

AGENDA
GIG HARBOR CITY COUNCIL MEETING
Monday, July 10, 2023 – 5:30 p.m.
Council Chambers

This meeting may also be accessed through Zoom at <https://zoom.us/j/93216056382> or by calling (253) 215-8782 and entering meeting ID 932 1605 6382. Please see the public comment & decorum section at the end of this agenda for information on options to make public comment.

CALL TO ORDER/ROLL CALL

PLEDGE OF ALLEGIANCE

LAND ACKNOWLEDGMENT

Before we begin this council meeting we would like to recognize that we are gathered on not only the ancestral and traditional lands of the sx̣wəbəc̣ band of the Puyallup Tribe of Indians, but also on the site of one of the largest and longest standing historic villages of their people, the original inhabitants of the Gig Harbor area.

CHANGES TO THE AGENDA

PUBLIC COMMENT ON CONSENT AGENDA ITEMS AND ITEMS NOT ON THE AGENDA

CONSENT AGENDA

1. City Council Minutes

Documents:

[City Council Minutes - June 26, 2023.pdf](#)

2. Approval of Lease Renewal with DNR for Eddon Boat Park

Documents:

[AGENDA BILL Eddon Boat Park DNR lease.pdf](#)

3. Amendment to Murphy's Landing Marina Navigation Channel Dredging Agreement

Documents:

[AGENDA BILL Agreement Amendment with Murphys Landing.pdf](#)

4. Appointment of Jon Ashlock and Guy Hoppen to the Historic Preservation Commission

Documents:

[AGENDA BILL HPC Appointments.pdf](#)

5. Resolution 1284 Authorizing the Submittal of an Application for Grant Funding Assistance to the Washington State Transportation Improvement Board for the Two Capital Improvement Projects “Burnham Drive Half-Width Improvement Phase 1a” and “Wollochet/Wagner Intersection Improvements”

Documents:

[AGENDA BILL Resolution 1284.pdf](#)

6. Approval of Vouchers

Check numbers 100890 through 100992 and ACH Payments in the amount of \$803,365.42.

7. Approval of Payroll for the Month of June

Checks #8390 through #8392 and direct deposit transactions in the total amount of \$861,353.04.

PRESENTATIONS

1. Municipal Court Week Proclamation

Documents:

[Municipal Court Week Proclamation.pdf](#)

2. Recognition of Retiring Police Sergeant Matt Dougil and Police Officer Mike Allen

Chief of Police Kelly Busey

Documents:

[Matt Dougil and Mike Allen.pdf](#)

3. Annual Crime Report

Chief of Police Kelly Busey

Documents:

[2022 Crime in Washington Presentation.pdf](#)

MAYOR'S REPORT

CITY ADMINISTRATOR'S REPORT

Documents:

[Department Updates - July 5, 2023.pdf](#)

BUSINESS ITEMS

1. Resolution 1285 Approving a 2023-2024 Lodging Tax Grant to the Gig Harbor Chamber of Commerce to Provide Direct Marketing Organization Services

Suggested Motion: Move to approve Resolution 1285.

- a) Report: City Clerk Josh Stecker
- b) Clarifying questions from council
- c) Public comment
- d) Council deliberation and action

Documents:

[AGENDA BILL Resolution 1285.pdf](#)

2. Approval of Professional Services Contract Amendment #2 Davido Consulting Group, Inc., for Commercial Fishing Homeport

Suggested Motion: Move to authorize the mayor to execute professional services contract amendment #2 with Davido Consulting Group, Inc., in an amount not to exceed \$27,182.00.

- a) Report: Public Works Director Jeff Langhelm
- b) Clarifying questions from council
- c) Public comment
- d) Council deliberation and action

Documents:

[AGENDA BILL Homeport PSC amendment.pdf](#)

3. Pierce County Conservation Futures Agreement to Reimburse and Stewardship Agreement/Restrictive Covenants for the Shaw-Warren Property

Suggested Motion: Move to authorize the mayor to sign the following Pierce County Conservation Futures documents related to the City's recently acquired Shaw-Warren property: Agreement to Reimburse and Stewardship Agreement and Declaration of Restrictive Covenants

- a) Report: Public Works Director Jeff Langhelm
- b) Clarifying questions from council
- c) Public comment
- d) Council deliberation and action

Documents:

[AGENDA BILL Conservation Futures Agreement.pdf](#)

4. First Reading and Adoption of Ordinance 1515 Relating to the City's Water System Billing, Delinquencies, and Liens; Amending GHMC Section 13.04.050(B)

Suggested Motion: Move to approve Ordinance 1515.

- a) Report: Public Works Director Jeff Langhelm
- b) Clarifying questions from council
- c) Public comment
- d) Council deliberation and action

Documents:

[AGENDA BILL Ordinance 1515.pdf](#)

COUNCIL REPORTS / COMMENTS

ANNOUNCEMENT OF UPCOMING MEETINGS

Documents:

[Upcoming City Meetings.pdf](#)

[City of Gig Harbor Two-Year Strategic Plan 2023-24.pdf](#)

ADJOURN

PUBLIC COMMENT & DECORUM

The city council desires to allow a maximum opportunity for public comment.

However, the business of the city must proceed in an orderly, timely manner. The purpose of a council meeting is to conduct the city's business; it is not a public forum.

Speakers will be allotted 3 minutes per individual, unless revised by the mayor. In-person comments shall be made from the microphone, first giving the speaker's name and address. Anyone making "out of order" comments may be subject to removal from the meeting.

Public comment may be made remotely via Zoom or by phone during designated portions of the meeting. To speak during the meeting, press the raise hand button near the bottom of your Zoom window or press *9 on your phone. Please refrain from raising your hand until the mayor has announced that she has opened the public comment portion of the meeting. Your name or the last three digits of your phone number will be called out when it is your turn to speak. When using your phone to call in, you may need to press *6 to unmute yourself. All speakers will have up to three minutes to speak.

Instead of making oral comment, written comments may be submitted to the city council at mayorandcouncil@gigharborwa.gov.

All remarks shall be addressed to the council as a body and not to any specific councilmember. All speakers shall be courteous in their language and deportment and shall not engage in or discuss or comment on personalities or indulge in derogatory remarks or insinuations with regard to any councilmember, the mayor, or any member of the staff or the public.

There will be no demonstrations during or at the conclusion of any public comment. These guidelines are intended to promote an orderly system of holding a public meeting, to give every person an opportunity to be heard and to ensure that no individuals are embarrassed by voicing their opinions.

AMERICANS WITH DISABILITIES (ADA) ACCOMMODATIONS

ADA accommodations can be provided upon request. Those requiring special accommodations should contact the city clerk at cityclerk@gigharborwa.gov or (253) 853-7613 at least 24 hours prior to the meeting.

MINUTES FOR GIG HARBOR CITY COUNCIL MEETING
Monday, June 26, 2023 – 5:30 p.m.
Council Chambers

CALL TO ORDER / ROLL CALL: Mayor Markley called the meeting to order at 5:30 p.m. Councilmembers Barber, Henderson, Lykins, Martin, Rodenberg, and Woock were present. Councilmember Storset was excused.

PUBLIC COMMENT ON CONSENT AGENDA ITEMS AND ITEMS NOT ON THE AGENDA: Mike Shipman, Dick Kuehn, and Stanley Cook commented on the Soundview watermain project. Jennifer Day commented on the pride in the park event. Robert Winskill, Christine Johnston, and Pamela Ruzic commented on potential park property for sale on 38th Street.

CONSENT AGENDA:

1. City Council Minutes - City Council Minutes - June 12, 2023; City Council Study Session Minutes - June 15, 2023
2. Appointment of Robert Soltess and Loreto Tessicini to the Planning Commission
3. Purchase Authorization for 5-Yard Dump Truck and Stainless Sander
4. Professional Services Contract with Carollo Engineers, Inc., for Well #9 Development and Water Rights Processing
5. Land Use Hearing Examiner Services Agreement
6. Approval of Vouchers - Check numbers 100738 through 100889 and ACH payments are approved for payment in the amount of \$749,851.28.

MOTION: Move to approve the consent agenda (Woock/Lykins).

VOTE: Unanimously approved.

MAYOR'S REPORT: Mayor Markley reported on attending the AWC conference in Spokane, the SR 16 brush fire, and the pride in the park event.

CITY ADMINISTRATOR'S REPORT: City Administrator Katrina Knutson reported on the proposed flag policy, department updates, the fireworks ban, a retirement celebration for police officers Mike Allen and Matt Dougil, and the potential park property on 38th Street. She also asked council to appoint a replacement chair for the lodging tax advisory committee in lieu of Councilmember Storset.

MOTION: Move to appoint Mary Barber to the lodging tax advisory committee (Woock/Lykins).

VOTE: Unanimously approved.

BUSINESS ITEMS

1. **Public Hearing: Resolution 1283 Adopting 2024-2029 Six-Year Transportation Improvement Program (TIP)** – City Engineer Aaron Hulst introduced the resolution.

Public hearing: There were no public comments.

MOTION: Move to approve Resolution 1283 with a revision to change priority list item number 10 to number 9 and priority list item number 10 to number 9 (Woock/Barber).

AMENDMENT: Move to amend the motion to remove the revision to change priority list item number 10 to number 9 and priority list item number 10 to number 9 (Rodenberg/Henderson).

VOTE: Amendment approved 4-2 (Councilmembers Woock and Barber opposed).

VOTE: Motion passed, 5-1; Councilmember Woock opposed.

2. **Resolution 1281 Amending the Wastewater Comprehensive Plan by Revising the Sewer Collection Basin #14 Discharge Location Into Basin #21** - Public Works Director Jeff Langhelm introduced the resolution.

MOTION: Move to approve Resolution 1281 (Henderson/Lykins).

VOTE: Unanimously approved.

Council entered into recess at 6:34 p.m. The meeting resumed at 6:43 p.m.

3. **Agreement with FISH Food Bank for Human Services Grant** – Public Works Director Jeff Langhelm introduced the agreement.

MOTION: Move to authorize the mayor to execute an agreement with FISH Food Bank for a human services grant in an amount not to exceed \$50,000 (Lykins/Barber).

VOTE: Unanimously approved

4. **Amendment #1 to the Professional Services Contract with Peninsula Financial Consulting for the Utility Rate Study** - Public Works Director Jeff Langhelm introduced the amendment.

MOTION: Move to authorize the mayor to sign Amendment #1 to the professional services contract with Peninsula Financial Consulting for utility rate analyses in an amount not to exceed \$12,300 (Martin/Henderson).

VOTE: Unanimously approved

5. **First Reading and Adoption of Ordinance 1514 Relating to the City's Criminal Code; Amending Section 9.26.070 of the Gig Harbor Municipal Code to Adopt by Reference RCW 7.105 Relating to Protection Orders** – Police Lieutenant Fred Douglas introduced the ordinance.

MOTION: Move to approve Ordinance 1514 (Woock/Henderson).

VOTE: Unanimously approved

COUNCIL REPORTS / COMMENTS: Councilmember Henderson reported on the recent WSPER meeting. Councilmember Lykins reported on the recent PCRC meeting and the pride in the park event.

ADJOURN: The meeting adjourned at 7:15 p.m.



Joshua Stecker, CMC
City Clerk



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Approval of lease renewal with DNR for Eddon Boat Park

SUBMITTED BY: Public Works Director Jeff Langhelm, P.E.

DEPARTMENT: Public Works

PHONE: (253) 853-7630

SUGGESTED MOTION: Move to authorize the mayor to execute renewal to the aquatic lease agreement with the Department of Natural Resources for Eddon Boat Park.

BACKGROUND INFORMATION: The proposed lease renewal would continue to allow public use of the aquatic lands in front of Eddon Boat Park. This lease will prevent neighboring property owners from executing a lease in front of the park, which could allow for dock construction or other uses that would inhibit public enjoyment of the park. The lease term is twelve years, expiring July 31, 2035.

Staff recommends authorizing the mayor to sign the lease agreement.

FISCAL CONSIDERATION: N/A

BOARD/COMMISSION/COMMITTEE RECOMMENDATION: N/A

ATTACHMENTS:

1. Draft lease agreement
 2. Record of survey for leased area
-

STRATEGIC PLAN PRIORITY: Promote environmental sustainability and preserve Gig Harbor's natural beauty

When recorded, return to:
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335



AQUATIC LANDS LEASE

Lease No. 22-B78899

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Gig Harbor
Legal Description: Govt. Lot. 7 (SW1/4 SW1/4), Section 5, Township 21 North, Range 2 East, W.M.
Complete Legal Description on Page 33
Auditor Reference Number: ROS 200802265003
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 0221053050

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF GIG HARBOR, a government agency ("Tenant").

BACKGROUND

Tenant desires to lease a portion of the aquatic lands commonly known as Gig Harbor, which is Tidelands and Harbor Area located in Pierce County, Washington, from State, and State desires to lease the Property to Tenant pursuant to the terms and conditions of this Lease. State has

authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the “Property”).
- (b) This Lease is subject to all valid interests of third parties noted in the records of Pierce County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Property boundaries. Tenant’s obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) Tenant’s use or occupancy of any state-owned aquatic lands outside the Property boundaries is a material breach of this Lease and State may seek remedies under Section 14 of this Lease in addition to any other remedies afforded by law or equity or otherwise.

1.3 Inspection. State makes no representation regarding the condition of the Property, Improvements located on the Property, the suitability of the Property for Tenant’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it “AS IS.”

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for:

Public use and Access

(the “Permitted Use”), and for no other purpose. Exhibit B includes additional details about the Permitted Use, the Property, and Improvements. The Permitted Use of this Lease shall not be changed or modified without the written consent of State, which shall be at State’s sole discretion.

2.2 Restrictions on Permitted Use and Operations. The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Tenant’s compliance with the following does not limit Tenant’s liability under any other provision of this Lease or the law.

- (a) Tenant shall not cause or permit:
 - (1) Damage to land or natural resources,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes, but is not limited to, deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) Tenant shall avoid damage caused by propeller wash from vessels.
- (d) Tenant shall not allow vessels to come in contact with underlying tidelands bedlands (commonly referred to as “grounding out”) at any time.

2.3 Conformance with Laws. Tenant shall keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant’s use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant’s occupancy of the Property.

2.5 Residential Uses Prohibited. Residential uses, as defined by WAC 332-30-106(62), are not permitted on the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Twelve (12) years, beginning on the 1st day of August, 2023 (the “Commencement Date”), and ending on the 31st day of July, 2035 (the “Termination Date”), unless terminated sooner under the terms of this Lease (the “Term”). Whenever the phrase “termination of this Lease” or “termination of the Lease” is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant or deny. Tenant must apply for a new lease at least one (1) year prior to the Termination Date.

3.3 End of Term.

- (a) Removal of Improvements and Personal Property: Prior to the termination of this Lease, Tenant shall remove Improvements and Personal Property in accordance with Section 7.
- (b) Restoration of Property:
 - (1) Prior to the termination of this Lease, Tenant shall restore the Property to its condition prior to Tenant's use of the Property.
 - (2) This restoration is to be done at Tenant's expense and to the satisfaction of State. Restoration of the Property is considered to be Work, as described in Section 7 of the Lease. Tenant's plans for restoring the Property shall be submitted to State for prior approval in accordance with Section 7 of this Lease.
 - (3) If Tenant fails to restore the condition of the Property as required by this Paragraph, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.
- (c) Vacation of Property: Upon the termination of this Lease, Tenant shall cease all operations on and use of the Property and surrender the Property to State.

3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, and State has not notified Tenant that Tenant must vacate the Property, in the absence of a new lease agreement between State and Tenant, the following terms apply: Tenant's occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, except that either Party may terminate the tenancy on thirty (30) days' written notice. The month-to-month occupancy will not be an extension or renewal of the Term.
 - (1) The monthly rent during the month-to-month tenancy will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
 - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.

- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe State all amounts due under RCW 79.02.300 or other applicable laws.

SECTION 4 RENT

4.1 Annual Rent.

- (a) The Annual Rent is based on the use classification of Tenant's Permitted Use of the Property and the square footage of each use classification, as set forth in Exhibit A.
- (b) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Zero Dollars (\$0).
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.
- (d) Public Use and Access. This Lease allows for free or reduced rent for areas that meet the requirements of RCW 79.105.230 and WAC 332-30-131. If Tenant's use of these areas ceases to meet the requirements for free or reduced rent in RCW 79.105.230 and WAC 332-30-131, State will charge Tenant water-dependent rent for using these areas.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Change in Use Classification. Neither the use classification, nor the square footage of a use classification, shall be changed without the prior written consent of State. If the use classification or the square footage of a use classification is changed, the Annual Rent shall be adjusted based on the revised use classification or square footage of each use classification.

4.4 Rent Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5(b) and 4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Commencement Date.
- (b) Procedures on Failure to make Timely Adjustment. If State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) Rent Cap. State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until State implements the full amount of increase as determined by the statutory rent formula.

4.6 Rent Adjustments for Nonwater-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust nonwater-dependent rent annually on the Commencement Date, except in those years in which State revalues the rent under Paragraph 4.6(b) below. Adjustment is based on the percentage rate of change in the previous fiscal year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, for the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the Improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form

of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. If Tenant fails to pay rent when due under this Lease, State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. Improvements include, but are not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant, (2) acquired by Tenant from the prior tenant, (3) made by subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.
- (f) "Improvements Owned by Others" are Improvements owned by others (not including Tenant or a subtenant) with a right to occupy or use the Property.

7.2 Existing Improvements. On the Commencement Date, there are no Improvements located on the Property.

7.3 Construction, Major Repair, Modification, and Other Work.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively "Work").
- (b) Except in an emergency, Tenant shall not conduct Work without State's prior written consent. Tenant shall obtain State's prior written consent as follows:
 - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications to State at least ninety (90) days before commencement of Work.

- (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if the proposed Work does not comply with Paragraph 7.4 and 11.3. State may impose additional conditions intended to protect and preserve the Property or adjacent state-owned aquatic lands.
 - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Tenant shall immediately notify State of emergency Work. Upon State's request, Tenant shall provide State with as-built plans and specifications of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant or Tenant's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
 - (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant on the Property during the Term, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

7.4 Standards for Work.

- (a) Applicability of Standards for Work.
 - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five-year period following the Commencement Date. Work commences when State approves plans and specifications.
 - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's current standards for Work.

- (3) If Tenant commences Work five (5) or more years after the Commencement Date, Tenant shall ascertain State's current standards for Work as follows:
 - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with State's current standards for Work on state-owned aquatic lands.
 - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with State's current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work, provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
 - (iii) If State does not timely provide State's current standards upon Tenant's request, the standards for Work under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for State's current standards for Work.
 - (iv) If Tenant fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Tenant shall, at Tenant's sole expense, make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date:
 - (1) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW) AND United States Fish and Wildlife Service (USFWS) AND National Marine Fisheries Service (NMFS).
 - (2) Tenant shall site new Improvements to avoid impacts to soft brown kelp. Aquatic vegetation surveys shall be conducted prior to installation of new improvements.

7.5 Tenant-Owned Improvements.

- (a) Removal of Tenant-Owned Improvements upon termination.
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements

- without payment by State, unless State elects otherwise. State may refuse or waive ownership.
- (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
- (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State of Washington, and regardless of whether Tenant enters into a new Lease for the Property.
 - (2) If Tenant enters into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
 - (3) If Tenant does not enter into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant shall submit its request to leave Tenant-Owned Improvements to State at least one (1) year before the Termination Date.
 - (ii) State, within ninety (90) days of receiving Tenant's request, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
- (1) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall not remove such Tenant-Owned Improvements.
 - (2) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

7.6 Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Tenant fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market

value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.

- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

7.7 Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the termination of the Lease. Tenant is liable for damage to the Property and any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the termination of the Lease.
 - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Tenant to State. State shall pay the remainder, if any, to the Tenant. Tenant shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
 - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.

- (d) “Tenant and affiliates” when used in this Section 8 means Tenant or Tenant’s subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant’s permission.
- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Tenant’s obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Property; and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
 - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned aquatic lands.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant’s obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant’s permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant’s Permitted Use or Tenant’s use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and

- (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality

Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of

final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with such Tests, provided State gave Tenant thirty (30) days' advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublease, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall be at State's sole discretion.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation, and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
 - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or

- (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant. Tenant shall remain liable for the full and complete performance, satisfaction, and compliance with the terms of this Lease.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for prior approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;
 - (5) The sublease must include an acknowledgment that the subtenant has received a copy of this Lease;
 - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than one year of rent;
 - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
 - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
 - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
 - (10) The subtenant's permitted use must be within the scope of the Permitted Use;
 - (11) The sublease must require the subtenant to indemnify, defend, and hold harmless State to the same extent Tenant is required to indemnify, defend, and hold harmless State under this Lease;
 - (12) The sublease must require the subtenant to meet the Insurance requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;

- (13) The sublease must require the subtenant to comply with the Financial Security requirements under Section 10; and
- (14) If the sublease includes moorage of a vessel, the sublease must require the subtenant to procure marine insurance as set forth in Paragraph 10.2(c)(4) of this Lease.

9.4 Event of Assignment. If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. If Tenant is a limited liability company, conveyance of an economic interest of greater than fifty percent (50%) is an assignment of this Lease. Assignments defined in this Paragraph 9.4 require State's consent under Paragraph 9.1.

SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to: bodily injury; sickness; disease; death; and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value to tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.
- (c) State shall not require Tenant to indemnify, defend, and hold harmless State, or its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (d) Tenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Tenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of

damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.

- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the Tenant or Tenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Tenant and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Tenant certifies that on the Commencement Date of this Lease it is a member of a self-insured risk pool for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Tenant shall provide to State evidence of its status as a member of a self-insured risk pool. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism. If during the Term Tenant's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Lease, Tenant shall procure additional commercial insurance coverage to meet the requirements of this Lease. The requirements in Paragraph 10.2(a)(3) and (4) only apply where the Tenant procures additional commercial insurance to meet the requirements of this Lease.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
 - (4) All property insurance, builder's risk insurance, and equipment breakdown insurance must name the State of Washington, the Department of Natural

- Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.
- (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
- (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
- (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
- (2) The certificate(s) of insurance must reference the Lease number.
- (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
- (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
- (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance required in this Lease within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
- (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
- (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Tenant's repayment.

- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
 - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs

or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term a corporate security bond or provide other financial security that State, at its option, may approve as security for the faithful performance and observance by Tenant of the terms, conditions, and provisions of this Lease ("Security"). Tenant shall provide Security in an amount equal to Five Hundred Dollars (\$500). Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.

- (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair, replacement, alterations, or additions.

- (a) Tenant shall not use or install treated wood on decking, docks, rafts, floats, wharves, piers, fixed docks, gangways, pilings, or any other structure at any location above or below water, except that Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.

- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements in accordance with Section 7 and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs, reconstruction, replacement, removal, or restoration may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of State, prevents or renders impractical the Permitted Use.

- (b) “Date of Taking” means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant’s leasehold estate and Tenant-Owned Improvements and (2) State’s interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease; or
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant’s property.

14.2 Tenant’s Right to Cure.

- (a) A default becomes an “Event of Default” if Tenant fails to cure the default within the applicable cure period following State’s written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days. This cure period does not apply where State terminates this Lease under Paragraph 10.2(f) or Paragraph 12.5.
- (c) For nonmonetary defaults not capable of cure within sixty (60) days, Tenant may submit a reasonable alternative cure schedule for State’s approval, which State has discretion to grant or deny. The default is not an Event of Default if State approves the alternative cure schedule and Tenant cures the default in accordance with the approved alternative cure schedule.

14.3 Remedies.

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) State's Rights to Cure Tenant's Defaults.
 - (1) If an Event of Default occurs, State may, without terminating this Lease, remedy the default (in whole or in part) on behalf of Tenant at Tenant's expense. Tenant shall pay State all costs, expenses, fees, and damages incurred by State in connection therewith.
 - (2) If Tenant is in default under the terms of the Lease, and State determines that such default poses an imminent threat of injury or damage to persons or property, State may enter the Property and take actions to eliminate, mitigate, or remedy the imminent threat at Tenant's expense. On demand by State, Tenant shall pay State the amount of all costs, expenses, and fees incurred by State in connection therewith.
 - (3) The rights given to State under Paragraph 14.3(b)(1)-(2) shall neither impose a duty on State nor excuse any failure on Tenant's part to comply with any term, covenant, or condition of this Lease.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
 - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
 - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Tenant's default or threatened default of any provision of this Lease.

SECTION 15 ENTRY BY STATE

15.1 Right to Enter The Property.

- (a) State and persons authorized by State may, without notice to Tenant, enter the Property and any Improvements on the Property at any reasonable hour to inspect

the Property and Improvements, to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, to survey habitat and species, enforce the terms of the Lease, or to exercise any right of State under the Lease or the law.

- (b) State and persons authorized by State, may enter the Property and any Improvements at any time without notice in the case of an imminent threat of injury or damage to persons or property or to prevent waste on the Property.

15.2 Disclaimer. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease. The rights given to State under this Section 15 do not impose, nor does State assume by reason thereof, any responsibility for the care, maintenance, or supervision of the Property or any part thereof.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics
950 Farman Avenue N
Enumclaw, WA 98022

Tenant: City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. Subject to the limitations set forth in Section 9, this Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word “Tenant” as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word “persons,” whenever used, shall include individuals, firms, associations, and corporations. The word “Parties” means State and Tenant in the collective. The word “Party” means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant’s expense and no later than thirty (30) days after receiving the fully executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.15 Exhibits and Attachments. All referenced exhibits and attachments are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF GIG HARBOR

Dated: _____, 20__

By: TRACIE MARKLEY

Title: Mayor

Address: 3510 Grandview Street

Gig Harbor, WA 98335

Phone: 253-525-0323

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

By: ALEXANDRA K. SMITH

Title: Deputy Supervisor for Forest Resilience,
Regulation, and Aquatics

Address: 950 Farman Avenue N

Enumclaw, WA 98022

REPRESENTATIVE ACKNOWLEDGMENT

Notarized online using audio-video communication

STATE OF)
) ss.
County of)

I certify that I know or have satisfactory evidence that TRACIE MARKLEY is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor of City of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.
This notarial act involved the use of communication technology.

Dated: _____, 20____
(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

STATE ACKNOWLEDGMENT

Notarized online using audio-video communication

STATE OF WASHINGTON)) ss.
County of)

I certify that I know or have satisfactory evidence that ALEXANDRA K. SMITH is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Forest Resilience, Regulation and Aquatics of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

This notarial act involved the use of communication technology.

Dated: _____, 20__

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY & USE CLASSIFICATIONS

Agreement Number 22-B78899

1. LEGAL DESCRIPTION OF THE PROPERTY:

That real property legally described as “LEGAL DESCRIPTION – LEASE AREA” in that Record of Survey recorded in Pierce County, Washington on February 26, 2008 under Auditor’s File Number 200802265003.

2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	_____
Water-dependent that is public use and access	<u>40,073</u>
Nonwater-dependent	_____
Water-oriented subject to water- dependent rental rates	_____
Water-oriented subject to nonwater- dependent rental rates	_____
Total Square Feet	<u>40,073</u>

EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities.

Eddon Boat Park is located on the west shore of Gig Harbor, approximately 0.3 miles south of the head of the bay. An industrial shipyard operated at this location between the 1940's and 2003. Currently, the upland portion of the site is utilized for boat building and wooden vessel restoration activities and as a public park. Private tidelands include fixed pier, transient moorage float, and marine rails.

The City of Gig Harbor leases an area of open water tidelands and harbor area in front of Eddon Park to maintain access to public facilities located on private tidelands. No improvements are located on the leasehold. The lease is abutted by lease number 22-002773 on the northwest and lease number 20-A12428 on the southeast.

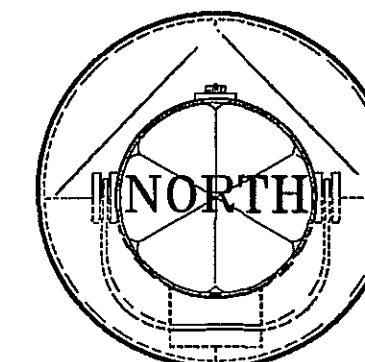
Historic ship building activities at the site resulted in contamination of sediments and upland soils at this location. Eddon Boat Park is a former cleanup site and sediments were contaminated with PAHs, PCBs, metal, and TBT. A portion of the cleanup site occurs within the leasehold. This area was dredged to a depth of at least 2 feet below the mudline and received a clean sand cap to isolate dredge residuals. Remedial action was completed in 2011, and a No Further Action determination was made in 2014.

B. Proposed Work.

Tenant proposes no new facilities or Work.

2. ADDITIONAL OBLIGATIONS **NONE.**

ABUTTING A PORTION OF GOV'T LOT 7, A.K.A. THE
S.W 1/4 OF THE S.W. 1/4 OF SEC. 5, TOWNSHIP 21
NORTH, RANGE 2 EAST, W.M., CITY OF GIG
HARBOR, PIERCE COUNTY, WASHINGTON. NO. 14 PER



GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

BASIS OF BEARING

THIS SURVEY UTILIZED THE WASHINGTON STATE PLANE COORDINATE SYSTEM - SOUTH ZONE (NAD83/91) AS SHOWN ON STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES "AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES" RECORDED UNDER AUDITOR'S FILE NUMBER 9512140115. RECORDS OF PIERCE COUNTY, WASHINGTON.

METHODS AND EQUIPMENT

SURVEY PERFORMED WITH A 2" TOTAL STATION, USING TRAVERSE AND RADIAL SURVEY METHODS. THIS SURVEY MEETS OR EXCEEDS ACCURACY REQUIREMENTS CONTAINED IN WAC 332.130.090.

VERTICAL DATUM

MEAN LOWER LOW WATER - CITY MONUMENT NO. 55 (IN CASE) IN THE PARKING LOT OF THE "TIDES TAVERN" - PUBLISHED ELEVATION OF 28.82 FEET (M.L.L.W.)

NOTE: THIS BENCHMARK IS BASED ON GIG HARBOR TIDAL BENCH NO. 5 (1944) WHICH HAS AN ELEVATION OF 14.18 FEET

EXTREME LOW WATER	-4.5
MEAN LOWER LOW WATER	0.0
MEAN LOW WATER	2.8

(NOTE: THIS INFORMATION WAS BASED FROM INFORMATION PUBLISHED BY NOAA AND THE DEPARTMENT OF NATURAL RESOURCES UTILIZING TIDAL BENCHMARKS IN THE IMMEDIATE AREA AND AGREES WITH THE DATA SHOWN ON LEASE SURVEY RECORDED UNDER A.F.N. 9605090296 LOCATED NORTH OF THIS PROJECT. CONTACT KEN BROWN, PLS LAND SURVEY SECTION-DNR AT (360) 902-1379 FOR MORE INFORMATION)

LEGEND

- LEGEND**
- | | |
|---|---|
|  | MONUMENT FOUND AS NOTED |
|  | CALCULATED POSITION AS NOTED |
|  | FOUND REBAR/IRON PIPE AS NOTED |
|  | FOUND CHISELED CROSS AS NOTED |
|  | TEMPORARY BENCHMARK AS NOTED |
| (-2) | ELEVATION BELOW MEAN LOWER LOW WATER (MLLW) |
| | 2' CONTOUR AS NOTED |

COORDINATE NOTE

(DNR CONTROL)	(THIS SURVEY)
NW CORNER GOV'T LOT 7	NW CORNER GOV'T LOT 7
N 736888.88	N 736890.43
E 1122433.99	E 1122432.1098
PER WHEELER SURVEY	PER ROS 8708240422

SURVEYOR'S CERTIFICATE

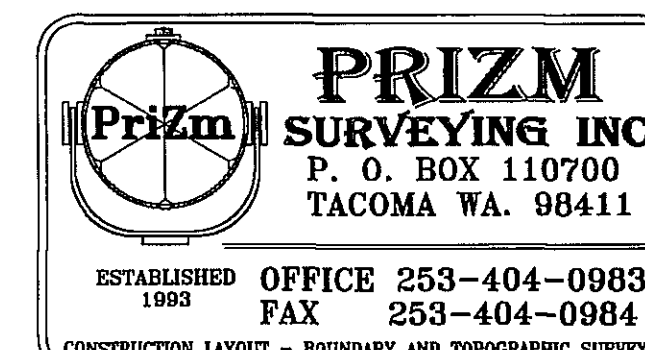
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF THE CITY OF GIG HARBOR, IN OCTOBER, 2006.

LBBL 2/14/08
AARON B. BLAISDELL P.L.S. # 41278 DATE

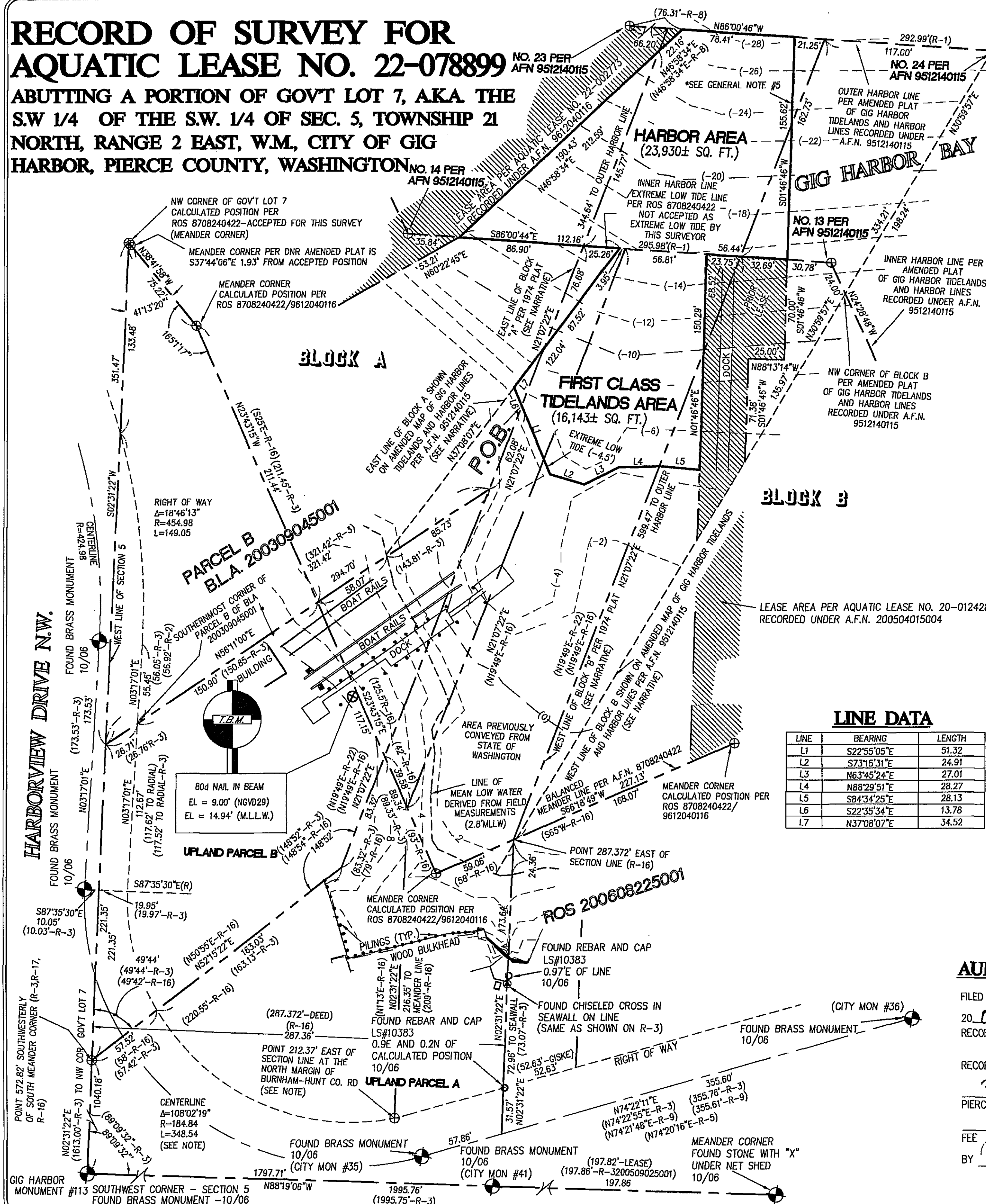
AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS 26th DAY OF Feb
20 08 AT 53 MINUTES PAST 11:00 A M.
RECORDS OF THE PIERCE COUNTY AUDITOR, TACOMA, WASHINGTON.

RECORDING NUMBER 200802265003
Pat McCarty
 PIERCE COUNTY AUDITOR
\$ 113.00
 FEE
 BY K. Smith



JOB NO. 2006-107



C. R. K. M. A.

RECORD OF SURVEY FOR AQUATIC LEASE NO. 22-078899

ABUTTING A PORTION OF GOVERNMENT LOT 7, AKA. THE S.W. 1/4 OF THE S.W. 1/4 OF SECTION 5, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON

SHEET 2 OF 2

LEGAL DESCRIPTION - UPLANDS

(BASED ON STATUTORY WARRANTY DEED RECORDED UNDER A.F.N. 200503170517)

PARCEL A

BEGINNING AT THE INTERSECTION WITH THE NORTH BOUNDARY LINE OF THE 60 FOOT RIGHT OF WAY OF THE BURNHAM-HUNT COUNTY ROAD, AND A LINE WHICH IS NORTH 1 DEGREES 13 MINUTES EAST, BEING PARALLEL TO THE SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, AND EAST THEREFROM 212.37 FEET, MEASURED AT RIGHT ANGLE THERETO;

THENCE ON A LINE NORTH 1 DEGREES 13 MINUTES EAST, 209 FEET, MORE OR LESS, TO THE INTERSECTION WITH THE GOVERNMENT MEANDER LINE ON THE SOUTH SIDE OF GIG HARBOR;
THENCE SOUTH AND EAST, FOLLOWING SAID GOVERNMENT MEANDER LINE TO ITS INTERSECTION WITH A LINE WHICH IS SOUTH 1 DEGREES 13 MINUTES WEST AND PARALLEL TO THE AFORESAID SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., AND EAST THEREFROM 287.37 FEET, MEASURED AT RIGHT ANGLE THERETO;
THENCE SOUTH 1 DEGREES 13 MINUTES WEST ON SAID LINE 163 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE NORTH BOUNDARY LINE OF THE AFORESAID BURNHAM-HUNT COUNTY ROAD;
THENCE WEST AND SOUTH 79 FEET MORE OR LESS, ALONG THE NORTH BOUNDARY LINE OF SAID COUNTY ROAD TO THE POINT OF BEGINNING.

ALSO THE FOLLOWING DESCRIBED TIDELANDS OF THE SECOND CLASS, BEING ADJACENT TO AND ABUTTING UPON THE AFOREDESCRIBED UPLAND PROPERTY;

BEGINNING AT THE INTERSECTION OF THE WEST BOUNDARY LINE OF THE AFOREDESCRIBED UPLAND PROPERTY AND THE SAID GOVERNMENT MEANDER LINE, WHICH POINT IS EAST 212.37 FEET FROM THE SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., AND MEASURED AT RIGHT ANGLE THERETO;
THENCE ON A LINE NORTH 19 DEGREES 49 MINUTES EAST OVER TIDELANDS OF THE SECOND CLASS TO AN INTERSECTION WITH THE IRREGULAR LINE INDICATED BY THE EXTREME LOW TIDE;
THENCE SOUTH AND EAST FOLLOWING SAID IRREGULAR LINE OF EXTREME LOW TIDE, TO INTERSECT A LINE WHICH BEARS NORTH 19 DEGREES 49 MINUTES EAST FROM THE NORTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF UPLAND;
THENCE ON SAID PARALLEL LINE SOUTH 19 DEGREES 49 MINUTES WEST TO ITS INTERSECTION WITH THE AFORESAID GOVERNMENT MEANDER LINE;
THENCE WEST AND NORTH ALONG THE SAID GOVERNMENT MEANDER LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE STONE MONUMENT WHICH IS AT THE INTERSECTION OF THE SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., WITH ITS GOVERNMENT MEANDER LINE ON THE SOUTH SIDE OF GIG HARBOR, PIERCE COUNTY, WASHINGTON.
THENCE SOUTH 1 DEGREES 13 MINUTES WEST ON THE SAID SECTION LINE COMMON TO SECTION 5 AND 6 AFORESAID, 572.82 FEET;
THENCE ON A LINE NORTH 50 DEGREES 55 MINUTES EAST 58 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE EAST BOUNDARY LINE OF THE RIGHT-OF-WAY OF THE 60 FOOT BURNHAM-HUNT COUNTY ROAD, THE TRUE POINT OF BEGINNING;
THENCE CONTINUING ON THE SAID LINE, WHICH IS NORTH 50 DEGREES 55 MINUTES EAST TO THE POINT 220.55 FEET, MEASURED FROM ITS INTERSECTION WITH THE AFORESAID SECTION LINE COMMON TO SAID SECTION 5 AND 6;
THENCE ON A LINE NORTH 19 DEGREES 49 MINUTES EAST 79 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE GOVERNMENT MEANDER LINE OF GIG HARBOR;
THENCE ON THE SAID GOVERNMENT MEANDER LINE SOUTH 25 DEGREES EAST 42 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE WHICH IS SOUTH 1 DEGREES 13 MINUTES WEST, WHICH LINE IS PARALLEL TO THE AFORESAID SECTION LINE COMMON TO SECTIONS 5 AND 6, AND THE EAST 212.37 FEET, MEASURED AT RIGHT ANGLES THERETO;
THENCE SOUTH 1 DEGREES 13 MINUTES WEST ON SAID LINE, 209 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE NORTH BOUNDARY OF THE AFORESAID BURNHAM-HUNT COUNTY ROAD;
THENCE ON A CURVE TO THE RIGHT, FOLLOWING THE NORTH BOUNDARY LINE OF SAID BURNHAM-HUNT COUNTY ROAD, 193 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

ALSO THE FOLLOWING DESCRIBED TIDELANDS OF THE SECOND CLASS BEING ADJACENT AND ABUTTING UPON THE AFOREDESCRIBED UPLAND PROPERTY:

BEGINNING AT THE STONE MONUMENT WHICH IS AT THE INTERSECTION OF THE SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., WITH ITS GOVERNMENT MEANDER LINE ON THE SOUTH SIDE OF GIG HARBOR, PIERCE COUNTY, WASHINGTON.

THENCE SOUTH 1 DEGREES 13 MINUTES WEST ON THE SAID SECTION LINE COMMON TO SECTION 5 AND 6 AFORESAID, 572.82 FEET;
THENCE ON A LINE NORTH 50 DEGREES 55 MINUTES EAST 220.55 FEET;
THENCE ON A LINE NORTH 19 DEGREES 49 MINUTES EAST 79 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE AFORESAID GOVERNMENT MEANDER LINE, THE TRUE PLACE OF BEGINNING
THENCE CONTINUING ON SAID LINE NORTH 19 DEGREES 49 MINUTES EAST OVER THE TIDELANDS OF THE SECOND CLASS, TO AN INTERSECTION WITH AN IRREGULAR LINE INDICATED BY THE EXTREME LOW TIDE;
THENCE SOUTH AND EAST FOLLOWING SAID IRREGULAR LINE OF EXTREME LOW TIDE, TO INTERSECT A LINE WHICH BEARS NORTH 19 DEGREES 49 MINUTES EAST FROM THE NORTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF UPLAND;
THENCE ON SAID PARALLEL LINE SOUTH 19 DEGREES 49 MINUTES WEST TO ITS INTERSECTION WITH THE AFORESAID GOVERNMENT MEANDER LINE NORTH 25 DEGREES WEST 42 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

GENERAL NOTES:

1. THE INNER AND OUTER HARBOR LINES WERE ESTABLISHED FROM THE STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES "AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES" RECORDED UNDER AUDITOR'S FILE NUMBER 9512140115
2. RECORD OF SURVEY RECORDED UNDER A.F.N. 8708240422 WAS USED AS A BASIS FOR THIS SURVEY AND MEANDER LINE DATA.
3. THIS EXHIBIT MAP DOES NOT PURPORT TO SHOW ANY OR ALL ENCUMBRANCES, BENEFITING OR BURDENING THE SUBJECT PARCEL.
4. ALL CONTOURS SHOWN HEREON WERE BASED FROM FIELD LOCATIONS BY PRIZM SURVEYING, INC IN OCTOBER, 2006.
5. THE EAST LINE OF THE THE SUBJECT LEASE AREA LYING WITHIN THE HARBOR AREA WAS CALCULATED AS THE EAST LINE EXTENDED, OF THE LEASE AREA PER AQUATIC LEASE NO. 20-012428 RECORDED UNDER A.F.N. 200504015004 UPON THE REQUEST OF THE CITY OF GIG HARBOR.

LEGAL DESCRIPTION - UPLANDS (CONT)

PARCEL B

ALL THAT PART OF LOT 7, SECTION 5, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M. IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE MONUMENT AT THE NORTHWEST CORNER OF SAID LOT 7; THENCE RUNNING SOUTH 1 DEGREES 13 MINUTES WEST ALONG THE WEST LINE OF SAID LOT, 351.47 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 1 DEGREES 13 MINUTES WEST ON SAID WEST LINE 221.35 FEET TO TRACT CONVEYED TO JOHN DOWER LUMBER COMPANY BY DEED RECORDED IN BOOK 521 OF DEEDS AT PAGE 170, UNDER AUDITOR'S FILE NO. 987817;
THENCE NORTH 50 DEGREES 55 MINUTES EAST 220.55 FEET;
THENCE NORTH-19 DEGREES 49 MINUTES EAST 79 FEET, MORE OR LESS, TO GOVERNMENT MEANDER LINE OF SAID LOT 7;
THENCE ON SAID GOVERNMENT MEANDER LINE NORTH 25 DEGREES WEST 125.5 FEET, MORE OR LESS, TO A POINT NORTH 54 DEGREES 48 MINUTES EAST OF THE TRUE POINT OF BEGINNING;
THENCE SOUTH 54 DEGREES 48 MINUTES WEST 174.98 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH TIDELANDS OF THE SECOND CLASS ABUTTING THEREON, LYING WITHIN THE PROLONGATION OF THE SIDELINES OF THE ABOVE DESCRIBED TRACT AND EXTENDING TO THE LINE OF MEAN LOW TIDE.

AND TOGETHER WITH ALL TIDELANDS OF THE SECOND CLASS LYING BETWEEN THE LINE OF MEAN LOW TIDE AND EXTREME LOW TIDE, LYING IN FRONT THEREOF.

EXCEPT STATE HIGHWAY NO. 14.

AND EXCEPT ANY PORTION LYING SOUTH OF SAID HIGHWAY.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

SURVEYOR'S NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO DEFINE THE LEASE AREA BY THE CITY OF GIG HARBOR OF THE FIRST CLASS TIDELANDS AND THE HARBOR AREAS FROM THE STATE OF WASHINGTON. BASED ON THE AREA REQUESTED BY THE CITY OF GIG HARBOR AND THE DEPARTMENT OF NATURAL RESOURCES, BOUNDARY LINE DISCREPANCIES EXIST WITH RESPECT TO THE SUBJECT AREA AND ARE CLARIFIED BELOW. NO DETERMINATION WAS MADE AS TO WHETHER THE AREA CAN OR CANNOT BE LEASED FROM THE STATE OF WASHINGTON NOR THE TERMS OF SAID LEASE:

- 1) DURING THE RESEARCH PORTION OF THIS SURVEY, IT APPEARS THAT ON JULY 19, 1930, THE STATE SOLD ALL THE SECOND CLASS TIDELANDS LYING BETWEEN THE LINE OF MEAN LOW TIDE AND EXTREME LOW TIDE "AND" IN FRONT OF A TRACT DESCRIBED IN THOSE DEEDS FILED IN VOLUME 16, PAGE 682 AND VOLUME 20, PAGE 38 (ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS) TO THE JOHN DOWER LUMBER COMPANY AND ARTHUR GLEN, RESPECTIVELY. THE DESCRIPTIONS CONTAINED WITHIN THOSE TIDELAND CONVEYANCES ARE COMMON TO THOSE DEEDS RECORDED UNDER PIERCE COUNTY A.F.N(S) 1667980, 2738107, 2795933 AND 801250236. WITHIN THOSE ABOVE DEEDS, THE SIDELINES OF THE TIDELANDS ARE AN ELONGATION OF THE UPLAND TRACTS OF PROPERTY. THESE DESCRIPTIONS ALSO HAVE COMMON BEARINGS ALONG THE SIDELINES OF BLOCK "A" AND "B" FOUND ON THE 1974 MAP OF GIG HARBOR TIDELANDS AND ARE COMMON TO THOSE SURVEYS RECORDED UNDER A.F.N.(S) 8708240422, 9612040116, 200608225001 HOWEVER, IN 1995, THE DEPARTMENT OF NATURAL RESOURCES FILED AN AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES. (SEE A.F.N. 9512140115, RECORDS OF PIERCE COUNTY) ON SHEET 3 OF 3 OF THIS AMENDED PLAT, THERE WAS A CHANGE IN THE LOCATION OF THE SIDELINES OF BOTH BLOCKS "A" AND "B" FROM THE 1974 PLAT WITHOUT A CHANGE IN THE DESCRIPTION (WHICH WAS CITED AS THE BASIS OF THE BLOCKS). BASED ON THE AMENDMENT NOTE ON SHEET 1 OF 3, BOUNDARY ERRORS IN THE 1974 PLAT WERE CORRECTED IN BLOCKS "C AND "F", BUT MADE NO REFERENCE TO BLOCKS "A" AND "B" (SEE WAC 332-130-050(3)(c)(iii)) FROM THIS INFORMATION, IT IS THE OPINION OF THIS SURVEYOR THAT THERE SHOULD BE NO CHANGE TO THE EAST SIDELINE OF BLOCK "A" AND THE WEST SIDELINE OF BLOCK "B". TO ACCEPT THE SIDELINES DEFINED UNDER THIS 1995 AMENDED PLAT WOULD DRASTICALLY IMPACT THE PRIVATE OWNERSHIP RIGHTS ALREADY CONVEYED BY THE STATE OF WASHINGTON WITHIN THIS AREA. HOWEVER, ACCORDING TO THE LAND SURVEY SECTION OF THE DNR, THE 1974 PLAT WAS IN ERROR BASED ON THE RELATIONSHIP OF THE TIDELANDS DISPOSAL POLICY OF PAYMENT PER LINEAR CHAIN OF OWNERSHIP ALONG THE MEAN LOW TIDE LINE. THIS POLICY CHALLENGES PRIOR DEEDS BUT ACCORDING TO THE DNR, DEVELOPS A MORE EQUITABLE SOLUTION FOR THE UPLAND OWNERS, THUS ALLOWING EVERY UPLAND OWNER THE RIGHT OF ACCESS TO THE HARBOR AREA. THEREFORE, THE AMENDED SURVEY HAS BEEN USED FOR THIS SURVEY AT THE DIRECTION OF THE DNR AND THE CITY OF GIG HARBOR. THIS ALTERNATIVE SOLUTION TO THE LOCATION OF THE SIDELINES OF BLOCKS "A" AND "B" IS SHOWN HEREON AND IS ONLY USED FOR THIS AQUATIC LEASE APPLICATION.
- 2) BASED ON INFORMATION OBTAINED FOR THIS SURVEY, THE MAP OF GIG HARBOR TIDELANDS OF 1974 SHOWS THAT THE LINE OF EXTREME LOW TIDE IS LOCATED NEAR THE INNER HARBOR LINE AND IS ACCEPTED BY JACK BOLTON (SEE RECORD OF SURVEY A.F.N. 8708240422) BASED ON INFORMATION OBTAINED FROM THE DEPARTMENT OF NATURAL RESOURCES - LAND SURVEY DIVISION, THE ACCEPTED ELEVATION OF EXTREME LOW TIDE IN THE PUGET SOUND BASIN IS -4.5' MLLW AND WAS HELD AS THE LINE BETWEEN PUBLIC AND PRIVATELY OWNED TIDELANDS FOR THIS SURVEY. HOWEVER, IT APPEARS THAT DREDGING MAY HAVE TAKEN PLACE PRIOR TO THIS SURVEY NEAR THE END OF THE DOCK AND COULD AFFECT THE LOCATION OF THE EXTREME LOW TIDE. THEREFORE, HISTORICAL EVIDENCE OF THE LOCATION OF THE (-4.5') EXTREME LOW TIDE CONTOUR WAS USED. THIS HISTORICAL EVIDENCE WAS BASED ON A US COAST AND GEODETIC HYDROGRAPHIC SURVEY NO. 5931 COMPLETED IN 1935 FOR THE SOUTH END OF COLVOS PASSAGE.
- 3) THE MEANDER LINE DATA SHOWN HEREON IS BASED FROM THAT DATA SHOWN ON RECORD OF SURVEY RECORDED UNDER A.F.N. 8708240422. THE INITIAL COMMENCEMENT POINT FOR THE MEANDER LINE IS A CALCULATED POSITION OF THE MEANDER CORNER BASED ON THE AFOREMENTIONED SURVEY AT WHICH A STONE WAS FOUND BY JACK BOLTON, PLS. THIS POSITION FOR THE MEANDER CORNER IS ALSO SHOWN AND ACCEPTED ON RECORD OF SURVEY(S) A.F.N.(S) 1726, 9605090296, 9612040116, 200309045001 AND THEREFORE IS ACCEPTED FOR THIS SURVEY.

LEASE NOTE:

THE LEASE AREA(S) SHOWN ON AQUATIC LANDS LEASE NO. 20-012428, RECORDED UNDER A.F.N. 200504015004 AND AQUATIC LANDS LEASE NO. 22-002773, RECORDED UNDER A.F.N. 9605090296 DESCRIBE AREAS ADJOINING THE SUBJECT PARCEL DESCRIBED FOR THIS SURVEY. THEY ARE BEING SHOWN TO REFLECT THE RELATIONSHIP BETWEEN LEASES ALREADY IN PLACE WITHIN THE AREA.

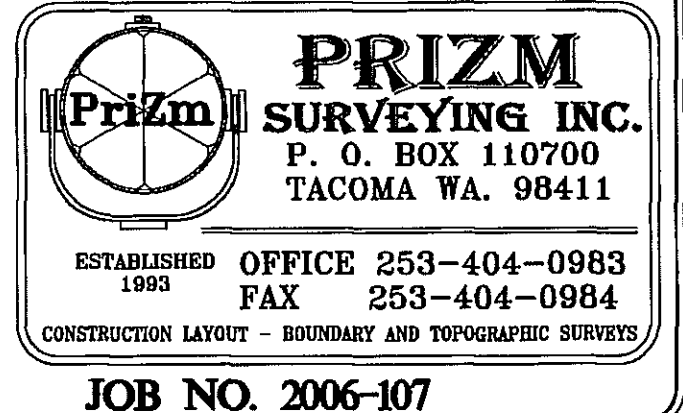
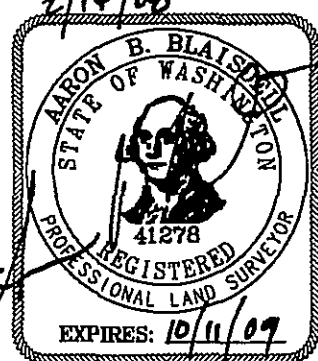
SURVEYOR'S REFERENCES:

- | | | | |
|--------|---|--------|--|
| (R-1) | STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES "AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES" RECORDED UNDER AUDITOR'S FILE NUMBER 9512140115 | (R-14) | TIDELANDS DEED RECORDED IN VOLUME 13 OF DEEDS, PAGE 151 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA |
| (R-2) | CITY OF GIG HARBOR BOUNDARY LINE ADJUSTMENT RECORDED UNDER A.F.N. 200309045001 | (R-15) | TIDELANDS DEED RECORDED IN VOLUME 16 OF DEEDS, PAGE 415 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA |
| (R-3) | RECORD OF SURVEY A.F.N. 8708240422 | (R-16) | TIDELANDS DEED RECORDED IN VOLUME 16 OF DEEDS, PAGE 682 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA |
| (R-4) | RECORD OF SURVEY A.F.N. 200608225001 | (R-17) | TIDELANDS DEED RECORDED IN VOLUME 20 OF DEEDS, PAGE 38 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA |
| (R-5) | ROS LEASE NO. 22-077216 AFN 200509025001 | (R-18) | TIDELANDS ACTIVITY REGISTER TS27-082 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA |
| (R-6) | ROS LEASE NO. 20-012428 AFN 200504015004 | (R-19) | WARRANTY DEED A.F.N. 1667980 |
| (R-7) | ROS LEASE NO. 22-002773 AFN 9605090296 | (R-20) | STATUTORY WARRANTY DEED A.F.N. 2795933 |
| (R-8) | AMENDED ROS LEASE NO. 22-002773 AFN 9612040116 | (R-21) | STATUTORY WARRANTY DEED A.F.N. 2738107 |
| (R-9) | ROS LEASE NO. 22-A02571 AFN 200605115002 | (R-22) | MAP OF GIG HARBOR TIDELANDS AND HARBOR LINES FILED IN 1974 AT THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS - OLYMPIA |
| (R-10) | STATUTORY WARRANTY DEED A.F.N. 8011250236 | (R-23) | US COAST AND GEODETIC SURVEY - HYDROGRAPHIC SURVEY NO. 5931 COMPLETED IN 1935 FOR THE SOUTH END OF COLVOS PASSAGE. |
| (R-11) | STATUTORY WARRANTY DEED A.F.N. 200503170517 | | |
| (R-12) | TIDELANDS DEED RECORDED IN VOLUME 2 OF DEEDS, PAGE 183 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA | | |
| (R-13) | TIDELANDS DEED RECORDED IN VOLUME 10 OF DEEDS, PAGE 324 ON FILE AT THE OFFICE OF COMMISSIONER OF PUBLIC LANDS -OLYMPIA | | |

LEGAL DESCRIPTION - LEASE AREA

AN AREA FOR AQUATIC LEASE LYING BETWEEN THE LINE OF EXTREME LOW TIDE AND THE OUTER HARBOR LINE ABUTTING GOVERNMENT LOT 7, SECTION 5, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON. SAID AREA DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SECTION 5 AND 6, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., WITH ITS GOVERNMENT MEANDER LINE ON THE SOUTH SIDE OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, SAID POINT ALSO BEING THE NORTHWEST CORNER OF GOVERNMENT LOT 7; THENCE SOUTH 02°31'22" WEST, ALONG THE SECTION LINE THEREOF, 351.47 FEET; THENCE NORTH 56°11'00" EAST 26.71 FEET TO THE SOUTHERNMOST CORNER OF PARCEL B OF RECORD OF SURVEY FOR BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FEE NUMBER 200309045001, RECORDS OF PIERCE COUNTY; THENCE CONTINUING NORTH 56°11'00" EAST, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL B AND THE EXTENSION THEREOF, 294.70 FEET; THENCE NORTH 21°07'22" EAST 62.08 FEET TO A POINT ON THE LINE OF EXTREME LOW TIDE, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE LEASE AREA; THENCE SOUTHEASTERLY, ALONG SAID LINE OF EXTREME LOW TIDE, SOUTH 22°55'05" EAST 51.32 FEET; THENCE SOUTH 73°15'31" EAST 24.91 FEET; THENCE NORTH 63°45'24" EAST 27.01 FEET; THENCE NORTH 88°29'51" EAST 28.27 FEET; THENCE SOUTH 84°34'25" EAST 28.13 FEET TO A POINT ON THE WEST LINE OF THAT AQUATIC LEASE NO. 20-012428, RECORDED UNDER AUDITOR'S FEE NUMBER 200504015004, RECORDS OF PIERCE COUNTY; THENCE LEAVING SAID LINE OF EXTREME LOW TIDE, NORTH 01°46'46" EAST, ALONG THE WEST LINE OF SAID LEASE, 150.29 FEET TO A POINT ON THE INNER HARBOR LINE OF THE AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES RECORDED UNDER AUDITORS FEE NUMBER 9512140115, RECORDS OF PIERCE COUNTY; THENCE SOUTH 86°00'44" EAST, ALONG THE INNER HARBOR LINE OF THE AFOREMENTIONED AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES, 56.44 FEET TO THE NORTHEAST CORNER OF THAT AQUATIC LEASE NO. 20-012428, RECORDED UNDER AUDITOR'S FEE NUMBER 200504015004, RECORDS OF PIERCE COUNTY; THENCE NORTH 01°46'46" EAST, ALONG THE EAST LINE EXTENDED OF SAID LEASE, 155.62 FEET TO A POINT ON THE OUTER HARBOR LINE OF THE AFOREMENTIONED AMENDED PLAT; THENCE NORTH 86°00'46" WEST, ALONG SAID OUTER HARBOR LINE, 78.41 FEET TO THE NORTHEAST CORNER OF THAT AQUATIC LEASE NO. 22-002773, RECORDED UNDER AUDITOR'S FEE NUMBER 9612040116, RECORDS OF PIERCE COUNTY; THENCE SOUTH 46°58'34" WEST, ALONG THE EAST LINE OF SAID LEASE, 212.59 FEET TO A POINT ON THE AFORMENTIONED INNER HARBOR LINE OF THE AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES; THENCE SOUTH 86°00'44" EAST, ALONG SAID INNER HARBOR LINE, 112.16 FEET TO A POINT ON THE EAST LINE OF BLOCK A OF THE AFOREMENTIONED AMENDED PLAT OF GIG HARBOR TIDELANDS AND HARBOR LINES; THENCE SOUTH 37°08'07" WEST, ALONG SAID EAST LINE, 122.04 FEET TO A POINT ON THE LINE OF EXTREME LOW TIDE; THENCE SOUTH 22°35'34" EAST, ALONG SAID EXTREME LOW TIDE LINE, 13.78 FEET TO THE POINT OF BEGINNING.



200802265003



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Amendment to Murphy's Landing Marina Navigation Channel Dredging Agreement

SUBMITTED BY: Public Works Director Jeff Langhelm, PE

DEPARTMENT: Public Works

PHONE: (253) 853-7630

SUGGESTED MOTION: Move to authorize the mayor to sign an amendment to the agreement between the City of Gig Harbor and Murphy's Landing Marina for dredging the navigation channel for the marina.

BACKGROUND INFORMATION: In 2021, the city and the marina entered into an agreement related to a project that would dredge a small area of the harbor near the marina. The city's responsibility, as described within the agreement, consists of creating design documents and acquiring the associated permits. The city completed the design and acquired all local and state permits for the work.

The last outstanding permit is managed by the US Army Corps of Engineers (USACE). The city applied for a nationwide permit through USACE. The remaining action to acquire this permit is Endangered Species Act consultation. The estimated consultant cost for this consultation is \$45,000.

The Marina proposed that the city transfer to the marina an amount equal to the estimated consultant cost for the marina to complete the permit acquisition process. In exchange, the marina will complete the permitting process for the project.

Council reviewed this project during three different study session meetings on January 12, April 20, and June 29, 2023. During the June meeting, council directed staff to prepare the described amendment to the original agreement.

FISCAL CONSIDERATION: This amount was unbudgeted, but the city's wastewater capital fund has sufficient funds to pay for this expenditure.

Expenditure Required: \$ 45,000.00	Amount Budgeted: \$ 0	Appropriation Required: \$ 0
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BOARD/COMMISSION/COMMITTEE RECOMMENDATION:

ATTACHMENTS:

1. Amendment to the agreement between the city and the marina
 2. Original agreement between the city and the marina dated May 11, 2021
-

STRATEGIC PLAN PRIORITY: Promote and enhance a dynamic and robust economy

DREDGING AGREEMENT AMENDMENT

THIS AMENDMENT (the "Amendment") TO THE MAY 11, 2021, DREDGING AGREEMENT (the "Agreement") is made and entered into on _____ between the City of Gig Harbor ("City"), and Association of Moorage Slip Owners and the Association of Moorage Slip Owners of Murphy's Landing II, ("Murphy's Landing") (together the "Parties").

RECITALS

WHEREAS, Murphy's Landing Marina (Marina) is owned by Murphy's Landing and is located at the confluence of Donkey Creek and an unnamed creek that discharges through stormwater infrastructure directly west of the Marina; and

WHEREAS, the sediment naturally flowing from both Donkey Creek and the unnamed creek accumulates throughout the north western portion of the Marina, which caused Murphy's Landing to originally dredge this sediment in 1985 from Gig Harbor bay to create a basin for the Marina to have sufficient depth to moor vessels; and

WHEREAS, in 2010 the City installed a marine outfall pipe from the City's wastewater treatment plant under the seabed in the bay to the north east of Donkey Creek which is covered by approximately 24 inches of gravel; and

WHEREAS, because the sediment continued to naturally flow from Donkey Creek and the unnamed creek, in 2012 Murphy's Landing re-dredged portions of the Marina and installed an deflection barrier along the north western portion of the basin at the level of the seabed to prevent the sediment from naturally being deposited and accumulating in the basin and to encourage the sediment to flow beyond the basin and out into the bay; and

WHEREAS, as noted in a 2018 study prepared by the City, the gravel covering the pipe was originally slightly mounded in accordance with the marine outfall project and caused a portion of the flow of water from Donkey Creek and the associated sediment to flow towards the Marina; and

WHEREAS, over time the gravel covering the pipe has naturally shifted to allow rills which permit the water and sediments to flows out into the bay in its natural course and without being diverted towards the Marina; and

WHEREAS, Murphy's Landing desires to dredge the location where the water and sediment flows out into the bay and have agreed that such activity will be the last such activity that will involve the City; and

WHEREAS, the City and Murphy's Landing entered into an agreement in May 2021 outlining each party's responsibility to perform the design, permitting, and dredging work for the entire project; and

WHEREAS, the City proceeded with design and permitting with local, state, and federal agencies for the dredging work; and

WHEREAS, the federal permitting process through the United States Army Corps of Engineers (USACE) has two options for disposal of the dredged material, which is either upland disposal that follows the USACE Nationwide Permit process or in-water disposal that follows the USACE Individual Permit process; and

WHEREAS, additional financial expenditures are necessary to complete the federal permitting process regardless of which option for disposal is selected; and

WHEREAS, the costs to dispose of the dredged material vary greatly, depending on which disposal option is selected; and

WHEREAS, at City Council's June 29, 2023 Study Session, City Council considered which federal permitting process would have the best benefit for the sewer utility rate payers; and

WHEREAS, Murphy's Landing has proposed to the City that Murphy's Landing complete the remaining design and permitting processes for this entire project in exchange for the City providing a payment to Murphy's Landing in the amount the City anticipated expending to complete the Nationwide Permit process; and

WHEREAS, payment of the amount of anticipated permitting costs by the City (\$45,000) and transfer of the permits to Murphy's Landing will act as full and complete satisfaction of the City's obligations under this agreement; and

WHEREAS, the City agrees to Murphy's Landing's proposal.

NOW, THEREFORE, the Parties do hereby agree as follows:

AMENDMENT

The Parties agree to amend the Agreement as outlined below.

2.2 *Permitting.* The City further agrees to submit the completed dredging design for all necessary permitting to the appropriate local (city), state, and federal agencies and will manage the submission/s until a permit approval is received. Costs associated with the permit submittal, including all permit fees, are the responsibility of the City until July 11, 2023. After July 11, 2023 ~~t~~The City will coordinate with the

permitting agencies and Murphy's Landing to transfer the approved current permit application(s) existing as of July 11, 2023 to Murphy's Landing. Once those permits are transferred to Murphy's Landing the City has no further obligations to take any actions related to any permitting. The City further agrees to pay Murphy's Landing in exchange for completing the permitting process associated with the entire project an amount of \$45,000. This payment shall be made from the City to Murphy's Landing within 35 calendar days of the execution date of this amendment.

2.4 *Future Work.* The Parties agree that once ~~the City~~ Murphy's Landing receives the payment outlined in 2.3 above and the permits existing as of July 11, 2023 have been transferred to Murphy's Landing~~required approval/s on the permit submittal as noted above,~~ the City no longer has any responsibilities related to this dredging project or any ongoing sediment flow, accumulation, or dredging on the Murphy's Landing property and all of the City's obligations under this Agreement have been fully and completely satisfied. Murphy's Landing is exclusively responsible for the ongoing maintenance, dredging, and control of its property as it pertains to sediment accumulation and dredging. Murphy's landing acknowledges and agrees that sediment flow naturally originating from Donkey Creek and the unnamed creek will continue to impact its property and that the City is not responsible for such ongoing impacts.

3.2.2 *Permitting* —~~the City~~ Murphy's Landing shall take reasonable efforts to complete the permitting process in a timely manner with the express understanding that the timeline is largely out of the ~~City's~~ Murphy's Landing's control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY

By: _____
Mayor Tracie Markley

Date: _____

Attest: _____

Approved as to Form: _____

MURPHY'S LANDING

By: _____

Date: _____

Title: _____

DREDGING AGREEMENT

THIS DREDGING AGREEMENT (the "Agreement") is made and entered into this 11th day of May 2021 between the City of Gig Harbor ("City"), and Association of Moorage Slip Owners and the Association of Moorage Slip Owners of Murphy's Landing II, ("Murphy's Landing") (together the "Parties").

RECITALS

WHEREAS, Murphy's Landing Marina (Marina) is owned by Murphy's Landing and is located at the confluence of Donkey Creek and an unnamed creek that discharges through stormwater infrastructure directly west of the Marina; and

WHEREAS, the sediment naturally flowing from both Donkey Creek and the unnamed creek accumulates throughout the north western portion of the Marina, which caused Murphy's Landing to originally dredge this sediment in 1985 from Gig Harbor bay to create a basin for the Marina to have sufficient depth to moor vessels; and

WHEREAS, in 2010 the City installed a marine outfall pipe from the City's wastewater treatment plant under the seabed in the bay to the north east of Donkey Creek which is covered by approximately 24 inches of gravel; and

WHEREAS, because the sediment continued to naturally flow from Donkey Creek and the unnamed creek, in 2012 Murphy's Landing re-dredged portions of the Marina and installed an deflection barrier along the north western portion of the basin at the level of the seabed to prevent the sediment from naturally being deposited and accumulating in the basin and to encourage the sediment to flow beyond the basin and out into the bay; and

WHEREAS, as noted in a 2018 study prepared by the City, the gravel covering the pipe was originally slightly mounded in accordance with the marine outfall project and caused a portion of the flow of water from Donkey Creek and the associated sediment to flow towards the Marina; and

WHEREAS, over time the gravel covering the pipe has naturally shifted to allow rills which permit the water and sediments to flows out into the bay in its natural course and without being diverted towards the Marina; and

WHEREAS, Murphy's Landing desires to dredge the location where the water and sediment flows out into the bay and have agreed that such activity will be the last such activity that will involve the City.

NOW, THEREFORE, the Parties do hereby agree as follows:

AGREEMENT

The Parties agree to complete a dredging project consistent with the Agreement outlined below.

1. Location and Description of Dredging.

1.1 The dredging covered by this project shall occur on Murphy's Landing's property in the location depicted in **Exhibit A**.

1.2 The dredging project shall include the following work: Development of a dredging plan, submittal of the dredging plan to permitting agencies (federal, state and local agencies), and completion of the dredging operation in accordance with the approved and permitted dredging plan.

2. Responsibilities.

2.1 *Design.* The City agrees to complete, or cause to be completed, the design work necessary to dredge the area depicted in Exhibit A in a manner sufficient to allow water and sediment flow through the dredged area. The City will provide the proposed design to Murphy's Landing prior to permit submittal and Murphy's Landing shall have five days from receipt to provide input to the City which the City shall consider. Because the design must comply with relevant local, state and federal law as well as standard practices, the City is not obligated to change the design following receipt of input but agrees to consider such input prior to permit submittal. Costs associated with the design work are the responsibility of the City.

2.2 *Permitting.* The City further agrees to submit the completed dredging design for all necessary permitting to the appropriate local (city), state, and federal agencies and will manage the submission/s until a permit approval is received. Costs associated with the permit submittal, including all permit fees, are the responsibility of the City. The City will coordinate with the permitting agencies and Murphy's Landing to transfer the approved permit to Murphy's Landing.

2.3 *Dredging.* Murphy's Landing agrees that all actions required to complete the permitted work are the responsibility of Murphy's Landing. This includes the dredging outlined in the permit, disposal of material if necessary, or anything else that might be necessary for the dredging project. All costs associated with the dredging project, with the exception of the design and permitting noted above, are the responsibility of Murphy's Landing.

2.4 *Future Work.* The Parties agree that once the City receives the required approval/s on the permit submittal, the City no longer has any responsibilities related to this dredging project or any ongoing sediment flow, accumulation, or dredging on the Murphy's Landing property. Murphy's Landing is exclusively responsibility for the ongoing maintenance, dredging, and control of its property as it pertains to sediment accumulation and dredging. Murphy's landing acknowledges and agrees that sediment flow naturally originating from Donkey Creek and the unnamed creek will continue to impact its property and that the City is not responsible for such ongoing impacts.

3. Term and Timeline.

3.1 *Term.* The term of this Agreement shall commence when all parties have signed the Agreement and shall continue until the dredging project described above is complete, or the dredging permit is no longer valid, whichever is shorter. The parties agree that if the dredging project described in this agreement is not completed for any reason, the City will nonetheless not be responsible for any ongoing or future maintenance, dredging, or sediment accumulation at the property.

3.2 *Timeline.* The Parties agree that the agreed work shall be completed as follows:

3.2.1 *Design* – the City shall complete design of the dredging project by January 1, 2022.

3.2.2 *Permitting* – the City shall take reasonable efforts to complete the permitting process in a timely manner with the express understanding that the timeline is largely out of the City's control.

3.2.3 *Dredging* – Murphy's Landing shall commence the dredging project within the timeline prescribed by the Permit. Failure to timely commence the dredging project shall not impact or renew the City's responsibilities under this Agreement.

4. Termination. This Agreement may be terminated as follows:

4.1 By written agreement of the Parties, or

4.2 By either Party with cause. "Cause" shall be defined as when the other Party has failed to fully comply with the obligations outlined in this Agreement and has failed to cure the failure within thirty (30) days following notice of such failure.

5. Compensation. The Parties agree that neither party shall be compensated as a result of this agreement. Further, the financial obligations for each party extend only as far as described in Section 2 above. The financial obligations outlined in this agreement act as full and complete consideration for this Agreement and further act to fully satisfy and resolve any claims either Party may have as of the date of this Agreement pertaining to sediment accumulation on the Murphy's Landing property.

6. Insurance. Both parties agree that they will each procure and maintain in full force and effect for the duration of their respective obligations insurance coverages sufficient to address the nature of the work being performed by that Party.

7. Indemnification of Parties. The Parties covenant and agree to indemnify, defend, and hold harmless the other Party, its officers, agents, and employees from and against any and all claims, actions, damages, liability, cost, and expense, including reasonable attorneys' fees, in connection with or occasioned, in whole or in part by the non-indemnifying Party's actions under this Agreement or the actions of its officers, agents, employees, customers, or licensees under this Agreement.

With respect to the performance of this Agreement, and as to claims against the Owner, its officers, agents, and employees, the Parties expressly waive immunity under Title 51 of the Revised Code of Washington for injuries to its employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Parties. This waiver was mutually negotiated by the Parties.

8. Non-Assignment. Neither Party may, without the prior written consent of the other Party, assign its rights under this Agreement.

9. Access. The City shall have the right to access and inspect the Murphy's Landing property at any reasonable time in order to design and permit the project.

10. Notice. All notices under this Agreement shall be made in writing and shall be given to the parties by registered or certified mail, return receipt requested, at the addresses set forth herein or at such other addresses as either of the parties may herein specify in the same manner. If the parties agree in writing, another form of notice is acceptable.

The addresses of the parties are:

CITY:

Public Works Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

MURPHY'S LANDING:

Association of Moorage Slip Owners and Association of Moorage Slip Owners Murphy's Landing II
Attn: Board President
3901 Harborview Dr
Gig Harbor, WA 98335

11. Attorney's Fees. If any legal action or other proceedings brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of the Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, arbitration, or proceeding, in addition to any other relief to which it or he may be entitled.

12. Severability. In the event any provision hereof shall be modified or held ineffective by any court in any respect, such adjudication shall not invalidate or render ineffective the balance of the provisions of this Agreement.

13. Non-Discrimination. The Parties agree not to discriminate against any employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed,

religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification.

14. Independent Status. The Parties to this Agreement, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.

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

16. Venue. The parties agree that venue for any suit or action to specifically enforce the provisions of this Agreement herein shall lie in Pierce County Superior Court.

17. Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the management and operation of the Property.

18. Successors. This Agreement shall be binding upon the successors and assigns of the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY

By: Kit Kuhn
Mayor Kit Kuhn

Date: 5-11-21

Attest: Mally Doree
Approved as to Form: Daniel Kenny

MURPHY'S LANDING

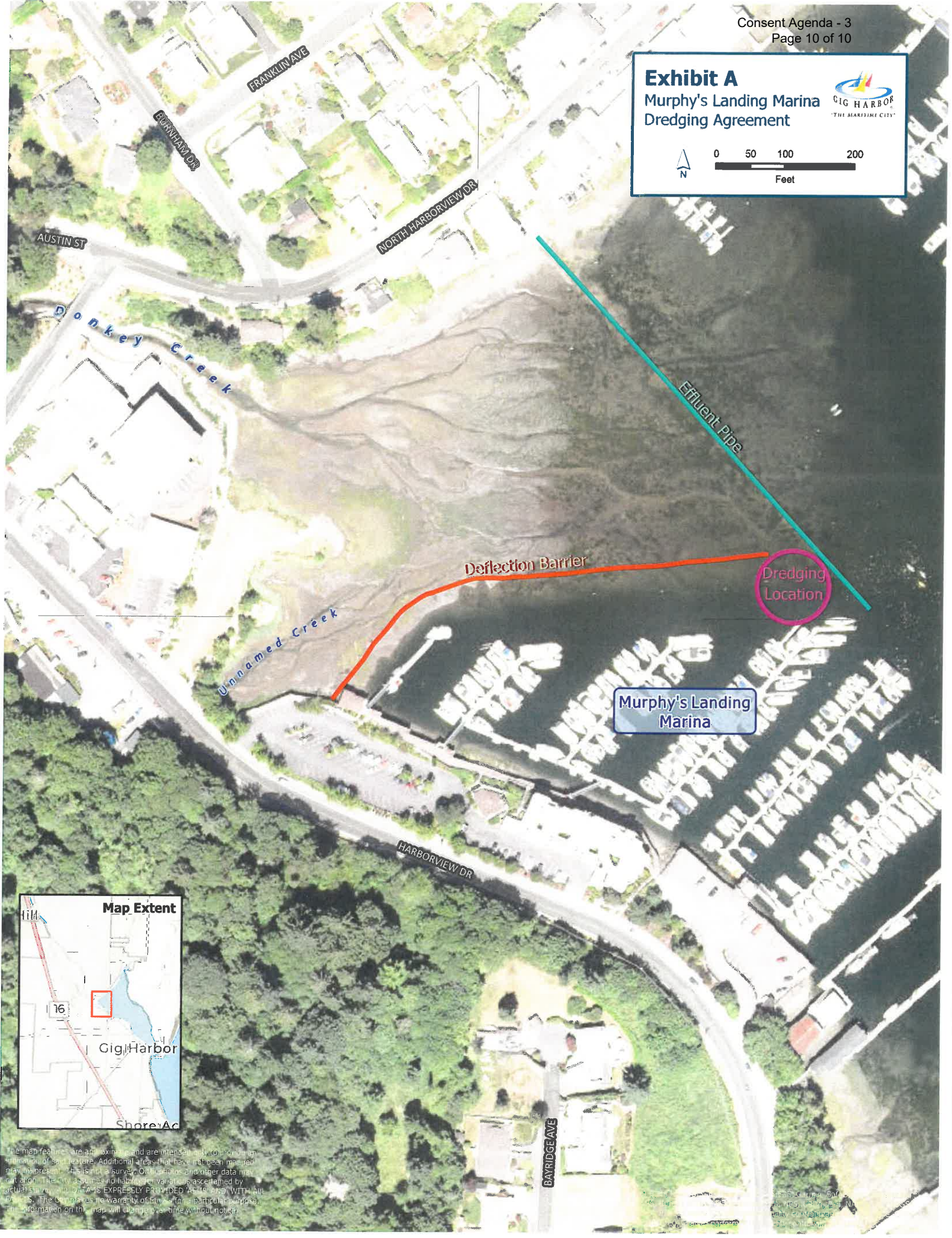
By: James Horkner Date: 5-19-21
Title: PRESIDENT

Exhibit A

Murphy's Landing Marina Dredging Agreement



0 50 100 200
Feet



The map features are approximate and are intended only to provide a general overview of the area. Additional areas that have not been mapped may be present. This is not a survey. On the basis of other data that may be present, the City assumes no liability for any errors or omissions. The City makes no warranty of the accuracy of the information on this map. The information on this map will change over time without notice.



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Appointment of Jon Ashlock and Guy Hoppen to the Historic Preservation Commission

SUBMITTED BY: City Clerk Josh Stecker

DEPARTMENT: Administration

PHONE: 853-7613

SUGGESTED MOTION: Move to confirm the appointment of Jon Ashlock and Guy Hoppen to the historic preservation commission with terms expiring September 30, 2026.

BACKGROUND INFORMATION: Based on their qualifications, the mayor intends to appoint Jon Ashlock and Guy Hoppen to the historic preservation commission.

FISCAL CONSIDERATION: None.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION: N/A

ATTACHMENTS: None.

STRATEGIC PLAN PRIORITY: Foster a healthy City organization



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Resolution 1284 Authorizing the Submittal of an Application for Grant Funding Assistance to the Washington State Transportation Improvement Board for the Two Capital Improvement Projects "Burnham Drive Half-Width Improvement Phase 1a" and "Wollochet/Wagner Intersection Improvements"

SUBMITTED BY: Project Engineer Marcos McGraw

DEPARTMENT: Public Works/Engineering

PHONE: 853-2647

SUGGESTED MOTION: Move to approve Resolution 1284.

BACKGROUND INFORMATION: The purpose of the established grant program managed by the Transportation Improvement Board (TIB) is to fund high priority transportation projects in communities throughout the state to enhance the movement of people, goods, and services. The TIB is an independent state agency, created by the Legislature, that distributes and manages street construction and maintenance grants to 320 cities and urban counties throughout Washington State. Funding for TIB's grant programs comes from revenue generated by the statewide gas tax.

The grant applications are due to the TIB no later than August 11, 2023. The TIB announces the selected projects by December 1 of each year, which might restrict commencement of advertisement of the two city projects. A small match of local funds is required. Funds through TIB will be available beginning as early as spring 2024.

Staff recommends the city proceed with two TIB grant applications that will, if successful, provide funding for construction of:

- Intersection improvements at Wollochet Drive and Wagner Way; and
- Burnham Drive Phase 1A improvements.

FISCAL CONSIDERATION: It is anticipated that design and permitting for both projects will be complete by fall of 2023 and construction will occur summer/fall of 2024. The preliminary estimate for the total construction cost of the project "Wollochet Drive/Wagner Way Intersection Improvements" is \$1,000,000.00. The preliminary estimate for the total construction cost of the project "Burnham Drive Half-Width Improvements Phase 1a" is \$4,000,000.00.

Construction funding will need to be allocated for the projects during 2023-2024 budget amendment deliberations.

Expenditure Required: \$ 0	Amount Budgeted: \$ 0	Appropriation Required: \$
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BOARD/COMMISSION/COMMITTEE RECOMMENDATION:

ATTACHMENTS: Resolution 1284

STRATEGIC PLAN PRIORITY: Ensure sustainable future for public services and facilities

RESOLUTION 1284

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR GRANT FUNDING ASSISTANCE TO THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (TIB) FOR THE TWO CAPITAL IMPROVEMENT PROJECTS “BURNHAM DRIVE HALF-WIDTH IMPROVEMENT PHASE 1A” AND “WOLLOCHET/WAGNER INTERSECTION IMPROVEMENTS”

WHEREAS, the City of Gig Harbor intends to construct for public safety of motorists, pedestrians, cyclists, and other active transportation users a new signal system at the intersection of Wollochet Drive and Wagner Way; and

WHEREAS, the City of Gig Harbor intends to implement half-width roadway improvements for public safety of motorists, pedestrians, cyclists, and other active transportation users along Burnham Drive between the Eagles Club (4425 Burnham Dr.) and 96th Street; and

WHEREAS, under the provisions of the Transportation Improvement Board (TIB) grant program, grant funding may be available to aid in financing the cost of constructing capital improvement projects;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor:

Section 1. City staff is hereby authorized to make formal application(s) to the TIB for grant funding to finance construction of the capital projects “Burnham Drive Half-Width Improvements Phase 1a” and “Wollochet Drive/Wagner Way Intersection Improvements.”

ADOPTED by the City Council of the City of Gig Harbor at a regular meeting thereof, held this 10th day of July 2023.

Tracie Markley
Mayor

Attest:

Joshua Stecker, CMC
City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, the Gig Harbor Municipal Court is a vital part of local government;
and

WHEREAS, public impression of the Washington state judicial system is largely dependent upon the public's experience in municipal court; and

WHEREAS, municipal judges and court support personnel have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and conform to the standards set by the Canons of Judicial Conduct; and

WHEREAS, the municipal court plays a significant role in preserving the quality of life in our community and protecting the peace and dignity of our city; and

WHEREAS, the municipal judges, clerks, and court support personnel continually strive to improve the administration of justice and the experiences of those who come through the court;

NOW, THEREFORE, BE IT RESOLVED THAT, I, Tracie Markley, Mayor of the City of Gig Harbor, do hereby proclaim the week of July 17-21, 2023, as

Municipal Court Week

in the City of Gig Harbor and further extend appreciation to the Gig Harbor Municipal Court for the vital services they perform and their exemplary dedication to our city.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 10th day of July, 2023.

Mayor Tracie Markley
City of Gig Harbor

GIG HARBOR POLICE DEPARTMENT



2005

PATROL SERGEANT
MATT DOUGIL



GIG HARBOR POLICE DEPARTMENT



2005

PATROL OFFICER
MIKE ALLEN





Sergeant Matthew Dougil

GHPD 1997-2023



Officer Michael Allen

GHPD 2004-2023





Crime in Washington

GIG HARBOR POLICE DEPARTMENT
2022 CRIME STATISTICS

Crime Reporting

- Crime = Punishable by possible incarceration
- Data collected via officer report writing system
- Adjusted/corrected by Police Administrative Staff
- Submitted to South Sound 911 → Compiled and reported by Washington Association of Sheriffs and Police Chiefs (WASPC)
- National Incident Based Reporting System (NIBRS)
- Separated into Group A and Group B

Group A Offenses

Reported Crimes

- Crimes against persons
- Crimes against property
- Crimes against society

Group B Offenses

Actual Arrests

- Usually “on-view” arrests

Classifications of Crimes – Group A Offenses



Statewide Crime Profile – Crime up 8.5%

- Crimes against persons  4.9 %
- Crimes against property  9.8 %
- Crimes against society  3.0 %

Violent crimes showed an increase of 8.9% with **32,397** reported.

There were **394** murders statewide in 2022 – an increase of **16.6** %.



Gig Harbor – Group A Crimes

Group A Offenses	Reported 2021	Reported 2022	% of Change	Crime Rate per 1,000	Total Arrests	DV Offense Totals
Grand Total	831	1,114	34.1%	88.8	191	40

Offense Overview

Offense Total	1,114
# of Cleared Offense	262
Percent Cleared	23.5%

Group A Arrest Overview

Arrest Total	191
Adult Arrest Total	186
Juvenile Arrest Total	5

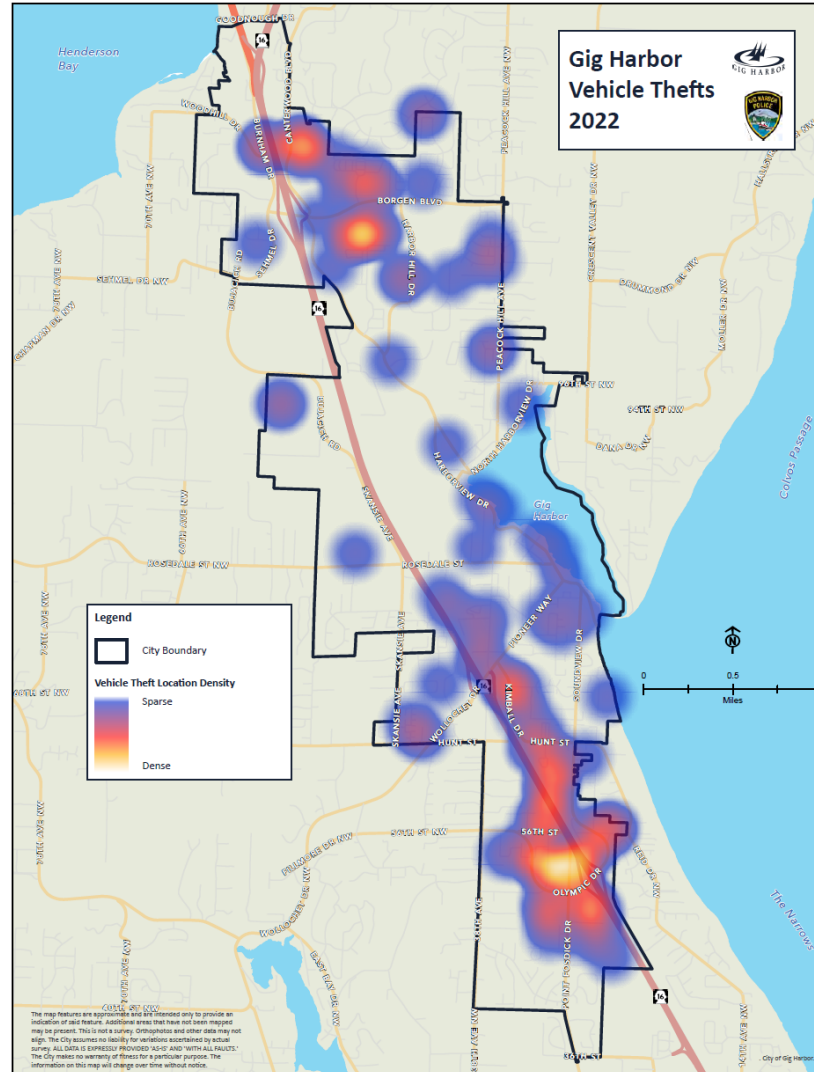
Gig Harbor – Crimes Against Persons

Group A Offenses	Reported 2021	Reported 2022	% of Change	Crime Rate per 1,000	Total Arrests	DV Offense Totals
Murder	0	0		0.0	0	0
Manslaughter	0	0		0.0	0	0
Rape	0	2		0.2	0	1
Sodomy	0	0		0.0	0	0
Sexual Assault w/Object	1	0	-100.0%	0.0	0	0
Fondling	2	2	0.0%	0.2	0	1
Aggravated Assault	10	18	80.0%	1.4	6	2
Simple Assault	44	45	2.3%	3.6	24	21
Intimidation	1	0	-100.0%	0.0	0	0
Kidnapping	3	1	-66.7%	0.1	1	1
Incest	0	0		0.0	0	0
Statutory Rape	0	0		0.0	0	0
Human Trafficking Offenses	0	0		0.0	0	0
Violation of No Contact/Protect.	17	10	-41.2%	0.8	1	9

Gig Harbor – Crimes Against Property

Group A Offenses	Reported 2021	Reported 2022	% of Change	Crime Rate per 1,000	Total Arrests	DV Offense Totals
Robbery	9	12	33.3%	1.0	8	0
Burglary	55	90	63.6%	7.2	5	0
Larceny-Theft Offenses	436	564	29.4%	45.0	106	0
Motor Vehicle Theft	46	118	156.5%	9.4	6	1
Arson	0	1		0.1	0	0
Destruction of Property	82	102	24.4%	8.1	2	4
Counterfeiting/Forgery	11	4	-63.6%	0.3	0	0
Fraud Offenses	64	61	-4.7%	4.9	0	0
Embezzlement	0	1		0.1	0	0
Extortion/Blackmail	0	2		0.2	0	0
Bribery	0	0		0.0	0	0
Stolen Property Offenses	30	56	86.7%	4.5	27	0

Gig Harbor – Auto Theft

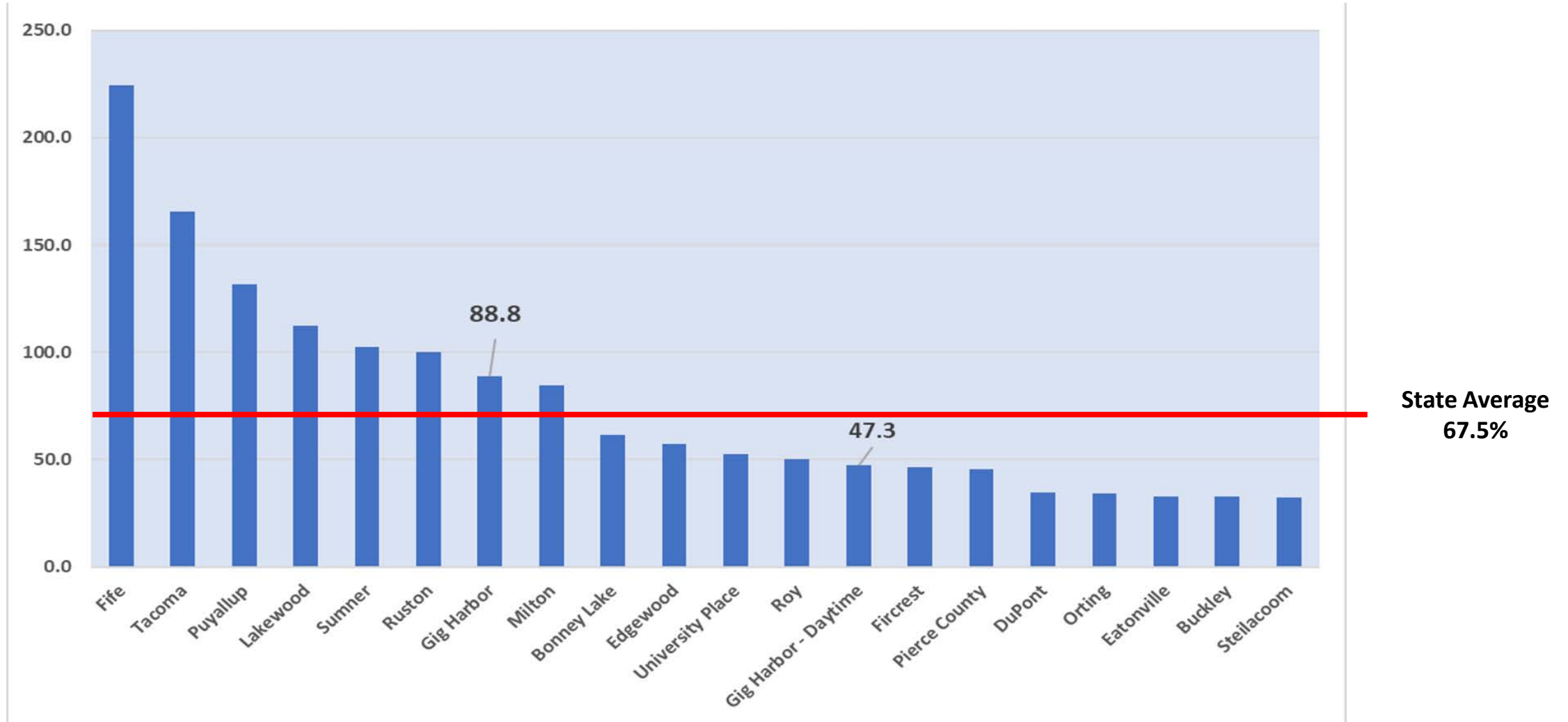


Gig Harbor – Crimes Against Society

Group A Offenses	Reported 2021	Reported 2022	% of Change	Crime Rate per 1,000	Total Arrests	DV Offense Totals
Animal Cruelty	1	1	0.0%	0.0	1	0
Drug/Narcotic Violations	9	7	-22.2%	0.0	0	0
Drug Equipment Violations	4	2	-50.0%	0.0	1	0
Gambling Offenses	0	0		0.0	0	0
Pornography	2	2	0.0%	0.0	0	0
Prostitution Offenses	0	0		0.0	0	0
Weapon Law Violations	4	13	225.0%	0.0	3	0

Grand Total	831	1,114	34.1%	88.8	191	40
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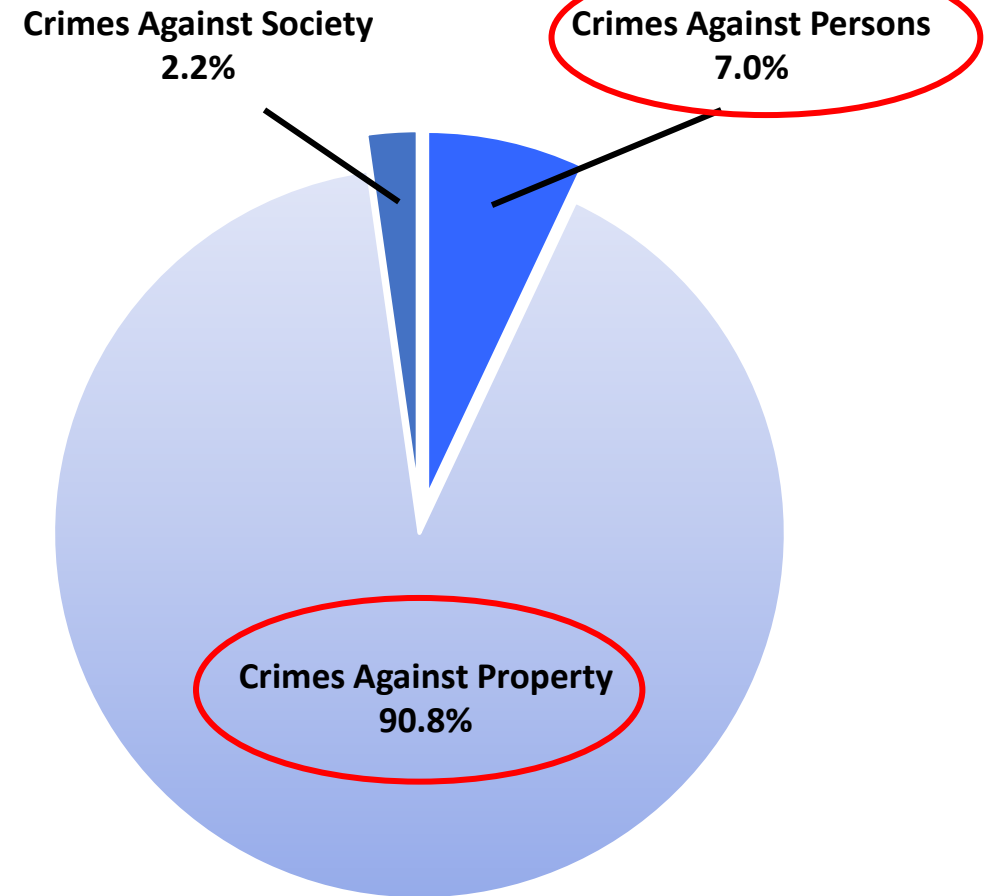
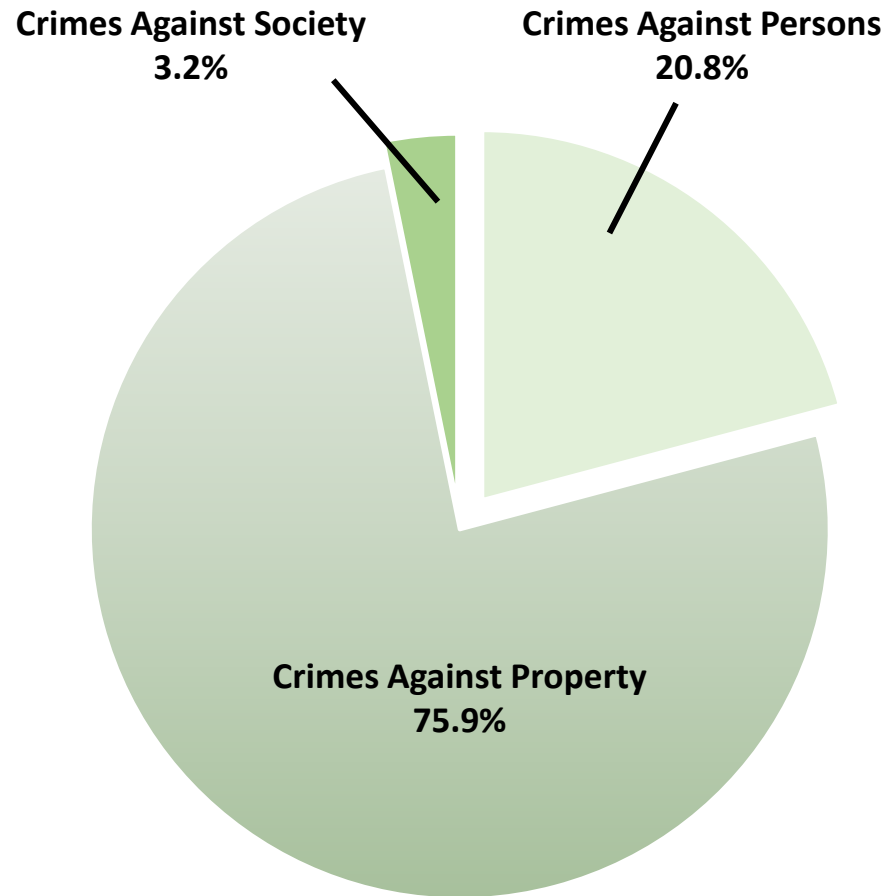
Gig Harbor – “Crime Rate”



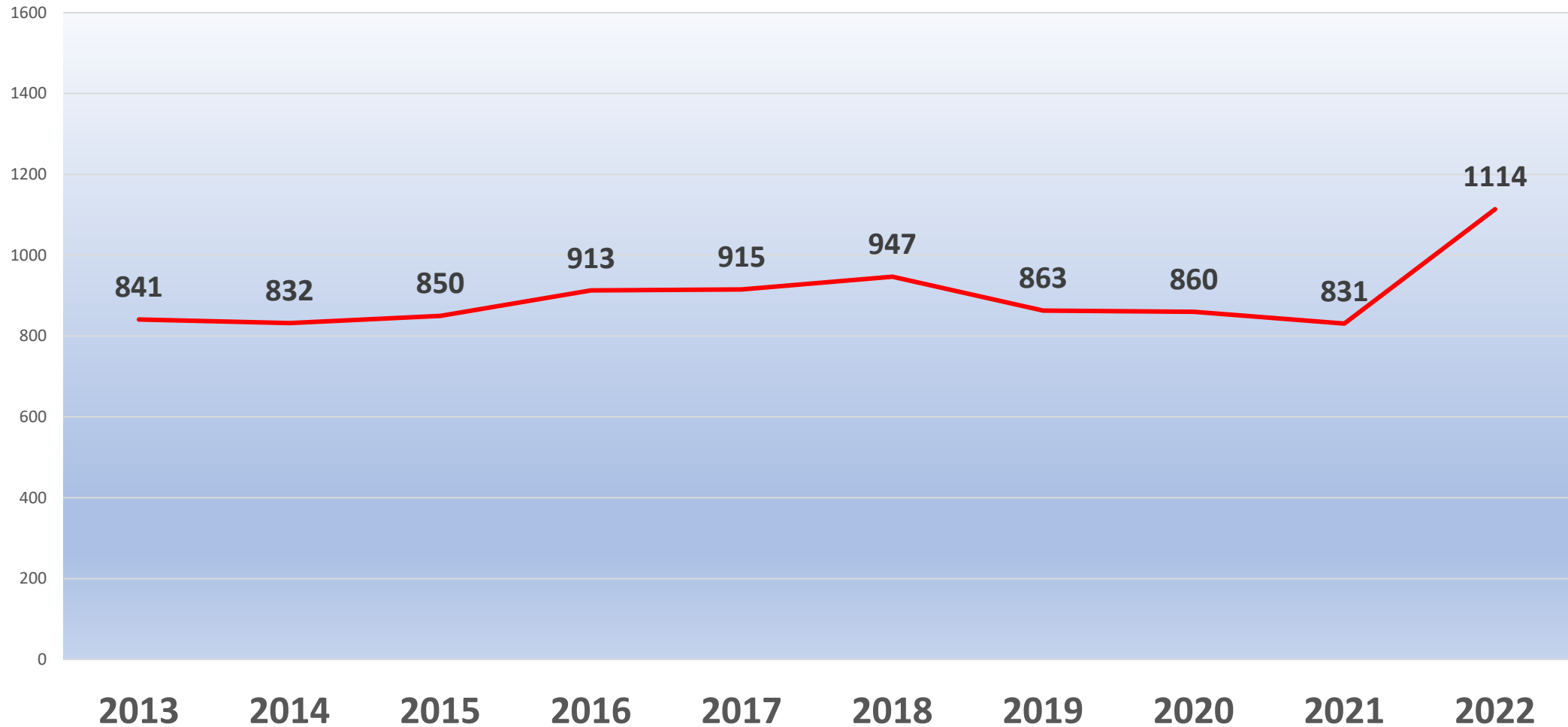
GROUP A OFFENSES

State Profile

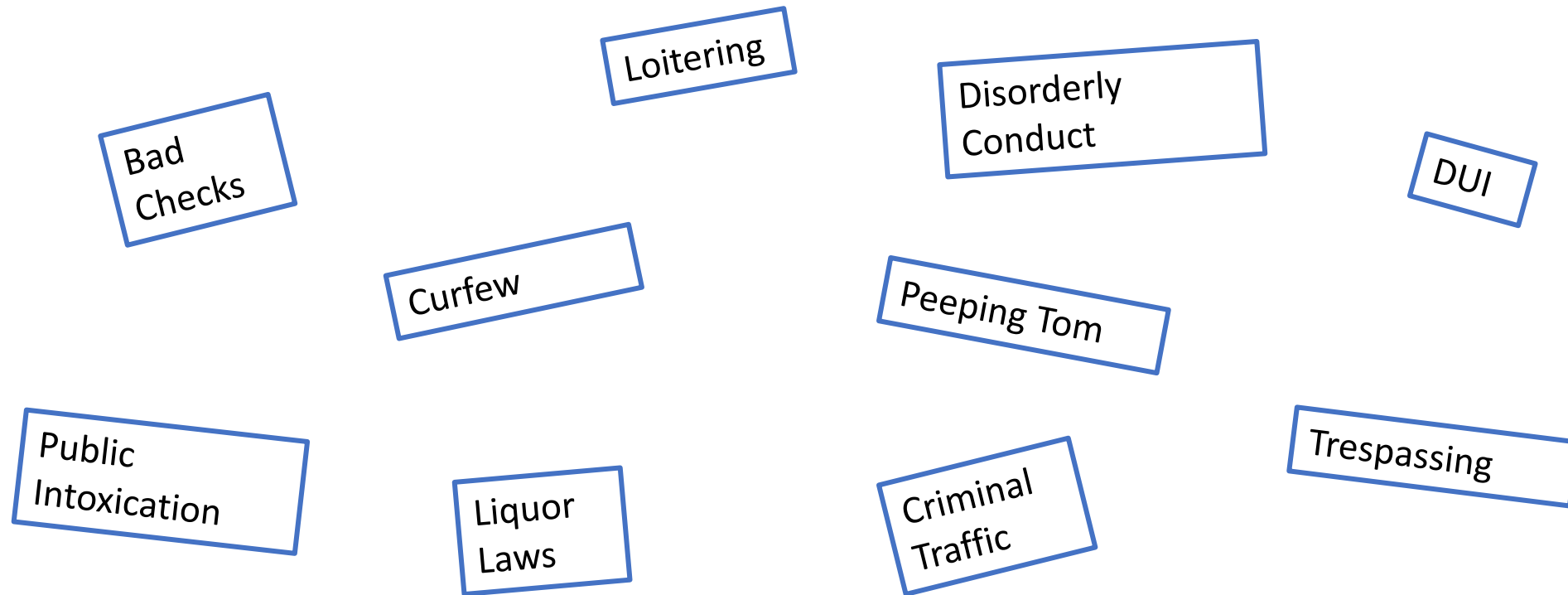
Gig Harbor Profile



Gig Harbor – Trend - Group A Crimes



Classifications of Crimes – Group B Offenses



Arrests

2022 Group B Arrests

Offense	Adult	Juvenile
Bad Checks	0	0
Curfew/Vagrancy	0	0
Disorderly Conduct	0	0
Drunkenness	0	0
DUI	26	0
Family Offenses	1	0
Liquor Law Violations	0	0
Peeping Tom	0	0
Trespass	4	0
All Other Offenses	52	2
Total	83	2

2022 Property Values by Type

Type	Value
Seized	\$3
Burned	\$0
Counterfeited/Forged	\$2,003
Destroyed/Damaged	\$593,978
Recovered	\$1,100,446
Stolen	\$1,712,503
Total	\$3,408,933

Three Significant Factors

Blake Decision – February 2021

Ruled simple possession of drugs unconstitutional

Police “Reform” Laws – July 2021

Use of Force

Pursuits

Covid

Booking restrictions at jails



Takeaways

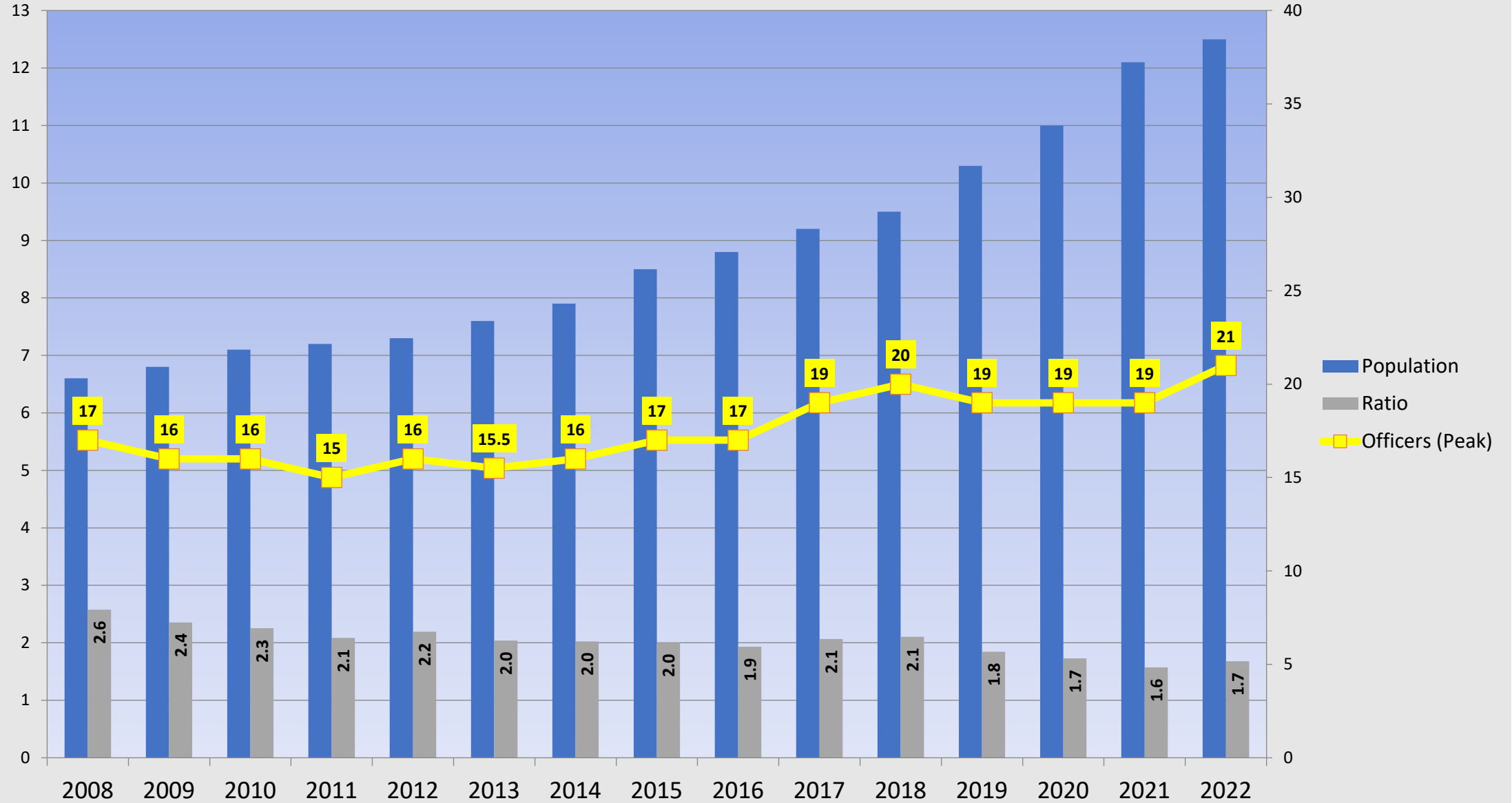
Still Safe – Violent Crime Down

Theft Up Significantly – Car Theft

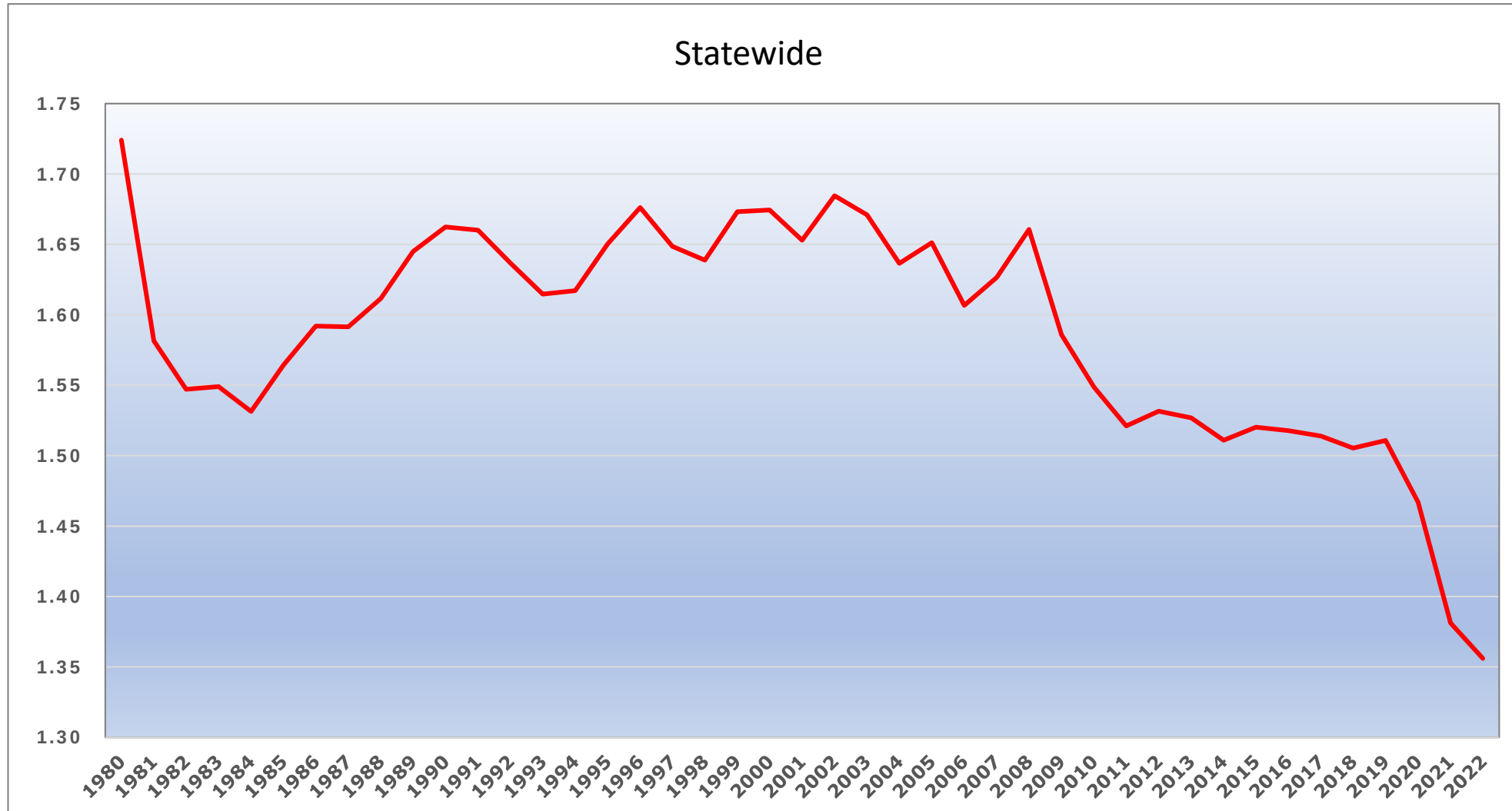
Drug Law Changes Should Help

Jail Staffing Still a Factor

Officers per 1000 Citizens

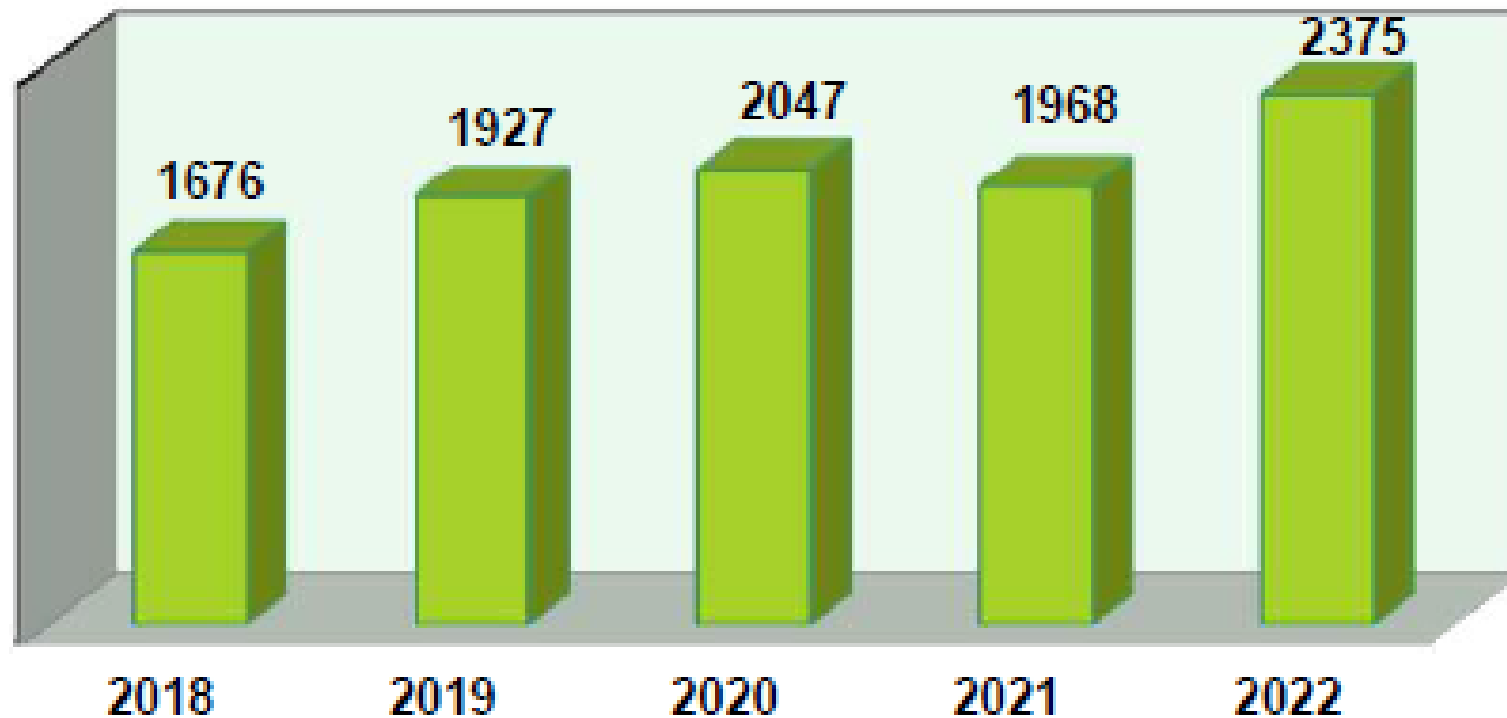


Total Officer Rate per 1,000 Population (1980-2022)



Assaults on Officers

Officers Assaulted Five-Year Trend



+ 42%

2022 Professional Standards

GIG HARBOR POLICE DEPARTMENT

Complaints

- Citizen and Internal Complaints
 - Anonymous complaints accepted
- Minor Complaints Investigated Internally
 - Major complaints investigated by outside agency at Chief's request
- Complaint Resolution
 - Sustained
 - Not Sustained
 - Unfounded
 - Exonerated

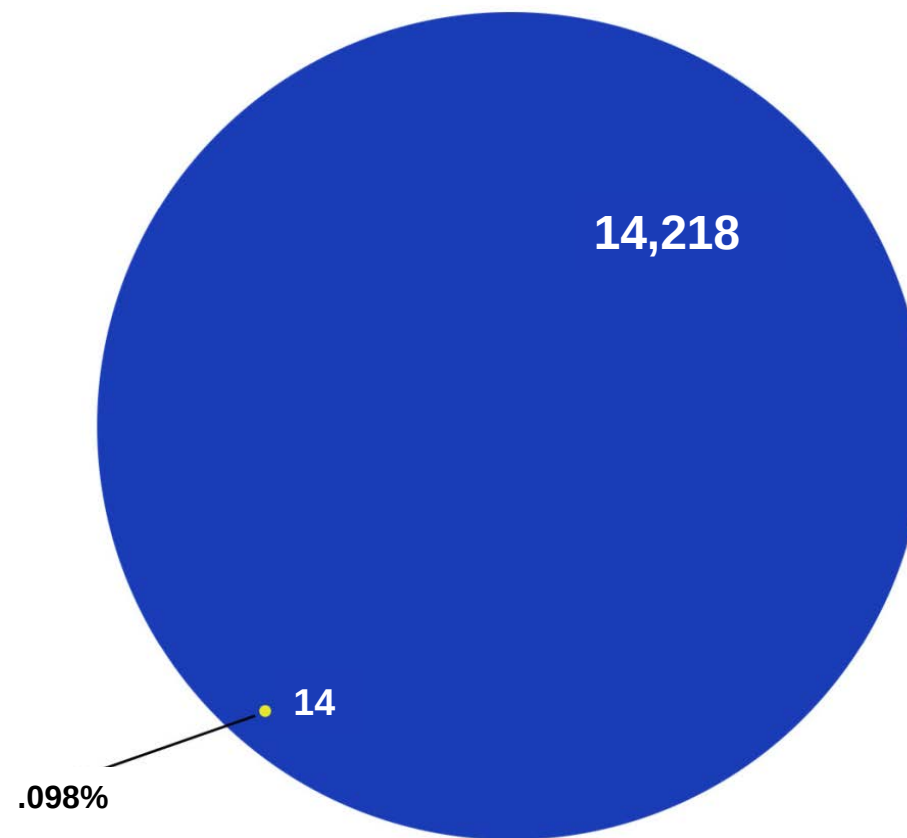
Complaints

0

Use of Force

- **Force** - means any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement.
 - Does not include:
 - Pat-downs
 - Incidental touching
 - Verbal commands
 - Compliant handcuffing
 - Draw and direct*
- **Deadly force** - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Use of Force Incidents - 2022



Use of Force

Type of Force Used by Officer(s)

Primary Type - the first tool or tactic an officer used.

Secondary Type - used when the primary tool or tactic proved ineffective.

Physical controls	13	Physical controls	1
Taser: Air deployment	1	Taser: Air deployment	1
Taser: Contact deployment	0	Taser: Contact deployment	1
Taser: Point and Direct	0	Taser: Point and Direct	1
OC / Chemical	0	OC / Chemical	1
Impact / Baton	0	Impact / Baton	0
Baton used as Leverage tool	0	Baton used as Leverage tool	0
Firearm Draw and Direct	6	Firearm: Draw and Direct	0
Firearm	0	Firearm	0
Empty hand	0	Empty hand	2
Impact Munition	0	Impact Munition	0
Other (K-9)	0	Other (K-9)	0
Leg Restraints	0	Leg Restraints	0
TOTAL	20	TOTAL	7

Use of Force

Use of Force Aggravating Factors

Intoxicated / Drugs	16
Domestic Violence	4
Mental Illness	1

*100% of all uses of force involved one or more of the above.

Use of Force

Use of Force by Race of Subject			Use of Force by Sex	
White	17		Male	13
Black	1		Female	7
Asian	0		X	0
Native American	1			
Hispanic	1			
Unknown	0			

* Race and Gender is captured one-time per incident not per use of force.

Use of Force Injuries				
Treatment				
	# Of Injuries (Visible or complained of)	Minor – No treatment required	On-scene by Aid	Hospital
Officer	2	2	0	0
Suspect	5	4	1	0

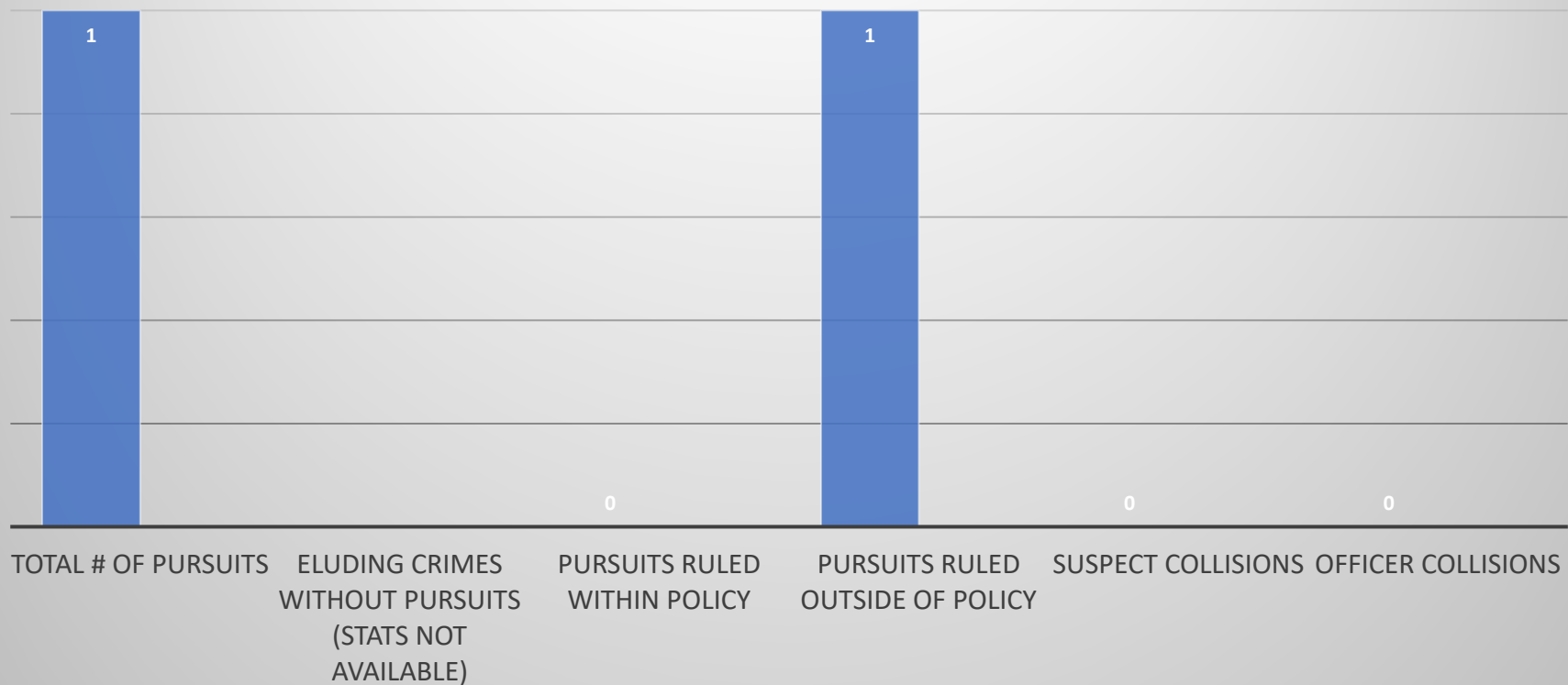
Unbiased Enforcement

	Criminal Traffic ³ / Non-Traffic		Traffic Infractions ⁴	
Race	# By race	% By race	# By race	% By race
White	56 / 62	81.4%	143	69.1
Black	10 / 3	8.9%	8	3.9
Asian-PI	3 / 0	2.1%	4	1.9
Amer Ind - AK Native	1 / 2	2.1%	1	.5
Hispanic	1 / 2	2.1%	11	5.3
Unknown	4 / 1	3.4%	32	15.4
Totals	145		207	

Gig Harbor Demographics	
White	85.8 %
Black	.75 %
Asian-PI	6.38 %
Native American	1.0 %
Hispanic	3.88 %

Pursuits

2022 PURSUIT STATISTICS GIG HARBOR POLICE



Vehicle Collisions

Collisions by Category	
# of officer-involved collisions	3
# of collisions ruled 'Preventable'	0
# of collisions ruled 'Non-Preventable'	3
# of collisions that involved injury	0
# of collisions that involved pursuits	0
# of backing collisions	0

Takeaways

- No citizen complaints in 2022
 - 10 years without sustained citizen complaint
- Very few use of force incidents
 - One minor reported injury requiring treatment
 - < 1% of all incidents
- Enforcement by gender and race show no bias
- Few pursuits or collisions





DEPARTMENT UPDATES

WEDNESDAY, JULY 5, 2023

A BI-MONTHLY SUMMARY FROM YOUR CITY OF GIG HARBOR LEADERSHIP TEAM

These department updates are an effort to increase our internal and external communication initiatives, to provide the mayor and city councilmembers with the information they need to serve the public and make informed decisions, and just as importantly, to share citywide information and updates with all staff and residents. Please feel free to send any questions, suggestions, or concerns about this document to communications@gigharborwa.gov.

ADMINISTRATION

City Administrator Katrina Knutson

ASSOCIATION OF WASHINGTON CITIES (AWC) CONFERENCE: Nearly 500 city councilmembers, mayors, and city partners came together in Spokane for the AWC's 90th anniversary conference. This year's theme was *90 years of building bridges*, and leaders from 140 cities and towns across the state celebrated cities working together for nearly a century. Leaders networked, shared challenges and opportunities, and gave one another inspiring ideas to take back home. Mayor Markley and City Administrator Knutson represented Gig Harbor at the conference and brought back key ideas to share with councilmembers and staff with the goal of continual civic improvement. Some key takeaways were:

- 1) **Belonging is big!** A primary tenant of the conference was centered around diversity, equity, inclusion, and belonging (DEIB). Keynote speaker Victoria Woodards shared her equation of, "People + Partnerships = Possibilities." City leaders learned the importance of expanding the equation to specifically include *B* for belonging. It was noted that as we build trust with those who live, work, and play in our city, we must incorporate goals across plans and processes, and discover new ways to ensure all residents are able to participate and be stakeholders.
- 2) **Keep discourse civil.** Multiple sessions, including some with Ann Macfarlane of Jurassic Parliament and with Mónica Guzmán of Braver Angels, focused on how to improve our communication and build trust - whether with our colleagues, our neighbors, our councils, or our ideological opponents. Guzmán stressed that if compromise seems impossible, we can start with finding common ground. She reminded us that trust doesn't happen at scale, but in one-on-one conversations. AWC's research shows that constituents across the state value leaders who can work together respectfully and have meaningful conversations.
- 3) **Artificial Intelligence is coming - and it will impact Gig Harbor.** Consensus is in - AI is the most profound and pervasive technological change on the horizon since the

advent of the internet. Whether it's identifying "deep fakes" or considering the ethical implications of the shifting technological landscape, it's clear that getting familiar with the subject is only the beginning. Mayor Josh Penner of Orting gave a great overview of some of the challenges and major opportunities that are already arising, and Jevin West (colloquially known as Professor BS) of UW and the Center for an Informed Public, brought us an eye-opening plenary, deep diving into the whys and the ways we should begin to think offensively about misinformation, disinformation, rogue players, and both intentional and unintentional data reporting errors.

- 4) **The kids are alright - so get them involved.** We heard in person from four of this year's eight rising stars - students who received the 2023 Center for Quality Communities (CQC) \$2,500 scholarship, including one who was also the recipient of the prestigious UW Presidential Scholar Award. Each of these student leaders was inspiring, and each was clear about their ambitions to make a difference in the world. They all spoke to the importance of having their voices heard and included by their local leaders and shared how those experiences shifted their perspectives on their future. The value of youth councils and youth consultants was emphasized both by the students' city sponsors and by the students themselves as being impactful, meaningful, and eye-opening. We plan to immediately act on this, as a Youth Council is currently in the works!

Two topics notably missing from this year's AWC conference were discussions and sessions regarding homelessness and community safety (police pursuits, etc.). We have requested these topics be considered for focus at next year's conference.

RECEPTION FOR RETIRING POLICE OFFICERS: Two of our very own Gig Harbor Police Officers, Sergeant Matt Dougil and Officer Mike Allen, are retiring after diligently serving Gig Harbor for many years! In their honor we will host a reception in advance of the July 10 council meeting, from 5:00 to 5:30 p.m., to celebrate their wonderful careers and let them know how much their service has meant to all. The reception will take place in the Civic Center Lobby. Light refreshments will be served.



PENINSULA SHOPPING CENTER: Mayor Markley, City Administrator Knutson, Public Works and Community Development staff, and representatives from the Downtown Waterfront Alliance met with Peninsula Shopping Center representatives to discuss the status of the shopping center (the Peninsula Shopping Center is located along Judson Street between Soundview and Pioneer downtown Gig Harbor). The purpose of the meeting was to determine what, if any, development is expected on those properties in the future, and to discuss the public's desire for a grocer and other amenities. Parking and housing were also discussed. Representatives stated they will meet with the city again soon to discuss zoning codes and design. This is an important piece of property in our downtown core, and it is in the city's best interest to stay informed and collaborative. No formal proposal has been made to the city and the public will be noticed if this occurs.

PIERCE COUNTY URBAN GROWTH AREA (UGA) MEETING: City Administrator Knutson and Community Development Director de Simas met with Pierce County Planning and Public Works (PPW) Director Jennifer Tetazin and Long-Range Planning Manager Angie Silva to discuss the beginning of a joint-planning agreement for the UGAs associated with Gig Harbor. Multiple paths forward were discussed regarding applicable codes, impact fees, and timing related to the 2024 Comprehensive Plan Updates. The group will meet again to review a draft Memorandum of Understanding for how the two agencies will work together to further this work. This is the first step of many needed to ensure development within the UGA is consistent with city standards.

CREATIVE ARTS DISTRICT MEETING: Community leaders and volunteers gathered again recently at the Civic Center to further discuss if Gig Harbor should become a state certified

[Creative Arts District](#). This meeting was facilitated by state and city Arts Commissioner Robin Avni. She led the group through an exercise to determine what existing arts infrastructure exists and where opportunities exist for furtherance of the arts. Data collected from this meeting will be shared at a follow up meeting in September. If you are interested in participating, please email Assistant City Clerk [Tiffany Aliment](#).



LODGING TAX GRANT RECOMMENDATION FOR THE CHAMBER OF COMMERCE: The Lodging Tax Advisory Committee (LTAC) held a special meeting on June 30 to review a proposal from the Gig Harbor Chamber of Commerce for tourism services. Under the proposal, the chamber would become the official tourism agency for the city.

The city staffed a tourism department until the end of 2022 that was funded by lodging taxes collected in the city. This funding would transfer over to the chamber to perform similar services. LTAC recommended funding the chamber \$275,600 in 2023 and \$500,000 in 2024. City staff supports the recommendation, and it will be presented to the city council for approval at the July 10 meeting.

MUNICIPAL COURT WEEK: The Municipal Court of Gig Harbor is a vital part of local government, and it plays a significant role in preserving the quality of life in our community and protecting the peace and dignity of our city.

At the July 10 City Council meeting, we will honor our municipal court personnel and the exceptional work they do. Mayor Markley will present a proclamation and declare the week of July 17-21 as Municipal Court Week.

COMMUNITY DEVELOPMENT

Community Development Director Carl de Simas

PLANNING

Pre-application activity has picked up significantly, with one completed June 28 and four new applications scheduled for July. The inquiries range from a change of use downtown to a second story ADU and an 8-lot plat.

Code Enforcement Officer Adam Blodgett will make a short presentation to the Downtown Waterfront Alliance on July 12 with particular emphasis on sign regulations. On a related note, sign sweeps will be conducted on July 8 and July 15, and possible changes to the sign code are being considered to simplify the permitting process.

Senior Planner Roxy Robles and Principal Planner Robin Bolster-Grant plan to meet with City Councilmembers over the next week or two to discuss the Climate Action Plan. Their goal is to expand upon issues/questions that may not have been fully covered during the June 15 study session.

BUILDING

Over the past two weeks, Building & Fire has received 31 applications and finalized 17 permits. Of note, we have received applications for the Sports Complex 1B buildings. We're also reviewing an

application for the final building at Towne Plaza up by The Inn at 56th & 32nd. The permit to enclose the Shenandoah at the Harbor History Museum is approved and we are working to get that permit issued in the coming days.

COURT

Court Administrator Stacy Colberg

No updates this week but stay tuned!

FINANCE

Finance Director Dave Rodenbach

AUDIT: Due to a technicality, the annual compliance examination of funds the City received under the State and Local Fiscal Recovery Fund Program (SLFRF) is postponed until 2024.

In preliminary review of the SLFRF funds and their related use, the State Auditor’s Office and Finance Department agreed to postpone the examination until the 2024 audit. The regular compliance and financial statement audit will occur sometime in late summer or fall 2023.

HUMAN RESOURCES

Human Resources Director Shannon Costanti

ADVANCE YOUR CAREER

Are you looking to grow in your career? There are several opportunities available throughout the city – [take a look!](#) If you know someone who would be a great fit, please tell them about it!

POSITION	TYPE	STATUS
Police Officer - Lateral & Exceptional Entry	FT	Continuous
Construction Supervisor	FT	Continuous
Associate Engineer	FT	Continuous
Wastewater Operator I/II/III	FT	Open until 7/9
Public Works Assistant	FT	Open until 7/9
Housing, Health & Human Services Program Manager	FT	Open until 7/26
Police Officer - Entry Level	FT	Closed - selection(s) pending
Engineering Technician	FT	Closed - selection pending
Infrastructure Systems Engineer	FT	Closed - Nate Yamamoto starting 7/3
Seasonal Worker	FT	Closed - Henry Oates & Wyatt Taylor starting 7/3

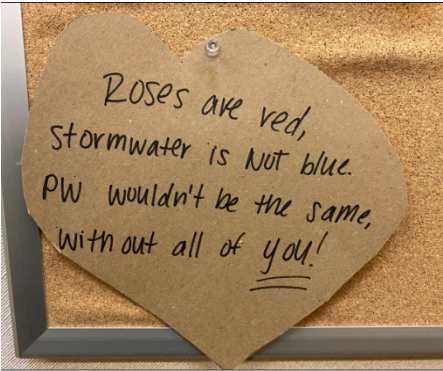
STAFF INTROS

Introducing new staff as they join the city team! This week, please join us in welcoming:

Henry Oates	Seasonal Worker	July 3
Nate Yamamoto	Infrastructure Systems Engineer	July 3
Wyatt Taylor	Seasonal Worker	July 3
Dennis Kamau	ITS Support Technician	July 5

SHOUT OUTS

Shout out to Public Works staff!



ITS

Information Technology Services Manager Keith Smith

FACILITIES SECURITY: We continue working with vendor Security Solutions to configure the new security badge system. The new door access control at the Civic Center is mostly installed and operating.

If you misplace or have an issue with your card, please submit a request to the ITS ServiceDesk and use the Building Access Key Card Issue template. Please contact your department head if your new access card is not working on specific doors. Any access changes must be submitted to the ITS ServiceDesk using the Employee Door Location Access template.

STAFFING UPDATE: I want to welcome Dennis Kamau, the ITS Support technician, and Nate Yamamoto, who will be in the ITS Infrastructure Systems Engineer role.

Dennis will start July 5 and comes here from Kidder Mathews where he was a Desktop Support Specialist II.

Nate started full-time on July 3 and comes here from the SouthSound911 support center.

POLICE

Police Chief Kelly Busey

FIREWORKS COMPLAINTS: Between June 28 – July 5, the Police Department fielded 10 fireworks complaints (a lot fewer than we expected). Our Marine Patrol Officer assigned to work the evening of July 4 fielded several inquiries from boaters and residents on the city side of the bay about fireworks not being addressed on the county side. He explained the jurisdictional differences to them, but there was apparent confusion.

Date	Time	End Location	Complaint	Disposition/Officer Notes
7/1/2023	2252	49XX DEER CREEK LN	SOUTH OF LOC... PEOPLE SETTING OFF FIREWORKS NEIGHBORS YELLING "STOP IT"	Apparent county address - south of, likely in county, no contact requested
7/2/2023	1732	27XX HOLLYCROFT ST	IN THE PARKING LOT OF LOC, FIREWORKS GOING OFF. NO KNOWN HAZARDS	2 officer response. No notes added, other than solved on arrival.
7/4/2023	1405	101XX VETERAN AVE	POSSIBLY FROM THE NW, FIREWORKS, NO FIRE/INJURIES	Gone on arrival - No fireworks seen
7/4/2023	1920	40XX APOLLO WAY	FOR PAST 10 MINS, JUST EAST OF OF LOC, AT WHALE FIN PARK... SEES FIREWORKS...NO FLAMES/INJURIES	Large family gathering at Whale Fin park with kids. Set off a couple of small fireworks. Was advised of the law change in the city about fireworks and they agreed to stop for the evening.
7/4/2023	2029	MOONLIGHT CT/SUNDIAL LN	FIREWORKS IN THE AREA	Heard small firecrackers but no visible fireworks in the area. Spoke to residents in the area and they said they hadn't heard anything in a while
7/4/2023	2042	28XX HARBORVIEW DR	NEIGHBORS AT LOCATION ARE LIGHTING OFF FIREWORKS, NO HAZARDS, REPORTING PARTY CONCERNED FOR THE SPARKS THAT ARE LANDING IN THE DRY YARDS... (Two complaints) FOR PAST 30 MINUTES, FROM ADDRESS ... MORE THAN 15 FIREWORKS HEARD / FOR THE PAST HOUR AND A HALF... AT LOCATION, FIREWORKS GOING OFF... NOTHING ON FIRE, NOT	Unable to locate - Observed the area for several minutes and did not see or smell any fireworks.
7/4/2023	2059	PELTON CT/TAYLOR PL		SPOKE TO FAMILIES, THEY'RE COMPLIANT
7/4/2023	2105	106XX ROCKY PEAK PL	COMING FROM SENTINEL DRIVE, FIREWORKS	SPOKE TO RESIDENTS IN THE AREA & THEY AGREED TO STOP FOR THE EVENING
7/4/2023	2203	42XX 35TH AVE	PEOPLE LIGHTING OFF FIREWORKS ON BRIARWOOD LN	Educated some citizens about the new laws and they were compliant.
7/5/2023	0226	51XX OLYMPIC DR	FOR THE PAST 15 MINUTES LIGHTING OFF MORTARS IN THE PARKING LOT.....W/M 23-24 BROWN GLASSE,S UNKNOWN CLOTHING...DRIVES A BLK OLDER HYUNDAI...RP WENT OVER THERE	2 officer response - Nobody on scene upon arrival

BRUSH FIRE: On June 25, GHPD officers received word of a large brush fire on SR-16 near Wollochet Drive. The fire threatened several occupied structures, and our officers began evacuating people within those buildings. Gig Harbor Fire did a tremendous job of containing the fire before it reached the structures. The following week, Fire Chief Doan called to commend our officers for their actions in evacuating residents. Great teamwork!

CALLS FOR SERVICE: On Saturday, officers were dispatched to the report of two subjects fighting in the roadway. A description of one of the subjects matched a known subject who suffers from mental illness and has been increasingly aggressive in recent weeks. He is also the subject of a felony warrant that is not currently detainable due to jail booking restrictions. Our patrol officers arrived on the scene, but the known subject had fled on foot. The person/victim involved in the assault did not want to make a police report. Due to the known subject's volatile behavior, officers continued to search for him and soon found him nearby as he was approaching

a woman walking her dog. The officer intervened and attempted to detain him. The subject then began running toward the woman and the officer positioned himself between them. The officer drew his Taser and commanded the subject to stop. The subject continued to act aggressively and balled his fists before charging at the officer. The subject was Tased but got up and ran away. A second officer arrived on scene and both officers caught the subject and took him into custody without further event. He was booked into jail for assaulting a police officer and resisting arrest.

On Monday, an off-duty officer observed a subject obviously casing cars as potential theft targets in the business district of Borgen Boulevard. Our Detective Sergeant responded and attempted to contact an occupant of the vehicle, but the subject fled on foot. The vehicle was listed as stolen. After searching the area, the Sergeant located the subject on foot near Prentice Avenue and took him into custody.

PUBLIC WORKS

Public Works Director Jeff Langhelm

MID-BIENNIAL BUDGET AMENDMENT: Public Works Managers are beginning to assemble any proposed amendments to the 2023-24 budget in time for review by Administration in September and City Council in October. The larger proposed amendments will be presented to Council as Study Session agenda items.

ACCESS CONTROL SYSTEM IMPLEMENTATION: Jeff Olsen and his team are nearing the end of the implementation stage for the access control system project. This project will provide improved security and access throughout the Civic Center and to other City facilities in the future. Thanks to everyone involved who worked to bring us to this point!

NEW 6-MONTH LEASE AT ANCICH BOAT STORAGE BUILDING: July 1 brings a new term for the established 6-month leases for public storage of human-powered craft at Ancich Park. The Operations Crew has cleaned the storage space and prepared it for the next round of users.

WELL #5 UPDATE: Early in spring, the City's contractor removed the pump and motor assembly from the well casing for Well #5. After the well was cleaned and inspected, the pump and motor assembly were placed back into the casing, the well was flushed, and a full regiment of water samples was taken. Unfortunately, the well has remained off-line for over a month and staff is working with the contractor to have it on-line in time for the peak water demand months.

PT. FOSDICK DRIVE EMERGENCY ROADWAY REPAIR: The cement concrete pavement on Point Fosdick Drive at the intersection with Briarwood Lane is broken due to a failed utility trench that was installed prior to the City annexing this area (circa 1997). Broken pieces of concrete are currently stable in place. Staff is preparing the necessary paperwork to request an emergency contract this summer to repair the roadway. The public will encounter temporary disruptions to traffic flows during this repair work.





City of Gig Harbor City Council Meeting Agenda Bill

Meeting Date: July 10, 2023

SUBJECT: Resolution 1285 Approving a 2023-2024 Lodging Tax Grant to the Gig Harbor Chamber of Commerce to Provide Direct Marketing Organization Services

SUBMITTED BY: City Clerk Josh Stecker

DEPARTMENT: Administration

PHONE: 853-7613

SUGGESTED MOTION: Move to approve Resolution 1285.

BACKGROUND INFORMATION: Since the beginning of the year the city has been exploring different options for how to provide direct marketing organization services for the city. With the consensus of the city council, the mayor and city administrator have elected not to continue to staff a tourism department within the city and instead will use lodging tax grant funding to outsource these services.

Staff have been working on moving forward with the Gig Harbor Chamber of Commerce as the city's partner to provide many of these services, starting with the 2023 Profile Magazine/visitors guide, which was released in April. The chamber was asked to submit a grant application to provide DMO services for the remainder of 2023 and all of 2024.

The chamber is proposing to undertake a scope of work similar in nature to the work previously carried out by the city's tourism and communications department. This includes both digital and print advertising, maintain the visitgigharborwa.com website and events calendar, producing an annual visitors guide, coordinating media hosting, analyzing visitor data, supporting local business outreach to tourists, and developing various tourism marketing materials. The chamber's application for a lodging tax grant is attached.

The chamber is requesting a grant agreement in the amount of \$275,650.00 in 2023 and \$500,00.00 in 2024 to perform these services.

FISCAL CONSIDERATION: Fund 107 (hotel/motel tax) total resources for the 2023-24 budget cycle are estimated at \$2,145,257. Lodging taxes received through May 2023 are currently tracking slightly above revenues received in 2022.

Resolution 1268 awarded \$1,317,200 in funding for 2023. The grant funding allocation to the chamber in 2023 of \$275,600 will reduce the allocation previously provided to the city for DMO services (\$475,000). This will result in no fiscal impact for 2023.

After funding the 2023 grants, \$828,057 remains to fund grants in 2024. If the chamber grant is fully funded at \$500,000 in 2024, that would leave \$328,057 for other grant applicants. In 2023, the total awarded this pool of applicants was \$342,200 and included operational grants to the Downtown Waterfront Alliance (\$100,000), the Harbor History Museum (\$70,000) and Harbor WildWatch (\$20,000).

BOARD/COMMISSION/COMMITTEE RECOMMENDATION: On June 30, 2023, the lodging tax advisory committee reviewed an application from the Gig Harbor Chamber of Commerce to provide direct marketing organization services for the city. The committee unanimously recommended a lodging tax grant to the Gig Harbor Chamber of Commerce in the amount of \$275,650.00 in 2023 and \$500,00.00 in 2024.

ATTACHMENTS:

1. Resolution 1285
 2. Resolution 1268
 3. Lodging Tax Grant Application from the Gig Harbor Chamber of Commerce
-

STRATEGIC PLAN PRIORITY: Ensure sustainable future for public services and facilities

RESOLUTION 1285

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING A 2023-2024 LODGING TAX GRANT TO THE GIG HARBOR CHAMBER OF COMMERCE TO PROVIDE DIRECT MARKETING ORGANIZATION SERVICES

WHEREAS, Chapter 67.28 of the Revised Code of Washington and Chapter 3.27 of the Gig Harbor Municipal Code authorizes the city to collect an excise tax on lodging, which tax is to be used for tourist promotion; and,

WHEREAS, the city council established a lodging tax advisory committee in GHMC Chapter 2.53 to make recommendations to council for expenditure of the funds; and,

WHEREAS, on June 30, 2023, the committee reviewed an application from the Gig Harbor Chamber of Commerce to provide direct marketing organization services for the city in 2023 and 2024; and

WHEREAS, the city no longer intends to provide direct marketing organization services through a dedicated tourism department;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor:

Section 1. The city council adopts the recommendation of the lodging tax advisory committee to provide a lodging tax grant to the Gig Harbor Chamber of Commerce in the amount of \$275,650.00 in 2023 and \$500,00.00 in 2024. The mayor is authorized to enter into an agreement with the Gig Harbor Chamber of Commerce up to these amounts.

Section 2. The city council adopts the recommendation of the lodging tax advisory committee to reduce the amount of the grant allocated to the city for tourism operations (as approved by Resolution 1268) from \$475,000.00 to \$199,400.00.

ADOPTED by the City Council of the City of Gig Harbor at a regular meeting thereof, held this 10th day of July, 2023.

Tracie Markley
Mayor

Attest:

Joshua Stecker
City Clerk

RESOLUTION 1268

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING 2023 LODGING TAX EXPENDITURES

WHEREAS, Chapter 67.28 of the Revised Code of Washington and Chapter 3.27 of the Gig Harbor Municipal Code authorizes the City to collect an excise tax on lodging, which tax is to be used for tourist promotion; and,

WHEREAS, the City Council established a Lodging Tax Advisory Committee in GHMC Chapter 2.53 to make recommendations to the Council for expenditure of the funds; and,

WHEREAS, on September 20, 2022, the Committee adopted its recommendations for 2023; and,

WHEREAS, Council reviewed the recommendations of the Committee at a study session on November 3, 2022, and provided notice to the Lodging Tax Advisory Committee that it intended to modify the recommended amounts provided to the City of Gig Harbor, the Downtown Waterfront Alliance, and the Harbor History Museum; and

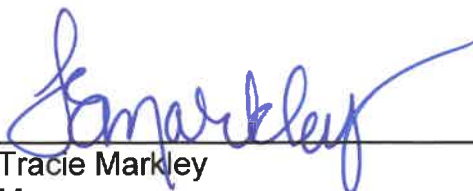
WHEREAS, the Committee voted to support the revisions proposed by Council at its December 27, 2022, meeting;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor:

Section 1. The City Council adopts the 2023 recommendations for recipients and expenditures of lodging tax revenues in substantially the same form as at Exhibit A.

Section 2. The Mayor is authorized to enter into agreements with the recipients of these revenues up to the amounts authorized by this Resolution.

ADOPTED by the City Council of the City of Gig Harbor at a regular meeting thereof, held this 9th day of January, 2023.



Tracie Markley
Mayor

Attest:



Joshua Stecker
City Clerk

EXHIBIT A

2023 Gig Harbor Lodging Tax Allocations

Applicant	Event/Activity	Amount Awarded
Asia Pacific Cultural Center	Korean Chuseok Festival	\$10,200.00
City of Gig Harbor	Tourism Marketing Operations	\$475,000.00
City of Gig Harbor	Gig Harbor Sports Complex Phase 1B	\$500,000.00
Downtown Waterfront Association	Operations & Events	\$100,000.00
Gig Harbor BoatShop	Operations	\$15,000.00
Gig Harbor Canoe and Kayak Racing Team	Paddlers Cup	\$12,000.00
Gig Harbor Film Festival	Film Festival	\$20,000.00
Gig Harbor Kiwanis	Veterans Day Celebration	\$7,500.00
Gig Harbor Quilters	Quilts Ahoy 2023	\$5,000.00
Gig Harbor Senior Center	Shamrock'n the Harbor Run and Walk	\$1,000.00
Gig Harbor Sportsman's Club	Sea Food Shoot	\$5,000.00
Gig Harbor Yacht Club Junior Sail Program	2023 Sail Camp and Narrows Race	\$15,000.00
Greater Gig Harbor Foundation	Rattle Dem Bones	\$2,000.00
Greater Gig Harbor Foundation	Summer Sips	\$5,000.00
Harbor History Museum	Marketing, Exhibits and Operations	\$70,000.00
Harbor WildWatch	2023 SVIC Operations	\$20,000.00
Key Peninsula Farm Council	Key Peninsula Farm Tour	\$5,000.00
Peninsula Art League	2023 Summer Art Festival	\$5,000.00
Peninsula Art League	Open Juried Show	\$6,000.00
Permission to Start Dreaming Foundation	Prayer Breakfast & Race for a Soldier	\$30,000.00
Rotary Club of Gig Harbor Foundation	Galloping Gertie	\$8,500.00
	TOTAL	\$1,317,200.00



CITY OF GIG HARBOR 2023 LODGING TAX FUNDING APPLICATION

**Lodging Tax Funds Requested: \$ 275,650 (2023); \$500,000 (2024)
For events/operations during the 2023 calendar year.**

APPLICATION DEADLINE: WEDNESDAY, AUGUST 31, 2022

*For application assistance please contact City Clerk Josh Stecker at (253) 853-7613 or
cityclerk@gigharborwa.gov prior to Friday, August 26.*

Organization/Agency Name: Gig Harbor Chamber of Commerce

Event Name (if applicable): Destination Marketing Organization (DMO) for Gig Harbor

Contact Name and Title: Miriam Battson, President/CEO

Mailing Address: PO Box 102

City: Gig Harbor State: WA Zip Code: 98335

Phone: (253) 851-6865 Email Address: mbattson@gigharborchamber.com

Check all service categories that apply to this application:

- ☒ Tourism Marketing
- ☒ Marketing and operations of special events and festivals designed to attract tourists
- ☒ Operations and capital expenditures of tourism-related facilities owned or operated by a municipality
- ☒ Operations of tourism-related facilities owned or operated by nonprofit organizations

Complete Application packet **must** include the following:

- ☐ Completed Application
- ☐ Copy of Non-Profit Registration (required for all applicants other than municipalities)
- ☐ IRS Form W-9
- ☐ Itemized budget (event budget or tourism-related facility operation budget – see sample budget at the end of the application)

Application Questions

1. Describe your tourism-related event/facility.

- If an event, list the name and date(s) of the event
- If a capital expenditure, list the projected impact to tourism to the greater Gig Harbor area, both short- and long-term.
- Describe why tourists will travel to Gig Harbor to attend your activity/facility.

The Gig Harbor Chamber of Commerce would like to be considered to operate the Destination Marketing Organization (DMO) for the Gig Harbor area. We have been running one of two visitor centers in Gig Harbor and have listened and observed what has brought people to our community over the years. In addition, we have built good relationships within the business community who will ultimately benefit from this work. It would be an honor to represent our community in this manner.

What we envision for the remainder of 2023 is using this time to set up the program and tackle the low hanging fruit for tourism. Our anticipation is that it will include firming up the feel to portray & message the Gig Harbor vibe, brand management with design and strategy. This process will include hiring staff and taking over management of the VisitGigHarborWA.com website, FB page and creating an IG page. We will work with the city to acquire master files for previous brochures and content that may be available. Our thought is that all marketing print/digital will have a cohesive look/feel and be an extension of the website where we will be able to draw analytics.

One goal is to create an event that will occur in the shoulder season of early 2024 that will draw tourism to our community. We see several avenues to target with the goal to increase visitors, make a positive economic impact and increase overnight lodging throughout the year (focusing on non-peak months).

Our vision for 2024, is to improve upon the data we learn from in the second half of 2023, add additional targets for content, programs that increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists. We will continue developing strategies to expand tourism; operate the DMO under the Chamber umbrella; and market and/or hold special events and festivals designed to attract tourists.

2. As a direct result of your proposed tourism-related service or facility, provide an estimate of:

Overall attendance at your proposed event:	Increased #
--	----------------

Number of attendees staying overnight in paid accommodations:	Increased #
Number of attendees travelling more than 50 miles one-way for the event:	Increased #
Number of attendees from another state/country:	Increased #

By working with Datafy, we will be able to see historical data from previous campaigns to compare to. The city should also see an increase in sales tax and lodging tax revenue. Our goal is a year-over-year increase to reach a comfortable level of consistent tourism for our area.

3. What methodology did you use to calculate the estimates?

- ☐ **Direct Count:** Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.
- ☐ **Indirect Count:** Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.
- ☐ **Representative Survey:** Information collected directly from individual visitors/participants. A representative survey is a highly structured data collection tool, based on a defined random sample of participants, and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.
- ☐ **Informal Survey:** Information collected directly from individual visitors or participants in a nonrandom manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.
- ☐ **Structured Estimate:** Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).
- ☒ **Other:** *Datafy, google analytics, etc. We will be able to use the geofenced data along with social and web analytics to measure increased interaction with the DMO brand.*

4. Have you requested LTAC funds previously?

- a. For a different event? Yes ☐ or No ☒

If "Yes", was it approved by LTAC? Yes ☐ or No ☐

b. For the same event? Yes ☐ or No ☒

If "Yes", was it approved by LTAC? Yes ☐ or No ☐

5. Describe the prior success of your event/facility in attracting tourists.

As the Chamber, we have been able to bring new businesses to town as a place where people want to live, work and play. As one of the visitor centers for the city, we are uniquely prepared to take on this role as we have been listening to what has brought people to Gig Harbor for a visit and their interests. These individuals range from only having a few hours on their way out toward the ocean or before heading to the airport to choosing this location for a longer stay. Some have visited for a day and then planned their trip to return. Others are visiting family nearby and have chosen to stay in a hotel. Of these visitors, many are looking for things to do and excursions.

As for event management, we have successfully run the Maritime Gig Festival for over 26 years. We look forward to coming up with events that draw people in the shoulder season.

6. Is there a host hotel/lodging for your event (Yes ☒ or No ☒)? If yes, list the host hotel/lodging.

We will be working on ways to draw people to stay in Gig Harbor at all our lodging options. One of the areas of focus will be on small conferences and corporate retreats which would include the hotels/lodging. Other events we are considering will include hotels.

7. Describe your target tourist audience (location, demographics, etc.)

The target will be people traveling from mostly more the 50 miles. From our research, there are routine travelers from WA for weekend getaways, along with those from Portland, OR, southern California, Arizona, and Idaho. The ages do range from what we briefly saw in the previous Datafy account. As we do a deeper dive into current data and from conversations within the community, there are several target markets that each will have unique messaging that will draw tourist. Families, couples (babymoon, honeymoon, anniversaries, etc.), friends trips, sports teams, ecotourism, etc.

8. Describe how you will promote your event/activity/facility to attract tourists.

Marketing Gig Harbor as a destination takes a multi-prong approach. Overall, we plan to work with the VisitGigHarborWa.com website to make sure the community brand shines through. From there we create messaging that carries through to social media, digital

marketing, rack cards, things to do booklets, visitor guide/relocation guide, magazines, create sample itineraries for if you have 2-4 hours, 1-day, a week, etc.

We will be participating in various tourism organizations to get the word out and increase Gig Harbor's visibility as a destination to come for various activities that could include small-medium sized corporate retreats, small conferences, family getaways, anniversaries, friends weekends, etc.

9. Are you applying for Lodging Tax funds from another community (Yes ☐ or No ☒)? If yes, list the other jurisdiction(s) and amount(s) requested.

10. Are you applying for, or have you received, grants or funds pledged from other sources for the event (including for-profit businesses, national sources, etc)? Please list grants applied for or received.

n/a

11. What is the overall budget for your event? What percent of the budget are you requesting from the City of Gig Harbor Lodging Tax Fund (attach event budget)?

See attached for details. 275,650 (2023); \$500,000 (2024)

12. What specific expenses will you use LTAC funds to cover (if not shown on event budget)?

Operations of a Destination Marketing Organization & promotion of Gig Harbor. See attached for details.

13. What will you cut from your proposal or do differently if full funding for your request is not available or recommended? How is Lodging Tax funding essential to the success of your proposal?

Tourism is the goal, if the funding is changed, we would simply adjust what we work on for the advertising to reduce expenses.

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I have read the application instructions and understand that:

- I am proposing a tourism-related service for 2023 and can provide evidence and reporting to support tourism-related attendance for the greater Gig Harbor area. If awarded, my organization intends to enter into a Professional Services Contract with the City; provide liability insurance for the duration of the contract naming the City as additional insured and, in an amount, determined by the City; and file for a permit to use City property, if applicable.
- My organization will only use lodging tax funds, if awarded, for the purposes stated on this application and as outlined in the signed contract with the City.
- The City of Gig Harbor will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City.
- My agency will be required to submit a report documenting economic impact results in a format determined by the City.

Signature: *Miriam Battson* Date: 5/9/2023

Application Instructions

Application Deadline: To be eligible for consideration, your complete proposal must be received by August 31, 2022. The Committee will review proposals in a public meeting and determine funding recipients and levels of funding.

Applications may be submitted digitally to cityclerk@gigharborwa.gov or mailed to:

City Clerk
City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 98335

Please direct questions to the City Clerk at 253-853-7613 or cityclerk@gigharborwa.gov.

Applications filed with the City are public records. The City may choose to post on its website copies of the applications and proposed budgets.

What is the Lodging Tax Fund?

Funding for this program comes from the City of Gig Harbor Lodging Tax Fund which receives a percentage of hotel/motel taxes from lodging establishments inside the city limits. The City collects a tax on charges for overnight lodging. These funds are distributed by the Department of Revenue back to the City of Gig Harbor for the funding of tourism related capital facilities, non- event operations, and event marketing and operations.

What can be funded with Lodging Tax Revenue?

Lodging taxes can be used for:

- Tourism Promotion/Marketing
- Operation of a Tourism Promotion Agency
- Operation of a Tourism-Related Facility owned or operated by a non-profit organization
- Operation and/or Capital Costs of a Tourism-Related Facility owned by a municipality

State Law Defining the Use of Lodging Tax

Revised Code of Washington (RCW), Chapter 67.28 'Public Stadium, Convention, Arts and Tourism Facilities' provides detailed information about the use, award and reporting of tourism funds.

Important Terms Relating to RCW 67.28

Tourism: Economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs

Tourism promotion: Activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

Tourism-related facility: Real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities

Who May Apply?

Lodging Tax funding is open to non-profit organizations and municipalities with the demonstrated ability to achieve tourism related goals as outlined below:

- Increase hotel/lodging occupancy in the City of Gig Harbor by creating overnight stays.
- Increase the number of visitors to the City from more than 50 miles away.

All applications must include estimates of how funding the activity will result in increases to people staying overnight, travelling 50 miles away or more, or coming from another state or country. To ensure this data is collected, the City is required to have applicants provide additional information in the lodging tax application.

Selection and Award Process

Funding of the program and specific awards are dependent on recommendations of the City's Lodging Tax Advisory Committee (LTAC). LTAC will receive all applications and recommend a list of candidates and funding levels that will be forwarded to the Gig Harbor City Council for final determination. Funds will be awarded on a competitive basis.

The City of Gig Harbor Lodging Tax Advisory Committee Considerations

In developing its recommendations, the committee may consider:

- The estimated amount of Lodging Tax Fund available for the coming year as provided by the City's Finance Office.
- Thoroughness and completeness of the proposal.
- Percent of the proposal request to the event/facility promotions budget and overall revenues.
- Percent of increase over prior year City of Gig Harbor Lodging Tax funded proposals, if any.
- Projected economic impact within the City of Gig Harbor, in particular projected overnight stays in Gig Harbor lodging establishments.
- The applicant's financial stability.
- The applicant's history of tourism promotion success.

- Committee member general knowledge of the community and tourism-related activities.

Reporting

Reporting requirements enacted by the Washington State legislature in 2013 requires the City to report to the State regarding the use of funds for the year. All recipients of lodging tax revenue, regardless of what the revenue is to be used for, must submit a post-event activity report to the City describing the actual number of travelers generated. The City will, as part of the contract with the recipients, require that the report be provided immediately after the event or activity. The City will file an annual report to the State of Washington Joint Legislative Audit and Review Committee (JLARC).

The post-event activity report must include the following:

- Total amount spent on the facility/operation/product.
- The number of participants who attended the activity/facility in each of the following categories:
 - Staying overnight in paid accommodations away from their place of residence or business;
 - Staying overnight in unpaid accommodations (e.g. with friends and family) and traveling fifty miles/two hours away or more one way from their place of residence or business;
 - Staying for the day only and traveling more than fifty miles/two hours away or more one way from their place of residence or business;
 - Attending but not included in one of the three categories above.
- The estimated number of participants in any of the above categories that attended from out-of-state (includes other countries).
- A description of methods used to determine attendance and distinguish among the visitor categories at the event/activity.

Any recipient awarded funding must complete the reporting requirements.

DMO Budget Detail

	2023 (partial year)	
Salaries (Marketing, Information Services staff)		\$85,000.00
Office & Operating Supplies		\$5,000.00
Small Tools & Equipment		\$10,000.00
Tourism – Professional Service		\$22,000.00
Web/mobile/ eNews (hosting and maintenance)		\$24,500.00
Communications		\$5,000.00
Travel		\$3,350.00
Advertising		\$30,800.00
Eat, Drink, Explore Guides		\$25,000.00
Visitor Guide		\$60,000.00
Media Hosting		\$5,000.00
TOTAL		\$275,650.00

	2024	
Salaries (Marketing, Information Services staff)		\$170,000.00
Office & Operating Supplies		\$10,000.00
Small Tools & Equipment		\$10,000.00
Tourism – Professional Service		\$27,000.00
Web/mobile/ eNews (hosting and maintenance)		\$28,000.00
Communications		\$10,000.00
Travel		\$6,700.00
Advertising		\$73,300.00
Eat, Drink, Explore Guides		\$90,000.00
Visitor Guide		\$65,000.00
Media Hosting		\$10,000.00
TOTAL		\$500,000.00



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Approval of Professional Services Contract Amendment #2 Davido Consulting Group, Inc., for Commercial Fishing Homeport

SUBMITTED BY: Associate Engineer Stephanie Seibel, P.E.

DEPARTMENT: Public Works/Engineering

PHONE: 853-7626

SUGGESTED MOTION: Move to authorize the mayor to execute professional services contract amendment #2 with Davido Consulting Group, Inc., in an amount not to exceed \$27,182.00.

BACKGROUND INFORMATION: This proposed amendment addresses the extended amount of time that it has taken to get through permit review processes. With the extended amount of time that it has taken to get through the federal permit review process, and thus the local permit process, we have expended more of the contract budget for design and permitting than anticipated by this time.

Additionally, based on preliminary indications from the US Army Corps, this project will require additional mitigation, which will likely include stormwater outfall maintenance. For the consultant to continue to move forward through the permit mitigation design process, staff will bring a subsequent contract amendment at an upcoming council meeting requesting funds to cover this additional work.

FISCAL CONSIDERATION: In the city's 2023-24 budget, Parks Development– Capital Objectives 10 is identified to complete the design and permitting, water rights processing, and construction for the Commercial Fishing Homeport Design and Permitting.

2023-24 Budget Project Funding:	
Commercial Fishing Homeport Design and Permitting	\$ 30,000
Construction (Contract/Testing/Change Order Authority)	\$ 3,170,000
Total 2023-24 Budget:	\$3,200,000
Project Expenses:	
DCG Commercial Fishing Homeport Contract (January 2022)	(\$147,922)
DCG Commercial Fishing Homeport Contract Amendment 01 (September 2022)	(\$44,261)
DCG Commercial Fishing Homeport Contract Amendment 02 (July 2023)	(\$27,182)
Construction (Contract/Testing/Change Order Authority)	TBD
Available budget:	\$2,980,635

BOARD/COMMISSION/COMMITTEE RECOMMENDATION: N/A

ATTACHMENTS: Professional Services Contract Amendment #2 with Davido Consulting Group, Inc., for Commercial Fishing Homeport

STRATEGIC PLAN PRIORITY: Ensure sustainable future for public services and facilities

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
DAVIDO CONSULTING GROUP, INC.**

THIS SECOND AMENDMENT is made to that certain Professional Services Contract dated June 14, 2022 (the "Agreement"), and on September 13, 2022, by and between the City of Gig Harbor, a Washington municipal corporation (hereafter the "City"), and Davido Consulting Group, Inc., a corporation organized under the laws of the State of Washington (hereafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in completing the Design of the Commercial Fishing Homeport project and desires to extend consultation services in connection with the project; and

WHEREAS, section 17 of the Agreement requires the parties to execute an amendment to the Agreement in order to modify the scope of work to be performed by the Consultant and to amend the amount of compensation paid by the City;

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

1. Scope of Work. Section 1 of the Agreement is further amended to add the work as shown in **Exhibit A**, attached to this Amendment and incorporated herein.

2. Payment. Section 2(A) of the Agreement is amended to increase compensation to the Consultant for the work to be performed as described in **Exhibit A** in an amount not to exceed Twenty-Seven Thousand One Hundred Eighty-Two Dollars and Zero Cents, (\$ 27,182.00), as shown in **Exhibit B**, attached to this Amendment and incorporated herein.

3. Duration of Work. Section 3 of the Agreement is amended to extend the duration of this Agreement to March 31, 2024.

[Remainder of page intentionally left blank.]

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties have executed this Amendment on this _____ day of _____, 20__.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its Principal

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



June 16, 2023

City of Gig Harbor
3589 Harborview Dr
Gig Harbor, WA 98332
Attn: Jeff Langhelm and Stephanie Seibel

Re: Proposal for Engineering and Environmental Services
Commercial Fishing Homeport Permit Design and Support Scope

Dear Jeff and Stephanie,

DCG/Watershed, Inc. (DCG) is pleased to submit a proposal for the Commercial Fishing Homeport Permit Design and Support Phase. In this proposal, we have summarized the project understanding, DCG's scope of work, deliverables, assumptions, schedule, and fees.

PROJECT UNDERSTANDING

The City of Gig Harbor (City) has completed multiple phases of development at the Ancich Waterfront Park designed by DCG's marine engineering group. Work included the restoration of the historic Ancich Netshed and pier, installation of the Jerkovich catwalk, widening of the Harborview Drive sidewalk, construction of a boat storage facility, and the Community Paddler's dock.

Design of the Homeport Fishing dock concept was identified in the 2020 feasibility study by the City and DCG. The City, DCG's team, and local fishermen identified criteria for the dock and helped generate various configurations. Based on this study DCG developed Plans, Specifications, and Estimates for the Commercial Fishing Homeport Project, and those bid documents were submitted to the City in May of 2023. Additional Permit Design and Support for the project are needed to finalize the project's impact mitigation and ultimately the project's final permitting.

DCG proposes to assist the city through the continued design and permit process from the present time to the end of 2023. A detailed scope of services and respective fees are described herein.

SCOPE OF WORK

DCG proposes this scope of work as outlined below:

Work will be required from DCG to complete the required permit design items identified and to continue the permit process. Anticipated tasks are outlined below and the attached fee estimate (Attachment 1) summarizes estimated fee costs for the following tasks:

Task 6 Ongoing Project Management

This task will last for the duration of the year. It is assumed this will require approximately 2 hours per week compromising a period of 6 months. DCG will perform the following tasks:

1. Attend monthly meetings with the City on the project status.
2. Coordinate, file, and track all permit comments.
3. Complete required site visits or in-person meetings, up to 2 total.

Seattle	Kirkland	Mount Vernon	Freeland	Federal Way	Spokane
9706 4th Ave NE, Ste 300 Seattle, WA 98115 Tel 206.523.0024	750 6 th St S Kirkland, WA 98033 Tel 425.822.5242	2210 Riverside Dr, Ste 110 Mount Vernon, WA 98273 Tel 360.899.1110	1796 E Main St, Ste 105 Freeland, WA 98249 Tel 360.331.4131	31620 23rd Ave S, Ste 307 Federal Way, WA 98003 Tel 253.237.7770	601 W Main Ave, Ste 617 Spokane, WA 99201 Tel 509.606.3600

City of Gig Harbor – Commercial Fishing Homeport
Construction Support Scope
June 16, 2023

Task 7 Ongoing Permit Support

An ongoing permit support effort is underway and this task is to continue that effort. This includes Local, State, and Federal Permits. The Shoreline Use Permits are under review and we currently have active comments that are pending the Corp and NMFS reviews. Building Permits are pending and will begin coordination during/after the bid and after the Shoreline Use Permits are approved. State and Federal permits are currently coordinating with the Corp review and with Nation Fisheries consultation. State WDFW (HPA Permit) waiting on SEPA determination and final mitigation plan. The final mitigation plan has been submitted and is currently under review. This task assumes that the agencies could have additional comments and requirements to arrive at the final project permits. This task will last for the duration of the year, compromising a period of 6 months.

Task 8 Project Management Reserve

An approximate 10% of the project Permit Design and Support subtotal shall be added to the scope for potential modification to the Permit Design and Support scope. These modifications could include potential change orders or city requested work.

Deliverables

DCG will submit the following Deliverables:

- Meeting and project updates

Assumptions

The following assumptions apply to this proposal:

1. All Work associated with the contract will be completed by the end of 2023.
2. All Permitting Work associated with the contract will be completed by January 2024.
3. ~~RCW 4.24.115 is the governing law for indemnification for this contract.~~
4. All field studies are excluded.

Schedule

DCG will begin work immediately following authorization to proceed. A draft project schedule is below:

Budget

The cost of the services described below shall be on an hourly service basis. Further breakdown of costs is provided in Attachment I – Fee Estimate.

Task 6: Ongoing Project Management	\$9,026
Task 7: Ongoing Permit Support.....	\$12,656
Task 8: Project Management Reserve	\$5,000
Project Expenses.....	\$500
Total Fee.....	\$27,182

Hourly Rate Schedule is attached for reference.

Additional Services

The work noted in the above tasks is for a one-time performance only. Additional work is to be reimbursed on an hourly basis at the rates specified in the 2023 Hourly Rates Summary (Attachment 2). Additional services shall not be performed without prior Client authorization.

City of Gig Harbor – Commercial Fishing Homeport
Construction Support Scope
June 16, 2023

Conclusion

If our proposal is satisfactory, please sign and return one copy of this proposal to us. We appreciate the opportunity and look forward to working with you toward the successful completion of the project. Please do not hesitate to contact us if you have any questions.

Sincerely,

DCG/Watershed, Inc.

 Digitally signed by
steve
Date: 2023.06.16
09:52:58 -07'00'

Steve Robert, PE
Principal

Authorization to proceed:

Jeff Langhelm

Name/Title

Signature

Date

Client Billing Address:

3589 Harborview Dr

Address

Gig Harbor	WA	98332
City	State	ZIP

Attachments: Attachment 1 – Fee Estimate
 Attachment 2 – Hourly Rates



DCG/Watershed

PROFESSIONAL CONSULTING SERVICES ESTIMATE

Project: CPP-2204 Commercial Fishing Homeport

Client: City of Gig Harbor

PM: Drew McDonald

Permit Design and Support

DCG LABOR CATEGORIES

Task No.	Task Description	Principal Engineer VI	Engineer IV	Engineer II	Envir. Scientist III	Total Hours	Subtotal
6	Ongoing Project Management					50	\$9,026
a	Monthly Meetings (6)	6	6	6		18	\$2,994
a	Site Visit (2)	16	16			32	\$6,032
7	Ongoing Permit Support					80	\$12,656
a	Federal Permit Support Allowance	8	16		16	40	\$6,328
b	Local Permit Support Allowance	8	16		16	40	\$6,328
8	Project Management Reserve						\$5,000
a	Approximately 10% Project Subtotal						\$5,000
						Subtotal	\$26,682

TOTAL ESTIMATED HOURS BY LABOR CATEGORY 38 54 6 32 130

TOTAL PROJECT PERCENTAGE BY EMPLOYEE BASED ON HOURS 29% 42% 5% 25% 100%

HOURLY RATE \$213.00 \$164.00 \$122.00 \$125.00

TOTAL ESTIMATED CHARGES BY LABOR CATEGORY \$8,094 \$8,856 \$732 \$4,000 \$21,682

Subtotal: **\$26,682**

DCG Expenses: \$500

TOTAL ESTIMATED MAXIMUM FEES: **\$27,182**



**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: Pierce County Conservation Futures Agreement to Reimburse and Stewardship Agreement/Restrictive Covenants for the Shaw-Warren Property

SUBMITTED BY: Public Works Director Jeff Langhelm, PE

DEPARTMENT: Public Works

PHONE: 853-7630

SUGGESTED MOTION: Move to authorize the mayor to sign the following Pierce County Conservation Futures documents related to the City's recently acquired Shaw-Warren property:

1. Agreement to Reimburse; and
 2. Stewardship Agreement and Declaration of Restrictive Covenants
-

BACKGROUND INFORMATION: In late 2021 the City of Gig Harbor identified six parcels located along Harborview Drive directly north of the recently acquired Lyons property as parcels of uniquely undeveloped and healthy streamside forest through which North Creek (aka Donkey Creek) passes. These six parcels total about 24 acres. The owners of the parcels were considering the placement of single-family residences on the parcels but willingly discussed with the city their interest in selling the parcel so the city could establish the parcels as conservation land. The city negotiated a purchase for the parcels while also applying to Pierce County for a conservation futures grant to provide a majority of the funding to acquire this parcel.

The city council approved Resolution 1221 in November 2021 authorizing the submittal of a conservation futures grant application to Pierce County and subsequently closed on the purchase of the property in fall 2022.

The county's agreement to reimburse would reimburse the city for a portion of the funds expended by the city to purchase the property. The county's stewardship agreement places restrictive covenants on the property "as are necessary to protect, preserve, maintain, improve, restore, limit the future development and use of and otherwise conserve, in perpetuity, the Protected Property and its Conservation Characteristics."

Because the agreement to reimburse also requires the city accept the recording of the restrictive covenants against the title of the property, both agreements are being presented together on this agenda bill.

FISCAL CONSIDERATION: In anticipation of receiving this agreement and the associated funding, the city issued general obligation bonds in the full amount of the property purchase in order to close on the property in fall 2022. Approving this agreement would reimburse the city for a portion of its funds used for the purchase.

Expenditure Required: \$ 0	Amount Budgeted: \$ 0	Appropriation Required: \$ 0
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BOARD/COMMISSION/COMMITTEE RECOMMENDATION: N/A

ATTACHMENTS:

1. Pierce County Conservation Futures Stewardship Agreement
2. Declaration of Restrictive Covenants

STRATEGIC PLAN PRIORITY: Promote environmental sustainability and preserve Gig Harbor's natural beauty

PIERCE COUNTY CONSERVATION FUTURES AGREEMENT TO REIMBURSE

THIS PIERCE COUNTY CONSERVATION FUTURES AGREEMENT TO FUND (“Agreement”) is made and entered into as of the Effective Date (defined in Section 23 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (“Pierce County”) and CITY OF GIG HARBOR, a municipal corporation and political subdivision of the state of Washington (“City” or “Sponsor”). Pierce County and Sponsor may collectively be referred to hereinafter as “the Parties” or individually as a “Party.”

R E C I T A L S

WHEREAS on November 8, 2021, the City adopted Resolution No. 1221 authorizing the City of Gig Harbor to submit the Conservation Futures Opportunity Account Grant Application to Pierce County to help provide purchase money grant funding for Tax Parcels 022106-1000, 002106-1044, 002106-1070, 002106-1071, 002106-1113, and 002106-2100 (“Subject Property”); and

WHEREAS the City of Gig Harbor Resolution No. 1221 indicated that the Mayor is authorized to sign a Receiving Agency Affidavit on behalf of the City, acknowledging that the City will accept the property interest acquired for Tax Parcels 022106-1000, 002106-1044, 002106-1070, 002106-1071, 002106-1113, and 002106-2100 and add the property into the City’s park inventory, and protect the property in perpetuity; and

WHEREAS the City of Gig Harbor adopted the 2016 Parks, Recreation and Open Space Plan, which provides a long-term strategic framework for the City’s parks and recreation system and identifies the Subject Property on a map as located within a designated Open Space Corridor;

WHEREAS on November 1, 2021, the City of Gig Harbor entered into a contract with the owners of the Subject Property to purchase it; and

WHEREAS on December 7, 2021, the Pierce County Council adopted Resolution No. R2021-215 (“Resolution”) identifying certain parcels of open space, farm and agricultural and timber lands in Pierce County eligible for protection from future development through expenditures from the Pierce County Conservation Futures Opportunity Account (“Eligible Property”); and

WHEREAS the Eligible Property contains elements, features and characteristics consistent with the purposes and values described in Chapter 84.34 RCW and Chapters 2.96 and 2.97 of the Pierce County Code (“PCC”) including, without limitation: (a) open spaces; (b) wetlands; (c) streams; and (d) salmonid habitat (collectively “Conservation Characteristics”); and

WHEREAS the Resolution selected the Subject Property as the Eligible Property under the Opportunity Account that the Executive was authorized to fund, subject to negotiation of conservation covenants; and

WHEREAS in October 2022, the sellers of the Subject Property and the City of Gig Harbor agreed to close their real estate transaction ahead of reaching agreement with Pierce County on the terms for funding and conservation covenants; and

WHEREAS the City of Gig Harbor advanced the cost of the transaction to acquire title to the Subject Property and the City did not use Conservation Futures funding to close the transaction with sellers Richard H. Shaw, James Peschek and Robert Frederick; and

WHEREAS, disbursement of Conservation Futures funding requires that conservation covenants approved by Pierce County are recorded against title, but the City of Gig Harbor's title to the Subject Property is not presently encumbered by conservation covenants; and

WHEREAS the City of Gig Harbor now wishes to enter into an agreement with Pierce County to obtain reimbursement of the costs of acquiring the Subject Property; and

WHEREAS the City is a code city of the State of Washington and is a "Public Receiving Agency" within the meaning of the term as defined in Pierce County Code 2.97.020 empowered to hold on behalf of the public fee simple or other interests in land; and

WHEREAS the City has delivered to Pierce County a Receiving Agency Affidavit declaring its willingness to take and hold title to the Protected Property in perpetuity as open space land for and on behalf of the public; and

WHEREAS Pierce County's Parks and Recreation Department has reviewed those certain Deeds recorded October 31, 2022, conveying the Subject Property to the City of Gig Harbor and concluded that the encumbrances identified in the policy of title issued to the City are compatible with Conservation Futures funding; and

WHEREAS Pierce County's Parks and Recreation Department has reviewed the appraisal and review appraisal of the Subject Property and concluded that appraisal questions have been satisfactorily resolved; and

WHEREAS, Pierce County wishes to release Conservation Futures funding to reimburse the City subject to the recording of stewardship and conservation covenants that will encumber title to the Subject Property in perpetuity and other terms and conditions as set forth in this agreement to fund; and

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Pierce County and the City agree as follows:

A G R E E M E N T

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

2. Identification of Subject Property. The Subject Property consists of real property, identified by Parcel Account Numbers 0221061113, 0221061000, 0201061044, 0221061070, 0221062100, and 0221061071, and located in the City of Gig Harbor, containing approximately 23.87 acres, legally described in attached **Exhibit A**, and depicted on the Site Map at **Exhibit B**.

3. Definitions.

3.1 "Purchase Price" means the sum FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,200,000.00), the amount paid by the City of Gig Harbor to Richard H. Shaw, James Peschek, and Robert Frederick dated October 31, 2022, the prior owners, to acquire the Subject Property;

3.2 "MAI Appraisal" means an independent written appraisal of the Subject Property commissioned by the City of Gig Harbor and conducted in accordance with the Uniform Standards for Professional Appraisal Practice ("USPAP") by an appraiser who is licensed and certified by the state of Washington and a member in good standing of the Appraisal Institute;

3.3 "Appraised Value" means the sum THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) as determined by the MAI Appraisal of the Subject Property.

3.4 "Review Appraisal" means a review for Pierce County as intended user of the MAI Appraisal of the Subject Property conducted in accordance with USPAP by an appraiser who is licensed and certified by the state of Washington and a member in good standing of the Appraisal Institute;

3.5 "Stewardship Agreement" means the Pierce County Conservation Futures Stewardship Agreement and Declaration of Restrictive Covenants attached hereto as **Exhibit C**.

3.6 "Administrative Guidelines" means the February 1, 2021, Pierce County Conservation Futures Administrative Guidelines attached hereto as **Exhibit D**;

3.7 "Reimbursable Acquisition-Related Costs" means the following types of costs:

- (a) Closing Agent's escrow fee;
- (b) the recording fees for the Deed and the Stewardship Agreement;
- (c) documented cost incurred by Sponsor for the Appraisal and Appraisal Review and preliminary title reports and policy of title insurance.

4. Pierce County Funding Commitment. Pierce County's expenditure from the Conservation Futures Opportunity Account ("Pierce County Funding Commitment") shall not exceed the sum total of the following:

4.1 SEVENTEEN PERCENT (17%) of the fair market value of the Subject Property as determined by the MAI Appraisal and confirmed by any Review Appraisal commissioned and approved by Pierce County in its sole and absolute judgment and discretion, or FIVE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$595,000.00), whichever is less ("Pierce County Purchase Money Grant");

4.2 Reimbursable Acquisition-Related Costs not to exceed TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00);

4.3 The City shall ensure that any costs submitted as Reimbursable Acquisition-Related Costs do not include any of the following:

- (a) costs associated with hazardous waste or environmental assessments or cleanups;
- (b) costs associated with structural inspections or repairs;
- (c) costs for real estate excise taxes;
- (d) costs for surveys, boundary line adjustments, or subdivisions;
- (e) costs associated with initial stewardship;
- (f) costs associated with signage, equipment, or obtaining federal, state, and county permits necessary to complete the project;
- (g) any cost billed to another funding source or agency.
- (h) any cost associated with staff time spent on lobbying elected officials or their staff;

4.4 The City represents that the acquisition of the Subject Property has not been undertaken through the exercise of eminent domain.

5. Disbursement of Pierce County Funding Commitment. Pierce County shall disburse the Pierce County Funding Commitment as follows:

5.1 Provided that all conditions precedent set forth in Section 6 below are satisfied or waived by Pierce County, Pierce County shall reimburse the City/Sponsor the Purchase Money Grant amount and Reimbursable Acquisition Related costs outlined in Section 4 above (herein after referred to as “Reimbursement”);

5.2 Sponsor shall submit invoices for Reimbursable Acquisition-Related Costs no later than September 30, 2023.

6. Conditions Precedent to Disbursement of Funding Commitment. Pierce County's obligation to disburse the Pierce County Funding Commitment as provided in Section 5 above is subject and conditioned upon satisfaction or waiver by Pierce County, acting in its sole and absolute judgment and discretion, of each of the following conditions precedent:

6.1 Execution of the Stewardship Agreement and Declaration of Restrictive Covenants by the City of Gig Harbor and Pierce County. The City of Gig Harbor shall execute and return the Stewardship Agreement and Declaration of Restrictive Covenants to Pierce County for the Parks & Recreations Department to record in the records of Pierce County.

6.2 Recording of the Stewardship Agreement and Declaration of Restrictive Covenants. Pierce County shall record the Stewardship Agreement prior to releasing the Conservation Futures grant funding to the City of Gig Harbor.

7. Failure of Conditions Precedent or Failure to Perform
This Agreement shall automatically terminate if any of the conditions precedent set forth in Section 6 are not satisfied or waived. Neither Party shall have any further rights, remedies, or obligations toward or against the other, except those that expressly survive termination hereof. In no event shall Pierce County have any obligation whatsoever to provide funding beyond the date that budget appropriation for acquisition of the Subject Property expires.

8. Representations and Warranties.

8.1 By the City. In addition to any other representations and/or warranties contained elsewhere in this Agreement, the City represents and warrants to Pierce County as follows:

8.1.1 Authority. The City has full right, title, authority and capacity to execute and perform this Agreement and the individual(s) who on Sponsor's behalf executes and delivers this Agreement and the Stewardship Agreement and Declaration of Restrictive Covenants are and shall be authorized to do so;

8.1.2 Litigation. To the best of the City's knowledge there are no actions, suits, proceedings or litigation pending or threatened against the City in any court or before any administrative agency regarding the Subject Property; and

8.1.3 No Activity Incompatible with Restrictive Covenants. To the best of the City's knowledge, since the City took title to the Subject Property, the City has not engaged in any use or activity likely to cause pollution of soils or waters on the Subject Property, and has not stored waste or released Hazardous Substances on the Subject Property. The City has not since taking title, subdivided or partitioned the Subject Property or converted the Subject Property to residential, commercial or industrial uses.

8.1.4 Change in Circumstances. If, prior to recording of the Stewardship Agreement and Declaration of Restrictive Covenants, the City becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement, then the City shall promptly give written notice thereof to Pierce County. If the City gives written notice of any such change, or if Pierce County otherwise has actual notice of any such change, Pierce County shall have the option to terminate this Agreement within FIVE (5) business days from the date Pierce County receives written notice of the changed fact or circumstance, whereupon neither Party shall have any rights or remedies against the other except those that expressly survive termination hereof. Pierce County shall not have the option to terminate this Agreement once the Stewardship Agreement and Declaration of Restrictive Covenants is recorded.

8.2 By Pierce County. In addition to any other representations and/or warranties contained elsewhere in this Agreement, Pierce County represents and warrants to Sponsor as follows:

8.2.1 Authority. Pierce County has full right, title, authority, and capacity to execute and perform this Agreement and to consummate the transactions contemplated hereby, and the individuals who on Pierce County's behalf execute this Agreement and all related instruments and documents are and shall be authorized to do so;

8.2.2 Litigation. There is no litigation pending or, to Pierce County's knowledge, threatened, against Pierce County before any court or administrative agency which might result in Pierce County becoming unable to disburse the Pierce County Funding Commitment contemplated by this Agreement; and

8.2.3 Change in Circumstances. If, prior to Reimbursement, Pierce County becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement, then Pierce County shall promptly give written notice thereof to the City. If Pierce County gives written notice of any such change, or if the City otherwise has actual notice of any such change, the City shall have the option to terminate this Agreement within FIVE (5) business days from the date the City receives written notice of the changed fact or circumstance, whereupon neither Party shall have any rights or remedies against the other except those that expressly survive termination hereof.

8.3 Condition of Subject Property at Acquisition. The City acknowledges and agrees Pierce County has not made any statement, representation, warranty, or agreement as to any matter concerning the condition of the Subject Property or the suitability thereof for the City's intended uses. The City represents and warrants to Pierce County that the City made its own independent examination, inspection and investigation of the Subject Property and acquired the same in its then present "AS-IS" condition, with all faults and without any warranties whatsoever, express or implied.

9. Release, Defense, Indemnity and Hold Harmless. As of the Effective Date, the City shall release, defend, indemnify and forever hold harmless Pierce County, and its elected and appointed officials, employees, agents, attorneys, successors and assigns, of and from all claims, demands, damages, actions or causes of action, costs, attorney fees and expenses of any kind, type or nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or in any way relating to the City's purchase of the Subject Property, except those arising from Pierce County's sole conduct. The release, defense, indemnity and hold harmless obligations set forth in this Section 9 shall survive Closing and shall not be deemed extinguished by any legal doctrine including, without limitation, the doctrine of merger by deed.

10. Notices. Notices required or desired to be given under this Agreement shall be in writing to the Notice Representative identified and sent by either: (a) United States mail, return receipt requested; or (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record. The notice shall be deemed delivered on the earlier of: (a) three (3) business days from deposit in the United States mail; or (b) the delivery date as shown in the regular business records of the overnight courier service. Notices shall be addressed as follows:

Address for Delivery of Notice to Notice Representative for Sponsor:

City of Gig Harbor
Attn: Jeff Langhelm, Public Works Director
3510 Grandview Street
Gig Harbor, WA 98335
Email: JLanghelm@gigharborwa.gov

Address for Delivery of Notice to Notice Representative for Pierce County:

Pierce County Parks & Recreation Services
Attn: Kimberly Freeman, Resource Stewardship Division
9850 64th St W
University Place, WA 98467
Telephone: 253-798-4009
Email: kimberly.freeman@piercecountywa.gov

Any Party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party. **NOTICE: The electronic mail**

addresses provided above are for convenience only and do not constitute a valid method of giving notice under this Agreement.

Copy of notices may be sent via email only to the following copy recipients:

Pierce County Prosecuting Attorney/Civil Division

Attn: Todd Campbell, Deputy Prosecuting Attorney
Email: todd.campbell@piercecountywa.gov

11. Attorneys' Fees/Venue. The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Agreement shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating in any way to this Agreement shall be in the Superior Court of Pierce County, Washington.

12. Negotiation, Construction & Interpretation. This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed under the laws of the state of Washington according to its fair meaning and not strictly for or against either Party.

13. Time. Time is of the essence of this Agreement and of every term and provision hereof.

14. Entire Agreement. This Agreement and the documents executed and delivered in accordance herewith constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all written or oral agreements or understandings, if any.

15. Modification. This Agreement may be modified only in writing signed by both Parties.

16. Date of Performance. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

17. Cost of Performance. Except as otherwise expressly provided in this Agreement, all covenants, agreements and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

18. Recording. Unless otherwise expressly required by law, neither this Agreement, nor any memorandum hereof, shall be recorded.

19. Survival of Provisions. The covenants, representations, warranties, agreements, terms and provisions contained in this Agreement shall survive Closing and shall not be deemed to have been extinguished by any legal doctrine including, without limitation, the doctrine of merger by deed.

20. Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

21. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and/or assigns.

22. Exhibits. The following exhibits are attached hereto and by this reference are incorporated herein as if fully set forth:

Exhibit A - Legal Description of Protected Property

Exhibit B - Site Map of the Protected Property

Exhibit C - Stewardship Agreement & Declaration of Restrictive
Covenants

Exhibit D - Administrative Guidelines, effective 2/1/2021

23. Effective Date. The Effective Date of this Agreement shall be the date upon which the Pierce County Executive (who shall be the last person to sign) shall have executed this Agreement as indicated opposite his name below.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

SPONSOR'S SIGNATURE PAGE

CITY OF GIG HARBOR, a municipal corporation and political
subdivision of the state of Washington:

By: _____

Printed Name: Tracie Markley

Title: Mayor

Date: _____

PIERCE COUNTY'S SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political
subdivision of the state of Washington:

Approved as to legal form only:

Deputy Prosecuting Attorney Date

Recommended for final action only:

Director, Parks & Recreation Services Date

Director, Finance Date

Final Action:

Pierce County Executive Date

EXHIBIT A
Legal Description of Protected Property

PARCEL A: (APN 022106-1000)

THE SOUTH 330.1 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD;

EXCEPT THE EAST 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

TOGETHER WITH THE SOUTH 330.1 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING EASTERLY OF THE TACOMA-LAKE CUSHMAN ELECTRIC TRANSMISSION LINE RIGHT-OF-WAY.

PARCEL B: (APN 022106-1070 & 022106-1044)

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE WEST LINE OF STATE HIGHWAY NO. 14;

EXCEPT THE SOUTH 550 FEET THEREOF:

ALSO EXCEPT THAT PORTION CONVEYED TO JOANNE L. SHADBOLT BY DEED RECORDED AUGUST 18, 1971 UNDER AUDITOR'S [FILE NO. 2406595](#), RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SOUTH 87°28'56" WEST ALONG SAID NORTH LINE 238.32 FEET TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, A DISTANCE OF 764.63 FEET TO THE WEST LINE OF STATE HIGHWAY NO. 14, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHERLY ALONG SAID WEST LINE OF STATE HIGHWAY NO. 14, A DISTANCE OF 320.55 FEET;

THENCE SOUTH 87°28'56" WEST 150 FEET, MORE OR LESS, TO THE CENTER OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER OF SAID CREEK TO INTERSECT A LINE BEARING SOUTH 87°28'56" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 87°28'56" EAST TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIPTION:

COMMENCING AT THE INTERSECTIN OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE WEST LINE OF STATE HIGHWAY NO. 14 IN SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.;

THENCE SOUTH 209 FEET TO THE TRUE POINT OF BEGINNING; THENCE WEST 22 FEET, MORE OR LESS;
THENCE SOUTH 121 FEET;

THENCE EAST 29 FEET, M., TO THE WEST LINE OF SAID HIGHWAY;

THENCE NORTH ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING;

PARCEL C: (APN 022106-1071)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SO 38.32 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D: (APN 022106-1113)

THE SOUTH 330.1 FEET OF THE EAST 660 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD, SAID DISTANCE OF 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE SOUTH 270 FEET OF SAID DESCRIBED PROPERTY WHICH LIES EAST OF THE MAIN CHANNEL OF NORTH CREEK.

PARCEL E: (APN 022106-2100)

THAT PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF THE CITY OF TACOMA POWER RIGHT-OF-WAY APPROPRIATED BY THE CITY OF TACOMA IN PIERCE COUNTY SUPERIOR COURT NO. 51234.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT B Site Map of Protected Property

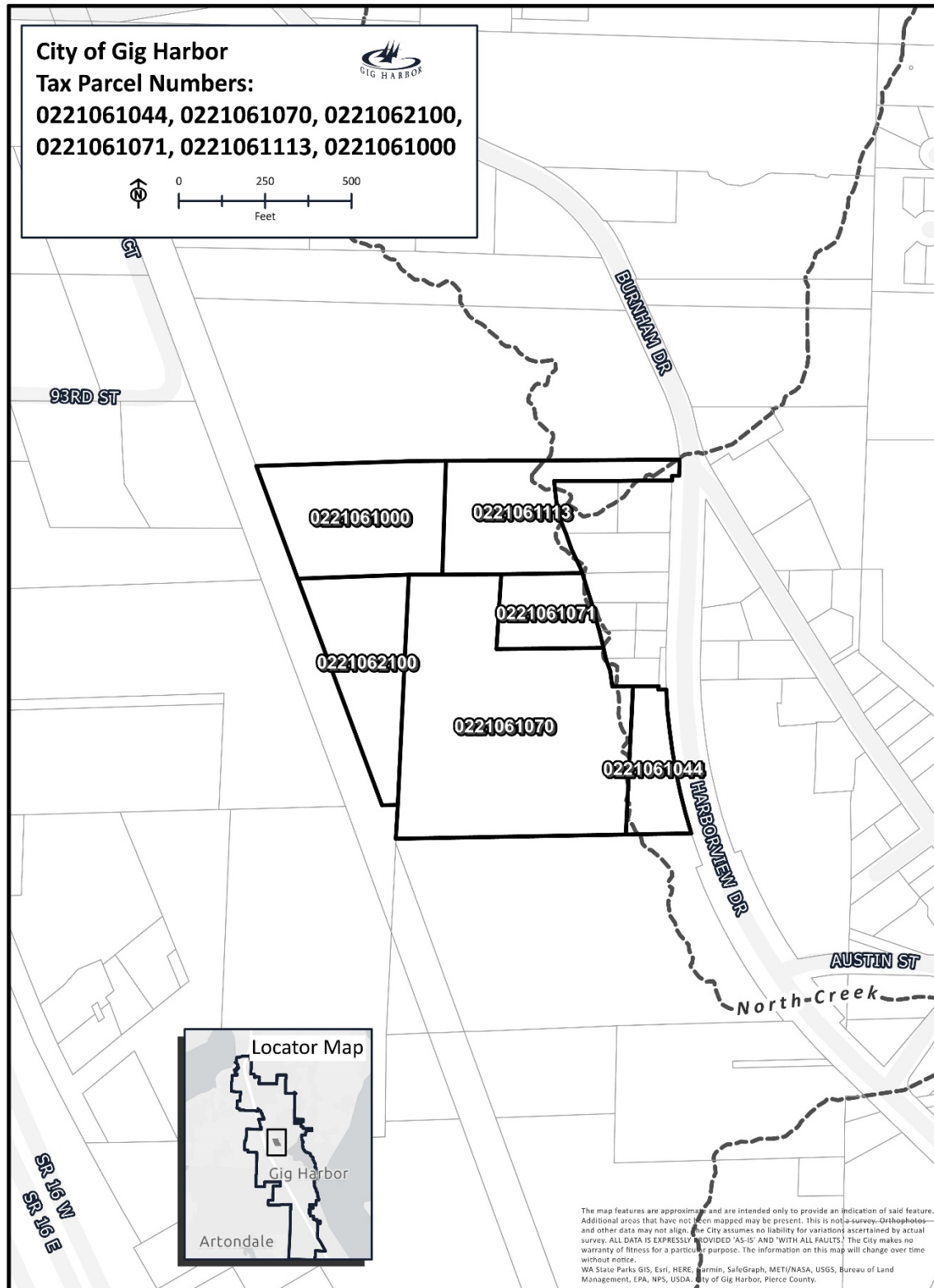


EXHIBIT C

Stewardship Agreement and Declaration of Restrictive Covenants **FORM ONLY - DO NOT SIGN**

Paste in approved Stewardship Agreement and Restricted Covenants

WHEN RECORDED RETURN TO:
Pierce County Parks & Recreation Services
ATTN: Conservation Futures Coordinator
9850 64th St W
University Place, WA 98467

WASHINGTON STATE COUNTY AUDITOR'S/RECORDERS INDEXING FORM

Document Title:	Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenants
Grantor:	City of Gig Harbor, a municipal corporation and political subdivision of the state of Washington
Grantee:	Pierce County, a municipal corporation and political subdivision of the state of Washington
Abbreviated Legal:	PTN W1/2 of NE & E1/2 of NW, Sec 6-21-2E, W.M. Tax Account No: 022106-1000, 1044, 1070, 1071, 1113, and 2100
Tax Parcel Number(s):	0221061000, 0221061044, 0221061070, 0221061071, 0221061113, and 0221062100

**PIERCE COUNTY CONSERVATION FUTURES
STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS**

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into as of the Effective Date (defined in Section 27 below) by and between CITY OF GIG HARBOR, a municipal corporation and political subdivision of the state of Washington ("Grantor") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Pierce County"). Grantor and Pierce County may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

R E C I T A L S

WHEREAS Grantor is sole owner in fee simple of that certain parcel real property in Pierce County, Washington, legally described in **Exhibit A** and depicted in **Exhibit B** attached hereto and by this reference incorporated herein ("Protected Property"); and

WHEREAS the Protected Property includes Pierce County Tax Parcels No. 0221061000, 0221061044, 0221061070, 0221061071, 0221061113, and 0221062100 containing approximately 23.87 acres and was previously owned by James Peschek, Robert Frederick, and Richard H. Shaw; and

WHEREAS the Protected Property contains significant elements, features, attributes and amenities of great importance to Grantor, Pierce County, the people of Pierce County and the state of Washington, described in and designated for protection under chapter 84.34 of the Revised Code of Washington ("RCW") and chapters 2.96 and 2.97 of the Pierce County Code ("PCC") including, without limitation: (a) open spaces; (b) wetlands; (c) streams; and (d) salmonid habitat open space (collectively "Conservation Characteristics"); and

WHEREAS the Parties desire to establish in this Declaration the terms, covenants and conditions under which Grantor shall use and manage the Protected Property and to impose upon the Protected Property such restrictive covenants as are necessary to protect, preserve, maintain, improve, restore, limit the future development and use of and otherwise conserve, in perpetuity, the Protected Property and its Conservation Characteristics.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Grantor and Pierce County hereby agree as follows:

AGREEMENT

1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

2. **Restrictive Covenants; Purpose.**

2.1 **Restrictive Covenants.** Grantor hereby declares that the terms, covenants and conditions of this Declaration shall, pursuant to Chapter 84.34 RCW and Chapter 2.97 PCC: (a) constitute restrictive covenants and/or equitable servitudes running with the Protected Property in perpetuity in fulfillment of the legal and contractual obligations of Grantor with respect thereto; and (b) forever bind Grantor and its successors-in-interest.

2.2 **Purpose.** The intention and purpose of the Parties (collectively "the Purpose") in executing, delivering and performing this Declaration is: (a) to ensure the Protected Property is held by Grantor and its successors-in-interest in perpetuity as open space land so as to protect, preserve, maintain, conserve, enhance and improve its Conservation Characteristics; and (b) to prevent any use of the Protected Property that will damage or destroy its Conservation Characteristics or prevent their maintenance, restoration or enhancement.

3. **Stewardship.** Grantor agrees for itself and its successors-in-interest to use and manage the Protected Property in perpetuity in accordance with the Purpose, this Declaration and all Applicable Laws (defined in Section 4.1 below).

4. **Obligations to Protect and Provide Public Access - Permitted Uses.**

4.1 **Obligation to Protect.** Grantor shall use the Protected Property in accordance with: (a) all applicable federal, state, county and local laws, rules, regulations and standards (collectively "Applicable Laws"); (b) the Property Management Plan (as defined in and consistent with Section 8 below); and (c) this Declaration; so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics thereof.

4.2 **Obligation to Provide Public Access.** Grantor shall ensure that the Protected Property is opened to public access. Grantor shall identify and submit to Pierce County a map depicting the location of at least one public access opportunity which shall serve as interim access until long-term public access opportunities are developed by Grantor and set forth in the Property Management Plan to be completed by Grantor as set forth in Section 8. Grantor shall permit the public to have regular access to the Protected Property consistent with the requirements of Pierce County Code, the Administrative Guidelines, the Purpose, this Declaration and the Property Management Plan. In the event that the Grantor anticipates submitting a Property Management Plan that will involve limitations on regular public access to protect sensitive natural areas, Grantor shall identify and explain in writing any potential conflicts between providing

public access to the Protected Property and restoration activities and other Conservation Futures priorities for the Protected Property and submit Grantor's request for Pierce County's approval of limitations on public access within 120 days of the Effective Date of this Declaration. At a minimum, public access to the Protected Property shall include, but not be limited to passive recreational activities such as: (a) hiking; (b) wildlife viewing; and (c) nature study. Grantor's obligation to permit access to the Protected Property by the public does not include an affirmative duty to develop parking for vehicles and/or bicycles, restroom facilities or any other facilities or infrastructure.

4.3 Acknowledgements, Written Materials and Signs. Grantor may, at its sole cost and expense, elect to create written materials and/or erect signs describing the Protected Property or any past, present or future Conservation Futures projects related thereto. If Grantor shall make such an election, all such written materials and signs shall comply with the Purpose, this Declaration and all Applicable Laws and shall include an express acknowledgement of the role played by the Pierce County Conservation Futures program in acquiring the Protected Property. Grantor shall coordinate with Pierce County regarding language to describe the County's Conservation Futures Program to be included in such express acknowledgments. In addition, all signs placed upon the Protected Property shall be: (a) prominently placed upon Protected Property in full view of the general public; and (b) designed to harmonize with the aesthetic features of the Protected Property.

5. Obligation to Remove Structures.

Within 18 months after recording of this Stewardship Agreement, Grantor must complete demolition and removal of all existing structures identified in the Appraisal of the Protected Property by Joseph W. Harris, MAI in a reported dated December 6, 2021 – and any other structures that may exist on the date of this Stewardship Agreement's recording.

6. Prohibited Uses and Restrictions on Permitted Uses.

6.1 General. Any use of, or activity on, the Protected Property inconsistent with the Purpose, this Declaration or any Applicable Law is prohibited, and Grantor acknowledges and agrees it will not knowingly conduct, engage in, or permit any such use or activity.

6.2 No Conversion to Incompatible Uses. Grantor shall not convert the Protected Property to any residential, commercial or industrial development or use or to any other use that is incompatible with the Purpose, this Declaration or any Applicable Laws.

6.3 Land Division. Grantor shall not further subdivide or partition the Protected Property, whether by physical or legal process, including, without limitation: (a) subdivision; (b) short subdivision; (c) platting; (d) binding site plan; (e) testamentary division; or (f) other process by which the Protected Property is divided into lots, or in

which title to different portions of the Protected Property are not held in unified ownership (collectively “Land Division”), without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion, and then only for purposes, and in a manner, consistent with the Purpose, this Declaration and all Applicable Laws.

6.4 Limitations on Natural Resource Use.

6.4.1 Aquatic Products. Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products.

6.5 Limitations on Mining. Grantor shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method. Grantor may conduct or engage in mineral extraction if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Conservation Characteristics of the Protected Property. No extraction permitted pursuant to this Section 6.5 shall occur without prior written notice to and consent of Pierce County and such notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

6.6 No Significant Erosion or Pollution. Grantor shall not knowingly engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant contamination or pollution of any soils or surface or subsurface waters on the Protected Property.

6.7 Forest Health and Timber Management. Grantor may not conduct, engage in, or permit commercial forest management on the Protected Property. Forest management, if any, on the Protected Property shall meet the Pierce County Forest Practices requirements set forth in Title 18H PCC and be identified in the Property Management Plan.

6.8 Limitations on Waste Disposal. Grantor shall not accumulate and store ashes, garbage or other waste on the Protected Property. Nor shall Grantor knowingly dispose of or Release (or knowingly permit the disposal or release of) any Hazardous Substance on the Protected Property. The term “Release” shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term “Hazardous Substance” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term “Hazardous Substances” shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in

accordance with all Applicable Laws. No storage of Hazardous Substances shall be allowed on the Protected Property.

6.9 No Compensatory Mitigation. The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.

6.10 No Agricultural Use; No Horses or Livestock. Agricultural use of the Protected Property is prohibited. Horses and livestock are prohibited.

6.11 No Active Recreational Use. Active recreational use of the Protected Property is prohibited.

7. Transfers by Grantor.

7.1 Definition. “Transfer” includes, but is not limited to: (a) any sale, grant, lease, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; (b) any transaction the purpose of which is to effect a sale, grant, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; or (c) any legal proceeding the purpose of which is to effect a taking of the Protected Property, or any portion thereof or interest therein. For purposes of this Declaration the term “Grantor” includes any future property owner(s).

7.2 Limitations on Transfers. Grantor shall not effect a Transfer except to a city, town, conservation district, federally recognized Indian tribe, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion.

7.3 Notice; Binding Effect. Grantor shall give Pierce County written notice of not less than SIXTY (60) calendar days and not more than ONE HUNDRED TWENTY (120) calendar days prior to the date of any Transfer. In addition, any deed or other legal instrument effecting a Transfer shall: (a) expressly provide that the new owner of the Protected Property shall be subject to and strictly bound by all of the terms, covenants and conditions of this Declaration; and (b) incorporate therein the terms, covenants and conditions of this Declaration by express reference. The failure of Grantor

to perform any act required by this Section 6.3 shall not impair the validity of this Declaration or limit its enforceability in any way.

8. **Property Management Plan.** Grantor shall, within ONE (1) year from the Protected Properties acquisition date of October 31, 2022, prepare and deliver to Pierce County a comprehensive written plan consistent with the requirements of Pierce County Code and the Administrative Guidelines that describes in detail (a) how Grantor will maintain or steward the Protected Property over time; and (b) how Grantor will implement and monitor activities associated with the Conservation Futures Priorities described in Grantor's application for Conservation Futures Funding (hereinafter "Property Management Plan").

The Property Management Plan shall address, at a minimum, the following:

- 8.1 Long-term management goals for the Protected Property and measures to protect the stream integrity, including but not limited to restricting public access, signage, fencing, and or maintenance of existing riparian vegetation (desired future conditions);
- 8.2 Removal of a culvert on North Creek to improve fish passage and removal of invasive species and illegal dumping;
- 8.3 Activities related to goal of restoring critical salmonid habitat, including development of a site restoration design plan;
- 8.4 Program for monitoring the Protected Property in perpetuity in accordance with the standards and practices of the Land Trust Alliance;
- 8.5 Plan for passive public access opportunities on the Protected Property compatible with stream and riparian restoration and natural resources protection, including installation of a salmon viewing spur, a loop trail with interpretive and educational signage and excluding horses;
- 8.6 Maps including: (i) a U.S. Geological Survey quadrant map or recent aerial photo and county assessor's parcel map; (ii) a map showing all human-made and natural features; and (iii) the location of public access and use areas.
- 8.7 Implementation timeline and budget that identifies the source of funding for elements of the Plan.

9. **Maintenance; Reporting.**

9.1 **Maintenance.** Grantor shall, at its sole cost and expense, keep and maintain the Protected Property, together with any improvements or alterations in, on, under or about the Protected Property, in a good and sound state of repair and in a neat,

clean, safe and sanitary condition in accordance with the Purpose, all Applicable Laws and this Declaration.

9.2 **Reporting.** Grantor shall, at least once every THREE (3) years from the Effective Date, issue to Pierce County a comprehensive written report documenting the then physical condition of the Protected Property, any improvements or alterations to the Protected Property, and compliance with Section 4.1 above.

10. **Pierce County's Rights.** To accomplish the Purpose, Pierce County shall have the following rights under this Declaration:

10.1 **Protection.** Pierce County shall have the right to identify, protect, preserve, maintain, improve, restore and conserve, in perpetuity, the Conservation Characteristics of the Protected Property.

10.2 **Access.** To enter upon the Protected Property at such other times as are necessary if there is reasonable cause to believe that a violation of this Declaration is occurring, solely for the purposes of enforcing the provisions of this Declaration. Prior to entry, Pierce County shall provide notice to Grantor and shall describe the reasonable cause to believe that a violation is occurring on the Protected Property.

10.3 **Uses and Practices.** To enter upon, inspect, observe and study the Protected Property, with such persons as Pierce County may require, at mutually agreeable dates and times and upon prior notice of not less than THIRTY (30) calendar days to Grantor, solely for the purposes of: (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property; and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with the Purpose. For each such entry, Grantor shall have the right to designate an individual to accompany Pierce County during its inspections, observations and studies.

10.4 **Natural Events.** To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

10.5 **No Material Interference.** Pierce County shall exercise its rights in compliance with all Applicable Laws and in a manner that will not materially disturb or interfere with Grantor's rights hereunder or its quiet enjoyment of the Protected Property.

10.6 **Consent.** Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Pierce County.

10.7 **Prevention and Restoration.** Pierce County shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose, this Declaration or any Applicable Laws, and shall have the right to cause to be undertaken the restoration of such areas or features of the

Protected Property as may be materially damaged by activities contrary to the provisions hereof.

10.8 Assignment or Conveyance. Pierce County shall have the right in its sole and absolute judgment and discretion to assign, convey or otherwise transfer its right, title and interest in and to the Protected Property under this Declaration to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior consent of Grantor. In the event of any such assignment, conveyance or transfer, Pierce County shall have absolutely no further liability with respect to the Protected Property or to Grantor under this Declaration except as to matters of liability that have accrued and remain unsatisfied. Pierce County's successor-in-interest shall have all rights of Pierce County hereunder.

11. Dispute Resolution.

11.1 Preventive Discussions. Except in circumstances contemplated in Section 11, Grantor and Pierce County shall endeavor to resolve any dispute regarding the interpretation of the terms of this Declaration first through a discussion between the Representatives of the Parties identified in this Section 10, then escalated to each Party's respective Executive if the dispute has not been resolved within ten (10) business days. Grantor and Pierce County shall promptly give the other Party notice of problems or concerns arising in connection with the others' actions under this Declaration or the use of or activities or conditions on the Protected Property, and shall meet as needed, but no later than THIRTY (30) calendar days after receipt of a written request for a meeting.

11.2 Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose, this Declaration or any Applicable Laws, and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor and Pierce County shall refer the dispute to mediation by request made in writing upon the other. Within TEN (10) business days of the receipt of such a request, the Parties shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

11.2.1 Purpose. The purpose of the mediation is to: (a) promote discussion among the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, covenants or conditions of this Declaration.

11.2.2 Participation. The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the

mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.

11.2.3 Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective legal counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be construed as an admission of a party. Provided, however, this provision relating to confidentiality shall not be construed to constrain Pierce County's compliance with the Washington State Public Records Act nor to create any obligation for Pierce County to ensure the nondisclosure of records that may be required to be disclosed pursuant to the Washington State Public Records Act.

11.2.4 Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of SIXTY (60) calendar days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

11.2.5 Costs. The costs mediation services shall be borne equally by the Parties. The Parties shall bear their own expenses, including attorney's fees, individually.

11.3 Arbitration. The Parties may, but are not required to, submit disputed matters to binding arbitration. In the event that one Party wishes to request that a disputed matter be submitted to binding arbitration, such Party shall provide notice in writing of its request and propose the rules for arbitration to be applied. Arbitration may take place only upon mutual agreement of the Parties with regard to the arbitrator, deadline for arbitration, and applicable rules for arbitration.

11.4 Representatives. The following shall be each Party's Representatives for purposes of initiating Preventive Discussions:

Pierce County:
Kimberly Freeman, Resource Stewardship Superintendent
9850 64th St W
University Place, WA 98467
Telephone: 253-798-4009
Email: kimberly.freeman@piercecountywa.gov

City of Gig Harbor:
Attn: Jeff Langhelm, Public Works Director
3510 Grandview Street
Gig Harbor, WA 98335
Telephone: 253-853-7638

Email: JLanghelm@gigharborwa.gov

12. **Pierce County's Remedies.**

12.1 Notice of Non-Compliance. If Pierce County determines Grantor is in violation of the terms of this Declaration or that a violation is likely to occur, Pierce County shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with this Declaration, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan to which Pierce County has given consent.

12.2 Grantors' Failure to Respond. Pierce County may bring an action as provided in Section 12.3 below if Grantor: (a) fails to cure the violation within NINETY (90) calendar days after receipt of notice thereof from Pierce County; (b) under circumstances where the violation cannot reasonably be cured within the NINETY (90) calendar day period, fails to begin curing such violation within the NINETY (90) calendar day period; or (c) fails to continue diligently to cure such violation until finally cured.

12.3 Pierce County's Action. Pierce County may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Declaration or injury to any of the Conservation Characteristics protected hereby, including damages for the loss thereof; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Pierce County, acting in its sole and absolute judgment and discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Pierce County being required to post bond or provide other security.

12.4 Immediate Action Required. Notwithstanding any other provision of this Declaration to the contrary, if Pierce County, acting in its sole and absolute judgment and discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Characteristics, Pierce County may pursue its remedies under this Section 12 without prior notice to Grantor, without participation in dispute resolution as provided in Section 11 above, or without waiting for the period provided for cure to expire.

12.5 Nature of Remedy. Pierce County's rights under this Section 12 apply equally in the event of either actual or threatened violations of the terms of this Declaration. Grantor acknowledges and agrees Pierce County's remedies at law for any violation of the terms of this Declaration are inadequate and that Pierce County shall be entitled to the injunctive relief described in this Section 12 both prohibitive and

mandatory, in addition to such other relief to which Pierce County may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Pierce County's remedies described in this Section 12 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

12.6 Damages. Inasmuch as the actual damages to the Conservation Characteristics that could result from a breach of this Declaration by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages to which Pierce County is entitled shall be the higher of: (a) the amount of economic gain realized by Grantor from violating the terms of this Declaration; or (b) the cost of restoring any Conservation Characteristics that have been damaged by such violation. If Pierce County chooses the second of these two measures, Grantor agrees to allow Grantee and its agents or contractors, to enter upon the Protected Property and conduct restoration activities.

12.7 Pierce County's Discretion. Enforcement of the terms of this Declaration shall be at the discretion of the Pierce County and any forbearance by Pierce County to exercise its rights under this Declaration in the event of any breach of any of the terms, covenants or conditions hereof by Grantor shall not be deemed or construed to be a waiver by Pierce County of such term, covenant or condition or of any of Pierce County's rights hereunder. No delay or omission by in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

13. Fees and Charges. If Grantor elects to charge user or other types of fees in connection with the public use of the Protected Property, fees and charges shall be commensurate with the value of the recreational services or opportunities furnished and are within the prevailing range of public fees and charges within the state of Washington for the particular activity involved.

14. Indemnification. Grantor, for itself, its successors and assigns, shall defend, indemnify and forever hold Pierce County, and its elected and appointed officials, employees and agents, harmless to the maximum extent allowed by law from and against any and all liabilities, claims, demands, suits, judgments, costs and attorney fees of any kind, type or nature whatsoever arising out of or relating in any way relating to the Protected Property or to the subject matter of this Declaration.

15. Representations and Warranties.

15.1 By Grantor. Grantor represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

15.1.1 Authority. Grantor has full power and authority to execute and deliver this Declaration and the individual(s) who execute and deliver this Declaration are duly authorized to do so;

15.1.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Grantor before any court or administrative agency which might result in Grantor being unable to perform its obligations under this Declaration; and

15.1.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 14.1, Grantor makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

15.2 **By Pierce County.** Pierce County represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

15.2.1 **Authority.** Pierce County has full power and authority to execute and perform this Declaration, and the individuals who execute and deliver this Declaration are duly authorized to do so;

15.2.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Pierce County before any court or administrative agency which might result in Pierce County being unable to perform its obligations under his Declaration;

15.2.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 15.2, Pierce County makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

16. **Notices.** Notices required or desired to be given under this Declaration shall be in writing addressed to the Notice Representative and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) such other address or addresses designated in writing from time to time by the method provided in this Section. The notice shall be deemed delivered on the earlier of: (a) Three (3) business days from deposit in the United States mail; or (b) the delivery date as shown in the regular business records of the overnight courier service. Notices shall be addressed as follows:

To Notice Representative for Grantor:

City of Gig Harbor
Attn: City Legal Counsel
3510 Grandview Street
Gig Harbor, WA 98335
Telephone: 253-853-7638

To Notice Representative for Pierce County:

Pierce County Parks & Recreation Services
Attn: Resource Stewardship Division-Conservation Futures Program
9850 64th St W
University Place, WA 98467

Copy to: Pierce County Prosecuting Attorney/Civil Division
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

Any Party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party. NOTICE: Any electronic mail addresses provided above are for convenience only and are not valid for purposes of providing notices under this Declaration.

17. **Attorney Fees; Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Declaration shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Declaration shall be in the Superior Court of Pierce County, Washington.

18. **Negotiation.** This Declaration was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

19. **Construction and Interpretation.** This Declaration shall be construed and interpreted in accordance with the laws of the state of Washington so as to restrict use of the Protected Property to such activities that are consistent with the Purpose, the terms of this Declaration and all Applicable Laws.

20. **Time.** Time is of the essence of this Declaration and of every term and provision hereof.

21. **Entire Agreement.** This Declaration constitutes the entire agreement of the Parties with respect to the subject matter of this Declaration and supersedes all written or oral agreement or understandings, if any. This Declaration may be modified only in writing signed by both Parties.

22. **Date of Performance.** If the date of any performance under this Declaration falls on a weekend or holiday, the time shall be extended to the next business day.

23. **Cost of Performance.** Except as otherwise expressly provided in this Declaration, all covenants, agreement and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

24. **Binding Effect.** The terms, covenants, conditions and restrictions of this Declaration shall be binding upon and shall inure to the benefit of Grantor and Pierce County and their respective successors-in-interest in perpetuity.

25. **Invalid Provision.** If any provision of this Declaration is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Declaration shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Declaration; and the remaining provisions of this Declaration shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Declaration.

26. **Recording.** This Declaration shall be recorded in its entirety with the Auditor of Pierce County, Washington.

27. **Effective Date.** "Effective Date" shall mean the date upon which the Pierce County Executive (who shall be last person to sign) shall have executed this Declaration as indicated opposite her name below.

28. **List of Exhibits.**

28.1 **Exhibit A** – Legal Description of Protected Property

28.2 **Exhibit B** – Site Map of Protected Property

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

GRANTOR'S SIGNATURE PAGE

City of Gig Harbor, a municipal corporation and political subdivision of the state of Washington:

By: _____

Printed Name: Tracie Markley

Title: Mayor

Date: _____

STATE OF WASHINGTON)

) SS.

COUNTY OF)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Tracie Markley known to me to be the Mayor of the City of Gig Harbor, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.

RESIDING AT _____

MY COMMISSION EXPIRES

PIERCE COUNTY'S SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

Pierce County Executive _____ Date _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared BRUCE F. DAMMEIER, known to me to be the executive of PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE _____
 PRINTED NAME _____
 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
 RESIDING AT _____
 MY COMMISSION EXPIRES _____

EXHIBIT A
Legal Description of Protected Property

PARCEL A: (APN 022106-1000)

THE SOUTH 330.1 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD;

EXCEPT THE EAST 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

TOGETHER WITH THE SOUTH 330.1 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING EASTERLY OF THE TACOMA-LAKE CUSHMAN ELECTRIC TRANSMISSION LINE RIGHT-OF-WAY.

PARCEL B: (APN 022106-1070 & 022106-1044)

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE WEST LINE OF STATE HIGHWAY NO. 14;

EXCEPT THE SOUTH 550 FEET THEREOF:

ALSO EXCEPT THAT PORTION CONVEYED TO JOANNE L. SHADBOLT BY DEED RECORDED AUGUST 18, 1971 UNDER AUDITOR'S [FILE NO. 2406595](#), RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SOUTH 87°28'56" WEST ALONG SAID NORTH LINE 238.32 FEET TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, A DISTANCE OF 764.63 FEET TO THE WEST LINE OF STATE HIGHWAY NO. 14, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHERLY ALONG SAID WEST LINE OF STATE HIGHWAY NO. 14, A DISTANCE OF 320.55 FEET;

THENCE SOUTH 87°28'56" WEST 150 FEET, MORE OR LESS, TO THE CENTER OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER OF SAID CREEK TO INTERSECT A LINE BEARING SOUTH 87°28'56" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 87°28'56" EAST TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIPTION:

COMMENCING AT THE INTERSECTIN OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE WEST LINE OF STATE HIGHWAY NO. 14 IN SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.;

THENCE SOUTH 209 FEET TO THE TRUE POINT OF BEGINNING; THENCE WEST 22 FEET, MORE OR LESS;
THENCE SOUTH 121 FEET;

THENCE EAST 29 FEET, M., TO THE WEST LINE OF SAID HIGHWAY;

THENCE NORTH ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING;

PARCEL C: (APN 022106-1071)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SO 38.32 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D: (APN 022106-1113)

THE SOUTH 330.1 FEET OF THE EAST 660 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD, SAID DISTANCE OF 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6, IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE SOUTH 270 FEET OF SAID DESCRIBED PROPERTY WHICH LIES EAST OF THE MAIN CHANNEL OF NORTH CREEK.

PARCEL E: (APN 022106-2100)

THAT PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF THE CITY OF TACOMA POWER RIGHT-OF-WAY APPROPRIATED BY THE CITY OF TACOMA IN PIERCE COUNTY SUPERIOR COURT NO. 51234.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT D
Administrative Guidelines

Pierce County Conservation Futures Program
Administrative Guidelines February 2021

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Disclaimer: Please note that the information contained in this manual does not supersede the statutes governing the Pierce County Conservation Futures program and should be read in conjunction with the Pierce County Code.

CONSERVATION FUTURES PROGRAM OVERVIEW

Conservation Futures is a land preservation program for the protection of important open space, including parkland, timber lands, wetlands, habitat areas, and agricultural lands within the boundaries of Pierce County. Conservation Futures funds are used to acquire land or the rights to future development of land for the benefit and enjoyment of the citizens of Pierce County. The Conservation Futures program is administered by Pierce County through the Parks and Recreation Department.

The funding for this program is authorized through the Revised Code of Washington, chapter 84.34.230, whereby a county in Washington may levy up to 6.25 cents per \$1,000 of assessed property value to fund preservation of lands of public interest for future generations. The Pierce County Council (County Council) enacted the levy in 1991 and funds associated with the levy are administered through the Pierce County budget.

The acquisition of property interests under the Conservation Futures program is for the benefit of Pierce County residents. This funding is dedicated in accordance with Pierce County Code (PCC) because existing policies and regulations have been ineffective in providing long-term protection of open space, wetlands, habitat areas, agricultural lands, and timber lands, which are under the pressure of conversion and development.

Grant Application Process

Conservation Futures projects may be sponsored and received by local governments, federal agencies, special purpose districts, Pierce County Departments and nonprofit corporations who purchase property or interest in property for the benefit of the citizens as open space, parklands, timber lands, wetlands, habitat areas, and agricultural lands. Project sponsors are responsible for preparing and submitting the Conservation Futures application, hosting site visits, making a formal project presentation to the Conservation Futures and Open Space Citizens' Advisory Board (CAB), project implementation, and all contracting, reporting, and reimbursement obligations under PCC.

Applications are accepted in odd-numbered calendar years. The application period is posted on the program website and is announced in local newspapers and via email. Application materials are available on the program website or from program staff and are typically due in March or April. Sponsors are strongly encouraged to discuss projects with Conservation Futures staff ahead of application submission. Once submitted, applications are reviewed by program staff and the Technical Advisory Committee (TAC) to determine eligibility and completeness. Following initial review of applications, sponsors present eligible projects to and host site visits for the CAB. The CAB meets to review and rank projects and compose its overall recommendations to the County Council in May and June. The County Council generally makes award determinations in August or September, which are finalized with the adoption of the County budget. Funding for project implementation becomes available in January of the following year and projects must utilize authorized funds over a two-year period.

All meetings relating to the review, ranking, and funding of Conservation Futures projects are open to the public and subject to the Washington Open Public Meetings Act. Citizens are encouraged to attend, although citizen comment may not always be taken.

All projects must close within the approved biennium following the application cycle. If a project is awarded funding, then the transaction must close by the last business day in November in the second year of the funding cycle. If a project cannot close within the funding biennium then it may be resubmitted for a grant award in the next application period. If resubmitted, the project will not retain its rank or rating. Deeds, restrictive covenants, and conservation easement documents must be recorded by the Pierce County Auditor's Office within 10 days of closing.

Application Review

Completed project applications are submitted to Pierce County Parks and Recreation under the evaluation schedule noted above. The application must clearly demonstrate that the project meets the goals and eligibility requirements of the Conservation Futures program as outlined in PCC 2.97. Applications are scored based on the following criteria:

1. **Conservation Values (60% of points):** Sponsors must describe the quality and condition of at least one and up to three conservation values and demonstrate that all conservation values identified in the application will be reasonably conserved and/or enhanced through project implementation and compliance with the long-term obligations generally described in these guidelines. Projects will be scored based on the conservation values identified and how well the proposed use and long-term management goals will result in protection or enhancement of the conservation values.
2. **Program Goals (25% of points):** Sponsors must identify how the project meets the environmental and planning priorities of Pierce County or local governments. Points are awarded for properties with priority designations, project size, continuity with other preserved open spaces, and location within an area threatened by development.
3. **Matching Funds (15% of points):** Sponsors must provide a minimum of 10% of the purchase price of the property interest to qualify for Conservation Futures funding. Additional points are awarded for increasing the match and leveraging other funding sources, such as additional grants or private donations.

Each project application undergoes the following review process:

- The TAC reviews project applications for eligibility, completeness, and accuracy.
- The CAB reviews, scores, and ranks eligible project applications. The CAB sends their ranked recommendations to the County Council for review.
- The County Council reviews the recommendations of the CAB and holds a public hearing to determine which projects will be funded and the final project ranking.

ADMINISTRATIVE GUIDELINES

Match Requirement

A 10% match is required for all projects. Match must be provided through a cash contribution at

the time of closing or a reduction in the purchase price by at least 10% of the appraised value, also known as a bargain sale. The percentage of match established in the project application may not be reduced at the time of closing. The source of matching funds identified in the application may change so long as new match sources are not associated with requirements that are incompatible with protection of the conservation values identified in the application and purposes described in the Agreement to Fund. Proof of availability of matching funds should be provided as soon as possible but prior to closing.

If a sponsor is unable to provide the matching funds identified in their application and the Agreement to Fund in a timely manner, Pierce County reserves the right to withdraw Conservation Futures funding from a project. In these cases, a project may be revisited later in the funding cycle if matching funds become available or a project may be resubmitted in a future grant round when readiness can be demonstrated.

Grant Notification and Agreement

Sponsors will be notified by staff of their selection for Conservation Futures grant funding as soon as possible after adoption of the County Council resolution. Fee simple acquisition projects are expected to obtain an Agreement to Fund in the first year that funding is available. An executed real estate purchase and sale agreement with the property owner is not required prior to obtaining an Agreement to Fund. The Agreement to Fund will include the terms and conditions for release of funding, the amount of the grant, address reimbursement of expenses, and describe the Conservation Futures project, its timeline and budget, roles and responsibilities of the sponsor and the County, and grant deliverables.

When funding is for acquisition of a Conservation Easement, the sponsor must review and coordinate with Conservation Futures staff on all proposed terms and conditions for the Conservation Easement before they can expect to obtain an Agreement to Fund. Conservation Easement terms and conditions should be considered material to the development of an appraisal. Conservation Easement terms and conditions should be approved within the first 16 months of the funding biennium to ensure adequate time for processing of the Agreement to Fund, purchase and sale agreement, and any additional documents required for closing.

Grant Award Modifications

In an effort to advance as many Conservation Futures projects during a grant cycle as possible, it is critical

that sponsors manage their budgets effectively and communicate their progress on projects frequently. In general, projects are expected to be completed in the order in which they are ranked and be in a position to close within the funding biennium. From time to time sponsors may request a project modification. Determinations regarding modification requests are made on a case-by-case basis. There are several common modifications that may be necessary to successfully complete a Conservation Futures project, including but not limited to the following:

1. Reduced project size: If the project size can be reduced while still protecting all of the conservation priorities identified in the application, the grant award will be reduced proportionately to the size of the project.
2. Increase in project acquisition cost: If the appraisal of the property is significantly different than the value anticipated in the grant application, the sponsor may request a 10% increase in the project award to complete the project or resubmit the project for

consideration during a future funding cycle. Any award increase is dependent on the availability of uncommitted funds in the grant round.

3. Increased project size: If the project size can be increased without increasing the grant award and the additional property proposed for acquisition enhances the conservation priorities identified in the application, acquisition of additional property may be considered.

Acquisition Process and Documentation

In many cases, Pierce County has negotiated favorable contracts for professional services on behalf of the Conservation Futures program. Prior to selection of professional services and/or vendors to complete tasks associated with a Conservation Futures project, sponsors are strongly encouraged to contact Conservation Futures staff to determine if there is a preferred vendor and/or rate for a professional service.

The acquisition of real property or property interests must meet the following standards to receive funding.

Title Report and Title Insurance

Pierce County or sponsors will procure a preliminary title report early in the acquisition process for review and approval of the condition of the title. The title should be reviewed for any encumbrances that may jeopardize the purpose of the acquisition project and its use as parkland, timber land, habitat, or agricultural land.

Specifically, sponsors should identify and evaluate title reports for:

- ☐ Liens and debts
- ☐ Open space classifications that require compensating taxes or notice of continuation
- ☐ Surveys of boundaries or other encumbrances, identifying encroachments that need to be resolved
- ☐ Easements (e.g., utility, storm water, access, road and benefits to neighboring properties, reciprocal access easements between timber companies, etc.)
- ☐ Reservations (e.g., mineral, timber, railroad, hunting, camping, and any other reserved rights)
- ☐ As-built plans or other surveyed documents for the built environment
- ☐ Clear legal access to the subject property
- ☐ Covenants (homeowners associations, development restrictions, etc.)

Sponsors must forward the title report and a title review checklist explaining which encumbrances will be removed and which encumbrances do not jeopardize the project and will be allowed to remain on the title. An updated title report and title insurance must be issued in conjunction with the property transaction.

Appraisal

Pierce County or sponsors must procure an independent appraisal (standard, narrative or M.A.I.) from a Washington State Certified Licensed Appraiser. No appraisal is required for properties assessed at \$25,000 or less.

The appraisal must include:

- ☐ Legal Description – Include the legal description from the preliminary title report. If only a portion of the ownership listed on the preliminary title report is to be appraised, clearly identify the area to be acquired in the property description.
- ☐ Property Description – Include the parcel number(s), acreage to be acquired and a map.
- ☐ Property Access – Describe the existing physical access to the property and the location of legal access to the public roadway, if known.
- ☐ Ownership and Occupant Information – Include any information you have about the current ownership of the property and any tenants. Note other adjacent property under the same ownership if the acquisition is for less than the entire ownership.
- ☐ Preliminary Title Report – Provide a copy of the preliminary title report with existing easements and encumbrances as an appendix.
- ☐ Identify the Client – The client must be the sponsor. It cannot include the landowner or other third party unless approved by Pierce County.
- ☐ Intended Users – The intended users must always include the client and Pierce County.
- ☐ Intended Use – The intended use must include a statement regarding the voluntary acquisition of the identified property.
- ☐ Appraisal Standards – Instruct the appraiser that the appraisal is required to comply, at a minimum, with the *Uniform Standards of Professional Appraisal Practice* (USPAP).
- ☐ Date of Value – This typically should be the same as the date of the last property inspection unless otherwise instructed or justified.
- ☐ Encumbrances – Include encumbrances from the preliminary title report and instruct the appraiser to address whether any of the encumbrances would impact the market value of the property. If the appraiser becomes aware of unrecorded encumbrances through the course of their work, those should also be addressed as to whether they would impact the market value of the property.
- ☐ Report Format – The report format must be a self-contained appraisal report.
- ☐ Participation in the Appraisal Review Process – The appraiser should be informed that the appraisal report will be reviewed by an independent review appraiser. The appraisal contract should require that the appraiser respond to the review appraiser's inquiries and questions and provide clarifications and corrections as necessary to enhance the credibility of the appraisal report.

The appraisal must have been completed no earlier than one year from the date of the Purchase and Sale Agreement and no earlier than 18 months from the date of closing.

Review Appraisal

A review appraisal will be completed for all Conservation Futures projects. When sponsors have procured an appraisal for a Conservation Futures project, that appraisal will be reviewed by Pierce County's preferred vendor at Pierce County's expense. Review appraisals may be ordered by Conservation Futures staff or by the sponsor so long as they are completed by Pierce County's preferred vendor and the criteria specified below are met. Review appraisals should include, at a minimum, evaluation of:

- 1) Extraordinary Assumptions – The reviewer must note any extraordinary assumptions in the appraisal and make a determination as to their reasonableness.
- 2) Hypothetical Conditions – The reviewer must note any hypothetical conditions in the appraisal and make a determination as to their reasonableness.

The reviewer should develop an opinion regarding:

- ☐ The completeness of the material under review;
- ☐ The apparent adequacy and relevance of the data and the propriety of any adjustments to the data;
- ☐ The appropriateness of the appraisal methods and techniques and develop reasons for any disagreements;
- ☐ Whether the analysis, opinions, and conclusions are appropriate and reasonable and develop the reasons for any disagreements; and
- ☐ Whether the appraisal is compliant with the applicable standards, USPAP or USFLA.

The reviewer should provide a recommendation in accordance with one of the following options:

1. Approval – The appraisal is compliant with the applicable standards and the stated opinion of value is a reliable basis for establishing an offer of just compensation; OR
2. Acceptance with a Revised Value Opinion – The appraisal is compliant with the applicable standards, but the stated opinion of value is not a reliable basis for establishing an offer of just compensation. The reviewer formulates a value opinion based upon adjustments or corrections to the information and analysis contained in the appraisal and/or new information is readily available to the review appraiser within the scope of the original appraisal assignment; OR
3. Rejection – The appraisal is substantially not compliant to applicable standards and the reviewer is unable to formulate a revised opinion of value from the information available. A new appraisal may be required in order to move a project forward if the review appraisal recommends rejection.

Long-Term Obligations

Restrictions on the Property

Pierce County requires all Conservation Futures properties be restricted with a covenant or conservation easement which assures the protection of conservation priorities on the property as identified in the application. The covenant or easement shall be recorded on the title and run with the land in perpetuity. The application must include specific requirements and restrictions related to identified conservation priorities proposed for inclusion in the property management plan or conservation easement. Additional restrictions may be requested or required as a condition of grant funding following application review.

Since the Conservation Futures program is funded by tax dollars, in addition to specific management actions to protect identified conservation priorities it is expected that all projects will be consistent with municipal codes and accepted best conservation and management practices. Sponsors must explain whether the project meets the local Critical Areas Ordinance (CAO) for the intended use of the property. If the property does not meet the CAO currently, the sponsor should outline how the project will meet CAO in the future through additional resource protections and/or restoration or explain how each identified conservation priority will be protected in the future, even if those actions are less restrictive than CAO requirements. According to PCC 2.97.060 E., the CAB may request further conditions be placed on the property to ensure protection of each conservation priority in consultation with the TAC, a resource biologist, or other professional qualified to make such a recommendation.

Unless the County Council has approved active recreational uses on all or a portion of the property, the covenant and property restrictions shall specify that any improvements to a Conservation Futures property shall be limited to those which are passive in nature or related to the regular maintenance or operations of working agricultural and timber lands.

In the case where Pierce County will hold or co-hold a conservation easement, Conservation Futures staff will typically meet directly with the landowner and sponsor to discuss restrictions that will be placed on the property. Meeting with the landowner ensures that all parties are aware of the conservation requirements necessary to achieve the goals and values stated in the application.

Property Management Plan

Sponsors must provide a property management plan within one (1) year of completing the project. The plan must include a detailed description of how the property or property right acquired with Conservation Futures funds will be maintained or stewarded to ensure long-term protection and enhancement of the conservation values identified in the application. The plan should include specific actions that will be implemented to ensure protection and include regular monitoring activities that support ongoing management of the property.

The property management plan should at a minimum include:

- ☐ Long-term management goals for the property (i.e., desired future conditions)
- ☐ Restoration, enhancement, and development goals (if applicable)
- ☐ Monitoring program for the property
- ☐ A description of existing or proposed public access opportunities on the property

- Description of the project area, including the following:
 - U.S. Geological Survey quadrant map and county assessor's parcel map
 - Map showing all human-made and natural features
 - Location of public access and use areas
- An implementation timeline and budget that also identifies the source of funding for elements of the plan.

In some cases, Conservation Futures sponsors may be required to attach a specialized management plan for a project. Examples of specialized plans might include a farm management plan when agricultural land is identified as a conservation value in the Conservation Futures application and/or a forest stewardship plan when timber land or forested areas are identified. When specialized plans are required, the Agreement to Fund will provide guidance on the plan requirement. In many cases, these plans can be incorporated into the overall property management plan.

Public Access

Regardless of whether the property is developed, all property acquired with Conservation Futures funding must be open to public use. Public access means that the general public has regular or directed access and use of property acquired in a manner that is compatible with conservation values on the property.

Sponsors will have 90 days from the date of purchase to ensure lands acquired with Conservation Futures funds are open for public access. Providing public access to the site does not mean that sponsors must provide developed facilities or that the entire property must be accessible. Use of undeveloped or partially developed properties may be restricted, with access initially granted at a temporary or interim location pending site development or preparation. However, total exclusion of the public must be avoided. Pierce County may approve a sponsor's request to limit public access on properties to ensure public safety or protect sensitive natural areas or cultural resources on a case-by-case basis.

Acknowledgement and Signage

When sponsors decide to create written materials or erect signage related to a Conservation Futures project, materials must include an acknowledgement of the Conservation Futures funding. Conservation Futures staff will review and approve proposed language describing the program to ensure that it is consistent and accurate.

Acknowledgement may include:

- Prominent placement of a sign on the property. The sponsor may build such signs to harmonize with an existing design standard.
- Recognition in any media or publication developed or modified during or after project implementation.
- Recognition at dedication ceremonies. Conservation Futures staff should be notified at least 30 days before the ceremony if you wish to have a representative present.

Income

The source of any income generated in association with a Conservation Futures funded project must be compatible with the funding source, restrictive covenant or conservation easement, and the Agreement to Fund. User and other fees may be charged in connection with Conservation Future's acquired properties if the fee(s) are consistent with the:

- Value of any services furnished;
- Value of any opportunities furnished; and
- Prevailing range of public fees in the state for the activity involved.

All income and/or fees (including for entrance, leases, timber harvesting, farming, etc.) and total revenue may only be used to offset:

- The sponsor's matching funds;
- The expense of operation, maintenance, stewardship, and monitoring of the property; or
- Capital expenses for development or restoration on the property that is compatible with the funding source and restrictive covenant or conservation easement.

Expense Reimbursement

Eligible expenses for Conservation Futures projects may be incurred by the project sponsor or Pierce County as a project is negotiated and prepared for closing. In the case where sponsors expend their own funds on eligible expenses, reimbursement of expenses may be provided after closing.

Conservation Futures funds may be made available to the title company shortly before closing for the direct costs of property acquisition. Please discuss closing dates with staff to help ensure that grant funds are available when needed.

Eligible Expenses

The following expenses are eligible for reimbursement with Pierce County Conservation Futures funds:

- Costs of acquiring real property or interests in real property
- Cost of appraisal
- Cost of preliminary title reports and title insurance
- Escrow fees/Closing costs
- Recording fees
- Directly related employee/staff time, legal and/or attorney's fees, and administrative costs incurred by non-profit organizations (may not exceed 5% of the Conservation Futures funds contributed toward the purchase price of the project)

Staff Time for Non-Profit Receiving Agencies

Employee time directly related to completing the Conservation Futures project may be reported as a grant

expense. The reportable amount is the employee's regular rate of pay per hour, including taxes and benefits. Taxes and benefits are eligible only if they are paid when they are due.

Overhead may also be reimbursed as a grant expense but may not exceed 25 percent of an employee's combined salary and benefits. For organizations that have contracted out work related to the project that would otherwise be performed by an employee or staff, overhead does not apply. Mileage may be itemized as a direct expense.

All staff time reported as a grant expense must be documented on a timesheet. The timesheet must meet the following standards:

- ☐ Include specific dates, hours, and tasks completed associated with the Conservation Futures project.
- ☐ Account for the total activity for which employees are compensated.
- ☐ Be signed or authorized electronically by the individual employee or by a responsible supervisor having firsthand knowledge of the activities performed by the employee.
- ☐ Be prepared at least monthly and coincide with one or more pay periods.
- ☐ Must not include budget estimates or other distributions based on a percentage determined before the work was performed.

Reimbursement requests and supporting documentation may be submitted at any time during the project period but must be submitted no later than 45 days after closing. It is important to implement projects in as timely a manner as possible and to bill in a timely manner.

Ineligible Expenses

The following expenses are not eligible for reimbursement with Pierce County Conservation Futures funds:

- Costs associated with hazardous waste or environmental assessments or cleanups
- Structural inspections or repairs
- Real estate excise taxes
- Surveys, boundary line adjustments, or subdivisions
- Initial stewardship
- Signage, equipment, and federal, state, and county permits necessary to complete the project
- Costs billed to another funding source or agency
- Acquisition of real property or interest in real property through exercise of the power of eminent domain
- Costs associated with staff time for lobbying elected officials or their staff

RECORDS RETENTION/ PUBLIC RECORDS ACT

The project sponsor shall retain all books, records, documents, data and other materials relevant to the agreement for a minimum of six (6) years after the completion of the project. Documents related to the expenditure of Conservation Futures funds, including but not limited to purchase and sale contracts, settlement documents, invoices, e-mails, expert reports and/or appraisals, are Public Records subject to disclosure in accordance with the Public Records Act, Ch. 42.56 RCW, if requested by a citizen or entity.

All meetings and activities of the Conservation Futures Citizen Advisory Board are subject to the Open Public Meetings Act, Ch. 42.30 RCW. The public is always invited and encouraged to attend.

WHEN RECORDED RETURN TO:
Pierce County Parks & Recreation Services
ATTN: Conservation Futures Coordinator
9850 64th St W
University Place, WA 98467

WASHINGTON STATE COUNTY AUDITOR'S/RECORDERS INDEXING FORM

Document Title: Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenants

Grantor: City of Gig Harbor, a municipal corporation and political subdivision of the state of Washington

Grantee: Pierce County, a municipal corporation and political subdivision of the state of Washington

Abbreviated Legal: PTN W1/2 of NE & E1/2 of NW, Sec 6-21-2E, W.M.
Tax Account No: 022106-1000, 1044, 1070, 1071, 1113, and 2100

Tax Parcel Number(s): 0221061000, 0221061044, 0221061070, 0221061071, 0221061113, and 0221062100

PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into as of the Effective Date (defined in Section 27 below) by and between CITY OF GIG HARBOR, a municipal corporation and political subdivision of the state of Washington ("Grantor") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Pierce County"). Grantor and Pierce County may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

R E C I T A L S

WHEREAS Grantor is sole owner in fee simple of that certain parcel real property in Pierce County, Washington, legally described in **Exhibit A** and depicted in **Exhibit B** attached hereto and by this reference incorporated herein ("Protected Property"); and

WHEREAS the Protected Property includes Pierce County Tax Parcels No. 0221061000, 0221061044, 0221061070, 0221061071, 0221061113, and 0221062100 containing approximately 23.87 acres and was previously owned by James Peschek, Robert Frederick, and Richard H. Shaw; and

WHEREAS the Protected Property contains significant elements, features, attributes and amenities of great importance to Grantor, Pierce County, the people of Pierce County and the state of Washington, described in and designated for protection under chapter 84.34 of the Revised Code of Washington ("RCW") and chapters 2.96 and 2.97 of the Pierce County Code ("PCC") including, without limitation: (a) open spaces; (b) wetlands; (c) streams; and (d) salmonid habitat open space (collectively "Conservation Characteristics"); and

WHEREAS the Parties desire to establish in this Declaration the terms, covenants and conditions under which Grantor shall use and manage the Protected Property and to impose upon the Protected Property such restrictive covenants as are necessary to protect, preserve, maintain, improve, restore, limit the future development and use of and otherwise conserve, in perpetuity, the Protected Property and its Conservation Characteristics.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Grantor and Pierce County hereby agree as follows:

A G R E E M E N T

1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

2. **Restrictive Covenants; Purpose.**

2.1 **Restrictive Covenants.** Grantor hereby declares that the terms, covenants and conditions of this Declaration shall, pursuant to Chapter 84.34 RCW and Chapter 2.97 PCC: (a) constitute restrictive covenants and/or equitable servitudes running with the Protected Property in perpetuity in fulfillment of the legal and contractual obligations of Grantor with respect thereto; and (b) forever bind Grantor and its successors-in-interest.

2.2 **Purpose.** The intention and purpose of the Parties (collectively "the Purpose") in executing, delivering and performing this Declaration is: (a) to ensure the Protected Property is held by Grantor and its successors-in-interest in perpetuity as open space land so as to protect, preserve, maintain, conserve, enhance and improve its Conservation Characteristics; and (b) to prevent any use of the Protected Property that will damage or destroy its Conservation Characteristics or prevent their maintenance, restoration or enhancement.

3. **Stewardship.** Grantor agrees for itself and its successors-in-interest to use and manage the Protected Property in perpetuity in accordance with the Purpose, this Declaration and all Applicable Laws (defined in Section 4.1 below).

4. **Obligations to Protect and Provide Public Access - Permitted Uses.**

4.1 **Obligation to Protect.** Grantor shall use the Protected Property in accordance with: (a) all applicable federal, state, county and local laws, rules, regulations and standards (collectively "Applicable Laws"); (b) the Property Management Plan (as defined in and consistent with Section 8 below); and (c) this Declaration; so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics thereof.

4.2 **Obligation to Provide Public Access.** Grantor shall ensure that the Protected Property is opened to public access. Grantor shall identify and submit to Pierce County a map depicting the location of at least one public access opportunity which shall serve as interim access until long-term public access opportunities are developed by Grantor and set forth in the Property Management Plan to be completed by Grantor as set forth in Section 8. Grantor shall permit the public to have regular access to the Protected Property consistent with the requirements of Pierce County Code, the Administrative Guidelines, the Purpose, this Declaration and the Property Management Plan. In the event that the Grantor anticipates submitting a Property Management Plan that will involve limitations on regular public access to protect sensitive natural areas, Grantor shall identify and explain in writing any potential conflicts between providing public access to the Protected Property and restoration activities and other Conservation Futures priorities for the Protected Property and submit Grantor's request for Pierce County's approval of limitations on public access within 120 days of the Effective Date of this Declaration. At a minimum, public access to the Protected Property shall include, but not be limited to passive recreational activities such as: (a) hiking; (b) wildlife viewing; and (c) nature study. Grantor's obligation to permit access to the Protected Property by the public does not include an affirmative duty to develop parking for vehicles and/or bicycles, restroom facilities or any other facilities or infrastructure.

4.3 Acknowledgements, Written Materials and Signs. Grantor may, at its sole cost and expense, elect to create written materials and/or erect signs describing the Protected Property or any past, present or future Conservation Futures projects related thereto. If Grantor shall make such an election, all such written materials and signs shall comply with the Purpose, this Declaration and all Applicable Laws and shall include an express acknowledgement of the role played by the Pierce County Conservation Futures program in acquiring the Protected Property. Grantor shall coordinate with Pierce County regarding language to describe the County's Conservation Futures Program to be included in such express acknowledgments. In addition, all signs placed upon the Protected Property shall be: (a) prominently placed upon Protected Property in full view of the general public; and (b) designed to harmonize with the aesthetic features of the Protected Property.

5. Obligation to Remove Structures.

Within 18 months after recording of this Stewardship Agreement, Grantor must complete demolition and removal of all existing structures identified in the Appraisal of the Protected Property by Joseph W. Harris, MAI in a reported dated December 6, 2021 – and any other structures that may exist on the date of this Stewardship Agreement's recording.

6. Prohibited Uses and Restrictions on Permitted Uses.

6.1 General. Any use of, or activity on, the Protected Property inconsistent with the Purpose, this Declaration or any Applicable Law is prohibited, and Grantor acknowledges and agrees it will not knowingly conduct, engage in, or permit any such use or activity.

6.2 No Conversion to Incompatible Uses. Grantor shall not convert the Protected Property to any residential, commercial or industrial development or use or to any other use that is incompatible with the Purpose, this Declaration or any Applicable Laws.

6.3 Land Division. Grantor shall not further subdivide or partition the Protected Property, whether by physical or legal process, including, without limitation: (a) subdivision; (b) short subdivision; (c) platting; (d) binding site plan; (e) testamentary division; or (f) other process by which the Protected Property is divided into lots, or in which title to different portions of the Protected Property are not held in unified ownership (collectively "Land Division"), without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion, and then only for purposes, and in a manner, consistent with the Purpose, this Declaration and all Applicable Laws.

6.4 Limitations on Natural Resource Use.

6.4.1 Aquatic Products. Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products.

6.5 Limitations on Mining. Grantor shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method. Grantor may conduct or engage in mineral extraction if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Conservation Characteristics of the Protected Property. No extraction permitted pursuant to this Section 6.5 shall occur without prior written notice to and consent of Pierce County and such notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

6.6 No Significant Erosion or Pollution. Grantor shall not knowingly engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant contamination or pollution of any soils or surface or subsurface waters on the Protected Property.

6.7 Forest Health and Timber Management. Grantor may not conduct, engage in, or permit commercial forest management on the Protected Property. Forest management, if any, on the Protected Property shall meet the Pierce County Forest Practices requirements set forth in Title 18H PCC and be identified in the Property Management Plan.

6.8 Limitations on Waste Disposal. Grantor shall not accumulate and store ashes, garbage or other waste on the Protected Property. Nor shall Grantor knowingly dispose of or Release (or knowingly permit the disposal or release of) any Hazardous Substance on the Protected Property. The term "Release" shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term "Hazardous Substance" shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term "Hazardous Substances" shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with all Applicable Laws. No storage of Hazardous Substances shall be allowed on the Protected Property.

6.9 No Compensatory Mitigation. The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property ("Compensatory Mitigation") is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.

6.10 No Agricultural Use; No Horses or Livestock. Agricultural use of the Protected Property is prohibited. Horses and livestock are prohibited.

6.11 **No Active Recreational Use.** Active recreational use of the Protected Property is prohibited.

7. **Transfers by Grantor.**

7.1 **Definition.** "Transfer" includes, but is not limited to: (a) any sale, grant, lease, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; (b) any transaction the purpose of which is to effect a sale, grant, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; or (c) any legal proceeding the purpose of which is to effect a taking of the Protected Property, or any portion thereof or interest therein. For purposes of this Declaration the term "Grantor" includes any future property owner(s).

7.2 **Limitations on Transfers.** Grantor shall not effect a Transfer except to a city, town, conservation district, federally recognized Indian tribe, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion.

7.3 **Notice; Binding Effect.** Grantor shall give Pierce County written notice of not less than SIXTY (60) calendar days and not more than ONE HUNDRED TWENTY (120) calendar days prior to the date of any Transfer. In addition, any deed or other legal instrument effecting a Transfer shall: (a) expressly provide that the new owner of the Protected Property shall be subject to and strictly bound by all of the terms, covenants and conditions of this Declaration; and (b) incorporate therein the terms, covenants and conditions of this Declaration by express reference. The failure of Grantor to perform any act required by this Section 6.3 shall not impair the validity of this Declaration or limit its enforceability in any way.

8. **Property Management Plan.** Grantor shall, no later than August 31, 2024, prepare and deliver to Pierce County a comprehensive written plan consistent with the requirements of Pierce County Code and the Administrative Guidelines that describes in detail (a) how Grantor will maintain or steward the Protected Property over time; and (b) how Grantor will implement and monitor activities associated with the Conservation Futures Priorities described in Grantor's application for Conservation Futures Funding (hereinafter "Property Management Plan").

The Property Management Plan shall address, at a minimum, the following:

8.1 Long-term management goals for the Protected Property and measures to protect the stream integrity, including but not limited to restricting public access, signage, fencing, and or maintenance of existing riparian vegetation (desired future conditions);

8.2 Removal of a culvert on North Creek to improve fish passage and removal of invasive species and illegal dumping;

8.3 Activities related to goal of restoring critical salmonid habitat, including development of a site restoration design plan;

8.4 Program for monitoring the Protected Property in perpetuity in accordance with the standards and practices of the Land Trust Alliance;

8.5 Plan for passive public access opportunities on the Protected Property compatible with stream and riparian restoration and natural resources protection, including installation of a salmon viewing spur, a loop trail with interpretive and educational signage and excluding horses;

8.6 Maps including: (i) a U.S. Geological Survey quadrant map or recent aerial photo and county assessor's parcel map; (ii) a map showing all human-made and natural features; and (iii) the location of public access and use areas.

8.7 Implementation timeline and budget that identifies the source of funding for elements of the Plan.

9. **Maintenance; Reporting.**

9.1 **Maintenance.** Grantor shall, at its sole cost and expense, keep and maintain the Protected Property, together with any improvements or alterations in, on, under or about the Protected Property, in a good and sound state of repair and in a neat, clean, safe and sanitary condition in accordance with the Purpose, all Applicable Laws and this Declaration.

9.2 **Reporting.** Grantor shall, at least once every THREE (3) years from the Effective Date, issue to Pierce County a comprehensive written report documenting the then physical condition of the Protected Property, any improvements or alterations to the Protected Property, and compliance with Section 4.1 above.

10. **Pierce County's Rights.** To accomplish the Purpose, Pierce County shall have the following rights under this Declaration:

10.1 **Protection.** Pierce County shall have the right to identify, protect, preserve, maintain, improve, restore and conserve, in perpetuity, the Conservation Characteristics of the Protected Property.

10.2 **Access.** To enter upon the Protected Property at such other times as are necessary if there is reasonable cause to believe that a violation of this Declaration is occurring, solely for the purposes of enforcing the provisions of this Declaration. Prior to entry, Pierce County shall provide notice to Grantor and shall describe the reasonable cause to believe that a violation is occurring on the Protected Property.

10.3 **Uses and Practices.** To enter upon, inspect, observe and study the Protected Property, with such persons as Pierce County may require, at mutually agreeable dates

and times and upon prior notice of not less than THIRTY (30) calendar days to Grantor, solely for the purposes of: (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property; and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with the Purpose. For each such entry, Grantor shall have the right to designate an individual to accompany Pierce County during its inspections, observations and studies.

10.4 Natural Events. To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

10.5 No Material Interference. Pierce County shall exercise its rights in compliance with all Applicable Laws and in a manner that will not materially disturb or interfere with Grantor's rights hereunder or its quiet enjoyment of the Protected Property.

10.6 Consent. Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Pierce County.

10.7 Prevention and Restoration. Pierce County shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose, this Declaration or any Applicable Laws, and shall have the right to cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof.

10.8 Assignment or Conveyance. Pierce County shall have the right in its sole and absolute judgment and discretion to assign, convey or otherwise transfer its right, title and interest in and to the Protected Property under this Declaration to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior consent of Grantor. In the event of any such assignment, conveyance or transfer, Pierce County shall have absolutely no further liability with respect to the Protected Property or to Grantor under this Declaration except as to matters of liability that have accrued and remain unsatisfied. Pierce County's successor-in-interest shall have all rights of Pierce County hereunder.

11. Dispute Resolution.

11.1 Preventive Discussions. Except in circumstances contemplated in Section 11, Grantor and Pierce County shall endeavor to resolve any dispute regarding the interpretation of the terms of this Declaration first through a discussion between the Representatives of the Parties identified in this Section 10, then escalated to each Party's respective Executive if the dispute has not been resolved within ten (10) business days. Grantor and Pierce County shall promptly give the other Party notice of problems or concerns arising in connection with the others' actions under this Declaration or the use of or activities or conditions on the Protected Property, and shall meet as needed, but no later than THIRTY (30) calendar days after receipt of a written request for a meeting.

11.2 Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose, this Declaration or any Applicable Laws, and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor and Pierce County shall refer the dispute to mediation by request made in writing upon the other. Within TEN (10) business days of the receipt of such a request, the Parties shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

11.2.1 Purpose. The purpose of the mediation is to: (a) promote discussion among the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, covenants or conditions of this Declaration.

11.2.2 Participation. The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.

11.2.3 Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective legal counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be construed as an admission of a party. Provided, however, this provision relating to confidentiality shall not be construed to constrain Pierce County's compliance with the Washington State Public Records Act nor to create any obligation for Pierce County to ensure the nondisclosure of records that may be required to be disclosed pursuant to the Washington State Public Records Act.

11.2.4 Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of SIXTY (60) calendar days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

11.2.5 Costs. The costs mediation services shall be borne equally by the Parties. The Parties shall bear their own expenses, including attorney's fees, individually.

11.3 Arbitration. The Parties may, but are not required to, submit disputed matters to binding arbitration. In the event that one Party wishes to request that a disputed matter be submitted to binding arbitration, such Party shall provide notice in writing of its request and propose the rules for arbitration to be applied. Arbitration may take place only upon mutual agreement of the Parties with regard to the arbitrator, deadline for arbitration, and applicable rules for arbitration.

11.4 **Representatives.** The following shall be each Party's Representatives for purposes of initiating Preventive Discussions:

Pierce County:
Kimberly Freeman, Resource Stewardship Superintendent
9850 64th St W
University Place, WA 98467
Telephone: 253-798-4009
Email: kimberly.freeman@piercecountywa.gov

City of Gig Harbor:
Attn: Jeff Langhelm, Public Works Director
3510 Grandview Street
Gig Harbor, WA 98335
Telephone: 253-853-7638
Email: JLanghelm@gigharborwa.gov

12. **Pierce County's Remedies.**

12.1 **Notice of Non-Compliance.** If Pierce County determines Grantor is in violation of the terms of this Declaration or that a violation is likely to occur, Pierce County shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with this Declaration, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan to which Pierce County has given consent.

12.2 **Grantors' Failure to Respond.** Pierce County may bring an action as provided in Section 12.3 below if Grantor: (a) fails to cure the violation within NINETY (90) calendar days after receipt of notice thereof from Pierce County; (b) under circumstances where the violation cannot reasonably be cured within the NINETY (90) calendar day period, fails to begin curing such violation within the NINETY (90) calendar day period; or (c) fails to continue diligently to cure such violation until finally cured.

12.3 **Pierce County's Action.** Pierce County may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Declaration or injury to any of the Conservation Characteristics protected hereby, including damages for the loss thereof; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Pierce County, acting in its sole and absolute judgment and discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such

actions for injunctive relief may be taken without Pierce County being required to post bond or provide other security.

12.4 Immediate Action Required. Notwithstanding any other provision of this Declaration to the contrary, if Pierce County, acting in its sole and absolute judgment and discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Characteristics, Pierce County may pursue its remedies under this Section 12 without prior notice to Grantor, without participation in dispute resolution as provided in Section 11 above, or without waiting for the period provided for cure to expire.

12.5 Nature of Remedy. Pierce County's rights under this Section 12 apply equally in the event of either actual or threatened violations of the terms of this Declaration. Grantor acknowledges and agrees Pierce County's remedies at law for any violation of the terms of this Declaration are inadequate and that Pierce County shall be entitled to the injunctive relief described in this Section 12 both prohibitive and mandatory, in addition to such other relief to which Pierce County may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Pierce County's remedies described in this Section 12 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

12.6 Damages. Inasmuch as the actual damages to the Conservation Characteristics that could result from a breach of this Declaration by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages to which Pierce County is entitled shall be the higher of: (a) the amount of economic gain realized by Grantor from violating the terms of this Declaration; or (b) the cost of restoring any Conservation Characteristics that have been damaged by such violation. If Pierce County chooses the second of these two measures, Grantor agrees to allow Grantee and its agents or contractors, to enter upon the Protected Property and conduct restoration activities.

12.7 Pierce County's Discretion. Enforcement of the terms of this Declaration shall be at the discretion of the Pierce County and any forbearance by Pierce County to exercise its rights under this Declaration in the event of any breach of any of the terms, covenants or conditions hereof by Grantor shall not be deemed or construed to be a waiver by Pierce County of such term, covenant or condition or of any of Pierce County's rights hereunder. No delay or omission by in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

13. Fees and Charges. If Grantor elects to charge user or other types of fees in connection with the public use of the Protected Property, fees and charges shall be commensurate with the value of the recreational services or opportunities furnished and are within the prevailing range of public fees and charges within the state of Washington for the particular activity involved.

14. Indemnification. Grantor, for itself, its successors and assigns, shall defend, indemnify and forever hold Pierce County, and its elected and appointed officials, employees

and agents, harmless to the maximum extent allowed by law from and against any and all liabilities, claims, demands, suits, judgments, costs and attorney fees of any kind, type or nature whatsoever arising out of or relating in any way relating to the Protected Property or to the subject matter of this Declaration.

15. Representations and Warranties.

15.1 By Grantor. Grantor represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

15.1.1 Authority. Grantor has full power and authority to execute and deliver this Declaration and the individual(s) who execute and deliver this Declaration are duly authorized to do so;

15.1.2 Litigation. There are no actions, suits or proceedings pending or threatened against Grantor before any court or administrative agency which might result in Grantor being unable to perform its obligations under this Declaration; and

15.1.3 No Other Representations or Warranties. Other than as expressly set forth in this Section 14.1, Grantor makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

15.2 By Pierce County. Pierce County represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

15.2.1 Authority. Pierce County has full power and authority to execute and perform this Declaration, and the individuals who execute and deliver this Declaration are duly authorized to do so;

15.2.2 Litigation. There are no actions, suits or proceedings pending or threatened against Pierce County before any court or administrative agency which might result in Pierce County being unable to perform its obligations under his Declaration;

15.2.3 No Other Representations or Warranties. Other than as expressly set forth in this Section 15.2, Pierce County makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

16. Notices. Notices required or desired to be given under this Declaration shall be in writing addressed to the Notice Representative and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) such other address or addresses designated in writing from time to time by the method provided in this Section. The notice shall be deemed delivered on the earlier of: (a) Three (3) business days from deposit in the United States mail; or

(b) the delivery date as shown in the regular business records of the overnight courier service. Notices shall be addressed as follows:

To Notice Representative for Grantor:

City of Gig Harbor
Attn: City Legal Counsel
3510 Grandview Street
Gig Harbor, WA 98335
Telephone: 253-853-7638

To Notice Representative for Pierce County:

Pierce County Parks & Recreation Services
Attn: Resource Stewardship Division-Conservation Futures Program
9850 64th St W
University Place, WA 98467

Copy to: Pierce County Prosecuting Attorney/Civil Division
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

Any Party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party. NOTICE: Any electronic mail addresses provided above are for convenience only and are not valid for purposes of providing notices under this Declaration.

17. **Attorney Fees; Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Declaration shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Declaration shall be in the Superior Court of Pierce County, Washington.

18. **Negotiation.** This Declaration was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

19. **Construction and Interpretation.** This Declaration shall be construed and interpreted in accordance with the laws of the state of Washington so as to restrict use of the

Protected Property to such activities that are consistent with the Purpose, the terms of this Declaration and all Applicable Laws.

20. **Time.** Time is of the essence of this Declaration and of every term and provision hereof.

21. **Entire Agreement.** This Declaration constitutes the entire agreement of the Parties with respect to the subject matter of this Declaration and supersedes all written or oral agreement or understandings, if any. This Declaration may be modified only in writing signed by both Parties.

22. **Date of Performance.** If the date of any performance under this Declaration falls on a weekend or holiday, the time shall be extended to the next business day.

23. **Cost of Performance.** Except as otherwise expressly provided in this Declaration, all covenants, agreement and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

24. **Binding Effect.** The terms, covenants, conditions and restrictions of this Declaration shall be binding upon and shall inure to the benefit of Grantor and Pierce County and their respective successors-in-interest in perpetuity.

25. **Invalid Provision.** If any provision of this Declaration is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Declaration shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Declaration; and the remaining provisions of this Declaration shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Declaration.

26. **Recording.** This Declaration shall be recorded in its entirety with the Auditor of Pierce County, Washington.

27. **Effective Date.** "Effective Date" shall mean the date upon which the Pierce County Executive (who shall be last person to sign) shall have executed this Declaration as indicated opposite her name below.

28. **List of Exhibits.**

28.1 **Exhibit A** – Legal Description of Protected Property

28.2 **Exhibit B** – Site Map of Protected Property

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

GRANTOR'S SIGNATURE PAGE

City of Gig Harbor, a municipal corporation and political
subdivision of the state of Washington:

By: _____

Printed Name: Tracie Markley

Title: Mayor

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Tracie Markley known to me to be the Mayor of the City of Gig Harbor, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

RESIDING AT _____

MY COMMISSION EXPIRES _____

PIERCE COUNTY'S SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

Pierce County Executive

Date _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared BRUCE F. DAMMEIER, known to me to be the executive of PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT

MY COMMISSION EXPIRES

EXHIBIT A
Legal Description of Protected Property

PARCEL A: (APN 022106-1000)

THE SOUTH 330.1 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD;

EXCEPT THE EAST 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

TOGETHER WITH THE SOUTH 330.1 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING EASTERLY OF THE TACOMA-LAKE CUSHMAN ELECTRIC TRANSMISSION LINE RIGHT-OF-WAY.

PARCEL B: (APN 022106-1070 & 022106-1044)

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING WESTERLY OF THE WEST LINE OF STATE HIGHWAY NO. 14;

EXCEPT THE SOUTH 550 FEET THEREOF:
ALSO EXCEPT THAT PORTION CONVEYED TO JOANNE L. SHADBOLT BY DEED RECORDED AUGUST 18, 1971 UNDER AUDITOR'S [FILE NO. 2406595](#), RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SOUTH 87°28'56" WEST ALONG SAID NORTH LINE 238.32 FEET TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, A DISTANCE OF 764.63 FEET TO THE WEST LINE OF STATE HIGHWAY NO. 14, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHERLY ALONG SAID WEST LINE OF STATE HIGHWAY NO. 14, A DISTANCE OF 320.55 FEET;

THENCE SOUTH 87°28'56" WEST 150 FEET, MORE OR LESS, TO THE CENTER OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER OF SAID CREEK TO INTERSECT A LINE BEARING SOUTH 87°28'56" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE NORTH 87°28'56" EAST TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIPTION:

COMMENCING AT THE INTERSECTIN OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE WEST LINE OF STATE HIGHWAY NO. 14 IN SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.;

THENCE SOUTH 209 FEET TO THE TRUE POINT OF BEGINNING; THENCE WEST 22 FEET, MORE OR LESS;

THENCE SOUTH 121 FEET;

THENCE EAST 29 FEET, M., TO THE WEST LINE OF SAID HIGHWAY;

THENCE NORTH ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING;

PARCEL C: (APN 022106-1071)

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 87°28'56" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, 276.94 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 209 FEET;

THENCE NORTH 87°28'56" EAST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TO THE CENTER LINE OF NORTH CREEK;

THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID CREEK TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6;

THENCE SO 38.32 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D: (APN 022106-1113)

THE SOUTH 330.1 FEET OF THE EAST 660 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING WESTERLY OF THE GIG HARBOR-PURDY COUNTY ROAD, SAID DISTANCE OF 660 FEET BEING MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 6, IN PIERCE COUNTY, WASHINGTON;

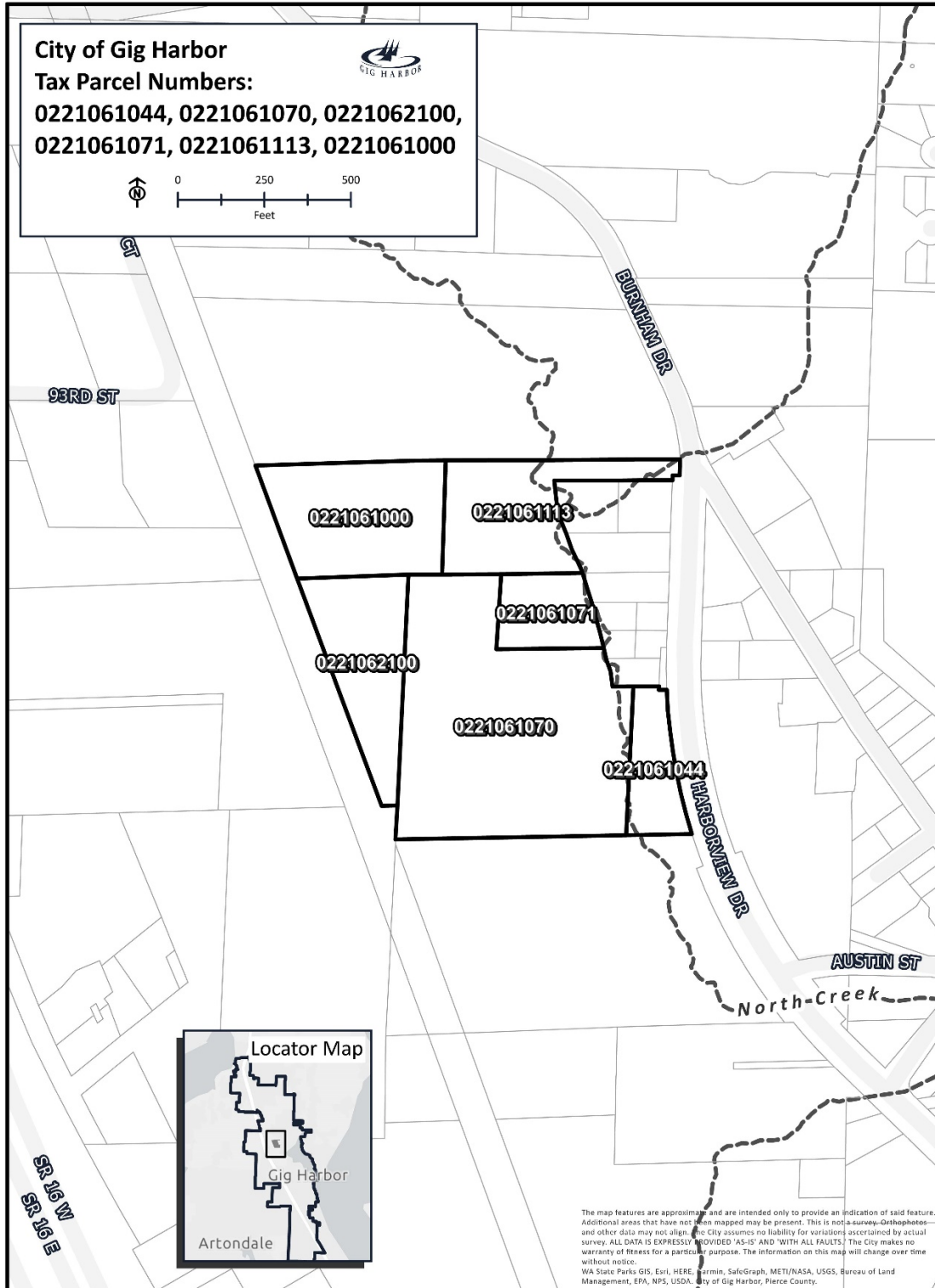
EXCEPT THE SOUTH 270 FEET OF SAID DESCRIBED PROPERTY WHICH LIES EAST OF THE MAIN CHANNEL OF NORTH CREEK.

PARCEL E: (APN 022106-2100)

THAT PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF THE CITY OF TACOMA POWER RIGHT-OF-WAY APPROPRIATED BY THE CITY OF TACOMA IN PIERCE COUNTY SUPERIOR COURT NO. 51234.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT B Site Map of Protected Property





**City of Gig Harbor
City Council Meeting Agenda Bill**

Meeting Date: July 10, 2023

SUBJECT: First Reading and Adoption of Ordinance 1515 Relating to the City's Water System Billing, Delinquencies, and Liens; Amending Section 13.04.050(B) of the Gig Harbor Municipal Code

SUBMITTED BY: Public Works Director Jeff Langhelm, PE

DEPARTMENT: Public Works

PHONE: 853-7630

SUGGESTED MOTION: Move to approve Ordinance 1515.

BACKGROUND INFORMATION: More frequent periods of extreme heat affect a majority of residents and disproportionately harm the medically vulnerable. Unfortunately, this extreme heat is becoming more common and deadly. It is important for the city to protect the health and safety of its residents and the city recognizes that domestic water is critical for keeping people healthy and in their homes.

Earlier in 2023 the Washington State Legislature passed ESHB 1329 that prevents utility providers from shutting off residential customers during periods of extreme heat, which becomes effective on July 23, 2023. ESHB 1329 is not consistent with Section 13.04.050(B) of the Gig Harbor Municipal Code (GHMC). Therefore, staff recommends an amendment to GHMC 13.04.050(B) to collect on water utility delinquencies within the city's standard practice, unless otherwise required by state law.

FISCAL CONSIDERATION: The public works department will prepare a policy to direct staff how to respond proceed with delinquent accounts during periods of extreme heat. While there is no direct expenditure required to implement this change in code, the staff time to implement this change is undermined.

Expenditure Required: \$0	Amount Budgeted: \$0	Appropriation Required: \$0
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BOARD/COMMISSION/COMMITTEE RECOMMENDATION: None.

ATTACHMENTS: Ordinance 1515

STRATEGIC PLAN PRIORITY: Ensure sustainable future for public services and facilities

ORDINANCE 1515

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S WATER SYSTEM BILLING, DELINQUENCIES, AND LIENS; AMENDING SECTION 13.04.050(B) OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, more frequent periods of extreme heat affect a majority of residents and disproportionately harm the medically vulnerable and this extreme heat is becoming more common and deadly; and

WHEREAS, it is important for the city to protect the health and safety of its residents and the City recognizes that domestic water is critical for keeping people healthy and in their homes; and

WHEREAS, earlier in 2023 the Washington State Legislature passed ESHB 1329 that prevents utility providers from shutting off residential customers during periods of extreme heat, which becomes effective on July 23, 2023; and

WHEREAS, ESHB 1329 is not consistent with Section 13.04.050(B) of the Gig Harbor Municipal Code (GHMC); and

WHEREAS, Staff recommends an amendment to GHMC 13.04.050(B) to collect on water utility delinquencies within the city's standard practice, unless otherwise required by state law.

NOW THEREFORE, The City Council of the City of Gig Harbor, Washington, do ordain as follows:

Section 1. Section 13.04.050(B) and (C) of the Gig Harbor Municipal Code is hereby amended to read as follows:

B. Water service charges shall be deemed delinquent if not paid within 30 days following the billing date. Interest at the rate of eight percent per annum shall be charged on all delinquent service charges. In the event any billing for water service or other service charge has not been paid within 60 days of billing, the city utility department shall mail a first delinquency/shut-off notice to the property owner and occupant if the record owner does not reside at the premises. The delinquency/shut-off notice shall provide the following: (1) payment for service is overdue and the total amount due and a statutory lien will be imposed; (2) service will be suspended unless payment in full is made to the city within 10 days; (3) address and telephone number of the utility department, stating that the

owner or occupant may contact the department if a dispute exists as to liability for the billing or the validity of lien; and (4) the city will charge a turn-on fee before service is resumed. The customer shall be charged \$10.00 for this first notice. If the customer has not settled the account within the time provided in the notice, a second notice which indicates service shall be discontinued by the city the next day shall be posted by the city utility department at a reasonably visible location at the property site. The customer shall be charged \$15.00 for this second notice. If the property owner has not settled the account within the time provided under the second notice, the city utility department shall shut off service. The City shall follow the notice procedures and shut-off procedures as outlined in this section unless otherwise required by law.

C. The city, as provided by law, shall have a lien against the premises to which water service was furnished and may enforce such lien by shutting off service until all charges and interest thereon then due are paid. Additionally, the city shall have the option to enforce the delinquent utility charges pursuant to other methods allowable by law. If the water service is shut off, it may be turned on again by the city after full payment is made for all charges to date, plus notice charges, interest and turn-on charge or such other procedures dictate by law.

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

Section 3. Correction of Errors. The city clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

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

ADOPTED by the Council of the City of Gig Harbor at a regular meeting thereof,
held this 10th day of July, 2023.

Tracie Markley
Mayor

Approved as to form:

Attest:

Daniel Kenny
City Attorney

Joshua Stecker, CMC
City Clerk

UPCOMING GIG HARBOR CITY MEETINGS
ALL AGENDA ITEMS TENTATIVE – SUBJECT TO CHANGE
Please see the meeting agenda for specific details on how to attend.

Day	Date	Time	Group	Agenda Items
M	July 10	5:30pm	City Council	See Agenda
W	July 12	10:00am	Arts Commission	
TH	July 13	3:00pm	City Council Study Session	Arts Commission Appointee Holiday Display and 4 th of July Event Discussion Masonic Lodge/Crescent Creek Master Plan – Options Discussion Flag Policy Cultural Access Program
TH	July 13	5:30pm	Design Review Board	CANCELLED
TH	July 20	3:00pm	City Council Study Session	Utility Rates Discussion & Public Outreach Plan Review
TH	July 20	5:30pm	Planning Commission	2044 Comprehensive Plan Update
M	July 24	5:30pm	City Council	Consent Agenda: - Professional Services Contract Amendment #1 for Wollochet/SR16 Westbound Right Turn Lane Traffic Analysis and Preliminary Design Business Items: - Resolution 1286 Declaring an Emergency for the Pavement Repair at the Intersection of Pt. Fosdick and Briarwood Lane Staff Report: 2 nd Quarter Financials & Budget Update
TH	July 27	3:00pm	City Council Study Session	HPC Appointees STR Update
TH	July 27	5:30pm	Design Review Board	
W	Aug. 2	5:30pm	Parks Commission	
TH	Aug. 3	3:00pm	Civil Service Commission	
TH	Aug. 3	5:30pm	Planning Commission	2044 Comprehensive Plan Update
W	Aug. 9	10:00am	Arts Commission	
TH	Aug. 10	5:30pm	Design Review Board	
M	Aug. 14	5:30pm	City Council	Consent Agenda: HPC Appointments
TH	Aug. 17	3:00pm	City Council Study Session	Sports Complex Phase 2 & 3 Feasibility Study Update Code Enforcement Program Update
TH	Aug. 17	5:30pm	Planning Commission	2044 Comprehensive Plan Update

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ALL AGENDA ITEMS TENTATIVE – SUBJECT TO CHANGE

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Day	Date	Time	Group	Agenda Items
TH	Aug. 24	5:30pm	Design Review Board	
M	Aug. 28	5:30pm	City Council	NO MEETING

City of Gig Harbor Two-Year Strategic Plan 2023-2024

Adopted by Resolution 1280 on June 12, 2023

Vision Statement: *The City of Gig Harbor leads the way in livability, environmental stewardship, economic vitality, and municipal services.*

Priorities	Goals	Actions – Routine/Annual	Actions - Project
Foster a healthy city organization	- Be an exceptional employer - Retain existing workforce - Attract qualified applicants - Ensure safe work environment - Encourage staff training - Encourage and obtain employee feedback - Fill all vacancies in a timely manner	- Re-qualify for AWC Well City designation - Conduct annual employee satisfaction survey	- Develop a staff retention and attraction program - Review and update the city's DEI program - Update personnel policies manual - Update safety manual and accident prevention program - Revise employee evaluation process - Develop management training for all new supervisors - Update job descriptions and conduct salary & benefits study
Ensure sustainable future for public services and facilities	- Provide more effective municipal services - Increase city communication effectiveness - Listen to community needs and expectations - Source funding for parks, streets/transportation, and utilities - Ensure infrastructure to support community needs	- Update utility rates as needed - Continually improve permit and land use approval processes - Increase resources for capital projects - Review/amend TIP to improve motorized and non-motorized transportation	- Create a city-wide communications plan - Update public works standards - Conduct HOA fair - Implement hybrid court system/electronic case management - Parks division organizational assessment - Complete construction of Public Works Operations Center - Place parks bond on ballot
Maintain small town character and historic preservation while growing responsibly	- Promote responsible growth in keeping with small town character - Address infrastructure to relieve traffic issues - Ensure adequate affordable housing - Focus on character retention and historic preservation - Decrease distance to get to a park or open space - Enhance walkability and pedestrian/cyclist safety	- Annually docket specific priorities in the comprehensive plan - Fund Harbor History Museum operations - Monitor state legislative activity - Support the arts commission - Develop sister city program - Fund creative endeavor grants - Monitor short-term rentals	- Prepare 2044 Comprehensive Plan periodic update - Complete annexation study - Develop housing needs and action plan - Create historic preservation commission - Review businesses and off-street parking requirements - Develop 4th of July event - Establish process and procedure for code compliance program - Establish park standards
Promote environmental sustainability and preserve Gig Harbor's natural beauty	- Address climate change - Preserve tree canopy - Preserve and enhance natural character - Add undeveloped land to parks inventory	- Annually review climate & sustainability action plan (once developed) - Consider possible conservation properties and/or mitigation areas and activities	- Adopt climate & sustainability action plan - Form climate action committee - Adopt urban forest management plan/tree retention policies - Develop recycling program in city parks - Install Civic Center electric vehicle charging station - Annex parcels in city's parks system - Update stormwater manual - Assess gaps in public charging stations for electric vehicles
Promote and enhance a dynamic and robust economy	- Develop a plan to increase promotion of our local business community - Increase vitality of the city's small businesses - Attract larger business to industrial zone - Maintain and enhance commercial fishing	- Support Downtown Waterfront Alliance - Support Chamber of Commerce - Fund tourism with lodging tax grants - Promote downtown businesses/events - Collaborate with Pierce Transit for trolley	- Design and construct fishermen's home port - Create a business retention and attraction plan - Evaluate and amend development regulations and fees - Develop and implement a small business fair - Develop holiday display attractions
Provide a safe, healthy, and inclusive community	- Foster safe, livable and attractive community - Ensure city services are available to all residents - Implement DEI in city personnel practices	Provide funding for senior programming	- Develop housing, health, & human services coordinator position - Provide funding for senior center permanent home - Develop a plan to support youth and teen activities - Obtain police department accreditation - Update emergency management plan