



Development Agreements in Clark County

February 2019

The report is prepared to detail Clark County's methodology for processing Development Agreements, compare the procedures with other jurisdictions, and present draft code to improve our processes while providing certainty to applicants.

Existing Conditions

Overview

A development agreement (DA) is a voluntary contract between a local jurisdiction and a person who owns or controls property within the jurisdiction, detailing the obligations of both parties and specifying the standards and conditions that will govern development of the property. Although the agreements are voluntary, once made they are binding on the parties and their successors.

A DA provides assurances to the developer that the development regulations that apply to the project will not change during the term of the agreement. The city or county may require conditions to mitigate project impacts, as well as clarification about project phasing and timing of public improvements. RCW 36.70B.170 describes the type of development standards that are appropriate in a DA.

Clark County typically processes and approves DAs for large complex land development and/or rezones. In most situations, DAs are initiated by the developer, rather than the county. The agreements provide certainty in the development process by setting the ground rules. The certainty in the DA reduces the financial risk to the developer. However, Clark County lacks a formal process for reviewing and approving DAs. The absence of codified procedures introduces uncertainty in the process of establishing DA assurances.

Statutory Authority / Legal Requirements

The Local Project Review Act (Ch. 36.70B RCW), enacted in 1995, provides specific authority and direction for DAs. In particular, see RCW 36.70B.170 - .210 and WAC 365-196-845.

Local jurisdictions must hold a public hearing prior to approving a DA and may only impose impact fees, dedications, mitigation measures and standards as authorized by other laws. RCW 36.70B.180 addresses vested rights under a DA.

Purposes of Development Agreements

The Washington State Legislature authorized DAs in 1995 with the following intent:

"The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses.

Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW [36.70B.170](#) through [36.70B.210](#) to allow local governments and owners and developers of real property to enter into development agreements."

DAs are approved for a variety of situations that may include the establishment of mitigation requirements, flexibility in the development process, tax benefits, encouraging development and re-development or vesting establishment; among others. The general public may benefit in the protection of environmental and historic features of land, job creation, controls over design, layout and style aesthetics, or furthering of Comprehensive Plan goals and policies. The private sector may benefit by offsetting and limiting development costs, easier marketing of property, development process predictability or the vesting of development regulations.

Development Agreements in Clark County

Clark County does not have a formal process for negotiating DAs; some of which are provide below:

Inefficiency

The lack of a prescriptive process leads to inefficiency for processing DAs. DAs are initially conceptualized by developer and submitted to the county for consideration. In the past DAs have been submitted to the Prosecuting Attorney's Office, Department of Public Works, Community Development, Community Planning or the Clark County Council. Because DAs can be used for a variety of purposes, the lead Clark County department to process the DA is not always clear. The lack of process creates internal uncertainty as to which department is facilitating the DA negotiations; producing inefficient staff time.

Policy Negotiation

Once a department is assigned as the lead, the draft DA submitted is reviewed by staff and negotiations begin. In many cases, negotiations include policy decisions that are not under county staff's authority. Policy decisions are the purview of the County Councilors. The final approval of development agreement rests with the councilors in the public hearing. Development agreements are often complex, so to negotiate policy issues in the public hearing may have negative consequences for the county.

Public Process

When development agreements are negotiated by staff that are subject to planning commission review before final approval by council, planning commissioners may feel they have been "left out of the loop." This may be especially true if the legislative body is the only one receiving updates as negotiations proceed. The consequences of the planning commission feeling insufficiently involved may include:

- Bad feelings on the part of individual planning commissioners;
- A lack of planning commission input during negotiations; and
- Less protection of elected officials' interests by appointed commissioners.

Best Practices

Overview

While a development agreement may be viewed as an alternative to the traditional development approval process, in practice it is commonly used in conjunction with it. Development agreements can involve a great deal of time and energy to negotiate and implement. Accordingly, it is important at the outset to carefully evaluate the advantages and disadvantages of using a development agreement in each specific instance. It's important to evaluate other local jurisdictions practices as they relate to development agreements in order to employ the best strategy for Clark County.

Application Process

An application form specifying the type of information an agency needs to process the development agreement request is an efficient way of ensuring that the agency receives all of the information it needs in a timely manner. Some development procedures authorize the agency's planning director to develop a form application for development agreements. A sample development agreement application from the City of San Diego is provided in Appendix 2.

It can also be helpful for an agency's development agreement procedures to authorize the prosecuting attorney's office to develop a form agreement. Having a readily available form agreement saves staff time in reviewing development agreements; it also provides greater assurance that the agreement will cover all of the agency's needs. A form agreement can save time and costs for reviewing the terms of the proposed agreement. Appendix 3 is a sample for from the City of Gig Harbor, Washington.

Who Negotiates?

The public agency, senior staff or their representatives typically negotiate development agreements. The county manager (or representative) is typically involved because he or she presumably knows the community, understands the desires of the legislative body and can gauge whether aspects of the agreement will be valuable to the community.

The agency's planning director (or representative) is typically on the negotiating team because of his or her planning background. While the manager may focus on financial benefits to the community, the planning director will be concerned with the project's land use impacts, including its compatibility with surrounding land uses.

The public agency may also want to include its attorney on the negotiating team, rather than just at the drafting stage, especially if the project proponent is represented by legal counsel. Legal issues will undoubtedly arise during negotiations and drafting issues may overlap with substantive deal points. Whether legal counsel participates in the negotiations or not, he or she should be fully apprised of the negotiations as they proceed.

If the agreement will cover extensive infrastructure issues, it may be helpful to include the agency's engineer or public works staff on the negotiating team.

Procedures

Numerous jurisdictions throughout Washington State and elsewhere apply development agreements to unique projects that need certainty regarding development standards, uses, vesting and/or mitigation for major projects. The [City of Vancouver](#), [King](#), [Pierce](#) and [Snohomish](#) County identify the procedures for approval in their county code. The procedures for these three counties take different paths, in relation to the development application. The City of Vancouver, King and Snohomish County require that the application to develop the site run concurrently with the DA, while in Pierce County the DA precedes the development application.

City of Vancouver

- Development Agreements not associated with a land use application are presented to the City Council
- Development Agreements associated with a Type I or III land use application receive approval from the review body on portions of the land use application not related to the development agreement
- Development Agreements associated with a Type IV land use application receive the Planning Commission's recommendation on portions of the land use application not related to the development agreement
- The City Council considers the development agreement in a public hearing
- The City Council approves the development agreement by ordinance or resolution
- The City records the Development Agreement with the County Auditor

Pierce County

- DA is submitted by the developer
- County Council initiates DA review through an adopted resolution
- Staff reviews and negotiate terms and conditions of DA
- County Council considers DA in public hearing
- County Council adopts ordinance authorizing County Manager to enter into the approved DA
- DA recorded with the County Auditor

Snohomish County

- DA is submitted by the developer
- Staff reviews and negotiate terms and conditions of DA
- DA is presented to the hearing examiner
- Hearing examiner makes recommendation on DA
- Party of record may request review of the hearing examiner's recommendation
- If no party of record requests review of the hearing examiner's recommendation, the department forwards the recommendation to the County Council in a closed public hearing
- County Council considers DA and adopts ordinance
- DA is recorded with County Auditor

King County

- Applicant submits an application for an urban planned development (UPD) permit

- When development standards differ from those allowed in the development standards, a DA is initiated.
- The DA and the UPD are processed concurrently.
- County Council considers the UPD and DA in public hearing
- County Council approved the UPD and adopts DA ordinance
- DA is recorded with County Auditor.

Criteria

Development Agreements are authorized by the state of Washington for local jurisdictions planning under the Growth Management Act in RCW 36.70A. This reference to the Growth Management Act requires consistency that DAs have to remain compatible with the Comprehensive Growth Management Plan. King, Pierce and Snohomish Counties specify decision criteria in their particular county codes. The criteria in each of these codes are subjective. Pierce County requires advancement of the Comprehensive Plan’s goal and policies; specifically, to achieve economic vitality, preserve resource land and to promote sustainability. Snohomish County requires the compatibility with the Comprehensive Plan, consistency with development regulations (unless modified) and mitigation of adverse environmental impacts. King County specifies that DAs can only be applied in the urban areas of the County and relies on the specific standards for urban planned developments for their criteria.

Default, Remedies and Termination

Drafters typically recite that upon the commission of a material breach, the other party may terminate the agreement and exercise other legal remedies it may have.

Especially with respect to larger projects, parties may be motivated to enter into elaborate provisions concerning default, available remedies and termination, so that in the event of a material breach, the breaching party has a specified time to “cure” the breach, before the other party can terminate the agreement. These provisions may contain what are known as “force majeure” recitals that preclude terminating the agreement, or that extend the term of the agreement, when performance is not possible due to war, insurrection, terrorism, strikes and other events that are beyond the control of the parties. Recognize that these provisions are generally advantageous to the project proponent and that having potentially lengthy periods in which the agency is unable to apply new land use rules and regulations may affect the agency’s ability to do responsive land use planning.¹

Non Performance Issues

It is important to remember that a development agreement is indeed a contract, the breach of which may be subject to monetary damages. Some local agency attorneys include clauses limiting remedies against the agency to specific performance. Under some circumstances, liquidated damages clauses may protect the agency from upside risks associated with damages awards. The local agency will also find it helpful to consider what kinds of remedies it will want to have available in the event the project

¹ The Nuts and Bolts of Processing Development Agreements. Institute for Local Self Government. Community Land Use Project. 2002

proponent defaults on certain obligations. Some of the options local agencies may want to consider include:

- Letters of credit
- Performance bonds
- Withholding certain approvals (for example building permits), until performance occurs

The agency may also want to think through timing issues associated with project proponent performance; in some instances, it may be advisable to specify time frames for performing aspects of the development agreements and the consequences of not meeting those time frames.²

Indemnification and Hold Harmless Provision

It is standard practice to have the project proponent hold the local agency harmless from any liability the agency may incur as a result of entering into the agreement. Also helpful is a provision requiring the project proponent to indemnify and defend the entity at the proponent's cost against any legal action instituted by a third party to challenge the validity of the agreement.

² The Nuts and Bolts of Processing Development Agreements. Institute for Local Self Government. Community Land Use Project. 2002

Summary

Clark County continually reviews and approves development agreements that advance the county's long term objectives. The ability to implement development agreements efficiently and effectively benefits the public sector by minimizing staff resources; while allowing the private sector to develop innovative projects that don't conform to traditional development practices. However, Clark County lacks formal procedures to move development agreements through the approval process. In order to provide staff with specific procedures and allow the private development to track the process, the Clark County Code may be amended to provide a prescribed process for development agreements.

Clark County has processed development agreements for project and non-project developments. Project developments have specific site plans that the developer wishes to build, while non-project developments are conceptual in nature. The difference between these two types of development agreements can mean that Community Development takes the lead in processing the Development Agreement because it is tied to a permit. Non-project development agreements may mean Community Planning is the lead with potential amendments to the Comprehensive Plan. The Pierce County Code frames the approval process to make this determination. The Pierce County Code also engages the County Councilors in the initial steps of the process. This initial involvement can be helpful during the negotiations of the development agreement.

There are a number of issues that warrant consideration when drafting a development agreement. In the final analysis, a well-drafted development agreement should accurately capture the deal points negotiated by the parties and anticipate and address potential problems that may arise during implementation of its terms.

Appendix 1

Section 40.550.030 DEVELOPMENT AGREEMENTS

40.550.030 Development Agreements

- A. Purpose.** The purposes of this Section include one or more of the following, as appropriate in the circumstances:
1. Create a procedure for application, review, consideration, and conditioning of certain development projects according to the extent to which they advance the Comprehensive Plan's goals and policies.
 2. Subject to the provisions of CCC 40.550.030.D.1.c, provide certainty to a developer that a project may proceed to be developed per the development standards, zoning ordinances, regulations, and other code provisions in effect at the time of the approval.
 3. Provide assurance that currently allowed uses for a property may be maintained for a specified period of time in exchange for specific consideration which advances the Comprehensive Plan's goals and policies.
 4. Provide a consistent process and criteria for review of proposed development agreements.
- B. Applicability.**
1. This Section applies to development agreements authorized pursuant to RCW 36.70B.170 through 36.70B.210 between Clark County and any person having ownership or control of real property located within Clark County's jurisdiction.
 2. The provisions of this Section do not apply to or affect the validity of any contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on or before the effective date of this Section, or adopted under separate authority, even though such agreements may also relate to development standards, mitigation and other regulatory requirements.
 3. The county is authorized, but not required, to accept, review and approve a proposed development agreement. This process is voluntary on the part of both the applicant and the County. The decision to approve a development agreement is discretionary with the Clark County Council.

4. Neither application nor approval of a development agreement vests a project to development standards, zoning ordinances, regulations, and other code provisions, except as specified in the development agreement.
5. Development agreements shall terminate 10 years from the date of recordation, or earlier, if specified in the terms of the development agreement.

C. Types of Development Agreements.

1. **Project Development Agreement.** A project development agreement shall relate to a specific development proposal that is or would be subject to a Type II or III process defined in Chapter 40.510 CCC. The applicant shall submit a detailed site design with the identification of specific uses and activity. The level of detail shall be such that the project can be reviewed to determine the appropriate level of mitigation related to, but not limited to, transportation, stormwater and critical areas.
2. **Non-Project Development Agreement.** A non-project development agreement shall address a conceptual development that involves a legislative decision associated with a Type IV process defined in Chapter 40.510 CCC.

D. Development Standards.

1. Project Development Agreement.
 - a. A development agreement may set forth the development standards, zoning ordinances, regulations, code provisions that shall apply to and govern the project, for the duration specified in the agreement.
 - b. In order to encourage innovative land use management and provide flexibility to achieve public benefits, a development agreement adopted pursuant to this Section may impose development standards that differ from, but are consistent with, the development standards of the Clark County Code that would otherwise apply to a proposed development. Development standards imposed by the development agreement must be consistent with the comprehensive plan, and adequately address public health, safety, welfare and environmental requirements.
 - c. Subsequently adopted standards which differ from those in the development agreement shall apply to the subject site only if necessary to address a serious threat to public health and safety or if the development agreement specifies a time period or phase after which certain identified standards may be modified. Building permit applications shall be subject to the building codes in effect when the building permit application is deemed complete.

2. Non-Project Development Agreement. Unless otherwise specified, a non-project development agreement may only allow permitted land use types associated with the zoning or existing legally established uses in effect at the time the agreement is approved.

E Development Agreement Application.

1. The applicant shall submit a form provided by the County to initiate a development agreement. The application form for proceeding with a development agreement may include a draft development agreement, but must include a narrative that details:
 - a. The proposed development or Type IV non-project proposal;
 - b. The need to deviate from the Clark County Code;
 - c. The specific consideration that the applicant will provide to the County pursuant to the DA; and
 - d. How the development agreement would be consistent with state law, development standards, zoning ordinances, regulations and other code provisions and would comply with the Clark County Comprehensive Plan's Goals and Policies.

F Contents of a Development Agreement.

1. A project development agreement shall include the following:
 - a. A site plan depicting boundaries and project elements, such as: location, acreage and range of densities for residential development, if applicable; location and range of types of uses of nonresidential development; if applicable; location and size of critical areas and buffers, if any; perimeter buffers, if any; location and acreage of active and passive recreational areas, if any; and motorized and non-motorized circulation routes, including route connections to streets and pedestrian and bicycle routes servicing and/or abutting the site;
 - b. The identification of consideration provided by the developer that furthers the goals and policies of the Clark County 20-year Comprehensive Growth Management Plan in exchange for implementing the agreement;
 - c. The expected build-out period and, if applicable, the phasing of development;
 - d. The duration of the agreement, which must comply with CCC 40.550.030.B.5;
 - e. Provisions for the termination of the development agreement, which must comply with CCC 40.550.030.B.5;
 - f. If environmental review is required under the State Environmental Policy Act, measures to mitigate significant adverse impacts including, but not limited to any impacts to public services and facilities;

- g. A traffic impact study consistent with the requirements of CCC 40.350.020.D;
 - h. A title report containing proof of ownership;
 - i. If the applicant is not the owner of the property, a written and notarized statement by the owner authorizing the applicant to submit and negotiate the application on the owner's behalf, and for the County to process, review, negotiate, and consider the application for approval;
 - j. Identification of whether the development agreement runs with the land;
 - k. Provisions acknowledging that at the time a specific development application is submitted, all development regulations in effect at the time of submittal shall be applicable; and
 - l. Cost recovery provisions and timelines for processing, administering, and monitoring compliance with any required permits and approvals.
2. A non-project development agreement shall include the following:
- a. A map depicting boundaries of the area subject to the development agreement;
 - b. The identification of consideration provided by the developer that furthers the goals and policies of the Clark County 20-year Comprehensive Growth Management Plan in exchange for implementing the agreement;
 - c. The listing of use types or specific uses that shall be permitted or prohibited pursuant to the development agreement, and their phasing, if applicable, and build-out periods;
 - d. The duration of the agreement, which must comply with CCC 40.550.030.B.5;
 - e. Provisions for the termination of the agreement, which must comply with CCC 40.550.030.B.5;
 - f. A map depicting the location of specific public amenities, infrastructure improvements or other public benefits that shall be provided through implementation of the agreement;
 - g. A traffic impact study consistent with the requirements of CCC 40.350.020.D;
 - h. A title report containing proof of ownership;
 - i. If the applicant is not the owner of the property, a written and notarized statement by the owner authorizing the applicant to submit and negotiate the application on the owner's behalf, and for the County to process, review, negotiate, and consider the application for approval;
 - j. Identification of whether the development agreement runs with the land; and
 - k. Provisions acknowledging that at the time a specific development application is submitted, all development regulations in effect at the time of submittal shall be applicable.

G Review Criteria.

1. The County Manager or designee(s) shall negotiate acceptable terms and conditions of the proposed development agreement, subject to initial authorization by the Clark County Council and to final approval of the development agreement by the Clark County Council.
2. A development agreement must conform to the existing Clark County 20-year Comprehensive Growth Management Plan. The agreement must not allow for use types or densities currently not permitted by the existing zoning ordinance or existing legally established uses.
3. A development agreement must advance the goals and policies of the existing Clark County 20-year Comprehensive Growth Management Plan. Examples of compliance with this requirement include, but are not limited to, demonstration of one or more of the following:
 - a. Promoting vitality of an area designated as a Regional, Countywide or Local Center;
 - b. Preserving resource lands;
 - c. Promoting community sustainability through complete, compact and connected communities;
 - d. Dedicating lands for public facilities or services; and
 - e. Constructing of public improvements.

H. Procedures.

1. Preliminary Review.
 - a. Preliminary review is required for all development agreement applications. To initiate preliminary review, an applicant shall submit a completed development agreement application, pursuant to CCC 40.550.030.E, to the Permit Center, along with the required preliminary review fee. The required preliminary review fee shall be twenty percent of the total fee cost established in CCC 6.110A.010. The Land Use Division of the Community Development Department shall determine whether the application is fully complete.
 - b. Within twenty-one (21) calendar days after acceptance of a fully complete development agreement application, the County Manager or designee(s) shall collect a cursory assessment from each of the Departments of Community Development, Community Planning, and Public Works.
 - c. The County Manager or designee(s) shall schedule a public meeting with the Council.
2. Initial Authorization by the Clark County Council.
 - a. The Clark County Council shall hold a public meeting in accordance with the rules and procedures adopted by the Council. The County Manager shall present the preliminary departmental assessments and a recommendation whether the County should proceed to negotiate the proposed development agreement.

- b. The Clark County Council may direct the County Manager to proceed with negotiating the terms of the draft development agreement, or it may deny the development agreement application.
3. Negotiation and Recommendation.
 - a. The applicant shall submit all the materials required by Section 40.550.030.F, along with a final review fee, to initiate negotiations. The required final review fee shall be the total fee established in CCC 6.110A.010, less the fee paid at preliminary review.
 - b. The County Manager may appoint a designee to conduct negotiations on behalf of the County and provide a recommendation to the County Manager.
 - c. The draft development agreement shall be forwarded to each affected department which shall review and comment to the County Manager regarding the policy and financial implication of the proposal.
 - d. After negotiating the terms of a proposed project development agreement, the County Manager shall forward the proposed development agreement with a recommendation to the Clark County Council for its review and approval.
 - e. After negotiating the terms of a proposed non-project development agreement, the County Manager shall forward the proposed development agreement with a recommendation to the Planning Commission.
 4. Final Consideration by Clark County Council..
 - a. The Clark County Council shall consider a proposed development agreement in a public hearing and the Council shall either adopt an ordinance or resolution authorizing the County Manager to enter into the development agreement or may deny the proposed development agreement.
 - b. The County Manager will designate in writing the department responsible for administering and monitoring compliance with the approved Development Agreement.

I. Effect.

1. A development agreement pursuant to Chapter 36.70B RCW and this Section shall: Bind the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property subject to the development agreement;
2. Upon approval of a development agreement pursuant to CCC 40.550.030.H and its execution by all the parties to the agreement, the County shall record the agreement with the Clark County Auditor. On the date of recordation, or any later date specified in the agreement, the development agreement will take effect.

J. Amendment. Any revision to an approved development agreement must be by written amendment, made during the term of the development agreement, duly authorized by the Council pursuant to the procedures set forth in Section 40.550.030.H.2-4, and signed by the parties.

Appendix 2

City of San Diego's Application Form



City of San Diego
Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

Development Agreement Supplemental Form

**FORM
 DS-3038**

JUNE 2013

Project No.: _____

California Government Code sections 65864 et al. and Land Development Code Chapter 12, Article 4, Division 1 provide for a process for review and approval of Development Agreements. This form is required upon submittal of an application to request a Development Agreement and is intended to supplement the General Application form.

1. Applicant Name: _____ **E-mail Address:** _____

Address: _____ **City:** _____ **State:** _____ **Zip Code:** _____ **Telephone:** _____

2. Property Owner Name: _____ **E-mail Address:** _____

Address: _____ **City:** _____ **State:** _____ **Zip Code:** _____ **Telephone:** _____

3. Site Address/Assessor's Parcel Number where Development Agreement is requested:

Address/APN: _____ **Zip Code:** _____

4. Identify whether the Development Agreement will impact the following. If the answer is yes, identify the associated impact or benefit in the space provided.

- | | | | |
|--|------------------------------|-----------------------------|-------|
| Circulation Facilities | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Parks | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Schools | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Water | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Police Protection | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Fire Protection | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Trash Disposal | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Sewage Disposal | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Hazardous Waste Disposal | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Air Quality | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Public Libraries | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Low-income and Affordable housing (as defined by the Housing Commission) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
| Airports | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |

5. Identify the type and size of development that would be covered and the requested duration of the development agreement.

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
 Upon request, this information is available in alternative formats for persons with disabilities.

DS-3038 (06-13)

Project No.: _____

6. Identify the public benefit that will result in excess of what can be obtained under existing policies and regulations.

7. Identify how the project will comply with Council Policy 300-10 (Equal Opportunity) and Council Policy 800-15 (Equal Opportunity Contracting).

8. Identify how the project will comply with Council Policy 600-19 (Balanced Communities) and Council Policy 600-20 (Open Housing Policy).

9. Please attach any documents that you feel are necessary to support your request for a Development Agreement.

10. Property Owner Declaration: I _____, certify, under penalty of perjury under the laws of the State of California, that the information provided above is correct.

Signature: _____

Date: _____

Appendix 3

City of Gig Harbor's Development Agreement Form

PL 2.1420

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND _____, FOR THE
_____ DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 200_, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the “City,” and _____, a (corporation, limited partnership, partnership, etc.) organized under the laws of the State of _____, hereinafter the “Developer.”

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, local governments may also enter into a development agreement for real property outside its boundaries as part of a proposed annexation or service agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the “Development Agreement”), relates to the development known as _____, which is located at: (provide street address _____) (hereinafter the “Property”); and

WHEREAS, the following events have occurred in the processing of the Developer’s application:

- a) By Ordinance No. ___, the City amended the City’s Comprehensive Plan land use designation for the Property to _____;

b) By Ordinance No. __, the City amended the City's Zoning Ordinance to rezone the property to _____, subject to various conditions;

c) By Hearing Examiner's decision No. _____, approved a (identify development approval), a copy of which is attached hereto;

d) After a public hearing, by Ordinance No. __, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, consisting of _____ acres in the City of Gig Harbor. The _____ (identify development permit/approval) describes the Project as _____ (number of residential units, retail and service uses, parks, etc.).

Section 2. *The Subject Property.* The Project site is legally described in Exhibit __, attached hereto and incorporated herein by this reference.

Section 3. *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Adopting Ordinance" means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200.

b) "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

c) "Council" means the duly elected legislative body governing the City of Gig Harbor.

d) "Design Guidelines" means the Gig Harbor Design Manual, as adopted by the City.

e) "Director" means the City's Community Development Director or Director of Planning and Building.

f) "Effective Date" means the effective date of the Adopting Ordinance.

g) “Existing Land Use Regulations” means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

h) “Landowner” or is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The “Developer” is identified in Section 5 of this Agreement.

i) “Project” means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. *Exhibits.* Exhibits to this Agreement are as follows:

- a) Exhibit A – legal description of the Subject Property.
- b) Exhibit B – Map showing Development Phases.
- c) Exhibit C – Map of Wetland Areas.

Section 5. *Parties to Development Agreement.* The parties to this Agreement are:

a) The “City” is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

b) The “Developer” or Owner is a private enterprise which owns the Subject Property in fee, and whose principal office is located at _____.

c) The “Landowner.” From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6. *Project is a Private Undertaking.* It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. *Term of Agreement.* This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement, and shall continue in

force for a period of ___ years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

Section 9. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

Section 10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Financing of Public Facilities.

A. Developer acknowledges and agrees that it shall participate in the _____ for its pro-rata share of the costs of public improvements to be financed thereby, in accordance with the provisions of this Agreement and the SEPA MDNS issued for the _____.

B. At the request of the Developer, the City shall pursue the use of a local improvement district and other similar project-related public financing mechanism for financing the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Subject Property, whether located within or outside the Subject Property. To the extent allowed by law, the City shall address any

reimbursement mechanism to Developer for expenses incurred by Developer associated with the _____, subject to the City's ordinances and State law.

Section 13. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.____ of the Gig Harbor Municipal Code.

Section 14. Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed according to the following schedule:

- A. Street Improvements.
- B. Potable Water and Fire Flow Facilities.
- C. Sewer Facilities.
- D. Utilities.
- E. Parks and Open Space.
- F. _____.

Section 15. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement. Dedication shall be considered by the City in the following schedule:

A. Parks. With regard to parks within the Subject Property, each park site (or portion of the community park site, which is to be dedicated in phases) shall be dedicated to the City as the maps for the phases of the subdivisions are approved and recorded, as shown in Exhibit ___, attached hereto.

B. Rights-Of-Way. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 16. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 17. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

Section 18. Termination. This Agreement shall expire and/or terminate as provided below:

A. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

B. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals.

C. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such

termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

Section 19. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 21. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 22. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 23. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see*, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its

Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property five years from the anniversary date of the Effective Date of this Agreement.

Section 24. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 25. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 26. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This development agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the _____ project are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 27. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 28. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of

such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 29. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 30. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

CITY OF GIG HARBOR

By _____
Its _____

By _____
Its Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

[Add notary blocks]