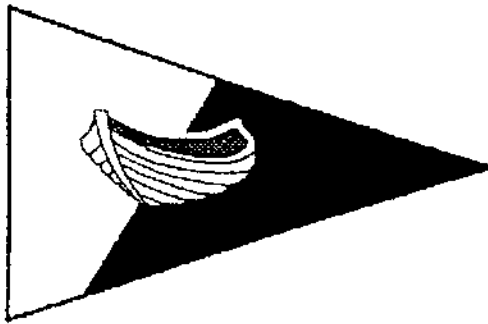


**GIG HARBOR
CITY COUNCIL MEETING**



MAY 9, 1994

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

**AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
MAY 9, 1994**

PUBLIC HEARING:

Resolution - ANX 93-02 - Preannexation Zoning and Notice of Intent to Annex.

PUBLIC COMMENT/DISCUSSION:

CALL TO ORDER:

APPROVAL OF MINUTES:

CORRESPONDENCE:

OLD BUSINESS:

1. Second Reading - Definition of Telephone Services Ordinance.
2. Second Reading - Marine Ordinance.

NEW BUSINESS:

1. State Revolving Funds Loan Document.
2. Maintenance and Testing of Fire Hydrant Agreement.
3. Comprehensive Transportation Plan - KJS Associates.
4. Wastewater Treatment Plant Expansion Project Septage Handling System.
5. Resolution - Building Inspection Fees - Wastewater Treatment Plant Expansion.
6. Special Occasions Liquor License - Chamber of Commerce & PSD Teacher's Assoc.

STAFF REPORTS:

1. Police Department.
2. Planning Department.

MAYOR'S REPORT:

COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

APPROVAL OF BILLS:

EXECUTIVE SESSION: Property Acquisition, Claim, and Legal Matter, approximately 20 minutes.

ADJOURN:




City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

MEMORANDUM

TO: Mayor Wilbert and City Council

FROM:  Planning Department/Planning Commission

DATE: May 4, 1994

SUBJ.: ANX 93-02, Preannexation Zoning and Notice of Intent to Annex Resolution

Attached for your consideration is a notice of intent to annex submitted by Anna Nelson for a one acre parcel located east of and adjacent to Soundview Drive. The petitioner requested a zoning designation of R-2 (single family/duplex) as the property to be annexed contains three duplex dwelling units.

The Planning Commission conducted a public hearing on the proposed zoning designation at its meeting of March 8, 1994 and, following public comment and discussion, recommended that the Council adopt an R-2 designation for the area, based upon the findings and conclusions as recommended by staff in its report of March 3, 1994. The Council conducted its first of two required hearings on the proposed zoning for the area at its regular meeting of March 28, 1994. Final action on the proposed zoning and the notice of intent to annex may be taken at this meeting.

A resolution for the annexation of this property under an R-2 designation is attached for your review and consideration. Upon adoption of the resolution, the petition will be forwarded to the Pierce County Boundary Review Board for its approval.

CITY OF GIG HARBOR
RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR ACCEPTING AN ANNEXATION PETITION SUBMITTED BY ANNA NELSON AND ESTABLISHING A ZONING DESIGNATION OF R-2 (SINGLE FAMILY/DUPLEX) FOR A ONE ACRE PARCEL OF LAND LOCATED EAST OF AND ADJACENT TO SOUNDVIEW DRIVE, AND ENTERS AN INTENT TO APPROVE AND REFERRING THE PETITION TO THE PIERCE COUNTY BOUNDARY REVIEW BOARD.

WHEREAS, on December 21, 1993, a petition for annexation of approximately 1 acre was submitted for the property lying east of Soundview Drive, at 65th Street Court NW; and,

WHEREAS, the petition which has been certified by the City Administrator as legally sufficient containing the signatures of not less than 100% of the owners of assessed evaluation and the legal description of the subject property are attached to this resolution and made a part hereto; and,

WHEREAS, such annexation proposal is within the Urban Area Boundary as defined in the Urban Area Agreement of September, 1987, between Pierce County and the City of Gig Harbor; and,

WHEREAS, such annexation proposal is within the future potential annexation area as defined by the City of Gig Harbor; and

WHEREAS, the petitioner requests annexation to obtain city services, principally sewer, to correct an on-site sewage disposal problem; and,

WHEREAS, on the 8th of March, 1993, the City Planning Commission conducted a public hearing on the proposed zoning for the property; and,

WHEREAS, the Planning Commission found that a zoning designation of R-2 (single family/duplex) is appropriate for the parcel as the property is built-out with two-family dwelling units at a density compatible with the proposed zone; and,

WHEREAS, the City Council has reviewed the petition for annexation in which the petitioner agrees to annexation under the following terms:

1. Assumption by the property owners their portion of the City of Gig Harbor's indebtedness;
2. The area shall be zoned as single family/duplex (R-2), subject to the City of Gig Harbor Zoning Code, Title 17 of the Gig Harbor Municipal Code;

WHEREAS, on March 3, 1994 a determination of non-significance was issued for the proposal, based upon a review of the environmental documents submitted by the petitioner, in accordance with the City of Gig Harbor Environmental Policy Ordinance, Title 18 of the Gig Harbor Municipal Code;, and,

WHEREAS, at the public hearings of March 28, 1994 and May 9, 1994, the City Council does hereby declare its intent to authorize and approve said annexation, and to accept same as a part of the City of Gig Harbor; and,

WHEREAS, the City Council shall comply with the procedural requirements of RCW 35A.14 to the conclusion of this annexation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

Section 1. The City Council of the City of Gig Harbor does hereby declare its intent to authorize and approve the annexation and to accept the subject property as described in Exhibit "A" as part of the City of Gig Harbor with the following requirements:

1. Assumption by the property owners their portion of the City of Gig Harbor's indebtedness.
2. The area shall be zoned as single family residential/duplex (R-2) subject to the City of Gig Harbor Zoning Code, Title 17 of the Gig Harbor Municipal Code.

Section 2. The City Clerk of the City of Gig Harbor hereby declares the annexation petition contiguous with the boundaries of the City of Gig Harbor and said property which is more particularly described in the petition which is marked Exhibit "A" and which is made a part hereto. The City Council does refer the petition and petitioner to the Pierce County Boundary Review Board for approval of the annexation and the City Council shall not take any further action on the annexation proposal until such time the Pierce County Boundary Review Board has completed its review of the notice of intent to annex.

PASSED AND APPROVED, at the regularly scheduled City Council meeting of the 9th day of May, 1994.

Gretchen Wilbert, Mayor

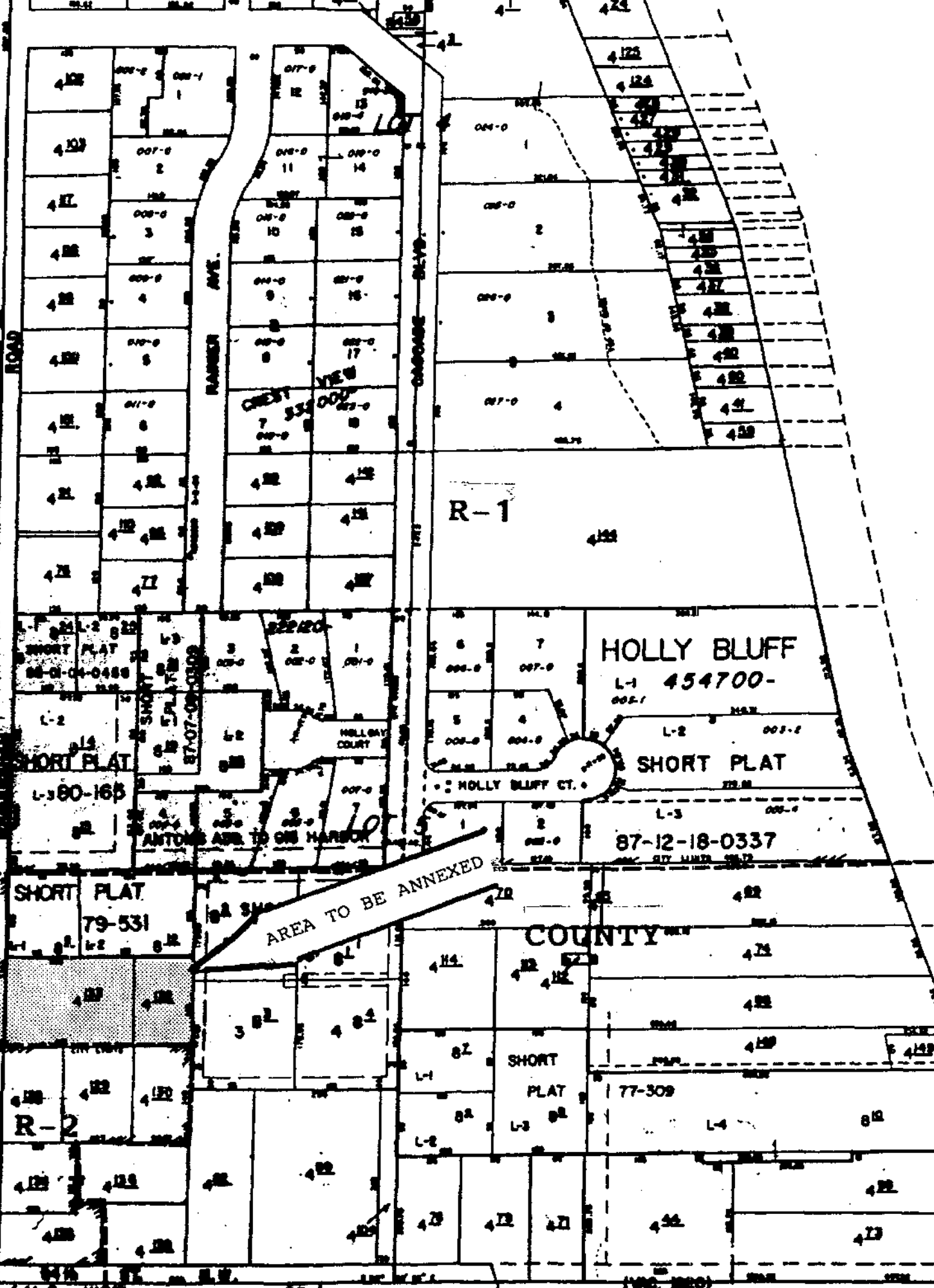
ATTEST:

Mark E. Hoppen, City Administrator
Filed with City Clerk: 3/23/94
Passed by City Council:

EXHIBIT A
LEGAL DESCRIPTION
ANX 93-02

Beginning at the southwest corner of the southeast quarter of Section 8, Township 21 North, Range 2 E.Wm., in a northerly direction approximately 380 feet along the approximate centerline of Soundview Drive to the true point of beginning.

Thence east a distance of approximately 330 feet; thence north a distance of approximately 146 feet; thence west a distance of 330 feet; thence south a distance of 146 feet to the true point of origin.



R-1

HOLLY BLUFF

L-1 454700-

SHORT PLAT

87-12-18-0337

AREA TO BE ANNEXED

COUNTY

SHORT PLAT

79-531

R-2

SHORT PLAT

77-309

HOLLY BLUFF CT.

HOLLY BLUFF COURT

ANTONIS ADD TO ONE HARBOR

CHEST VIEW

FARMER AVE.

CHOCOMA BLVD.

ROAD

SHORT PLAT

L-3 80-165

SHORT PLAT

88-01-04-0488

SHORT PLAT

87-07-03-0338

SHORT PLAT

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Nelson Annexation (ANX93-02)



Residence north of property.

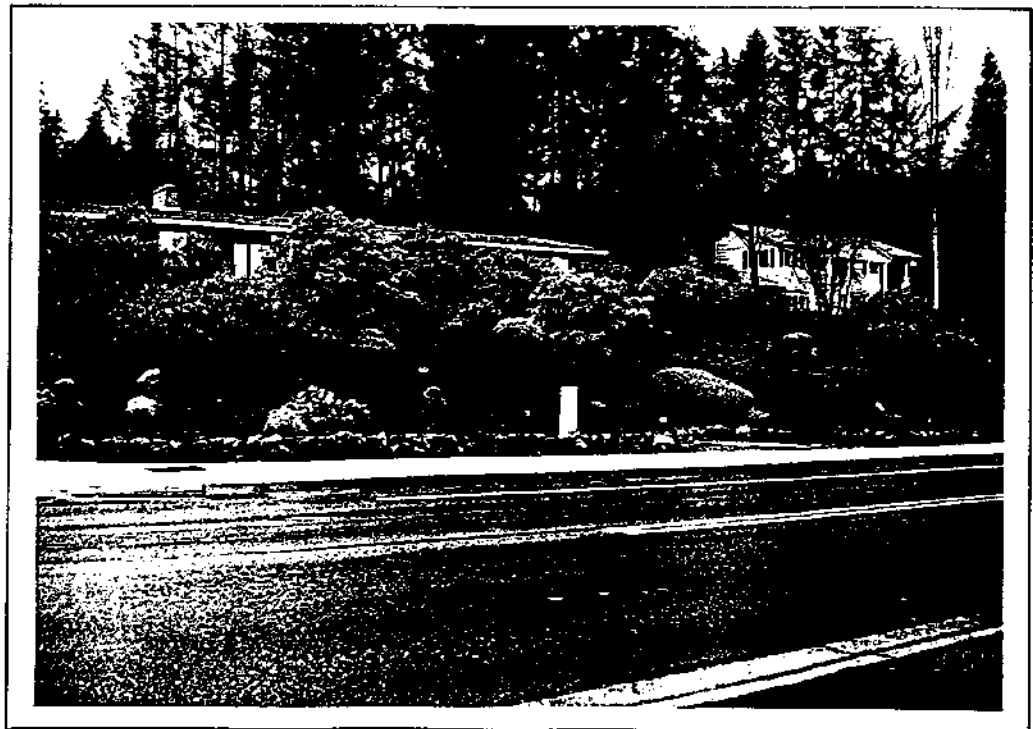


Duplexes south of property.

Nelson Annexation (ANX93-02)



Seaview Place Subdivision, west of annexation area (within City limits).



Area west of Soundview Drive, opposite property access road.

Nelson Annexation (ANX93-02)



Petitioner's property/annexation area to the left of access road.

REGULAR GIG HARBOR CITY COUNCIL MEETING OF APRIL 25, 1994

PRESENT: Councilmembers Platt, Stevens Taylor, Markovich, Picinich and Mayor Wilbert.
Councilman Ekberg was absent.

PUBLIC HEARING: None scheduled.

PUBLIC COMMENT / DISCUSSION: None.

CALL TO ORDER: 7:03 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of the last council meeting as submitted.
Markovich / Picinich - unanimously approved.

CORRESPONDENCE:

1. **Gig Harbor Little League.** Mayor Wilbert read a letter from Brad Carpenter, representing the Little League, thanking the City of Gig Harbor, and especially the Public Works Crew, for the excellent job that was done on the ballfield at the City Park.
2. **Emergency Preparedness.** Ray Zimmerman wrote to thank the City for its donation of \$500 toward the purchase of antennas for the emergency notification system.
3. **AWC Wellness Coordinator.** Julie McDowell, of the Association of Washington Cities, sent a letter accepting the City of Gig Harbor's Employee Wellness Program. With good participation, the city will qualify for grant funding for the wellness program next year.

OLD BUSINESS:

1. **Eden Systems Contract.** Mark Hoppen explained the previous contract that had been modified by legal counsel and approved by Council was not accepted by Eden Systems. The company has adopted a policy which prohibits the company from signing contracts that deviate from their standard agreement. He added that Eden Systems had agreed to add the City of Gig Harbor as an additional insured on their liability policy, which should alleviate any concerns regarding liability.

MOTION: Move approval of the standard form contract submitted by Eden Systems Inc. for their support agreement for 1994.
Markovich / Stevens Taylor - unanimously approved.

NEW BUSINESS:

1. First Reading - Definition of Telephone Services Ordinance. Mark Hoppen presented this ordinance to include cellular phones in the business tax section of the Gig Harbor Municipal Code. This ordinance will return for a second reading at the next regular meeting.
2. First Reading - Marine Ordinance. Mark Hoppen presented the first reading of this ordinance to authorize the marine enforcement activities on City of Gig Harbor jurisdictional waters. Councilmember Platt voiced concerns that personal watercrafts (jetskis), could not be banned because they are a licensed vessel. He suggested that they be regulated along with other vessels. This ordinance will return with suggested changes at the next regular meeting.
3. Appeal of Hearing Examiner Decision - Monique DeMartin - VAR 94-05. Steve Osguthorpe introduced this appeal of the Hearing Examiner's Decision to deny a side yard variance of four feet, and a height variance of four feet eight inches. He explained the Hearing Examiner denied the variance request upon finding that there were other alternatives for developing the property. Dean Lamb, architect for the applicant, spoke briefly about the property and structure design. Monique DeMartin, the appellant, also spoke, thanking the Councilmembers for hearing her appeal. She voiced disappointment that others surrounding her had been allowed to obtain variances, and she was not being allowed to improve her property and regain the view lost when a neighbor built in front of her home. Council determined that because of the large size of the lot, the architect could work within the restraints of the zoning code without the variances.

MOTION: Move we adopt the Hearing Examiner's findings and fact and conclusions of law in Variance Request 94-05 and uphold the denial of those variance requests.
Markovich / Picinich - unanimously approved.

MOTION: Move to adopt Resolution #416 supporting the Hearing Examiner's decision.
Picinich / Platt - unanimously approved.

4. Liquor License Renewals - Stockmarket and Thriftway. No action taken.

STAFF REPORTS:

1. East / West Road. Mark Hoppen announced the final meeting to establish a route for the road from Swede Hill to Peacock Hill had been set by County Council and urged the Mayor and Councilmembers to attend this meeting May 10th.
2. Finance Department - Tom Enlow gave the Quarterly Finance Report. He announced the General Fund Revenue is at 25%, a little higher than expected due to sales tax receipts. Water and sewer funds are looking good for the first quarter.

MAYOR'S REPORT: None scheduled.

COUNCIL COMMENTS:

Councilmember Stevens Taylor commended Ben Yazici and the public works crew for their work around town. She mentioned the retaining rock wall on Hunt Street, the curb and sidewalk across from the Tides Tavern and the planter boxes around town. She added that the grass strip on Stinson could use some additional attention.

ANNOUNCEMENT OF OTHER MEETINGS:

Pierce County Council Public Meeting - East/West Road. Tuesday, May 10th, 4:00 p.m. at the County Council Chambers.

APPROVAL OF BILLS:

MOTION: To approve Bill Vouchers #12106 through #12207, in the amount of \$64,619.92.
Platt/Stevens Taylor - unanimously approved.

EXECUTIVE SESSION: None scheduled.

ADJOURN:

MOTION: To adjourn at 8:04 p.m.
Stevens Taylor / Platt - unanimously approved.

Cassette recorder utilized.
Tape 348 Side B 166 - end.
Tape 349 Side A 000 - end.
Tape 349 Side B 000 - 143.

Mayor

City Administrator



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: ORDINANCE TO FURTHER DEFINE TELEPHONE BUSINESS, 2ND READING
DATE: APRIL 27, 1994

INTRODUCTION / BACKGROUND

Currently, the Gig Harbor Municipal Code does not define cellular telephone services as subject to business tax. Additionally, telephone services are soon highly likely to diversify in a ways not previously considered as phone services. Legal counsel has recommended that we explicitly provide for the inclusion of these services through ordinance in the business license section of our code.

RECOMMENDATION

Staff recommends that Council move to approve this ordinance as presented.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S UTILITIES BUSINESS TAX, ADDING THE DEFINITION OF "TELEPHONE BUSINESS" CONSISTENT WITH STATE LAW; AMENDING THE GIG HARBOR MUNICIPAL CODE 3.16.020.

WHEREAS, subsection 3.16.020 of the Gig Harbor Municipal Code defines terms used within this chapter for purposes of utility taxes; and

WHEREAS, the original intent of said definitions was to enable the collection of all taxable business revenues; and

WHEREAS, the state amended its definitions of a "telephone business" and "competitive telephone business" (RCW 82.04.065) for tax purposes, as a result of deregulation of certain telephone-related services and to determine the applicability of the tax regulations to cellular phone service; and

WHEREAS, the definitions contained in Chapter 3.16 of the Gig Harbor Municipal Code have not been similarly amended;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, DO ORDAIN as follows:

Section 1. Section 3.16.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

3.16.020 Definitions. In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- D. "Business, telephone" means the business of providing access to a local telephone network, local network telephone switching service, toll service, cellular phone or coin telephone services. or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. This includes interstate service, and includes toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. It further includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations. "Competitive telephone service" means the providing of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

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, being an ordinance authorizing the levy or collection of taxes, is not subject to initiative or referendum, and shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

Mark E. Hoppen
City Administrator/Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

Filed with City Clerk: 4/18/94
Passed by City Council:
Date Published:
Date Effective:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: MARINE ORDINANCE, SECOND READING
DATE: APRIL 27, 1994

INTRODUCTION / BACKGROUND

Attached is a copy of a proposed marine ordinance to authorize certain marine enforcement activities on City of Gig Harbor jurisdictional waters. Chapter 88.12 RCW, recently updated by the State, covers the vast majority of marine situations which our officers will encounter, and is adopted by reference. Other issues referenced in the attached ordinance are issues peculiar to our waterfront and bay. Among those issues are: rules of the road, four knot speed limit, prohibition of aircraft, limitations on mooring buoys, prohibition of residential floating homes and houseboats, and standards for penalties. Language prohibiting personal watercraft (jetskis) has been removed per council's direction.

RECOMMENDATION

Staff recommends that the City Council adopt this ordinance authorizing marine enforcement activities on City of Gig Harbor jurisdictional waters.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REGULATING USE OF THE HARBOR WATERS WITHIN THE JURISDICTION OF THE CITY, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, ADOPTING CHAPTER 88.12 RCW AND CHAPTER 352-60 WAC BY REFERENCE, REPEALING CHAPTER 8.24 AND ADDING A NEW CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, in the exercise of its police power, the City of Gig Harbor may assume control over all waters within its jurisdictional limits, and regulate the use thereof; and

WHEREAS, chapter 88.12 RCW relating to the regulation of recreational vessels has recently been amended to allow enforcement by local law enforcement officers; and

WHEREAS, chapter 8.24 of the Gig Harbor Municipal Code on the subject of motorboat regulation has become outdated;

NOW, THEREFORE,

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

Section 1. Chapter 8.24 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.24 is added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 8.24

HARBOR CODE

Sections:

- 8.24.020 Application.**
- 8.24.040 Definitions.**
- 8.24.060 Harbor Warden.**
- 8.24.080 Rules of the Road.**
- 8.24.100 Chapter 88.12 RCW Adopted by Reference.**
- 8.24.120 Chapter 352-60 Adopted by Reference.**
- 8.24.140 Speed Regulations.**
- 8.24.160 Aircraft Prohibited.**
- 8.24.180 Mooring Buoys.**
- 8.24.200 Residential Use of Floating Homes and Houseboats Prohibited.**
- 8.24.220 Penalties.**

8.24.020. Application. The provisions of this chapter shall be applicable to all vessels and watercraft operating in the harbor of the City. The provisions of this chapter shall be construed to supplement United States laws, state laws and regulations, when not expressly inconsistent therewith in the City's harbor.

8.24.040. Definitions. RCW 88.12.010, "Definitions," as the same now exists or may hereafter be amended, is hereby adopted by reference, and the definitions set forth therein shall apply throughout this chapter.

8.24.060. Harbor Warden. This chapter shall be enforced by the police chief, who shall be designated the Harbor Warden. It shall be the duty of the Harbor Warden, and his/her authorized designees, to:

- A) enforce the ordinances and regulations of the City upon the waters of the harbor and adjacent lands thereto, when the harbor is affected;
- B) to maintain patrols in the harbor for the protection of life and property, including, but not limited to, the removal and disposition of oil pollution, drifting debris and nuisances from the waters of the harbor;
- C) to investigate and report upon marine and maritime accidents in the harbor;
- D) to perform all necessary functions in connection with search and rescue in the harbor;
- E) to promulgate rules and regulations governing the use of the navigable portions of waterways; to issue permits for movement of unseaworthy craft and anchoring or moorage of vessels or watercraft in anchorage areas; and to charge for all such permits the fee established by the City; and
- F) to remove, impound or sell any vessel, watercraft or obstruction anchored or moored in violation of this chapter deemed a public nuisance or a hazard to navigation or operated or afloat under conditions deemed unsafe for water transportation.

8.24.080. Rules of the Road. Except as otherwise specified in this chapter, vessels shall be subject to the ~~International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS), Title 33, Code of Federal Regulations, Part 81-72, Appendix A, Coast Guard Rules for Navigation for Inland Waters as contained in the Code of Federal Regulations, Title 33, Part 80, and Coast Guard Publication C6169, promulgated by the United States Coast Guard,~~ as such rules are now or may hereafter be amended or adopted. Vessels engaged in a sanctioned or authorized race, log race, regatta or similar event, shall be subject to the applicable rules for such events, including, but not limited to, differing right-of-way rules.

8.24.100. Chapter 88.12 RCW Adopted by Reference. Chapter 88.12 RCW, "Regulation of Recreational Vessels," as the same now exists or may hereafter be amended, is hereby adopted by reference.

8.24.120. Chapter 352-60 WAC Adopted by Reference. Chapter 352-60 WAC, "Boating Safety," as the same now exists or may be hereafter amended, is hereby adopted by reference.

8.24.140. Speed regulations. Within the waters of the City's harbor, it shall be unlawful for any person to operate a vessel at a speed in excess of four (4) nautical miles per hour. Nothing in this section shall be construed as exempting any person from liability caused by wake action from operation of any vessel in the City's harbor.

8.24.160. Aircraft Prohibited. Within the waters of the City's harbor, it shall be unlawful for any person to operate any aircraft, or to take off or land any aircraft on such waters, except in emergency situations.

8.24.180. Mooring Buoys. Mooring buoys are prohibited in the City's harbor where such buoys will interfere with customarily traveled routes for vessels. No more than one buoy will be allowed for each ownership of waterfront residences adjacent to the City's harbor. The City's permission to install a mooring buoy shall not exempt a person from obtaining any and all necessary permits or permissions required by other governmental authorities.

8.24.200. Residential Use of Floating Homes or Houseboats in Harbor Prohibited. It shall be unlawful to use a floating home or houseboat for residential purposes within the City's harbor. For the purpose of this chapter, a floating home or houseboat is defined as a single-family dwelling unit constructed on a float, not designed or primarily used as a vessel, and which is moored, anchored or otherwise secured in the water.

8.24.220. Penalty. A violation of Sections 8.24.080, 8.24.200, 8.24.140, 8.24.160, 8.14.180, and 8.24.200 shall be an infraction under Chapter 7.84 RCW.

Section 2. Statutes and Washington Administrative Codes Filed with City Clerk. As required by RCW 35A.12.140, a copy of chapter 88.12 RCW and chapter 352-60 WAC, as adopted by reference in this ordinance, shall be filed with the City Clerk, authenticated and recorded by the City Clerk.

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

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

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST/AUTHENTICATED:

MARK E. HOPPEN
City Administrator/Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

Filed With City Clerk: 4/20/94
Passed by City Council:
Date Published:
Date Effective:

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the ____ day of _____, 1994, 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, REGULATING USE OF THE HARBOR WATERS WITHIN THE JURISDICTION OF THE CITY, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, ADOPTING CHAPTER 88.12 RCW AND CHAPTER 352-60 WAC BY REFERENCE, REPEALING CHAPTER 8.24 AND ADDING A NEW CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE.

8.24.220. Penalty. A violation of Sections 8.24.080, 8.24.200, 8.24.140, 8.24.160, 8.14.180, and 8.24.200 shall be an infraction under Chapter 7.84 RCW.

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

DATED this ____ day of _____, 1994.

CITY ADMINISTRATOR, MARK HOPPEN



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: BEN YAZICI, DIRECTOR OF PUBLIC WORKS *BBY*
SUBJECT: STATE REVOLVING FUNDS LOAN DOCUMENT
DATE: APRIL 26, 1994

INTRODUCTION:

On October 18, 1994, the City Council's authorized the Mayor to sign the Department of Ecology State Revolving Funds Loan Document for approximately \$ 891,000 at 3.5% interest rate over a 14 year period. This loan will help finance the Wastewater Treatment Plant expansion project.

Since the Council's authorization, Carol Morris, Mark Hoppen and I met with Ecology to review the loan documents; some changes were made relating primarily to the City's contract bidding procedures and the processing of construction change orders and to insure the loan document language is not in conflict with our internal practices.

The Department of Ecology requires that the City Council adopt a Resolution approving the Loan Agreement. Accordingly, the attached resolution has been drafted to authorize us to proceed with execution of the loan agreement.

The following documents are attached for your information and review:

- 1) My memorandum dated October 18, 1994, on this issue,
- 2) State Revolving Fund Loan Document,
- 3) Ecology's letter requesting we adopt a resolution accepting the loan, and
- 4) The Resolution

RECOMMENDATION

I recommend a council motion to adopt the attached resolution authorizing the City to enter into a State Revolving Fund loan agreement with the Department of Ecology for approximately \$890,000.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. BOX 47600 • Olympia, Washington 98504-7600 • (206) 459-6000

April 19, 1994

Ben Yazici, P. E.
Director of Public Works
City of Gig Harbor
PO Box 145
Gig Harbor, WA 98335

**RE: City of Gig Harbor
Loan Application No. 9405
Ordinance/Resolution**


Dear Mr. Yazici:

The City must adopt an ordinance/resolution that authorizes the City to participate in the State Revolving Fund loan program with the Department of Ecology. Please send me a copy to incorporate into the loan agreement as soon as possible.

Enclosed is an example of a resolution passed by the City of Snohomish. The May 31, 1994, deadline to sign the loan is approaching fast.

If you have any questions, please call me at (206) 407-6550.

Sincerely,


Jon K. Peterson
Project officer
Water Quality Financial Assistance

JKP:smr

cc: Loan File



CITY OF GIG HARBOR

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF GIG HARBOR AUTHORIZING THE CITY TO ENTER INTO A STATE REVOLVING FUND LOAN AGREEMENT WITH THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY FOR APPROXIMATELY \$891,000 FOR FINANCING THE WASTEWATER TREATMENT FACILITY UPGRADE.

WHEREAS, the Department of Ecology, a Washington State Agency, has established a State Revolving Fund (SRF) for providing financial assistance for the construction of Wastewater Treatment Facilities; and,

WHEREAS, the City has completed the design of the Wastewater Treatment Plant Expansion Project; and,

WHEREAS, the City desires to obtain the lowest financing costs possible for the construction project; and

WHEREAS, a condition of the loan agreement is that the City Council adopt a resolution authorizing the loan,

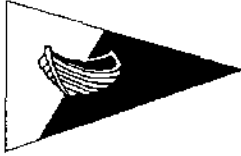
NOW, THEREFORE, BE IT RESOLVED THAT the City of Gig Harbor is hereby authorized by the City Council to enter into a loan agreement with the State of Washington Department of Ecology for approximately \$891,000 for the financing of the Wastewater Treatment Plant facility upgrade. The terms of and conditions of said loan agreement are attached as Exhibit A and are hereby incorporated by reference.

PASSED this 9th day of May, 1994.

Gretchen A. Wilbert, Mayor

ATTEST:

Mark E. Hoppen, City Clerk



City of Gig Harbor. The "Maritime City."
3105 JUDSON STREET • P.O. BOX 115
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: Mayor Wilbert and City Council
FROM: Ben Yazici, Director of Public Works *BY*
RE: State Revolving Fund Loans
DATE: October 18, 1993

INTRODUCTION

I am pleased to inform you that our loan application for the Wastewater Treatment Plant expansion project has been approved. Our loan request was \$890,851 at 0% interest for five year term. We are now requested to sign the loan document. The purpose of this memorandum is to obtain your authorization for Mayor Wilbert and the City Administrator, Mark Hoppen, to sign the loan agreement.

BACKGROUND AND ISSUES

The city has been planning on expanding the capacity of the treatment plant since 1985. In 1985, the city published an Engineering Report to expands its treatment plant capacity from 400,000 gallons per day (gpd) to 700,000 gpd, and, eventually, that it be increased to 1,600,000 gpd.

We have prepared a facilities report and received necessary approvals from the Department of Ecology to expand the plant capacity to 1,600,000 gallons per day. While the final plans and specifications are being prepared, the United States Environmental Protection Agency (EPA) published its new sludge regulations (EPA 503 Sludge Regulations) early this year. The new regulations have made it almost impossible to dispose of Class B biosolids at landfills. Our existing plant, and the design of the expanded plant, produces Class B biosolids.

After reviewing various alternatives available to dispose of biosolids, it became apparent that we need to be able to produce Class A biosolids in order to have viable biosolid disposal options. It was a good time for us to modify the plant design to be able to produce Class A biosolids.

There were primarily three ways of producing Class A biosolids. Externally heated Digester; Lime Addition, or Thermophilic Digester without external heat. Among the three, we chose to build the thermophilic digester without any external heating.

Mayor Wilbert and City Council
October 18, 1993
Page 4

the required annual payments.

RECOMMENDATION

I recommend a council motion to authorize Mayor Gretchen Wilbert to sign the loan documents for a minimum \$890,000 loan amount with the Department of Ecology at 3.5% interest rate for up to 14 year financing terms.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. BOX 47600 • Olympia, Washington 98504-7600 • (206) 459-6000

April 28, 1994

Ben Yazici, P. E.
Director of Public Works
City of Gig Harbor
PO Box 145
Gig Harbor, WA 98335

**RE: City of Gig Harbor
SRF Application No. 9405
Loan Agreement**

Dear Mr. Yazici:

Enclosed are three original copies with one set of exhibits of the State Revolving Fund loan agreement between the Department of Ecology and the City of Gig Harbor. This \$890,851 loan is to help improve and expand your secondary wastewater treatment facility.

This updated agreement incorporates the March 1, 1994 letter from City Attorney Carol Morris to the Department and the Department's March 10, 1994 reply. These two documents are incorporated as Exhibit K and L, respectively.

If you find this loan agreement satisfactory, please have Mayor Gretchen Wilbert and your legal counsel sign and date all three copies and return them to me. I will send you a signed original copy of the agreement when the signature process is completed by the Department. Please keep the enclosed set of exhibits for your files. We need to have the signed documents back before May 31, 1994.

I understand the City is working on an ordinance/resolution authorizing the City to participate in the State Revolving Fund loan program. Please send a copy of the ordinance along with the signed agreements and I will incorporate it into the loan documents.



Ben Yazici
April 28, 1994
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Prior to the first disbursement of loan funds, the Department will need the following:

- A favorable opinion from your legal counsel (see Term VI., page 4).
- Documentation that the City has the financial stability and ability to repay the loan (see Term X.A., page 11); and
- Proof of insurance for the facility (see Exhibit A.6.)

If you have any questions, please call me at (206) 407-6550.

Sincerely,



Jon K. Peterson
Project Officer
Water Quality Financial Assistance

JKP:smr
Enclosures

cc: Darrel Anderson, Ecology/Southwest Regional Office
Brian Howard, Ecology/WQFA-Policy and Support Section
Al Bolinger, Ecology/WQFA-Facilities Section
Loan File

Washington State Water Pollution Control
State Revolving Fund (SRF) Loan Agreement
between the
State of Washington Department of Ecology
and the
City of Gig Harbor

I. OVERALL TERMS

THIS is a binding agreement entered into, by and between the State of Washington, Department of Ecology, hereinafter referred to as the "DEPARTMENT" and the City of Gig Harbor, hereinafter referred to as the "RECIPIENT". The purpose of this agreement is to lend funds to the RECIPIENT to carry out the activities described herein.

PROJECT TITLE Wastewater Treatment Plant Expansion

| | |
|---|---|
| RECIPIENT ADDRESS | City of Gig Harbor Public Works 3105 Hudson Street Gig Harbor, WA 98335 |
| RECIPIENT PROJECT REPRESENTATIVE TITLE | Ben Yazici Director of Public Works |
| RECIPIENT TELEPHONE NUMBER | (206) 851-8136 |
| DEPARTMENT PROJECT OFFICER | Jon K. Peterson |
| PROJECT OFFICER TELEPHONE NUMBER | (206) 407-6550/SCAN 407-6550 |
| TOTAL PROJECT COST | \$2,090,851 |
| TOTAL ELIGIBLE COST | \$ 890,851 |
| SRF LOAN AMOUNT | \$ 890,851 |

Subject to all of the terms, provisions and conditions of this agreement, and subject to the availability of state and federal funds, the DEPARTMENT will loan the sum of eight hundred ninety thousand eight hundred and fifty one dollars (\$890,851) to the RECIPIENT. (The final loan amount may vary according to the terms herein, depending upon disbursements and respective accrued interest.)

INTEREST RATE. The interest rate shall be 3.5 percent per annum.

TERM OF LOAN. The term of the loan shall be 14 years.

ESTIMATED PROJECT COMPLETION DATE. July 1, 1995.

USEFUL LIFE OF THE PROJECT. 20 years.

EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement shall be the date this agreement is signed by the DEPARTMENT's Water Quality Financial Assistance Program Manager.

This agreement shall remain in effect until the date of final repayment of this loan, unless terminated earlier according to the provisions hereof.

II. PROJECT DESCRIPTION

SRF FUNDING CATEGORY: Facilities

SCOPE OF WORK: The RECIPIENT shall use the funds received from the DEPARTMENT under this agreement to expand the Gig Harbor Wastewater Treatment Facility to 1.6 million gallons per day (MGD). This expansion consists of:

- A new 45 foot diameter secondary clarifier
- Additional aeration basin
- Conversion of existing clarifier to gravity thickener
- Addition of aerobic selector zones in the existing aeration basins
- A sludge recycle line

Construction will be in accordance with approved DEPARTMENT plans and specifications. This project will help eliminate some failed individual and community drainfields in the Gig Harbor area and improve surface water quality.

NOTE: Any changes, additions, and/or deletions in Scope of Work shall require prior approval by letter from the DEPARTMENT. Scope of Work does not denote eligible components. It is for the purpose of describing the project to be constructed.

III. ESTIMATED COST OF PROJECT

| <u>Major Project Elements</u> | <u>Total Project Cost</u> | <u>Total Eligible Cost</u> | <u>Eligibility</u> | <u>Requested SRF Assistance</u> |
|-------------------------------|---------------------------|----------------------------|--------------------|---------------------------------|
| A. Construction | | | | |
| 1. Treatment Plant | \$2,090,851 | \$1,172,172 | 76% | \$890,851 |
| Total Construction Cost | <u>\$2,090,851</u> | <u>\$1,172,172</u> | | <u>\$890,851</u> |
| Total Cost | \$2,090,851 | \$1,172,172 | | \$890,851 |

IV. SOURCE AND TYPE OF FUNDS FOR THE PROJECT. Federal/State/Local

| | | |
|----------|--------|-------------|
| SRF Loan | (43%) | \$ 890,851 |
| Local | (57%) | \$1,200,000 |
| Total | 100% | \$2,090,851 |

V. AUTHORITY

- A. This agreement is given as evidence of a loan to the RECIPIENT made by the DEPARTMENT pursuant to Chapter 90.50A RCW, and shall be subject to the regulations of the DEPARTMENT.
- B. This loan is authorized by the RECIPIENT pursuant to Resolution/Ordinance No. _____, duly passed by the RECIPIENT on _____ (attached hereto as Exhibit __) and pursuant to the Constitution and laws of the State of Washington, and laws amendatory thereof and supplemental thereto, and the RECIPIENT's authority.
- C. The RECIPIENT warrants that it is a duly formed and legally existing public body of the State and has full corporate and other power to enter into this agreement.
- D. The RECIPIENT warrants that there is no material adverse information relating to the project or this agreement, known to RECIPIENT, which has not been disclosed to the DEPARTMENT.
- E. The RECIPIENT warrants that to RECIPIENT's knowledge, no litigation exists, and no litigation has been threatened, which would cast doubt on the enforceability of the RECIPIENT's obligations under this agreement.
- F. The RECIPIENT warrants that this obligation does not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations applicable to it.

VI. OPINION OF LEGAL COUNSEL

A favorable opinion (written letter) from the Legal Counsel of the RECIPIENT shall be delivered to the DEPARTMENT at or prior to the first disbursement under this loan agreement with respect to the following:

- A. The RECIPIENT has the power and authority to execute and deliver, and perform its obligations under, this agreement; and
- B. This agreement has been duly executed, acknowledged where necessary, by RECIPIENT's authorized representatives and, to the best knowledge of such Counsel, all other necessary actions have been taken, so that this agreement is valid, binding, and enforceable upon the RECIPIENT in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditor's rights generally; and to such Counsel's knowledge, this agreement does not violate any other agreement, statute, court order, or law to which the RECIPIENT is a party or by which it is bound.

VII. REPAYMENT AND SECURITY FOR THE LOAN

A. Definitions.

1. "Gross Revenues"; "Net Revenues". "Net Revenues" means "Gross Revenues" minus operating and maintenance expenses (but excluding depreciation).

"Gross Revenues" means all rates, fees, charges and other income received by the RECIPIENT from operation of its Sewer System including, but not limited to, normal rates and charges, system development charges, any other charges relating to connecting to the Sewer System, and revenues from product sales or other services provided by the Sewer System. "Gross Revenues" also includes:

- a) Any interest earnings on Gross Revenues; and
 - b) Any interest earnings on other funds associated with the Sewer System, if the use of those earnings is not restricted to purposes inconsistent with the payment of debt service on the loan.
2. "Sewer System". If the RECIPIENT owns and operates a combined water and sewer system against the revenues of which it secures RECIPIENT's other borrowings, "Gross Revenues" also shall include all rates, fees, charges and other income received by the RECIPIENT from operation of the water system.
 3. "Outstanding Parity Bonds". "Outstanding Parity Bonds" means any and all Sewer System revenue bonds (or combined water and sewer system revenue bonds, if the RECIPIENT owns and operates a combined water and sewer system) of the RECIPIENT having a first lien and charge on the Net Revenues of the Sewer System and outstanding at the time this loan agreement is entered into. "Outstanding Parity Bonds" does not mean Sewer System revenue bonds (or combined water and sewer system revenue bonds, if the RECIPIENT owns and operates a combined water and sewer system) of the RECIPIENT, if any, having a junior or subordinate lien and charge on the Net Revenues of the Sewer System and outstanding at the time this loan agreement is entered into.

4. "Future Parity Bonds". "Future Parity Bonds" means any and all Sewer System revenue bonds (or combined water and sewer system revenue bonds, if the RECIPIENT owns and operates a combined water and sewer system) of the RECIPIENT:
- a) If the RECIPIENT has Outstanding Parity Bonds, those bonds hereafter issued on a parity of lien and charge against Net Revenues with its Outstanding Parity Bonds and the loan;
 - b) If the RECIPIENT has no Outstanding Parity Bonds, those bonds hereafter issued on a parity of lien and charge against Net Revenues with the loan.

B. Pledge of Net Revenues; Payment from Other Sources; No Defeasance. Repayment of this loan shall be secured by "Net Revenues", and the Net Revenues are hereby irrevocably pledged to the punctual payment of the principal and interest, if any, on this loan. The RECIPIENT may, however, repay any portion of this loan from any other funds legally available to it for repayment, including special assessments, general taxes, proceeds of general obligation bonds or revenue bonds, or other sources. So long as the DEPARTMENT shall hold this loan, the RECIPIENT shall not be entitled to, and shall not effect, an economic defeasance or an advance refunding of this loan.

C. Priority of Payment from Net Revenues. The RECIPIENT hereby grants the DEPARTMENT a continuing pledge of Net Revenues to secure the payment and performance of the RECIPIENT's obligations under this loan agreement, as follows:

1. If RECIPIENT Has Outstanding Parity Bonds. If the RECIPIENT has outstanding Outstanding Parity Bonds, the loan shall be repaid from Net Revenues on a parity with the repayment of, and with an equal lien and charge against Net Revenues as, the RECIPIENT's Outstanding Parity Bonds.
2. If RECIPIENT Has No Outstanding Parity Bonds. If the RECIPIENT has no outstanding Outstanding Parity Bonds, the loan shall be repaid from Net Revenues first available and prior to the payment from Net Revenues of any other obligations of the RECIPIENT to make payments from those Net Revenues.

This pledge is made upon and subject to the condition that as long as the RECIPIENT is not in default under this agreement, the RECIPIENT may retain and have full use and benefit of the Net Revenues.

- D. Future Parity Bonds. The RECIPIENT agrees not to incur obligations (except for routine operating and maintenance expenses) which have a lien or charge on the pledged Net Revenues which is equal or superior to the DEPARTMENT's lien and charge without the prior written consent of the DEPARTMENT, except that the RECIPIENT may issue Future Parity Bonds with a lien and charge on Net Revenues equal to the lien and charge of the loan as follows:
1. If RECIPIENT Has Outstanding Parity Bonds. If the RECIPIENT has outstanding Outstanding Parity Bonds, those Future Parity Bonds shall be issued in full compliance with the applicable requirements for their issuance contained in the ordinance or resolution authorizing the Outstanding Parity Bonds.
 2. If RECIPIENT Has No Outstanding Parity Bonds. If the RECIPIENT has no outstanding Outstanding Parity Bonds, those Future Parity Bonds shall be issued under such terms and conditions and with such covenants as the RECIPIENT and its underwriter shall agree, but in no event shall such terms, conditions and covenants impair the validity and enforceability, or diminish the effect, of the RECIPIENT's covenants to the DEPARTMENT contained in this loan agreement while the loan remains outstanding and unpaid.
- E. Rate Covenant. The RECIPIENT hereby covenants with the DEPARTMENT that, for as long as any principal or interest is due under this loan agreement, it will at all times establish, maintain and collect rates and charges of the Sewer System which will produce Gross Revenues of the Sewer System sufficient to meet all obligations of the RECIPIENT out of those Gross Revenues, including timely payments of principal and interest due under this loan agreement and the establishment and maintenance of the reserve fund or funds required by Section VII-F-2-b, if applicable, and Section 8 of Exhibit A to this loan agreement. In particular, the RECIPIENT agrees to impose and collect each year User Rates or Charges which will produce Gross Revenues sufficient to pay all obligations owing to the DEPARTMENT pursuant to this agreement and to pay:
1. New and existing debt service;
 2. Reserve funds;
 3. Insurance coverage as required by Section 6 of Exhibit A to this loan agreement;
 4. Fidelity bond as required by Section 7 of Exhibit A to this loan agreement;

5. Emergency repair and replacement fund as required by Section 8 of Exhibit A to this loan agreement; and
 6. Cost of operation, maintenance, and replacement of the facility and the project until the final loan repayment.
- F. Other Covenants. The RECIPIENT also covenants to the DEPARTMENT for so long as the loan is outstanding and unpaid as follows:
1. If RECIPIENT Has Outstanding Parity Bonds. If the RECIPIENT has outstanding Outstanding Parity Bonds, the RECIPIENT covenants to the DEPARTMENT:
 - a) That the payment of this loan by the RECIPIENT will be, and is legally entitled to be, made on a parity of lien and charge against Net Revenues with the lien and charge of those Outstanding Parity Bonds;
 - b) That all conditions required to be satisfied for making the loan payable on a parity of lien and charge against Net Revenues with the Outstanding Parity Bonds have been met, or will be met prior to the first disbursement until this loan agreement; and
 - c) All covenants of the RECIPIENT, including covenants relating to a reserve fund or reserve account to secure payment of the Outstanding Parity Bonds and future obligations issued on a parity therewith, previously made to the holders of Outstanding Parity Bonds are incorporated herein by this reference for the benefit of, and as if expressly made to, the DEPARTMENT.
 2. If RECIPIENT Has No Outstanding Parity Bonds. If the RECIPIENT has no outstanding Outstanding Parity Bonds, the RECIPIENT covenants to the DEPARTMENT as follows:
 - a) Coverage Covenant. It will establish, maintain and collect such Sewer System rates and charges as will make available, in each calendar year, Net Revenues in an amount equal to at least 1.25 times:
 - (i) The average annual debt service on the outstanding loan; and
 - (ii) The amounts necessary to create or maintain the reserve funds required by Section VII-F-2-b and by Section 8 of Exhibit A to this loan agreement.

- b) Reserve Fund. It will accumulate during the first six years of the repayment period for the loan, in six approximately equal annual payments, a reserve fund equal to at least one year's average annual debt service on the outstanding loan.
- c) Keep Sewer System in Good Repair. It will at all times maintain and keep the Sewer System in good repair, working order and condition and also will at all times operate the Sewer System and the business in connection therewith in an efficient manner and at a reasonable cost.
- d) Accounts and Records. It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Sewer System.
- e) No Free Sewer System Service. It will not furnish Sewer System services to any customer whatsoever free of charge.
- f) Not to Dispose of Sewer System.
 - (i) It will not sell, lease, mortgage or in any manner encumber or dispose of all of the property of the Sewer System unless provision is made for the immediate repayment in full of the loan; and
 - (ii) It will not sell, lease, mortgage or in any manner encumber or dispose of any part of the property of the Sewer System that is used, useful or material to the operation thereof unless provision is made for the replacement thereof or for immediate repayment of the portion of the outstanding loan in the same ratio as the Gross Revenues available for debt service for the outstanding loan for the twelve months preceding such sale, lease, encumbrance or disposal from the portion of the Sewer System sold, leased, encumbered or disposed of bears to the Gross Revenues available for debt service for the outstanding loan from the entire Sewer System for the same period.

Nothing herein contained shall prevent the RECIPIENT from issuing Future Parity Bonds containing covenants more restrictive to the RECIPIENT, or more favorable to the holder, than those contained herein, but in such event those covenants shall be treated as also running to the DEPARTMENT for its benefit as if they had been expressly made and incorporated herein.

G. Tax Exemption of Interest on Loan: Transferability: Tax Covenants.

The RECIPIENT and the DEPARTMENT intend that the interest to be paid on this loan shall be excluded from gross income for federal income tax purposes of any subsequent owner of this loan to which the DEPARTMENT may transfer ownership. The DEPARTMENT expressly reserves the right to transfer ownership of this loan to any person at any time and in its sole discretion.

The RECIPIENT hereby covenants to the DEPARTMENT that it will not make any use of the proceeds of the loan or any other funds of the RECIPIENT which may be deemed to be proceeds of the loan pursuant to Section 148 of the federal Internal Revenue Code of 1986 and the applicable regulations thereunder that will cause the loan to be "arbitrage bonds" within the meaning of said section and said regulations. The RECIPIENT will comply with the requirements of Section 148 of the Internal Revenue Code of 1986 (or any successor provision thereof applicable to the loan) and the applicable regulations thereunder throughout the term of the loan. The RECIPIENT covenants that:

1. It will cause to be delivered to the DEPARTMENT prior to the first disbursement under this loan agreement, an opinion of nationally recognized bond counsel to the effect that the interest on the loan is excluded under existing federal law from the gross income of its owner or owners for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax applicable to individuals; and
2. It will timely file, or caused to be filed on its behalf, a Form 8038 with the Internal Revenue Service and will provide sufficient evidence of that filing to the DEPARTMENT.

H. Cross Default Provision. It shall be an event of default under this loan agreement, and the principal of and interest on this loan shall become immediately due and payable, if any obligations of the RECIPIENT's Sewer System:

1. Shall become due and payable prior to the maturity thereof; or
2. Shall not be paid when due or within any grace period for the payment thereof and the holder thereof shall have the right to declare the indebtedness evidenced thereby to be due and payable prior to its maturity.

VIII. PROJECT COMPLETION SCHEDULE

The RECIPIENT agrees to complete the project in accordance with the following schedule. In the event that the schedule is not complied with, and after a thirty (30) day grace period, the DEPARTMENT, after due notice to the RECIPIENT, may withdraw the loan and demand any outstanding balance of principal and interest be paid immediately. Any changes to this schedule must be effected through a letter from the DEPARTMENT.

- A. Construction Start Date
(date in Notice to Proceed) July 1, 1994
- B. Date of Project Completion July 1, 1995
- C. Date of Initiation of Operation September 1, 1995

IX. TERMINATION OF AGREEMENT

Termination of this agreement may be initiated by the DEPARTMENT if the RECIPIENT fails to start construction on the project within four months of the effective date of this agreement or the construction start date previously specified above, or fails to complete the project in a timely manner according to the preceding schedule.

The DEPARTMENT's failure to terminate this agreement on a particular occasion shall not be deemed a waiver of its right to terminate at a later date or on different grounds.

X. DISBURSEMENTS

- A. Prior to the first disbursement under this loan agreement, the RECIPIENT must provide documentation, by letter and financial records, to the DEPARTMENT that it has the financial stability and ability to repay the loan in accordance with the estimated repayment schedule.
- B. Disbursement Requests. Each request by the RECIPIENT for disbursement shall constitute a certification by the RECIPIENT to the effect that all representations made in this agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the loan plus accrued interest, have occurred since the date of this agreement unless specifically disclosed in writing by the RECIPIENT in the request for disbursement.

The RECIPIENT may request disbursement, subject to the DEPARTMENT's approval, for the following costs:

- 1. Payment of any eligible planning or design allowance provided in the loan (see SRF Program Guidelines).

2. Payment of other eligible costs within Scope of Work, when such costs have been incurred and are due and payable.

C. Conditions for Disbursement. The DEPARTMENT may, at any time, review and audit requests for disbursement under this agreement. The DEPARTMENT may make adjustments for errors and discrepancies discovered in audits or other reviews of requests for disbursement including, but not limited to, adjustments for mathematical errors, items not in fact provided or constructed, services not on fact provided, or construction which does not meet acceptable standards.

The DEPARTMENT shall not be under any obligation to disburse any loan funds to the RECIPIENT under this agreement unless:

1. The DEPARTMENT is satisfied that such requests are reasonable and used in completing the Scope of Work.
2. The RECIPIENT has funds available to pay for that portion of the total cost of the project which is not eligible to be funded under this agreement.
3. The RECIPIENT is not in default of any conditions of this agreement.
4. The RECIPIENT continues to maintain reasonable progress toward completing the project.

D. Method of Disbursements. Subject to the conditions of this section, the DEPARTMENT agrees to disburse the loan amount (as stated on page 1 of this agreement) during the progress of the project. The RECIPIENT shall submit requests for disbursement at least quarterly but not more than monthly. Failure to comply with this condition puts the RECIPIENT in violation of this agreement.

Disbursement requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement. Request for disbursement must be submitted in accordance with the Departmental procedures on state voucher request forms provided by the DEPARTMENT. Each voucher shall be submitted to the DEPARTMENT along with back-up documentation of the work performed, expenses incurred and the progress of the project. Disbursements shall be made for each task/phase of the project or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT.

The state voucher request form and supportive documents must itemize all costs by major elements and show eligible and ineligible costs. When voucher requests are approved by the DEPARTMENT, disbursements will be made to the RECIPIENT.

- E. Accrued Interest. Interest will begin to accrue on each disbursement at the time the warrant is mailed to the RECIPIENT.
- F. Budget Deviation. Deviations in budget amounts may be allowed with prior written approval from the project officer, as long as such deviations do not entail an increase in the total loan amount.
- G. Period of Compensation. Loan disbursements shall only be made for action of the RECIPIENT pursuant to this agreement and performed within the effective dates of this agreement unless those dates are specifically modified in writing as provided in this agreement.
- H. Final Request(s) for Disbursements. The RECIPIENT must submit final requests for compensation within 15 days after the end of the state fiscal biennium and within 45 days after satisfactory completion of this project. Failure to comply may result in delayed disbursements.
- I. Indirect Costs. No reimbursement for indirect costs will be eligible unless approved by the DEPARTMENT and provided for and defined in the Scope of Work hereunder. (See SRF Program Guidelines.)
- J. Use of Funds. RECIPIENT shall use the disbursements only for payment of or reimbursement of costs of the project as specified in the Scope of Work.

XI. LIABILITY OF THE DEPARTMENT

It is expressly understood and agreed that the DEPARTMENT will be under no liability of any kind or character whatsoever for payment of costs in connection with the project or for the carrying out of the contracts entered into by the RECIPIENT with third parties. All costs shall be paid by the RECIPIENT and the RECIPIENT shall indemnify, save, hold harmless and defend the DEPARTMENT from any actions, suits, liens, or claims whatsoever in connection with construction of the project.

XII. ALTERATION OF PROJECT

During construction and after the completion of the project, the RECIPIENT shall not materially alter the design or structural character of the project without the written approval of the DEPARTMENT and shall take no action which would adversely affect the eligibility of the project as a State Revolving Fund Project under Chapter 173.98 WAC, or cause a violation of any covenant, condition or provision herein.

XIII. REPAYMENTS

- A. When the project has been fully completed or the Initiation of Operation date has been determined (if appropriate), the DEPARTMENT and RECIPIENT will execute an agreement amendment which details the final loan amount, and the DEPARTMENT will prepare a loan repayment schedule. The final loan amount will include the principal from disbursements and all accrued interest, if any. Any eligible costs incurred during the one year certification period will be included in a final loan amount in a subsequent amendment.
- B. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest due on this loan shall be paid not later than one year after Initiation of Operation, or five years from the first disbursement, whichever is earlier. Equal payments shall be due every six months after this first payment. Additional payments may be made at any time without penalty and shall result in a recalculation of the loan repayment schedule.
- C. Prepayment of Loan. So long as the DEPARTMENT shall hold this loan, the RECIPIENT may prepay, from any funds legally available to the RECIPIENT for this purpose, on any interest payment date the entire unpaid principal of the loan or, from time to time at any time, may prepay such lesser portion as the RECIPIENT may determine of the unpaid principal amount thereof. Upon prepayment of a portion of the principal of the loan, interest on the loan shall be recalculated and the semiannual payments of principal and interest shall be adjusted to reflect that recalculation. Notice of any such optional prepayment of this loan shall be given by the RECIPIENT at least thirty days prior to the prepayment date by mailing to the DEPARTMENT a notice fixing such prepayment date and the amount of principal to be prepaid.
- D. If a project has been phased or segmented, the provisions for repayment shall apply to the completion of the individual phases or segments.
- E. The final loan amount shall be fully repaid not later than 14 years after the project completion date.
- F. If the RECIPIENT refinances this project or obtains any grant or loan to finance the project additional to those listed in Section IV without the written consent of the DEPARTMENT, the DEPARTMENT may declare a breach of this agreement and may declare any unpaid loan principal and interest immediately due and payable. In such a case, any grant or loan obtained by the RECIPIENT to finance or refinance the project shall be used to repay the RECIPIENT's obligations to the DEPARTMENT under this agreement unless the DEPARTMENT finds, in its sole discretion, that repayment from the additional grant(s) or loan(s) would not be in the public interest.

XIV. LOAN DEFAULT

- A. In the event of a default, including a declaration of a default by the DEPARTMENT, the DEPARTMENT may cease making further disbursements under this agreement and may declare the principal and interest on the loan immediately due and payable.
- B. In accordance with RCW 90.50A(060), in event of loan default, funds from the State otherwise due to the RECIPIENT may be withheld, applied to the indebtedness and deposited into the State Revolving Fund.
- C. The State shall also have the right to take any action necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation by the RECIPIENT of this agreement.
- D. The RECIPIENT shall, on demand, pay to the State the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of legal staff) incurred by the State in the collection of payments or any other sum due hereunder or in the enforcement of performance or observance of any obligation by the RECIPIENT of this agreement.

XV. INCORPORATION OF DOCUMENTS

This agreement incorporates the following documents by this reference:

- Exhibit A: SRF Loan Agreement Special Conditions
- Exhibit B: SRF Loan Agreement General Terms and Conditions
- Exhibit C: Facilities Plan Approval Letter (where applicable) and any amendments thereto
- Exhibit D: Plans and Specifications Approval Letter (where applicable) and any amendments thereto
- Exhibit E: Loan Repayment Schedule and any amendments thereto
- Exhibit F: Chapter 90.50A RCW Water Pollution Control Facilities
- Exhibit G: Chapter 173-98 WAC Uses and Limitations of the Water Pollution Control Revolving Fund
- Exhibit H: DEPARTMENT's SRF Program Guidelines revised May, 1991
- Exhibit I: Declaration of Construction of Water Pollution Control Facilities
- Exhibit J: RECIPIENT's Ordinance/Resolution No. _____
- Exhibit K: March 1, 1994 letter from the RECIPIENT's attorney to the DEPARTMENT

- Exhibit L: March 10, 1994 letter from the DEPARTMENT to the RECIPIENT's attorney

XVI. VALIDITY AND SEVERABILITY

In the event any covenant, condition or provision of this agreement is held to be invalid or unenforceable by a final judgement of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions or provisions hereof.

XVII. GENERAL RECIPIENT COMMITMENTS

The RECIPIENT accepts and agrees to comply with all terms, provisions, conditions and commitments of this agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations and commitments made by the RECIPIENT in its application, accompanying documents and communications filed in support of its request for a loan.

XVIII. NOTICES

Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing:

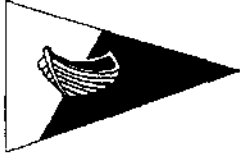
TO DEPARTMENT: Washington State Department of Ecology
Water Quality Financial Assistance Program
PO Box 47600
Olympia, WA 98504-7600
Attention: Jon K. Peterson

TO RECIPIENT: Ben Yazici, Director
Department of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

XIX. ALL WRITINGS CONTAINED HEREIN

This agreement, including the incorporated documents, contains the entire understanding between the parties, and there are no other understandings or representations other than those set forth or incorporated by reference herein. No subsequent substantive amendment(s) to this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and the DEPARTMENT, and made part of this agreement; EXCEPT:

- A. In relation to change of the DEPARTMENT's Project Officer or the RECIPIENT's Project Representative as set forth on page 1 of this document, either party may make such change by sending a letter to the other, to that effect, without the signature of the other party;



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: BEN YAZICI, DIRECTOR OF PUBLIC WORKS *BBY*
SUBJECT: MAINTENANCE AND TESTING OF FIRE HYDRANTS IN THE CITY
DATE: MAY 3, 1994

INTRODUCTION

Fire District 5 asked us to execute the attached Operational Agreement for the maintenance and testing of fire hydrants. We are asking for your approval of this Agreement.

BACKGROUND/ISSUES

The Pierce County Fire District is responsible for fire prevention and fire suppression within the legally established boundaries of the District which includes the City of Gig Harbor incorporated boundaries.

We own and operate the water system within the City limits. Although Fire District 5 has been maintaining the fire hydrants within the City limits, there is no formal agreement between the City and the Fire District defining the extent of the maintenance and operation and the responsibilities of each party.

The attached agreement clearly defines the responsibilities and type of maintenance activities to be performed on the fire hydrants. We have circulated this Agreement within the affected City Departments and it is the common recommendation of everyone involved in the review process that this agreement be considered by the Council for approval.

POLICY ISSUES

The Pierce County Council passed an ordinance requiring the Fire District execute an agreement to clearly identify the responsibilities between the District and the water purveyors for the maintenance and operation of the fire hydrants. Therefore, in order for the District to continue to maintain the fire hydrants, they must execute such an agreement with us.

FISCAL IMPACT

None. There will be no financial burden on the City for executing and implementing the attached agreement.

Mayor Wilbert and City Council
May 4, 1994
Testing of Fire Hydrants - Page Two

RECOMMENDATION

I recommend a Council motion to authorize the Mayor to sign the attached Operational Agreement between the City of Gig Harbor and the Fire District 5 for the maintenance and testing of fire hydrants.

PIERCE COUNTY FIRE
PROTECTION DISTRICT NO. 5

6711 Kimball Dr. • Gig Harbor, WA 98335
Phone 851-3111 • Fax 851-9606

OPERATIONAL AGREEMENT

MAINTENANCE AND TESTING OF FIRE HYDRANTS

THIS AGREEMENT made by and between PIERCE COUNTY FIRE DISTRICT NO. 5 (hereinafter referred to as the "District") and CITY OF GIG HARBOR (hereinafter referred to as the "Water Purveyor").

WHEREAS, the District is responsible for fire prevention and fire suppression within the legally established boundaries of the district; and

WHEREAS, the Water Purveyor is a duly licensed and authorized purveyor of water which may be used for fire suppression, through a water distribution system located within the legally established boundaries of the district; and

WHEREAS, the Pierce County Council has required by Ordinance No. 92-99 and Pierce County Code Section 15.40.070(c) the execution of written operational agreements identifying responsibilities for maintenance and testing of water distribution systems supplying water for fire suppression purposes (fire flow), as between the District and the Water Purveyor; and

WHEREAS, the aforementioned parties are desirous of setting forth this agreement with respect to such maintenance and testing of water distribution systems for the mutual benefit of their customers or constituents;

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

Section 1 - Water Distribution System Base Maps

Base Maps that accurately depict the entire water distribution system will be provided to the District by the Water Purveyor. Revised base maps will be provided to the District as additions, deletions or revisions to the water distribution system are made by the Water Purveyor.

Section 2 - Installation or Removal of Fire Hydrants

The Water Purveyor will notify the District of any installation or removal of fire hydrants. When the Water Purveyor notifies the District of any fire hydrant installation, the Water Purveyor will state, in writing, the fire flow available, the duration of available fire flow, the street address of the fire hydrant(s), and will provide to the District, one set of "as built" drawings showing the new fire hydrant(s).

The "as built" drawings are in addition to the revised base maps as indicated in Section 1 of this agreement.

Section 3 - Testing

All fire hydrants that are located within the legally established boundaries of the district are subject to flow testing by the District.

Flow tests will be requested by the Water Purveyor of the District, with reasonable notice being given to the District for scheduling.

Flow tests may also be scheduled by the District with reasonable notice given to the Water Purveyor, except, in emergency situations, when reasonable notice or scheduling are not required.

The results of any flow tests will be provided to the Water Purveyor by the District within a reasonable amount of time.

Section 4 - Maintenance

The District will maintain the exterior, above ground portion of fire hydrants that are attached to the Water Purveyor's water distribution system and the ground area immediately adjacent to such fire hydrants.

a. Cleaning and Painting.

The District will clean and paint all fire hydrants. The paint will be high visibility yellow enamel.

Pierce County Fire District #5

Hydrant Defect Codes
09/17/93

| Code No. | Description |
|------------|-------------------------------------|
| DRAIN | Hydrant does not drain properly |
| LEAKS | Hydrant leaks when pressurized |
| NEED STORZ | Purveyor must install a 5" Storz |
| NOT ACCEPT | PP thread won't accept Storz adapt |
| OBST | Obstruction within 3 ft of hydrant |
| PP CAP | Pumper port cap inoperable |
| PP SIZE | Pumper port not 4" diameter |
| PP THREAD | Pumper port threads not NST |
| STEM FROZN | Stem is frozen tight, can not turn |
| STEM LUBE | Stem needs lubricated |
| STEM NUT | Operating stem nut is damaged |
| STEM SPIN | Stem does not turn hydrant ON/OFF |
| SV CAP | Street valve cap missing or damaged |
| SVNF | Street valve not found |
| TOO LOW | Less than 18" from port to ground |
| TUBE FULL | SV cap missing, tube full of debris |
| WATER | NO WATER OR LOW WATER PRESSURE |

b. Color Coding.

The District will color code fire hydrant bonnets using the following schedule:

Green - over 1,000 GPM at 20 P.S.I.

Orange - 500 to 1,000 GPM at 20 P.S.I.

Red - less than 500 GPM at 20 P.S.I.

c. Lubrication and Gaskets.

The District will clean and lubricate all port caps and threads. The District will replace port cap gaskets as necessary. Other lubrication and gaskets/seals will be the responsibility of the Water Purveyor.

d. Valves, Drains and Defects.

The District will inspect the fire hydrant for defects, exercise the main operating stem, check for proper drainage and locate the hydrant street valve. Repairs will be the responsibility of the Water Purveyor.

e. Vegetation.

Natural vegetation occurring adjacent to fire hydrants will be trimmed or removed by the District. The area to be trimmed will be large enough to allow working room around the fire hydrant and good visibility from the Fire Department's access to such hydrant.

f. Physical Obstructions.

Physical obstructions include, but are not limited to, rockeries, fences, buildings, utility poles or enclosures, mailboxes and ornamental vegetation. These obstructions will be reported to the authority having jurisdiction for removal. This reporting will be done through the District via a Company Level Referral Form.

Section 5 - Reporting and Notification

Any fire hydrant that is known to be out of service by the District or the Water Purveyor will be reported to the other party immediately. Any reduction of fire flow or shut down of a water system or portion of a water system by the Water Purveyor will require immediate notification to the District.

The District agrees to notify the Water Purveyor in writing of any malfunctioning fire hydrant or of any repairs needed to bring the fire hydrant into compliance with Ordinance No. 92-99. (See "Hydrant Defect Code").

The Water Purveyor will respond as expeditiously as possible to such identified malfunction or needed repair and correct the problem in a workmanship like manner. The Water Purveyor will notify the District, in writing, when repairs are completed or malfunctions are corrected.

Section 6

Non-compliance with the terms of this agreement by either party serves to make this agreement null and void.

DATED this _____ day of _____, 1993.

PIERCE COUNTY FIRE
DISTRICT NO. 5
("District)

CITY OF GIG HARBOR
("Water Purveyor")

By: _____
GLEN R. STENBAK
Assistant Chief

By: _____

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this _____ day of _____, 1993, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GLEN R. STENBAK, to me known to be the Assistant Chief of PIERCE COUNTY FIRE DISTRICT NO. 5, the government entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said government entity,



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: BEN YAZICI, DIRECTOR OF PUBLIC WORKS *BY*
SUBJECT: COMPREHENSIVE TRANSPORTATION PLAN, PROFESSIONAL SERVICES CONTRACT
DATE: MAY 3, 1994

INTRODUCTION

Attached is the professional services contract with KJS Associates for your consideration. KJS Associates was interviewed when the Transpo Group Inc. was selected to be the consultant for the Comprehensive Transportation Plan. KJS Associates Inc. is willing to complete the Comprehensive Transportation Plan for \$38,624.00 which is the balance of the Transpo Group's contract. I am recommending your approval of this contract.

BACKGROUND/ISSUES

As you know, the Transpo Group was behind schedule for completing the Comprehensive Transportation Plan and they requested an extension of time to the contract. The City Council granted an extension with a liquidated damages provisions. The Transpo Group did not want to sign the contract amendment with the liquidated damage clause.

I then met with the Public Works Committee and discussed the possibility of terminating the contract and hiring another firm to complete the Comprehensive Transportation Plan. The Public Works Committee was convinced that the Transpo Group would not complete the plan on time and, therefore, it was decided to terminate the contract with them and select another firm to complete the plan.

We then contacted KJS Associates Inc. who was interviewed at the time of the consultant selection process. They indicated the desire to complete the plan for the remainder balance of the Transpo's contract which is approximately \$39,000.00.

POLICY ISSUES

We anticipate that there will be approximately three months delay for the final completion and adoption of the plan. This should have no significant impact in terms of Growth Management Act deadlines for completing our planing activities.

Our standard contract requires professional liability insurance. The KJS indicated that they do not carry professional liability insurance. I checked with the City Attorney and the City

Administrator and we concluded that our own insurance provides professional liability insurance. Therefore, we deleted the section of the standard contract regarding the professional liability insurance requirement.

FISCAL IMPACT

None. We will be completing the project within the original contract amount with Transpo Group, Inc. of \$44,790.00. There will not be a cost increase on this project for changing consultants.

RECOMMENDATION

I recommend a Council motion to approve the attached professional services contract with KJS Associates to complete the City of Gig Harbor Comprehensive Transportation Plan in the amount of \$38,624.

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF GIG HARBOR, WASHINGTON
AND
KJS ASSOCIATES, INC.**

THIS AGREEMENT, made and entered into this ____ day of May, 1994, by and between the City of Gig Harbor, Washington, a municipal corporation of the State of Washington (hereinafter referred to as the "Owner") and the KJS Associates Inc. (hereinafter referred to as the "Consultant").

WHEREAS, the Owner desires to retain the Consultant to perform professional services for preparing the City of Gig Harbor Comprehensive Transportation Plan (hereinafter referred to as Project); and

WHEREAS, the consultant represents that it has available and offers to provide expert personnel and services necessary to accomplish the services required for the project within the required time and that there are no conflicts of interest prohibited by law in entering into this agreement with the Owner;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained or incorporated herein, the Owner and the Consultant agree as follows:

SECTION 1 - ADMINISTRATION AND SUPERVISION

A. The Public Works Director will administer the Owner's Project responsibilities and assistance to the Consultant as required by the Agreement, which responsibilities shall be as follows:

The Public Works Director will provide all background and supporting documents to the Consultant as requested and available.

B. The Consultant represents that it has, or will obtain, all personnel necessary to perform the services required under this agreement, and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services.

SECTION 2 - SCOPE OF SERVICES

The Owner hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on the Project. The work and services for the Project to be performed by the Consultant are set forth in the Scope of Work attached hereto as Attachment A which is incorporated herein by this reference.

SECTION 3 - CHANGES AND ADDITIONAL WORK

The owner may direct the Consultant to revise portions of the Project work previously completed in a satisfactory manner, delete portions of the Project or make other changes within the general scope of the services or work to be performed under this Agreement.

SECTION 4 - RESPONSIBILITY OF THE CONSULTANT

A. The Consultant shall be responsible for professional quality, technical adequacy and accuracy, timely completion and coordination of all reports and other services prepared or performed by the Consultant under this Agreement. The Consultant shall correct or revise any errors, omissions or other deficiencies in such reports and other services without additional compensation.

B. The Consultant shall be and shall remain liable, in accordance with applicable law, for all damages to and costs incurred by the Owner caused by, arising from or connected with the Consultant's errors, omissions or negligent performance of any of the services furnished under this Agreement.

SECTION 5 - COMMENCEMENT AND COMPLETION OF PROJECT WORK

A. Time is of the essence in the performance by the Consultant. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and orderly progress of the Work. The Consultant shall complete the Project within 120 days of signing this Agreement and shall furnish any required follow-up services within five (5) days of the project completion.

B. During the performance under this Agreement, the Consultant shall use its best efforts to see that its work and services and that of its subconsultants are provided and performed in the most cost-effective and efficient manner practicable.

C. The Consultant agrees that the following schedule shall be met:

1. The draft plan will be submitted to the Public Works Director and the Planning Director not later than July 10, 1994, and
2. The draft plan will be submitted to the Planning Commission not later than July 17, 1994, and
3. Depending upon the Planning Commission's review time, the Consultant will make every effort possible to facilitate the submission of the plan to the City Council not later than August 17, 1994.

SECTION 6 - COMPENSATION

A. Subject to the provisions set forth in Attachment B, which is incorporated herein by this reference, the total payment to the Consultant will not exceed thirty-eight thousand six hundred twenty-four dollars (\$38,624.00), to be paid on monthly basis. Such payment shall be full compensation for work performed and services rendered for all supervision, labor, supplies, materials, equipment or use thereof, taxes and for all other necessary incidentals. The total fee and any individual phase amounts shall be subject only to authorized adjustments as specifically provided in this Agreement. In the event the Consultant incurs costs in excess of the total fee or the individual phase amounts, adjusted as provided herein, the Consultant shall pay such excess from its own funds and the Owner shall not be required to pay any part of such excess and the Consultant shall have no claim against the Owner on account thereof.

B. No payment, whether first or final, to the Consultant for any Project work shall constitute a waiver or release by the Owner of any claims, right or remedy it may have against the Consultant under this Agreement or by law, nor shall such payment constitute a waiver, remission or discharge by the Owner of any failure or fault of the Consultant to satisfactorily perform the Project work as required under this Agreement.

SECTION 7 - TERMINATION OF AGREEMENT

A. Either party may terminate this Agreement in whole or in part, in writing if the other party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the party initiating termination; provided that, insofar as practicable, the parties will be given: (1) not less than ten calendar days written notice delivered by certified mail, return receipt requested, of intent to terminate; and, (2) an opportunity for consultation before termination.

B. In addition to termination under Paragraph A of this Section, the Owner may terminate this Agreement, in whole or in part, in writing, for its convenience; provided, the Consultant will be given: (1) not less than ten calendar days' written notice delivered by certified mail, return

be given: (1) not less than ten calendar days' written notice delivered by certified mail, return receipt requested, of intent to terminate; and, (2) an opportunity for consultation with the Owner before termination.

C. If the Owner terminates for reasons other than fault on the part of the Consultant, the Owner and the Consultant shall determine the amount of work satisfactorily completed to the date of termination and the amount owing to the Consultant.

D. Upon receipt of a termination notice under paragraphs A or B above, the Consultant shall promptly discontinue all services affected (unless the notice directs otherwise), and (2) promptly deliver or otherwise make available to the Owner all reports and such other information and materials as the Consultant or subcontractors may have accumulated in performing this Agreement, whether completed or in progress.

E. Upon termination under any paragraph above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise.

SECTION 8 - LEGAL RELATIONS

A. In performing work and services hereunder, the Consultant and its employees, agents and representatives shall not be construed to be employees or agents of the Owner in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the Owner by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Owner. The Consultant shall be solely responsible for any claims for wages or compensation by Consultant employees, agents and representatives, including subconsultants, and save and hold the Owner harmless therefrom.

B. In performing the services under the contract, Consultants agrees to indemnify and hold harmless the Owner and Consultant's officers and employees to the fullest extent permitted by law, from and against any and all injury or damage to the Owner or its property, and also from and or damage to the Owner or its property, and also from and against all claims, demands and causes of action of every kind and character arising directly or indirectly or in any way incident to, in connection with, or arising out of performance of professional services under the terms hereof, including personal injuries or death, when caused in whole or in part by negligent acts, errors, or omissions of the Consultant, its agents, employees, representatives or subcontractors. In the event such claim, demand or cause of action is caused by the Concurrent Owner, its agents or employees, this indemnity shall apply only to the extent of Consultant's negligence. Consultant specifically promises to defend and indemnify the Owner against claims or suits brought under Title 51 RCW by its employees or subcontractors and waives any immunity that the consultant may have under the title with respect to but only to the Owner. This paragraph shall not apply to damages or claims arising from the sole negligence of the Owner.

C. Consultant will provide and maintain at its sole expense such policies of general comprehensive liability insurance as may be appropriate to insure against any claim or claims for damage arising by reason of personal injury, death or property damage occasioned directly or indirectly in connection with the acts or omissions of the Consultant, its agents, employees, representatives or subcontractors. In no event will such policies provide coverage in amounts less than five hundred thousand dollars (\$500,000) per person and one million dollars (\$1,000,000) per occurrence. The policy or policies shall require the insurer(s) to give the Owner at least 30 days advance written notice of any revocation, suspension, modification or termination of any such policy or policies. Consultant will not less than annually provide the Owner with the evidence of compliance with this paragraph in the form of a certificate of insurance or evidence in such other form as the Owner will deem satisfactory. This paragraph shall survive the termination of this Agreement for a period of time necessary to adequately insure against all claims that could arise out of, or are related to, or that result during the terms of this Agreement.

D. The Owner's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

E. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. Subject to the provisions herein regarding exhaustion of administrative remedies, the Superior Court of Pierce County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

SECTION 9 - NOTICE

Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party or twenty-four (24) hours after mailing to the place of business set forth below, whichever is earlier.

Owner: City of Gig Harbor
P.O. Box 145
Gig Harbor, Washington 98335
Attn: Director of Public Works

Consultant: KJS Associates Inc.
Koll Center Bellevue
500 108th Avenue N.E., Suite 2100
Bellevue, Washington 98004
Attn: Mr. Joseph Savage, P.E., Vice President

SECTION 10 - ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the subject matter hereof and constitutes the entire Agreement between the parties.

This Agreement may be amended only by written instrument signed by the parties hereto.

SECTION 11 - OWNERSHIP OF DOCUMENTS

Methodology, software, logic and systems developed under this Agreement are the property of the Consultant and the Owner, and may be used by the Consultant and the Owner as they see fit, including the right to revise or publish the same without limitation.

SECTION 12 - ASSIGNMENT

The Consultant shall not assign, sublet or otherwise transfer any rights or obligations under this Agreement without the written consent of the Owner. This Agreement shall be binding on the parties, their heirs, successors and legal representatives.

CITY OF GIG HARBOR

By _____
Mayor Gretchen Wilbert

Date _____

ATTEST/AUTHENTICATE:

Mark E. Hoppen
City Administrator/Clerk

CONSULTANT

By _____
Name & Title

Signature _____

Date _____

**Gig Harbor Transportation Plan
Milestones**

| Item | Date |
|--|---|
| Kickoff Meeting | May 13, 1994 |
| Alternatives Public Meeting with Planning Commission | Week of June 19 |
| Present Draft Recommendations to City Staff | Week of July 10 |
| Present Draft Plan to Planning Commission (Public Meeting) | Week of July 17 |
| Present Draft Plan to City Council | Estimated date August 17 (depends on Planning Commission's schedule) |
| Final Plan Document (camera ready) | One week following City Council Action on Draft Plan (est. Date = Sept 15) |

**Attachment B
Gig Harbor Transportation Plan Cost Estimate**

| No. | Name | Proj. Man. | Senior | Associate | WP | Technical |
|---------------------|---|-----------------|-----------------|-----------------|----------------|----------------|
| | | JPS | JLG | MLE/JRM | Deb | Support |
| 1 | Proj. Management | 6 | | | | 4 |
| 2 | Community Interaction Staff Meetings (4) | 16 | 8 | | | |
| | Public Meetings (2) | 10 | | 16 | 8 | 10 |
| 3 | (deleted) | | | | | |
| 4 | Future Traffic Volumes | | | | | |
| | Land Use Forecasts | 8 2 | 4 8 | 2 24 | | |
| 5 | System Deficiencies | | | | | |
| | Level of Service | 4 | 8 | 24 | 4 | 4 |
| | Identify Deficiencies | 2 | 8 | 4 | | |
| 6 | Develop List of Improvements | 4 | 16 | 40 | | 8 |
| | Plan Refinement | | | | | |
| | Alternatives Testing | 6 | 16 | 24 | | |
| | Prioritization | 2 | 4 | 4 | | |
| | Non-motorized Plan | 1 | 4 | 16 | | 8 |
| 7 | Transit/TDM | 1 | 4 | 16 | | 8 |
| | Tech Memo | 4 | 24 | 10 | 8 | 12 |
| 7 | Funding | 2 | 24 | 32 | 4 | |
| 8 | Reports | 8 | 24 | 24 | 20 | 8 |
| Total Hours | | 76 | 152 | 238 | 44 | 62 |
| Billing Rate | | \$133 | \$80 | \$49 | \$44 | \$38 |
| Labor Costs | | \$10,108 | \$12,160 | \$11,564 | \$1,936 | \$2,356 |

| | |
|--------------------|-----------------|
| Total Labor | \$38,124 |
| Directs | \$500 |
| Total Costs | \$38,624 |

5/3/94

Gig Harbor Transportation Study Project Schedule

| ID | Name | 5/8 | 5/15 | 5/22 | 5/29 | 6/5 | 6/12 | 6/19 | 6/26 | 7/3 | 7/10 | 7/17 | 7/24 | 7/31 | 8/7 | 8/14 |
|----|---------------------------|-----|------|------|------|-----|------|------|------|-----|------|------|------|------|-----|------|
| 1 | 1. Project Management | | | | | | | | | | | | | | | |
| 2 | 2a. Kickoff Meeting | | | | | | | | | | | | | | | |
| 3 | 2b. Second meeting | | | | ◆ | | | | | | | | | | | |
| 4 | 2c. Third meeting | | | | | | | ◆ | | | | | | | | |
| 5 | 2d. Fourth meeting | | | | | | | | | ◆ | | | | | | |
| 6 | 2e. Fifth meeting | | | | | | | | | | | ◆ | | | | |
| 7 | 2A. Alternatives Meeting | | | | | | | ■ | | | | | | | | |
| 8 | 2B. Present Draft Plan | | | | | | | | | | | | | | | |
| 9 | 2C. Present Final Plan | | | | | | | | | | | | | | | ◆ |
| 10 | 3. Exist Cond Review | | | | | | | | | | | | | | | |
| 11 | 4. Future Traffic Volumes | | | | | | | | | | | | | | | |
| 12 | 5. Deficiencies & Needs | | | | | | | | | | | | | | | |
| 13 | 6. Plan Refinement | | | | | | | | | | | | | | | |
| 14 | 7. Financial Plan | | | | | | | | | | | | | | | |
| 15 | 8a. Draft Report | | | | | | | | | | | | | | | |
| 16 | 8b. Final Report | | | | | | | | | | | | | | | |