

Gig Harbor City Council Meeting



July 27, 1998

7:00 P.M., CITY HALL COUNCIL CHAMBERS

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
July 27, 1998 - 7:00 p.m.

CALL TO ORDER:

APPROVAL OF MINUTES:

CORRESPONDENCE / PROCLAMATIONS:

OLD BUSINESS:

1. Second Reading of Ordinance – Indemnification.
2. Settlement Agreement – Canterwood.

NEW BUSINESS:

1. Payroll System Upgrade.
2. First Reading of Ordinance – Consent Agenda.
3. First Reading of Ordinance – Amending GHMC Criminal Code Section.
4. EIS for Comp Plan Update – Consultant Services Agreement, Beckwith & Associates.
5. TIB Grant Agreement – 38th Avenue Sidewalk Improvements (Phase II)
6. Comprehensive Plan Update – Water.
7. Comprehensive Plan Update – Sewer.
8. Comprehensive Plan Update – Stormwater.
9. Wilkinson Property Acquisition.
10. Liquor License Application – Harbor Rock Café.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS:

STAFF REPORTS:

1. Wes Hill, Public Works Director – Esteb Sewer Connection.
2. Dave Rodenbach, Finance Director – Quarterly Finance Reports.

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

ADJOURN:

DRAFT

REGULAR GIG HARBOR CITY COUNCIL MEETING OF JULY 13, 1998

PRESENT: Councilmembers Ekberg, Young, Owel, Dick, Picinich, Markovich and Mayor Wilbert. Councilmember Platt was absent.

CALL TO ORDER: 7:03 p.m.

Mayor Wilbert introduced Matt Cox, and other members of Scout Troop #212, who led the assembly in the Pledge of Allegiance.

PUBLIC HEARING: Planning Commission Recommendation – Preannexation Zoning for the Purdy Area.

Mayor Wilbert opened the public hearing on this item at 7:07 p.m. Ray Gilmore, Planning Director, explained that this recommendation had been presented to Council for a first reading and public hearing on May 26, 1998. He added that this proposed pre-annexation zoning plan was to establish a zoning plan consistent with the city's Comprehensive Plan to establish zoning guidelines for future annexation. He introduced the ordinance and the attached map outlining the proposed zoning.

Mayor Wilbert asked if anyone wished to speak on this issue. No one came forward, and the public hearing was closed at 7:07 p.m.

APPROVAL OF MINUTES:

MOTION: Move approval of the minutes of June 22, 1998 meeting as presented. Picinich/Owel – four members voted in favor. Councilmembers Ekberg and Young abstained.

CORRESPONDENCE/PROCLAMATIONS: None scheduled.

OLD BUSINESS:

1. Planning Commission Recommendation – Preannexation Zoning for the Purdy Area – Second Reading of Ordinance. Mr. Gilmore gave a brief overview of this recommendation from the Planning Commission for preannexation zoning for the Purdy area located within the city's urban growth area.

MOTION: Move to adopt Ordinance No. 795. Picinich/Young – unanimously approved.

2. Request for Consideration to Annex to the City – Fairway Estates. Ray Gilmore, Planning Director, explained that at the last council meeting, he had been asked for a legal description to accompany this request to consider annexation of approximately 20 acres. He explained that staff prepared the legal based upon the description of the plat submitted with the petition, but included the rights-of-way abutting the subdivision. He added that the second document submitted for review and consideration is a fiscal analysis of the annexation prepared by Finance and Administration.

Councilmember Dick asked about the option to exclude the rights-of-way because the annexation request did not include the area across from the subdivision. Mark Hoppen, City Administrator, explained that historically it was the policy of the Boundary Review Board to include any adjoining streets in an annexation request.

Councilmember Ekberg asked for clarification on the maintenance of the common areas and greenbelts. Ray assured him that the city would not be assuming responsibility for these areas. Councilmember Dick asked about maintenance of the storm-drainage facilities. Wes Hill, Public Works Director, explained that it had been confirmed that the storm drainage facilities and streets within the development are public and have been maintained by Pierce County. Councilmember Young asked if there was any chance of obtaining funds from Pierce County to bring the facilities up to city standards. Wes explained that it was a possibility. Wes gave an explanation of the stormdrainage facility locations.

Jim Pasin – 3208 56th St. Ct. NW. Mr. Pasin asked Council for consideration so that the neighborhood could move ahead with the next step in the annexation process.

MOTION: Move for adoption of Resolution No. 521 accepting the annexation request from Fairway Estates.
Picinich/Owel – unanimously approved.

3. Second Reading of Ordinance – Eliminating a Reference to the process for Appeals for the CUP Process. Ray Gilmore explained that a section of the code had been superseded by the adoption of Title 19 and that this ordinance corrects the Municipal Code.

MOTION: Move for adoption of Ordinance No. 796.
Markovich/Dick – unanimously approved.

4. Second Reading of Ordinance – Establishment of Speed Limits. Wes Hill introduced the second reading of this ordinance establishing speed limits on various arterials in the city.

Bernard Hanson -- 3512 109th St. Ct. NW. Mr. Hanson explained that he lives outside the city limits, but that he travels Peacock Hill Avenue extensively. He said that he was concerned with the reduction of the speed limit to 25 mph which he assumed was the result of the fatal accident. He added that he hoped that the city would follow the

recommendations to bring the speed limit back up to 35 mph. He said that it is a nice wide road with good shoulders and plenty of visibility.

Councilmember Owel said that she had spoken to Mr. Estes, who had addressed Council on this issue in the past, but could not be here this evening to speak. She explained that it was important to Mr. Estes that he be understood. His comment was that the speed limit being set at 35 mph might be acceptable if it were rigorously enforced, but if you set the speed at 25, people will drive 35, and if you set it at 35, people will drive 45 and 50. Councilmember Owel explained to Mr. Hanson that the speed limits in the city automatically are set at 25 mph when annexed.

MOTION: Move adoption of Ordinance No. 797.
Markovich/Ekberg –

Councilmember Picinich said that he is opposed to the increase to 35 mph on Peacock Hill, although he realized that it is hard to make it up the hill at 25 with a car that has automatic acceleration. He added that a lot of people walk up there three abreast, creating a safety concern.

Councilmember Owel said the difference between 25 miles and 35 miles for 8/10 of a mile is minimal. Councilmember Markovich said that it works both ways, and both agreed that enforcement was the key.

Councilmember Young added that the road is engineered for speeds limits considerably higher. He said he didn't think that moving the limit back to 35 would make a dramatic difference, and may even cure some road rage during peak traffic hours. Councilmember Ekberg said that it was much simpler when the entire city's speed limits were 25 mph, but there has been annexation of new areas where streets are built for speeds in excess of 25 mph, and creating an artificially low limit that would be difficult to enforce would not be in the city's best interest. He added that the 30 and 35 mph segments throughout the annexed areas are adequate.

Mayor Wilbert said that a no-passing zone had been suggested. Wes Hill explained that an additional study would need to be done to understand the relationship of the access roads and speeds to determine situations where a no-passing zone would be warranted. He pointed out that Pierce County had done studies last year before they repaved that segment, and that there had been no change in driveways or road access since that time. He added that by establishing a no-passing zone, you preclude the ability for a motorist to bypass an object within the roadway, such as a cyclist, without violating the law.

Councilmember Picinich said he has seen several incidences where school buses have had their flags out and vehicles have sped passed them. Wes agreed that pedestrian safety is a main consideration deciding an appropriate speed limit, and to lower the recommended limit was within the Council's discretion. He then reinforced that studies indicate that posting speed limits 15 miles per hour above or below the 85th percentile

result in no appreciable change in the speeds that are traveled, and that the studies also indicate that posting at the 50th percentile keeps the accident rates at a minimum, and that posting too low or too high may increase the accident rate.

Mayor Wilbert asked if there was an amendment to the motion.

MOTION: Call for the question to close debate.
Markovich/Ekberg –

Mayor Wilbert asked for a roll-call vote on the motion to close debate. The results of the vote are as follows:

Councilmember Ekberg voted yes. Councilmember Young voted yes. Councilmember Owel voted yes. Councilmember Dick voted yes. Councilmember Picinich voted no. Councilmember Markovich voted yes.

The motion to close debate carried.

ORIGINAL MOTION: Move to adopt Ordinance No. 797.
Markovich/Ekberg – five voted in favor. Councilmember Picinich voted against.

5. East-West Roadway Construction Project Release and Covenant Not to Sue. Carol Morris, Legal Counsel, explained that this Council was being asked to ratify Mayor Wilbert's signature on this agreement. She offered to answer any questions.

MOTION: Move to ratify the execution of the Release and Covenant Not to Sue.
Dick/Markovich – unanimously approved.

NEW BUSINESS:

1. DUI Task Force Interlocal Agreement. Lieutenant Colberg explained that the majority of law enforcement agencies in Pierce County have formed a DUI Task Force. He gave an overview of the process to target an area on a monthly basis to conduct a DUI emphasis patrol.

MOTION: Move to direct the Mayor to sign the interlocal agreement.
Picinich/Young – unanimously approved.

2. Cash Receipting Software Purchase. Dave Rodenbach, Finance Director, explained that this request to purchase a cash receipting system is in response to several years of auditor comments that the city's cash receipting system needed strengthening. He gave an explanation of how the receipting is done currently, and how the new system would integrate with the existing utility billing software. He added that there are other less

expensive systems that would not integrate with the existing system, and also would not realize any staff time savings.

MOTION: Move to approve Resolution No. 522 declaring the purchase of computer software for cash receipting.
Ekberg/Young – unanimously approved.

3. First Reading of Ordinance – Indemnification. Carol Morris explained that this item on indemnification came before Council at the last meeting in resolution form, and was being brought back as an ordinance so it could be codified. She added that this item was on the agenda in light of recent court decisions where liability was imposed on individual council members. She said that procedure would allow an individual to request that Council pay their attorney's fees in defense and any judgement. She answered Councilmember Dick's questions regarding under which circumstances the coverage would be considered. This will return at the next meeting for a second reading, with corrections to the language.
4. Transportation Plan Update – Consultant Services Agreement. Wes Hill explained that one of the 1998 budget objectives is to update the Transportation Plan element of the City's Comprehensive Plan of 1994. He added that several firms had been interviewed and that KJS Associates was selected as the most qualified to perform the work.

MOTION: Move we approve the execution of the Consultant Service Contract with KJS Associates, Inc., in an amount not to exceed forty-two thousand nine hundred ten dollars (\$42,910.00).
Owel/Young – unanimously approved.

5. Park, Recreation and Open Space Plan Update – Consultant Services Agreement. Wes Hill presented another update to the Comprehensive Plan of 1996 for parks, recreation and open spaces. He answered Council's question regarding the changes that had occurred since 1996.

MOTION: Move we approve the execution of the Consultant Service Contract with Beckwith Consulting Group, in an amount not exceed sixteen thousand dollars and no cents (\$16,000.00).
Young/Ekberg – unanimously approved.

6. Purchase Authorization – Harborview Drive Water Main Replacement. Wes Hill explained that a portion of the water main on Harborview Drive, south of Soundview Drive, failed earlier this year. Due to the damage caused by the break and continued concerns, the resident's living on the roadway requested that the water line be replaced this year. He gave an overview of the price quotations and recommended approval for the purchase of the materials to replace the water main.

MOTION: Move to approve the purchase of the materials from the lowest bidder, H.D. Fowler, in the amount of \$14,915.55.
Picinich/Markovich – unanimously approved.

7. Purchase Authorization – Hill Street Water Main Replacement. Wes Hill explained that this replacement was included in the 1998 Budget and requested approval to purchase the materials to replace the water main on Hill Street from the lowest bidder, H.D. Fowler.

MOTION: Move to authorize the purchase of the water main materials for the Hill Street water main replacement project from H.D. Fowler Company in the amount of fourteen-thousand eight hundred seven dollars and twelve cents (\$14,807.12).
Picinich/Ekberg – unanimously approved.

8. Purchase Authorization - North Harborview Drive Street Lights. Wes Hill presented this request to purchase street lights for North Harborview Drive. He explained that the Public Works Department had distributed questionnaires to the residents in the area to determine if they approved of the choice of lights. He added that the lights would be installed in a two-phase effort and gave a brief description of the project.

MOTION: Move we purchase the materials and complete the work on the street lights on North Harborview Drive.
Owel/Young – unanimously approved.

9. Approval of Maintenance Agreements Renewal – Minolta Copier Machine. Molly Towslee, City Clerk, explained that this was the same contract that Council had approved the year before. She added that there was no increase in the amount and that staff remained happy with the service provided by Minolta.

MOTION: Move to authorize the Mayor to sign the attached maintenance contract.
Picinich/Young -- unanimously approved.

10. Liquor License Applications- Flowers on the Bay; Satish Changela (AM-PM Minimart).
No action taken.

11. Liquor License Renewals - Emerald Star Restaurant; Hunan Garden Restaurant; Kinza Teriyaki; Shorline Steak & Seafood Grill; Spiro's Bella Notte' Pizza & Pasta; The Keeping Room, Candles & Wine Etc. No action taken.

12. Approval of Special Occasion Liquor License - Peninsula High School Booster Club. No action taken.

PUBLIC COMMENT:

Mark Robinson – 7415 Stinson Avenue. Mr. Robinson spoke of his concerns about the increased traffic on Stinson Avenue, making it more difficult to get out of his driveway. He

talked about the increasing speed along the street and asked that Councilmembers encourage the enforcement of the 25 mile per hour speed limit.

Mike Esteb – 507 7th Ave., Fox Island. Mr. Esteb explained that he was currently building a home at 8808 Franklin Avenue. He passed out a letter and gave an explanation of his efforts to hook his home up to an existing side sewer. He asked for consideration to be able to hook up to the sewer without having to sign an indemnification agreement. Councilmember Picinich asked Carol Morris for her comments on this issue. Ms. Morris suggested that a full detailed staff report be brought back at the next Council Meeting addressing this issue. She added that the Public Works Director had not made a final decision, and that he had been in touch with her throughout the process.

COUNCIL COMMENTS:

STAFF REPORT:

Gig Harbor Police Department June Statistics. Lieutenant Bill Colberg gave a brief overview of the statistics and explained that it was expected that the numbers would continue to rise. He added that the crime of choice seems to be vehicle prowls and that an unmarked unit was being used at night to try and find the prowlers. He gave a brief update on the Marine Services Unit and the Bicycle Officers' efforts.

Mayor Wilbert shared several pieces of mail, newspaper articles and correspondence with Councilmembers.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Special City Council Meeting – August 3, 1998, 7:00 p.m. at City Hall.
2. Kimball Drive Park & Ride Project Meeting – 5:00 p.m., Thursday, July 16th at Fire District #5 Station on Kimball Drive.

APPROVAL OF PAYROLL:

MOTION: Move approval of checks #15921 through #16074 in the amount of \$266,895.39.
Young/Ekberg - unanimously approved.

APPROVAL OF BILLS:

MOTION: Move approval of checks #20473 through #20594 in the amount of \$112,527.15.
Young/Ekberg - unanimously approved.

EXECUTIVE SESSION:

MOTION: Move to adjourn to Executive Session at 8:30 p.m. for approximately 45 minutes for the purpose of discussing property acquisition per RCW 42.30.110, (b) and litigation per RCW 42.30.110 (i).
Young/Ekberg – unanimously approved.

MOTION: Move to return to regular session at 9:10 p.m.
Picinich/Ekberg – unanimously approved.

MOTION: Move that we have the Canterwood Agreement presented at our next Council Meeting of July 27th.
Picinich/Young – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 9:20 p.m.
Owel/Young - unanimously approved.

Cassette recorder utilized.
Tape 500 Side A 037 – end.
Tape 500 Side B 000 – end.
Tape 501 Side A 000 – end.

Mayor

City Clerk



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: CAROL MORRIS, CITY ATTORNEY
SUBJECT: PROPOSED ORDINANCE ON INDEMNIFICATION
DATE: JULY 22, 1998

INFORMATION/BACKGROUND

As you are probably aware, plaintiffs are frequently naming individual city officials and officers as defendants in lawsuits which were formerly brought against the municipality alone. In a recent case, the Washington State Supreme Court imposed liability on individual council members, mayors and city officials under 42 U.S.C. § 1983 for action purportedly taken within the scope of official duties.

Pursuant to RCW 4.96.041, the City of Gig Harbor may establish a procedure to allow an officer, employee or volunteer to request the Council to authorize the defense of an action or proceeding brought against him or her individually at the City's expense. The attached ordinance establishes a procedure consistent with the statute for the defense and payment of any judgment imposed on the officer, employee or volunteer.

FISCAL IMPACTS

The proposed ordinance is consistent with the City's current insurance policy. There would be no financial impact as a result of the adoption of this ordinance.

RECOMMENDATION

The City Attorney's office recommends that the Council move to adopt this ordinance at this second reading.

RCW 4.96.041 Action or proceeding against officer, employee, or volunteer of local governmental entity – Payment of damages and expensed of defense.

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(1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.

(2) If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgement against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

(3) The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

(4) When an officer, employee, or volunteer of the local governmental entity has been represented at the expense of the local governmental entity under subsection (1) of this officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgement creditor shall seek satisfaction for nonpunitive damages only from the local governmental entity, and judgment for nonpunitive damages shall not become a lien upon any property of such officer, employee, or volunteer. The legislative authority of a local governmental entity may, pursuant to a procedure created by ordinance or resolution, agree to pay an award for punitive damages.

[1993 c 449 § 4; 1989 c 250 § 1; 1979 ex.s. c 72 § 1. Formerly RCW 36.16.132.]

Notes:

Purpose – Severability—1993 c 449: See notes following RCW 4.96.010.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LEGAL ACTIONS BROUGHT AGAINST CITY OFFICIALS, OFFICERS AND EMPLOYEES, PROVIDING FOR LEGAL REPRESENTATION FOR CONDUCT, ACTS AND OMISSIONS PERFORMED ON BEHALF OF THE CITY AND WITHIN THE SCOPE OF THEIR SERVICE OR EMPLOYMENT; PROVIDING FOR THE TERMS, CONDITIONS AND EXCEPTIONS FROM SUCH REPRESENTATION AND INDEMNIFICATION; SPECIFYING THE CIRCUMSTANCES UNDER WHICH CLAIMS AGAINST CITY OFFICIALS AND EMPLOYEES WILL BE PAID BY THE CITY; ADDING A NEW CHAPTER 2.19 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City currently has no ordinance in place to address indemnification of public officials and employees; and

WHEREAS, RCW 4.96.041 allows the City to establish a procedure for same;

NOW, THEREFORE

BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1. A new chapter 2.19 is hereby added to the Gig Harbor Municipal Code, to read as follows:

CHAPTER 2.19

INDEMNIFICATION OF PUBLIC OFFICIALS AND EMPLOYEES

- | | |
|-----------------|---|
| 2.19.010 | Conditions Under Which City Will Provide Legal Representation. |
| 2.19.020 | Exclusions. |
| 2.19.030 | Determination of Exclusion. |
| 2.19.040 | Representation and Payment of Claims -- Conditions. |

2.19.050	Effect of Compliance with Conditions.
2.19.060	Failure to Comply with Conditions.
2.19.070	Reimbursement of Incurred Expenses.
2.19.080	Conflict with Provisions of Insurance Policies.
2.19.090	Pending Claims.
2.19.100	Definitions.
2.19.110	Effect of Future Repeal or Modification.

2.19.010 Conditions Under Which City Will Provide Legal Representation.

A. As a condition of service or employment the City shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the City, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the City in their capacity as a City official or employee, unless the conduct, act or omission are specifically excluded under GHMC § 2.19.020 herein. The City Council shall, in its sole discretion, determine whether the fees and costs of any legal representation provided under this chapter are "reasonably necessary" for the defense of an official or employee, and are subject to reimbursement.

B. The legal services shall be provided by the office of the City Attorney unless:

1. Any provision of an applicable policy of insurance provides otherwise; or
2. A conflict of interest or ethical bar exists with respect to said representation.

C. In the event that outside counsel is retained under subparagraph B(1) above, the City shall indemnify the employee from the reasonable costs of defense, provided that in no event shall the officer or employee be indemnified for attorney's fees in excess of the hourly rates established by the City's contract with the attorney selected by the City. The officer or employee shall be liable for all hourly charges in excess of said rate, and for any fees and costs determined not to be "reasonably necessary" for the official or employee's defense, as determined by the City Council.

2.19.020 Exclusions.

A. In no event shall protection be offered under this chapter by the City to:

1. Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or employee;

2. Any act or course of conduct of an official or employee which is not performed on behalf of the City;

3. Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the City; and/or

4. Any lawsuit brought against an official or employee by or on behalf of the City.

B. Nothing herein shall be construed to waive or impair the right of the City Council to institute suit or counterclaim against any official or employee nor to limit its ability to discipline or terminate an employee.

C. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for which the City or the official or employee is insured against loss or damages under the terms of any valid insurance policy, provided that this chapter shall provide protection, subject to its terms and limitations, above any loss limit of such policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance owned or applicable to any official or employee. The City shall have the right to require an employee to utilize any such policy protection prior to requesting the protection afforded by this chapter.

2.19.030 Determination of Exclusion.

The determination of whether an official or employee shall be afforded a defense by the City under the terms of this chapter shall be made by the City Council on the recommendation of the Mayor and City Administrator. The decision of the City Council shall be final as a legislative determination and shall be based upon a finding that the claim or suit against an official or employee is excluded under GHMC § 2.19.020.

Nothing herein shall preclude the City from undertaking an officer or employee's defense under a reservation of rights. This reservation of rights shall include, but not be limited to, the officer or employee's written agreement to reimburse the City for all attorneys' fees and costs incurred by the City under the circumstances described in GHMC § 2.19.070.

The determination as to whether to furnish a defense as provided under this chapter to a member or members of the City Council shall be made without the vote of such member or members of the City Council unless the inclusion of such member or members is required for a quorum. Provided, that if a claim or lawsuit affects a quorum or greater number of the members of the City Council, all such affected members shall retain their voting privileges under this section.

2.19.040. Representation and Payment of Claims - Conditions.

The provisions of this chapter shall apply only when the following conditions are met:

A. In the event of any incident or course of conduct potentially giving rise to a claim for damage or the commencement of a suit, the official or employee involved shall, as soon as practicable, give the City Attorney written notice thereof, identifying the official or employee involved, all information known to the official or employee involved, all information known to the official or employee with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

B. Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the City Attorney, and shall cooperate with the City Attorney or an attorney designated by the City, and, upon request, assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the City because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and attorneys' fees arising out of state or federal statute upon a determination that the suit brought is frivolous in nature.

C. Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses all without any additional compensation to the official or employee and, in the event that an employee has left the employ of the City, no fee or compensation shall be provided; and

D. Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense relating to said claim or suit; other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss, or damage.

2.19.050. Effect of Compliance with Conditions.

If legal representation of an official or employee is undertaken by the City Attorney, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the City Council shall make a decision, based on the exclusions set forth in GHMC § 2.19.020, whether to pay such judgment or settlement not otherwise covered by insurance, and the City Council may at its discretion appeal as necessary such judgment.

2.19.050. Failure to Comply with Conditions.

In the event that any official or employee fails or refuses to comply with any of the conditions of GHMC § 2.19.040, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions for indemnification in this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation.

2.19.070. Reimbursement of Incurred Expenses.

A. If the City determines that an official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the City shall pay any judgment rendered against the official or employee and the reasonable attorney's fees incurred by the official or employee in defending against the claim. The City shall pay any costs and reasonable attorney's fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter. Provided, if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the City's costs and reasonable attorney's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

B. If the City determines that a claim against a City official or employee does come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the City shall be reimbursed by the official or employee for attorneys' fees, costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter, as well as all of the attorneys' fees and costs incurred by the City in the official or employee's defense that are not covered by the City's insurance.

2.19.080. Conflict with Provisions of Insurance Policies.

The indemnification provisions of this chapter do not constitute a policy of insurance, and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where any City official or

employee thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided however, that nothing contained in this section shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter and section to provide the coverage detailed in this chapter only outside and beyond insurance policies which may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter.

2.19.090. Pending Claims.

The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee, or any such claim or lawsuit thereafter filed, without regard to the date of the events or circumstances which are the basis of such claim or lawsuit.

2.19.100. Definitions.

Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meanings:

A. "Official". Any person who is serving or has served as an elected or appointed City official or officer, and any person who is serving or has served as an appointed member of any City board, commission, committee or other appointed position with the City. The term appointed as used herein shall mean a person formally appointed by the City Council or as authorized by State law or City ordinance.

B. "Employee". Any person who is or has been employed by the City.

2.19.110. Effect of Future Repeal or Modification.

This chapter is subject to repeal or modification at the sole discretion of the City Council, provided, that such repeal or modification shall apply prospectively only, and shall have no effect upon the obligation to indemnify and/or defend against any claim which is based, in whole or in part, upon any act or omission of an official occurring prior to the effective date of the repeal or modification.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 3. Effective Date. This ordinance shall take effect and be in full force and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this day of _____
_____, 199_.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

BY: _____
CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY, CAROL A. MORRIS

FILED WITH THE CITY CLERK: 7/8/98
PASSED BY THE CITY COUNCIL:
EFFECTIVE DATE:
ORDINANCE NO.

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the _____ day of _____, 199__, the City Council of the City of Gig Harbor, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LEGAL ACTIONS BROUGHT AGAINST CITY OFFICIALS, OFFICERS AND EMPLOYEES, PROVIDING FOR LEGAL REPRESENTATION FOR CONDUCT, ACTS AND OMISSIONS PERFORMED ON BEHALF OF THE CITY AND WITHIN THE SCOPE OF THEIR SERVICE OR EMPLOYMENT; PROVIDING FOR THE TERMS, CONDITIONS AND EXCEPTIONS FROM SUCH REPRESENTATION AND INDEMNIFICATION; SPECIFYING THE CIRCUMSTANCES UNDER WHICH CLAIMS AGAINST CITY OFFICIALS AND EMPLOYEES WILL BE PAID BY THE CITY; ADDING A NEW CHAPTER 2.19 TO THE GIG HARBOR MUNICIPAL CODE.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 199__.

CITY CLERK, MOLLY TOWSLEE



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: SETTLEMENT AGREEMENT - CANTERWOOD
DATE: JULY 20, 1998

INFORMATION/BACKGROUND

The proposed Settlement Agreement and supporting agreements are attached. The settlement agreement has been reviewed and approved by the City Attorney's office and by Canterwood. The principal components of the settlement agreement are: (1) dismissal of the lawsuit initiated by Canterwood; (2) Canterwood's release of all claims against the city for imposition of the emergency moratorium; (3) amendment of the Utility Extension and Capacity Agreement to adjust the capacity commitment payment credit for future sewer connections; (4) amendment of the Amendment to Utility Extension and Capacity Agreement to extend the capacity commitment period; and (5) creation of an expedited application process for future sewer service applications for lots within Canterwood.

POLICY CONSIDERATIONS

This package of agreements clarifies the relationship of the city with its outside sewer customer, Canterwood, and simplifies the business relationship with regard to sewer extension within this developed residential subdivision.

FISCAL CONSIDERATIONS

The financial impact of this settlement package on the city is negligible. Also, this settlement avoids potential legal costs.

RECOMMENDATION

Legal Counsel and staff recommend that the City Council approve in separate motions the Settlement Agreement, the Amendment to Utility Extension and Capacity Agreement, and the Amendment to Amendment to Utility Extension and Capacity Agreement.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between the CITY OF GIG HARBOR ("City"), a municipal corporation, and CANTERWOOD DEVELOPMENT COMPANY, INC., ("Canterwood"), a Washington corporation. The City and Canterwood are collectively referred to herein as the "Parties."

RECITALS

A. WHEREAS, Canterwood is the owner of certain real property located in Pierce County, Washington, the legal description of which is attached hereto as Exhibit A ("Canterwood Subdivision"); and

B. WHEREAS, on December 1, 1991, the Parties entered a Utility Extension and Capacity Agreement ("Capacity Agreement") that, among other things, reserved to Canterwood the right to discharge 50,000 gallons per day of average flow to the City sewer system until December 31, 1993, in exchange for payment by Canterwood of \$32,600 (a copy of the Capacity Agreement is attached hereto as Exhibit B); and

C. WHEREAS, on December 29, 1993, the Parties entered an Amendment to Utility Extension and Capacity Agreement ("Amendment") that extended the reservation period of the Capacity Agreement for an additional five years, reserving sewer capacity for Canterwood through December 29, 1998 (a copy of the Amendment is attached hereto as Exhibit C); and

D. WHEREAS, on May 27, 1997, in response to delays in obtaining its renewal National Pollution Discharge Elimination System permit from the Washington State Department of Ecology, the City Council imposed an emergency moratorium on the acceptance of applications for sewer service connections and the issuance of new sewer service permits; and

E. WHEREAS, on June 18, 1997, Canterwood initiated a lawsuit against the City in Pierce County Superior Court as Cause No. 97-2-08598-1 ("Lawsuit"), alleging, among other things, that the City breached the Capacity Agreement and Amendment by imposing the emergency moratorium on sewer service connections (a copy of the Complaint is attached hereto as Exhibit D); and

F. WHEREAS, on June 23, 1997, the City Council adopted Ordinance No. 761 allowing for the temporary installation and use of approved septic systems during the time the moratorium was in effect; and

G. WHEREAS, on July 14, 1997, the City Council adopted Resolution No. 499 extending the commitment period of the Capacity Agreement and Amendment from December 29, 1998, to June 29, 2000; and

H. WHEREAS, on August 25, 1997, the City Council adopted ^{ORDINANCE} ~~Resolution~~ No. 764 terminating the emergency moratorium on sewer service connections; and

I. WHEREAS, Canterwood and the City desire to settle the Lawsuit under the terms and conditions described in this Agreement;

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. Amendment of Capacity Agreement and Amendment. The Parties agree to amend the Capacity Agreement and Amendment by executing and recording with the Pierce County Auditor an Amendment to the Capacity Agreement substantially in the form attached hereto as Exhibit E and an Amendment to the Amendment substantially in the form attached hereto as Exhibit F. Canterwood shall record such documents within five (5) days of the effective date of this Agreement and shall bear all costs of recording such documents.

2. Dismissal of Lawsuit. The Parties shall dismiss the Lawsuit with prejudice and each Party shall bear its own attorneys' fees and costs relating to the Lawsuit. In order to dismiss the Lawsuit, the Parties shall, within five (5) days of the effective date of this Agreement, execute and file in Pierce County Superior Court a Notice of Settlement ("Notice") substantially in the form attached hereto as Exhibit G and a Stipulation and Agreed Order of Dismissal with Prejudice ("Stipulation") substantially in the form attached hereto as Exhibit H.

3. Expedited Processing Procedure for Sewer Service Applications. All sewer service applications for lots within the Canterwood Subdivision submitted to the City on or after the entry of a court order dismissing the Lawsuit shall be processed according to Title 13 of the Gig Harbor Municipal Code ("GHMC"), as the same now exists or may hereafter be amended, except that the Capacity Agreement and Amendment, as amended by this Agreement, shall be deemed to satisfy the

requirements of GHMC 13.34.060 (Utility Extension Agreement). In addition, the following procedures shall apply to the processing of sewer service applications for lots within the Canterwood Subdivision submitted to the City on or after the entry of a court order dismissing the Lawsuit:

a. Payment in full of applicable sewer connection fees, inspection fees and deposits shall be made to the City with the sewer service application. The City shall not issue a letter of sewer availability to Pierce County until and unless all application requirements have been met and all fees have been paid.

b. Requests for inspections associated with sewer service applications shall be made to the City by the applicant at least twenty-four (24) hours prior to inspection, while the trench is still open. After completion of the inspection and approval by the City, the City shall begin billing the Canterwood STEP Association for sewer service as provided in Title 13 GHMC.

4. Release. Upon execution and filing of the Stipulation described in Paragraph 1, the City and Canterwood shall, and hereby do, mutually release, acquit, and forever discharge one another from any and all claims, demands, damages, controversies, or suits of any kind or nature whatsoever, whether known or unknown, asserted or not asserted, foreseen or unforeseen, whether past, present or future, included in, pertaining to or arising from the Lawsuit, including, but not limited to, any and all claims for attorneys' fees and costs.

5. Compromise of Claims. The Parties understand and agree that this Agreement is the compromise of disputed claims and the execution and performance

of this Agreement does not constitute and shall not be construed as an admission of liability, fault, or responsibility of any Party. Neither Parties' actions in settlement of the Lawsuit shall be used against either Party in any future matter. The acts of the City in settling the Lawsuit shall not be precedent for any future matter.

6. Notices. All notices and other communications regarding this Agreement shall be directed to the following persons at the following addresses:

For Canterwood: James A. Cathcart
Bonnevile, Viert, Morton & McGoldrick
820 "A" Street, Suite 600
P.O. Box 1533
Tacoma, WA 98401
Tel: (253) 627-8131
Fax: (253) 272-4338

For City: Mark E. Hoppen
City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335
Tel: (253) 851-8136
Fax: (253) 851-8563

Carol A. Morris
Ogden Murphy Wallace, PLLC
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101
Tel: (206) 447-7000
Fax: (206) 447-0215

Either Party may change its authorized representative upon written notice to the other Party.

7. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties, and no Party may assign or delegate its obligations under this Agreement without the prior written consent of the other Party.

8. Dispute Resolution. Any dispute which may arise under this Agreement shall be resolved according to this Paragraph. If either Party alleges a violation of any provision of this Agreement, it shall provide written notice of the alleged violation to the other Party. Within fourteen (14) days from the date of receipt of such notice, the Parties shall meet in person as soon as reasonably possible to attempt to resolve the dispute. The Parties shall negotiate in good faith to resolve the dispute. If the Parties cannot resolve the dispute within thirty (30) days, the Parties may then pursue any available remedy, including litigation.

9. Duration. Except for the terms and conditions of this Agreement that expressly survive termination, this Agreement shall remain in effect until completion of the terms and conditions of this Agreement. This Agreement may be extended by the written agreement of the Parties.

10. Amendments. Amendments to this Agreement shall become effective upon execution of a written amendment.

11. Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings among the Parties relating to the subject matter of this Agreement.

12. Interpretation. This Agreement was drafted by counsel for the Parties and there shall not be a presumption or construction against any of the Parties. The

headings used in this Agreement have been inserted for convenience only and shall not affect the construction of this Agreement.

13. Governing Law and Venue. This Agreement shall be interpreted and enforced pursuant to the laws of the state of Washington. Venue for any lawsuit arising out of the Agreement shall be in Pierce County, Washington.

14. Attorneys' Fees. In any action between the Parties to enforce any of the terms or conditions of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorneys' fees and costs.


15. Authority to Execute. Each person executing this Agreement represents and warrants that he or she is fully authorized to execute this Agreement on behalf of the Party for which he or she is signing.

16. Voluntary Execution. In executing this Agreement, the Parties acknowledge that they have consulted with their attorneys, and that they have voluntarily executed this Agreement after independent investigation, without fraud, duress, or undue influence.

17. Counterparts. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

18. Effective Date. This Agreement shall become effective as of the latest date of execution below.

CANTERWOOD DEVELOPMENT COMPANY, INC.

Signature: 

Printed Name: Russell Tanner

Title: President

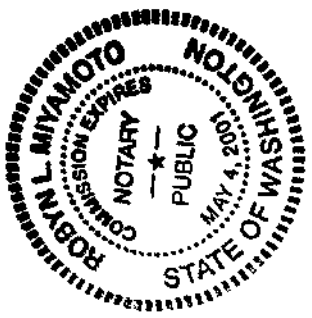
STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Russell Tanner
appeared before me and signed this instrument on July 13, 1998, as
a free and voluntary act, and that he has the authority
to execute this Agreement on behalf of the Canterwood Development Company, Inc.

My appointment as a Notary Public expires on 5/4/01. I reside
at Tacoma, Washington.


(Signature)

ROBYN L. MIYAMOTO
(Printed Name)



CITY OF GIG HARBOR

Signature: _____

Printed Name: _____

Title: _____

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Mayor Gretchen Wilbert appeared before me and signed this instrument on _____, 1998, as a free and voluntary act, and that Mayor Wilbert has the authority to execute this Agreement on behalf of the City of Gig Harbor.

My appointment as a Notary Public expires on _____. I reside at _____, Washington.

(Signature)

(Printed Name)

EXHIBIT
SEWER CAPACITY

Legal Description for Canterwood Subdivision as recorded:

Division 4 AFN # 8905250266
Division 5 AFN # 8905170206
Division 6 AFN # 9006050477
Division 7 AFN # 9007240290
Division 8 AFN # 9006260161
Division 9 AFN # 9012100403
Division 10 PN # 02-22-30-3-000
 PN # 02-22-30-3-005
Division 11 PN # 01-22-25-1-025
Division 12 PN # 02-22-19-2-002

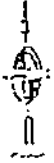
Situate Gig Harbor, Pierce County, Washington

EXHIBIT A

CANTERWOOD MASTER S.E. PLAN

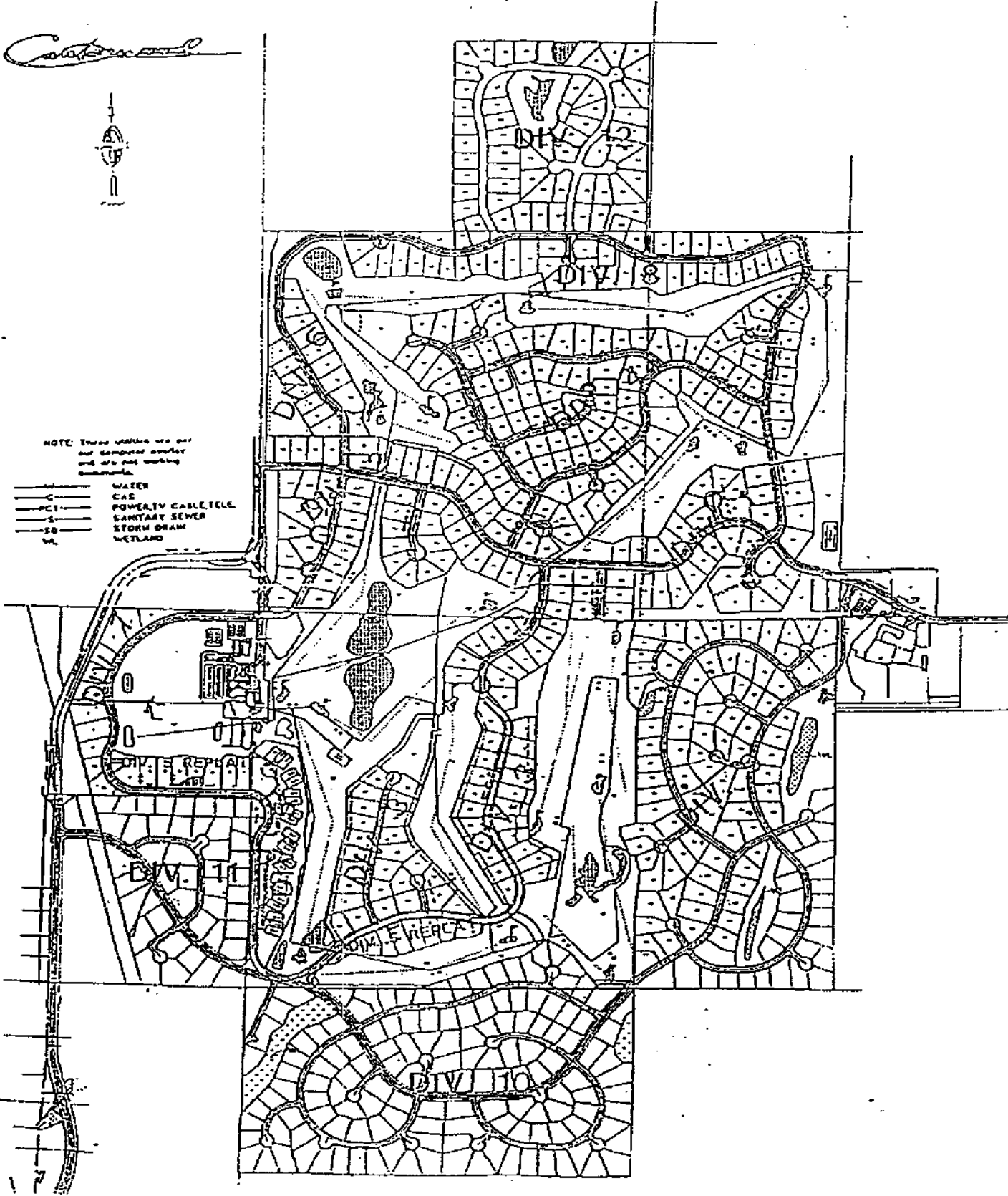
PORTION OF SECTIONS 19 & 30, TOWNSHIP 22 NORTH, RANGE 2 EAST &
SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M.
PIERCE COUNTY, WASHINGTON

Canterwood



NOTE: These utilities are per
our computer analysis
and are not marking
utilities.

- WATER
- GAS
- PC1 POWER, TV, CABLE, TELE.
- S— SANITARY SEWER
- SD— STORM DRAIN
- W— WETLAND





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92 DEC 17 PM 2:20 UTILITY EXTENSION, CAPACITY AGREEMENT

RECORDED
BRIAN SONNTAG
AUDITOR PIERCE CO. WASH

THIS AGREEMENT is entered into on this 1st day of December, 1994, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Lorigon Corporation, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City ~~sewer and water~~ utility systems, hereinafter referred to as "the utility" and is willing to allow connection 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:

1. Warranty of Title. The Owner warrants that he/she is the Owner of the property described in Exhibit "A" 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 utility line on Harborview Drive/Burnham Drive at the following location:

ULID #3

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's Public Works Director. 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 sewerage system 50,000 gallons per day average flow. These capacity rights are allocated only to the

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EXHIBIT B

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Lorigon Corporation
Utility Extension Agreement
Page 2

Owner's system as herein described. Any addition 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 sewerage system. The City agrees to reserve to the Owner this capacity for a period of 24 months ending on December 31, 1993, provided this agreement is signed and payment for sewer capacity commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of Thirty-two thousand six hundred dollars (\$32,600) to reserve the above specified time in accordance with the schedule set forth below:

<u>Commitment period</u>	<u>Percent (%) of Connection Fee</u>
One year	Five percent (5%)
Two years	Ten percent (10%)
Three years	Fifteen percent (15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the

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Lorigon Corporation
Utility Extension Agreement
Page 3

sewer facilities.)

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements 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 the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of ~~water~~ or sewer main lines, pump stations, ~~wells~~, and/or other city required capital facilities, the Owner agrees to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction 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. As built plans or drawings in a form acceptable to the City Public Works Department;
- 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 Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

9. Connection Charges. The Owner agrees to pay the connection charges, in addition to any costs of construction, as a condition of connecting to the City utility system at the rate schedules applicable at the

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Lorigon Corporation
Utility Extension Agreement
Page 4

time the Owner requests to actually connect his property to the system. In addition to any capacity commitment paid under this contract, if 100% connection is made prior to December 31, 1993, then Lorigon Corporation shall be credited for previous commitment payments of \$3,024 and \$26,720. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, then the capacity commitment payment (\$32,600) and previous payments (\$3,024 and \$26,720) shall be credited on a pro-rated percentage basis to the connection charges as they are levied. Resultingly, the capacity commitment payment will be credited at the rate of \$1.24688 per gallon of connected capacity (\$62,344/50,000 gallons).

10. Service Charges. In addition to the charges for connection, 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.

11. Annexation. Owner understands that annexation of the property described on Exhibit "A" to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, ~~fire~~^{fire} and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. 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;
- E. Zoning and land use regulations applicable to

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Lorigon Corporation
Utility Extension Agreement
Page 5

the property after annexation may be different from those applicable to the property prior to annexation; and

- F. 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.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's right to oppose 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 purchases of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that any development or redevelopment of the property described on Exhibit "A" shall meet the following conditions after execution of Agreement:

- A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment. (Check as applicable):
- | | |
|-------------------------------------|-----------------------------|
| <input checked="" type="checkbox"/> | Single Family Residential |
| <input checked="" type="checkbox"/> | Commercial |
| <input type="checkbox"/> | Industrial |
| <input checked="" type="checkbox"/> | Multiple Family Residential |

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Lorigon Corporation
Utility Extension Agreement
Page 6

- B. The development or redevelopment shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code and Building Regulations for similarly zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

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. This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit "A", and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

17. Attorney's Fees. 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.

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Lorigon Corporation
Utility Extension Agreement
Page 7

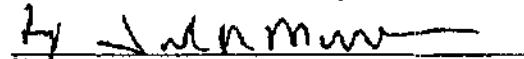
DATED this 3rd day of December, 1992.

CITY OF GIG HARBOR


Mayor Gretchen Wilbert

OWNER

LORIGON CORP

By 

Name:

Title: SENIOR VICE PRESIDENT

ATTEST/AUTHENTICATED:


City Clerk, Mark E. Hoppen

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

JR0840PG0463

EXHIBIT
SEWER CAPACITY

Legal Description for Canterwood Subdivision as recorded:

Division 4 AFN # 8905250266
Division 5 AFN # 8905170206
Division 6 AFN # 9006050477
Division 7 AFN # 9007240290
Division 8 AFN # 9006260161
Division 9 AFN # 9012100403
Division 10 PN # 02-22-30-3-000
 PN # 02-22-30-3-005
Division 11 PN # 01-22-25-1-025
Division 12 PN # 02-22-19-2-002

Situate Gig Harbor, Pierce County, Washington

9212170463

CANTERWOOD MASTER S.E. PLAN

PORTION OF SECTIONS 19 & 30, TOWNSHIP 22 NORTH, RANGE 2 EAST &
SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M.

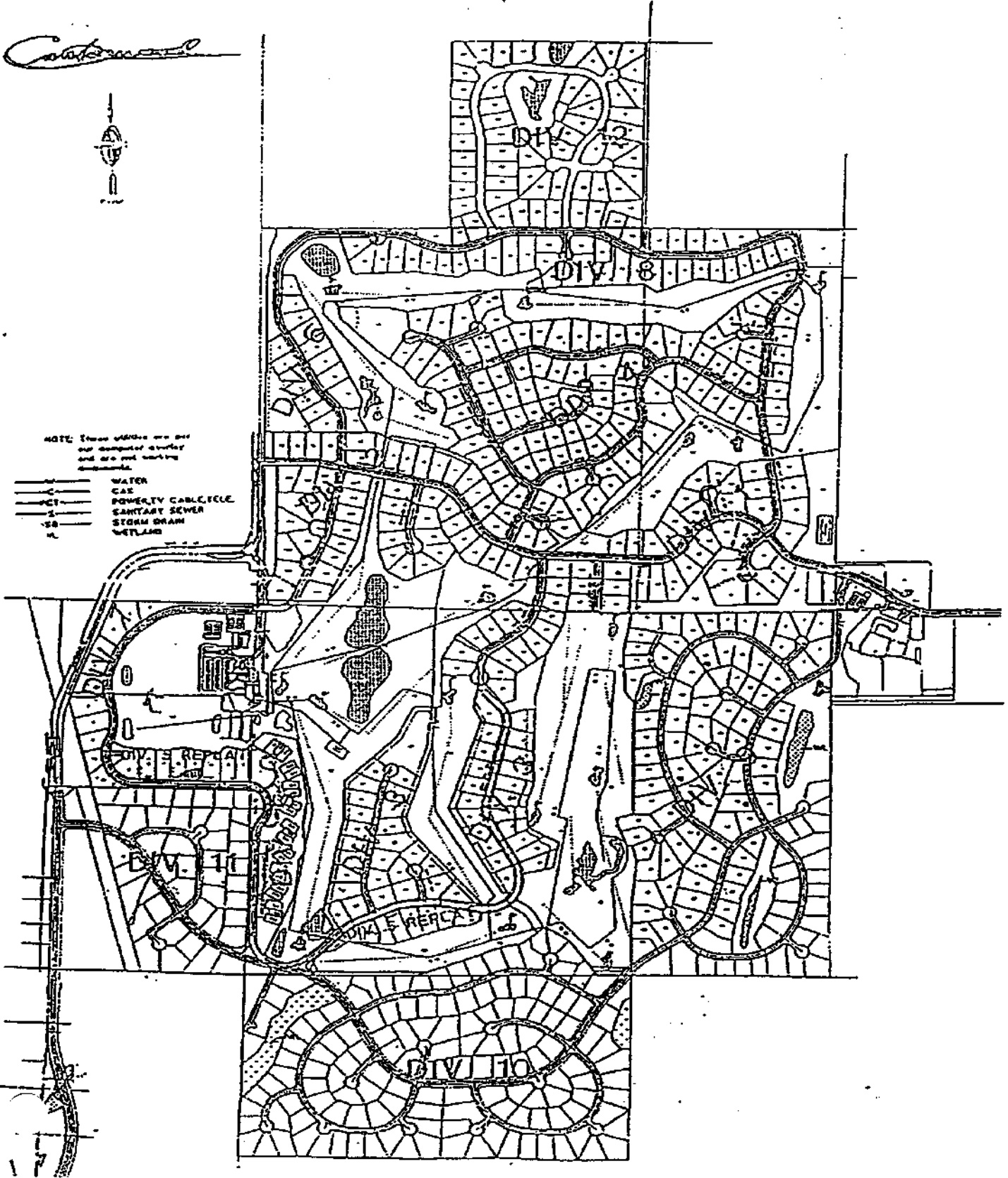
PIERCE COUNTY, WASHINGTON

Canterwood



NOTE: These symbols are per
our computer output
and are not working
symbols.

- WATER
- GAS
- PCT — POWERTY CABLE/COLE
- S — SANITARY SEWER
- SD — STORM DRAIN
- W — WETLAND



JK 974 PG 1180

9312300080

93 DEC 30 AM 8:59

AFTER RECORDING RETURN TO:
City Administrator, City of Gig Harbor
P.O. Box 145
Gig Harbor, WA 98335

RECORDED
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH.

AMENDMENT TO
UTILITY EXTENSION AND CAPACITY AGREEMENT

THIS AGREEMENT is entered into on this 29th day of December, 1993, between the City of Gig Harbor, a Washington municipal corporation, hereinafter referred to as the "City," and Lorigon Corporation, a corporation organized under the laws of the State of Washington, located at Canterwood Estates, hereinafter referred to as the "Owner."

RECITALS

WHEREAS, the Owner has entered into a Utility Extension and Capacity agreement (hereinafter the "Prior Agreement,") with the City on December 1, 1991, recorded against the property legally described in Exhibit A, attached hereto and by this reference incorporated herein, recorded under Pierce County Auditor's Recording No. 9212170463 (hereinafter the "Property"); and

WHEREAS, the Prior Agreement provided that the City would agree to reserve capacity for sewer flowage for a period of time ending on December 31, 1993; and,

WHEREAS, the parties now wish to extend the date for the City's reservation of capacity for sewer, to provide the owner the option to extend the commitment period for five years after the date of execution of this Amendment, and to renew all other terms of the Prior Agreement for the period of time set forth herein; Now, Therefore,

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

TERMS

1. Extension of Water or Sewer Capacity Commitment. The parties agree that Section Four of the Prior Agreement shall be hereby amended to extend the sewer capacity commitment period for five years after the date of execution of this Amendment. The City agrees to reserve to the Owner the same amount of capacity as provided in the Prior Agreement, without any further capacity commitment payment by the Owner for reservation of this sewer capacity during this five year time period. Both parties acknowledge that the date

9312300080

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EXHIBIT C

Utility Extension & Capacity Agreement

Page 2

of the capacity commitment set forth in the Prior Agreement will soon expire, and Section Six of the Prior Agreement shall be rendered ineffective.

2. Depreciation Payments to the City. As a condition of the City's reservation to the Owner of the same amount of capacity as provided in the Prior Agreement for five years after execution of this Agreement, the Owner shall make quarterly payments to the City for the City's wastewater treatment plant's depreciation costs.

A) Time of Payment. Within thirty (30) days after execution of this Amendment, or at the conclusion of construction of the City of Gig Harbor's wastewater treatment plant upgrade to 1.6 mgd, whichever event occurs later, the Owner shall commence to make quarterly payments to the City for the City's wastewater treatment plant's depreciation costs based on the formula set forth in 2(B) below.

B) Depreciation Cost. The depreciation costs shall be based on the following formula: the Owner's remaining reserved capacity commitment divided by the total plant capacity times the annual budgeted depreciation of the wastewater treatment plant (as such depreciation is calculated yearly by the City).

C) Failure to Make Depreciation Payments. The Owner's failure to make quarterly depreciation payments for reservation of sewer capacity as provided in this Section 2 shall result in: (1) forfeiture of all remaining capacity commitment moneys previously contributed to the City; and (2) termination of the City's remaining sewer capacity obligation under the terms of this Amendment, and the Prior Agreement.

3. Property Inclusion. At the present time, the Owner's Property has been included in a Utility Local Improvement District (ULID), that has been confirmed by the City. As the ULID is presently configured and confirmed, the Owner's Property is specially benefitted in an amount equalling the Owner's final assessment under the ULID. The Owner hereby agrees that it will continue to include the Property, or property of sufficient value within the ULID assessment area so that the special benefit attributable to the Owner's ULID improvement equals or exceeds the final assessment for participation in the ULID.

4. Renewal of All other Terms of Prior Agreement. The parties agree that all other terms and conditions of the Prior Agreement that are not inconsistent with this Amendment

BKD 974 PG 1182

Utility Extension & Capacity Agreement
Page 3

shall remain in full force and effect.

EXECUTED on the day and year stated above.

ATTEST:

Wanda E. Haggan
Gig Harbor City Clerk

CITY OF GIG HARBOR .

Ortchen Ahlbeck
Mayor, City of Gig Harbor

Eva L. Jacobson K.P. Lem
Lorigon Representative

9312300080

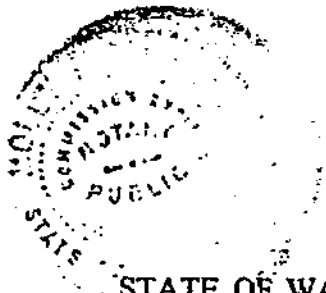
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Utility Extension & Capacity Agreement
Page 4

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: 12/29/93

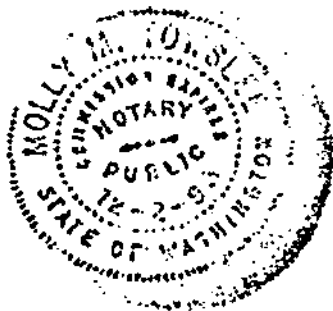


Molly M Dowler
NOTARY PUBLIC for the State
of Washington, residing at
Gig Harbor
My commission expires 12/2/95.

STATE OF WASHINGTON)
) ss:
COUNTY OF PIERCE)

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

Dated: December 29, 1993



Molly M Dowler
NOTARY PUBLIC for the State
of Washington, residing at
Gig Harbor
My commission expires 12/2/95

9312300080

ATTACHMENT 3

EXHIBIT A

JOB 4415

CANTERWOOD

(THE LORIGON CORPORATIONS ORIGINAL AND PRESENT PROPERTY OWNERSHIP DESCRIPTIONS AND LAND OPTION DESCRIPTIONS)

DESCRIPTIONS

PARCEL 1 - OPTION LAND

LOTS 9, 10 AND 11, GREENACRES NO. 4, ACCORDING TO PLAT RECORDED IN BOOK 10 OF PLATS AT PAGE 64, IN PIERCE COUNTY, WASHINGTON.

CONTAINING 15.1 ACRES.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL 2 - OPTION LAND

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.,

CONTAINING 39.6 ACRES.

EXCEPT ROADS.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL 3 - ORIGINAL OWNERSHIP (** SEE PAGE 3 & 4)

- A. THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M. EXCEPT THAT PORTION THEREOF CONVEYED TO THE STATE OF WASHINGTON FOR STATE ROUTE 16 BY DEED RECORDED UNDER AUDITOR'S FEE NO. 2424920 AND 2409676.
- B. THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.
- C. THE WEST HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M. ALSO SUBJECT TO AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER AND ACROSS THE NORTH 30 FEET THEREOF.
- D. LOTS 1, 2 AND 3 AS SHOWN ON SHORT PLAT NO. 77-313 AS FILED IN VOLUME 16 OF SHORT PLATS, PAGE 56 RECORDS OF PIERCE COUNTY AUDITOR.
- E. THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.
- F. THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.
- G. GOVERNMENT LOTS 1 AND 2 AND THE EAST HALF OF THE NORTHWEST QUARTER, ALL IN SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M.;
EXCEPT THE SOUTH 30 FEET OF SAID GOVERNMENT LOT 2;
ALSO EXCEPT THE SOUTH 30 FEET OF SAID EAST HALF OF THE NORTHWEST QUARTER.
- H. THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M.;

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EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NO. 678954;

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON RECORDED UNDER AUDITOR'S FEE NO. 2413560.

CONTAINING 422.6 ACRES AFTER EXCEPTIONS.

THE ABOVE ARE ALL SITUATED IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL 4 - OWNED LAND

THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.

CONTAINING 79.2 ACRES.

PARCEL 5 - OPTION LAND

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.

CONTAINING 40.0 ACRES

SUBJECT TO LACK OF ACCESS TO AND FROM THE SUBJECT PROPERTY.

PARCEL 6 - OPTION LAND-A.F.N.8712230313 (** SEE PAGE 3 & 4)

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.

CONTAINING 37.6 ACRES.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE FOLLOWING DESCRIBED PARCEL:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 25; THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 82 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE EAST LINE OF SAID SUBDIVISION 82 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING AS GRANTED BY INSTRUMENT RECORDED MARCH 11, 1977 AS RECORDING NO. 2722464.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL 7 - OPTION LAND

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M., RECORDS OF PIERCE COUNTY;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA, FOR TRANSMISSION RIGHT OF WAY, BY DEED RECORDED UNDER AUDITOR'S NO. 677886,

AND,

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED AUGUST 17, 1971 UNDER AUDITOR'S NO. 2406340;

CONTAINING 36.8 ACRES AFTER EXCEPTIONS.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE FOLLOWING DESCRIBED PARCEL:

8908230224

VOL. 0561 PAGE 3656

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE W.M. AS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25; THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 82 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE EAST LINE OF SAID SUBDIVISION 82 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING AS GRANTED BY INSTRUMENT RECORDED MARCH 11, 1977 AS RECORDING NO. 2722464.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL 8 - OWNER LAND

THAT PORTION OF THE NORTH HALF OF THE NORTHEAST 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 THE EASTERLY LINE OF SR-16 RIGHT OF WAY, AND CITY OF TACOMA POWER LINE RIGHT OF WAY, AS DESCRIBED BELOW:

EXCEPT THAT PORTION OF SAID NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER CONVEYED TO THE STATE OF WASHINGTON (SR-16) BY DEED UNDER AUDITOR'S FEE NUMBER 2439069.

ALSO EXCEPT THAT PORTION OF SAID NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER CONVEYED TO THE CITY OF TACOMA (POWER LINE) BY DEED RECORDED UNDER AUDITOR'S FEE NUMBER 678954 IN PIERCE COUNTY, WASHINGTON.

CONTAINING 16.5 ACRES AFTER EXCEPTIONS.

SUBJECT TO AND TOGETHER WITH EASEMENTS OF RECORD.

****PARCEL 3 (STATISTICAL BREAKDOWNS)**

A. TOTAL NUMBER OF PLATTED RESIDENTIAL LOTS INCLUDING THE CANTERWOOD REPLAT WHICH IS NOT RECORDED AS OF 11-23-88.

1. DIVISION NUMBER ONE - 72 LOTS (NOT INCLUDING REPLAT)
2. DIVISION NUMBER TWO - 44 LOTS (NOT INCLUDING REPLAT)
3. DIVISION NUMBER THREE - 48 LOTS
4. CANTERWOOD RE-PLAT - 6 LOTS
5. CANTERWOOD TOWNHOUSES - 5 LOTS

TOTAL: 175 LOTS

B. TOTAL NUMBER OF LOTS SOLD AND THEIR TOTAL AREAS AS OF 11-23-88.

- | | | |
|----------------------------|---------|------------|
| 1. DIVISION NUMBER ONE - | 45 LOTS | 24.0 ACRES |
| 2. DIVISIN NUMBER TWO - | 24 LOTS | 12.4 ACRES |
| 3. DIVISION NUMBER THREE - | 11 LOTS | 5.7 ACRES |
| 4. CANTERWOOD RE-PLAT - | 4 LOTS | 2.2 ACRES |
| 5. CANTERWOOD TOWNHOUSES - | 4 LOTS | 1.0 ACRES |

TOTAL: 88 LOTS 45.3 ACRES

8908230224

- C. TOTAL NUMBER OF PROPOSED RESIDENTIAL LOTS IN CANTERWOOD DIVISION NUMBER FOUR AND AREA.
 - 1. DIVISION NUMBER FOUR - 97 LOTS 80.9 ACRES
- D. TOTAL NUMBER OF PROPOSED RESIDENTIAL LOTS IN CANTERWOOD DIVISION NUMBER 5 (TOWNSHOUSES)
 - 1. DIVISION NUMBER FIVE - 21 LOTS

** THIS PARCEL MAY HAVE OR SHOULD BE DESCRIBED AS GOVERNMENT LOT 3. A MAJOR VARIANCE EXISTS BETWEEN THE WAY THIS DESCRIPTION IS DESCRIBED IN A.F.N. 8712230313 AND THAT OF A GOVERNMENT LOT. IT IS RECOMMENDED A TITLE SEARCH BE DONE PRIOR TO ANY CONVEYANCE TO DETERMINE CORRECT LEGAL DESCRIPTION. THE AREA COMPUTED AT 37.6 ACRE IS BASED ON A GOVERNMENT LOT.

NOTE:

IT IS RECOMMENDED THAT PRIOR TO ANY CONVEYANCE A DETAILED TITLE SEARCH SHOULD BE PREPARED TO DETERMINE ACCURATE LEGAL DESCRIPTIONS, ACCESS, EASEMENTS AND ANY ENCOMBERANCES.



JUN 18 1997

97 2 08598 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CANTERWOOD DEVELOPMENT)
COMPANY, INC., a Washington)
corporation,)
)
Plaintiff,)
)
v.)
)
CITY OF GIG HARBOR, a municipal)
corporation,)
)
Defendant.)

NO. 97 2 08598 1

COMPLAINT FOR BREACH OF CONTRACT,
WRIT OF MANDAMUS, AND SPECIFIC
PERFORMANCE

COMES NOW the plaintiff by and through its attorneys Bonneville, Viert, Morton & McGoldrick, P.S., and alleges as follows:

I. PARTIES.

1.1 Plaintiff Canterwood Development Company (hereinafter referred to as "Canterwood") is a Washington corporation licensed to do business in the State of Washington which has paid all fees owed to the State. Canterwood (formerly known as Lorigon Corporation) is the developer of a planned community located in Pierce County known as Canterwood (hereinafter referred to as "the Property") and is the owner of those development lots in the community which have not been sold. The Property is located outside the city limits of Gig Harbor.

EXHIBIT D

1 1.2. Defendant City of Gig Harbor (hereinafter referred to as "Gig Harbor") is a municipal
2 corporation organized under the laws of the State of Washington.

3 II. FACTS.

4 2.1 The property is part of Utility Local Improvement District #3 (hereinafter referred to as
5 "ULID"). This ULID was formed to bring sewer services to the Property that is the subject of this
6 lawsuit, as well as other surrounding and nearby properties. The Property was assessed for special
7 benefits received as a result of the formation of the ULID. The owners of the Property have paid in
8 full all of the ULID assessments so as to ensure sewer availability for the Property.

9 2.2 After formation of the ULID sewer facilities were installed. Over 70 lots have been
10 sold in the Property by plaintiffs and the homes built on those lots have been connected to the
11 sewer facilities.

12 2.3 Effective December 1, 1991 plaintiff and defendant entered into a "Utility Extension
13 Capacity Agreement" (hereinafter referred to as "the Agreement"), attached as Exhibit A and
14 incorporated herein by this reference, whereby defendant contracted to provide sewer utility service
15 to the plaintiff and reserved to the plaintiff the right to discharge to the City's sewerage system
16 50,000 gallons per day of sewage, average flow.

17 2.4 The Agreement called for the payment to the defendant by the plaintiff of the sum of
18 \$32,600 to reserve the capacity for a period of three years, in addition to \$29,744 in capacity
19 commitment payments plaintiff had made to defendant pursuant to previous Capacity Agreements.
20 The Agreement further provided that the plaintiff, at its own expense, could engineer and construct a
21 sewer extension from the City's facility in ULID #3 to the Property. All work would be subject to City
22 approval and built to City standards and capital improvements would become City property upon
23 completion. Plaintiff so engineered and constructed such extension.

1 2.5 Plaintiff has made all payments required by the Agreement and has complied with its
2 obligations thereunder.

3 2.6 On December 29, 1993, the parties executed an "Amendment to Utility Extension and
4 Capacity Agreement", (hereinafter referred to as "the Amendment"), attached as Exhibit B and
5 incorporated herein by this reference, whereby, in pertinent part, the reservation of capacity was
6 extended for five years from the date of execution. In consideration of this extension, plaintiff
7 agreed to make certain payments to defendant upon the occurrence of certain conditions not yet in
8 existence.

9 2.7 On May 27, 1997 defendant's City Council imposed an emergency moratorium on
10 applications for sewer system connections, prohibiting the connection of any new construction to the
11 City's sewer system for which permits had not already been issued.

12 2.8 As of the date of this moratorium, the average sewage flow from the Property was
13 20,000 gallons per day, more or less.

14 2.9 The Agreement provides specially for the remedy of Specific Enforcement in case of
15 a breach of the Agreement by either party.

16 2.10 The Agreement provides that in a suit or proceeding to enforce provisions of the
17 Agreement that the prevailing party shall be entitled to reasonable attorneys' fees and costs.

18 2.11 Plaintiff's primary business is selling the remaining building lots in the Property for the
19 purpose of residential home construction.

20 2.12 For so long as the City's moratorium is in effect no building permit can be obtained
21 requiring a sewer connection for approval.

22 2.13 The availability of City sewer connections is a significant sales tool and incentive for
23 clients to purchase lots in the Property.

1 2.14 The inability to obtain building permits and the inability of the plaintiff's sales staff to
 2 advise potential customers as to when permits may be obtained has and will continue to cause the
 3 plaintiff loss of sales during the summer which is the prime selling season.

4 2.15 Administrative remedies are either not available, would be futile, or the exercise
 5 would delay the plaintiff's ability to obtain a useful remedy during the prime summer selling season.

6 III. FIRST CAUSE OF ACTION - BREACH OF CONTRACT (ULID).

7 3.1 Plaintiff Canterwood realleges paragraph 1.1 through 2.15 as if they were set out
 8 herein and incorporates those paragraphs by reference.

9 3.2 Plaintiffs have paid all assessments for ULID #3 assessed by defendant Gig Harbor.
 10 The assessments charged by Gig Harbor were based upon the special benefits that the plaintiff was
 11 to receive as a result of the existence of the ULID.

12 3.3 By accepting the assessments paid by the plaintiff and by entering into a contract
 13 understanding that in reliance thereon the plaintiff would expend significant sums of money to
 14 extend the City's sewer line from ULID #3 to the Property, Gig Harbor entered into an express
 15 and/or implied contract to provide sewer services. Gig Harbor has received benefits under the
 16 contract through the payment by the Property owners of the Property's share of assessments and
 17 agreement to pay future assessments.

18 3.4 Gig Harbor has breached its contractual obligation to provide sewer services to the
 19 Property and plaintiff has been damaged in an amount to be proved at trial as a proximate result of
 20 that breach.

21 IV. SECOND CAUSE OF ACTION - BREACH OF CONTRACT
 22 AGREEMENT AND AMENDMENT.

23 4.1 Plaintiff Canterwood realleges paragraph 1.1 through 2.15 as if they were set out
 24 herein and incorporates those paragraphs by reference.

1 4.2 Plaintiff contracted with defendant, without contingency save plaintiff's performance
 2 of its contractual obligations, to reserve 50,000 gallons per day average capacity in the City's
 3 sewage system until December 1998. The entire point of plaintiff's entering into the capacity
 4 agreement and the payment to the City of over \$60,000 in fees was to protect against a situation
 5 where the City's lack of capacity would interfere with the plaintiff's ability to market its property.

6
 7 4.3 By passing the moratorium the City has refused to make available to plaintiff sewer
 8 services for which plaintiff has contracted and paid and is therefore in breach of the Agreement and
 9 Amendment and plaintiff Canterwood has been damaged in an amount to be proved at trial as a
 10 direct and proximate result of that breach.

11 V. THIRD CAUSE OF ACTION - WRIT OF MANDAMUS.

12 5.1 Plaintiff Canterwood realleges paragraph 1.1 through 2.15 as if they were set out
 13 herein and incorporates those paragraphs by reference.

14 5.2 Defendant Gig Harbor has wrongfully, without authority, and in breach of contract
 15 refused plaintiff Canterwood access to sewer capacity for which plaintiff has paid pursuant to
 16 contract, and to which plaintiff is entitled as a ULID participant.

17 5.3 Because of the difficulty of establishing sales lost, damages will not fully compensate
 18 Canterwood and it has no plain, speedy remedy at law.

19 VI. FOURTH CAUSE OF ACTION - SPECIFIC PERFORMANCE.

20 6.1 Plaintiff Canterwood realleges paragraph 1.1 through 2.15 as if they were set out
 21 herein and incorporates those paragraphs by reference.

22 6.2 Defendant Gig Harbor has wrongfully, without authority, and in clear breach of the
 23 Agreement and Amendment, enacted a moratorium denying the plaintiff's access to 30,000 gallons
 24
 25

per day average capacity of sewer services for which it has paid. Defendant has accepted its benefits under the contract and now seeks to deny plaintiff the benefits for which it contracted.

6.3 The Agreement clearly provides that specific performance is an available remedy to enforce the provisions of the Agreement.

6.4 Because of the difficulty inherent in determining why potential residents do not purchase a lot in the Property, or identifying those who may be discouraged from even coming to the attention of plaintiff or its staff by publicity or competitor's advice, specific performance is a particularly appropriate remedy in this case.

VII. PRAYER FOR RELIEF.

WHEREFORE, having set out its Complaint above, Canterwood prays for the following relief:

7.1 For a money judgment against defendant Gig Harbor for actual damages for breach of contract.

7.2 For an order of Specific Performance, directing defendant to permit sewer connections to lots in the Property until the average daily flow is 50,000 gallons per day or until December 29, 1998, whichever comes first.

7.3 In the alternative that this Court issue a Writ of Mandamus mandating that the City of Gig Harbor permit sewer connections to lots in the Property based both on the City's obligations pursuant to the Agreement and Amendment and pursuant to the City's obligations arising out of the establishment and funding of the ULID #3.

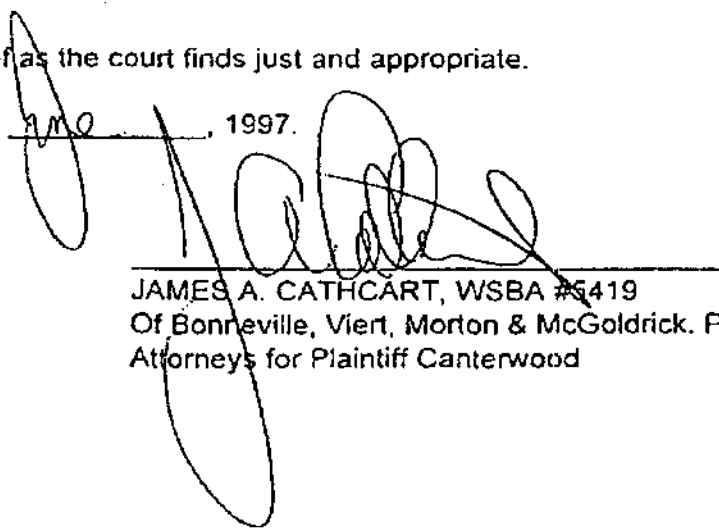
7.4 For the costs of this action and reasonable attorneys' fees as provided in the Agreement and pursuant to any statute, regulation or common law ground appropriate to the facts of this case.

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7.5 For such other relief as the court finds just and appropriate.

DATED this 16 day of June, 1997.



JAMES A. CATHCART, WSBA #5419
Of Bonneville, Viert, Morton & McGoldrick, P.S.
Attorneys for Plaintiff Canterwood

AMENDMENT TO UTILITY EXTENSION AND CAPACITY AGREEMENT

This AGREEMENT is made and entered into by and between the CITY OF GIG HARBOR ("City"), a municipal corporation, and CANTERWOOD DEVELOPMENT COMPANY, INC., ("Canterwood"), a Washington corporation. The City and Canterwood are collectively referred to herein as the "Parties"

RECITALS

A. WHEREAS, Canterwood is the owner of certain real property located in Pierce County, Washington, the legal description of which is attached hereto as Exhibit A ("Canterwood Subdivision"); and

B. WHEREAS, on December 1, 1991, the Parties entered a Utility Extension and Capacity Agreement ("Capacity Agreement") that, among other things, reserved to Canterwood the right to discharge 50,000 gallons per day of average flow to the City sewer system until December 31, 1993, in exchange for payment by Canterwood of \$32,600; and

C. WHEREAS, on December 29, 1993, the Parties entered an Amendment to Utility Extension and Capacity Agreement ("Amendment") that extended the reservation period of the Capacity Agreement for an additional five years, reserving sewer capacity for Canterwood through December 29, 1998; and

D. WHEREAS, on May 27, 1997, in response to delays in obtaining its renewal National Pollution Discharge Elimination System permit from the Washington State Department of Ecology, the City Council imposed an emergency moratorium on

the acceptance of applications for sewer service connections and the issuance of new sewer service permits; and

E. WHEREAS, on June 18, 1997, Canterwood initiated a lawsuit against the City in Pierce County Superior Court as Cause No. 97-2-08598-1 ("Lawsuit"), alleging, among other things, that the City breached the Capacity Agreement and Amendment by imposing the emergency moratorium on sewer service connections; and

F. WHEREAS, on June 23, 1997, the City Council adopted Ordinance No. 764 allowing for the temporary installation and use of approved septic systems during the time the moratorium was in effect; and

G. WHEREAS, on July 14, 1997, the City Council adopted Resolution No. 499 extending the commitment period of the Capacity Agreement and Amendment from December 29, 1998, to June 29, 2000; and

H. WHEREAS, on August 25, 1997, the City Council adopted ^{Ordinance} ~~Resolution~~ No. 764 terminating the emergency moratorium on sewer service connections; and

I. WHEREAS, on June __, 1998, Canterwood and the City entered a settlement agreement that terminated the Lawsuit and that required Canterwood and the City enter this Agreement;

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. Amendment to Capacity Agreement. The Parties agree that the Capacity Agreement shall be amended as follows:

a. Section 4 of the Capacity Agreement is hereby deleted and replaced with the following language:

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 sewerage system 50,000 gallons per day average flow until December 28, 2000; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety. Any delay or anticipated delay resulting from such public health and safety suspension shall not constitute a breach of this Agreement. These capacity rights are allocated only to the Owner's property as set forth in Exhibit A (Legal Description and Canterwood Master Site Plan). Any addition or extension 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's sewerage system.

b. Section 9 of the Capacity Agreement is hereby deleted and replaced with the following language:

9. Connection Charges. The Owner agrees to pay the connection charges, in addition to the costs of construction, as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. The capacity commitment paid and remaining to be credited under this Agreement (\$32,964.94) shall be credited at the rate of six hundred dollars (\$600) per connection for all connections made on or before December

28, 2000, or until exhaustion of the capacity commitment credit, whichever occurs first.

2. Renewal of All Other Terms of Capacity Agreement. The Parties agree that all other terms and conditions of the Capacity Agreement that are not inconsistent with this Agreement shall remain in full force and effect.

3. Interpretation. This Agreement was drafted by counsel for the Parties and there shall not be a presumption or construction against any of the Parties. The headings used in this Agreement have been inserted for convenience only and shall not affect the construction of this Agreement.

4. Governing Law and Venue. This Agreement shall be interpreted and enforced pursuant to the laws of the state of Washington. Venue for any lawsuit arising out of the Agreement shall be in Pierce County, Washington.

5. Attorneys' Fees. In any action between the Parties to enforce any of the terms or conditions of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorneys' fees and costs.

6. Authority to Execute. Each person executing this Agreement represents and warrants that he or she is fully authorized to execute this Agreement on behalf of the Party for which he or she is signing.

7. Voluntary Execution. In executing this Agreement, the Parties acknowledge that they have consulted with their attorneys, and that they have voluntarily executed this Agreement after independent investigation, without fraud, duress, or undue influence.

8. Counterparts. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

9. Effective Date. This Agreement shall become effective as of the latest date of execution below.

CANTERWOOD DEVELOPMENT COMPANY, INC.

Signature: 

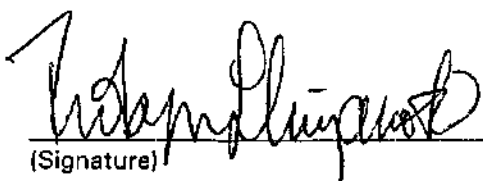
Printed Name: Russell Tanner

Title: President

STATE OF WASHINGTON)
) ss.
 COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Russell Tanner appeared before me and signed this instrument on July 13, 1998, as a free and voluntary act, and that he has the authority to execute this Agreement on behalf of the Canterwood Development Company, Inc.

My appointment as a Notary Public expires on 5/4/01. I reside at TACOMA, Washington.


 (Signature)

ROBYN L. MIYAMOTO
 (Printed Name)

CITY OF GIG HARBOR

Signature: _____

Printed Name: _____

Title: _____

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Mayor Gretchen Wilbert appeared before me and signed this instrument on _____, 1998, as a free and voluntary act, and that Mayor Wilbert has the authority to execute this Agreement on behalf of the City of Gig Harbor.

My appointment as a Notary Public expires on _____. I reside at _____, Washington.

(Signature)

(Printed Name)



**AMENDMENT TO AMENDMENT TO UTILITY EXTENSION
AND CAPACITY AGREEMENT**

This AGREEMENT is made and entered into by and between the CITY OF GIG HARBOR ("City"), a municipal corporation, and CANTERWOOD DEVELOPMENT COMPANY, INC., ("Canterwood"), a Washington corporation. The City and Canterwood are collectively referred to herein as the "Parties"

RECITALS

A. WHEREAS, Canterwood is the owner of certain real property located in Pierce County, Washington, the legal description of which is attached hereto as Exhibit A ("Canterwood Subdivision"); and

B. WHEREAS, on December 1, 1991, the Parties entered a Utility Extension and Capacity Agreement ("Capacity Agreement") that, among other things, reserved to Canterwood the right to discharge 50,000 gallons per day of average flow to the City sewer system until December 31, 1993, in exchange for payment by Canterwood of \$32,600; and

C. WHEREAS, on December 29, 1993, the Parties entered an Amendment to Utility Extension and Capacity Agreement ("Amendment") that extended the reservation period of the Capacity Agreement for an additional five years, reserving sewer capacity for Canterwood through December 29, 1998; and

D. WHEREAS, on May 27, 1997, in response to delays in obtaining its renewal National Pollution Discharge Elimination System permit from the Washington State Department of Ecology, the City Council imposed an emergency moratorium on

the acceptance of applications for sewer service connections and the issuance of new sewer service permits; and

E. WHEREAS, on June 18, 1997, Canterwood initiated a lawsuit against the City in Pierce County Superior Court as Cause No. 97-2-08598-1 ("Lawsuit"), alleging, among other things, that the City breached the Capacity Agreement and Amendment by imposing the emergency moratorium on sewer service connections; and

F. WHEREAS, on June 23, 1997, the City Council adopted Ordinance No. 761 allowing for the temporary installation and use of approved septic systems during the time the moratorium was in effect; and

G. WHEREAS, on July 14, 1997, the City Council adopted Resolution No. 499 extending the commitment period of the Capacity Agreement and Amendment from December 29, 1998, to June 29, 2000; and

H. WHEREAS, on August 25, 1997, the City Council adopted ^{Ordinance} Resolution No. 764 terminating the emergency moratorium on sewer service connections; and

I. WHEREAS, on June __, 1998, Canterwood and the City entered a settlement agreement that terminated the Lawsuit and that required Canterwood and the City enter this Agreement;

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. Amendment to Amendment. The Parties agree that the Amendment shall be amended as follows:

a. The third recital of the Amendment is hereby ~~deleted~~² and replaced with the following language:

WHEREAS, the Parties now wish to extend the date for the City's reservation of capacity until December 28, 2000, and to renew all other terms of the Prior Agreement for the period of time set forth herein; Now, Therefore,

b. Section 1 of the Amendment is hereby ~~deleted~~ and replaced with the following language:

1. Extension of Water or Sewer Capacity Commitment. The Parties agree that Section 4 of the Prior Agreement shall be hereby amended to extend the sewer capacity commitment period until December 28, 2000. The City agrees to reserve to the Owner the same amount of capacity as provided in the Prior Agreement, without any further capacity commitment payment by the Owner for reservation of this sewer capacity.

2. Renewal of All Other Terms of Amendment. The Parties agree that all other terms and conditions of the Amendment that are not inconsistent with this Agreement shall remain in full force and effect.

3. Interpretation. This Agreement was drafted by counsel for the Parties and there shall not be a presumption or construction against any of the Parties. The headings used in this Agreement have been inserted for convenience only and shall not affect the construction of this Agreement.

4. Governing Law and Venue. This Agreement shall be interpreted and enforced pursuant to the laws of the state of Washington. Venue for any lawsuit arising out of the Agreement shall be in Pierce County, Washington.

5. Attorneys' Fees. In any action between the Parties to enforce any of the terms or conditions of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorneys' fees and costs.

6. Authority to Execute. Each person executing this Agreement represents and warrants that he or she is fully authorized to execute this Agreement on behalf of the Party for which he or she is signing.

7. Voluntary Execution. In executing this Agreement, the Parties acknowledge that they have consulted with their attorneys, and that they have voluntarily executed this Agreement after independent investigation, without fraud, duress, or undue influence.

8. Counterparts. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

9. Effective Date. This Agreement shall become effective as of the latest date of execution below.

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CANTERWOOD DEVELOPMENT COMPANY, INC.

Signature: 

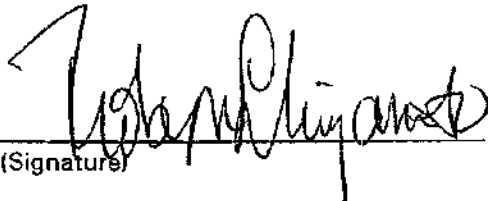
Printed Name: Russell Tanner

Title: President

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Russell Tanner appeared before me and signed this instrument on July 13, 1998, as a free and voluntary act, and that he has the authority to execute this Agreement on behalf of the Canterwood Development Company, Inc.

My appointment as a Notary Public expires on 5/4/01. I reside at Tacoma, Washington.


(Signature)

ROBYN L. MIYAMOTO

(Printed Name)

CITY OF GIG HARBOR

Signature: _____

Printed Name: _____

Title: _____

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I hereby certify that I have satisfactory evidence that Mayor Gretchen Wilbert appeared before me and signed this instrument on _____, 1998, as a free and voluntary act, and that Mayor Wilbert has the authority to execute this Agreement on behalf of the City of Gig Harbor.

My appointment as a Notary Public expires on _____. I reside at _____, Washington.

(Signature)

(Printed Name)

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR PIERCE COUNTY

8 CANTERWOOD DEVELOPMENT
9 COMPANY, INC., a Washington
corporation,

10 Plaintiff,

11 v.

12 CITY OF GIG HARBOR, a municipal
corporation,

13 Defendant.
14

NO. 97-2-08598-1

NOTICE OF SETTLEMENT OF ALL
CLAIMS AGAINST ALL PARTIES

Docket Code: NTSSTD

Judge Terry D. Sebring

15 NOTICE is hereby given that all claims against all parties in this action have been resolved.
16 Any trials or other hearings in this matter may be stricken from the court calendar. This notice is
17 being filed with the consent of all parties.

18 If an order dismissing all claims against all parties is not entered within ninety (90) days
19 after this written notice of settlement is filed, the case shall be dismissed by the court.

20 OGDEN MURPHY WALLACE, P.L.L.C.

21
22 By: _____ Dated: _____
23 Howard F. Jensen, WSBA #25144
24 Attorney for Defendant
City of Gig Harbor

25 ///

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EXHIBIT G

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BONNEVILLE, VIERT, MORTON & MCGOLDRICK

By: _____
James A. Cathcart, WSBA #5419
Attorney for Plaintiff
Canterwood Development Company, Inc.

Dated: _____

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR PIERCE COUNTY

8 CANTERWOOD DEVELOPMENT
9 COMPANY, INC., a Washington
corporation,

10 Plaintiff,

11 v.

12 CITY OF GIG HARBOR, a municipal
corporation,

13 Defendant.
14

NO. 97-2-08598-1

STIPULATION AND ORDER OF
DISMISSAL WITH PREJUDICE

Judge Terry D. Sebring

Clerk's Action Required

15 CLERK'S ACTION: The clerk of the court is hereby directed to dismiss all of the claims of all of
16 the parties against each other in the above captioned suit with prejudice and without costs.

17 STIPULATION

18 IT IS HEREBY STIPULATED by and among plaintiff Canterwood Development Company,
19 Inc. and defendant City of Gig Harbor, and their attorneys of record, that all of the causes of action
20 raised in the above-captioned lawsuit by the parties against each other be dismissed with prejudice
21 and without attorneys' fees or costs to any party and that the subjoined order be entered without
further notice of presentation.

22 OGDEN MURPHY WALLACE, P.L.L.C.

23
24 By: _____
Howard F. Jensen, WSBA #25144
25 Attorney for Defendant
City of Gig Harbor

Dated: _____

26 EXHIBIT H

1 BONNEVILLE, VIERT, MORTON & MCGOLDRICK

2
3 By: _____
4 James A. Cathcart, WSBA #5419
5 Attorney for Plaintiff
6 Canterwood Development Company, Inc.

Dated: _____

7 **ORDER**

8 THE COURT, having reviewed the foregoing stipulation, and being fully advised, hereby
9 orders that all of the causes of action by the parties against each other in the above-captioned lawsuit
10 are hereby dismissed with prejudice and without attorneys' fees or costs to any party.

11 DATED this _____ day of May, 1998.

12 _____
13 HONORABLE TERRY D. SEBRING

14 Presented by:

15 OGDEN MURPHY WALLACE, P.L.L.C.

16 By: _____
17 Howard F. Jensen, WSBA #25144
18 Attorney for Defendant
19 City of Gig Harbor

20 Approved as to Form;
21 Notice of Presentation Waived:

22 By: _____
23 James A. Cathcart, WSBA #5419
24 Attorney for Plaintiff
25 Canterwood Development Company, Inc.



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH *DR*
SUBJECT: PAYROLL SYSTEM UPGRADE
DATE: JUNE 24, 1998

BACKGROUND

At the May 11 Council meeting, Council approved upgrade of the payroll processing software.

We determined that EDEN Systems, Inc. produces the only payroll software application that is compatible with our current accounting system.

POLICY CONSIDERATIONS

Eden Systems Payroll 3.5 has worked well for the City for over 10 years. Over this time period, Eden has also provided excellent support.

The City Finance Director discussed with EDEN modification of the original contract to address issues raised by the City Attorney in her review. EDEN Systems agreed to certain changes, but not all. A brief summary of the nature of the changes proposed and the City Attorney's rationale is provided below. EDEN System's, Inc. has stated that they will not make any further changes to the agreement.

- **Section 1 – Definitions.** Section 6.3, titled "Exclusive Remedy," requires Eden to use "commercially reasonable efforts" to provide maintenance modifications to correct errors in the software. Carol recommended Eden provide a definition for the term "commercially reasonable efforts" in section 1 to provide the City with some information as to the extent to which EDEN would assist the City with error correction, and to aid enforcement of the contract.

The support portion of the agreement, section 9, does not address standards of support EDEN will provide through the Annual Support Agreement. If, in the future, we decide EDEN support is not adequate, we may terminate at any time.

- **Section 7.3 – Actions Upon Termination.** After the first sentence, Carol recommends the following: "Upon termination by Licensee for Licensor's breach, Licensee shall not be required to comply with this subsection. Furthermore, upon such termination by Licensee for Failure of Acceptance Testing as set forth in Section 8.8 ...". Carol's rationale for this addition was to negate the illogical result of requiring the City to cease use and to return the software to EDEN if EDEN breaches this agreement.

- **Section 8.2 – No Assignment.** This section was proposed to read as follows (our recommended changes are underlined):
“Licensee Neither party shall ~~not~~ sell transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of Licensor. Any act in derogation of the foregoing shall be null and void; provided, however, that any such assignment shall not relieve Licensee the party making such assignment of its obligations under this Agreement.”
Carol was concerned that only the City was bound to the Assignment Clause, while EDEN was free to assign their responsibilities without notification to the City to another company (that may or may not be acceptable to the City).

FISCAL CONSIDERATIONS

The previously approved purchase price to include license fee, data conversion, and 4 days of staff training is \$11,250. In addition, the 1998 support agreement will be \$1,402.50 (16% of license fee prior to application of discount). This will be prorated to account for the number of months remaining in 1998. Subsequent years' support fees can increase no more than 10% in any year.

If Council decides against this contract, the City would eventually need to purchase an entire accounting system, the cost of which would probably exceed \$150,000. For the short term, in order to be Year 2000 compliant, the City could either outsource or purchase another payroll system that is not compatible with Eden. Either of these options would probably require additional staff (.5 fte) due to the increased workload in relation to payroll cost distributions.

RECOMMENDATION

Staff recommends that Council adopt the resolution declaring Eden Systems Payroll 5.0 sole source, and, in addition, separately approve the attached Software License and Use Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DECLARING THE PURCHASE OF COMPUTER SOFTWARE TO BE LIMITED TO A SOLE SOURCE, AND WAIVING COMPETITIVE NEGOTIATION REQUIREMENTS FOR SUCH PURCHASE.

WHEREAS, EDEN Systems Inc. was awarded a contract by the City of Gig Harbor on March 22, 1983 to provide computer software and support; and

WHEREAS, the original software purchased included a payroll application; and

WHEREAS, City staff has confirmed that EDEN Systems Inc. is the only supplier of payroll software that is totally compatible with the City's previously purchased accounting system; and

WHEREAS, EDEN Systems Inc. has estimated that the cost of the payroll system upgrade, data conversion, and staff training will be \$12, 000; and

WHEREAS, City staff has confirmed that if the City were to go to a different vendor to purchase a new payroll application that is not compatible with Eden Systems and make the necessary modifications for compatibility, the initial cost of such has been estimated to cost at least \$4,000 in addition to software license fees; and

WHEREAS, City staff has also determined that creation of an interface between the Eden Systems Inc. General Ledger application and a non-Eden Systems payroll product is unproven in other cities; and

WHEREAS, the City Council may waive the requirements of advertisement, proposal evaluation, and competitive negotiation of electronic data processing software purchases pursuant to RCW 39.04.270 if the Council declares that the proposed purchase is clearly and legitimately limited to a single source or supply, and recites why this situation exists; NOW, THEREFORE,

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

Section 1. The City Council declares that purchase of Eden Systems, Inc. Payroll 5.0 is clearly and legitimately limited to a single source or supply because of the City's previous purchase of accounting software from the same vendor. The system must be installed and operating prior to December 31, 1999 because the current payroll application is not year 2000 compliant; and EDEN Systems has assured the City they can meet this schedule. Therefore, the City Council waives all competitive negotiation requirements for this sole source purchase.

RESOLVED this ___ day of _____, 1998.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO. __

Eden Systems, Incorporated Software License and Use Agreement

THIS AGREEMENT, made and entered into by and between Eden Systems, Incorporated (hereinafter "Licensor"), a corporation duly authorized and existing under the State of Washington and having its principal offices at 5015 Tieton Drive; Suite A; Yakima, Washington 98908, and the City of Gig Harbor, (hereinafter "Licensee"), a government organization having its principal offices at 3105 Judson, Gig Harbor, WA 98335.

Licensor desires to grant to Licensee, and Licensee desires to acquire from Licensor a non-exclusive right and license to use certain computer software as hereinafter defined. Both parties agree they are able to comply with and will satisfy the terms and conditions as set forth in this Agreement. Both parties, intending to be legally bound, agree to the following:

SECTION 1 - DEFINITIONS

The definition of terms set forth in this section shall apply when such terms are used in this Agreement, its exhibits, and any amendments:

- 1.1 **"Licensed Program."** The computer program designated by Licensor as *InForum*[™], or *Command Series*[™] including object code, as well as related procedural code, and documentation of any type which describes it.
- 1.2 **"Licensed Documentation."** The system user manuals, and other documentation made available by Licensor, for the Licensed Program.
- 1.3 **"Enhancements."** Changes or additions, other than Maintenance Modifications, to the Licensed Program or Licensed Documentation that add significant new functions or substantially improved performance thereto by changes in system design or coding.
- 1.4 **"Error."** Problem caused by incorrect operation of the computer code of the Licensed Program or an incorrect statement or diagram in Licensed Documentation that produces incorrect results or causes incorrect actions to occur.
- 1.5 **"Error Correction."** Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Licensee of such non-conformity.
- 1.6 **"Maintenance Modifications."** Modifications or revisions to the Licensed Program or Licensed Documentation that correct Errors.
- 1.7 **"Specifications."** The functional performance parameters of the Licensed Program effective on the date of this Agreement, as set forth in on-line documentation imbedded within the Licensed Program.
- 1.8 **"Proprietary Information."** Unpublished "know-how" and "trade secrets" which shall include (without limitation) computer programs, program designs, algorithms, subroutines, system specifications, test data, charts, graphs, operation sheets, and all other technical information, owned by Licensor or under its control, relating to the development and production or use of the Licensed Program and the design, configuration, programming, and protocol of the Licensed Program.
- 1.9 **"Normal Working Hours."** The hours between 8AM and 5PM PST (Pacific Standard Time) or PDT (Pacific Daylight Time), whichever is applicable, on the days Monday through Friday, excluding regularly scheduled holidays of Licensor.

set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.

- 3.2 Title to Enhancements and Maintenance Modifications; Restrictions on Use, Disclosure, Access, And Distribution.** All right, title, and interest in and to any Enhancements and Maintenance Modifications developed by either Licensor or by Licensee shall be and remain with the Licensor. Licensee shall treat all such Enhancements and Maintenance Modifications, whether developed by Licensor or by Licensee, in accordance with the restrictions and limitations set forth herein respecting Licensed Programs and Licensed Documentation.

SECTION 4 - FEES AND PAYMENTS

- 4.1 License Fee.** In consideration of the licenses granted hereunder, Licensee shall pay Licensor a one-time license fee as well as other associated costs as further defined in Exhibit A, attached hereto.
- 4.2 Support Fee.** Software Support is subject to the terms and conditions of Section 9, *Software Support*, and may be offered, at the Licensor's sole option, on a year by year basis.
- 4.3 Per Diem.** Charges for meals and incidental expenses associated with the delivery of the Licensed Program will be charged on a per diem basis. The rate for such per diem shall be the maximum meals and incidental expenses allowed for Licensee's locality as specified in 41 CFR Section 301 Appendix A of the code of Federal Regulations. Partial days (1/2 day or less) will be billed to the Licensee at one half the applicable rate.
- 4.4 Other Costs.** Other costs, including but not limited to air/train/taxi fare, lodging, car rental, parking, freight costs and reproduction charges incurred by Licensor on account of this Agreement, shall be billed to the Licensee. Licensor shall have the right to charge a 5% administrative fee for all fees and charges specified in this Section.
- 4.5 Payment.** The License fee set forth herein shall be paid by Licensee according to the payment schedule set forth in Exhibit B.

SECTION 5 - PROPRIETARY PROTECTION OF MATERIALS

- 5.1 Acknowledgment of Proprietary Materials; Limitations on Use.** Licensee acknowledges that the Licensed Program and Licensed Documentation are unpublished works for purposes of federal copyright law and embody valuable confidential and secret information of Licensor, the development of which required the expenditure of considerable time and money by Licensor. Licensee shall treat the Licensed Programs and Licensed Documentation in confidence and shall not use, copy, or disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement.
- 5.2 Secure Handling.** Except for copies of the Licensed Program installed and operated upon its computers as permitted hereunder, Licensee shall require that the Licensed Program and Licensed Documentation be kept on Licensee's premises which shall be maintained in a manner so as to reasonably preclude unauthorized persons from gaining access thereto, and Licensee shall permit access only as necessary for either party's use thereof in accordance with the terms of this Agreement.
- 5.3 Proprietary Legends.** Licensee shall not permit anyone other than Licensor to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Licensor. Licensee may reproduce the written documentation provided by Licensor, provided that such reproductions are for the private internal use of Licensee, and all such reproductions bear Licensor's copyright notices and other proprietary legends.
- 5.4 Licensee's Obligations Respecting Access.** Licensee shall limit use of and access to the Licensed Program and Licensed Documentation to such personnel of Licensee as are directly involved in the use thereof by Licensee. Licensee shall prevent all Licensee personnel from having access to any such information that is not required in the performance of their duties for Licensee. Licensee shall, as requested by Licensor, provide Licensor with written

- 6.6 Licensee Indemnification.** Licensee shall and does hereby agree to indemnify, hold harmless, and save Licensor from liability against any claim, demand, loss or action (1) resulting from Licensee's use or modification of the Licensed Program and Licensed Documentation and (2) alleging that any Maintenance Modifications made by Licensee infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon Licensor (1) fully cooperating with Licensee in the defense or settlement of such actions and (2) giving Licensee prompt written notice of any claim, demand, or action for which indemnification is sought.
- 6.7 Licensor Indemnification.** Licensor shall and does hereby agree to indemnify, hold harmless, and save Licensee from liability against any claim, demand, loss, or action alleging that the Licensed Program and Licensed Documentation or any Maintenance Modifications or Enhancements made by Licensor infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon Licensee (1) fully cooperating with Licensor in the defense or settlement of such actions and (2) giving Licensor prompt written notice of any claim, demand, or action for which indemnification is sought.
- 6.8 Survival of Terms.** The provisions of Sections 6.1 through 6.7 shall survive termination of this Agreement for any reason.

SECTION 7 - TERM AND TERMINATION

- 7.1 Term.** This Agreement shall commence on the date and year contained herein and shall continue until terminated in accordance with the terms thereof.
- 7.2 Termination by Either Party.** Either party may terminate this Agreement upon 60 days written notice to the other party if the other party commits a breach of any term hereof and fails to cure said breach within that 60-day period. Such notice shall set forth the basis of the termination.
- 7.3 Actions Upon Termination.** Upon termination of this Agreement for any reason, Licensee shall immediately cease use of, and return forthwith to Licensor, the Licensed Program and Licensed Documentation, and any copies or portions thereof, including Maintenance Modifications or Enhancements. Upon such termination by Licensee, Licensor shall promptly return all License Fees paid within this Agreement.

SECTION 8 - MISCELLANEOUS

- 8.1 Entire Agreement.** This Agreement, including Licensee's Request for Proposal (RFP), Licensor's Response to said RFP, appendices, addendum, and referenced attachments, incorporated herein by reference, constitute the entire Agreement between the parties and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject. Neither party shall be bound by any warranty, statement, or representation not contained herein. In the event of any conflict in the terms and conditions, the documents shall control in the following order:
1. This Software License and Use Agreement;
 2. Licensor's Response to Licensee's Request for Proposal, if applicable;
 3. Licensee's Request for Proposal, if applicable.
- 8.2 No Assignment.** Licensee shall not sell transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of Licensor. Any act in derogation of the foregoing shall be null and void; provided, however, that any such assignment shall not relieve Licensee of its obligations under this Agreement.
- 8.3 Force Majeure.** Excepting provisions of this Agreement relating to payment of license fees, and protection of Licensor's Proprietary Information, neither party shall be in default of the terms hereof if such action is due to a natural calamity, or similar causes beyond the control of such party.

SECTION 9 - SOFTWARE SUPPORT

9.1 Scope of Service. Licensor shall render support and services between the hours of 8AM and 5PM, PST (Pacific Standard Time) or PDT (Pacific Daylight Time), whichever is in effect, for the following:

- a. **Telephone Support** - Calls related to operation of the Licensed Program, reporting of a potential error condition or abnormal termination of a program, or request for minor assistance related to the Licensed Program;
- b. **Support Enhancements** - Selected Enhancements, the nature and type of which shall be determined solely by the Licensor. Such provision shall not preclude Licensor from providing other Enhancements of the Licensed Program for license fees, training charges, and other related service fees and charges as specified elsewhere in this Agreement.
- c. **VCS (Version Control System) Maintenance** - Library of Licensed Program for Licensee complete with modifications authorized by Licensee, performed by Licensor, and delivered to Licensee site for use.

9.2 Fees and Charges. Licensee shall pay Licensor annual support charges for basic support for the Licensed Program based on an annual rate determined by Licensor for each Support Agreement Term, and the amounts listed in the Support Basis column of Exhibit "A".

Licensor reserves the right to change its support rate at the beginning of each Support Agreement Term, provided that no such change shall be an increase of greater than 10% of the support rate for the prior year.

All annual support charges are due and payable on or before the 1st working day of each Support Agreement Term. Failure to make such payment shall constitute cancellation and termination of support by Licensee and no further service or support will be provided by Licensor.

Charges for meals and incidental expenses associated with the delivery of support will be charged on a per diem basis. The rate for such per diem shall be the maximum meals and incidental expenses allowed for Licensee's locality as specified in 41 CFR Section 301 Appendix A of the Code of Federal Regulations. Partial days (1/2 day or less) will be billed to the Licensee at one half the applicable rate.

Other costs, including but not limited to air/train/taxi fare, lodging, car rental, parking, freight costs and reproduction charges incurred by Licensor, will be reimbursed by Licensee. Licensor shall have the right to charge a 5% administrative fee for all fees and charges specified in this Section.

The fees and charges specified in this section are exclusive of any federal, state, or local excise, sales, use, and similar taxes assessed or imposed with respect to the service and support provided hereunder. Licensee shall pay any such amounts upon request of Licensor accompanied by evidence of imposition of such taxes.

9.3 Licensee Responsibilities. Licensee shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Licensed Program and to obtain from Licensor the services called for according to Licensor's then existing policy.

9.4 Proprietary Rights. To the extent that Licensor may provide Licensee with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works of the Licensed Program prepared by Licensor, Licensee may (1) install one copy of the Licensed Program, in the most current form provided by Licensor, in Licensee's own facility; (2) use such Licensed Program in a manner consistent with the requirements of the Agreement, for purposes of serving Licensee's internal business needs; and (3) make up to three (3) copies of the Licensed Program in machine-readable form for nonproductive backup purposes only. Licensee may not use, copy, or modify the Licensed Program, or make any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Licensor.

**Exhibit A
Deliverables**

Products, Services and Equipment Setup/Training= []; Trips=()	License Fee (Support Basis)	Disct. %	Discount Amount	Misc. Services Third-Party	On-Site Services (See Exhibit C)	Total
Products:						
V2 Financial Core Products [19]; (6)			\$ -			\$ -
V1 Payroll 5.0 [4]; (2)	\$8,500.00	50%	- \$4,250.00		\$4,000.00	\$8,250.00
V3 Fixed Assets [2]; (1)			\$ -			\$ -
V2 Human Resources [2]; (1)			\$ -			\$ -
V2 Applicant Tracking [3]; (1)			\$ -			\$ -
V2 Parcel Manager, Permits & Inspections [7]; (3)			\$ -			\$ -
V1 Utility Management [5]; (2)			\$ -			\$ -
V1 Business Licensing [2]; (1)			\$ -			\$ -
Services:						
Informix System Setup [3]; (1)			\$ -			\$ -
Enhancements - Estimate			\$ -			\$ -
Consulting/Management - Estimate			\$ -			\$ -
Data File Conversion Services-Estimate (See Exhibit D)			\$ -	\$3,000.00		\$3,000.00
Equipment, 3rd Party Apps, Dbase, Tools						
Database Server			\$ -			\$ -
Informix, Tools [2]; (1)			\$ -			\$ -
IQ Report Writer/Windows [2]; (1)			\$ -			\$ -
Acucobol for Windows Runtime			\$ -			\$ -
Acu ODBC			\$ -			\$ -
Eden Menus			\$ -			\$ -
IQ Data Dictionaries			\$ -			\$ -
Total	\$8,500.00		- \$4,250.00	\$3,000.00	\$4,000.00	\$11,250.00
1 st Year Support (1998) - If installed in 1998, this amount shall be prorated to the number of months remaining in year.	\$1,402.50	\$	Concurrent			

Exhibit C **SERVICES**

Enhancements, Consulting/Management, Travel, Expenses - Based on Licensor's perception of the enhancements, consulting/management, travel and expenses required by Licensee at the time of execution of this Agreement, the estimate provided could vary depending on a fuller understanding of the requirements as the project unfolds. If the nature of the requirements causes a change in excess of 25% of the original estimate for any one or an aggregate of the named services, the Licensor will immediately notify the Licensee and both parties will negotiate an adjusted cost to provide the product before any work may proceed.

All Estimated Services - All estimated services described within this Exhibit C shall be invoiced to Licensee by Licensor, due and payable as such services are delivered to Licensee regardless of whether or not such services have been delivered in their entirety.

Onsite Services

Training, Installation, and Setup - All training is to be administered in either a) 'train the trainer' fashion; or b) seminar or 'group' fashion; to maximize the usefulness of time and resources. The training costs herein assume that training is to be provided on-site in the Licensee's offices and that the Licensee can provide suitable training room facilities and make Licensee's personnel available on the dates and times agreed to by the parties.

The training, installation, and setup specified herein is intended to provide a maximum of four (4) days to administer such services to licensee personnel and the need for additional services, as determined by the Licensee, will be charged to the Licensee at Licensor's then-going hourly rate. Such additional services and the payment for same shall be authorized via the Licensor's AFPS (Authorization For Professional Services) and no additional such services shall be administered without a fully executed AFPS by the Licensee.

Written acknowledgment of acceptance or full payment of the license fee for any module listed in Exhibit A shall signify full satisfaction of the commitment for related services under this Agreement.

Installation and setup charges assume the Licensee will ship, at its expense for all shipping and related costs, all necessary operating software, equipment and related tools to Licensor in order that Licensor place the Licensed Program on the Licensee's computer system named herein and make sure that the Licensed Program will work with the operating system provided. This will constitute 'installation and setup' and will be performed for the price quoted herein.

In order to provide onsite services Licensor must schedule visits in advance. If the scheduled visit is canceled by the Licensee for any reason without first having given Licensor a minimum of two weeks advance notice of such cancellation, the Licensor may charge the Licensee for the scheduled service and dissolve the liability for that portion of the scheduled service.

Exhibit D
DATA CONVERSION (continued)

Authorized Sub-Agencies. The following are considered authorized Sub-agencies of this Agreement and Licensee is authorized to use the Licensed Program and Licensed Documentation on Licensee's premises for the purpose of supporting the internal business practices of the named Sub-agencies.

Authorized Sub-Agencies
None Authorized



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: CONSENT AGENDA
DATE: JULY 20, 1998

INFORMATION/BACKGROUND

At the recent parliamentary workshop, attended by members of the Design Review Committee, the Planning Commission, the City Council, as well as the Mayor and staff, one idea emerged that the Mayor is submitting to the Council. The Mayor suggests that we implement a Consent Agenda in order to facilitate efficient use of Council time at meetings.

POLICY CONSIDERATIONS

Staff research indicates that a consent agenda contains routine items which are not controversial in nature and which do not need further discussion. Such items have been reviewed by management and have been determined to be non-controversial and routine, such that no discussion is necessary due to their very nature. The typical consent agenda would include: approval of payroll warrants and payment vouchers, approval of minutes, setting public hearings, approval of budgeted contracts, award of budgeted bids, confirmation of previously discussed issues, and liquor license approvals.

Items on the consent agenda would be grouped together on the printed agenda. Each consent agenda would include an explanatory note to the public that consent agenda items are considered routine and may be adopted by one motion.

Any Council member can pull an item off the consent agenda for discussion if so requested at a Council Meeting.

(If the July 13 Council Meeting had been restructured with a consent agenda, then it would have looked like the attached sample agenda.)

RECOMMENDATION

This is the first reading of this ordinance. Staff recommends that Council approve the attached ordinance at the second reading with such amendments, if any, as Council deems appropriate.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, TO EXPEDITE THE PUBLIC BUSINESS
AND TO PROVIDE FOR THE USE BY THE CITY COUNCIL
OF A CONSENT AGENDA AND AMENDING SECTION
2.04.030 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, many items of business required action by the Governing Body of this City, but are themselves of a routine and noncontroversial nature; and

WHEREAS, it is desirable to expedite the public business and provide additional time for deliberation by the Council on matters requiring such deliberation; now, therefore,

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

Section 1. Section 2.04.030 of the Gig Harbor Municipal Code shall be amended to read as follows:

2.04.030 Council meeting agendas.

A. Preparation of Agenda. The regular and official city council meeting ...

B. Consent Agenda.

1. Each agenda shall include a 'Consent Agenda' in the order of business. When the City Administrator and Mayor determine that any item of business requires action by the Council but is of a routine and noncontroversial nature, they may cause such item to be presented at a regular meeting of the council as part of a 'Consent Agenda..'

2. The reference material for all matters listed within the consent agenda shall be distributed to each member of the City Council for their review prior to the meeting. Matters on such Consent Agenda shall be considered to be routine and may be enacted by a single motion of the Council with

no separate discussion unless removed from the consent agenda as hereinafter provided.

3. If separate discussion of any consent agenda item is desired, that item may be removed from the Consent Agenda at the request of any individual Council member. At the conclusion of passage of the Consent Agenda, those items removed at the request of any individual Council member shall either be discussed and acted upon before proceeding to the next item of business on the agenda or shall be set to a later position on the agenda for that meeting.

4. Approval of the motion to approve the Consent Agenda shall be fully equivalent to approval, adoption, or enactment of each motion, resolution, or other item of business thereon, exactly as if each had been acted upon individually.

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

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

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 7/22/98
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____

**SUMMARY OF ORDINANCE NO. _____
of the City of Gig Harbor, Washington**

On _____, 1998, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, TO EXPEDITE THE PUBLIC BUSINESS
AND TO PROVIDE FOR THE USE BY THE CITY COUNCIL
OF A CONSENT AGENDA AND AMENDING SECTION
2.04.030 OF THE GIG HARBOR MUNICIPAL CODE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of _____, 1998.

BY: _____
Molly M. Towslee, City Clerk

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING

July 13, 1998 - 7:00 p.m.

CALL TO ORDER:

PUBLIC HEARING: Planning Commission Recommendation – Preannexation Zoning for the Purdy Area.

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Municipal Code _____.

1. Approval of the Minutes of the June 22, 1998 City Council meeting.
2. Correspondence / Proclamations - Informational.
None scheduled for this meeting.
3. Approval of Consultant Service Agreements:
Transportation Plan Update
Park, Recreation and Open Space Plan Update
4. Approval of Purchase Authorizations:
Hill Street Water Main Replacement.
North Harborview Drive Street Lights
5. Approval of Maintenance Agreements Renewal – Minolta Copier Machine
6. Approval of Liquor License Applications:
Flowers on the Bay
Satish Changela (AM-PM Minimart)
7. Approval of Liquor License Renewals:
Emerald Star Restaurant
Hunan Garden Restaurant
Kinza Teriyaki
Shorline Steak & Seafood Grill
Spiro's Bella Notte' Pizza & Pasta
The Keeping Room, Candles & Wine Etc.
8. Approval of Special Occasion Liquor License:
Peninsula High School Booster Club
9. Announcements of Other Meetings:
Special City Council Meeting – August 3, 1998, 7:00 p.m. at City Hall.
10. Approval of Payment of Bills and Payroll:
Checks # 20473 - 20594 in the amount of \$112,627.15.
June Payroll - #15921 – 16074 in the amount of \$266,895.39.

OLD BUSINESS:

1. Planning Commission Recommendation – Preannexation Zoning for the Purdy Area – Second Reading of Ordinance.
2. Request for Consideration to Annex to the City – Fairway Estates.
3. Second Reading of Ordinance – Eliminating a Reference to the Process for Appeals of the CUP Process.
4. Second Reading of Ordinance – Establishment of Speed Limits.
5. East-West Roadway Construction Project Release and Covenant Not to Sue.

NEW BUSINESS:

1. DUI Task Force Interlocal Agreement.
2. Cash Receipting Software Purchase.
3. First Reading of Ordinance – Indemnification.
4. Purchase Authorization – Harborview Drive Water Main Replacement.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS:

STAFF REPORTS:

Mitch Barker, GHPD June Stats.

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

ADJOURN:



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER *MB*
SUBJECT: ORDINANCE TO AMEND GHMC CRIMINAL CODE SECTION
DATE: JULY 20, 1998

INFORMATION/BACKGROUND

The current criminal code section of the Gig Harbor Municipal Code has become outdated in some instances. In the cases where we have identified an immediate need, we have made the changes required. Our legal counsel has now completed a comprehensive review of our criminal code and has submitted the attached ordinance. The ordinance repeals, amends, and adds various sections of the code to bring it current and adopt sections of the State RCW.

FISCAL IMPACTS

There is no direct fiscal impact attached to this ordinance.

RECOMMENDATION

The Police Department and legal counsel recommend that the Council adopt this ordinance at the second reading.

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the ____ day of _____, 1998, the City Council of the City of Gig Harbor passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S CRIMINAL CODE, REPEALING SECTIONS 9.04.020, 9.04.030, 9.20.040, 9.30.050, 9.30.060, 9.30.070, 9.30.080, 9.30.090, 9.32.010, AND 9.34.010 OF THE GIG HARBOR MUNICIPAL CODE, AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE GIG HARBOR MUNICIPAL CODE, ADDING NEW CRIMES, DELETING REPEALED AND/OR OUTDATED CRIMES, SETTING FORTH PENALTIES, ADOPTING VARIOUS PROVISIONS OF THE REVISED CODE OF WASHINGTON BY REFERENCE, AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this ____ day of _____, 1998.

CITY CLERK, MOLLY TOWSLEE

0008.160.002(C)

RJM/hrg

04/03/98

R:04/06/98hrg

R:04/09/98hrg

R:05/22/98

R:06/23/98

R:07/09/98

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S CRIMINAL CODE, REPEALING SECTIONS 9.04.020, 9.04.030, 9.20.040, 9.30.050, 9.30.060, 9.30.070, 9.30.080, 9.30.090, 9.32.010, AND 9.34.010 OF THE GIG HARBOR MUNICIPAL CODE, AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE GIG HARBOR MUNICIPAL CODE, ADDING NEW CRIMES, DELETING REPEALED AND/OR OUTDATED CRIMES, SETTING FORTH PENALTIES, ADOPTING VARIOUS PROVISIONS OF THE REVISED CODE OF WASHINGTON BY REFERENCE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 35A.11.020 authorizes the legislative body of code cities to adopt and enforce criminal codes related to misdemeanor and gross misdemeanor offenses, and

WHEREAS, the City has adopted a criminal code as authorized by statute, and

WHEREAS, various provisions of the City's criminal code have not been updated in several years, and

WHEREAS, new crimes have been added to the Revised Code of Washington by the State Legislature since the latest amendment of the City's criminal code, and

WHEREAS, the City desires to adopt some of these new crimes and amend and clarify existing portions of the City's criminal code, NOW, THEREFORE,

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

Section 1. Repealer. The following sections of the Gig Harbor Municipal Code are hereby repealed: 9.04.020, 9.04.030, 9.20.040, 9.30.050, 9.30.060, 9.30.070, 9.30.080, 9.30.090, 9.32.010, and 9.34.010.

Section 2. Section 9.01.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.01.020 General provisions.

The following state statutes are adopted by reference:

RCW

9.01.055	Citizen immunity if aiding officer.
9.01.110	Omission, when not punishable.
9.01.130	Sending letter, when complete.
9A.04.020	Purposes — Principles of construction.
9A.04.030	State criminal jurisdiction.
9A.04.040	Classes of crime.
9A.04.050	People capable of committing crimes — Capability of children.
9A.04.060	Common law to supplement statutes.
9A.04.070	Who amenable to criminal statutes.
9A.04.080	Limitation of actions.
9A.04.090	Application of general provisions of the code.
9A.04.100	Proof beyond a reasonable doubt.
9A.04.110	Definitions.

Section 3. Section 9.01.040 of the Gig Harbor Municipal Code, is hereby amended to read as follows:

9.01.040 Defenses.

The following state statutes are adopted by reference:

RCW

9A.12.010	Insanity.
-----------	-----------

- 9A.16.010 Definitions.
- 9A.16.020 Use of force — When lawful.
- 9A.16.060 Duress.
- 9A.16.070 Entrapment.
- 9A.16.080 Action for being detained on mercantile establishment of premises for investigation — "Reasonable grounds" as defense.
- 9A.16.090 Intoxication.
- 9A.16.100 Use of force on children - Policy - Actions presumed reasonable.

Section 4. Section 9.01.050 of the Gig Harbor Municipal Code, is hereby amended to read as follows:

9.01.050 Contempt.

The following state statutes are hereby adopted by reference:

- RCW
- 7.21.010 Definitions.
 - 7.21.020 Sanctions - Who may impose.
 - 7.21.030 Remedial sanctions - Payment for losses.
 - 7.21.040 Punitive sanctions - Fines.
 - 7.21.050 Sanctions - Summary imposition - Procedure.
 - 7.21.060 Administrative actions on proceedings - Petition to court for imposition of sanctions.
 - 7.21.070 Appellate review.

Section 5. Section 9.01.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.01.060 Penalty.

A. Any person convicted of a gross misdemeanor shall be punished by a fine not to exceed \$5,000 or by imprisonment in jail for a term not to exceed one year, or by both such fine and imprisonment.

B. Unless otherwise provided, any person convicted of violating the provisions of this title shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000

or by imprisonment in jail for a term not to exceed 90 days, or by both such fine and imprisonment.

C. In addition to the penalty provisions set forth in this section, a person who is convicted of a misdemeanor violation of any provision of Chapter 69.50 RCW adopted by reference shall be punished in accordance with RCW 69.50.425 as said statute now exists or is hereafter amended.

Section 6. Section 9.01.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.01.090 Amendments and additions.

This title is adopted in accordance with the provisions of RCW 35A.12.140, and all amendments, additions, and recodifications to the Revised Code of Washington sections adopted by reference herein, when printed and filed with the city clerk, shall be considered and accepted as amendments and additions to this chapter.

Section 7. Section 9.04.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.04.010 Alcoholic beverage control Enforcement.

The following state statutes are adopted by reference and wherever the word "title" or words "this title" are used therein the same shall be construed to mean and refer to RCW Title 66 and "this act" shall mean and refer to the Washington State Liquor Act:

RCW

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.
- 66.20.200 Unlawful acts relating to card of identification and certification card - Penalties.
- 66.20.210 Licensee's immunity to prosecution or suit — Certification card as evidence of good faith.
- 66.20.300 Alcohol servers — Definitions.
- 66.20.310 Alcohol servers — Permits — Requirements — Suspension, revocation — Violations — Exemptions.

- 66.20.340 Alcohol server — Violation of rules — Penalties.
- 66.28.080 Permit for music and dancing upon licensed premises.
- 66.28.090 Licensed premises open to inspection — Failure to allow, when.
- 66.44.040 Sufficiency of description of offenses in complaints, information, process, etc.
- 66.44.050 Description of offense in words of statutes — Proof required.
- 66.44.060 Proof of unlawful sale establishes prima facie intent.
- 66.44.070 Certified analysis is prima facie evidence of alcoholic content.
- 66.44.080 Service of process on corporation.
- 66.44.090 Acting without license.
- 66.44.100 Opening or consuming liquor in public place — Penalty
- 66.44.120 Unlawful use of seal.
- 66.44.130 Sale of liquor by drink or bottle.
- 66.44.140 Unlawful sale, transportation of spirituous liquor without a stamp or seal — Unlawful operation, possession of still or mash.
- 66.44.150 Buying liquor illegally.
- 66.44.160 Illegal possession, transportation of alcoholic beverages.
- 66.44.170 Illegal possession of liquor with intent to sell - Prima facie evidence, what is.
- 66.44.175 Violations of law.
- 66.44.180 General penalties — Jurisdiction for violation.
- 66.44.200 Sales to persons apparently under the influence of liquor.
- 66.44.210 Obtaining liquor for ineligible person.
- 66.44.240 Drinking in public conveyance Penalty against carrier.
- 66.44.250 Same — Penalty against individual.
- 66.44.265 Candidates giving or purchasing liquor on election day prohibited.
- 66.44.270 Furnishing liquor to minors — Possession, use — Exhibition of effects — Exceptions.
- 66.44.280 Minor applying for permit.
- 66.44.290 Minor purchasing liquor.
- 66.44.291 Penalty for minor purchasing or attempting to purchase liquor.

- 66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor is sold.
- 66.44.310 Minors frequenting off-limits area - Misrepresentation of age — Classification of licenses.
- 66.44.316 Certain persons eighteen years and older permitted to enter and remain upon licensed premises during employment.
- 66.44.320 Sales of liquor to minors a violation.
- 66.44.325 Unlawful transfer to a minor of an identification card.
- 66.44.328 Preparation or acquisition in supply to persons under age twenty-one of facsimile of official identification card - Penalty.
- 66.44.340 Employees 18 years and over allowed to sell and carry beer and wine for Class E and/or F employees.
- 66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for class A, C, D and/or H licensed employers.
- 66.44.370 Resisting or opposing officers in enforcement of title.

Section 8. Section 9.06.010 of the Gig Harbor Municipal Code is hereby

amended to read as follows:

9.06.010 Animals — Conduct prohibited.

The following state statutes are adopted by reference:

RCW

- 9.08.020 Diseased animals.
- 9.08.030 False certificate of registration of animals — False representation as to breed.
- 9.08.065 Definitions.
- 9.08.070 Dogs — Taking, concealing, injuring, killing, etc. — Penalty.

Section 9. Section 9.06.020 of the Gig Harbor Municipal Code is hereby

amended to read as follows:

9.06.020 Prevention of cruelty to animals.

The following state statutes are adopted by reference:

RCW

16.52.011	Definitions — Principles of liability.
16.52.080	Transporting or confining in unsafe manner — Penalty.
16.52.085	Removal of neglected animal — Examination — Notice — Euthanasia.
16.52.090	Docking horses — Misdemeanor.
16.52.095	Cutting ears — Misdemeanor.
16.52.100	Confinement without food and water — Intervention by others.
16.52.110	Old or diseased animals at large.
16.52.117	Animal fighting — Owners, trainers, spectators — Exceptions.
16.52.180	Limitation on application of chapter.
16.52.185	Exclusions from chapter.
16.52.190	Poisoning animals.
16.52.193	Poisoning animals — Strychnine sales — Records — Report on suspected purchases.
16.52.195	Poisoning animals — Penalty.
16.52.200	Sentences — Forfeiture of animals — Liability for costs — Civil penalty — Education, counseling.
16.52.207	Animal cruelty in the second degree.
16.52.210	Destruction of animal by law enforcement officer — Immunity from liability.
16.52.300	Dogs or cats used as bait — Seizure — Limitation.

Section 10. Section 9.08.010 of the Gig Harbor Municipal Code is hereby

amended to read as follows:

9.08.010 Anticipatory offenses prohibited.

The following state statutes are adopted by reference:

RCW

9A.28.020	Criminal attempt.
9A.28.030	Criminal solicitation.
9A.28.040	Criminal conspiracy.

Section 11. Section 9.10.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.10.010 Conduct prohibited.

The following state statutes are adopted by reference:

RCW

- 9.91.060 Leaving children unattended in parked automobile.
- 13.32A.080 Unlawful harboring of a minor — Penalty — Defense — Prosecution of adult for involving children in commission of offense.
- 13.32A.082 Providing shelter to minor — Requirement to notify parent, law enforcement, or department.
- 13.32A.084 Providing shelter to minor — Immunity from liability.
- 26.28.060 Child labor — Penalty.
- 26.28.080 Selling or giving tobacco to a minor — Belief of representative capacity no defense — Penalty.
- 26.28.085 Applying tatoo to a minor — Penalty.
- 70.155.010 Definitions.
- 70.155.080 Purchasing or obtaining tobacco by persons under the age of eighteen - Civil infraction.

Section 1,
Chapter 133,
Laws of 1998

Section 12. A new Section 9.10.030, entitled Sexual exploitation of children and minor access to erotic materials, is hereby added to the Gig Harbor Municipal Code is hereby amended to read as follows:

9.10.030 Sexual exploitation of children and minor access to erotic materials.

- 9.68A.011 Definitions.
- 9.68A.080 Processors of depictions of minor engaged in sexually explicit conduct — Report required.
- 9.68A.090 Communicating with a minor for immoral purposes.
- 9.68A.110 Certain defenses barred, permitted.
- 9.68A.120 Seizure and forfeiture of property.
- 9.68A.140 Definitions.

- 9.68A.150 Allowing minor on premises of live erotic performance.
- 9.68A.160 Penalty.

Section 13. Section 9.14.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.14.010 State statutes adopted by reference.

The following state statutes are adopted by reference:

- RCW**
- 69.41.010 Definitions.
 - 69.41.020 Prohibited acts — Information not privileged communication.
 - 69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited - Exceptions.
 - 69.41.050 Labeling requirements.
 - 69.41.060 Search and seizure.
 - 69.41.062 Search and seizure at rental premises — Notification of landlord.
 - 69.41.065 Violation — Juvenile driving privileges.
 - 69.41.070 Penalties.
 - 69.50.101 Definitions.
 - 69.50.102 Drug paraphernalia — Definitions.
 - 69.50.204
 - (c)(14) Schedule I — Marijuana.
 - 69.50.309 Containers.
 - 69.50.401(e) Prohibited Acts: A-Penalties.
 - 69.50.408 Second or subsequent offenses.
 - 69.50.412 Prohibited Acts: E-Penalties.
 - 69.50.420 Violations — Juvenile driving privileges.
 - 69.50.425 Misdemeanor violations — Minimum imprisonment.
 - 69.50.505 Seizure and Forfeiture.
 - 69.50.506 Burden of Proof; liabilities.

Section 14. Section 9.14.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.14.030 Inhaling toxic fumes.

The following state statutes are adopted by reference:

RCW
9.47A.010 Definition.
9.47A.020 Unlawful inhalation -- Exception.
9.47A.030 Possession of certain substances prohibited, when.
9.47A.040 Sale of certain substance prohibited, when.
9.47A.050 Penalty.

Section 15. Section 9.14.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.14.040 Poisons.

The following state statutes are hereby adopted by reference:

RCW
69.38.010 "Poison" defined.
69.38.020 Exceptions from chapter.
69.38.030 Poison register - Identification of purchaser.
69.38.040 Poison register -- Penalty for failure to maintain register.
69.38.050 False representations - Penalty.
69.38.060 Manufacturers and sellers of poisons - License required - Penalty.

Section 16. Section 9.14.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.14.060 Steroids.

The following state statutes are adopted by reference:

RCW
69.41.300 Definitions.
69.41.320 Practitioners -- Restricted use Medical records.

Section 17. Section 9.20.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.20.010 Firearms and dangerous weapons — Prohibitions.

The following statutes of the state of Washington are adopted by reference:

RCW	
9.41.010	Terms defined.
9.41.042	Children - Permissible firearm possession.
9.41.047	Restoration of possession rights.
9.41.050	Carrying firearms.
9.41.060	Exceptions to restrictions on carrying firearms.
9.41.070	Concealed pistol license — Application — Fee — Renewal.
9.41.075	Concealed pistol license - Revocation.
9.41.090	Dealer deliveries regulated - Hold on delivery.
9.41.094	Waiver of confidentiality.
9.41.098	Forfeiture of firearms — Disposition — Confiscation.
9.41.110	Dealer's licenses, by whom granted, conditions, fees - Employees, finger printing and background checks - Wholesale sales excepted - Permits prohibited.
9.41.120	Firearms as loan security.
9.41.122	Out-of-state purchasing.
9.41.124	Purchasing by non-residents.
9.41.185	Coyote getters.
9.41.220	Unlawful firearms and parts contraband.
9.41.230	Aiming or discharging firearms, dangerous weapons.
9.41.240	Possession of pistol by person from eighteen to twenty one.
9.41.250	Dangerous weapons — Penalty.
9.41.260	Dangerous exhibitions.
9.41.270	Weapons apparently capable of producing bodily harm — Unlawful carrying or handling — Penalty — Exceptions.
9.41.280	Possessing dangerous weapons on school facilities — Penalty — Exceptions.
9.41.300	Weapons prohibited in certain places - Local laws and ordinances - Exceptions - Penalty.
9.41.800	Surrender of weapons or licenses — Prohibition on future possession or licensing.

9.41.810 Penalty,
70.74.010 Definition of explosives.

Section 18. Section 9.20.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.20.020 Unlawful use of air guns — Penalty.

A. It is unlawful for any person to point or shoot an air gun, bow and arrow, or crossbow at any person or property of another, or to aim or discharge such weapon in the direction of the person or residence of another, while within such range as to cause or inflict injury to the person or damage the property of another.

B. As used in this section, "air gun" means and includes the following: air gun, air pistol, air rifle, BB gun and toy or other guns of any kind or nature when so designed, contrived, modified and used to propel, by compressed air or spring-loaded plunger, any pellet, dart, hard-tipped arrow, bean, pea, BB, rock or other hard substance a distance of more than 25 feet with sufficient force to break windows or inflict injury upon persons or animals.

C. Any person convicted of a violation of the provisions of this section is guilty of a misdemeanor and, in addition to any other punishment imposed by the court, the court shall direct that the weapon so used in violation of the provisions hereof be confiscated.

Section 19. A new Section 9.20.040, entitled Destruction, Trade or Sale of Forfeited Firearms, is hereby added to the Gig Harbor Municipal Code to read as follows:

9.20.040 Destruction, trade or sale of forfeited firearms.

A. Firearms that are (1) judicially forfeited and no longer needed for evidence or (2) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010 may be disposed of by the city.

B. The city may destroy, retain, trade, auction or arrange for an auction of forfeited firearms obtained on or after June 30, 1993 pursuant to Section 9.01.010, adopting by reference RCW Section 9.41.098.

C. The city may retain the proceeds of any trade or auction of forfeited firearms.

Section 20. Section 9.22.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.22.010 Frauds and swindles.

The following state statutes are adopted by reference:

RCW

- 9.04.010 False advertising.
- 9.04.090 Advertising fuel prices by service stations.
- 9.16.080 Sales of petroleum products improperly labeled or by wrong grade.
- 9.16.090 Sales of petroleum products improperly labeled by wrong grade - Penalty for violations.
- 9.18.080 Offender a competent witness.
- 9.18.120 Suppression of competitive bidding.
- 9.18.130 Collusion to prevent competitive bidding.
- 9.18.140 Penalty.
- 9.18.150 Agreements out of state.
- 9.44.080 Misconduct in signing a petition.
- 9.45.060 Encumbered, leased or rented personal property - Construction.
- 9.45.062 Failure to deliver leased personal property -- Requisites for presentation -- Construction.
- 9.45.070 Mock auctions.
- 9.45.080 Fraudulent removal of property.
- 9.45.090 Knowingly receiving fraudulent conveyance.
- 9.45.100 Fraud in assignment for benefit of creditors.
- 9.26A.090 Telephone company credit cards - Prohibited acts.
- 9.26A.100 Definitions.
- 9.26A.110 Fraud in obtaining telecommunications service - Penalty.
- 9.26A.120 Fraud in operating coin-box telephone or other receptacle.
- 9.26A.130 Penalty for manufacture or sale of slugs to be used for coin.
- 9A.60.010 Definitions.
- 9A.60.040 Criminal impersonation.
- 9A.60.050 False certification.

Section 21. Section 9.22.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.22.020 False representations.

The following state statutes are adopted by reference:

RCW

- 9.38.010 False representation concerning credit.
- 9.38.015 False statement by deposit account applicant.
- 9.38.020 False representation concerning title.

Section 22. Section 9.26.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.26.010 Assault and other crimes involving physical harm.

The following statutes, including all future amendments, are adopted by reference:

RCW

- 9A.36.041 Assault in the fourth degree.
- 9A.36.050 Reckless endangerment.
- 9A.36.070 Coercion.

Section 23. Section 9.26.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.26.040 Harassment.

The following state statutes are adopted by reference:

RCW

- 9A.46.020 Definition — Penalties.
- 9A.46.030 Place where committed.
- 9A.46.040 Court-ordered requirements upon person charged with crime — Violation.
- 9A.46.050 Arraignment — No-contact order.
- 9A.46.060 Crimes included in harassment.
- 9A.46.070 Enforcement of orders restricting contact.

- 9A.46.080 Order restricting contact — Violation.
- 9A.46.090 Nonliability of peace officer.
- 9A.46.100 "Convicted," time when.
- 9A.46.110 Stalking.
- 9.61.230 Telephone harassment.
- 9.61.240 Telephone harassment — Permitting telephone to be used.
- 9.61.250 Telephone Harassment — Offenses, where deemed committed.

Section 24. Section 9.26.070 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.26.070 Civil anti-harassment and protection orders.

The following state statutes are adopted by reference:

- RCW
- 10.14.010 Legislative findings, intent.
- 10.14.020 Definitions.
- 10.14.030 Course of conduct — Determination of purpose.
- 10.14.040 Protection order — Petition.
- 10.14.050 Administrative reports — Forms, information.
- 10.14.060 Proceeding informā pauperis.
- 10.14.070 Hearing — Service.
- 10.14.080 Anti-harassment protection orders — Ex parte orders — Renewals.
- 10.14.085 Hearing re set after ex parte order.
- 10.14.090 Representation or appearance.
- 10.14.100 Service of order.
- 10.14.105 Order following service by publication.
- 10.14.110 Notice to law enforcement agencies — Enforceability.
- 10.14.115 Enforcement of order — Knowledge prerequisite to penalties — Reasonable efforts to serve copy of order.
- 10.14.120 Disobedience of order — Penalty.
- 10.14.125 Service by publication — Cost.
- 10.14.130 Exclusion of certain actions.
- 10.14.140 Other remedies.
- 10.14.150 Jurisdiction.
- 10.14.160 Where action may be brought.

10.14.170	Criminal penalty.
10.14.180	Modification of order.
10.14.190	Constitutional rights.
10.14.200	Availability of orders in proceedings under chapter 26.09, 26.10, or 26.26 RCW.
10.14.900	Severability.

Section 25. A new Section 9.26.080, entitled Criminal Mistreatment, is hereby added to the Gig Harbor Municipal Code to read as follows:

9.26.080 Criminal mistreatment.

The following state statutes are adopted by reference:

RCW	
9A.42.010	Definitions.
9A.42.080	Abandonment of a dependent person in the third degree.
9A.42.090	Abandonment of a dependent person — Defense.

Section 26. A new Section 9.26.090, entitled Failure to Abide by Court Order, is hereby added to the Gig Harbor Municipal Code to read as follows:

9.26.090 Failure to abide by court order.

It shall be a gross misdemeanor for any person subject to a court order, the violation of which is not covered by a specific provision of this title, to knowingly and wilfully violate the terms of that order.

Section 27. Section 9.28.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.28.010 Theft, unauthorized issuance of bank checks and possession of stolen property.

The following state statutes are adopted by reference:

RCW	
9.54.130	Restoration of stolen property — Duty of officers.
9A.56.010	Definitions.

- 9A.56.020 Theft — Definition, defense.
- 9A.56.050 Theft in third degree.
- 9A.56.060 Unlawful issuance of checks or drafts.
- 9A.56.096 Theft of rental, leased, or lease - Purchased property.
- 9A.56.140 Possessing stolen property Definition, access devices, presumption.
- 9A.56.170 Possessing stolen property in the third degree.
- 9A.56.220 Theft of cable television services.
- 9A.56.230 Unlawful sale of cable television services.
- 9A.56.240 Forfeiture and disposal of device used to commit violation.
- 9A.56.260 Connection of channel converter.
- 9A.56.270 Shopping cart theft.

Section 28. Section 9.28.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.28.020 Malicious mischief and obscuring identity of machines.

The following state statutes, including all future amendments, are adopted by reference:

RCW

- 9A.48.090 Malicious mischief in the third degree.
- 9A.48.100 Malicious mischief - "Physical Damage" defined.
- 9A.48.110 Defacing a state monument.
- 9A.56.180 Obscuring identity of a machine.

Section 29. A new Section 9.28.050, entitled Interference with Health Care Facilities or Providers, is hereby added to the Gig Harbor Municipal Code to read as follows:

9.28.050 Interference with health care facilities or providers.

The following statutes of the state of Washington are adopted by reference:

RCW

- 9A.50.010 Definitions.
- 9A.50.020 Interference with health care facility.
- 9A.50.030 Penalty.

9A.50.060 Informational picketing.

Section 30. Section 9.30.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.30.020 Sex crimes - Prostitution - Unlawful public exposure.

A. The following statutes of the state of Washington are adopted by reference:

- RCW
- 9A.44.010 Definitions.
- 9A.44.020 Testimony - Evidence - Written motion - Admissibility.
- 9A.44.030 Defenses to prosecution under this chapter.
- 9A.44.096 Sexual misconduct with a minor in the second degree.
- Section 1, Chapter 221, 1998 Laws Voyeurism
- 9A.88.010 Indecent exposure.
- 9A.88.030 Prostitution.
- 9A.88.050 Prostitution — Sex of parties immaterial — No defense.
- 9A.88.060 Promoting prostitution - Definitions.
- 9A.88.090 Permitting prostitution.
- 9A.88.110 Patronizing a prostitute.
- 9A.88.120 Additional fee assessments.

B. A person commits the crime of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. Indecent exposure is a misdemeanor, unless such person exposes himself/herself to a person under the age of 14 years, in which case the offense is a gross misdemeanor.

Section 31. Section 9.30.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.30.040 Unlawful public exposure — Exemptions.

The prohibition set forth in GHMC 9.30.020(B) shall not apply to any:

- A. "Expressive dance," as defined in GHMC 9.30.010;
- B. Play, opera, musical or other dramatic work;
- C. Class, seminar or lecture, conducted for a scientific or educational purpose; or
- D. Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities.

Section 32. A new Section 9.30.050, entitled Obscenity, is hereby added to the

Gig Harbor Municipal Code to read as follows:

9.30.050 Obscenity.

The following statutes of the state of Washington are adopted by reference:

RCW	
9.68.015	Obscene literatures, shows, etc., — Exemptions.
9.68.030	Indecent articles, etc.
9.68.050	"Erotic material" — Definitions.
9.68.060	"Erotic material" — Determination by court — Labeling — Penalties.
9.68.070	Prosecution for violation of RCW 9.68.060 — Defense.
9.68.080	Unlawful acts.
9.68.100	Exceptions to provisions of RCW 9.68.050 through 9.68.120.
9.68.110	Motion picture operator or projectionist exempt, when.
9.68.120	Provisions of RCW 9.68.050 through 9.68.120 exclusive.
9.68.130	"Sexually explicit material" — Defined — Unlawful display.

Section 33. Section 9.32.020 of the Gig Harbor Municipal Code is hereby amended and renumbered to read as follows:

9.32.010 Obstructing justice, criminal assistance, introducing contraband and related offenses.

The following state statutes are adopted by reference:

RCW

- 9.69.100 Duty of witness of offense against child or any violent offense - Penalty.
- 9A.72.010 Definitions.
- 9A.72.040 False swearing.
- 9A.72.050 Perjury and false swearing - Inconsistent statements - Degree of crime.
- 9A.72.060 False swearing — Retraction.
- 9A.72.070 False swearing — Irregularities no defense.
- 9A.72.080 Statement of what one does not know to be true.
- 9A.72.140 Jury tampering.
- 9A.72.150 Tampering with physical evidence.
- 9A.76.010 Definitions.
- 9A.76.020 Obstructing a law enforcement officer.
- 9A.76.030 Refusing to summon aid for a peace officer.
- 9A.76.040 Resisting arrest.
- 9A.76.050 Rendering criminal assistance Definition of term.
- 9A.76.060 Relative defined.
- 9A.76.070 Rendering criminal assistance in the first degree.
- 9A.76.080 Rendering criminal assistance in the second degree.
- 9A.76.090 Rendering criminal assistance in the third degree.
- 9A.76.100 Compounding.
- 9A.76.160 Introducing contraband in the third degree.
- 9A.76.170 Bail jumping.
- 9A.76.175 Making a false or misleading statement to a public servant.
- 9A.84.040 False reporting.

Section 34. Section 9.34.010 of the Gig Harbor Municipal Code is hereby amended and renumbered to read as follows:

9.34.010 Riot, failure to disperse, disorderly conduct.

The following state statutes are adopted by reference:

RCW

- 9.27.015 Interference, obstruction of any court, building or residence — Violations.
- 9A.84.010 Riot.
- 9A.84.020 Failure to disperse.
- 9A.84.030 Disorderly Conduct.

Section 35. Section 9.34.015 of the Gig Harbor Municipal Code is hereby

amended and renumbered to read as follows:

9.34.015 Disturbance of the peace - Penalty.

A. A person is guilty of disturbing the public peace if he or she intentionally engages in any conduct which tends to or does disturb the public peace.

B. The following are determined to disturb the public peace:

1. The frequent, repetitive or continuous sounding of any horn or siren, except as a warning of danger or as specifically permitted or required by law;

2. The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding, or testing of any motor vehicle, motorcycle, off-highway vehicle, watercraft, or internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property, unless otherwise authorized by law;

3. Yelling, shouting, whistling, or other raucous noises, on or near the public streets between the hours of 11:00 p.m. and 7:00 a.m.;

4. The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort, and repose of owners or possessors of real property, such as sounds from audio equipment, musical instruments, band sessions, or social gatherings;

5. Sound from motor vehicle sound systems, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than 50 feet from the vehicle itself,

6. Sound from audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than 30 feet from the source, unless it occurs within a multifamily unit such as a duplex, apartment or condominium, in which case it shall be a disturbance if it is clearly

audible to a neighbor, and disturbs his/her peace as described in subsection D above;

7. The repetitive noise created by animals under the control of individuals within the city, such as barking, or yelping dogs, or other such noises from animals, that unreasonably disturbs or interferes with the peace, comfort and repose of owners or possessors of real property; and

8. The foregoing provisions shall not apply to regularly scheduled events such as public address systems for baseball games, authorized street dances or other authorized community sponsored events. Safety devices, fire alarms, and emergency vehicles are exempt from these provisions.

C. Disturbing the public peace is a misdemeanor.

Section 36. Section 9.34.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.34.030 Privacy — Violating right of.

The following state statutes, including all future amendments, are adopted by reference:

RCW

- 9.73.010 Divulging telegram.
- 9.73.020 Opening sealed letter.
- 9.73.030 Intercepting, recording or divulging private communication — Consent required — Exceptions.
- 9.73.040 Intercepting private communication - Court order permitting interception - Grounds for issuance - Duration - Renewal.
- 9.73.050 Admissibility of intercepted communication and evidence.
- 9.73.070 Persons and activities excepted.
- 9.73.090 Police and fire personnel exempted from 9.73.030 — 9.73.080 — Standards.
- 9.73.095 Intercepting, recording, or divulging inmate conversations — Conditions — Notice.
- 9.73.100 Recordings available to defense counsel.
- 9.73.110 Intercepting, recording or disclosing private communications — Not unlawful for building owner — Conditions.
- 9.73.120 Reports — Required, when, contents.
- 9.73.130 Recording private communications — Authorization.

- 9.73.140 Recording private conversations — Authorization — Inventory.
- 9.73.200 Intercepting, transmitting or recording conversations concerning controlled substances — Findings.
- 9.73.210 Intercepting, transmitting or recording conversations concerning controlled substances — Authorization — Monthly report — Admissibility — Destruction of information.
- 9.73.220 Judicial authorities — Availability of Judge required.
- 9.73.230 Intercepting, transmitting or recording conversations concerning controlled substances — Conditions — Written reports required — Judicial review — Notice — Admissibility — Penalties.
- 9.73.240 Intercepting, transmitting, or recording conversations concerning controlled substances — Concurrent power of attorney general to investigate and prosecute.

Section 37. A new Section 9.34.060, entitled Abuse of Office, is hereby added to the Gig Harbor Municipal Code to read as follows:

9.34.060 Abuse of office.

The following state statutes are hereby adopted by reference:

- RCW
9A.80.010 Official misconduct.

Section 38. Section 9.36.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.36.010 Conduct prohibited.

The following state statutes are adopted by reference:

- RCW
9.02.050 Concealing birth.
- 9.03.010 Abandoning, discarding, refrigeration equipment.
- 9.03.020 Permitting unused equipment to remain on premises.
- 9.03.030 Violation of RCW 9.03.010 or
- 9.03.040 Keeping or storing equipment for sale.

- 9.91.010 Denial of civil rights — Terms defined.
- 9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
- 9.91.025 Unlawful bus conduct.
- 9.91.110 Meal buyers — Records of purchases Penalty.
- 9.91.130 Disposal of trash in charity donation receptacle.
- 9.91.140 Food stamps.
- 9.91.150 Tree spiking.

Section 39. Section 9.36.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.36.020 Littering and pollution.

The following state statutes are adopted by reference:

- RCW
- 70.93.060 Littering, prohibited - Penalties.
- 70.54.010 Polluting water supply.

Section 40. Section 9.36.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

9.36.040 Regulation of recreational vessels.

The following state statutes are hereby adopted by reference:

- RCW
- 88.12.010 Definitions.
- 88.12.015 Violations of chapter punishable of misdemeanors - Circumstances - Violations designated as civil infractions.
- 88.12.020 Operation of a vessel in a negligent manner - Penalty.
- 88.12.025 Operation of vessel in a reckless manner - Operation of a vessel under the influence of intoxicating liquor - Penalty.
- 88.12.035 Failure to stop for law enforcement officer.
- 88.12.075 Tampering with vessel lights or signals - Exhibiting false lights or signals - Penalty.
- 88.12.085 Muffler or underwater exhaust system required - Exemptions - Enforcement - Penalty.
- 88.12.115 Personal floatation devices required - Penalty.

- 88.12.125 Water skiing safety - Requirements.
- 88.12.135 Loading or powering vessel beyond safe operating ability - Penalties.
- 88.12.145 Operation of personal water craft - Prohibited activities - Penalties.
- 88.12.155 Duty of operator involved in collision, accident, or other casualties - Immunity from liability of persons rendering assistance - Penalties.

Section 41. Codes adopted by Reference. Pursuant to RCW 35A.12.140, one copy of the statutes adopted by reference herein have been and are now on file with the City Clerk and are available for examination by the public.

Section 42. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 43. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
CAROL A. MORRIS

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



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: PLANNING-BUILDING STAFF, RAY GILMORE
SUBJECT: CONTRACT FOR PROFESSIONAL SERVICES - BECKWITH CONSULTING; ENVIRONMENTAL IMPACT STATEMENT FOR COMPREHENSIVE PLAN UPDATE
DATE: JULY 22, 1998

BACKGROUND/INTRODUCTION

The City is currently updating the 1994 Comprehensive Plan. Most of the updates (Transportation, Sewer, Water, Parks) are significant and require a detailed analysis and assessment of the city's population/service capacity for the GMA twenty-year planning horizon. The environmental review process under SEPA is an important element of the Comprehensive Plan update and it provides review agencies and the general public the opportunity to participate in and contribute to this planning process.

POLICY ISSUES

The preparation of an EIS was planned for during the budgeting process. Beckwith Consulting Group has submitted a proposal and scope of work to prepare draft and final EIS's. The contract amount is \$19,215.00, which is within the amount budgeted for this project. The draft contract is enclosed for your review and consideration.

RECOMMENDATION

Staff recommends that the Council authorize the Mayor to execute a contract with Beckwith Consulting to prepare draft and final environmental impact statements for the comprehensive plan update, in an amount not to exceed \$19,215.00.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
THE BECKWITH CONSULTING GROUP**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Beckwith Consulting Group, organized under the laws of the State of Washington, located and doing business at Medina, Washington, (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in a substantial update of the Comprehensive Plan and desires that the Consultant perform services necessary for the preparation of an environmental impact statement (EIS) as authorized pursuant to RCW 43.21C.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated June 23 1998, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth.

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

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed nineteen thousand two-hundred fifteen dollars and no cents (\$19,215.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's billing rates shall be as described in Exhibit B.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within

fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed within 180 calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement at any time prior to completion of the work described in Exhibit A. Termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later. Such notice may be delivered to the Consultant in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II hereinafter. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Consultant shall be liable to the City for any additional costs incurred by it in the completion of the Scope of Work referenced as Exhibit A and

as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

VIII. Insurance

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

B. Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

3. Professional Liability insurance with limits no less than \$1,000,000 limit per occurrence.

C. Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies.

D. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Consultant's insurance shall be primary insurance as respects the City. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

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

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Public Works Director and the City shall determine the term or provision's true intent or meaning. The City 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.

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 Public Works Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be 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 action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

XVII. Assignment

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

XIII. Modification

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

XIX. Entire Agreement

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 1998.

THE CITY OF Gig Harbor

By: _____
Its Principal

By: _____
Mayor

Notices to be sent to:

Thomas Beckwith
The Beckwith Consulting Group
P.O. Box 162
Medina, WA 98039

Mr. Ray Gilmore
Director, Planning-Building Department
The City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

EXHIBIT "A"

Comprehensive Plan EIS Update
Gig Harbor, Washington

the Beckwith Consulting Group
22 July 1998

EXHIBIT "A"

Tasks of work

Following is a brief description of the work tasks outlined in the gantt chart on the facing page:

Scoping

1: Review existing planning documents

We will review the contents of the proposed Gig Harbor Comprehensive Plan Update, Sewer & Water Plan Updates, and all other supporting documents with you, your traffic, civil, and fiscal consultants, and any other appropriate parties at an introductory workshop.

2: Issue scope notice

We will develop (and you will distribute) a scoping notice in accordance with WAC 197-11-455. The notice will identify the alternatives and the elements of the environment to be included within the draft environmental impact statement (DEIS).

3: Review scoping notice responses

We will jointly review the letters of comment received on the EIS scoping notice following the 30 day review period with you at a workshop session. We will jointly review the comments and decide on the level of analysis appropriate.

Develop EIS elements

4: Develop texts and materials on existing conditions - conduct environmental analysis on alternatives

Based on the results of task 3, we will develop text and materials on existing conditions for the draft environmental impact statement (DEIS). We expect the Draft EIS could involve a comprehensive analysis of the following elements:

- general contents - including project summary description, alternatives to the proposal, mailing list and response to the scoping letters of comment.
- GMA checklist - including a summary of the proposed actions that corresponds with the content requirements of Washington State Department of Community Development's review requirements.

Natural environment

- earth - including topography, soils, and erosion hazards. The analysis will be based on the results of the sensitive area inventories for wetland, geological hazards, wildlife habitat, and other characteristics recently completed for the Washington State Growth Management Act (GMA), along with Soil Conservation Service maps, similar secondary document materials, and any on-site field observations that have been recorded since the original comprehensive plan EIS.

- air - including emission and dust hazards as a result of potential urbanization that have been recorded at the nearest Puget Sound Air Pollution Control Agency (PSAPCA) monitoring station. The analysis of project impacts and mitigations will be based on the consultant's previous use of PSAPCA data on similar projects.
- water - including surface and groundwater hazards to water quality as a result of potential urbanization.
- plants and animals - including the potential impact on fisheries resources as a result of additional runoff and possible nonpoint source pollution into Gig Harbor and the Donkey and Crescent Creek water basins, and Henderson Bay and the McCormick Creek water basin.
- energy and natural resources - including the potential loss of commercial resources due to increased urban development and the use of materials in construction activities.

Human environment

- health - including noise associated with additional urban development. The analysis of project impacts and mitigations will be based on the consultant's use of noise data in similar projects.
- land and shoreline use - including the plan's impact on shoreline management issues and designations, and conformance with the urban growth boundaries and populations delineated within governing land use plans and policies. The analysis of project impacts and mitigations will be based on the proposals and policies adopted within the proposed Pierce County comprehensive plan, Vision 2020 and the previous Gig Harbor comprehensive plan.
- population and housing - including the definition of planning units and their holding or population capacities under various alternative plan proposals including net density before and after market land discounts through the projection year 2018.
- transportation - including level-of-service (LOS) and traffic hazards associated with increased traffic and development densities. The analysis of impacts and mitigations will be based on the materials to be provided by the traffic consultant under separate city contract.
- public services - including impacts on existing capacities and plants, and level-of-service (LOS) of police, fire, schools, utilities, and other capital facilities affected by population growth under each alternative. The analysis of possible capital facilities requirements and impacts will be based on the materials to be provided by the traffic, civil, and fiscal consultant under separate city contract.
- urban design and aesthetics - including each alternative plan's potential impact on park and recreational elements and the visual and historical character of the older developed areas.

5: Review Draft EIS with Planning Director

We will submit a draft copy of the proposed DEIS to you for review. You will make any editing revisions appropriate, decide on the adequacy of the responses and determine, if appropriate, whether additional primary research is required over and above the sources and scope outlined in task 3 above.

6: Edit DEIS document

Based on the results of the reviews from task 5, we will develop additional information or text, revise graphics, and other tasks necessary for adequate conformance.

7: Copy/distribute DEIS

Based on the results of task 6, you will reproduce the necessary number of copies of the DEIS for mailing by department staff.

8: Conduct public hearing on DEIS

The Gig Harbor Planning Commission and Department, with our assistance if appropriate, may conduct the optional public hearing provided in WAC 197-11-455 to take testimony on the contents of the DEIS.

Respond to FEIS comments**9: Review DEIS comments with Planning Director**

We will review the results of the public hearing in task 8 and letters of comment received on the DEIS following the 30 day review period with you at a workshop session. We will jointly review the comments and decide on responses appropriate.

10: Develop Final EIS text elements

Based on the results of task 9, we will develop a Final EIS document. The FEIS will contain written responses to letters of comment and a summary of the proposal, any additional or explanatory narratives, and other particulars appropriate that have been defined in task 4 as the source of the analysis of impacts and mitigations.

11: Review Final EIS with Planning Director

We will submit the proposed Final EIS to you for review. You will make any editing revisions appropriate, decide on the adequacy of the responses, and determine, if appropriate, whether additional primary research is required over and above the sources and scope outlined in task 10 above.

12: Copy/distribute FEIS

Based on the results of task 11, you will reproduce and distribute the necessary number of copies of the FEIS and Notice of Availability.

Gantt Chart

Gig Harbor Comprehensive Plan EIS Update

Project Planner/Director - Tom Beckwith AICP
 Landscape Architect - Colie Hough-Back ASLA*
 Traffic Engineer - Joe Savage PE*

		time in weeks											labor hrs	labor cost	mtls cost	total cost					
		1	2	3	4	5	6	7	8	9	0	1					2	3	4	5	6
Scoping																					
1	Review existing plan documents	X															2	\$150	\$25	\$175	
2	Issue scoping notice	X															8	\$600	\$25	\$625	
3	Review scoping notice responses	X	O	O	O												2	\$150	\$25	\$175	
Develop DEIS elements																					
4	Develop Draft EIS element texts	X															12	\$900	\$25	\$925	
a	summary/alts/project/mailling/scoping ltrs/etc	X															16	\$1,200	\$25	\$1,225	
b	plan actions/GMA checklist	X															8	\$600	\$25	\$625	
c	earth	X	X														6	\$450	\$25	\$475	
d	air	X		X													12	\$900	\$25	\$925	
e	water	X															20	\$1,500	\$25	\$1,525	
f	plants and animals	X															36	\$2,700	\$25	\$2,725	
g	land use	X															16	\$1,200	\$25	\$1,225	
h	population/housing	X															12	\$900	\$25	\$925	
i	transportation	X															20	\$1,500	\$25	\$1,525	
j	public services	X															12	\$900	\$25	\$925	
k	parks and recreation	X	X														4	\$300	\$25	\$325	
l	archaeological/historical/aesthetic	X	X														4	\$300	\$100	\$400	
5	Review Draft EIS w/Planning Director	X	O	O													20	\$1,500	\$100	\$1,600	
6	Edit DEIS document	X	O	O																	
7	Copy/distribute Draft EIS	X																			
8	Conduct public hearing on DEIS	X																			
Respond FEIS comments																					
9	Review comments w/Planning Director	X	O	O													4	\$300	\$25	\$325	
10	Develop Final EIS text elements	X	X	X													16	\$1,200	\$50	\$1,250	
11	Review Final EIS w/Planning Director	O	O	O													4	\$300	\$100	\$400	
12	Copy/distribute Final EIS	X																			
* Woman/minority business enterprise (W/MBE)																					
		X															Subtotal	234	\$17,550	\$750	\$18,300
		O															Contingency	5%			\$915
																	Project budget				\$19,215

Assumptions by task:

- 2 We will compile and city will print and mail copies of the EIS scoping notice (assume a cost of \$2.00/copy if by consultant).
- 7 We will compile and city will print and mail copies of the DEIS (assume a cost of \$20.00/copy if by consultant).
- 12 We will compile and city will print and mail copies of the FEIS (assume a cost of \$10.00/copy if by consultant).
- (a) Estimates do not include costs for any additional consultation by city's traffic or fiscal consultants.



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *Wes Hill*
SUBJECT: TIB GRANT AGREEMENT - 38TH AVENUE SIDEWALK
IMPROVEMENTS (PHASE 2)
DATE: JULY 20, 1998

INTRODUCTION/BACKGROUND

On July 17, 1998, the State of Washington Transportation Improvement Board (TIB) confirmed approval of the grant application submitted earlier this year (under the Pedestrian Facilities Program, PFP) for design and construction of a sidewalk on the east side of 38th Avenue from 56th Street to 47th Street Court (38th Avenue Improvements, Phase 2). Conditions for accepting the TIB grant offer under the PFP program include the following:

1. Submittal of the executed "Project Agreement for Design and Construction Proposal" by August 6, 1998 (attached).
2. Completion of the sidewalk construction by August 1, 2000.

The agreement is a standard form agreement issued by the Transportation Improvement Board for the Pedestrian Facilities Program. Under the agreement, the TIB's conditions payment of its proportionate share of the eligible project costs primarily on the following items:

1. City agreement to comply with RCW 47.26 (TIB establishment, street project funding);
2. Conformance of sidewalk improvements to the grant application; and
3. City having the funds and paying its portion of the project's costs.

Design and construction costs for the sidewalk and related improvements are estimated at \$105,000, with the TIB grant covering \$81,600 of those costs (sidewalk portion only). The design cost includes a preliminary (approximately 30%) design for a full project improvement including bicycle lanes, curbs and gutters, storm sewer, lighting, and other improvements. The recently approved 1999-2004, 6-Year Transportation Improvement Program anticipated design in 2001 and sidewalk construction in 2002. The accelerated schedule will be shown in subsequent updates to the TIP.

FISCAL CONSIDERATIONS

The amounts for this project are set forth in the proposed 6-Year Transportation Improvement Program (TIP) for 1999 to 2004 that will be considered separately by Council.

RECOMMENDATION

Staff recommends that Council authorize execution of the attached "Project Agreement for Design and Construction Project" with the Transportation Improvement Board for the 38th Avenue (56th Street to 47th Street Court) sidewalk improvement project.



UATA/Pedestrian Facilities Program (PFP)

Project Agreement for Design and Construction Proposal

Lead Agency City of Gig Harbor	
Project Number 8-1-127(P02)-1	Authority Number 98300181
Project Title & Description 38th Avenue NW 47th Street Court NW to 56th Street NW	
Total Amount Authorized \$81,600	Authorization to Proceed Effective From July 13, 1998

IN CONSIDERATION of the allocation by the Transportation Improvement Board of UATA matching funds to the project and in the amount set out above, the agency hereby agrees that as condition precedent to payment of any UATA matching funds allocated at any time to the above referenced project, it accepts and will comply with the terms of this agreement, including the terms and conditions set forth in RCW 47.26; the applicable rules and regulations of the Transportation Improvement Board, and all representations made to the Transportation Improvement Board upon which the fund allocation was based; all of which are familiar to and within the knowledge of the agency and incorporated herein and made a part of this agreement, although not attached. The officer of the agency, by the signature below hereby certifies on behalf of the agency that federal, state, and local funds represented to be committed to the project will be available as necessary to implement the projected development of the project as set forth in the TIB Prospectus, acknowledges that funds hereby authorized are for the development of the design and construction proposal as defined by Chapter 167, Laws of 1988.

Projects in clean air non-attainment areas are subject to air quality conformity requirements as specified in RCW 70.94. The lead agency certifies that the project meets all applicable Clean Air Act requirements.

IN CONSIDERATION of the promises and performance of the stated conditions by the agency, the Transportation Improvement Board hereby agrees to reimburse the agency from UATA matching funds allocated, and not otherwise, for its reimbursable costs not to exceed the amount specified. Such obligation to reimburse UATA matching funds extends only to project costs incurred after the date of the Board's allocation of funds and authorization to proceed with the project.

LEAD AGENCY

TRANSPORTATION IMPROVEMENT BOARD

Signature of Chairman/Mayor

Date

Executive Director

Date



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *Wes Hill*
SUBJECT: WATER SYSTEM PLAN UPDATE - CONSULTANT SERVICES CONTRACT
DATE: JULY 22, 1998

INTRODUCTION/BACKGROUND

Council adopted the current Comprehensive Water System Plan in 1993. One of the 1998 budget objectives was to update the Water System Plan element to reflect the substantial changes that have occurred in the City since 1993 in conjunction with the update to the Comprehensive Plan.

This Department advertised for various consultant services, including comprehensive sanitary sewer planning services, in conjunction with the biannual update of the Consultant Services Roster. After reviewing the Consultant Services Roster, Gray & Osborne, Inc., was tentatively selected by staff as the most qualified firm to perform the update to the Comprehensive Water System Plan. Their selection was based on their technical proficiency in water system planning, previous work for the City including the current comprehensive water system plan, and familiarity with City facilities.

The proposed contract amount for the negotiated scope is thirty-two thousand nine-hundred two dollars and forty cents (\$32,902.40).

FISCAL CONSIDERATIONS

The 1998 budget provided \$30,000 for updating the Comprehensive Water System Plan. Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Gray & Osborne, Inc, in an amount not to exceed thirty-two thousand nine-hundred two dollars and forty cents (\$32,902.40).

**COMPREHENSIVE WATER PLAN UPDATE
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRAY & OSBORNE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gray & Osborne, Inc. organized under the laws of the State of Washington, located and doing business at 701 Dexter Avenue North, Suite 200, Seattle, Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the updating of the Comprehensive Water Plan and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated July 23, 1998, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as Exhibit A, 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:

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed thirty-two thousand nine hundred two dollars and forty cents (\$32,902.40) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's billing rates shall be as described in Exhibit B.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within

fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed within one hundred eighty (180) calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute

the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as Exhibit A and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or

in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

3. Professional Liability insurance with limits no less than \$1,000,000 limit per claim.

C. Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies.

D. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Consultant's insurance shall be primary insurance as respects the City. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all reasonable precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the reasonable 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 for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Public Works Director and the City shall determine the term or provision's true intent or meaning. The City 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.

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

XVII. Assignment

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

XIII. Modification

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

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part

of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of 23 July, 1998.

THE CITY OF Gig Harbor

By:  P.O.
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
Gray & Osborne, Inc.
701 Dexter Avenue North, Suite 200
Seattle, Washington 98109

Mr. Wes Hill
Director of Public Works
The City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

F:\USERS\MO\AGREEMNT\G&O-WH-98

Exhibit "A" – Scope of Work

SCOPE OF WORK

Gray and Osborne will prepare a Comprehensive Water System Plan update for the City of Gig Harbor in accordance with Department of Health Drinking Water Regulations, WAC 246-290, as amended; the 1990 Growth Management Act; the Safe Drinking Water Act as amended and the requirements of the Pierce County Coordinated Water System Plan Update.

The City of Gig Harbor's Comprehensive Water System Plan will be based on the City's previous Water Planning efforts. The Plan shall be prepared with regular review and input by City Staff. This will be facilitated by project milestones which will include the submittal of draft portions of the plan for City review and comment.

WATER COMPREHENSIVE PLAN**Task I - Assemble Background Data**

- Summarize the history and development of the water system.
- Conduct interviews with City staff.
- Summarize existing water system agreements and relationship with adjacent purveyors
- Develop goals and objectives for the Plan.

Task II - Service Area Characterization

- Identify existing water service areas.
- Examine the potential impact of the large number of small water system presently within the City's GMA.
- Identify land use/zoning designations in each service area using City's Comprehensive Plan.
- Update service area and land use on existing water system maps.
- Develop population projections by service area based on City's Comprehensive Plan.
- Include the possibility and implementation of regional projects.

Task III - Existing Water System

- Review and update, as necessary, existing minimum design criteria in relation to state requirements and current City standards. Review developer standards
- Update water system maps.
- Determine condition of existing system through review of existing maintenance records and field inspection.
- Review existing planning documents, engineering reports and other information to determine the history of the system and design water system capacity.

Exhibit "A" – Scope of Work

- Determine existing average day, maximum day, and maximum instantaneous demand for the service areas.
- Provide a discussion of the following City service area policies or ordinances as needed for plan approval by DOH.
 1. Local government policies affecting the provisions for water service
 2. Surcharges for outside customers
 3. Formation of local improvement districts
 4. Latecomer agreements
 5. Conditions of service
 6. Satellite system services

Task IV - Water Resources

- Review status of the existing water rights.
- Compare water usage projections to the available water rights.
- Water reuse issues

Task V - Future Water Demand

- Determine existing water needs and use by type of customer, including average day, maximum day, and maximum instantaneous demand flows within each pressure zone.
- To the extent feasible, estimate the amount of unaccounted for water in each pressure zone.
- Develop a graphical illustration of water demand for the previous five years.
- Indicate current conservation and education programs and estimate their impact on future water demand.
- Include current regulations requiring water conserving appliances and fixtures, and the impact conservation will have on future water demand.
- Calculate water demand for the existing and future service area, including a description and map by area within the existing and future service areas.
- Review and assess the potential for water re-use.

Task VI - Performance and Design Criteria

- Summarize the minimum performance and design criteria established by DOH, DOE, and Pierce County. The criteria will address:
 1. Water quality
 2. Average, peak daily, and peak hourly demand
 3. Fire Flows
 4. Minimum and maximum required pressures
 5. Minimum standards for construction and maintenance
 6. Multiple sources
- Describe how these criteria, standards, and policies will be applied to existing and future system components.

Exhibit "A" – Scope of Work

Task VII - Inventory of Existing System

- Provide a detailed narrative summary of critical system components.
- Develop a system schematic showing the City's pressure zones and critical water system components.
- Summarize and explain in detail the existing SCADA system.

Task VIII - Fire Flows

- Review and summarize current fire flow requirements based on City standards
- From available data, determine which structures within each zone require the largest fire flow volumes.
- Include fire flow tests performed by City staff, and tests conducted by the consultant in calibrating the hydraulic model. Compare this information with the requirements in each zone.

Task IX - Hydraulic Analysis

- Verify and update the existing model information.
- Perform site reconnaissance and develop background information on system control.
- Initiate model runs to compare model against fire flow data.
- Perform peak hour analysis of 1998, 2004, and 2018 with fire flow overlays.
- Develop and analyze the hydraulic considerations for different water supply scenarios.
- Provide hydraulic modeling training for City staff.

Task X - Water Quality

- Summarize source water quality data from City documents.
- Compare the water quality to Federal and State standards, and the water quality criteria developed in Performance and Design Criteria.
- Review, assess, and describe anticipated requirements of the SDWA. Summarize anticipated impacts to the City.
- Describe the City's efforts to satisfy customer concerns and complaints about water quality.
- Review and assess current water quality sampling sites. Where appropriate, recommend modifications to current sampling practices.
- Review and assess potential water quality issues attributed to different sources of supply.

Task XI - Conservation Program

- In cooperation with City staff, develop a conservation program in compliance with the latest DOH/DOE requirements and general format with the City's Plan.

Exhibit "A" – Scope of Work

- Present population and water use projections using information from the demand analysis section.
- Summarize, review, and analyze the effectiveness of the existing conservation program.
- Identify quantities and patterns of irrigation water use. Develop recommendations for reducing irrigation water use in the existing system as well as in future development.
- Review the feasibility of existing and proposed conservation measures with Public Works staff.
- Develop target water use reductions based on proposed conservation efforts.
- Develop a plan to include water re-use as part of the City's conservation program.

Task XII - System Deficiencies/Needed Improvements

- Develop a prioritized list of system deficiencies and needs, including operation, maintenance and emergency planning.
- Describe, assess, and justify detailed alternatives to correct system deficiencies and accommodate projected growth, including cost analyses.
- Develop a service area map which details proposed improvement alternatives.
- Prepare detailed engineering cost estimates for each system improvement.

Task XIII - Scheduling of Improvements

Task XIV - Financial Program

- Describe and assess the current financial status of the utility.
- List and discuss the available and potential revenue sources for system improvements.
- Project water utility revenues and expenses for the six year planning period.
- Assess the City's capability to obtain potential sources of revenue.
- Assess the impact of the financial program as an overlay to existing water rates.

APPENDIX

The City will complete the following tasks for inclusion in the plan appendix. Gray and Osborne will review for consistency with DOH requirements

Operations Program

- Review organization and certification.
 1. Prepare organizational chart listing personnel and responsibilities.
 2. Review current certification requirements and DOH compliance status.
- Identify major system components and outline maintenance and responsible personnel.
- Discuss routine and preventive maintenance.
 1. Review past maintenance practices and inspection routines.
 2. Describe routine and preventive maintenance program.

Exhibit "A" – Scope of Work

3. Provide routine maintenance recording forms.
- Discuss water quality monitoring.
 1. Review existing monitoring program and water quality data.
 2. Discuss Safe Drinking Water Act.
 3. Discuss City water quality monitoring schedule.
 4. Review DOH reporting requirements.
 5. Prepare press release and boil water notice language in the event of bacterial contamination.
 - Develop emergency response plan.
 1. Summarize natural and manmade potential hazards.
 2. Perform vulnerability assessment and levels of essential service.
 3. Suggest mitigating actions.
 4. Summarize preparedness planning including communications charts and emergency notification forms.
 5. Provide emergency response overview, plan implementation, and capital costs.

Wellhead Protection

- Delineate Wellhead protection areas
- Inventory potential contaminant sources within the established wellhead protection area
- Establish a spill response and contingency planning program
- Develop a wellhead protection area management plan.

Exhibit "B" – Billing Rates

GRAY & OSBORNE, INC.
 JULY 23, 1998
 CITY OF GIG HARBOR
 WATER COMPREHENSIVE PLAN
 ESTIMATE OF TASKS, MAN-HOURS & COST ESTIMATE

<u>TASK</u>	<u>Principal</u>	<u>Project Engineer</u>	<u>Civil Engineer</u>	<u>Technician</u>	
1 Assemble Background Data	1	4	16	10	
2 Service Area Characteristics	1	4	16	12	
3 Existing Water System	1	8	16	12	
4 Water Resources	1	10	12	8	
5 Future Water Demand	1	4	28	8	
6 Performance and Design Criteria	1	6	12		
7 Inventory of Existing System		8	10	6	
8 Fire Flows		4	10	8	
9 Hydraulic Analysis	1	10	40	16	
10 Water Quality	2	8	24		
11 Conservation Program	1	16	24	8	
12 System Deficiencies/Needed Improvements	3	14	14	8	
13 Scheduling of Improvements	1	4	6		
14 Financial Program		8	16		
15 Administration and Meetings (2)	3	12	12		
APPENDICES					
Operations Program		8			
Weilhead Protection Plan		8			
Man-hour Estimate:	17	136	256	96	
Salary Costs:	\$33.00	\$31.00	\$22.00	\$17.00	
Direct Labor Salary Cost:	\$561.00	\$4,216.00	\$5,632.00	\$1,632.00	
Subtotal Direct Labor Salary Cost:					\$12,041.00
Indirect Labor Costs (134%):					\$16,135.00
Subtotal					\$28,176.00
Fee (15%):					\$4,226.40
Mileage (@\$0.31/mile), Photos, Exhibits, and Printing Expenses:					\$500.00
TOTAL ESTIMATED PROJECT COSTS:					\$32,902.40



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *Wes Hill*
SUBJECT: SANITARY SEWER SYSTEM PLAN UPDATE - CONSULTANT SERVICES
CONTRACT
DATE: JULY 22, 1998

INTRODUCTION/BACKGROUND

Council adopted the current Sanitary Sewer Plan in 1993. One of the 1998 budget objectives was to update the Sanitary Sewer Plan element to reflect the substantial changes that have occurred in the City since 1993 in conjunction with the update to the Comprehensive Plan.

This Department advertised for various consultant services, including comprehensive sanitary sewer planning services, in conjunction with the biannual update of the Consultant Services Roster. After reviewing the Consultant Services Roster, Gray & Osborne, Inc., was tentatively selected by staff as the most qualified firm to perform the update to the Sanitary Sewer Plan. Their selection was based on their technical proficiency in sanitary sewer planning, previous work for the City, and familiarity with City facilities.

The proposed contract amount for the negotiated scope is forty-two thousand two-hundred thirty-two dollars (\$42,232.00).

FISCAL CONSIDERATIONS

The 1998 budget provided \$40,000 for updating the Comprehensive Sanitary Sewer Plan. Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Gray & Osborne, Inc, in an amount not to exceed forty-two thousand two-hundred thirty-two dollars (\$42,232.00).

**COMPREHENSIVE SANITARY SEWER PLAN UPDATE
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRAY & OSBORNE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gray & Osborne, Inc. organized under the laws of the State of Washington, located and doing business at 701 Dexter Avenue North, Suite 200, Seattle, Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the updating of the Comprehensive Sanitary Sewer Plan and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated July 23, 1998, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as Exhibit A, 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:

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed forty-two thousand two hundred thirty-two dollars and no cents (\$42,232.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's billing rates shall be as described in Exhibit B.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within

fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed within one hundred eighty (180) calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute

the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as Exhibit A and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or

in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

3. Professional Liability insurance with limits no less than \$1,000,000 limit per claim.

C. Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies.

D. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Consultant's insurance shall be primary insurance as respects the City. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all reasonable precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the reasonable 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 for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Public Works Director and the City shall determine the term or provision's true intent or meaning. The City 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.

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

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

XIII. Modification

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

of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of July, 1998.

THE CITY OF Gig Harbor

By: [Signature]
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
Gray & Osborne, Inc.
701 Dexter Avenue North, Suite 200
Seattle, Washington 98109

Mr. Wes Hill
Director of Public Works
The City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

CITY OF GIG HARBOR

Exhibit "A" – Scope of Work

SEWER COMPREHENSIVE PLAN UPDATE

Prepare a Sewer Comprehensive Plan Update that will enable the City to plan for growth of its wastewater collection, transmission and treatment system over the next 20 years in a manner consistent with the goals, policies and objectives of the Growth Management Act and in accordance with the requirements of the Department of Ecology for this type of report, as indicated in WAC 173-240-050.

Task 1 - Administration and Liaison

Work within this task will include:

- A. Project management and coordination of general sewer planning and GMA planning with City staff, Pierce County Planning, and the Department of Ecology, and project meetings and presentations to the Planning Commission and City Council.

Task 2 - Data Acquisition

- A. Obtain the following information from the City from the 1993 Comprehensive Sewer Plan, most recent Comprehensive Plan, or from the City for facilities within the service area:
 - a. Equivalent Residential Housing Units based on current land use, zoning and comprehensive plan designation of parcels.
 - b. Commercial/Institutional/Industrial Facility Information
 - c. Land Use
 - d. Sewage Flow Data from 1995 through the current year. Use run-time pump station data for 1995 through the current year.
- B. Obtain current and future population data for the City based on Office of Fiscal Management, Puget Sound Regional Council, and Pierce County information from the most recent Comprehensive Plan.

Task 3 - Existing Wastewater Collection and Transmission Facilities

Work within this task will include:

Exhibit "A" – Scope of Work

- A. Develop a system map from the 1993 Comprehensive Sewer Plan map and as-builts of developments built since 1993. The map will identify lateral and trunklines, interceptors, lift stations, force mains, manholes, and manhole invert elevations.
- B. Develop an inventory of the sewer system which includes manhole invert elevations, pipe diameters, pipe length between manholes, and hydraulic capacity of pipe segments.

Task 4 - Planning

Work within this task will include:

- A. Coordinate with Pierce County, Tacoma-Pierce County Health Department, DCTED, PSRC, and the Department of Ecology (DOE).
- B. Define drainage basins based on topography within existing and future service area which are defined in the 1993 Comprehensive Sewer Plan and within existing and probable Urban Growth Area (UGA) boundaries.
- C. Confirm service area boundaries as presently developed and proposed, relative to updated land use, projected land use, and estimated sewage generation information. Propose recommended changes to service area as warranted.
- D. Update population, land use, housing, recreational use, and commercial, institutional, and industrial facility inventory for the current and proposed City of Gig Harbor service area.
- E. Update population and land use projections for the City of Gig Harbor service area utilizing comprehensive land use plan, OFM, DCTED, and PSRC data.
- F. Meet with the jurisdictional agencies to review the sewer system planning and service area information alternatives developed under this task and Task 2 and obtain input.
- G. Refine and articulate the City's Comprehensive Plan goals, policies and objectives as they relate to the Comprehensive Service Plan.

Task 5 - Wastewater Flows

Work within this task will include:

- A. Determine the quantity of existing wastewater flows from the various drainage basins in the service area using treatment plant flow meter and run-time pump station data.

Exhibit "A" – Scope of Work

- B. Estimate the extent and impact of infiltration and inflow problems in the study area based on run-time pump station data.
- C. Determine per capita wastewater flow and per capita BOD contribution based on the population information developed in Task 4 and treatment plant flow records.
- D. Obtain input from City regarding their projected future capacity needs.
- E. Project the future wastewater flow and characteristics (based on the current Land Use Plan).

Task 6 - Hydraulic Model

Work within this task will include:

- A. Develop a computer model of the City of Gig Harbor sewer system and estimate system capacity of the trunk lines under existing and future conditions. All major trunklines and all lift stations and force mains will be included in the model.

Task 7 - Treatment and Collection System Alternatives

Work within this task will include:

Collection System

- A. Determine the capacity of the existing collection system.
- B. Prioritize the collection system improvements required to provide adequate capacity to serve the City of Gig Harbor service area at staged build out through the 20-year planning period.
- C. Develop and evaluate collection system alternatives for providing sewer service to currently unsewered areas in the City of Gig Harbor service area.
- D. Develop a preliminary cost estimate for each of the collection system alternatives identified.

Wastewater Treatment Facilities Capacity

- A. Review current hydraulic and organic loading data and compare to the capacities of each individual process unit and NPDES permitted WWTP capacity..
- B. Evaluate water conservation, and reuse as methods of extending treatment capacity and collection system hydraulic capacity needs thereby delaying future expansion.

Exhibit "A" – Scope of Work

- C. Identify possible improvements to the existing treatment facilities as may be required to meet the intermediate and long term treatment capacity needs.
- D. Identify possible facilities which may be required to meet future regulatory agency requirements.
- E. Review and update the recommendations in the 1993 Plan for treatment facilities improvements required to meet long-term capacity and treatment needs.
- F. Develop preliminary recommendations for phasing of specific treatment facilities, modifications, and upgrades required to meet treatment capacity needs.
- G. Develop preliminary cost estimates for each of the treatment facilities improvements identified.

Task 8 - Preferred Alternative

Work within this task will include:

- A. Select the preferred alternative for providing adequate sewer collection facilities to the City of Gig Harbor sewer service area.
- B. Select the preferred alternative for providing adequate treatment capacity for the City of Gig Harbor sewer service area.
- C. Select conservation and reuse alternatives viable for the City of Gig Harbor.
- D. Meet with the City to review the preferred alternatives for providing sewer collection and transmission facilities for the City of Gig Harbor service area.

Task 9 - Existing Wastewater Facilities Ordinances and Programs

Work within this task will include:

- A. Prepare an inventory and review existing ordinances and programs which regulate the sewer system.
- B. Review the City's existing developer agreements and sewer extension policies.
- C. Recommend modifications to the existing ordinances, programs and agreements.

Task 10 - Capital Improvement Plan

Work within this task will include:

Exhibit "A" – Scope of Work

- A. Develop a detailed plan, schedule and cost estimate for sewer replacements, upgrades and expansions identified as the preferred alternative for providing sewage collection for the City of Gig Harbor service area.
- B. Develop a detailed plan, schedule and cost estimate for the treatment plant modifications as identified for providing treatment for wastewater flows from the City of Gig Harbor service area.
- C. Review the City's financial capabilities, outstanding indebtedness and existing rate structure.
- D. Review the availability of outside loans and grants.
- E. Develop a financial plan to implement the proposed projects.
- F. Develop cost per service information for the preferred alternative and financial plan.
- G. Meet with the City to review the Capital Improvement Plan.
- H. Integrate the Capital Improvement Plan with the Capital Facilities Estimate.

Task 11 - Mapping

Work within this task will include:

- A. Develop a map of the preferred alternative for sewer system expansion and upgrade, showing future service area, basins, land use, type and size of sewer lines, and lift stations. Mapping to be in AutoCAD Release 14 format using Soft Disk and capable of expansion into a G.I.S. format.

Task 12 - Environmental Assessment

Work within this task will include:

- A. Prepare the SEPA checklist for this planning document not including development of any detailed mitigation measures.

Deliverables

Draft Report: 5 copies
Final Report: 10 copies

Work products shall be in Microsoft Word for Windows format and AutoCad Release 14 format using Soft Disk as applicable.

**TASKS & ESTIMATED COSTS
CITY OF GIG HARBOR
SEWER COMPREHENSIVE PLAN UPDATE**

Exhibit "B" - Billing Rates

	<u>Report Items</u>	<u>Proj. Mgr.</u>	<u>Proj. Eng.</u>	<u>Senior Design Eng.</u>	<u>Junior Eng.</u>	<u>Tech/ Draftsman</u>
Task 1	Administration.	16	16	---	---	---
Task 2	Data Acquisition	---	8	8	16	---
Task 3	Existing Wastewater Collection & Transmission Facilities	4	8	8	16	16
Task 4	Planning	4	16	8	16	---
Task 5	Wastewater Flows	4	16	16	8	---
Task 6	Hydraulic Model	4	8	8	60	8
Task 7	Treatment and Collection System Alternatives	16	56	40	16	24
Task 8	Preferred Alternatives	8	16	---	---	---
Task 9	Existing Wastewater Facilities Ordinances	4	8	---	---	---
Task 10	Capital Improvement Plan	8	32	8	---	---
Task 11	Mapping	4	8	8	---	40
Task 12	Environmental Assessment	2	4	---	16	---
	Manhour Estimate	74	196	104	148	88
	Estimated Hourly Rate	(36)	(29)	(26)	(20)	(17)
	Salary Costs	\$2,664	\$5,684	\$2,704	\$2,960	\$1,496
	Total Direct Salary Cost:					\$15,508.00
	Indirect Costs (134%):					\$20,781.00
	Labor Cost:					\$36,289.00
	Fee (15%):					\$ 5,443.00
	Subtotal Salary Cost:					\$41,732.00
	Direct Non-Salary: (Printing, Mileage & Expenses)					\$ 500.00
	TOTAL COST					<u>\$42,232.00</u>



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *WH*
SUBJECT: COMPREHENSIVE STORMWATER SYSTEM PLAN - CONSULTANT SERVICES CONTRACT
DATE: JULY 22, 1998

INTRODUCTION/BACKGROUND

In November 1987, a Stormwater Master Plan was prepared by the consulting firm of URS Corporation under contract with the City. One of the 1998 budget objectives was to develop a new Comprehensive Stormwater Management Plan in conjunction with the update to the Comprehensive Plan. In addition, the Plan was to evaluate several stormwater basins in the City, including the Avalon Woods storm drainage system relative to current standards. The Department of Ecology has set a deadline of the end of this year for adoption of a basic stormwater management program conforming to their standards.

This Department advertised for various consultant services, including comprehensive sanitary sewer planning services, in conjunction with the biannual update of the Consultant Services Roster. After reviewing the Consultant Services Roster, Gray & Osborne, Inc., was tentatively selected by staff as the most qualified firm to develop the Comprehensive Stormwater Management Plan. Their selection was based on their technical proficiency in stormwater management planning, focus on municipal clients, previous for the City, and familiarity with the Gig Harbor area.

The proposed contract amount for the negotiated scope is forty-five thousand dollars (\$45,000.00).

FISCAL CONSIDERATIONS

The 1998 budget provided \$45,000 for updating the Comprehensive Stormwater System Plan. Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Gray & Osborne, Inc, in an amount not to exceed forty-five thousand dollars (\$45,000.00).

**COMPREHENSIVE STORM SEWER PLAN UPDATE
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRAY & OSBORNE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gray & Osborne, Inc. organized under the laws of the State of Washington, located and doing business at 701 Dexter Avenue North, Suite 200, Seattle, Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the updating of the Comprehensive Storm Sewer Plan and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated July 23, 1998, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as Exhibit A, 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:

I. Description of Work

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

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed four thousand five hundred dollars and no cents (\$45,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's billing rates shall be as described in Exhibit B.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within

fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

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

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed within one hundred eighty (180) calendar days of the execution of this Agreement; provided however, that additional time shall be granted by the City for excusable delays or extra work.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute

the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as Exhibit A and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

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

VII. Indemnification

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

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or

in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

3. Professional Liability insurance with limits no less than \$1,000,000 limit per claim.

C. Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant. The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies.

D. The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The Consultant's insurance shall be primary insurance as respects the City. The City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

IX. Exchange of Information

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

X. Ownership and Use of Records and Documents

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

XI. City's Right of Inspection

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

XII. Consultant to Maintain Records to Support Independent Contractor Status

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

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all reasonable precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the reasonable 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 for use in connection with the work.

XIV. Non-Waiver of Breach

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

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Public Works Director and the City shall determine the term or provision's true intent or meaning. The City 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.

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

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

XVII. Assignment

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

XIII. Modification

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

of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of 23 July, 1998.

THE CITY OF Gig Harbor

By: [Signature]
Its Principal

By: _____
Mayor

Notices to be sent to:

CONSULTANT
Gray & Osborne, Inc.
701 Dexter Avenue North, Suite 200
Seattle, Washington 98109

Mr. Wes Hill
Director of Public Works
The City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

Exhibit "A" – Scope of Work

**CITY OF GIG HARBOR
STORMWATER COMPREHENSIVE PLAN****SCOPE OF WORK****Task 1 - Study Area Characterization and Description**

The Engineer shall develop a list of data necessary for the characterization and description of the City of Gig Harbor drainage basins and immediately adjacent areas which may effect these drainage basins. Information shall include, but not be limited to, as-built maps, existing studies, reports, topographic maps, land use maps, maintenance records, regulations and ordinances, soil maps, aerial photographs, rainfall data and environmental studies.

Identification of stormwater related problems and the integrity of proposed solutions are predicated on accurate delineation of drainage basins, drainage networks, and land use. For this reason, it is essential that the review of maps, plans and studies be performed thoroughly. This drainage information forms the basis for the subsequent analysis and recommendations, and must be verified and authenticated. Existing mapping will be used for the plan. Site field verification of stormwater facility location and elevation will not be preformed under this contract.

A drainage area characterization describing existing physical conditions of the study area will be developed. The characterization will describe biological, physical, geologic, land use, topographic, climatic and other characteristics of the study area.

A project area maps will be developed. The maps will consist of a base map with the following overlays:

- Existing and future land use
- Critical areas
- Existing facility inventory, and
- Existing drainage problems

Task 2 - Identify Environmental and Water Quality Problems

The Engineer shall collect existing information regarding water quality, habitat and biological conditions for the project area. The Engineer shall conduct a field reconnaissance to describe the water quality goals for the project area, including expected Phase II of the NPDES Stormwater Regulations and potential salmon issues which will protect and enhance the beneficial uses of the water resources impacted by stormwater drainage from the City to the highest degree possible. Pollution sources will be identified

Exhibit "A" – Scope of Work

and differentiated using filed surveys, GIS land use maps, Pierce County records, interviews with the City, County and DOE staffs.

The Engineer will complete a water quality assessment that describes existing water quality and associated habitat and biological conditions in the project area. The assessment will identify point and nonpoint sources of pollution based on field observation. The assessment will include a photographic record of the reconnaissance. Existing and proposed land uses will be used to describe potential pollutant loadings within the study area.

The water quality goals for the study area will be defined. The water quality goals will be in agreement with the Department of Ecology's Stormwater Management Manual for the Puget Sound Basin.

Task 3 - Specific Basin Analysis

The plan, while written to include all of the City of Gig Harbor will provided detailed analysis of water quantity and water quality concerns in the following three basin.

- Donkey Creek
- Quail Run
- Downtown Corridor
- Limited known problem areas

The detailed analysis of the Avalon Woods area will include a review of the structural soundness of the existing detention structure and a review of the adequacy of the existing system to meet current Department of Ecology standards for water quantity and water quality control.

Task 4 - Hydrologic/Hydraulic Model

The Engineer shall complete a limited hydrologic/hydraulic engineering analysis of the selected project areas discussed in Task 3 using a commercially available model. The analysis will determine the adequacy of the existing drainage systems to eliminate or minimize quantity related impacts to water quality and areas of inadequately sized drainage facilities. Existing stormwater facility inventories and as-built plans will be used to produce the model. The model will be calibrated using existing rainfall, flood plain and limited channel flow and monitoring data.

The model will be used for the following eight land use and design storm scenarios:

- Existing Land Use - 6-month, 24-hour storm event
- Existing Land Use - 2-year, 24-hour storm event
- Existing Land Use - 25-year, 24-hour storm event

Exhibit "A" - Scope of Work

Existing Land Use - 100-year, 24-hour storm event
Future Land Use - 6-month, 24-hour storm event
Future Land Use - 2-year, 24-hour storm event
Future Land Use - 100-year, 24-hour storm event

The Engineer will use the results of the model to develop a planning level analysis, using water quality information found in the literature, to estimate the nonpoint pollution loads which would be expected in the runoff from various storm events. The data generated in the system inventory and the computer modeling will become property of the City. The data will be in a clearly documented format which would allow its use by the City in the future.

Task 5 - Water Quality Management Element

The Engineer shall identify existing and future water quality problems and sources of the problems based on an analysis of the preceding tasks. The Engineer will identify structural and nonstructural measures which can be implemented to provide pollution source abatement and prevention alternatives for the study area. Abatement and prevention alternatives will include maintenance activities, specific monitoring programs, public information and education programs, enforcement actions, and financing options. Cost estimates will be developed for each of the recommended solutions.

The Engineer shall develop priorities for the water quality components of a capital improvement plan (CIP). Capital improvements for each of the sub-basins will be integrated into the CIP which will include a master list of proposed capital improvement projects with a corresponding maintenance schedule, a description of the projects, and a capital improvement overlay for the base map. The focus of the CIP will be on improvements with the greatest water quality benefits.

The Engineer shall review existing ordinances and development standards and determine alternative control strategies and policies which could be developed to properly manage stormwater drainage within the project area. Appropriate surface water development criteria which are consistent with the management strategies and land use design storm scenarios will be developed.

The Engineer shall develop ordinance requirements which may be needed to implement the proposed storm water management strategy and development standards. Ordinances shall meet, to the extent practicable, the minimum requirements of the Puget Sound Water Quality Management Plan, Section SW-1 and SW-2 and the elements from SW-4.2.

Task 6 - Water Quantity Management Element

The Engineer shall examine the results of the hydrologic/hydraulic model and existing records to determine areas of the stormwater conveyance system that are currently under

Exhibit "A" – Scope of Work

capacity or will be under capacity for the projected growth for the 25-year and 100-year storm events.

The Engineer will develop Water Quantity Management goals for the study area. Structural and nonstructural management strategies will be developed to provide adequate conveyance capacity to control the flood hazard areas identified in the Plan. Water quantity management strategies will be evaluated for cost and cost effectiveness, environmental impact, practicality and financial feasibility of the recommended improvements and consistency with applicable state and local rules, regulation, policies and plans.

The Engineer shall develop priorities for the water quantity component of a capital improvement plan (CIP). Capital improvements for each of the sub-basins will be integrated into the CIP which will include a master list of proposed capital improvement projects with a corresponding maintenance schedule, a description of the projects, and a capital improvement overlay for the base map. The focus of the CIP will be on improvements with the greatest water quantity control benefits.

The Engineer shall review existing ordinances and development standards and determine alternative control strategies and policies which could be developed to properly manage stormwater drainage within the project area. Appropriate surface water development design criteria which are consistent with the management strategies and land use design storm scenarios will be developed.

Task 7 - Citizen Involvement

The Engineer at the request of the city shall attend, participate in and/or conduct public meetings to solicit public comment concerning the Plan. The Engineer will prepare brief newspaper articles, notices or flyers to inform the citizens about the stormwater plan at the request of the City.

Task 8 - Stormwater Management Plan and Recommendations

The Engineer shall produce a unified document which contains the information generated in Tasks 1 through 6, and makes recommendations for structural and nonstructural improvements, including Best Management Practices, which the City can implement to minimize or eliminate the detrimental impact from stormwater runoff. The Stormwater Management Plan will contain a comprehensive capital improvement plan including an implementation schedule, possible methods of financing improvements including utility rates, grants, loans and volunteer labor and policy recommendations. The existing City stormwater ordinances will be reviewed and supplemented where necessary to reflect the recommendations of the stormwater management plan.

The Engineer shall complete a SEPA checklist for the final document.

Exhibit "A" – Scope of Work

The Plan will fulfill the basic and supplemental requirements for urban stormwater programs as outlined in the DOE Stormwater Manual for the Puget Sound Basin, 1992, page I-1-6.

Exhibit "B" – Billing Rates

GRAY & OSBORNE, INC.
 JULY 23, 1998
 CITY OF GIG HARBOR
 STORMWATER COMPREHENSIVE PLAN
 ESTIMATE OF TASKS, MAN-HOURS & COST ESTIMATE

<u>TASK</u>	<u>Principal</u>	<u>Project Engineer</u>	<u>Civil Engineer</u>	<u>Technician</u>
1 Study Area Characterization and Description	4	16	32	32
2 Identify Environ. and Water Quality Problems	6	16	40	0
3 Specific Basin Analysis	6	16	40	40
4 Hydrologic/Hydraulic Model	6	24	60	40
5 Water Quality Management Element	6	16	32	0
6 Water Quantity Management Element	6	16	32	0
7 Citizen Involvement	6	16	16	0
8 Stormwater Management Plan and Recommend.	8	24	80	24
9 Administration and Meetings (2)	8	12	0	0
Man-hour Estimate:	56	156	332	136
Salary Costs:	\$33.00	\$31.00	\$22.00	\$17.00
Direct Labor Salary Cost:	\$1,848.00	\$4,836.00	\$7,304.00	\$2,312.00
Subtotal Direct Labor Salary Cost:				\$16,300.00
Indirect Labor Costs (134%):				\$21,842.00
Subtotal				\$38,142.00
Fee (15%):				\$5,721.30
Mileage (@\$0.31/mile), Photos, Exhibits, and Printing Expenses:				\$1,136.70
TOTAL ESTIMATED PROJECT COSTS:				\$45,000.00



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: WILKINSON PROPERTY ACQUISITION
DATE: JULY 21, 1998

MMA

INFORMATION/BACKGROUND

The entire 17-acre Wilkinson Property is not readily available for purchase by the city. Mr. Darrell Rodman, the owner, has expressed no interest in selling the entire property. At this time, in order to acquire the property as envisioned in the city's Comprehensive Parks, Recreation and Open Space Plan, it will be necessary to condemn the property. In a condemnation action the city will pay the property owner fair market value.

POLICY CONSIDERATIONS

This proposed acquisition of property is consistent with the adopted 1996 Comprehensive Parks, Recreation and Open Space Plan.

As an identified Resource Park, the property contains significant system of wetlands located on the property. The proposed resource area will provide public access to significant environmental features within the city limits, as well conserving and providing access to historic improvements on the landscape. Some of the uplands or dry portions of the property, including the original homestead, could be developed to provide a trailhead and trail system into this high quality natural area. As envisioned in the comprehensive plan, this site can be improved with a variety of outdoor facilities including picnic facilities, playgrounds, and open grassy playfields. Supporting services may also be developed including parking, restrooms and utilities (p.176, GHPROSP).

The bridge to the Purdy powerline trail system extends through the property and could include multi-purpose trails intended to link major environmental assets, park and recreational facilities, community centers, and historical features throughout the urban growth area (Multipurpose Trails, p.178; Hiking and Walking Trails, p. 193; Off-Road mountain bike Trails, p.208, GHPROSP).

Also identified in Community/Recreation Centers element of the Comprehensive Plan, the Wilkinson Wetlands/Homestead acquisition could allow the city to renovate and retrofit the homestead as an interpretive center and community facility (p. 240 GHPROSP). This possible use of the property includes preservation of the house, barn, pasture and holly tree grove as a local "historic site." This scenario provides visitors and residents with an idea of what farms in

Gig Harbor and environs were like during the first part of this century. Local 4-H groups, the draft-horse club, gardening clubs and similar groups might be invited to use and maintain sections of the historic planting area, pasture and holly tree grove. Visitors would get the impression of a working farm and community groups would have the use of a great outdoor site. The historical society could be contracted to provide interpretation of the site. This could include any or all of the following: furnishing the barn with period artifacts and providing interpretive tours; creating displays or interpretive panels for building interiors and grounds; providing interpretive tours of the pasture and holly tree grove. There is also the possibility to develop interpretation around the wetland.

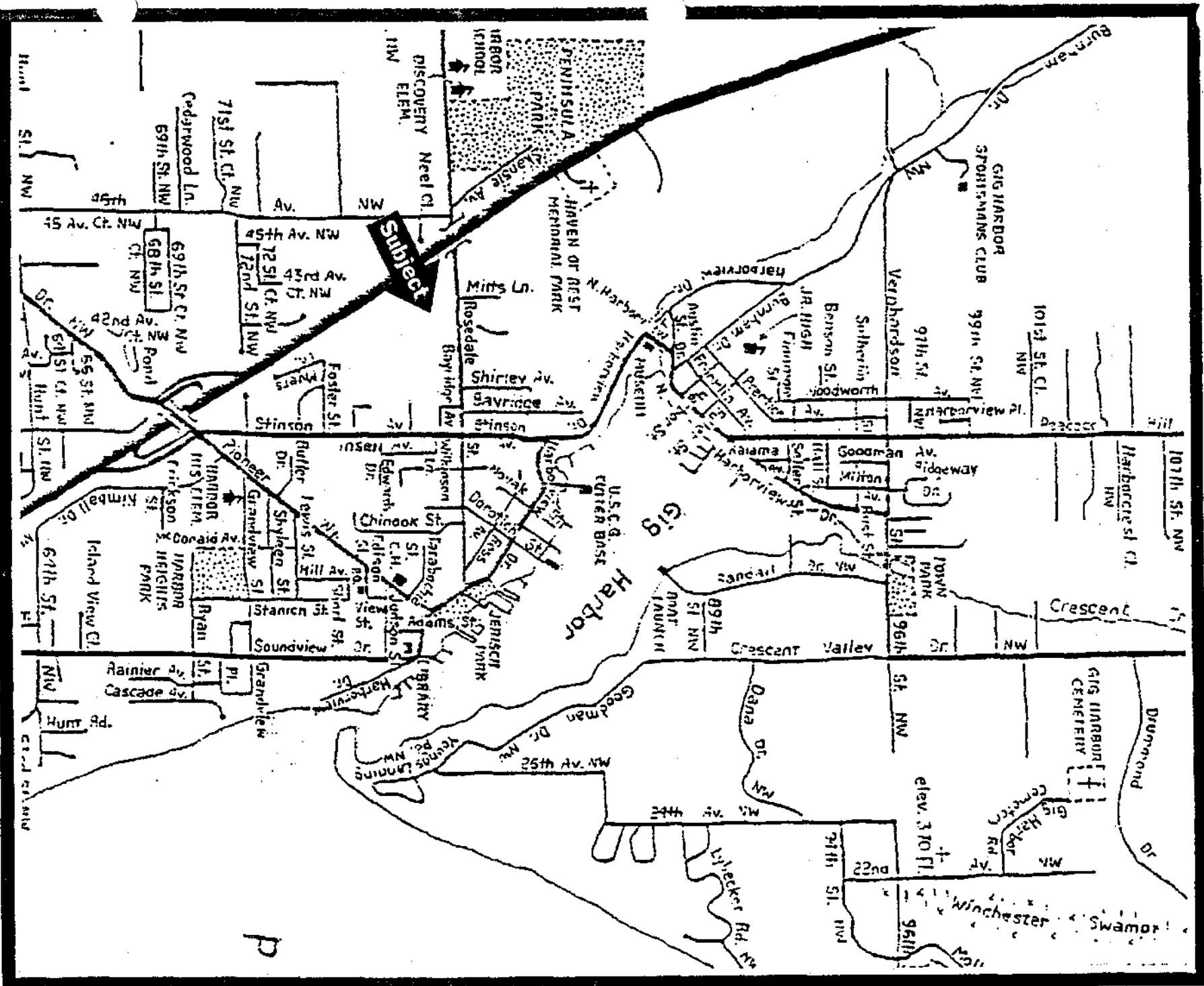
FISCAL CONSIDERATIONS

The Capital Improvement Plan 1996-2002 in the City of Gig Harbor Parks, Recreation and Open Space Plan indicates that the Wilkinson Wetlands is the only "high" priority project in Conservancy/Resource Parks category at an anticipated funding cost of approximately \$550,000, *including* acquisition, trail development, parking and restrooms.

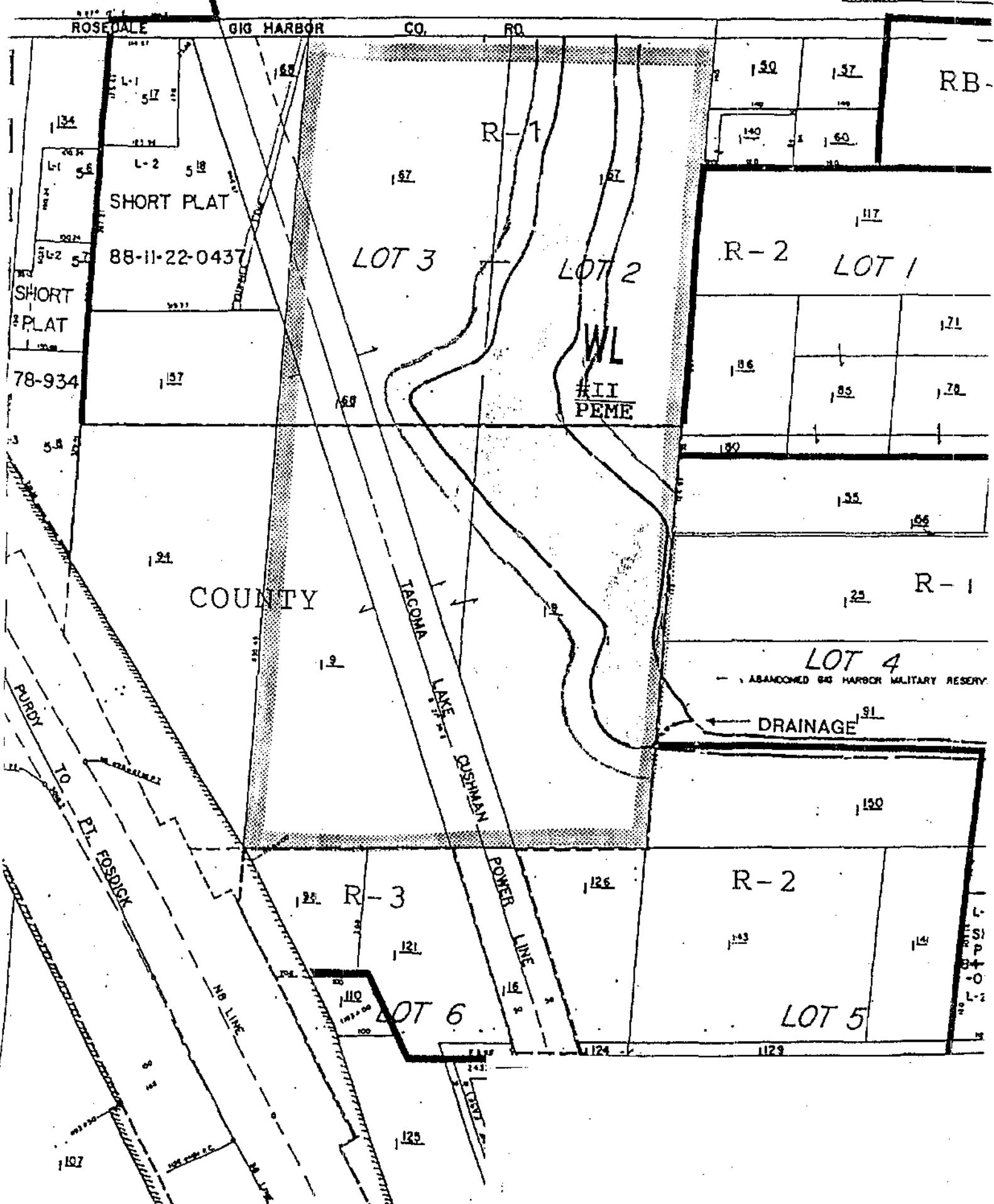
RECOMMENDATION

This is the first reading of this ordinance. Staff recommends approval after the second reading.

Area Map



✓ Subject Site



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN PROPERTY FOR THE PURPOSE OF ESTABLISHING A WETLAND RESOURCE CONSERVANCY PARK, TO BE KNOWN AS THE WILKINSON PARK, TOGETHER WITH ALL RELATED IMPROVEMENTS NECESSARY FOR THE PARK PROJECT AND IN CONFORMANCE WITH APPLICABLE CITY STANDARDS; PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY THEREFORE; PROVIDING THAT THE ENTIRE COST THEREOF SHALL BE PAID FROM CITY FUNDS; AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTION AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.

WHEREAS, the acquisition of property for and the establishment of the Wilkinson Park project is an important part of the City's Comprehensive Parks Plan; and

WHEREAS, the City has attempted to negotiate the purchase of all necessary property rights for the Park project from the property owners but has reached an impasse; and

WHEREAS, in view of the impasse reached with the property owners, the City Council has determined to condemn the property necessary for establishment of the Wilkinson Park project; now, therefore,

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

Section 1. Public Use. The City Council acknowledges that it has the authority, pursuant to RCW 8.12.030, to condemn land or property, or to damage the same, for public parks.

Section 2. Need for Property. The public health, safety, necessity and convenience

demand that the Wilkinson Park project be established, and that certain property be condemned, appropriated, taken and damaged for the establishment of the Park and installation of said improvements as provided by this ordinance.

Section 3. Declaration of Necessity. The City Council of the City of Gig Harbor, after hearing the report of City Staff and reviewing the planned improvements for the project, hereby declares that the property described on Exhibit A which is attached hereto and incorporated herein by this reference as if fully set forth, is necessary for the public use, i.e., for the establishment of the Wilkinson Park project, including property acquisition and park improvements.

Section 4. Condemnation. The real property described on Exhibit A shall be, and the same is hereby condemned, appropriated, taken and damaged for the purposes of establishment of the Wilkinson Park project, including property acquisition and installation of necessary park improvements to make a complete project in accordance with City of Gig Harbor standards. Condemnation of the property is subject to the payment of just compensation to the owners thereof in the manner provided by law.

Section 5. Authority of the City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the proceedings provided by law to condemn, take and appropriate the property and/or property rights necessary to carry out the provisions of this ordinance, and is further authorized in conducting said condemnation proceedings, and for the purpose of minimizing damages, to stipulate as to the use of the property hereby authorized to be condemned and appropriated and as to the reservation of any right of use of the owner, provided that such reservation does not interfere with the use of said property as provided in this ordinance.

The City Attorney is further authorized to adjust the location and/or width of any easement taken in order to minimize damages, provided that said adjustments do not interfere with the use of said property by the City as provided in this ordinance.

Section 6. Source of Funds. The entire cost of the property acquisition authorized by this ordinance, including all cost and expenses of condemnation proceedings, shall be paid from City funds.

Section 7. Consistency with the City's Comprehensive Plan. Pursuant to 36.70A.120, this condemnation is consistent with the City's Comprehensive Plan.

Section 8. Effective Date. This ordinance, being the exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect and be in full force five (5) days after its passage and publication of the attached summary, which is hereby approved.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
CITY ATTORNEY, CAROL A. MORRIS

FILED WITH THE CITY CLERK: 6/3/98
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____

EXHIBIT 'A'

Lots 2 and 3 of Gig Harbor Abandoned Military Reserve, in Section 7, Township 21 North, Range 2 East, W.M., Pierce County, Washington; except easement for establishment of Rosedale-Gig Harbor County Road, which is the north 30 feet of Lots 2 and 3; and except easement granted to Tacoma-Lake Cushman power line in Lot 3. Subject to all other restrictions, easements, and encumbrances of record.

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the _____ day of _____, 1998, the City Council of the City of Gig Harbor, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ACQUISITION OF CERTAIN PROPERTY FOR THE PURPOSE OF ESTABLISHING A WETLAND RESOURCE CONSERVANCY PARK, TO BE KNOWN AS THE WILKINSON PARK, TOGETHER WITH ALL RELATED IMPROVEMENTS NECESSARY FOR THE PARK PROJECT AND IN CONFORMANCE WITH APPLICABLE CITY STANDARDS; PROVIDING FOR THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND OR OTHER PROPERTY THEREFORE; PROVIDING THAT THE ENTIRE COST THEREOF SHALL BE PAID FROM CITY FUNDS; AND DIRECTING THE CITY ATTORNEY TO PROSECUTE THE APPROPRIATE ACTION AND PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 1998.

CITY CLERK, MOLLY TOWSLEE



RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 1025 E. Union, P.O. Box 43075
Olympia, WA 98504-3075
(360) 664-0012

TO: CITY OF GIG HARBOR

DATE: 7/16/98

RECEIVED

RE: NEW APPLICATION

JUL 20 1998

License: 081255 - 2E County: 27

APPLICANTS:

Tradename: HARBOR ROCK CAFE'

Loc Addr: 6565 KIMBALL DR
GIG HARBOR WA 98335

STILE, INC.

CITY OF GIG HARBOR

Mail Addr: 6565 KIMBALL DR
GIG HARBOR WA 98335-1227

BROCK, ROBERT W

10-21-70 532-86-1703

DUSCHEL, DENNIS C

08-11-59 531-76-3405

Phone No.: 253-209-8693 ROBERT BROCK

BILLMAN-DUSCHEL, KATHLEEN ELI

11-29-56 532-62-3073

Privileges Applied For:

BEER/WINE REST - BEER/WINE

As required by RCW 66.24.010(8), you are notified that application has been made to the Washington State Liquor Control Board for a license to conduct business. If return of this notice is not received in this office within 20 DAYS from the date above, it will be assumed that you have no objection to the issuance of the license. If additional time is required you must submit a written request for an extension of up to 20 days. An extension of more than 20 days will be approved only under extraordinary circumstances.

- 1. Do you approve of applicant?
2. Do you approve of location?
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken?

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: SANITARY SEWER CONNECTION UPDATE
DATE: JULY 23, 1998

INTRODUCTION/BACKGROUND

In response to a presentation from Mr. Michael Esteb at the July 13, 1998 Council meeting, Council requested information concerning the process and requirements for a sanitary sewer connection for Mr. Esteb's new residence at the northeast corner of Burnham Drive and Franklin Avenue.

The sanitary sewer lines in Burnham Drive and Franklin Avenue are approximately 17-ft. and 15-ft. deep along the respective frontages of Mr. Esteb's property. Depending on street grades, and abutting property elevations, typical sanitary sewer lines within the city vary from approximately 8-ft. to 20-ft. deep (with some as deep as 30-ft., with as shallow as 5-ft.). The intent is to provide gravity sewer connections for as many abutting properties as possible. The line depth on Franklin Avenue presumably was to accommodate as many homes as possible along Franklin Avenue (where the lot elevations are below the street grade), and the line depth on Burnham Drive was needed to match the line depth on Franklin Avenue at their intersection.

The lines in Burnham Drive and Franklin Avenue were installed in the early '70's under ULID No. 1. At the time, property owners were given the option of paying \$150 for a side sewer connection extending from the sanitary sewer main to within four or five feet of the ground surface near or at the edge of right-of-way (property line). Those electing to pay for the connection at that time had the amount added to their property assessment for the ULID. City records show that the owner of Mr. Esteb's property (ULID Parcel 3-149), and the abutting property to the northeast on Franklin Avenue (ULID Parcel 3-148), did not elect to pay for the side sewer connection at that time, and did not file a protest. A sewer stub connection fee was paid for a single side sewer connection for ULID Parcel 3-150, which fronts on Prentice Avenue (and is directly behind ULID Parcel 3-148). City records include a sketch of a four-plex (with three cleanouts) on Parcel 3-150 connecting to the 6-inch sewer stub from the Franklin street sewer, with a receipt stating the connection was completed in May 1975.

Briefly summarizing, Mr. Esteb met with Engineering Technician Willy Hendrickson last spring to determine the availability of sanitary sewer (and water) to serve the house he planned to construct on the then vacant lot at the northeast corner of Burnham Drive and Franklin Avenue (ULID Parcel 3-149). At that time Mr. Esteb expressed concern about the cost of a "deep" sewer connection. Mr. Hendrickson noted that the 1973 plans for ULID No. 1 showed a 6-inch sanitary sewer stub extending to approximately the north property line from the Burnham Drive sewer main, and another 6-inch sanitary sewer stub extending to the adjoining parcel on the east from the Franklin Avenue sewer main. At that time, Mr. Hendrickson noted that the information was approximate and could not be deemed reliable. As such, he advised Mr. Esteb that while connection to either stub was possible, further investigation would be needed to confirm the presence, location, and availability of the sewer stubs, and the suitability for Mr. Esteb's situation. In three separate meetings on site with prospective contractors for Mr. Esteb,

MAYOR WILBERT AND CITY COUNCIL

July 23, 1998

PAGE 2

Construction Inspector Tom Quinlan reviewed the location of the City's sanitary sewer main, and discussed the excavation and shoring requirements.

During exploratory work by Mr. Esteb's contractor, the sanitary sewer stub on Franklin Avenue was uncovered. The city crew performed smoke testing and confirmed that a four-plex on Prentice Avenue (ULID Parcel 3-150) had connected to the 6-inch sanitary sewer stub on Franklin Avenue. As noted above, review of City records indicates that the four-plex was allowed to connect to the Franklin Avenue line in 1975. This was not reflected on the City's sewer map.

The City's Public Works Standards adopted in 1993 anticipate that each developed property will have its own separate connection to the City's sanitary sewer system, and that cleanouts will be located behind the property line (not in the right-of-way). This reflects the potential problems that can occur with sewer connections, the potential difficulties with shared maintenance responsibilities, and concerns for insuring integrity of the line (a cleanout in the right-of-way is more exposed), and with private sanitary sewer lines (utilities) running parallel (not perpendicular) to the right-of-way for street improvement and maintenance activities.

This provision for each parcel to have a separate connection to the City's sanitary sewer is also contained in Section 13.24.070 GHMC (copy attached). Section 13.24.050 provides that a connection to the sanitary sewer stub may be performed by the City subject to reimbursement from the property owner, or a registered contractor employed by the property owner. The City has estimated that the costs to construct a sanitary sewer stub at this location would be in the \$6,000 to \$8,000 range.

As noted in the last sentence of the first paragraph in Section 13.24.040 GHMC, an exception to the single connection may be allowed by the "superintendent of sewers." Under the provisions of City code, a sanitary sewer stub is the responsibility of the abutting property owner from the point of discharge to the point of connection to the city's sanitary sewer main. Section 13.24.070 requires that for a shared connection, easements and maintenance agreements (between the owners) need to be reviewed by the City and recorded. Section 13.24.060 GHMC requires that the owner indemnify the City from any direct or indirect loss resulting from the sewer connection.

The Uniform Plumbing Code (Chapter 7), allows a maximum loading of 720-fixture units for a 6-inch waste pipe at a 2-percent slope. This would exceed the estimated flow from six residential units based on standard types and number of connections (intermittent flows, no pumps). However, the Uniform Plumbing Code provisions are oriented to single parcels.

Under three similar circumstances (City sanitary sewer main deeper than 15-ft.) within the past 5-years that Mr. Quinlan has been with the City, the builder/property owner connected directly to the City sewer. In the one situation of a shared gravity connection within the last 5-years, two single family residences on abutting parcels were allowed to connect to a sewer stub located at the shared property line corner. The cleanouts and connections were both outside of the right-of-way and on the respective properties.

For comparison, City of Tacoma staff essentially stated that a sanitary sewer line is not considered "deep" unless it's much deeper than 15-ft. ("Oh, by deep I thought you meant 'in the 50-foot range'"), and that individual parcels are expected to construct separate connections regardless of depth. Pierce County

MAYOR WILBERT AND CITY COUNCIL

MAY 21, 1997

PAGE 3

has similar provisions to ours, and requires separate connections for separate parcels except by issuance of a waiver (plus easement and maintenance agreement between the property owners).

Following several discussions between staff and Mr. Esteb concerning possible alternatives to direct connections to the sanitary sewer lines in either Franklin Avenue or Burnham Drive, the three options, as summarized below, were presented in a June 26, 1998 letter to Mr. Esteb:

1. Connect to the existing sanitary sewer stub behind the right-of-way to avoid running the private sewer line parallel to and within the Franklin Avenue right-of-way. (This would require an easement from the owner of the abutting vacant property to allow connection on the abutting property, hold-harmless agreements from the owners to the City, and a maintenance agreement between the property owner(s) connecting into this line. Upon the advice of the City Attorney, confirmation was requested from an independent engineer that the 6-inch sanitary sewer stub has the capacity to serve the proposed number of connections since its exact configuration and condition are unknown.)
2. Connect to the existing sanitary sewer stub from Burnham Drive. (Mr. Quinlan on his own time and with his own equipment checked the site. However, the first time he was at the site at the appointed time he was unable to complete the effort since Mr. Esteb had not exposed the waste pipe at its exit under the foundation, or the sanitary sewer stub. After the City mobilized its vactor truck and exposed the stub at the back of ditch, and Mr. Esteb had exposed the pipe approximately two-feet below the ground at the foundation, Mr. Quinlan returned to the site on his own time and with his own equipment checked the elevations.). This would require a pumped connection with shallow excavation, or excavation to approximately 11-ft. at the point of connection to provide the minimum 2% grade to the sewer stub. Similar hold harmless, easement and maintenance agreements would be required as for Option 1.
3. Connect to the sanitary sewer manhole in Burnham Drive. (This would have required the City to vary from City standards to allow an inside drop fastened at three locations (top, middle, and bottom), with core drilling through the existing manhole. Excavation depth would need to be a minimum of five-feet to avoid the existing asbestos cement water mains on the east side of Burnham Drive and the north side of Franklin Ave. Concrete encasement of the sewer stub would have been required if excavation revealed the sewer stub to be within 18-inches (vertically) of the existing water main(s) at the crossing location(s)).

Mr. Esteb advised staff that the owner of the abutting vacant parcel did not want to grant an easement, and that he (Mr. Esteb) did not want to execute a hold-harmless or maintenance agreement. Mr. Esteb also reviewed Option 2 and advised that he did not want to excavate down eleven feet to connect to the Burnham Drive sewer line, or install a pump system and connect at a higher elevation (in addition to the requirements to connecting to another parcel's sanitary sewer stub.). Option 3 also was not satisfactory to Mr. Esteb. City staff checked with local contractors to confirm that the estimated cost for either Options 2 or 3 would be under \$3,000.

In a subsequent meeting with Mr. Esteb, we discussed a variation of Option 1 that would allow a connection to the sanitary sewer stub from Franklin Avenue within the right-of-way provided that the cleanout was within four feet of the property line, and Mr. Esteb obtained and executed a "hold

MAYOR WILBERT AND CITY COUNCIL
MAY 21, 1997
PAGE 4

harmless" agreement from the owner of the sewer stub and him, and the requisite easement and maintenance agreement. I also requested that an independent confirmation of capacity be provided.

Subsequent to that meeting at which I understood there to be an agreement, Mr. Esteb brought in a document for me to sign. The document was determined not sufficient for compliance with Option 1 as modified.

During this process I have been in contact with Ms. Morris to confirm the appropriateness of our response relative to City Code and have received her concurrence.



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR
DATE: JULY 21, 1998
SUBJECT: QUARTERLY FINANCE REPORTS

Attached are the quarterly financial reports for the second quarter of 1998.

Total resources, including all revenues and beginning cash balances, are at 65% of the annual budget. Revenues, excluding cash balances, are at 40% of the annual budget. Expenditures (including ending fund balances) are at 19%.

General Fund revenues (excluding beginning cash balance) are at 61% of budget. Tax receipts are slightly ahead of pace at 57%, with sales and property taxes being at 55 and 52% respectively. Licenses and permits (*mostly due to building permits*), and charges for services (*mostly due to zoning & subdivision fees*) are at 90 and 115% of their respective budgets. We have received most of our grant funds for the Jerisich Park Dock Improvement Project. The court is on pace to slightly exceed budget, with revenues at 55% of budget through June.

General Fund expenditures are at 46% of budget. Legal fees are at 37% of budget through June. All departments, except for Parks and Recreation, are below 50% of budgeted expenditures. Parks and Recreation expenditures are at 55% of budget through June. This is due to the Jerisich Park Dock Improvement Project. Operating expenditures for this department are currently at 37% of budget.

Street revenues are 4% and expenditures 9% of budget. This is because \$3.75 million of Street Fund budgeted revenues are grants and inter-fund transfers. These revenues will not be received until related project expenditures are incurred. Operations and maintenance expenditures for the Street Fund are at 42% of budget.

Water and Sewer revenues are 44 and 47% of budget. Water expenditures are 21% of budget while Sewer expenditures are 42%. Through June 1997, expenditures for Water and Sewer were at 21 and 36% of budget.

Cash balances appear adequate in all funds.

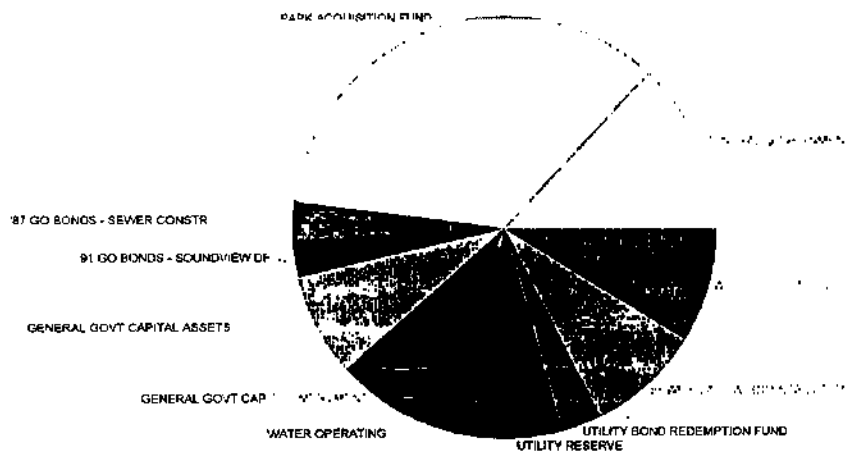
**CITY OF GIG HARBOR
CASH AND INVESTMENTS
YEAR TO DATE ACTIVITY
AS OF JUNE 30, 1998**

FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$810,993	\$2,181,057	\$1,964,614	(\$37,900)	\$989,536
101	STREET FUND	253,475	368,149	433,493	(45,907)	142,223
105	DRUG INVESTIGATION FUND	11,831	494	226	-	12,099
107	HOTEL-MOTEL FUND	19,809	14,582	16,880	-	17,511
109	PARK ACQUISITION FUND	2,611,544	49,111	2,663	-	2,657,993
200	'78 GO BONDS - FIRE	0	-	-	-	0
201	'75 GO BONDS - SEWER	0	-	-	-	0
203	'87 GO BONDS - SEWER CONSTR	152,832	85,302	14,225	(57)	223,852
208	91 GO BONDS - SOUNDVIEW DRIVE	79	262,264	51,970	(173)	210,199
301	GENERAL GOVT CAPITAL ASSETS	533,775	70,752	-	-	604,527
305	GENERAL GOVT CAPITAL IMPRVMEN	307,960	63,418	-	-	371,378
401	WATER OPERATING	385,020	291,539	202,077	(15,946)	458,536
402	SEWER OPERATING	70,639	441,080	423,282	(42,333)	46,103
407	UTILITY RESERVE	498,697	22,021	-	-	520,718
408	UTILITY BOND REDEMPTION FUND	366,866	18,456	150,054	-	235,269
410	SEWER CAPITAL CONSTRUCTION	580,383	98,416	29,541	17,725	666,982
411	STORM SEWER OPERATING	16,554	104,628	73,512	(36,349)	11,320
420	WATER CAPITAL ASSETS	638,419	43,236	14,654	(30)	666,961
605	LIGHTHOUSE MAINTENANCE TRUST	2,590	84	-	-	2,674
631	MUNICIPAL COURT	-	35,373	30,351	(5,022)	-
801	CLEARING CLAIMS	-	-	-	-	-
		<u>\$7,251,467</u>	<u>\$4,149,952</u>	<u>\$3,407,553</u>	<u>(\$155,992)</u>	<u>\$7,837,883</u>

**COMPOSITION OF CASH AND INVESTMENTS
AS OF JUNE 30, 1998**

	MATURITY	RATE	BALANCE
CASH ON HAND			\$300
CASH IN BANK		1.490%	138,015
LOCAL GOVERNMENT INVESTMENT POOL		5.488%	7,399,568
FEDERAL HOME LOAN BANK	06/16/99	5.750%	100,000
FEDERAL HOME LOAN BANK	06/24/99	5.703%	100,000
STUDENT LOAN MARKETING ASSOC	07/01/99	5.710%	100,000
			<u>\$7,837,883</u>

Ending Cash Balances By Fund No.

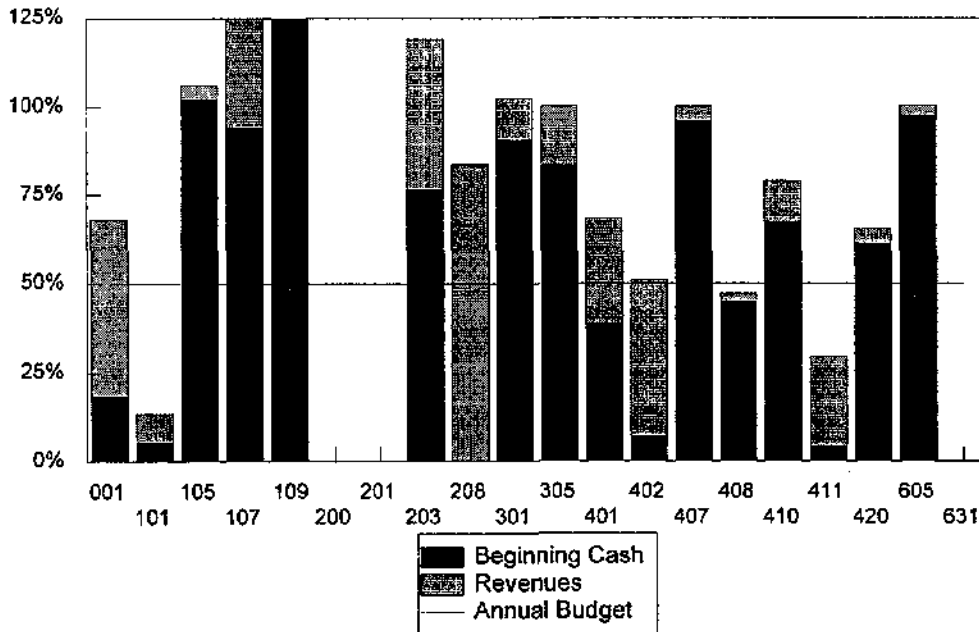


Smaller balances are excluded from chart

**CITY OF GIG HARBOR
YEAR-TO-DATE RESOURCE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING JUNE 30, 1998**

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$4,384,136	\$2,992,050	\$1,392,086	68.25%
101	STREET FUND	4,604,510	621,624	3,982,886	13.50%
105	DRUG INVESTIGATION FUND	11,600	12,325	(725)	106.25%
107	HOTEL-MOTEL FUND	21,100	34,391	(13,291)	162.99%
109	PARK ACQUISITION FUND	1,517,000	2,660,655	(1,143,655)	175.39%
200	'78 GO BONDS - FIRE	-	0	(0)	NA
201	'75 GO BONDS - SEWER	5,311	0	5,311	0.00%
203	'87 GO BONDS - SEWER CONSTR	200,000	238,134	(38,134)	119.07%
208	91 GO BONDS - SOUNDVIEW DRIVE	314,174	262,343	51,831	83.50%
301	GENERAL GOVT CAPITAL ASSETS	590,000	604,527	(14,527)	102.46%
305	GENERAL GOVT CAPITAL IMPROVEMENT	370,000	371,378	(1,378)	100.37%
401	WATER OPERATING	988,100	676,560	311,540	68.47%
402	SEWER OPERATING	1,005,744	511,719	494,025	50.88%
407	UTILITY RESERVE	520,000	520,718	(718)	100.14%
408	UTILITY BOND REDEMPTION FUND	815,919	385,323	430,596	47.23%
410	SEWER CAPITAL CONSTRUCTION	860,000	678,799	181,201	78.93%
411	STORM SEWER OPERATING	406,000	121,181	284,819	29.85%
420	WATER CAPITAL ASSETS	1,041,000	681,655	359,345	65.48%
605	LIGHTHOUSE MAINTENANCE TRUST	2,660	2,674	(14)	100.52%
631	MUNICIPAL COURT	-	35,373	(35,373)	NA
		\$17,657,254	\$11,411,429	\$6,245,825	64.63%

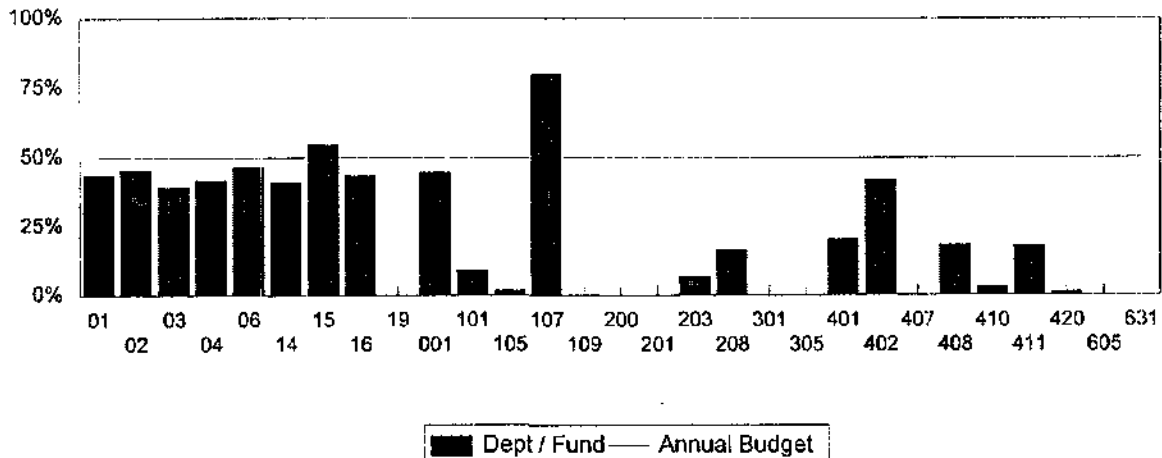
Resources as a Percentage of Annual Budget



**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
AND COMPARISON TO BUDGET
FOR PERIOD ENDING JUNE 30, 1998**

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$782,046	\$343,569	\$438,477	43.93%
02	LEGISLATIVE	30,000	13,732	16,268	45.77%
03	MUNICIPAL COURT	262,330	103,617	158,713	39.50%
04	ADMINISTRATIVE/FINANCIAL	475,950	200,384	275,566	42.10%
06	POLICE	1,298,812	608,303	690,509	46.84%
14	COMMUNITY DEVELOPMENT	456,135	188,941	267,194	41.42%
15	PARKS AND RECREATION	837,550	460,158	377,392	54.94%
16	BUILDING	104,800	45,910	58,890	43.81%
19	ENDING FUND BALANCE	136,513	-	136,513	-
001	TOTAL GENERAL FUND	4,384,136	1,964,614	2,419,522	44.81%
101	STREET FUND	4,604,510	433,493	4,171,017	9.41%
105	DRUG INVESTIGATION FUND	11,600	226	11,374	1.95%
107	HOTEL-MOTEL FUND	21,100	16,880	4,220	80.00%
109	PARK ACQUISITION FUND	1,517,000	2,663	1,514,337	0.18%
200	'78 GO BONDS - FIRE	-	-	-	NA
201	'75 GO BONDS - SEWER	5,311	-	5,311	-
203	'87 GO BONDS - SEWER CONSTR	200,000	14,225	185,775	7.11%
208	91 GO BONDS - SOUNDVIEW DRIVE	314,174	51,970	262,204	16.54%
301	GENERAL GOVT CAPITAL ASSETS	590,000	-	590,000	-
305	GENERAL GOVT CAPITAL IMPROVEM	370,000	-	370,000	-
401	WATER OPERATING	988,100	202,077	786,023	20.45%
402	SEWER OPERATING	1,005,744	423,282	582,462	42.09%
407	UTILITY RESERVE	520,000	-	520,000	-
408	UTILITY BOND REDEMPTION FUND	815,919	150,054	665,865	18.39%
410	SEWER CAPITAL CONSTRUCTION	860,000	29,541	830,459	3.44%
411	STORM SEWER OPERATING	406,000	73,512	332,488	18.11%
420	WATER CAPITAL ASSETS	1,041,000	14,664	1,026,336	1.41%
605	LIGHTHOUSE MAINTENANCE TRUST	2,660	-	2,660	-
631	MUNICIPAL COURT	-	30,351	(30,351)	NA
		\$17,657,254	\$3,407,553	\$14,249,701	19.30%

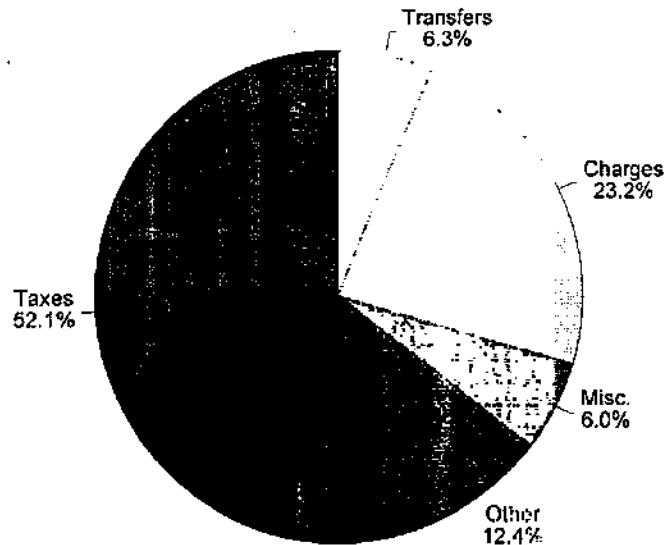
Expenditures as a Percentage of Annual Budget



**CITY OF GIG HARBOR
YEAR-TO-DATE REVENUE SUMMARY
BY TYPE
FOR PERIOD ENDING JUNE 30, 1998**

<u>TYPE OF REVENUE</u>	<u>AMOUNT</u>
Taxes	\$2,163,389
Licenses and Permits	126,816
Intergovernmental	296,868
Charges for Services	961,100
Fines and Forfeits	48,856
Miscellaneous	247,243
Non-Revenues	43,084
Transfers and Other Sources of Funds	262,607
Total Revenues	4,149,962
Beginning Cash Balance	7,261,467
Total Resources	\$11,411,429

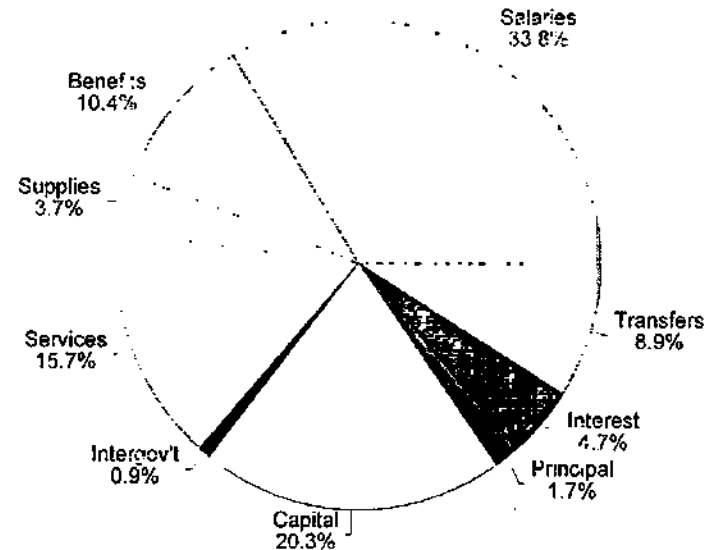
Revenues by Type - All Funds



**CITY OF GIG HARBOR
YEAR-TO-DATE EXPENDITURE SUMMARY
BY TYPE
FOR PERIOD ENDING JUNE 30, 1998**

<u>TYPE OF EXPENDITURE</u>	<u>AMOUNT</u>
Wages and Salaries	\$1,151,906
Personnel Benefits	354,181
Supplies	127,699
Services and Other Charges	534,247
Intergovernmental Services and Charges	29,827
Capital Expenditures	691,213
Principal Portions of Debt Payments	56,455
Interest Expense	159,794
Transfers and Other Uses of Funds	302,231
Total Expenditures	3,407,553
Ending Cash Balance	7,837,883
Total Uses	\$11,245,436

Expenditures by Type - All Funds



CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
BY FUND TYPE
AS OF JUNE 30, 1998

	GENERAL GOVERNMENT	SPECIAL REVENUE	DEBT SERVICE	TOTAL GOVERNMENTAL	PROPRIETARY	FIDUCIARY	ACCOUNT GROUPS	TOTAL ALL FUND TYPES
ASSETS								
CASH	\$24,122	\$40,403	\$10,508	\$75,033	\$63,282	-	-	\$138,315
INVESTMENTS	965,414	3,768,002	423,543	5,156,960	2,542,608	-	-	7,699,568
RECEIVABLES	27,236	18,251	9,125	54,612	2,554,912	-	-	2,609,523
FIXED ASSETS	-	-	-	-	11,536,347	-	6,129,396	17,665,743
OTHER	-	-	-	-	18,397	-	2,570,021	2,588,418
TOTAL ASSETS	\$1,016,772	\$3,826,656	\$443,176	\$5,286,604	\$16,715,546	-	\$8,699,417	\$30,701,567
LIABILITIES								
CURRENT	7,098	3,000	5,000	15,098	1,300,441	-	-	1,315,539
LONG TERM	16,273	16,273	8,186	40,731	2,834,710	-	2,570,021	5,445,462
TOTAL LIABILITIES	23,370	19,273	13,186	55,829	4,135,151	-	2,570,021	6,761,001
FUND BALANCE:								
BEGINNING OF YEAR	776,941	3,694,054	148,620	4,619,615	12,461,497	(5,022)	6,129,396	23,205,487
Y-T-D REVENUES	2,181,074	566,591	347,566	3,095,231	1,012,028	-	-	4,107,259
Y-T-D EXPENDITURES	(1,964,614)	(453,262)	(66,195)	(2,484,071)	(893,131)	-	-	(3,377,202)
ENDING FUND BALANCE	993,402	3,807,383	429,990	5,230,776	12,580,394	-	6,129,396	23,940,566
TOTAL LIAB. & FUND BAL.	\$1,016,772	\$3,826,656	\$443,176	\$5,286,604	\$16,715,546	-	\$8,699,417	\$30,701,567

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF JUNE 30, 1998**

	ACCOUNT GROUPS			TOTAL ACCOUNT GROUPS
	FIDUCIARY 631 MUNICIPAL COURT	820 GENERAL FIXED ASSET GROUP	900 GENERAL L-T DEBT GROUP	
CASH	-	-	-	-
INVESTMENTS	-	-	-	-
RECEIVABLES	-	-	-	-
FIXED ASSETS	-	6,129,396	-	6,129,396
OTHER	-	-	2,570,021	2,570,021
TOTAL ASSETS	-	\$6,129,396	\$2,570,021	\$8,699,417
LIABILITIES				
CURRENT	-	-	-	-
LONG TERM	-	-	2,570,021	2,570,021
TOTAL LIABILITIES	-	-	2,570,021	2,570,021
FUND BALANCE:				
BEGINNING OF YEAR	(5,022)	6,129,396	-	6,129,396
Y-T-D REVENUES	-	-	-	-
Y-T-D EXPENDITURES	-	-	-	-
ENDING FUND BALANCE	-	6,129,396	-	6,129,396
TOTAL LIAB. & FUND BAL.	-	\$6,129,396	\$2,570,021	\$8,699,417

CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF JUNE 30, 1998

	PROPRIETARY							TOTAL PROPRIETARY
	401 WATER OPERATING	402 SEWER OPERATING	407 UTILITY RESERVE	408 89 UTILITY BOND REDEMPTION	410 SEWER CAP. CONST.	411 STORM SEWER OPERATING	420 WATER CAP. ASSETS	
CASH	\$11,198	\$1,214	\$12,606	\$5,696	\$16,147	\$274	\$16,147	\$63,282
INVESTMENTS	447,338	44,890	508,112	229,573	650,835	11,046	650,814	2,542,608
RECEIVABLES	90,744	121,120	1,550	2,260,089	32,533	48,876	-	2,554,912
FIXED ASSETS	1,770,881	9,131,380	-	-	-	634,086	-	11,536,347
OTHER	-	-	-	18,397	-	-	-	18,397
TOTAL ASSETS	\$2,320,161	\$9,298,604	\$522,268	\$2,513,755	\$699,515	\$694,282	\$666,961	\$16,715,546
LIABILITIES								
CURRENT	(\$0)	\$840,247	-	\$404,710	\$55,484	-	-	\$1,300,441
LONG TERM	19,520	89,423	-	2,715,562	-	10,205	-	2,834,710
TOTAL LIABILITIES	19,520	929,670	-	3,120,272	55,484	10,205	-	4,135,151
FUND BALANCE:								
BEGINNING OF YEAR	2,211,077	8,350,915	500,247	(467,208)	575,156	652,920	638,389	12,461,497
Y-T-D REVENUES	291,640	441,300	22,021	10,745	98,416	104,669	43,236	1,012,028
Y-T-D EXPENDITURES	(202,077)	(423,282)	-	(150,054)	(29,541)	(73,512)	(14,664)	(893,131)
ENDING FUND BALANCE	2,300,640	8,368,933	522,268	(606,517)	644,031	684,077	666,961	12,580,394
TOTAL LIAB. & FUND BAL.	\$2,320,161	\$9,298,604	\$522,268	\$2,513,755	\$699,515	\$694,282	\$666,961	\$16,715,546

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF JUNE 30, 1998**

DEBT SERVICE

	200	201	203	208	TOTAL
	78 GO BONDS FIRE	75 GO BONDS SEWER	87 GO BONDS SEWER CONST	91 GO BONDS SOUNDVIEW DR	DEBT SERVICE
CASH	\$0	(\$0)	\$5,419	\$5,089	\$10,508
INVESTMENTS	0	0	218,433	205,110	423,543
RECEIVABLES	-	-	9,125	-	9,125
FIXED ASSETS	-	-	-	-	-
OTHER	-	-	-	-	-
TOTAL ASSETS	\$0	\$0	\$232,977	\$210,199	\$443,176
LIABILITIES					
CURRENT	-	\$5,000	-	-	\$5,000
LONG TERM	-	-	8,186	-	8,186
TOTAL LIABILITIES	-	5,000	8,186	-	13,186
FUND BALANCE:					
BEGINNING OF YEAR	0	(5,000)	153,715	(94)	148,620
Y-T-D REVENUES	-	-	85,302	262,264	347,566
Y-T-D EXPENDITURES	-	-	(14,225)	(51,970)	(66,195)
ENDING FUND BALANCE	0	(5,000)	224,791	210,199	429,990
TOTAL LIAB. & FUND BAL.	\$0	-	\$232,977	\$210,199	\$443,176

**CITY OF GIG HARBOR
STATEMENT OF FINANCIAL POSITION
AS OF JUNE 30, 1998**

	SPECIAL REVENUE FUNDS								TOTAL SPECIAL REVENUE
	001 GENERAL GOVERNMENT	101 STREET	105 DRUG INVESTIGATION	107 HOTEL - MOTEL	109 PARK ACQUISITION	301 GENERAL GOVT CAPITAL ASSETS	305 GENERAL GOVT CAPITAL IMP	605 LIGHTHOUSE MAINTENANCE	
CASH	\$24,122	\$3,375	\$293	\$424	\$12,621	\$14,635	\$8,991	\$65	\$40,403
INVESTMENTS	965,414	138,849	11,806	17,087	2,645,372	589,892	362,387	2,609	3,768,002
RECEIVABLES	27,236	18,251	-	-	-	-	-	-	18,251
FIXED ASSETS	-	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-	-
TOTAL ASSETS	\$1,016,772	\$160,474	\$12,099	\$17,511	\$2,657,993	\$604,527	\$371,378	\$2,674	\$3,826,656
LIABILITIES									
CURRENT	\$7,098	\$3,000	-	-	-	-	-	(\$0)	\$3,000
LONG TERM	16,273	16,273	-	-	-	-	-	-	16,273
TOTAL LIABILITIES	23,370	19,273	-	-	-	-	-	(0)	19,273
FUND BALANCE:									
BEGINNING OF YEAR	776,941	206,546	11,831	19,809	2,611,544	533,775	307,960	2,590	3,694,054
Y-T-D REVENUES	2,181,074	368,149	494	14,582	49,111	70,752	63,418	84	566,591
Y-T-D EXPENDITURES	(1,964,614)	(433,493)	(226)	(16,880)	(2,663)	-	-	-	(453,262)
ENDING FUND BALANCE	993,402	141,202	12,099	17,511	2,657,993	604,527	371,378	2,674	3,807,383
TOTAL LIAB. & FUND BAL.	\$1,016,772	\$160,474	\$12,099	\$17,511	\$2,657,993	\$604,527	\$371,378	\$2,674	\$3,826,656