use of fireworks.
- 8.20.130 Unlawful acts.
- 8.20.140 Enforcement.
- 8.20.150 Violation – Penalty.

8.20.010 Intent.

This chapter is intended to implement Chapter 228, Laws of 1961 of the state of Washington, and shall be construed in connection with said law and any and all rules or regulations issued pursuant thereto.

8.20.020 Applicability.

The provisions of this chapter shall apply to the sale of all safe and sane fireworks, as defined by Chapter 228, Laws of 1961 of the state of Washington, except as to the sales of “toy caps” and “sparklers.”

8.20.030 Compliance with licensing provisions.

It is unlawful for any person, firm or corporation to engage in the retail sale of or to sell any fireworks within the city limits of Gig Harbor without first obtaining a city business license and complying with the provisions of Chapter 5.16 GHMC. Chapter 5.01. GHMC.

8.20.040 License Permit – Application.

Applications for ~~temporary business licenses~~ temporary fireworks stand permit must be accompanied by the permit fee and pursuant to this chapter may be filed and will be accepted by the city only during the period between April 15th and July 4th June 1st of the year for which the license permit is sought.

8.20.050 License Permit – Use requirements.

A license permit granted pursuant to this chapter shall entitle the licensee permittee to maintain only one retail outlet. All ~~licenses~~ permits issued pursuant hereto shall be used only by the designated ~~licensee~~ permittee and shall be nontransferable. Any transfer or purported transfer of such a license permit shall be deemed a violation of this chapter.

8.20.060 License Permit – Maximum number.

The maximum number of ~~licenses~~ permits issued by the city in any year shall not exceed one for every 500 people or fraction thereof residing in the corporate limits of Gig Harbor.

8.20.070 License Permit – Terms and conditions.

~~A temporary business license~~ temporary fireworks stand permit for the sale of fireworks shall be issued only upon the following terms and conditions:

A. The applicant shall have a valid and subsisting Washington State Fireworks License ~~license~~ issued by the ~~state of Washington~~ Washington State Patrol authorizing the holder thereof to engage in the fireworks business.

B. The applicant shall own or have the right to possess a temporary fireworks stand complying with the standards hereinafter set forth for temporary fireworks stands.

C. The applicant shall procure and maintain a policy or policies of public liability and property damage insurance in a company or companies approved by the city of Gig Harbor in the following amounts: Not less than ~~\$300,000 bodily injuries to a person or persons in any one accident or occurrence; and \$100,000 property damage.~~ \$1,000,000 Commercial General Liability (each occurrence); \$50,000 Damage to premises; \$1,000,000 Personal & Adv Injury; \$2,000,000 General Aggregate; \$2,000,000 Products – Comp/OP AGG.

D. The ~~licensee's~~ permittee's location or place of business shall be only in those areas or zones within the city wherein commercial activities are authorized under the applicable zoning laws of the city of Gig Harbor; provided, that the sale of safe and sane fireworks shall not be deemed an enlargement of an existing nonconforming use; and provided, further, that no fireworks shall be sold in any residential area where a commercial enterprise does not exist.

E. The applicant shall file with the city a cash deposit in an amount not less than \$100.00, conditioned upon the prompt removal of the temporary stand and the cleaning up of all debris from the site of the temporary stand. The deposit shall be returned to the applicant after he removes the temporary stand and cleans up all debris to the satisfaction of the ~~public works director~~ Building Official/Fire Marshal. If he fails to do so, the cash deposit and all property not removed shall be forfeited to the city. In no event shall the applicant be entitled to the return of the cash deposit if he has failed to remove the temporary stand and clean up all debris by the tenth day of July of each year.

8.20.080 License Permit – Granting limitations.

In the event there are more applications for ~~licenses~~ permits than there are ~~licenses~~ permits available, ~~licenses~~ permits shall be granted in the following manner:

A. Any person, firm or corporation having been issued a ~~license~~ permit and exercised its rights under that ~~license~~ permit for the year prior to the making of the application shall be entitled to renew said ~~license-~~ permit.

B. Any ~~licenses~~ permits remaining shall be granted to those first applying there for, who meet all the necessary qualifications and requirements.

8.20.090 Temporary stands – Standards and conditions.

The temporary stands of all licensees permit holders shall conform to the following minimum standards and conditions:

A. Temporary fireworks stands need not comply with all provisions of the International Building Code; provided, however, that all such stands shall be erected under the supervision of the building inspector or his duly authorized representative, who shall require all stands to be constructed in a safe manner, insuring the safety of attendants and patrons. In the event any temporary stand is wired for electricity, then the wiring shall conform to the Electrical Code of the state of Washington.

B. No temporary fireworks stand shall be located within 20 feet of any other building or structure, nor within 50 feet of any gasoline station, oil storage tank or premises where flammable liquids are kept or stored.

C. Each temporary fireworks stand must have at least two exits, which shall be unobstructed at all times.

D. Each temporary fireworks stand shall have, in a readily accessible place, ~~a fire extinguisher duly approved in advance by the fire chief of Fire Protection District No. 5 or his duly authorized representative.~~ two approved, pressurized two and one-half gallon water-type fire extinguishers.

E. All weeds, grass and combustible material shall be cleared from the location of the temporary fireworks stand and the surrounding area a distance of not less than 20 feet, measured from the exterior walls on each side of said temporary fireworks stand.

F. No smoking shall be permitted in or near a temporary fireworks stand and the same shall be posted with proper "No Smoking" signs.

G. Each temporary fireworks stand shall have an adult in attendance at all times. No child or children under the age of 18 years shall be allowed inside the employee area of any temporary fireworks stand.

H. All unsold stock and accompanying litter shall be removed from said temporary fireworks stand by 12:00 noon on July 6th of each year.

8.20.100 Temporary stands – Safe and sane fireworks only.

All safe and sane fireworks except "toy caps" and "sparklers" shall be sold only from temporary stands.

8.20.110 Time limit – Sale of fireworks.

No licensee permittee shall sell at retail or offer for sale any fireworks authorized to be sold herein within the city limits of Gig Harbor except from 12:00 noon on June 28th to 12:00 noon on July 5th of any year.

8.20.120 Time limit – Use of fireworks.

No person shall use or explode any fireworks within the corporate limits of Gig Harbor except from 12:00 noon on June 28th to 12:00 noon on July 5th of any year; provided that this prohibition shall not apply to duly

authorized public displays where the same are authorized pursuant to the laws of the state of Washington.

8.20.130 Unlawful acts.

It is unlawful for any person to sell, possess, use or explode any dangerous fireworks within the city limits of Gig Harbor. Any item of fireworks which does not bear a "Safe and Sane" registration or classification of the State Fire Marshal in conformity with Chapter 228, Laws of 1961 of the state of Washington, shall be deemed dangerous and is prohibited by this chapter.

8.20.140 Enforcement.

The chief of police or his duly authorized representative is designated as the enforcing officer of this chapter. In addition to all the grounds for revocation of ~~licenses~~ permits set forth in the general provisions of this chapter, any failure or refusal on the part of ~~licensee~~ permittee to obey any rule, regulation or request of the chief of police concerning the sale of fireworks shall be grounds for the revocation of a ~~fireworks license~~ temporary fireworks stand permit.

8.20.150 Violation – Penalty.

Violation of any portion of this chapter is an infraction and subject to a penalty of \$1,000 as provided in GHMC 1.16.010D.

Section 3. 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 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of March, 2013

CITY OF GIG HARBOR

Mayor Pro Tem Steven K. Ekberg

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela Belbeck, City Attorney

FILED WITH THE CITY CLERK: 03/06/13
PASSED BY THE CITY COUNCIL: 03/25/13
PUBLISHED: 03/27/13
EFFECTIVE DATE: 04/01/13
ORDINANCE NO: 1261



Subject: Approval of the attached Buffer Zone Protection Plan (BZPP) Grant Agreement between the City of Gig Harbor and the Washington State Military Department.

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *MDH*

For Agenda of: April 25, 2013

Exhibits:

Initial & Date

Concurred by Mayor: *MDH 3/18/13*

Approved by City Administrator: *R 3/15/13*

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

Approved by Finance Director: *MDH 3/13*

Approved by Department Head: *MDH 3/15/13*

Proposed Council Action: Approve the attached grant agreement.

Expenditure	Amount	Appropriation
Required: \$32,499.18	Budgeted 0	Required : see fiscal consideration

INFORMATION / BACKGROUND

The attached grant agreement outlines the federal grant compliance requirements associated with the BZPP grant we were awarded in February. This agreement is with the Washington State Military Department who is the grant administrator. The funding authority for this grant is the U.S. Department of Homeland Security (DHS).

Through the FFY09 Buffer Zone Protection Program (BZPP) the DHS provides funds to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority Critical Infrastructure and Key Resource (CI/KR) assets through planning and equipment acquisition.

This grant funding will be used to purchase a CVIII plus-9 Geo Point handheld FLIR receiver, three (3) Gen III Milspec night vision monoculars and fourteen (14) Class III full body harnesses.

City Attorney Angela Belbeck has reviewed the agreement and approved it as to form.

FISCAL CONSIDERATION

The grant is for \$32,499.18 and does not require a match of city funds. Because we didn't budget for the granting of this money, we may need to request a budget amendment later in the year to cover this unbudgeted grant.

RECOMMENDATION / MOTION

Move to: Approve the attached FFY09 BZPP Grant Agreement with the Washington State Military Department.

Washington State Military Department GRANT AGREEMENT FACE SHEET			
1. Sub-grantee Name and Address: Gig Harbor Police Department 3510 Grandview Street Gig Harbor, WA 98335-1214		2. Grant Agreement Amount: \$32,499.18	3. Grant Agreement Number E13-190
4. Sub-grantee's Contact Person, phone number: Mike Davis, 253-853-2420 davism@cityofgigharbor.net		5. Sub-grantee Start Date: April 1, 2009	6. Grant Agreement End Date: March 31, 2013
7. MD Program Manager/phone number: Olivia Hollowwa, 253-512-7149 olivia.hollowwa@mil.wa.gov		8. DUNS #: 014363621	9. UBI # (state revenue): 273-000-606
10. Funding Authority: Washington State Military Department (Department) and the U.S. Department of Homeland Security (DHS)			
11. Funding Source Agreement #: 2009-BF-T9-0035	12. Program Index # & OBJ/SUB-OJ 793BL NZ	13. CFDA # & Title: 97.078 BZPP	14. TIN or SSN: 91-6001435
15. Service Districts: (BY LEG DIST): 26 (BY CONG DIST): 6		16. Service Area by County(ies): Pierce	17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
18. Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____		19. Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency	
20. Sub-grantee Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____		21. Sub-grantee Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER	
22. BRIEF DESCRIPTION: Through the FFY09 Buffer Zone Protection Program (BZPP) the U.S. Department of Homeland Security (DHS) provides funds to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority Critical Infrastructure and Key resource (CI/KR) assets through planning and equipment acquisition. The full amount of grant funding was not able to be used as originally planned which resulted in a reallocation of funding for additional projects. This is an added project to utilize the reallocated funds.			
IN WITNESS WHEREOF, the Department and Sub-grantee acknowledge and accept the terms of this Grant Agreement and attachments hereto and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet (Exhibit A), Special Terms and Conditions, General Terms and Conditions (Exhibit B), Statement of Work (Exhibit C), Milestone (Exhibit D), Budget (Exhibit E) and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Grant Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.			
In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable Federal and State Statutes and Regulations (b) Statement of Work (c) Special Terms and Conditions (d) General Terms and Conditions, and if attached, (e) Any other provisions of the Grant Agreement incorporated by reference.			
This Grant Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.			
WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.			
FOR THE DEPARTMENT: _____ Signature Date Dan Swisher, Chief Financial Officer Washington State Military Department BOILERPLATE APPROVED AS TO FORM: Brian E. Buchholz (signature on file) 6/13/2012 Assistant Attorney General		FOR THE SUB-GRANTEE: _____ Signature Date Charles Hunter, Mayor City of Gig Harbor APPROVED AS TO FORM (if applicable): _____ Applicant's Legal Review Date	

Washington State Military Department
SPECIAL TERMS AND CONDITIONS

ARTICLE I -- COMPENSATION SCHEDULE:

This is a fixed price, reimbursement Grant Agreement. Within the total Grant Agreement amount, travel, subcontracts, salaries and wages, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Grant Agreement. Any travel or subsistence reimbursement allowed under the Grant Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended and in agreement with federal rates. Receipts and/or backup documentation for any approved budget line items including travel related expenses that are authorized under this Grant Agreement must be maintained by the Sub-grantee and be made available upon request by the Military Department.

Cumulative changes to budget categories in excess of 10% of the Grant Agreement award will not be reimbursed without the prior written authorization from the Department. Budget categories are as specified or defined in the budget sheet of the Grant Agreement.

ARTICLE II -- REPORTS:

In addition to the reports as may be required elsewhere in this Grant Agreement, the Sub-grantee shall prepare and submit the following reports to the Department's Key Personnel:

<u>Financial</u>	<u>#/Copies</u>	<u>Due Date</u>
Invoices	1	Within 30 days after the end of the period in which the work was performed

Invoices must be submitted no more often than monthly, but at least quarterly. Failure to submit invoices in a timely manner will cause the Department to hold all requests for equipment approval until invoices are submitted.

Final Invoice (shall not exceed overall Grant Agreement amount)	1	No later than 30 days following the Grant Agreement end date
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<u>Technical</u>	<u>#/Copies</u>	<u>Due Date</u>
Quarterly Progress Report	Electronic	January 15, April 15, July 15, October 15 of each year of the Grant Agreement performance period

Final Report	Electronic	No later than 30 days following the Grant Agreement end date
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Failure to meet all of the reporting and invoicing deadlines will prohibit the Sub-grantee from being reimbursed and will prevent vetting of equipment requests while Grant Agreement requirements are outstanding.

All Grant Agreement work must end on the Grant Agreement end date, including receipt of supplies and equipment, however the Sub-grantee has up to **30** days after the Grant Agreement end date to submit all final reports, invoices, and/or deliverables.

ARTICLE III -- KEY PERSONNEL:

The individuals listed below shall be considered Key Personnel. The Key Personnel for each of the parties shall be the contact person for all communications and billings regarding the performance of this Grant Agreement. Any substitution must be made by written notification to the Military Department.

SUB-GRANTEE:

Name **Mike Davis**
 Title **Chief of Police**
 E-Mail davism@cityofgigharbor.net
 Phone **253-853-2420**

MILITARY DEPARTMENT:

Name **Olivia Hollowwa**
 Title **Program Coordinator**
 E-Mail olivia.hollowwa@mil.wa.gov
 Phone **253-512-7149**

ARTICLE IV -- ADMINISTRATIVE REQUIREMENTS:

1. The Sub-grantee shall comply with all financial and procurement guidance, including competitive processes and other procurement requirements, to include but not limited to: Office of Management and Budget (OMB) Circulars, A-87 (Cost Principles for State, local and Indian Tribal Governments), A-102 (Grants and Cooperative Agreements with State and Local Governments), A-122 (Cost Principles for Non-Profit Organizations), A-133 (Audits of States, Local Governments, and Non-Profit Organizations), and The Federal Emergency Management Agency's codified regulations, 44 Code of Federal Regulations (CFR). Local and state procurement and contracting regulations take precedence over these requirements when local and state regulations are more stringent.
2. The Sub-grantee shall comply with the **Federal Funding Accountability and Transparency Act (FFATA)** and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the Department Attachment #1 attached to and made a part of this Agreement.

ARTICLE V -- ADDITIONAL SPECIAL CONDITIONS AND MODIFICATION TO GENERAL CONDITIONS:

1. Funds are provided by the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) solely for the purpose of enhancing the capability of state and local units of government to prepare for, prevent, deter, respond to, and recover from catastrophic incidents resulting from man-made and natural events. The Sub-grantee shall use the funds to perform tasks as described in the Statement of Work and Budget portions of this Grant Agreement.
2. The Sub-grantee agrees that to receive any federal preparedness funding, all Environmental and Historical Protection (EHP) Program compliance requirements outlined in applicable guidance must be met. The Sub-grantee is advised that all projects that involve disturbing earth, communication towers, physical security enhancements, new construction, renovation, and modifications to buildings and structures that are 50 years old or older require EHP review. All other projects, including training and exercise activities, must be evaluated to determine impact. If impact is identified they must also go through an EHP review.
3. The Sub-grantee agrees that to receive any federal preparedness funding, all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance must be met.
4. Grant funds may not be used to replace or supplant existing funding.
5. The Sub-grantee will provide a match of \$0 of non-federal origin.
6. The Sub-grantee will comply with
 - a. All applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to: (a) Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 U.S.C. 2000d) which prohibits discrimination on the basis of race, color or national origin; (b) Civil Right Act of 1968 (42 U.S.C. 3601), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, (c) Title IX of the Education Amendments of 1972, as amended (20 U.S.C §§1681 et seq.), which prohibits discrimination on the basis of sex; (d) Section 504 of the Rehabilitation Act of 1973 (PL 93-112), as amended (29 U.S.C §794), which prohibits discrimination on the basis of disability; (e) the Age Discrimination Act of 1975, as amended (42 U.S.C §§6101 et seq.), which prohibits discrimination on the basis of age; (f) Fly America Act of 1974 which states preference for U.S. Flag Air Carriers, (g) Drug-Free Workplace Act of 1988 which requires the Sub-grantee to notify the Department if an employee of the recipient is convicted of violating a criminal drug statute, (h) Trafficking Victims Protection Act of 2000, (i) Animal Welfare Act of 1966, (j) Clean Air Act of 1970, (k) Clean Water Act of 1977, (l) National Flood Insurance Act of 1968, (m) Flood Disaster Protection Act of 1973, (n) Coastal Wetlands Planning, (o) Protection, and Restoration Act of 1990, (p) USA Patriot Act of 2001, and (q) the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing. However, the requirements of Section 202 of Executive Order 11246, as amended, do not apply to a government Sub-grantee or subcontractor that is a religious corporation, association, educational institution or society, with respect to the employment of

individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

b. If applicable, environmental standards prescribed pursuant to the following: (a) protection and enhancement of environmental quality pursuant to Executive Order (EO) 11514, as amended; (b) administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990, as amended; (d) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972 (P.L. 92-583), 16 U.S.C. §§1451 et seq., as amended; (f) Air Quality & Emission Limitations pursuant to 42 U.S.C. §§7401 et seq.; (g) the Safe Drinking Water Act of 1974 (PL 93-523), as amended; and, (h) the Endangered Species Act of 1973 (PL 93-205), as amended.

7. Per the 2 CFR Part 215, Sub-grantees are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

The Sub-grantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DHS/FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

The Federal Government has the right to: obtain, reproduce, publish or otherwise use the data first produced under an award and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

8. All recipients of financial assistance will comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
9. The Sub-grantee acknowledges that since this Grant Agreement involves federal funding, the period of performance described herein will likely begin prior to the availability of appropriated federal funds. The Sub-grantee agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Grant Agreement prior to distribution of appropriated federal funds.

The Sub-grantee agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement or any type of payment if federal funds are not appropriated or are not appropriated in a particular amount.

ARTICLE VI – PROCUREMENT AND FINANCIAL MANAGEMENT:

1. The Sub-grantee shall comply with all procurement requirements of 44 CFR Part 13.36, Procurement. All sole source contracts expected to exceed \$100,000 must be submitted to the Department for review and approval prior to the Sub-grantee's award and execution of a contract. This requirement must be passed on to all of the Sub-grantee's sub-contractors, at which point the Sub-grantee will be responsible for reviewing and approving their sub-contractor's sole source justifications.
2. All sole source contracts over \$100,000 must be reviewed and approved by the Department prior to execution of a contract. This requirement must be passed on to all of the Sub-grantee's subcontractors, at which point the Sub-grantee will be responsible for reviewing and approving their subcontractors' sole source justifications.
3. All contracts with individual consultants that are not competitively bid, and where the consultant will be charging an excess of \$450 per day (excluding travel and subsistence) must be approved by the Department before the contract is executed. This requirement must be passed on to all of the Sub-grantee's subcontractors, at which point the Sub-grantee will be responsible for reviewing and approving their subcontractors' contract.
4. No costs will be reimbursed in advance of their being incurred by the Sub-grantee.
5. No costs will be reimbursed until the items have been received by the Sub-grantee and invoiced by the vendor.
6. Each A-19 will be accompanied by a spreadsheet detailing the expenditures. Related financial documents and invoices must be kept on file by the Sub-grantee and be made available upon request to the Department, and local, state, or federal auditors.

7. Requests for reimbursement of equipment purchases will include a copy of the vendor's invoice and packing slip or a statement **signed** and **dated** by the Sub-grantee's authorized representative that states "all items invoiced have been received in good working order, are operational, and have been inventoried according to Grant Agreement and local procurement requirements".
8. No travel or subsistence costs, including lodging and meals, reimbursed with federal funds may exceed federal maximum rates which can be found at <http://www.gsa.gov>.
9. Per the 44 CFR Part 13.36, all sub-contracts must contain the following provisions:
 1. Administrative, contractual, or legal remedies in instances where Sub-grantees violate or breach Grant Agreement terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than \$100,000)
 2. Termination for cause and for convenience by the Sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
 3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000)
 4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair)
 5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded when required by Federal grant program legislation)
 6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)
 7. Notice of requirements and regulations pertaining to reporting.
 8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
 9. Requirements and regulations pertaining to copyrights and rights in data.
 10. Access by the Department, the Sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Sub-grantee which are directly pertinent to that specific Grant Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
 11. Retention of all required records for six years after the Sub-grantee makes final payments and all other pending matters are closed.
 12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub-grants of amounts in excess of \$100,000)
 13. All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research.
 14. All recipients of financial assistance will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
 15. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the Department for forwarding to the DHS

awarding office and the DHS Office of Civil Rights and Civil Liberties. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.

16. Sub-grantee must obtain prior approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
17. All recipients of financial assistance will comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

ARTICLE VII – EQUIPMENT MANAGEMENT:

1. The Sub-grantee or a Subcontractor shall submit all proposed equipment purchases to the Committee on Homeland Security, Subcommittee on Equipment to ensure that the requested equipment is on the Authorized Equipment List, is aligned with the statewide equipment purchasing strategy, and meets all statewide interoperability and standardization requirements. No reimbursement for equipment costs will occur until the appropriate approvals have been obtained.
2. All equipment purchased under this Grant Agreement, by the Sub-grantee or a subcontractor, will be recorded and maintained in the Sub-grantee's equipment inventory system, unless specific de-obligated funds are contracted directly between a county, or other entity, and the State, in which case the contracted county maintains the equipment records.
3. Upon successful completion of the terms of this Grant Agreement, all equipment purchased through this Grant Agreement will be owned by the Sub-grantee, or a recognized subcontractor/subgrantee for which a contract, subgrant agreement, or other means of legal transfer of ownership is in place.
4. The Sub-grantee, or a recognized subcontractor/subgrantee, shall be responsible for any and all operation and maintenance expenses and for the safe operation of their equipment including all questions of liability.
5. The Sub-grantee shall maintain equipment records that include: a description of the equipment; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Catalogue of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the equipment.
6. Records for equipment shall be retained by the Sub-grantee for a period of six years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Sub-grantee until all litigations, claims, or audit findings involving the records have been resolved.
7. For the purpose of inventory and disposal of equipment purchased under this Grant Agreement the 44 CFR Section 13.3 definition of equipment will be used. It defines equipment as a tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. This definition will be used for equipment purchased with Grant Agreement funds, unless local or state regulations are more restrictive.
8. The Sub-grantee shall take a physical inventory of the equipment and reconcile the results with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Sub-grantee to determine the cause of the difference. The Sub-grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
9. The Sub-grantee shall develop a control system to ensure adequate safeguards to prevent loss, damage, unauthorized use and theft of equipment, to include small and attractive items. Any loss, damage or theft shall be investigated and a report generated.
10. The Sub-grantee will develop adequate maintenance procedures to keep the equipment in good condition.

11. If the Sub-grantee is authorized or required to sell the equipment, proper sales procedures must be established to ensure the highest possible return.
12. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
 - a. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the Sub-grantee with no further obligation to the awarding agency.
 - b. Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the Sub-grantee shall compensate the Federal-sponsoring agency for its share.
13. Equipment purchased with funds from DHS grant programs should be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" whenever possible.
14. As subgrantees of federal funds, the Sub-grantee must pass on equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and subgrantees who receive pass-through funding from this Grant Agreement.

ARTICLE VIII – SUBRECIPIENT MONITORING

The Department will monitor the activities and equipment acquisition of the Sub-grantee from award to closeout and for the life of equipment purchased under this Grant Agreement. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations.

Monitoring activities may include:

- review of performance reports and documentation of Grant Agreement deliverables completion;
- documentation of phone calls, meetings, e-mails and correspondence;
- review of reimbursement requests to ensure allowability and consistency with Grant Agreement budget and Grant Agreement deliverables;
- observation and documentation of Grant Agreement related activities, such as planning, exercises, training, funded events and equipment demonstrations;
- on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.

As a subgrantee of federal funds, the Sub-grantee is required to meet or exceed the monitoring activities, as outlined above, for all subcontractors, consultants, and subgrantees who receive pass-through funding from this Grant Agreement.

Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants

A.1 DEFINITIONS

As used throughout this Grant Agreement, the following terms will have the meaning set forth below:

- a. **"Department"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
- b. **"Sub-grantee"** means the government or other eligible legal entity to which a sub-grant is awarded and which is accountable to the Grantee for the use of the funds provided under this Grant Agreement, and includes all employees of the Sub-grantee and any sub-contractor retained by the Sub-grantee as permitted under the terms of this Grant Agreement. The term "Sub-grantee" and "Sub-grantee" may be used interchangeably in this Agreement.
- c. **"Sub-grantee Agent"** means the official representative and alternate designated or appointed by the Sub-grantee in writing and authorized to make decisions on behalf of the Sub-grantee.
- d. **"Grantee"** means the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, the state of Washington is the Grantee. The Grantee and the Department are one and the same.
- e. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, authorities and policies.
- f. **"Investment Justification"** means grant application investment justification submitted by the Sub-grantee describing the project for which federal funding is sought and provided under this Grant Agreement. Such grant application investment justification is hereby incorporated into this Grant Agreement by reference.
- g. **"PL"** – is defined and used herein to mean the Public Law.
- h. **"CFR"** – is defined and used herein to mean the Code of Federal Regulations.
- i. **"OMB"** – is defined and used herein to mean the Office of Management and Budget.
- j. **"WAC"** – is defined and used herein to mean the Washington Administrative Code.
- k. **"RCW"** – is defined and used herein to mean the Revised Code of Washington.

A.2 SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)

Non-federal entities as subrecipients that expend \$500,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (amended June 27, 2003, effective for fiscal years ending after December 31, 2003, and further amended June 26, 2007). Non-federal entities that spend less than \$500,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. As defined in Circular A-133, the term "non-federal entity" means a State, local government, or non-profit organization, and the term "State" includes Indian tribes. Circular A-133 is available on the OMB Home Page at <http://www.omb.gov>.

Sub-grantee required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The Sub-grantee-grantee has the responsibility of notifying its auditor and requesting an audit in compliance with Circular A-133, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by Circular A-133.

The Sub-grantee shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records.

The Sub-grantee is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Sub-grantee must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Sub-grantee all disallowed costs resulting from the audit.

Once the single audit has been completed, the Sub-grantee must send a full copy of the audit to the Department and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The Sub-grantee must send the audit and the letter no later than nine (9) months after the end of the Sub-grantee's fiscal year(s) to:

Accounting Manager
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032

In addition to sending a copy of the audit, the Sub-grantee must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

If Sub-grantee claims it is exempt from the audit requirements of Circular A-133, Sub-grantee must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the Sub-grantee fiscal year(s) to:

Accounting Manager
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The Sub-grantee shall include the above audit requirements in any sub-contracts.

Conducting a single or program-specific audit in compliance with Circular A-133 is a material requirement of this Grant Agreement. In the absence of a valid claim of exemption from the audit requirements of Circular A-133, the Sub-grantees failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with Circular A-133; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.3 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Sub-grantee shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.4 AMENDMENTS AND MODIFICATIONS

The Sub-grantee or the Department may request, in writing, an amendment or modification of this Grant Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Sub-grantee. No other understandings or agreements, written or oral, shall be binding on the parties.

A.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Sub-grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.6 ASSURANCES

Department and Sub-grantee agree that all activity pursuant to this Grant Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Grant Agreement, the Sub-grantee certifies that the Sub-grantee is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal department or agency.

If requested by the Department, the Sub-grantee shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sub-grantee for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the Sub-grantee agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Sub-grantee certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the Sub-grantee may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the Excluded Parties List System (EPLS) maintained by the federal General Services Administration (GSA). The Sub-grantee also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List."

A.8 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Sub-grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the Sub-grantee who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement. The Sub-grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Sub-grantee and all its contractors shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of the Sub-grantee's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the Department may rescind, cancel, or terminate the Grant Agreement in whole or in part in its sole discretion. The Sub-grantee is responsible for all costs or liability arising from its failure to comply with applicable law, regulation, executive order, OMB Circular or policy.

A.10 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Sub-grantee's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the Department. However, the parties acknowledge that the Department, and state and local agencies as defined in RCW 42.56.010, are subject to RCW 42.56, the state Public Records Act.

A.11 DISPUTES

The Department and Sub-grantee shall make every effort to resolve disputes arising out of or relating to this Grant Agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this Agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute.

Both parties agree that this dispute resolution process shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this section shall preclude the parties from mutually agreeing to a different dispute resolution method in lieu of the procedure outlined above.

A.12 LEGAL RELATIONS

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the Sub-grantee, its successors or assigns, will protect, save and hold harmless the Department, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Sub-grantee, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the Sub-grantee further agrees to defend the Department and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Sub-grantee, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Sub-grantee, or Sub-grantee's agents or employees.

Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.13 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Sub-grantee or Alternate for the Sub-grantee, formally

designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives.

Further, only the Authorized Signature representative or Alternate for the Sub-grantee shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.14 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Sub-grantee an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.15 NONASSIGNABILITY

Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the Sub-grantee.

A.16 NONDISCRIMINATION

The Sub-grantee shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

A.17 NOTICES

The Sub-grantee shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.18 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/ HEALTH ACT (OSHA/WISHA)

The Sub-grantee represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the Sub-grantee's performance under this Grant Agreement. To the extent allowed by law, the Sub-grantee further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Sub-grantee to so comply.

A.19 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the Sub-grantee. The Sub-grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.20 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.21 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Grant Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.22 PUBLICITY

The Sub-grantee agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Grant Agreement wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Sub-grantee agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Sub-grantee may copyright original work it develops in the course of or under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an acknowledgement of FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.23 RECAPTURE PROVISION

In the event the Sub-grantee fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws and/or the provisions of the Grant Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Grant Agreement termination. Repayment by the Sub-grantee of funds under this recapture provision shall occur within 30 days of demand.

In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorney fees.

A.24 RECORDS

- a. The Sub-grantee agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Sub-grantee's contracts, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Grant Agreement (the "records").
- b. The Sub-grantee's records related to this Grant Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Sub-grantee with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the Grant Agreement.
- c. The records shall be made available by the Sub-grantee for such inspection and audit, together with suitable space for such purpose, at any and all times during the Sub-grantee's normal working day.
- d. The Sub-grantee shall retain and allow access to all records related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

A.25 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Sub-grantee with the project/statement of work/work plan (project) by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the Sub-grantee. The Department undertakes no responsibility to the Sub-grantee, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Sub-grantee, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Sub-grantee shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The Sub-grantee shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Sub-grantee in connection with the project. The Sub-grantee shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.26 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Sub-grantee hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Sub-grantee to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement,

and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, grant, loan, or cooperative agreement, the Sub-grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Sub-grantee will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

A.28 SUB-CONTRACTING

The Sub-grantee shall use a competitive procurement process in the award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the Sub-grantee.

All sub-contracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

A.29 SUB-GRANTEE NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Grant Agreement. The Sub-grantee, and/or employees or agents performing under this Grant Agreement are not employees or agents of the Department in any manner whatsoever. The Sub-grantee will not be presented as nor claim to be an officer or employee of the Department or of the State of Washington by reason of this Grant Agreement, nor will the Sub-grantee make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Sub-grantee is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Grant Agreement, the Sub-grantee shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Sub-grantee or its staff required by statute or regulation that are applicable to Grant Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Grant Agreement, the Sub-grantee may terminate this Grant Agreement by providing written notice of such termination to the Department's Key Personnel identified in the Grant Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Grant Agreement, the Department, in its sole discretion and in the best interests of the State of Washington, may terminate this Grant Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the Sub-grantee. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds. In the event of termination, the Sub-grantee shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Sub-grantee has failed to fulfill in a timely and proper manner its obligations under this Grant Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Sub-grantee unable to perform any aspect of the Grant Agreement, or has violated any of the covenants, agreements or stipulations of this Grant Agreement, the Department has the right to immediately suspend or terminate this Grant Agreement in whole or in part.

The Department may notify the Sub-grantee in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Sub-grantee an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Sub-grantee liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Sub-grantee an opportunity to cure, the Department shall notify the Sub-grantee in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Grant Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Grant Agreement, withhold further payments, or prohibit the Sub-grantee from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Sub-grantee, if allowed, or pending a decision by the Department to terminate the Grant Agreement in whole or in part.

In the event of termination, the Sub-grantee shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Grant Agreement and the replacement or cover Grant Agreement and all administrative costs directly related to the replacement Grant Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Sub-grantee: (1) was not in default or material breach, or (2) failure to perform was outside of the Sub-grantee's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.33 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Grant Agreement, the Sub-grantee shall follow any procedures specified in the termination notice. Upon termination of this Grant Agreement and in addition to any other rights provided in this Grant Agreement, the Department may require the Sub-grantee to deliver to the Department any property specifically produced or acquired for the performance of such part of this Grant Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Sub-grantee agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Grant Agreement termination, and the amount agreed upon by the Sub-grantee and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Grant Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Sub-grantee for termination. The Department may withhold from any amounts due the Sub-grantee such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Grant Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Sub-grantee shall:

- a. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Grant Agreement except as may be necessary for completion of such portion of the work under the Grant Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Sub-grantee under the orders and sub-contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Grant Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Grant Agreement which is in the possession of the Sub-grantee and in which the Department has or may acquire an interest.

A.34 TRAVEL AND SUBSISTENCE REIMBURSEMENT

Unless the Grant Agreement specifically provides for different rates, any travel or subsistence reimbursement allowed under the Agreement shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The Sub-grantee may be required to provide to the Department copies of receipts for any travel related expenses other than meals and mileage (example: parking) that are authorized under this Agreement.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Sub-grantee is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The Sub-grantee may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 WAIVERS

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

A.37 VENUE

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Thurston County, Washington. The Sub-grantee, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.

Statement of Work
FFY 2009 Buffer Zone Protection Program

INTRODUCTION: The Washington State Military Department Emergency Management Division's (EMD) Homeland Security (DHS) Section is responsible for programs designed to prepare and improve the State's ability to respond to a Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) terrorist attack. Through the FFY 2009 Buffer Zone Protection Program (BZPP), EMD is providing funds to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority Critical Infrastructure and Key Resource (CI/KR) assets through planning and equipment acquisition.

The BZPP provides enhanced security for select infrastructures and assets based on criteria established annually by DHS with state and local input. Buffer Zone Plans (BZP) are intended to help local law enforcement and first responders develop effective preventive measures that make it more difficult for terrorists to plan or launch attacks from the immediate vicinity of high priority infrastructure targets. The BZPP assists local authorities in assessing current vulnerabilities at CI/KR sites, and in developing and implementing BZPs to increase the level of protection and act as a deterrent and prevention mechanism. Upon completion, local authorities in concert with owners of property identified as buffer zones will use the BZPs as a basis for identifying needs and prioritizing resources related to training, information, equipment and exercise needs necessary for the protection of identified CI/KR sites.

Prior to contracting, the Sub-grantee has accomplished the following:

- Conducted a site vulnerability assessment of the designated infrastructure site, identifying the buffer zone outside the perimeter of the potential target. The site vulnerability assessment included coordination with security management and measures already in place at the facility.
- Developed a Buffer Zone Plan (BZP) in coordination with EMD staff, identifying required training, information, equipment, resources and recommended buffer zone protective measures necessary to address any shortfalls.
- Developed a Vulnerability Reduction Purchase Plan (VRPP), using the approved DHS template, which serves as the acquisition plan for the materials, equipment and resources necessary to implement the BZP.
- Completed a National Environmental Policy Act (NEPA) Checklist for any construction-related activities, if applicable, and submitted to EMD to obtain DHS approval prior to expenditure of funds. This includes activities related to the acquisition, installation, maintenance, operation, evaluation, removal, or disposal of security equipment to screen for or detect dangerous individuals or dangerous or illegal materials at existing facilities; acquisition, installation, maintenance, operation, evaluation, removal, or disposal of target hardening security equipment, devices or controls.
- Completed an Environmental and Historic Preservation review for any projects that involve communications towers, physical security enhancements, new construction, or modifications to buildings that are 50 years or greater.
- Submitted the BZP and VRPP to EMD for submission to DHS for review and approval.

THE SUB-GRANTEE AGREES TO:

1. Plan and implement equipment purchases and other activities in accordance with FFY09 Buffer Zone Protection Program Grant Guidance, which can be found at <http://www.fema.gov/government/grant/bzpp/index.shtm>, as well as all subsequent policy changes. These requirements must be passed on to all of the Sub-grantee's subcontractors, and monitored through periodic review of expenditures and equipment inventories.
2. Purchase, upon approval of BZP and VRPP, those items listed in the VRPP, and ensure delivery, installation, testing and verification of satisfactory performance of all equipment prior to the end of the performance period.
3. Mark, when practicable, any equipment purchased with grant funding, as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
4. Report progress on deliverables and advise EMD, in writing, of necessary adjustments to the content of the Grant Agreement.

5. Adhere to all financial and procurement guidance, including competitive bid processes and other procurement requirements. Local and state procurement and contracting regulations take precedence over these requirements when local and state regulations are more stringent.
6. Accompany each request for reimbursement with a spreadsheet detailing the expenditures, using the Reimbursement Spreadsheet form to be provided by EMD. Requests for reimbursement of equipment purchases will utilize the State's A-19 form and will include copies vendor invoices and packing slips. Requests for reimbursement not signed by the Sub-grantee's proper authorizing authority, as indicated on the Signature Authorization Form, will be returned to the Sub-grantee.
7. Acknowledge that the public disclosure of records relating to this Grant Agreement, and all underlying data, would have a substantial likelihood of threatening public safety, and are therefore exempt from public disclosure pursuant to RCW 42.56.420 effective 7/1/06.
8. If necessary, hire a Subcontractor to assist in accomplishing the Grant Agreement tasks.
9. If purchasing equipment, the Sub-grantee must meet the following requirements:
Be in compliance with the DHS Authorized Equipment List (AEL), as detailed at <http://www.rkb.us>.
 - Determine whether or not it is in the best interest of the Sub-grantee to make purchases using its own procurement process or ask the Department to make purchases on its behalf.
 - Make a request to the Department in writing that authorizes the Department to de-obligate funding from the Sub-grantee's Grant Agreement and use the state's procurement process and contracts to purchase equipment on behalf of the Sub-grantee.
 - This will necessitate an amendment to the Grant Agreement reducing the Sub-grantee's award by an amount sufficient for the Department to make the purchase(s).
 - The Department will pay the vendor directly and all items will be drop shipped to a location designated by the Sub-grantee.

THE MILITARY DEPARTMENT AGREES TO:

1. Provide technical assistance, expertise, and state coordination with FEMA where necessary.
2. Reimburse the Sub-grantee within 45 days of receipt and approval of requests for reimbursement which includes all documentation of expenditures as required.

MILESTONES
FFY 2009 Buffer Zone Protection Program

MILESTONE	TASK
April 1, 2009	Start of Grant Agreement performance period.
February 2013	Grant Agreement execution
March 31, 2013	End of Grant Agreement performance period.
No later than April 30, 2013	Submit Final Report, requests for reimbursement and/or deliverables.

ADDITIONAL AGREEMENT PROVISIONS AND WORKSHEET
For Compliance With The
Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) (FFATA)

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website. Federal awards include grants, subgrants, loans, awards, cooperative agreements and other forms of financial assistance as well as contracts, subcontracts, purchase orders, task orders, and delivery orders. The legislation does not require inclusion of individual transactions below \$25,000 or credit card transactions before October 1, 2008. However, if an award is initially below this amount yet later increased, the act is triggered. Due to this variability in compliance Subrecipients are **required** by the Military Department to be familiar with the FFATA requirements and complete this Worksheet for *each contract* for the State's submission in to the FFATA portal.

ADDITIONAL PROVISIONS

A. This contract (subaward) is supported by federal funds, requiring compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act) and Office of Management and Budget Guidance (OMB). Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note). By entering into this contract, contractor agrees to provide all applicable reporting information to the Washington Military Department (WMD) required by FFATA and OMB Guidance.

B. The FFATA requires the OMB to establish a publicly available online database (USASpending.gov) containing information about entities that are awarded Federal grants, loans, and contracts. As required by FFATA and OMB Guidance, certain information on the first-tier subawards related to Federal contracts and grants, and the executive compensation of awardees, must be made publicly available.

C. For new Federal grants beginning October 1, 2010, if the initial subaward is equal to or greater than \$25,000, reporting of the subaward and executive compensation information is required. If the initial subaward is below \$25,000 but subsequent grant modifications result in a total subaward equal to or over \$25,000, the subaward will be subject to the reporting requirements as of the date the subaward exceeds \$25,000. If the initial subaward equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the subaward continues to be subject to the reporting requirements of the Transparency Act and OMB Guidance.

D. As a Federal grant subawardee under this contract, your organization is required by FFATA, OMB Guidance and this contract to provide the WMD, as the prime grant awardee, all information required for FFATA compliant reporting by WMD. This includes all applicable subawardee entity information required by FFATA and OMB Guidance, subawardee DUNS number, and relevant executive compensation data, as applicable.

1. Data about your organization will be provided to USASpending.gov by the WMD. System for Award Management (SAM) is a government wide registration system for organizations that do business with the Federal Government. SAM stores information about awardees including financial account information for payment purposes and a link to D&B for maintaining current DUNS information, www.sam.gov. WMD requires SAM registration and annual renewal by your organization to minimize unnecessary data entry and re-entry required by both WMD and your organization. It will also reduce the potential of inconsistent or inaccurate data entry.
2. Your organization must have a Data Universal Numbering System (DUNS) number obtained from the firm Dun and Bradstreet (D&B) (www.dnb.com). A DUNS number provides a method to verify data about your organization. D&B is responsible for maintaining unique identifiers and organizational linkages on behalf of the Federal Government for organizations receiving Federal assistance.

E. The WMD, as the prime awardee, is required by FFATA to report names and total compensation of the five (5) most highly compensated officers of your organization (as the subawardee) if:

1. Your organization (the subawardee), in the preceding fiscal year, received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards; and
2. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

“Total compensation” for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.

F. If (1) in the preceding fiscal year your organization received 80 percent or more of its annual gross revenues from Federal awards and \$25,000,000 or more in annual gross revenues from Federal awards, and (2) the public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986, insert the names and total compensation for the five most highly compensated officers of your organization in the table below.

WORKSHEET

Subrecipient Agency: Gig Harbor Police Department				
Grant and Year: BZPP FY09		Agreement Number: E13-190		
Completed by:	<u>Mike Davis</u> Name	<u>Chief</u> Title	<u>253 853 2420</u> Telephone	
Date Completed: 3/15/2013				
STEP 1				
Is your grant agreement less than \$25,000?	YES <input type="checkbox"/>	STOP, no further analysis needed, GO to Step 6	NO <input checked="" type="checkbox"/>	GO to Step 2
STEP 2				
In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?	YES <input type="checkbox"/>	GO to STEP 3	NO <input checked="" type="checkbox"/>	STOP, no further analysis needed, GO to Step 6
STEP 3				
In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding?	YES <input type="checkbox"/>	GO to STEP 4	NO <input type="checkbox"/>	STOP, no further analysis needed, GO to Step 6
STEP 4				
Does the public have access to information about the total compensation* of senior executives in your organization?	YES <input type="checkbox"/>	STOP, no further analysis needed, GO to step 6	NO <input type="checkbox"/>	GO to STEP 5
STEP 5				
Executive #1	Name:			
	Total Compensation amount: \$			
Executive #2	Name:			
	Total Compensation amount: \$			
Executive #3	Name:			
	Total Compensation amount: \$			
Executive #4	Name:			
	Total Compensation amount: \$			
Executive #5	Name:			
	Total Compensation amount: \$			
STEP 6				
If your organization does not meet these criteria, specifically identify below each criteria that is not met for your organization: <u>For Example: "Our organization received less than \$25,000." Our organization received a grant over \$25,000 and in the preceding fiscal year we didn't receive 80% or more of our annual gross revenue from federal funding.</u>				

Signature: Mike Davis

Date: 3/15/2013

- * Total compensation refers to:
- Salary and bonuses
 - Awards of stock, stock options, and stock appreciation rights
 - Other compensation including, but not limited to, severance and termination payments
 - Life insurance value paid on behalf of the employee

Additional Resources:
<http://www.whitehouse.gov/omb/open>
<http://www.hrsa.gov/grants/ffata.html>
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>
<http://www.grants.gov/>

Exhibit C

REVISED BUDGET SHEET
FFY 2009 Buffer Zone Protection Program
Gig Harbor Police Department
Detailed Equipment Budget

NOT TO EXCEED: \$32,499.18

FUNDING SOURCE: 793BL

ITEM	AEL NUMBER	ITEM & DESCRIPTION
1	14SW-01-VIDA	BMS Carry Viewer III (CVIIIPlus-9 Geo Point) handheld FLIR receiver , allow monitoring of aerial observation of site from any FLIR capable aircraft on station when implementing the protection plan.
2	03OE-02-BNOC	AN/PVS-14 Gen3 pinnacle Milspec , Night Vision monocular assigned to our two supervisors to be used for surveillance and night time bridge security details.
3	03OE-05-HARN	Voyager Class III full body harness for local law enforcement for safety while conducting surveillance and response activities on the Tacoma Narrows Bridge. <i>Special Condition: A non-precedent setting waiver was approved by DHS for the inclusion of this item with the understanding that Gig Harbor Police Department will use this equipment for the protection of the Tacoma Narrows Bridge. Gig Harbor Police Department will retain operational control of this equipment and not transfer the equipment to another jurisdiction.</i>
4	21GN-00-SHIP	Shipping costs for equipment purchased with grant funding
5	21GN-00-STAX	Sales tax on equipment purchased with grant funding.

NOTES:

1. DHS program requirements affirm that federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.
2. Overall equipment budget cannot be exceeded. Any expenditure which exceeds the equipment budget will be the responsibility of the Sub-grantee.

SIGNATURE AUTHORIZATION FORM


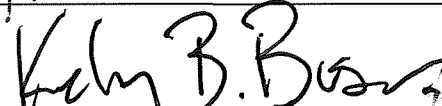
WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-5122

Please read instructions on reverse side before completing this form.

NAME OF ORGANIZATION Gig Harbor Police Department	DATE SUBMITTED 3/14/13
PROJECT DESCRIPTION FFY 2009 Buffer Zone Protection Grant	CONTRACT NUMBER 2009-BF-T9-0035

1. AUTHORIZING AUTHORITY		
SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Charles Hunter	Mayor/2010-2013
	Steve Eckberg	Mayor Pro-Tem/2013

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	Charles Hunter	Mayor/2010-2013
	Steve Eckberg	Mayor Pro-Tem/2013

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	Mike Davis	Chief of Police
	Kelly Busey	Lieutenant

Form **W-9**
(Rev. March 1994)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do NOT
send to the IRS.

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)
City of Gig Harbor

Business name (Sole proprietors see instructions on page 2.)
City of Gig Harbor

Please check appropriate box: Individual/Sole proprietor Corporation Partnership Other **Municipality**.....

Address (number, street, and apt. or suite no.)
3510 Grandview Street

City, state, and ZIP code
Gig Harbor, WA 98335

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see **How To Get a TIN** below.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number
| | | + | | | | |

OR

Employer identification number
9 | 1 | 6 | 0 | 0 | 1 | 4 | 3 | 5

List account number(s) here (optional)

Part II For Payees Exempt From Backup Withholding (See Part II instructions on page 2)

Part III Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see **Part III instructions** on page 2.)

Sign Here Signature  Date **2/6/2013**

Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must get your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 to give your correct TIN to the requester (the person requesting your TIN) and, when applicable, (1) to certify the TIN you are giving is correct (or you are waiting for a number to be issued), (2) to certify you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Giving your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

What Is Backup Withholding?—Persons making certain payments to you must withhold and pay to the IRS 31% of such

payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
- You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable

interest and dividend accounts opened after 1983 only), or

5. You do not certify your TIN. See the Part III instructions for exceptions.

Certain payees and payments are exempt from backup withholding and information reporting. See the Part II instructions and the separate **Instructions for the Requester of Form W-9**.

How To Get a TIN.—If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5, Application for a Social Security Number Card** (for individuals), from your local office of the Social Security Administration, or **Form SS-4, Application for Employer Identification Number** (for businesses and all other entities), from your local IRS office.

If you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to get a TIN and give it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN.

Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form

NAME Gig Harbor Police Department		Doing business as (DBA)	
ADDRESS 3510 Grandview Street, Gig Harbor WA 98335-1214	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI) 273000606	Federal Employer Tax Identification #: 91-6001435
This certification is submitted as part of a request to contract.			

Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: Mike DavisDate: 3/14/2013Print Name and Title: Mike Davis, Chief of Police



Business of the City Council
City of Gig Harbor, WA

Subject: Amendment to Section 125
Flexible Spending Arrangement, Plan
Documents

Dept. Origin: Administration

Prepared by: Laurelyn Brekke

For Agenda of: March 25, 2013

Exhibits: Plan Documents, Resolution

Proposed Council Action:

Adopt the Resolution approving
Amendment to the city's Section 125
Flexible Spending Arrangement, Plan
Documents, Flex-Plan Services Inc.

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Handwritten signatures and dates: 3/19/13, 3/19/13, N/A, 3/25/13

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and a final column with N/A.

INFORMATION / BACKGROUND

On June 9, 2009, the City Council adopted by Resolution No. 792 a Section 125 Cafeteria Plan for Flexible Spending Accounts to provide for pre-tax flexible spending accounts for health and dependent care expenses as negotiated through the Employee Guild Contracts. This amendment to the plan document is to reflect a change in the maximum amount that may be allocated to the Health Care Flexible Spending Arrangement by a participant. This allocation was reduced to \$2,500.

FISCAL CONSIDERATION

The annual Flex Plan Service fee is \$600 plus \$6 per participant. In addition, there is a monthly processing fee of \$5 per participating employee. Flex Plan Services charges \$1.10 per check or statement mailed; however, most employees opted to use the "Benny Card" to avoid these costs.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt the Resolution approving amendment to the employee Section 125 Flexible Spending Arrangement documents.

RESOLUTION NO. 923

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING AMENDMENTS TO THE CITY'S SECTION 125 CAFETERIA PLAN FOR FLEXIBLE SPENDING ACCOUNTS

WHEREAS, on June 9, 2009, Council adopted Resolution No. 792 implementing flexible spending accounts for the employees; and

WHEREAS, this plan has been amended to reflect a reduction to \$2,500 as the maximum amount that may be allocated to the Health Care Flexible Spending Arrangement by a participant; now, therefore,

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

Section 1. The City Council hereby approves the Amendment to the City's Flexible Spending Arrangement attached hereto as Exhibit A and incorporated herein, effective retroactive to January 1, 2013. Agents of the City are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

Section 2. Because this is an amendment the authorized agents of the City shall act as soon as possible to notify City employees of the adoption of this amendment by delivering to each employee a copy of the Summary Plan Document attached hereto as Exhibit B and incorporated herein.

RESOLVED by the City Council this 25th day of March, 2013.

APPROVED:

Steven K. Ekberg, Mayor Pro Tem

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

Filed with the City Clerk: 03/19/2013
Passed by the City Council:
Resolution No. 923

**FLEXIBLE BENEFITS PLAN
PLAN DOCUMENT**

CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN

TABLE OF CONTENTS

**ARTICLE I
DEFINITIONS**

**ARTICLE II
PARTICIPATION**

2.1	ELIGIBILITY	2
2.2	EFFECTIVE DATE OF PARTICIPATION	2
2.3	APPLICATION TO PARTICIPATE	3
2.4	TERMINATION OF PARTICIPATION	3
2.5	TERMINATION OF EMPLOYMENT	3
2.6	DEATH	3

**ARTICLE III
CONTRIBUTIONS TO THE PLAN**

3.1	EMPLOYER CONTRIBUTION	4
3.2	SALARY REDIRECTION	4
3.3	APPLICATION OF CONTRIBUTIONS	4
3.4	PERIODIC CONTRIBUTIONS	4

**ARTICLE IV
BENEFITS**

4.1	BENEFIT OPTIONS	4
4.2	HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT	5
4.3	DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT	5
4.4	HEALTH INSURANCE BENEFIT	5
4.5	CANCER INSURANCE BENEFIT	5
4.6	CASH BENEFIT	5
4.7	NONDISCRIMINATION REQUIREMENTS	5

**ARTICLE V
PARTICIPANT ELECTIONS**

5.1	INITIAL ELECTIONS	6
5.2	SUBSEQUENT ANNUAL ELECTIONS	6
5.3	FAILURE TO ELECT	6
5.4	CHANGE IN STATUS	6

**ARTICLE VI
HEALTH CARE FLEXIBLE SPENDING ACCOUNT**

6.1	ESTABLISHMENT OF PLAN	8
6.2	DEFINITIONS	8
6.3	FORFEITURES	9
6.4	LIMITATION ON ALLOCATIONS	9
6.5	NONDISCRIMINATION REQUIREMENTS	9
6.6	COORDINATION WITH CAFETERIA PLAN	9

6.7	HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS.....	9
6.8	DEBIT AND CREDIT CARDS.....	10

ARTICLE VII
DAY CARE FLEXIBLE SPENDING ARRANGEMENT

7.1	ESTABLISHMENT OF ACCOUNT.....	11
7.2	DEFINITIONS.....	11
7.3	DAY CARE FLEXIBLE SPENDING ARRANGEMENT.....	11
7.4	INCREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS.....	11
7.5	DECREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS.....	11
7.6	ALLOWABLE DEPENDENT CARE REIMBURSEMENT.....	12
7.7	ANNUAL STATEMENT OF BENEFITS.....	12
7.8	FORFEITURES.....	12
7.9	LIMITATION ON PAYMENTS.....	12
7.10	NONDISCRIMINATION REQUIREMENTS.....	12
7.11	COORDINATION WITH CAFETERIA PLAN.....	12
7.12	DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS.....	12

ARTICLE VIII
BENEFITS AND RIGHTS

8.1	CLAIM FOR BENEFITS.....	13
8.2	APPLICATION OF BENEFIT PLAN SURPLUS.....	14

ARTICLE IX
ADMINISTRATION

9.1	PLAN ADMINISTRATION.....	14
9.2	EXAMINATION OF RECORDS.....	15
9.3	PAYMENT OF EXPENSES.....	15
9.4	INSURANCE CONTROL CLAUSE.....	15
9.5	INDEMNIFICATION OF ADMINISTRATOR.....	16

ARTICLE X
AMENDMENT OR TERMINATION OF PLAN

10.1	AMENDMENT.....	16
10.2	TERMINATION.....	16

ARTICLE XI
MISCELLANEOUS

11.1	PLAN INTERPRETATION.....	16
11.2	GENDER AND NUMBER.....	16
11.3	WRITTEN DOCUMENT.....	16
11.4	EXCLUSIVE BENEFIT.....	16
11.5	PARTICIPANT'S RIGHTS.....	16
11.6	ACTION BY THE EMPLOYER.....	16
11.7	EMPLOYER'S PROTECTIVE CLAUSES.....	16
11.8	NO GUARANTEE OF TAX CONSEQUENCES.....	17

11.9	INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS.....	17
11.10	FUNDING.....	17
11.11	GOVERNING LAW.....	17
11.12	SEVERABILITY.....	17
11.13	CAPTIONS.....	17
11.14	FAMILY AND MEDICAL LEAVE ACT (FMLA).....	17
11.15	HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).....	17
11.16	UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA).....	17
11.17	COMPLIANCE WITH HIPAA PRIVACY STANDARDS.....	17
11.18	COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS.....	19
11.19	MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT.....	19
11.20	GENETIC INFORMATION NONDISCRIMINATION ACT (GINA).....	19
11.21	WOMEN'S HEALTH AND CANCER RIGHTS ACT.....	19
11.22	NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT.....	19

CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN

INTRODUCTION

The Employer has amended this Plan effective January 1, 2013, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on June 1, 2009. The Plan shall be known as City of Gig Harbor Flexible Benefits Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

ARTICLE I
DEFINITIONS

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit" or "Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of coverage under that Contract only or under Code Section 152 (as modified by Code Section 105(b)).

"Dependent" shall include any Child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account or as allowed by reason of the Affordable Care Act.

For purposes of the Health Care Flexible Spending Arrangement, a Participant's "Child" includes his natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

1.8 **"Effective Date"** means June 1, 2009.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Gig Harbor and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Employer Contribution"** means the contributions made by the Employer pursuant to Section 3.1 to enable a Participant to purchase Benefits. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V and as set forth in Section 3.1.

1.14 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses and Employment-Related Dependent Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.15 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.16 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.17 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.18 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.19 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.20 **"Plan"** means this instrument, including all amendments thereto.

1.21 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31, except that the first Plan Year shall be a short Plan Year beginning June 1. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.22 **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.23 **"Premium Conversion Benefit"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.24 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.2. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.25 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.26 **"Spouse"** means "spouse" as defined in an Insurance Contract for purposes of coverage under that Contract only or the "spouse," as defined under Federal law, of a Participant, unless legally separated by court decree.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference. However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.6; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.
- (b) **Day Care FSA.** With regard to the Day Care Flexible Spending Arrangement, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Day Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs and submitted within 90 days after the end of the Plan Year, based on the level of the Participant's Day Care Flexible Spending Account as of the date of termination.
- (c) **Health FSA.** With regard to the Health Care Flexible Spending Arrangement, the Participant may elect to continue his participation in the Plan.
 - (1) If the Participant elects to continue participation in the Health Care Flexible Spending Arrangement for the remainder of the Plan Year in which such termination occurs, the Participant may continue to seek reimbursement from the Health Care Flexible Spending Arrangement. The Participant shall be required to make contributions to the fund based on the elections made prior to the beginning of the Plan Year.
 - (2) If the Participant does not elect to continue participation in the Health Care Flexible Spending Arrangement for the remainder of the Plan Year in which such termination occurs, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Care Flexible Spending Arrangement have already been made for claims incurred up to the date of termination and submitted within 90 days after the end of the Plan Year.
- (d) **Health FSA treatment.** In the event a Participant terminates his participation in the Health Care Flexible Spending Arrangement during the Plan Year, if Salary Redirections are made other than on a pro rata basis, upon termination the Participant shall be entitled to a reimbursement for any Salary Redirection previously paid for coverage or benefits relating to the period after the date of the Participant's separation from service regardless of the Participant's claims or reimbursements as of such date.
- (e) **Employer Contributions.** With regard to Employer Contributions, if the Participant elects to continue coverage under the Benefit, such contribution shall continue to the Health Flexible Spending Account on behalf of the Participant up to the end of the period for which payments are made to the Plan.

2.6 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent.

ARTICLE III
CONTRIBUTIONS TO THE PLAN

3.1 EMPLOYER CONTRIBUTION

The Employer shall make available to each Participant an Employer Contribution to be used in the Participant's Health Flexible Spending Account equal to \$1,500 per Participant each Plan Year. Each Participant's Employer Contribution shall be converted to Cafeteria Plan Benefit Dollars and be available to purchase Benefits hereunder. The Employer's Contribution shall be made on a pro rata basis for each pay period of the Participant.

3.2 SALARY REDIRECTION

If a Participant's Employer Contribution is not sufficient to cover the cost of Benefits or Premium Expenses he elects pursuant to Section 4.1, his Compensation will be reduced in an amount equal to the difference between the cost of Benefits he elected and the amount of Employer Contribution available to him. Such reduction shall be his Salary Redirection, which the Employer will use on his behalf, together with his Employer Contribution, to pay for the Benefits he elected. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article IV.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.3 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Employer Contribution and Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such fund or account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

3.4 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Account, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year. In the event Salary Redirections to the Health Flexible Spending Account are not made on a pro rata basis, upon termination of participation, a Participant may be entitled to a refund of such Salary Redirections pursuant to Section 2.5.

ARTICLE IV
BENEFITS

4.1 BENEFIT OPTIONS

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Care Flexible Spending Arrangement
- (2) Day Care Flexible Spending Arrangement

In addition, each Participant shall have a sufficient portion of his Employer Contributions and Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

- (3) Health Insurance Benefit
- (4) Cancer Insurance Benefit
- (5) Cash Benefit

4.2 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Health Care Flexible Spending Arrangement option, in which case Article VI shall apply.

4.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Day Care Flexible Spending Arrangement option, in which case Article VII shall apply.

4.4 HEALTH INSURANCE BENEFIT

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.5 CANCER INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's cancer Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable cancer Insurance Contracts for use in providing this cancer insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such cancer Insurance Contract shall be determined therefrom, and such cancer Insurance Contract shall be incorporated herein by reference.

4.6 CASH BENEFIT

If a Participant elects not to participate in the Plan, such Participant shall be deemed to have chosen the Cash Benefit as his sole Benefit option.

4.7 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Benefits and Dependent Care Flexible Spending Account Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

ARTICLE V
PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

5.2 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which spending account Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

With regard to Benefits available under the Plan for which no Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

With regard to Benefits available under the Plan for which Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

5.4 CHANGE IN STATUS

- (a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) Legal Marital Status: events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) Number of Dependents: Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;

(3) **Employment Status:** Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;

(4) **Dependent satisfies or ceases to satisfy the eligibility requirements:** An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and

(5) **Residency:** A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Day Care Flexible Spending Arrangement, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child, as allowed under Code Sections 105(b) and 106, and IRS Notice 2010-38, shall qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care provider. The availability of dependent care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Day Care Flexible Spending Arrangement only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Care Flexible Spending Arrangement as a result of a cost or coverage change under any health insurance benefits.

ARTICLE VI
HEALTH CARE FLEXIBLE SPENDING ACCOUNT

6.1 ESTABLISHMENT OF PLAN

This Health Care Flexible Spending Arrangement is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Care Flexible Spending Arrangement may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Care Flexible Spending Arrangement. Periodic payments reimbursing Participants from the Health Care Flexible Spending Arrangement shall in no event occur less frequently than monthly.

6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Care Flexible Spending Arrangement"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Health Flexible Spending Account Remainder Amount"** means that portion of the Employer's Contribution, if any, allocated to the Health Flexible Spending Account, determined assuming that Employer Contributions which are converted to Cafeteria Plan Benefit Dollars are first applied to all other Benefits elected by the Participant under the Plan.

(c) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;
- (2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or
- (3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(d) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Care Flexible Spending Arrangement.

6.3 FORFEITURES

The amount in the Health Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

6.4 LIMITATION ON ALLOCATIONS

Notwithstanding any provision contained in this Health Care Flexible Spending Arrangement to the contrary, the maximum amount that may be allocated to the Health Care Flexible Spending Arrangement by a Participant in or on account of any Plan Year is \$2,500.

6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Care Flexible Spending Arrangement not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Care Flexible Spending Arrangement, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Care Flexible Spending Arrangement by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Care Flexible Spending Arrangement. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

6.7 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents during the Plan Year including the Grace Period shall be reimbursed during the Plan Year subject to Section 2.5, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Care Flexible Spending Arrangement for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Care Flexible Spending Arrangement, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Grace Period.** Notwithstanding anything in this Section to the contrary, Medical Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(e) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Care Flexible Spending Arrangement. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Care Flexible Spending Arrangement.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator following IRS guidelines.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs prescribed by a health care provider, including, if permitted by the Administrator, over-the-counter medications as allowed under IRS regulations;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

ARTICLE VII **DAY CARE FLEXIBLE SPENDING ARRANGEMENT**

7.1 ESTABLISHMENT OF ACCOUNT

This Day Care Flexible Spending Arrangement is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Day Care Flexible Spending Arrangement.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Day Care Flexible Spending Arrangement"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Day Care Flexible Spending Arrangement purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Day Care Flexible Spending Arrangement.

7.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT

The Administrator shall establish a Day Care Flexible Spending Arrangement for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Day Care Flexible Spending Arrangement benefits.

7.4 INCREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Day Care Flexible Spending Arrangement pursuant to elections made under Article V hereof.

7.5 DECREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Day Care Flexible Spending Arrangement, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This statement is set forth on the Participant's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Day Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

(a) **Code limits.** Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Day Care Flexible Spending Arrangement in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Day Care Flexible Spending Arrangement that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Day Care Flexible Spending Arrangement that not more than 25 percent of the amounts paid by the Employer for dependent care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Day Care Flexible Spending Arrangement by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Day Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Day Care Flexible Spending Arrangement. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Day Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

7.12 DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

The Administrator shall direct the payment of all such Day Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year including the Grace Period and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;

- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
 - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
 - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
 - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if he or she is employed, or
 - (2) if the Participant's Spouse is not employed, that
 - (i) he or she is incapacitated, or
 - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Grace Period.** Notwithstanding anything in this Section to the contrary, Employment-Related Dependent Care Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.
- (j) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

ARTICLE VIII
BENEFITS AND RIGHTS

8.1 CLAIM FOR BENEFITS

- (a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.
- (b) **Health and Day Care Flexible Spending Arrangement Claims.** The Participant must submit all claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

If a claim under the Plan is denied in whole or in part, the Participant will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure.

A level one appeal must be submitted within 180 days of receipt of the denial. Any such request should be accompanied by documents or records in support of the appeal. The Participant may review pertinent documents and submit issues and comments in writing. The claims administrator will review the claim and provide, within 30 days, a written response to the appeal (extended by reasonable time if necessary). In this response, the claims administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. If the Participant disagrees with the level one appeal decision the Participant may submit a request for a level two appeal to be determined by the Employer. The Participant must submit the request for level two appeal within 60 days of receipt of the level one notice. The Participant will be notified within 30 days after the Employer receives the appeal (extended by reasonable time if necessary). The Employer has the exclusive right to interpret the appropriate plan provisions. Decisions of the Employer are conclusive and binding.

The following timetable for claims applies:

Notification of whether claim is accepted or denied	30 days
Extension due to matters beyond the control of the Plan	15 days
Denial or insufficient information on the claim:	
Notification of	15 days
Response by Participant	45 days
Review of claim denial	30 days

The Participant must file the appeal by submitting a written request by email, fax, or mail to Flex-Plan and indicate either level one or two appeal on the email, fax, or letter.

Email: claims@flex-plan.com

Fax: 425-451-7002 or 866-535-9227

Mail: Flex-Plan Services, PO Box 53250, Bellevue WA 98015.

The response will provide written or electronic notification of any claim denial. The notice will state:

- (a) The specific reason or reasons for the denial;
- (b) Reference to the specific Plan provisions on which the denial was based;
- (c) A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why such material or information is necessary;
- (d) A description of the Plan's review procedures and the time limits applicable to such procedures.
- (e) A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;
- (f) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the Participant upon request.

When the Participant receives a denial, the Participant will have 180 days following receipt of the notification in which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the claim. If the Participant requests, the Participant will be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a claim if it:

- (a) was relied upon in making the claim determination;
- (b) was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;
- (c) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or
- (d) constituted a statement of policy or guidance with respect to the Plan concerning the denied claim.

The review will take into account all comments, documents, records, and other information submitted by the Participant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

(b) **Forfeitures.** Any balance remaining in the Participant's Dependent Care Flexible Spending Account or Health Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan.

ARTICLE IX ADMINISTRATION

9.1 PLAN ADMINISTRATION

The Employer shall be the Administrator, unless the Employer elects otherwise. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power and discretion to administer the Plan in all of its details and determine all questions arising in connection with the administration, interpretation, and application of the Plan. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the Plan, including, but not limited to, in addition to all other powers provided by this Plan:

- (a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the provisions of the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan and to assist any Participant regarding the Participant's rights, benefits or elections under the Plan;
- (f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;
- (g) To review and settle all claims against the Plan, to approve reimbursement requests, and to authorize the payment of benefits if the Administrator determines such shall be paid if the Administrator decides in its discretion that the applicant is entitled to them. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (h) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

9.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

9.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

9.4 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

9.5 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

ARTICLE X
AMENDMENT OR TERMINATION OF PLAN

10.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

10.2 TERMINATION

The Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Account or Dependent Care Flexible Spending Account, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

ARTICLE XI
MISCELLANEOUS

11.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

11.2 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

11.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

11.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

11.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

11.7 EMPLOYER'S PROTECTIVE CLAUSES

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

11.8 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

11.10 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

11.11 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Washington.

11.12 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

11.13 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

11.14 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

11.15 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

11.16 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

11.17 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If any benefits under this Cafeteria Plan are subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. Genetic information will not be used or disclosed for underwriting purposes.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy officer. The privacy officer shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(e) **Certification.** The Employer must provide certification to the Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

(4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;

(5) Make available Protected Health information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;

(6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;

(7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;

(8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;

(9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

- (10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

11.18 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

(a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.17.

11.19 MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act and ERISA Section 712.

11.20 GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

11.21 WOMEN'S HEALTH AND CANCER RIGHTS ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Women's Health and Cancer Rights Act of 1998.

11.22 NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Newborns' and Mothers' Health Protection Act.

IN WITNESS WHEREOF, this Plan document is hereby executed this _____ day of _____.

City of Gig Harbor

By _____
EMPLOYER

**FLEXIBLE BENEFITS PLAN
SUMMARY PLAN DESCRIPTION**

**CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN
SUMMARY PLAN DESCRIPTION**

TABLE OF CONTENTS

I
ELIGIBILITY

1. When can I become a participant in the Plan?..... 1
2. What are the eligibility requirements for our Plan?..... 1
3. When is my entry date? 1
4. What must I do to enroll in the Plan? 1

II
OPERATION

1. How does this Plan operate?..... 1

III
CONTRIBUTIONS

1. How much of my pay may the Employer redirect?..... 2
2. How much will the Employer contribute each year?..... 2
3. What happens to contributions made to the Plan? 2
4. When must I decide which accounts I want to use?..... 2
5. When is the election period for our Plan? 2
6. May I change my elections during the Plan Year?..... 2
7. May I make new elections in future Plan Years? 3

IV
BENEFITS

1. What benefits are offered under the Plan? 3
2. Health Care Flexible Spending Arrangement..... 3
3. Day Care Flexible Spending Arrangement..... 4
4. Premium Conversion Benefit..... 4

V
BENEFIT PAYMENTS

1. When will I receive payments from my accounts? 4
2. What happens if I don't spend all Plan contributions during the Plan Year? 4
3. Family and Medical Leave Act (FMLA) 5
4. Uniformed Services Employment and Reemployment Rights Act (USERRA)..... 5
5. What happens if I terminate employment?..... 5
6. Will my Social Security benefits be affected? 5

VI
HIGHLY COMPENSATED AND KEY EMPLOYEES

1. Do limitations apply to highly compensated employees?..... 5

VII
PLAN ACCOUNTING

1. Periodic Statements 6

VIII
GENERAL INFORMATION ABOUT OUR PLAN

1.	General Plan Information.....	6
2.	Employer Information	6
3.	Plan Administrator Information	6
4.	Service of Legal Process	6
5.	Type of Administration	6
6.	Claims Submission	7

IX
ADDITIONAL PLAN INFORMATION

1.	Claims Process	7
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APPENDIX II TO THE FLEXIBLE BENEFITS PLAN SUMMARY PLAN DESCRIPTION

X
SUMMARY

CITY OF GIG HARBOR FLEXIBLE BENEFITS PLAN

INTRODUCTION

We have amended the "Flexible Benefits Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the amended Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

Read this Summary Plan Description carefully so that you understand the provisions of our amended Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

I
ELIGIBILITY

1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Health Flexible Spending Account or Dependent Care Flexible Spending Account.

2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan. Of course, if you were already a participant before this amendment, you will remain a participant.

3. When is my entry date?

Once you have met the eligibility requirements, your entry date will be the first day of the month coinciding with or following the date you met the eligibility requirements.

4. What must I do to enroll in the Plan?

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for a portion of the benefits you have elected.

However, if you are already covered under any of the insured benefits, you will automatically participate in this Plan to the extent of your premiums unless you elect not to participate in this Plan.

II
OPERATION

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. Also, we will make additional Employer contributions to the

Plan that you may use to increase the amounts used to pay benefits. However, if you receive a reimbursement for an expense under the Plan, you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

III
CONTRIBUTIONS

1. How much of my pay may the Employer redirect?

Each year, we will automatically contribute on your behalf enough of your compensation to pay for the insurance coverage provided unless you elect not to receive any or all of such coverage. You may also elect to have us contribute on your behalf enough of your compensation to pay for any other benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. How much will the Employer contribute each year?

We will contribute an amount equal to \$1,500 for you each year. This contribution can be used for the Health Flexible Spending Account and will be made on a pro rata basis during the year.

3. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year.

4. When must I decide which accounts I want to use?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

If you are already covered by any of the insured benefits offered by this Plan, you will automatically become a Participant to the extent of the premiums for such insurance unless you elect, during the election period (defined below), not to participate in the Plan.

5. When is the election period for our Plan?

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

6. May I change my elections during the Plan Year?

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

In addition, if you are participating in the Day Care Flexible Spending Arrangement, then there is a change in status if your dependent no longer meets the qualifications to be eligible for dependent care.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

These rules on change due to cost or coverage do not apply to the Health Care Flexible Spending Arrangement, and you may not change your election to the Health Care Flexible Spending Arrangement if you make a change due to cost or coverage for insurance.

You may not change your election under the Day Care Flexible Spending Arrangement if the cost change is imposed by a dependent care provider who is your relative.

7. May I make new elections in future Plan Years?

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will assume you want your elections for insured benefits only to remain the same and you will not be considered a Participant for the non-insured benefit options under the Plan for the upcoming Plan Year.

IV
BENEFITS

1. What benefits are offered under the Plan?

Under our Plan, you can choose to receive your entire compensation and your Employer's contribution or use a portion to pay for the following benefits or expenses during the year.

2. Health Care Flexible Spending Arrangement

The Health Care Flexible Spending Arrangement enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Care Flexible Spending Arrangement allows you to be reimbursed by the Employer for expenses incurred by you and your dependents.

Drug costs, including insulin, may be reimbursed.

You may be reimbursed for "over the counter" drugs only if those drugs are prescribed for you. You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

The most that you can contribute to your Health Flexible Spending Account each Plan Year is \$2,500. In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

3. Day Care Flexible Spending Arrangement

The Day Care Flexible Spending Arrangement enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Dependent Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Dependent Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the dependent care expenses you are currently paying for qualify under our Plan.

The law places limits on the amount of money that can be paid to you in a calendar year from your Day Care Flexible Spending Arrangement. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250 for one dependent or \$500 for two or more dependents).

Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain dependent care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Day Care Flexible Spending Arrangement under our Plan. Ask your tax adviser which is better for you.

4. Premium Conversion Benefit

A Premium Conversion Benefit allows you to use tax-free dollars to pay for certain premium expenses under various insurance programs that we offer you. These premium expenses include:

- Health care premiums under our insured group medical plan.
- Cancer insurance premiums.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

If you cover your children up to age 26 under your insurance, you can pay for that coverage through the Plan.

V **BENEFIT PAYMENTS**

1. When will I receive payments from my accounts?

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Dependent Care Flexible Spending Account to the extent that there are sufficient funds in the Account to cover your request.

2. What happens if I don't spend all Plan contributions during the Plan Year?

If you have not spent all the amounts in your Health Flexible Spending Account or Dependent Care Flexible Spending Account by the end of the Plan Year, you may continue to incur claims for expenses during the "Grace Period." The "Grace Period" extends 2 1/2 months after the end of the Plan Year, during which time you can continue to incur claims and use up all amounts remaining in your Health Flexible Spending Account or Dependent Care Flexible Spending Account.

Any monies left at the end of the Plan Year and the Grace Period will be forfeited. Obviously, qualifying expenses that you incur late in the Plan Year or during the Grace Period for which you seek reimbursement after the end of such Plan Year and Grace Period will be paid first before any amount is forfeited. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

3. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance and the Health Flexible Spending Account. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Flexible Spending Account, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Flexible Spending Account are not reimbursable.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

4. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Care Flexible Spending Arrangement under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

5. What happens if I terminate employment?

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

- (a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.
- (b) You will still be able to request reimbursement for qualifying dependent care expenses incurred during the remainder of the Plan Year from the balance remaining in your Day care FSA at the time of termination of employment. However, no further salary redirection and contributions will be made on your behalf after you terminate. You must submit claims within 90 days after the end of the Plan Year in which termination occurs.
- (c) You may elect to continue your participation in the Health Care Flexible Spending Arrangement for the remainder of the Plan Year.
- (d) If you elect to continue your participation in the Health Care Flexible Spending Arrangement, you must continue to make any required contributions to the Plan.
- (e) If you elect not to continue participation in the Health Care Flexible Spending Arrangement, participation will cease and no further salary redirection and Employer contributions will be contributed on your behalf. You will be able to submit claims for health care expenses. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Care Flexible Spending Arrangement have already been made. You must submit claims within 90 days after the end of the Plan Year in which termination occurs.

6. Will my Social Security benefits be affected?

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

VI

HIGHLY COMPENSATED AND KEY EMPLOYEES

1. Do limitations apply to highly compensated employees?

Under the Internal Revenue Code, highly compensated employees and key employees generally are Participants who are officers, shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee or a key employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

Plan experience will dictate whether contribution limitations on highly compensated employees or key employees will apply. You will be notified of these limitations if you are affected.

VII
PLAN ACCOUNTING

1. Periodic Statements

The Administrator will provide you with a statement of your account periodically during the Plan Year that shows your account balance. It is important to read these statements carefully so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

VIII
GENERAL INFORMATION ABOUT OUR PLAN

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Gig Harbor Flexible Benefits Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your amended Plan become effective on January 1, 2013. Your Plan was originally effective on June 1, 2009.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31, except for the first Plan Year which began on June 1.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Gig Harbor
3510 Grandview ST
Gig Harbor, Washington 98335
91-6001435

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Gig Harbor
3510 Grandview ST
Gig Harbor, Washington 98335
(253) 851-8136

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process are:

City of Gig Harbor
3510 Grandview ST
Gig Harbor, Washington 98335

5. Type of Administration

The type of Administration is Employer Administration.

6. Claims Submission

Claims for expenses should be submitted to:

Flex-Plan Services, Inc
PO Box 53250
Bellevue, WA 98015

IX
ADDITIONAL PLAN INFORMATION

1. Claims Process

Claims that are insured or self-funded will be handled in accordance with procedures contained in the insurance policies or contracts. All other general requests should be directed to the Administrator of our Plan. If a Day Care or medical expense claim under the Plan is denied in whole or in part, you will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 180 days after receipt of the denial, you may submit a written request for reconsideration of the denial to the claims administrator.

If a dependent care or medical expense claim under the Plan is denied in whole or in part, you or your beneficiary will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 60 days after denial, you or your beneficiary may submit a written request for reconsideration of the denial to the Administrator.

You must file both level one and level two appeals by submitting a written request by email, fax, or mail. Indicate either level one or two appeal on the email, fax, or letter.

Email: claims@flex-plan.com
Fax: 425-451-7002 or 866-535-9227
Mail to: Flex-Plan Services, PO Box 53250, Bellevue WA 98015..

APPENDIX I TO THE FLEXIBLE BENEFITS PLAN SUMMARY PLAN DESCRIPTION

We understand that medical information about you and your health is personal. We are committed to protecting medical information about you. This summary applies to all of the personal health information we maintain with regard to the Plan. Your doctor or health care provider will have different policies or notices regarding the doctor's use and disclosure of your medical information created in the doctor's office or clinic. During the course of providing you with coverage under the Plan, the Plan will have access to information about you that is deemed to be "protected health information", or PHI, by the Health Insurance Portability and Accountability Act of 1996, or HIPAA. The following is a summary of procedures adopted by the Employer to ensure that both Employer and any third party service providers treat your PHI with the level of protection required by HIPAA.

This summary will provide you with a general overview of the ways in which we may use and disclose medical information about you. We also describe your rights and certain obligations we have regarding the use and disclosure of medical information.

We are required by law to:

- make sure that medical information that identifies you is kept private;
- give you this notice of our legal duties and privacy practices with respect to medical information about you; and
- follow the terms of the notice that is currently in effect.

Your PHI will be disclosed to certain employees of Employer who assist in administration of the Plan. These individuals may only use your PHI for Plan administration functions including those described below, provided they do not violate the provisions set forth herein. Any employee of Employer who violates the rules for handling PHI established herein will be subject to adverse disciplinary action. Employer will establish a mechanism for resolving privacy issues and will take prompt corrective action to cure any violations.

By adoption of the SPD, Employer has certified that it will comply with the privacy procedures summarized herein and detailed in any separate privacy notice. Employer may not use or disclose your PHI other than as summarized herein or as required by law. Any agents or subcontractors who are provided your PHI must agree to be bound by the restrictions and conditions concerning your PHI found herein. Your PHI may not be used by Employer for any employment-related actions or decisions or in connection with any other benefit or employee benefit plan of Employer. Employer must report to the Plan any uses or disclosures of your PHI of which the Employer becomes aware that are inconsistent with the provisions set forth herein.

HOW WE MAY USE AND DISCLOSE MEDICAL INFORMATION ABOUT YOU.

The following categories describe different ways that we use and disclose medical information for purposes of Plan administration. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

For Payment (as described in applicable regulations). We may use and disclose medical information about you to determine eligibility for Plan benefits, to facilitate payment for the treatment and services you receive from health care providers, to determine benefit responsibility under the Plan, or to coordinate Plan coverage.

For Health Care Operations (as described in applicable regulations). We may use and disclose medical information about you for other Plan operations. These uses and disclosures are necessary to run the Plan.

As Required By Law. We will disclose medical information about you when required to do so by federal, state, or local law.

To Avert a Serious Threat to Health or Safety. We may use and disclose medical information about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.

SPECIAL SITUATIONS

Disclosure to Health Plan Sponsor. Information may be disclosed to another health plan maintained by Employer for purposes of facilitating claims payments under that plan. In addition, medical information may be disclosed to Employer personnel solely for purposes of administering benefits under the Plan.

Organ and Tissue Donation. If you are an organ donor, we may release medical information to organizations that handle organ procurement or organ, eye, or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.

Military and Veterans. If you are a member of the armed forces, we may release medical information about you as required by military command authorities.

Workers' Compensation. We may release medical information about you for workers' compensation or similar programs.

Public Health Risks. We may disclose medical information about you for public health activities (e.g., to prevent or control disease, injury, or disability).

Health Oversight Activities. We may disclose medical information to a health oversight agency for activities authorized by law.

Lawsuits and Disputes. If you are involved in a lawsuit or a dispute, we may disclose medical information about you in response to a court or administrative order. We may also disclose medical information about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if efforts have been made to tell you about the request or to obtain an order protecting the information requested.

Law Enforcement. We may release medical information if asked to do so by a law enforcement official for law enforcement purposes.

Coroners, Medical Examiners and Funeral Directors. We may release medical information to a coroner or medical examiner. We may also release medical information about patients of the hospital to funeral directors as necessary to carry out their duties.

National Security and Intelligence Activities. We may release medical information about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.

Inmates. If you are an inmate of a correctional institution or under the custody of a law enforcement official, we may release medical information about you to the correctional institution or law enforcement official.

YOUR RIGHTS REGARDING MEDICAL INFORMATION ABOUT YOU.

You have the following rights regarding medical information we maintain about you:

Right to Inspect and Copy. You have the right to inspect and copy medical information that may be used to make decisions about your Plan benefits. To inspect and copy medical information that may be used to make decisions about you, you must submit your request in writing to Personnel/Benefits Office, except as otherwise set forth in any separate Privacy Notice provided to you by Employer. If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

We may deny your request to inspect and copy in certain very limited circumstances. HIPAA provides several important exceptions to your right to access your PHI. For example, you will not be permitted to access psychotherapy notes or information compiled in anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. Employer will not allow you to access your PHI if these or any of the exceptions permitted under HIPAA apply. If you are denied access to medical information, you may request that the

denial be reviewed.

Right to Amend. If you feel that medical information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the Plan.

To request an amendment, your request must be made in writing and submitted to your human resources department. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Is not part of the medical information kept by or for the Plan;
- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment;
- Is not part of the information which you would be permitted to inspect and copy; or
- Is accurate and complete.

Employer must act on your request for an amendment of your PHI no later than 60 days after receipt of your request. Employer may extend the time for making a decision for no more than 30 days, but it must provide you with a written explanation for the delay. If Employer denies your request, it must provide you a written explanation for the denial and an explanation of your right to submit a written statement disagreeing with the denial.

Right to an Accounting of Disclosures. You have the right to request an "accounting of disclosures" (other than disclosures you authorized in writing) where such disclosure was made for any purpose other than treatment, payment, or health care operations. You will be notified of where you can obtain an accounting of disclosure in the separate Privacy Notice. Your request must state a time period that may not be longer than six years and may not include dates before April 2003. Your request should indicate in what form you want the list (for example, on paper or electronically). The first list you request within a 12-month period will be free. For additional lists, we may charge you for the costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

Note that HIPAA provides several important exceptions to your right to an accounting of the disclosures of your PHI. For example, Employer does not have to account for disclosures of your PHI (i) to carry out treatment, payment or healthcare operations, (ii) to correctional institutions or law enforcement officials, or (iii) for national security or intelligence purposes. Employer will not include in your accounting any of the disclosures for which there is an exception under HIPAA. Employer must act on your request for an accounting of the disclosures of your PHI no later than 60 days after receipt of the request. Employer may extend the time for providing you an accounting by no more than 30 days, but it must provide you a written explanation for the delay. You may request one accounting in any 12-month period free of charge. Employer will impose a fee for each subsequent request within the 12-month period.

Right to Request Confidential Communications. You have the right to request that we communicate with you about medical matters in a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to your human resources department. We will not ask you the reason for your request. We will accommodate all requests we deem reasonable. Your request must specify how or where you wish to be contacted.

When Employer no longer needs PHI disclosed to it by the Plan, for the purposes for which the PHI was disclosed, Employer must, if feasible, return or destroy the PHI that is no longer needed. If it is not feasible to return or destroy the PHI, Employer must limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.

CHANGES TO THIS SUMMARY AND THE SEPARATE PRIVACY NOTICE

We reserve the right to change this summary and the separate Privacy Notice that may be provided to you. We reserve the right to make the revised or changed notice effective for medical information we already have about you as well as any information we receive in the future. The notice will contain the effective date on the front page.

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the Plan or with the Secretary of the Department of Health and Human Services. To file a complaint with the Plan, contact your human resources department except as otherwise provided in any separate Privacy Notice. All complaints must be submitted in writing.

You will not be penalized for filing a complaint.

OTHER USES OF MEDICAL INFORMATION.

Other uses and disclosures of medical information not covered by this notice or the laws that apply to us will be made only with your

written permission. If you provide us permission to use or disclose medical information about you, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose medical information about you for the reasons covered by your written authorization. We are unable to take back any disclosures we have already made with your permission and that we are required to retain our records of the care that we provided to you.

X

SUMMARY

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our flexible benefits plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

If you have any questions, please contact the Administrator.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into between Flex-Plan Services, Inc. and City of Gig Harbor acting on behalf of the City of Gig Harbor Flexible Benefits Plan effective as of June 1, 2009. The parties intend to use this Agreement to satisfy the Business Associate Contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

I. Definitions

- 1.1 *Business Associate.* "Business Associate" shall mean Flex-Plan Services, Inc. ("Flex-Plan").
- 1.2 *Covered Entity.* "Covered Entity" shall mean City of Gig Harbor Flexible Benefits Plan.
- 1.3 *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.4 *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.5 *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.6 *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- 1.7 *Secretary.* "Secretary" shall mean the U.S. Secretary of the Department of Health and Human Services or his designee.
- 1.8 *Security Incident.* "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
- 1.9 *Security Rule.* "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C.
- 1.10 *Standards for Electronic Transactions Rule.* "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- 1.11 *Electronic Protected Health Information.* "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR 160.103.
- 1.12 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

II. Obligations and Activities of Flex-Plan

- 2.1 Flex-Plan agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- 2.2 Flex-Plan agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Flex-Plan will implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.

- 2.3 Flex-Plan agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement and/or any Security Incident of which it becomes aware.
- 2.4 Flex-Plan agrees to obtain reasonable assurances that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Flex-Plan on behalf of, Covered Entity agrees to be bound by the same restrictions and conditions that apply through this Agreement to Flex-Plan, with respect to such information. Moreover, Flex-Plan shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's PHI.
- 2.5 Flex-Plan agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Flex-Plan on behalf of, the Covered Entity available to the Secretary, within ten (10) business days after receipt of written request or otherwise as designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 2.6 Flex-Plan agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- 2.7 Flex-Plan agrees to provide to Covered Entity or to an Individual, within ten (10) business days after receipt of written request, information collected in accordance with Section 2.6 of this Agreement, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- 2.8 Flex-Plan agrees to provide access, at the request of Covered Entity and within ten (10) business days after receipt of written request, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- 2.9 Flex-Plan agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual within ten (10) business days after receipt of written request.
- 2.10 In the event that Flex-Plan transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist Flex-Plan in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.

III. Permitted Uses and Disclosures by Business Associate

- 3.1 Except as otherwise limited in this Agreement, Flex-Plan may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in The Administrative Services Agreement between Flex-Plan and Covered Entity.
- 3.2 Except as otherwise limited in this agreement, Flex-Plan may disclose Protected Health Information for the proper management and administration of Flex-Plan, provided that such disclosures are required by law, or Flex-Plan obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Flex-Plan of any instance of which it is aware in which the confidentiality of the information has been breached.

- 3.3 Except as otherwise limited in this agreement, Flex-Plan may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.4 Except as otherwise limited in this Agreement, Flex-Plan may use Protected Health Information for the proper management and administration of Flex-Plan or to carry out the legal responsibilities of Flex-Plan.
- 3.5 Flex-Plan may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

IV. Obligations of Covered Entity

- 4.1 Covered Entity shall notify Flex-Plan of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Flex-Plan's use or disclosure of Protected Health Information.
- 4.2 Covered Entity shall notify Flex-Plan of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Flex-Plan's use or disclosure of Protected Health Information.
- 4.3 Covered Entity shall notify Flex-Plan of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Flex-Plan's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Entity

- 5.1 Covered Entity shall not request Flex-Plan to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for uses or disclosures for the purposes of data aggregation, management, and administrative activities of Flex-Plan.

VI. Term and Termination

- 6.1 *Term.* This Agreement shall be effective as of the date that it is entered into, and shall terminate when all of the Protected Health Information provided by Covered Entity to Flex-Plan, or created or received by Flex-Plan on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 *Termination for Cause.* Upon Covered Entity's knowledge of a material breach of the terms hereof by Flex-Plan, Covered Entity shall provide written notice to Flex-Plan of the breach, and Flex-Plan shall have the opportunity to cure that breach within the time period reasonably required to cure that breach. In the event that Flex-Plan does not cure the breach or end the violation within that time period, then Covered Entity shall be entitled to provide notice of termination of the terms hereof.
- 6.3 *Effect of Termination.*
 - 6.3.1 It is agreed that due to the manner in which Protected Health Information is retained and the retention requirements of the Internal Revenue Service, returning or destroying all of the Protected Health Information received from Covered Entity or created or received by Flex-Plan on behalf of Covered Entity, is infeasible. Therefore, Flex-Plan shall extend the protections of this Agreement to such Protected Health Information, and shall limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Flex-Plan maintains such Protected Health Information.

VII. Miscellaneous

- 7.1 *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

- 7.2 *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as may be necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 7.3 *Survival.* The respective rights and obligations of Flex-Plan under Section 6.3.1 of this Agreement shall survive the termination of the term of this Agreement.
- 7.4 Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 7.5 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Washington to the extent not preempted by the Privacy and Security Rules or other applicable federal law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first stated above.

Flex-Plan Services, Inc.

By: Tina Shozen
Title: Privacy Officer
Date: 2/25/2010

Covered Entity:

City of Gig Harbor on behalf of the City of
Gig Harbor Flexible Benefits Plan

By: _____
Title: _____
Date: _____



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

<p>Subject: Wollochet Drive/Wagner Way Traffic Signalization – Consultant Services Contract WH Pacific, Inc.</p> <p>Proposed Council Action: Approve and authorize the Mayor to execute the Consultant Services Contract with WH Pacific, Inc. in an amount not exceed \$43,475.00.</p>	<p>Dept. Origin: Public Works/Engineering</p> <p>Prepared by: Stephen Misiurak, P.E. <i>[Signature]</i> City Engineer</p> <p>For Agenda of: March 25, 2013</p> <p>Exhibits: Consultant Services Contract Scope and Fee</p> <p style="text-align: right;">Initial & Date</p> <p>Concurred by Mayor: <i>[Signature]</i> 3/21/13</p> <p>Approved by City Administrator: _____</p> <p>Approved as to form by City Atty: <i>[Signature]</i> 3/21/13</p> <p>Approved by Finance Director: <i>[Signature]</i> 3/21/13</p> <p>Approved by Public Works Director: <i>[Signature]</i> 3/21/13</p> <p>Approved by City Engineer: <i>[Signature]</i> 3/21/13</p>
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Expenditure Required	\$ 43,475.00	Amount Budgeted	\$ 400,000.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

A 2013 Street budget objective provides for the design and construction of a new traffic signal and corresponding intersection improvements at Wagner Way and Wollochet Drive. This contract provides for the updating of the original set of plans and specification completed in 2008 in order to be compliant with Federal Disability design requirements and other applicable standards. WH Pacific was the original engineer of record for this project. Also included in their scope of work are coordination services as requested by the City for informational sharing and design clarifications pertaining to the Cushman Trail Improvement project as WH Pacific was the original engineer of record for that project as well.

FISCAL CONSIDERATION

Funding for this project will be from the following revenue sources:

2013 Budget for Wollochet Drive/ Wagner Way Intersection Signalization.	\$ 400,000
Anticipated 2013 Expenses:	
WH Pacific, Inc. Consultant Services Contract	\$ (43,475)
<i>future project construction – Public Works Contract</i>	\$ (356,525)
Remaining 2013 Budget =	\$ 0

Note: Expenses in *italics* are estimated.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute an Consultant Services Contract with WH Pacific, Inc. in an amount not exceed \$43,475.00 for Wollochet Drive/Wagner Way Intersection Signalization.

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

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

RECITALS

WHEREAS, the City is presently engaged in the Wollochet Drive/ Wagner Way Traffic Signal 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 Forty Three Thousand Four Hundred Seventy Five (\$43,475.00) 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 – Scope of Work**. 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 March 1, 2014; 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

{ASB983048.DOC;1100008.900000\}

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 by an 'A' rated company licensed to conduct business in the State of Washington. If such coverage is written on a claims made form, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City of Gig Harbor.

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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Engineer or Public Works Director shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

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 Public Works Director 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:
WH Pacific, Inc.
ATTN: Darren Murrata, PE
12100 NE 195th St., Ste. 300
Bothell, WA 98011
425-951-4800

City of Gig Harbor
ATTN: Steve Misiurak, PE
City of Gig Harbor
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.

[Remainder of page intentionally left 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: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A-1 SCOPE OF WORK

GENERAL PROJECT DESCRIPTION

This Scope of Services describes work to be completed by WHPacific, Inc. (CONSULTANT) to provide professional services to the City of Gig Harbor (CITY) to update the Plans, Specifications, and Estimate (PS&E) for the Wagner Way-Wollochet Intersection Traffic Signal Improvements Project and to provide coordination for the Cushman Trail Project. During the term of this Professional Services Agreement, the CONSULTANT will perform professional services for the CITY as described below.

This contract will include the following tasks:

1. PROJECT MANAGEMENT
2. WAGNER-WOLLOCHET INTERSECTION IMPROVEMENT PLANS, SPECIFICATIONS & ESTIMATE UPDATE
3. WAGNER-WOLLOCHET INTERSECTION IMPROVEMENT BIDDING ASSISTANCE
4. CUSHMAN TRAIL COORDINATION
5. WAGNER WAY CROSSWALK MEMO

The planned improvements at the Wagner Way-Wollochet Intersection include the following:

- Update pedestrian signals to full Accessible Pedestrian Signals with the countdown signal heads, push-button locator tone, traffic arrow, audible and vibrotactile walk indications, and automatic volume adjustment.
- Upgrade ADA Ramps design to current standards on all four corners, including detailed and engineered design details for each of the four curb ramps.
- Delete stamped crosswalk option and replace with painted crosswalks.

I. GENERAL ASSUMPTIONS

- Project has no funds in the design or construction phase of the project.
- The latest edition and amendments of the following documents will be utilized to develop the project:
 - a. Washington State Department of Transportation (WSDOT), Local Agency Guidelines (LAG) Manual
 - b. WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*
 - c. WSDOT *Amendments and GSP's*
 - d. WSDOT *Standard Plans for Road, Bridge, and Municipal Construction*
 - e. WSDOT *APWA Specifications*
 - f. WSDOT Chapter 1510- Pedestrian Facilities
 - g. CITY *Standard Plans*
- No topographical or survey data will be obtained.
- Plans and specifications will be consistent with and in compliance with WSDOT's Local Agency Guidelines (LAG) Manual and Chapter 1510.
- No hydraulic analysis or revisions to the existing storm system is required.
- No utilities will need to be adjusted.

- The 2008 Traffic Control approach will be utilized.
- CONSULTANT to provide TCP that incorporates and depict ADA-compliant temporary access route complete with cane detectable warning barrier.
- CITY will use an on-line service such as Builder's Exchange to provide contract documents to all plan holders. No hardcopy Contract plans will be provided to bidders, agents or suppliers.
- The project will be completed within five months of Notice to Proceed.

II. SCOPE OF WORK

TASK 1: PROJECT MANAGEMENT

- 1.1 Accounting: Manage project budget. Review and verify weekly task charges. Prepare and submit monthly invoices. Invoices will include the monthly status reports. CONSULTANT will provide the CITY on a monthly basis a 3-line chart depicting Earned Value, Actual Costs, and Planned Value (baseline).
- 1.2 Manage the project by directing and supervising staff, subconsultants, and reviewing work for the duration of the work order. This management is for the overall work order rather than a specific task.
- 1.3 Communication: The CONSULTANT Project Manager will engage in a conference call with the CITY as necessary.
- 1.4 The CONSULTANT will attend project coordination meetings and provide information for CITY staff. The CONSULTANT will attend up to two (2) project coordination meetings with the CITY staff. The CONSULTANT will prepare meeting notes and distribute to participants.

Deliverables:

- Invoice submitted monthly by email or sent via US Mail.
- Meeting Notes.

TASK 2: PLANS, SPECIFICATIONS and ESTIMATE (PS&E)

Assumptions:

- CONSULTANT will revise plans as follows:
 - Update pedestrian signals to APS with the countdown signal heads.
 - Upgrade ADA Ramps design to current standards on all four corners.
 - Delete stamped crosswalk option and replace with painted crosswalk.
- Survey will not be required.
- The CONSULTANT will reference WSDOT's standard traffic plans. Contract provisions will call out the traffic control requirements. CONSULTANT to provide TCP that incorporates and depicts ADA-compliant temporary access route complete with cane detectable warning barrier.
- The CONSULTANT will submit a 90% PS&E package and a 100% PS&E (Ad ready) package to the CITY for final review.
- The revised plans shall be prepared using AutoCAD Civil 3d 2011 software.
- The CITY shall provide an electronic copy of the contract provisions to be modified and copy of the standard notices, forms, and certificates to include in the contract documents.

- The CITY will return one (1) "red-line" plan, specification and cost estimate with review comments from the CITY's review. The CITY will return one (1) "red-line" plan, specification and cost estimate with review comments from the WSDOT's review. CITY will resolve any conflicts between the two review sets prior to the sets being provided to the CONSULTANT.

Task Description:

2.1 Review existing plan sheets, details and specifications

- 2.1.1. The CONSULTANT'S key team members will visit the project area to familiarize themselves with the site conditions and specific design issues. Ground level photos will be obtained during the site visit.
- 2.1.2. The CONSULTANT will review existing data pertinent to the project that is available from the CITY such as the 2008 contract document titled "WAGNER-WOLLOCHET INTERSECTION IMPROVEMENT Project (CSP-0714)."

2.2 Prepare 90% PS&E

- 2.2.1. CONSULTANT will revise plans as follows:
 - Cover sheet.
 - Legend sheet.
 - Update pedestrian signals to APS with the countdown signal heads.
 - Provide ADA Ramp designs on all four corners.
 - Delete stamped crosswalk option and replace with marked crosswalk.
- 2.2.2. Develop quantities, assign unit costs for quantified items and assign lump sum costs to other items based on professional judgment. Develop a Final construction estimate.
- 2.2.3. Develop and update Contract Specifications and Plans.
- 2.2.4. CONSULTANT to complete walk through with CITY staff prior to final Quality Control Review.
- 2.2.5. Quality Control Review: Provide senior level review of task deliverables before submittal to CITY.

Deliverables:

- 90% PS&E Package will include half-sized plans, special provisions, and engineer's estimate submitted via courier or US Mail (3 copies).

2.3 Prepare 100% PS&E (Ad ready)

- 2.3.1. CONSULTANT to address CITY comments.
- 2.3.2. CONSULTANT shall revise the plans, specifications, and estimate to reflect comments made by the CITY.
- 2.3.3. Quality Control: Provide senior level review before CONSULTANT stamps and signs contract documents.
- 2.3.4. Prepare Ad-ready document.
- 2.3.5. CONSULTANT stamps and signs contract documents.
- 2.3.6. CONSULTANT to develop Final Engineers Estimate.
- 2.3.7. Prepare draft advertisement.

Deliverables:

- Ad-ready package will include half-sized plans, special provisions, and engineer's estimate submitted via courier or US Mail (3 copies).
- Full sized wet stamped mylar drawings to CITY.

TASK 3: BIDDING ASSISTANCE

Assumptions:

- CONSULTANT will provide up to three (3) hours for this task.

Task Description:

3.1 Bidding Assistance

- 3.1.1. Prepare written response to Contractor questions (if necessary).
- 3.1.2. CITY to submit to BXA.

Deliverables:

- N/A

TASK 4: CUSHMAN TRAIL COORDINATION

Assumptions:

- Coordination to be primarily via phone, email, and video conferencing and will be at the request of the CITY and funds will only be expensed as requested by the CITY.

Task Description:

4.1 Coordination

- 4.1.1. CONSULTANT will provide up to seventy-five (75) hours for this task.

Deliverables:

- N/A

TASK 5: WAGNER WAY CROSSWALK MEMO

Assumptions:

- Survey and Design will not be required.

Task Description:

5.1 Coordination

- 5.1.1. CONSULTANT will conduct a field review of the two existing crosswalks on Wagner Way, just north of the intersection of Wagner Way and Willochete Drive. The CONSULTANT will provide a memorandum with preliminary recommendations for consolidation of these two crosswalks.

Deliverables:

- Memorandum (via email)

III. COMPENSATION

The CITY agrees to pay the CONSULTANT as compensation for these services on a cost plus fixed fee basis.

IV. ADDITIONAL SERVICES

Out of scope tasks or other additional services, should there be any, will be authorized in advance of providing services by a supplemental agreement and tracked separately.

Exhibit B

CONSULTANT FEE ESTIMATE



Client: City of Gig Harbor

Project: Wagner-Wollochet Intersection Improvement / Cushman Trail

Date: March 20, 2013

LABOR:

TASK NO.	TASK DESCRIPTION	Darren Project Manager 48.50	Sarah Designer 42.91	Tom CADD 35.70	Julia Designer 33.65	Sam Principal 60.00	Nicole Project Coordinator II 31.73	Deanne Project Coordinator I 25.25	TOTAL HOURS	TOTAL COST
1.00	Project Management	32	14	0	0	0	6	10	62	\$ 2,596
1.1/1.2	Project Management	20					6	10	36	\$ 1,413
1.30	Communication	4	2						6	\$ 280
1.40	Meetings	8	12						20	\$ 903
									0	\$ -
2.00	PS&E	49	103.5	53.5	0	0	0	0	206	\$ 8,728
2.1.1	Walkthrough	4	4						8	\$ 366
2.1.2	Review Existing Information	2	8	8					18	\$ 726
2.2.1	Prepare 90% PS&E								0	\$ -
	Cover Sheet		0.5	1					1.5	\$ 57
	Legend		0.5	1					1.5	\$ 57
	APS and Countdown signals		8	4					12	\$ 486
	ADA Design and Details	8	8	16					32	\$ 1,302
	Crosswalk		0.5	0.5					1	\$ 39
	TCP for ADA Accessible Access Route	8	4	8					20	\$ 845
2.2.2	Quantities	1	6	1					8	\$ 342
2.2.3	Specifications	4	40						44	\$ 1,910
2.2.4	Walkthru	4	6						10	\$ 451
2.2.5	QA/QC	8							8	\$ 388
									0	\$ -
2.30	Prepare 100% PS&E	2							2	\$ 97
2.3.1	Address Comments	1	4						5	\$ 220
2.3.2	Revise Plans	2	2	8					12	\$ 468
	Revise Specification	1	8						9	\$ 392
	Revise Quantities		1						1	\$ 43
2.3.3	Quality Control	2							2	\$ 97
2.3.4	Preare Ad-ready document		1	2					3	\$ 114
2.3.5	Mylar Plans and Stamp Drawings		1	4					5	\$ 186
2.3.6	Develop Final Engineers Estimate	2	1						3	\$ 140
									0	\$ -
3.00	Bidding Assistance	1	2	0	0		0	0	3	\$ 134
3.1.1	Bidding Assistance	1	2						3	\$ 134
									0	\$ -
									0	\$ -
4.00	Cushman Trail Coordination	0	4	0	55	16	0	0	75	\$ 2,982
4.1.1	Coordination		4		55	16			75	\$ 2,982
									0	\$ -
5.00	Wagner Crosswalk Memo	2	0		0		0	0	2	\$ 97
5.10	Wagner Crosswalk Memo	2							2	\$ 97
	Labor Hours Total	84	123.5	53.5	55	16	6	10	348	
	Labor Cost Total	\$ 4,074	\$ 5,299	\$ 1,910	\$ 1,851	\$ 960	\$ 190	\$ 253	\$ 14,537	\$ 14,537
	Overhead Percentage:	168.49%		x Direct Salary Cost (DSC)						\$ 24,493
	Fixed Fee Percentage:	26.00%		x Direct Salary Cost (DSC)						\$ 3,780
										\$ 42,810

EXPENSES:

ITEM	Trips	QUANTITY	UNIT COST	EXPENSES COST
Mileage	1	1000	\$ 0.565	\$ 565
Copies/prints, misc		1	\$ 100	\$ 100
				\$ 665

SUBCONSULTANTS:


SUBCONSULTANT	FEE	MARK UP	SUBCONSULTANT COST
		1.0	\$ -
		1.0	\$ -
			\$ -

TOTAL FEE ESTIMATE \$ 43,475

Subject: Public Hearing on 2013
Comprehensive Plan Amendment Docket

Proposed Council Action: Review and consider the proposed 2013 Comprehensive Plan amendments and decide which applications will be forwarded to the Planning Commission to be processed and which applications will not be processed at this time.

Dept. Origin: Planning

Prepared by: Lindsey Sehmel 
Senior Planner

For Agenda of: March 25, 2013

Exhibits: Application materials for comprehensive plan amendments

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

SS 3/14/13
AD 3/20/13
email 3/15/13
N/A
JK 3/18/13

Expenditure	Amount	Appropriation
Required	Budgeted	Required
0	0	0

INFORMATION / BACKGROUND

The Planning Department has docketed the proposed Comprehensive Plan amendments submitted for the 2013 review cycle. The submittal deadline for the 2013 review cycle was October 31, 2012. As required by Chapter 19.09, the Planning Department has reviewed each application and has determined that each application is complete. The City Council should now hold a public hearing and make a final decision on which amendments will proceed through the annual amendment process. The Council should separate the applications as to which applications will be forwarded to the Planning Commission to be processed from those applications that will not be processed at this time.

The 2013 Comprehensive Plan amendment cycle has two applications on the docket. One is sponsored by the City and one is from private-party applicants. The private-party application is a request to amend a land use designation. Below is a brief description of each application on the docket. The basic application materials for each amendment are attached.

- 1. PL-COMP-13-0001: Burnham Hill Commercial Center Comprehensive Plan Land Use Map Amendment.** A proposed land use map amendment, submitted by John Park of Hungsung LLC, to change the land use designation of a 2.79 acre parcel located at 11102 Burnham Drive, Gig Harbor, WA from a Residential Medium (RM) designation to a Commercial/Business (C/B) designation.
- 2. PL-COMP-13-0002: Harbor Vision.** A city-sponsored Comprehensive Plan text amendment to incorporate the adopted Harbor Vision into the Comprehensive Plan and develop implementing policies.

POLICY ANALYSIS

A. Selection Criteria. Before rendering a decision whether the individual comprehensive plan amendment proposal may be processed during any year, the city council shall consider all relevant facts, including the application materials, as well as the following items:

1. Whether circumstances related to the proposed amendment and/or the area in which it is located have substantially changed since the adoption of the comprehensive plan; and
2. Whether the assumptions upon which the comprehensive plan is based are no longer valid, or whether new information is available which was not considered during the initial comprehensive plan adoption process or during previous annual amendments; and
3. For amendments that have been considered within the last three years, whether there has been a change in circumstances that makes reconsideration of the proposed amendment now appropriate. (GHMC 19.09.130)

B. Staff Recommendations. Staff believes that all amendments should be forwarded onto the Planning Commission for processing in the 2013 cycle. Staff has included a brief analysis of the amendments against the criteria in GHMC 19.09.130.

1. **PL-COMP-13-0001: Burnham Hill Commercial Center Comprehensive Plan Land Use Map Amendment.** A proposed land use map amendment, submitted by John Park of Hungsung LLC, to change the land use designation of a 2.79 acre parcel located at 11102 Burnham Drive, Gig Harbor, WA from a Residential Medium (RM) designation to a Commercial/Business (C/B) designation. The C/B designation can be implemented by the B-1, B-2, C-1, and DB zones.

Expansion of the Commercial/Business (C/B) designation may be appropriate for this area near the intersection of Burnham and Sehmel Drive. The subject property was annexed into the City of Gig Harbor in 2009. At the time it was in Pierce County's jurisdiction, the County had classified it Medium Density Residential and included it within Gig Harbor's UGA Boundary. Reflecting the County's Plan classification Gig Harbor also designated it Residential Medium, the closest category to what Pierce County had shown it to be. The subject property is zoned RB-2 recognizing that it can be served by infrastructure more easily than properties to the west or south that are designated Residential Low and zoned R-1. It should also be noted that the properties directly to the north of the subject property were designated Commercial/Business. It may be appropriate to change the designation to C/B as additional commercial services on the west side of the interchange could be beneficial to the community. The subject application has not been reviewed in previous annual cycles.

2. **PL-COMP-13-0002: Harbor Vision.** A city-sponsored Comprehensive Plan text amendment to incorporate the adopted Harbor Vision into the Comprehensive Plan and develop implementing policies. Resolution 920 passed on December 10, 2012 directed staff to include this application in the 2013 review cycle. The Downtown Planning and Vision Committee has been meeting since the adoption of the vision statement to provide a framework for the Planning Commission's review (enclosed). The framework includes draft neighborhoods for consideration and a rating of importance of the elements of the vision statement based on those neighborhoods.

ENVIRONMENTAL ANALYSIS

SEPA review will occur after the Council decides which comprehensive plan amendment applications will be forwarded to the Planning Commission.

FISCAL CONSIDERATION

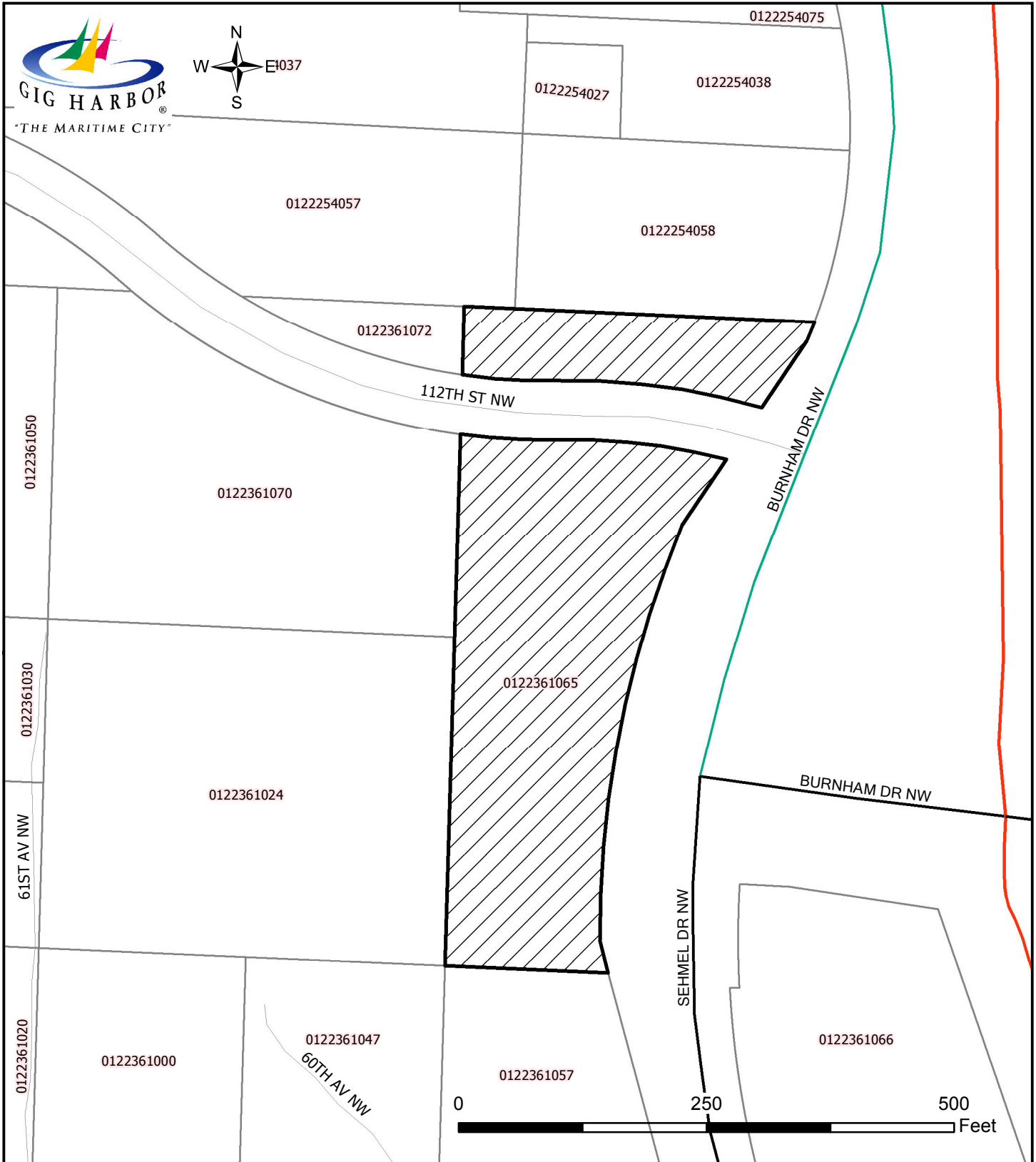
None.

BOARD OR COMMITTEE RECOMMENDATION

None solicited. The Planning Commission will make a recommendation on those comprehensive plan amendment applications which the Council accepts and forwards to the Planning Commission for further processing.

RECOMMENDATION / MOTION

Motion: Move that all of the 2013 Comprehensive Plan Amendment applications be forwarded to the Planning Commission for further processing.



**PL-COMP-13-0001 Burnham Hill Commercial Center
Residential Medium (RM) to Commercial/Business (C/B)**



The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

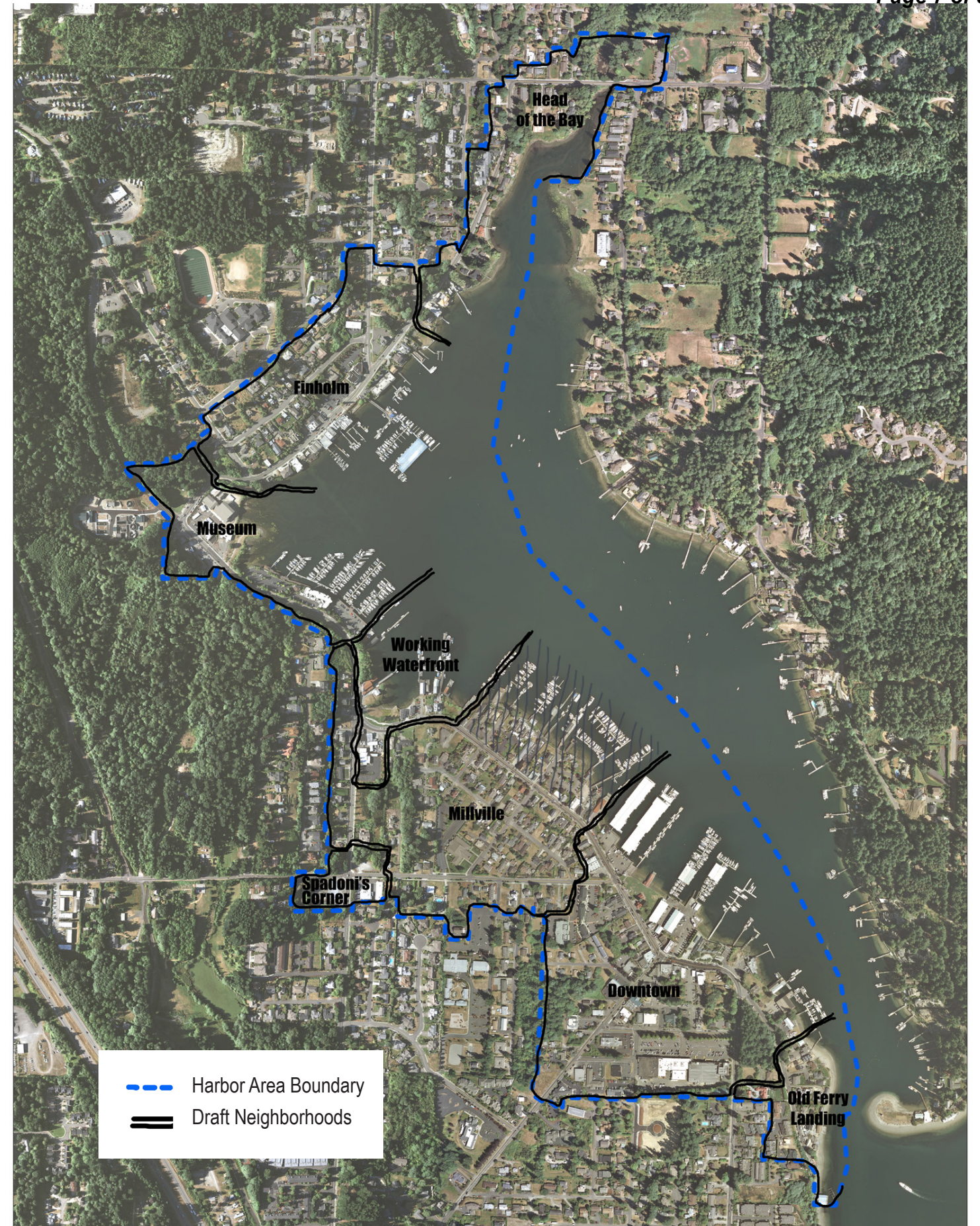
PL-COMP-13-0001 Burnham Hill Commercial Center Surrounding Uses

The Harbor

Shaped by our maritime heritage, the Harbor is a reflection of our past and the foundation for our future. The Harbor is:

- A vibrant place where residents, visitors and boaters enjoy a walkable waterfront, picturesque views, and the natural environment.
- A place that celebrates and perpetuates the character and traditions of a working waterfront and preserves historic neighborhoods.
- A place that supports and values local retail shops and services.
- A place that provides services for recreational and commercial boating.

The Harbor is a place where people live, work, play, shop and explore.



The Harbor Vision - Neighborhoods Matrix

RATE FOR FUTURE PLANNING (1 to 5)
1 = Not important to the neighborhood
5 = Extremely important to the neighborhood

Neighborhoods	Head of the Bay	Finholm	Museum	Working Waterfront	Millville	Spadoni's Corner	Downtown	Old Ferry Landing
A vibrant place where visitors and boaters enjoy a walkable waterfront.	4	5	5	5	5	1	5	4
A vibrant place where visitors and boaters enjoy picturesque views.	5	5	5	5	5	2	5	5
A vibrant place where visitors and boaters enjoy the natural environment.	5	3	5	4	3	1	3	5
A place that celebrates and perpetuates the character and traditions of a working waterfront.	1	3	5	5	3	1	4	2
A place that celebrates and preserves historic neighborhoods.	2	5	4	5	5	2	5	3
A place that values local shops and services.	2	5	4	3	4	5	5	1
A place that provides services for recreational and commercial boating.	1	5	4	5	5	1	4	1
A place where people live, work, play, shop and explore.	2	5	5	4	4	5	5	1

"Natural Environment" meaning habitat, water quality, trees & vegetation and the need to enhance existing

Rated based on "Future Potential"

"Marine" related services

Statements requested by GHHWA & Chamber

Rated based on promotion of "live, work & shop" in same neighborhood

Neighborhood includes Residential and Commercial areas



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

Subject: Resolution 924 – Canterwood Sewer Utility Extension Agreement.

Proposed Council Action: Move to approve Resolution 924 for a sewer Utility Extension Agreement with Canterwood Development Company.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, Public Works Director *JL*

For Agenda of: March 25, 2013

Exhibits: Resolution and Agreement

	Initial & Date
Concurred by Mayor:	<i>SK</i> 3/21/13
Approved by City Administrator:	<i>AD</i> 3/19/13
Approved as to form by City Atty:	VIA EMAIL 3/18/13
Approved by Finance Director:	<i>PR</i> 3/19/13
Approved by Department Head:	<i>AD</i> 3/19/13

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

RCW 35.67.310 and RCW 35.92.200 authorize the City to provide water and sewer utility services to property beyond the City limits. In March 2012 the City Council approved Ordinance No. 1235 that reinstated the City's ability to allow the extension water and sewer utilities to properties within the Urban Growth Areas of the City without the requirement to first annex. Ordinance No. 1235 provided conditions in Chapter 13.34 of the Gig Harbor Municipal Code (GHMC) for connection to such utility services.

Section 13.34.030 GHMC requires the property owner seeking a utility extension to enter into a utility extension agreement with the City as a condition of a utility extension. GHMC 13.34.030 further requires property owners seeking a utility extension to request an actual hook-up or connection to the City's system within one year from the date of issuance of a water or sewer capacity reservation certificate.

Canterwood Development Company (Canterwood) has requested an extension of the City's sewer collection system beyond the city limits to serve two connections in a residential plat that recently received final plat approval. The proposed utility extension agreement is in response to Canterwood's request and limits the two connections to flow by way of gravity sewer and NOT under pressure from a septic tank effluent pump (STEP) system

FISCAL CONSIDERATION

The proposed utility extension agreement requires Canterwood to pay all costs for designing and constructing any necessary extension of the City's sewer collection system.

Additionally, as prescribed by Chapter 13.32 GHMC, all general facilities charges and monthly services charges for sewer services outside the city limits shall be charged at 1.5 times the in-city rates.

BOARD OR COMMITTEE RECOMMENDATION

The Planning and Building Committee originally recommended the adoption of the utility extension agreement ordinance in March 2012.

RECOMMENDATION/MOTION

Move to approve Resolution 924 for a sewer Utility Extension Agreement with Canterwood Development Company.

RESOLUTION NO. 924

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE EXTENSION OF SEWER SERVICE OUTSIDE THE CITY, AUTHORIZING THE EXECUTION OF A UTILITY EXTENSION AGREEMENT WITH CANTERWOOD DEVELOPMENT COMPANY PROVIDING FOR TWO (2) EQUIVALENT RESIDENTIAL UNITS (ERUs) OF SEWER SERVICE IN PIERCE COUNTY, WASHINGTON.

WHEREAS, Canterwood Development Company requested an extension of the City of Gig Harbor's sewer utility system for two (2) ERUs of gravity sanitary sewer service for two single-family residences; and

WHEREAS, RCW 35.67.310 and RCW 35.92.200 authorize the City to provide water and sewer utility services to property beyond the City limits; and

WHEREAS, Section 13.34.030 of the Gig Harbor Municipal Code (GHMC) requires the property owner seeking a utility extension to enter into a utility extension agreement with the City as a condition of a utility extension; and

WHEREAS, GHMC 13.34.030 further requires property owners seeking a utility extension to request an actual hook-up or connection to the City's system within one year from the date of issuance of a water or sewer capacity reservation certificate; and

WHEREAS, the City approved a sewer capacity reservation certificate for two (2) ERUs to Canterwood Development Company on March 15, 2013.

NOW, THEREFORE,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Utility Extension Agreement attached hereto as Exhibit A, with the owner, Canterwood

Development Company.

Section 2. The City Council hereby directs the City Clerk to record the Utility Extension Agreement against the Property legally described in Exhibit A to the Utility Extension Agreement, at the cost of the applicant.

PASSED by the City Council this 25th day of March 2013.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO. 924

AFTER RECORDING RETURN TO:

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

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

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

Utility Extension Agreement and Agreement Waiving Right to Protest LID

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

The Canterwood Development Company

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

City of Gig Harbor

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

Sec. 25, Twn 22 N, Rge 1 E

Assessor's Property Tax Parcel or Account Number: 3001210010 and 3001210120

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

**UTILITY EXTENSION AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID**

THIS AGREEMENT is entered into on this _____ day of _____, 20____, between the City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), and _____ The Canterwood Development Company _____, a _____ Washington Corporation _____ (the "Owner").

RECITALS

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' and shown in the location map in Exhibit 'B' attached hereto and incorporated herein by this reference; and

WHEREAS, the Owner's property is not currently within the City limits; and

WHEREAS, the Owner desires to connect to the City sewer utility system, hereafter referred to as the "utility," and the City is willing to allow connection using gravity conveyance only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal Code, as now enacted or hereinafter amended; NOW, THEREFORE,

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

TERMS

1. Warranty of Title. The Owner warrants that Owner is the owner of the property described in Exhibit 'A', which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Baker Way (street or right-of-way) at the following location: Canterwood Division 11, Phases 3 and 4.

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City Engineer. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.

4. Sewer Capacity Commitment. The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewage system 2 ERU's as specified in the sewer capacity reservation certificate approved March 14, 2013; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any modification to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this Agreement shall not constitute ownership by the Owner of any facilities comprising the City sewage system. The

City agrees to reserve to the Owner this capacity for a period of one year from the date of issuance of a sewer capacity certificate.

5. Capacity Commitment Payment.

A. The Owner agrees to pay the City a capacity commitment payment in the amount of \$3,843.00, which is fifteen percent (15%) of the current general facilities charge, to reserve the above specified capacity. This payment shall reserve the specified capacity for a period of up to one year.

B. In the event the Owner has not made connection to the City's sewer system by the date set forth above, such capacity commitment shall expire and the Owner shall be entitled to a refund of the capacity commitment payment less a five percent (5%) administrative fee.

C. In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system by the date set forth above, such capacity commitment shall expire and the Owner shall be entitled to a refund of the capacity commitment payment less a five percent (5%) administrative fee.

6. General Facilities Charge Payment. At the time of actual connection, the Owner shall pay the difference between what was paid for the capacity commitment payment and the actual cost of the general facilities charge calculated at the rate schedules applicable at the time of actual connection.

7. Permits; Easements. Owner shall secure and obtain, at Owner's sole cost and expense, any and all necessary permits, easements, approvals, and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including, but not limited to, Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the design and construction of water or sewer main lines, pump stations, wells, and/or other City required capital facilities, the Owner agrees, if required by the City, to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction by the Owner and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

A. Record drawings in a form acceptable to the City Engineer;

B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;

C. A bill of sale in a form approved by the City Attorney; and

D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Engineer, ensuring that the facilities will remain free from defects in

workmanship and materials for a period of two years.

9. Service Charges. In addition to the general facilities charges, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist (which is presently at 150% the rate charged to customers inside city limits) or as they may be hereafter amended or modified.

10. Annexation.

A. Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- i. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- ii. City of Gig Harbor ordinances, resolutions, rules and regulations will apply to the property upon the effective date of annexation;
- iii. Governmental services, such as police, fire and utility service will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- iv. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- v. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- vi. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

B. With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

11. Public Works Standards and Utility Regulations. Owner agrees to comply with all of the requirements of the City's public works standards relating to sewer and utility regulations when

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developing or redeveloping all or any part of the property described on Exhibit A, and all other applicable sewerage standards in effect at the time.

12. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. The lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.290, all as now enacted or hereafter amended.

13. Termination for Noncompliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owner's property and for that purpose disconnect the sewer, in addition to any other remedies available to the City.

14. Waiver of Right to Protest LID. (If applicable)

A. Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

No additional improvements required.

B. Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

C. With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

15. Specific Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

16. Covenant. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

19. Attorney's Fees. This Agreement shall be construed and enforced in accordance

{ASB1032530.DOC;1\00008.900000\}

with the laws of the State of Washington. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement. Venue of such action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

20. Notices. Notices and correspondence to the City and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to any person who purchases any portion of the Property from the Owner shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notice and correspondence.

TO THE CITY:

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

TO THE OWNER:

Canterwood Development Company
5727 Baker Way, Ste 101
Gig Harbor, WA 98332

20. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. If any phrase, provision, or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of this Agreement, such invalidity shall not affect the other terms of this Agreement.

DATED this _____ day of _____, 20__.

OWNER:

CITY OF GIG HARBOR

By: _____
Its _____
(Owner, President, Managing Member)

By: _____
Its Mayor

Attest:

By: Eva Hill / Agent

Eva Hill 3.19.2013

City Clerk, Molly Towslee

Approved as to form:
Office of the City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

DATED: _____

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

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

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

DATED: _____

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

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

CANTERWOOD DIVISION 11 PHASE 3 AND 4

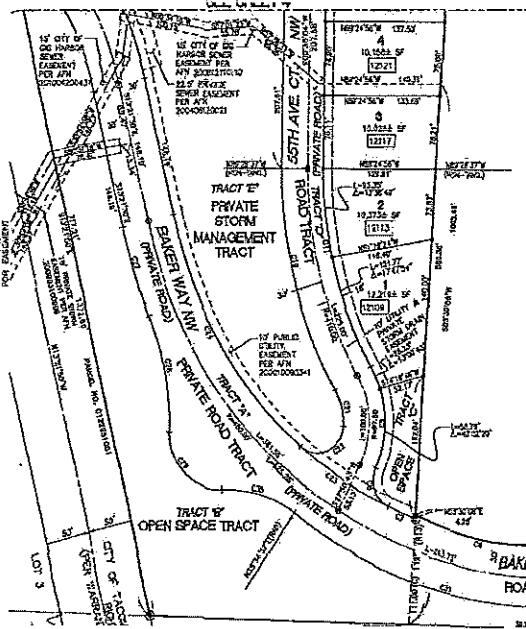
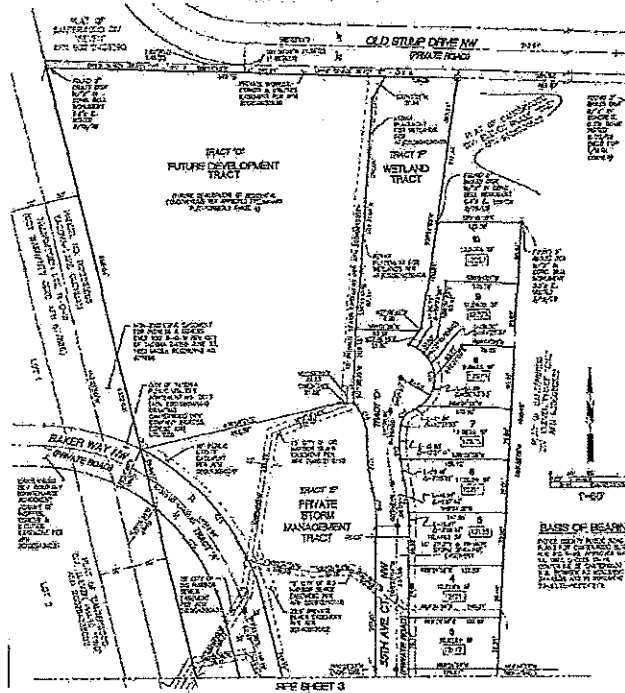
THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M. IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF TACOMA - LAKE CUSHMAN TRANSMISSION LINE;

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE PLAT OF CANTERWOOD DIVISION 11 PHASE 1.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT B
PROPERTY LOCATION MAP

CANTERWOOD DIVISION ELEVEN, PHASE 3
A PORTION OF THE SE 1/4 OF THE NE 1/4 OF
SECTION 23, TOWNSHIP 22 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN
PERCE COUNTY, WASHINGTON





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

Subject: Marine Outfall Inspection–
Consultant Services Contract Amendment

Dept. Origin: Public Works

Proposed Council Action: Approve and authorize the Mayor to execute the First Amendment to the Consultant Services Contract with Cosmopolitan Engineering, for inspection and evaluation of the City's Marine Outfall in an amount not to exceed Twenty-Eight Thousand Three Hundred Ninety-Seven Dollars and Zero Cents (\$28,397.00).

Prepared by: Jeff Langhelm, PE *AD*
Public Works Director

For Agenda of: March 25, 2013

Exhibits: First Amendment and Scope

Initial &
Date

Concurred by Mayor: *See 3/21/13*

Approved by City Administrator: *AD 3/20/13*

Approved as to form by City Atty: *VIA EMAIL 3/20/13*

Approved by Finance Director: *AD 3/20/13*

Approved by Department Head: *AD 3/20/13*

Expenditure Required	\$ 28,397	Amount Budgeted	\$25,000	Appropriation Required	See Fiscal Consideration
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INFORMATION/BACKGROUND

The City contracted with the design firm for the City's Marine Outfall Extension Project, Cosmopolitan Engineering, in 2009 to assist with special inspection of the Project construction. With the completion of the Project in the summer of 2011, the contractor was required to provide a two-year maintenance bond. This bond was set in place to ensure the proper construction and operation of the new outfall. The bond will expire in July 2013.

Prior to the expiration of the bond, City Staff recommends inspecting the new outfall to verify the status of the outfall. Typically City Staff performs these types of inspections prior to release of two-year maintenance bonds. However, due to the special inspections necessary for the Marine Outfall Extension Project, City Staff is unable to perform the inspection.

The proposed amendment to the consultant services contract with Cosmopolitan Engineering will provide for an inspection and assessment of the entire length of the new outfall. The inspection will be accomplished by both manned dives inside the Harbor and use of a remote operated vehicle (ROV) in Colvos Passage.

FISCAL CONSIDERATION

The 2013 Wastewater Division Operating Fund has budgeted \$25,000 for this task based on cost estimates in 2013. However, upon finalizing the scope and requesting a fee for this work, the actual cost exceeds the budgeted amount by \$3,397. Discussions with the Finance Director indicate sufficient funds are available in the Wastewater Operating fund to cover the additional expense.

BOARD OR COMMITTEE RECOMMENDATION

The Marine Outfall Extension Project, which includes the requirement of a maintenance bond, has been previously reviewed and accepted at both the Operations and Public Projects Committee and the City Council. This work has not been formally presented to a board or committee but is a continuation of the Project.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute the First Amendment to the Consultant Services Contract with Cosmopolitan Engineering, for inspection and evaluation of the City's Marine Outfall in an amount not to exceed Twenty-Eight Thousand Three Hundred Ninety-Seven Dollars and Zero Cents (\$28,397.00)

**FIRST AMENDMENT
TO
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
COSMOPOLITAN ENGINEERING GROUP**

THIS FIRST AMENDMENT is made to that certain Consultant Services Contract dated December 15, 2009 (the "Agreement"), by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Cosmopolitan Engineering Group, a corporation organized under the laws of the State of Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently contracting with the Consultant for Marine Outfall Extension Project;

WHEREAS, the City desires to extend consultation services with the Consultant in connection with the aforementioned services; and

WHEREAS, section 18 of the Agreement requires the parties to execute an amendment to the Agreement in order to modify the scope of work to be performed by the Consultant and to amend the amount of compensation paid by the City;

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

Section 1. Scope of Work. Section 1 of the Agreement is amended to add the work as shown in **Exhibit A – Scope of Work**, attached to this Amendment and incorporated herein.

Section 2. Compensation. Section 2(A) of the Agreement is amended to increase compensation to the Consultant for the work to be performed as described in **Exhibit A** in an amount not to exceed Twenty-Eight Thousand Three Hundred Ninety-Seven Dollars and Zero Cents (\$28,397.00), as shown in **Exhibit A**, attached to this Amendment and incorporated herein.

Section 3. Duration of Work. Section 4 of the Agreement is amended to extend the duration of this Agreement to June 30, 2013.

EXCEPT AS EXPRESSLY MODIFIED BY THIS FIRST AMENDMENT, ALL TERMS AND CONDITIONS OF THE AGREEMENT ARE HEREBY RATIFIED AND INCORPORATED INTO THIS AMENDMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties have executed this First Amendment on this _____ day of _____, 20__.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its Principal

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A



ENGINEERING
G R O U P

PO Box 1678 • Tacoma, WA 98401-1678
711 Pacific Avenue • Tacoma, WA 98402
Phone (253) 272-7220 • Fax (253) 272-7250
bfox@cosmopolitaneng.com

DATE: February 19, 2013
TO: Jeff Langhelm, City of Gig Harbor
FROM: Bill Fox, Cosmopolitan Engineering Group
RE: Scope of Work and Cost for Outfall Inspection

This memorandum outlines the scope of work and cost to complete an inspection and evaluation of the City of Gig Harbor marine outfall. This work will support the City's two-year maintenance bond requirements, the inspection requirements in the DNR aquatic lands lease, and support the upcoming NPDES permit renewal.

1. Colvos Inspection

An ROV inspection of the entire above-grade outfall pipeline in Colvos Passage will be conducted by Tim Nelson of AAC. AAC's services will include:

- Mob / Demob for pipeline inspection with the HD 2 + 2 ROV staged from a 26' work boat.
- Inspections will provide for visual inspection (color underwater video) of the outfall pipe alignment and exposed portions of pipeline in Colvos Passage.
- ROV equipped with two sonars – 2D Imaging & scanning.
- Work scheduled to utilize slack tide window at the offshore diffuser section, and other time in harbor pipe areas.
- Total inspections time anticipated to take 2 days (March – April 2013).
- AAC will provide narrative of inspections, still photos extracted from video, and DVD video of the inspections.

2. Gig Harbor Inspection

I will conduct the inspection of the pipeline inside Gig Harbor as follows:

- Mob/demob for pipeline inspection staged from a 26' work boat.
- Visually inspect the exterior of the entire above-grade portion of the outfall line inside Gig Harbor. Special attention will be provided at pipe joints and air relief ports.
- Videotape the exterior of the entire above-grade portion of the outfall line inside Gig Harbor.
- Determine outfall elevation profile by measuring water depth at every visible A-anchor of the outfall line inside Gig Harbor. Depth will be measured with a Seabird SBE 19 profiler, accurate to within 0.05 feet. (note: steeper portions may adjust spacing to every other anchor)
- Establish temporary tide gauge in Gig Harbor to correct depth soundings to elevation.

3. Outfall Assessment and Report

This task will provide a written assessment (and stamped by professional engineer) of the outfall condition based on the inspections described above. I will oversee the planning and execution of the ROV inspection, personally conduct the inside-harbor inspection, and the post inspection documentation. Areas of focus relative to as-built condition will include pipeline placement, rock placement, concrete anchor and fastener condition, joints and joint hardware, and air relief ports.

Schedule of Charges

LABOR

Task	Name: Principal/Sr Eng Rate: \$184.00 Hrs \$	Name: Engineer III Rate: \$137.00 Hrs \$	Name: WP/CAD Rate: \$114.00 Hrs \$	Task Subtotal
1. Colvos Inspection	\$0	\$0	\$0	\$0
2. Gig Harbor Inspection	\$0	\$0	\$0	\$0
3. Assessment and Report	24 \$4,416	16 \$2,192	16 \$1,824	\$8,432
Subtotal	24 \$4,416	16 \$2,192	16 \$1,824	\$8,432

LABOR SUBTOTAL: \$8,432

EXPENSES

Item	Quantity	Unit	Unit Cost	\$
1. ROV Inspection - AAC	1	EA	\$12,485	\$12,485
2. Gig Harbor Inspection - RME	1	EA	\$7,480	\$7,480

EXPENSE SUBTOTAL: \$19,965

TOTAL COST: \$28,397

|Direct costs invoiced at cost plus 10%