City Council Meeting

March 8, 2021
5:30 p.m.

GIG HARBOR®

"THE MARITIME CITY"

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
Monday, March 8, 2021 – 5:30 p.m.

Due to public health concerns, this meeting will be accessible by phone by dialing (253) 215-8782 and entering the Meeting ID 932 1605 6382 or through Zoom at: https://zoom.us/j/93216056382

Comments are only allowed 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 he has opened the public comment portion of the meeting.

Your name or the last four 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 speaking live, you may submit comments in writing before the meeting. Your input / questions must be provided to the City Clerk by 3:00 p.m. on Monday afternoon. All written comments must be able to be read in 3 minutes or less to be included in the record and have the title: FOR PUBLIC COMMENT included. Send comments to: cityclerk@gigharborwa.gov. Written comments will be read during the appropriate agenda item.

CALL TO ORDER / ROLL CALL:

PLEDGE OF ALLEGIANCE:

CHANGES TO THE AGENDA:

CONSENT AGENDA:

1. Approval of City Council Minutes: a) Study Session Feb. 11, 2021; and b) Regular Meeting of February 22, 2021
2. Receive and File: a) a) Harbor History Museum 2020 Year End Report; b) Planning Commission Minutes Jan. 21. 2021
3. FEMA Programmatic Review and Shoreline Master Program Update – Professional Services Contract – Grette Associates LLC
4. Resolution 1202 – Information Services Surplus Equipment
5. Approval of Payroll for the month of February: Checks #8250 through #8257 and direct deposit transactions in the total amount of $496,424.13.
6. Approval of Vouchers for Mar. 8, 2021: Checks #94835 through #94926and ACH payments in the amount of $1,441,328.25

PRESENTATION:

1. Harbor History Museum Year End Report – Stephanie Lile
2. Peninsula School District Updates – Superintendent Art Jarvis

MAYOR'S REPORT:

1. Acknowledging Employee Appreciation Day
2. International Women's Day
3. Honoring Jim Tallman

CITY ADMINISTRATOR'S REPORT:
Employee Engagement Survey Update

STAFF REPORTS:
1. Harborview / Stinson Sanitary Sewer – Public Works Director Jeff Langhelm
2. Austin Park Honoring Art – Public Works Director Jeff Langhelm

PUBLIC COMMENT ON NON-AGENDA ITEMS:

OLD BUSINESS:
1. Second Reading of Ordinance 1456 – WANRack Franchise Agreement
   a) Report: Public Works Director Jeff Langhelm
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

NEW BUSINESS:
1. Resolution 1201 – City Assumption of the Transportation Benefit District
   a) Report: Finance Director David Rodenbach
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

2. Stinson Ave Overlay and Intersection Improvements – Public Works Construction Contract Award, Contract Amendment #9 for Construction Support Services and Professional Services Contract for Materials Testing Services
   a) Report: Public Works Director Jeff Langhelm
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

COUNCIL REPORTS / COMMENTS:
1. Planning & Building Committee Mar. 1 – Councilmember Himes
2. Parks Commission Mar. 3 - Councilmember Abersold

ANNOUNCEMENT OF OTHER MEETINGS:
1. Public Works Committee – Mar. 9 at 3:00 p.m.
2. Council Study Session Mar. 11 at 3:00 p.m.
2. Boards & Commission Candidate Review – Mar. 15 at 3:00 p.m.
4. Intergovernmental Affairs Committee – Mar. 22 at 4:00 p.m.

ADJOURN

Americans with Disabilities (ADA) accommodations provided upon request. Those requiring special accommodations please contact the City Clerk at (253) 853-7613 at least 24 hours prior to the meeting.

MINUTES FOR GIG HARBOR CITY COUNCIL STUDY SESSION
Thursday, February 11, 2021 – 3:30 p.m.

Due to public health concerns, this meeting was held remotely.

CALL TO ORDER / ROLL CALL: Mayor Kuhn called the meeting to order and called roll. Those present: Councilmembers Abersold, Denson, Franich, Himes, Rodenberg and Woock. Councilmember Markley was excused.

Staff present: Assistant City Clerk Josh Stecker, Public Works Director Jeff Langhelm, and Community Development Director Katrina Knutson.

DISCUSSION ITEMS:

Funding for the Construction of the Community Paddler's Dock – Jeff Langhelm gave an overview of the history of the design for the Community Paddler's Dock and identified increased costs that had not been account for in the 2021 Budget. Council discussed funding options for the additional $330,000 required. Kristen Gregory spoke on behalf on the Gig Harbor Canoe and Kayak Race Team and indicated the team may have the ability to contribute towards the additional expense as part of the renegotiation of the club's lease with the City.

MOTION: Move to fund the project as recommended by staff in the amount of $730,000 ($290,000 Park Impact Fees, $100,000 Lodging Tax, $100,000 General Fund and $240,000 HBZ) with the goal of asking the Gig Harbor Canoe and Kayak Race Team to provide $100,000 and to pursue a further $100,000 in grant funds from the Port of Tacoma.
Rodenberg / Woock

AMENDMENT: Move to amend the contribution of the Gig Harbor Canoe and Kayak Race Team to $300,000.
Abersold / Himes –
CALL THE QUESTION - Rodenberg / Woock - unanimous approval
ROLL CALL VOTE: Denson – Nay, Rodenberg – Nay, Franich – Nay, Woock – Nay, Abersold – Aye, Himes – Aye

MAIN MOTION: Move to fund the project as recommended by staff in the amount of $730,000 ($290,000 Park Impact Fees, $100,000 Lodging Tax, $100,000 General Fund and $240,000 HBZ) with the goal of asking the Gig Harbor Canoe and Kayak Race Team to provide $100,000 and to pursue a further $100,000 in grant funds from the Port of Tacoma.
Rodenberg / Woock – Denson – Aye, Rodenberg – Aye, Franich – Nay, Woock – Aye, Abersold – Aye, Himes – Abstain

Staff will prepare a Budget Amendment Ordinance if necessary and the Lodging Tax Advisory Committee will be informed of Council's intent to use an additional $100,000 of lodging tax funds.

Property West of Treatment Plant Discussion – Jeff Langhelm identified the opportunity to pursue a Pierce County Conservation Futures Grant to acquire a parcel adjacent to the Wastewater Treatment Plant. The Puyallup Tribe has indicated willingness to provide $50,000 in matching funds for the grant. The Mayor proposed that the City provide $20,000 in matching funds.

MOTION: Move to direct the Mayor to prepare a resolution authorizing the City to pursue a Pierce County Conservation Futures Grant.
Denson / Woock – unanimously approved

ADJOURN: There was no further business and the meeting adjourned at 5:15 p.m.

MINUTES FOR GIG HARBOR CITY COUNCIL MEETING
Monday, February 22, 2021 – 5:30 p.m.

Due to public health concerns, this meeting was held remotely.

CALL TO ORDER / ROLL CALL:

Mayor Kuhn called the meeting to order and called roll. Those present: Councilmembers Abersold, Denson, Franich, Himes, Markley, Rodenberg and Woock.

Staff present: City Administrator Bob Larson, Community Development Director Katrina Knutson, Chief Kelly Busey, Public Works Director Jeff Langhelm, Senior Planner Carl DeSimas, City Clerk Molly Towslee, Assistant City Clerk Josh Stecker, and City Attorney Daniel Kenny.

Guests: Tribal Councilwoman Anna Bean, Tribal Land Use Planner and Asst. Tribal Historic Preservation Officer Jennifer Keating, Assistant Director Historic Preservation Department Brandon Reynon, Tribal Language Department Director Amber Hayward, and Parks Commissioner & Ad Hoc Committee Member Louise Tieman (joined later)

PLEDGE OF ALLEGIANCE:

CHANGES TO THE AGENDA: None

CONSENT AGENDA:

1. Approval of City Council Minutes: a) Special Meeting of January 29; and b) Regular Meeting of February 8, 2021
2. Receive and File: a) Planning/Building Committee Minutes Jan. 4, 2021; b) Boards and Candidate Review Committee Minutes Jan. 19, 2021; c) Council Study Session Minutes Jan. 14, 2021; d) Parks Commission Minutes Jan. 6, 2021; e) Council Retreat Jan. 27, 2021
3. Harborview Drive/Stinson Avenue Intersection Improvements – Professional Services Contract Amendment No. 4 / Transportation Solutions, Inc.
4. Municipal Cleaning Unit - Purchase Authorization
5. Approval of Vouchers for Feb. 22, 2021: Checks #94722 through #94834 and ACH payments in the amount of $701,364.71

MOTION: Move to approve the Consent Agenda as presented
Woock / Markley – unanimously approved 7-0

PRESENTATION: Recognition of Ancestral Homelands – Puyallup Tribal Council & Ad Hoc Committee. Mayor Kuhn acknowledged Tribal Councilwoman Anna Bean and thanked her for joining the meeting. He also thanked the others who worked to bring forward this presentation.

Councilwoman Bean thanked the Mayor and Council for this presentation. She acknowledged the collaborative efforts to honor the past, present and future generations of the Puyallup Tribe of Indians. She shared historical information and said we are now in a time of revitalization. The renaming of the estuary honors their people and a history that is both tragic and beautiful.

Mayor Kuhn explained that it is our goal to provide recognition and education of the sx̌ʷəbabš Band of the Puyallup Tribe, and to name an area for the location of their village. He

acknowledged members of the Ad Hoc Committee: Councilmembers Denson, Abersold and Himes, Louise Tieman, Linda Pitcher, Charlee Glock-Jackson, Jeff Langhelm, and many tribal members that have been introduced.

Louise Tieman, Amber Hayward, and Jennifer Keating shared a slide show that touched on the themes of reconnecting, honoring, recognition, education, inclusion, celebration, and restoration of the Puyallup Tribe's history in Gig Harbor. The presentation finalized with an overview of the recommendations from the Ad Hoc committee.

MAYOR'S REPORT:

Mayor Kuhn reported that Puget Sound Regional Council has removed Gig Harbor from a Puget Sound Passenger Ferry route.

CITY ADMINISTRATOR'S REPORT:

City Administrator Bob Larson acknowledged the exceptional service from our public works crew, support of the police officers and other staff during the recent Valentine's Weekend snowstorm.

STAFF REPORTS:

Chief Kelly Busey provided an update on the vaccination effort. The case rate continues to decline, and the next two Saturday's will be for administration of the second dose.

Public Works Director Jeff Langhelm announced the resignation of Associate Engineer Josh Gilchrist, who is returning to his former employer. His projects will be transferred to the on-call engineering consultant and the position will be back-filled as quickly as possible.

Community Development Director Katrina Knutson shared that we were able to secure a short course on local planning for the 5th of March. The Planning Commission, Design Review Board and Council are invited. The public will be welcome to attend as well.

PUBLIC COMMENT ON NON-AGENDA ITEMS: None

OLD BUSINESS:

1. Second Reading of Three Ordinances Regarding Mobility Devices: Ordinance 1453 Amends GHMC Chapter 8.30; Ordinance 1454 Amends Chapter 9.24; and Ordinance 1455 Repeals Chapter 10.24. Police Chief Kelly Busey presented a brief overview and addressed changes made from the first reading. He responded to questions.

Ben Coronado asked if these rules affect the Cushman Trail. Chief Busey responded that these mobility devices are prohibited on Cushman Trail partially due to restrictions placed on trails that used federal funding.

Councilmembers began deliberation on potential conflicts with the Cushman Trail connections to public sidewalks and speed limitations.

MOTION: Move to adopt Ordinances 1453, 1454 and 1455.
Woock / Rodenbach –

AMENDMENT: Move to amend 8.30.050(B) by lowering the speed limit from ten to five miles per hour.
Franich / no second to amendment.

MOTION: Move to adopt Ordinances 1453, 1454 and 1455.
Woock / Rodenbach – motion passed 7-0

NEW BUSINESS:

1. Resolution 1199 – Renaming Austin Estuary Park and Designating the tx^{w}aalqəł Estuary Area in Honor of the sx̌^{w}əbabš Band of the Puyallup Tribe. Mayor Kuhn said this has been quite a bit of work for almost a year and explained the efforts to obtain the overwhelming support that this has received.

City Administrator Bob Larson read several written public comments.

Karen Burns wrote in favor of the Recognition of Ancestral Homelands brought forward by the Puyallup Tribal Council & Ad Hoc Committee. She said making the ancestral homelands visible in Gig Harbor will help us teach the history of our area and will validate and honor the tribal descendants living here today.

Lori Bonvicini wrote to encourage support to rename Austin Park and the Estuary in North Gig Harbor in honor of our first inhabitants, members of the Puyallup Tribe. She looks forward to positive action on this and learning much more including the pronunciations.

Charlee Glock-Jackson, Gig Harbor Arts Commission Chair shared the Arts Commission support for recognizing the ancestral homelands of the sx^{w}əbabč band of the Puyallup Tribe and Gig Harbor's rich Native American history by: 1. Naming of Twalwacut Estuary; 2. Changing the name of "Austin Estuary Park" to "Austin Park;" and 3. Recognition of Ancestral Homelands of Sx^{w}əbabč Peoples.

Kevin and Kathy Cummings shared their support for the efforts to honor the ancestral inhabitants of our lands and waters in the naming of the Twa-al-cuth Estuary and the initiative to recognize the "Ancestral Homelands of the sx^{w}əbabč".

The Mayor opened public comments from the attendees.

Mark Hoppen provided a history of the property ownership of Austin Estuary Park. He said that renaming the estuary is appropriate and confirms the treaty rights in that area. He explained that this area used to be a summer camp for the children of the Puyallup tribe. He also shared that whole area is covered in six foot of sawdust and requires aeration to prevent odors.

Ben Coronado – 7305 46th Ave. NW. Mr. Coronado said it was a great experience to be part of this process and recognized the hard work of Louise Tieman. He thanked everyone for hearing his concerns and for investing the time on this effort.

Jason LaFontaine, Program Manager for Peninsula School District Native American Education Program, provided an overview of his work to share the history and culture of the Native People with his students. He said that this is a powerful way for Gig Harbor to acknowledge and honor the First People of the Area. He spoke about the efforts to name the new elementary school.

Stephanie Lile, Director of the Harbor History Museum thanked everyone and voiced the museum's support and delight in working on this project. There a lot of great things coming up, and she requested that the museum be allowed to be more involved.

Jennifer Keating said she never thought this level of collaboration would be possible in her lifetime. She thanked everyone for these discussions and efforts to honor the tribal history. This is an opportunity to bring everyone together at an actual site, speak to tribal members still here, and to learn tribal history.

MOTION: Move to approve Resolution 1199
Denson / Himes – motion passed 6-1. Councilmember Rodenberg voted nay.

2. Resolution 1200 - Authorizing the Submittal of a Conservation Futures Grant Application to Pierce County. Public Works Director Jeff Langhelm provided the background for a potential acquisition of property through a Pierce County Conservation Futures Grants and partnership with the Puyallup Tribe. The resolution authorizes the Mayor to work with Forterra and the Puyallup Tribe to submit a grant application.

Councilmember Denson also spoke, adding that this is an amazing opportunity and outstanding deal. She shared her optimism for a successful grant and thanked everyone for their support.

The Mayor added that the city also owns property adjacent to this parcel that could be preserved.

Mark Hoppen provided additional background information for conservation efforts for this area and encouraged Council to purchase not only this parcel but the entire corridor up to Highway 16 as it is critical to the preservation of Gig Harbor. He also encouraged council to do an area-wide zoning change to R-5 in this corridor.

Marian Berejikian, Friends of Pierce County, concurred with Mr. Hoppen's comments and voiced support of this proposal and to purchase even more parcels in this location.

Councilmembers shared comments, asked questions, and deliberated the proposal.

MOTION: Move to approve Resolution 1200 authorizing the submittal of a Conservation futures Grant Application to Pierce County.
Denson / Abersold –

The Mayor and Councilmembers continued deliberation on an amendment offered by Councilmember Himes.

AMENDMENT: Move to amend the resolution's eighth WHEREAS clause to read: "… The acquired parcel would be included in the City's parks open space inventory and maintained in its natural state as a conservation, historical, and cultural preserve with low impact trail access; and"
Himes / Franich – passed 7-0

MAIN MOTION: Move to approve Resolution 1200 as amended authorizing the submittal of a Conservation futures Grant Application to Pierce County.
Denson / Abersold – passed 7-0

At 7:30 p.m. the Mayor called a break. The meeting resumed at 7:38 p.m.

3. Public Hearing - Comprehensive Plan Docket. Senior Planner Carl DeSimas explained the process for handling comprehensive plan amendments and provided information for five proposed amendments. After he introduced each of the amendments, he and Community Development Director Katrina Knutson addressed council questions and comments.

1. PL-COMP-18-0001: Culture and Arts Element – Mr. DeSimas read the names of those who submitted written comment in support of this amendment. These comments have all be provided to Council: Charli Meacham, Marian Berejikian, Anne Smart, Patricia Frisino, Pam Jenkins, Marla Morgan, Serap Frank, Hannah Jay, Wendy Givan-Hess, Barbara Turecky, Lance & Gregori Trathen, Marta O'Neill, Ann Knapp, Scott Markowitz, Mark Hoppen, Terry McClelland, Ernie Donehower & Family, Lori Bonvicini, Robin Avni, Nora Eckstein, Charlee Glock-Jackson, and Lynn Stevenson.

2. PL-COMP-21-0001: Land Use Element Update Presentation combined with amendment below
3. PL-COMP-21-0002: Shoreline Master Program Periodic Update

4. PL-COMP-21-0003: Shoreline Master Program – Public Arts Exemption

5. PL-COMP-21-0004: House Element Update. For the record Councilmember Franich voiced his concern of the Washington State Department of Ecology overreach.

The Mayor opened the public hearing on each of these five amendments at 8:10 p.m. City Administrator Bob Larson read comments submitted for reading into the record first.

1. PL-COMP-18-0001: Culture and Arts Element:
Ann Smart, Executive Director for Arts & Humanities Bainbridge – Ms. Smart spoke strongly in support of inclusion of a Cultural Element as part of the comprehensive plan and believe it represents a significant statement of support from the city.

Ann Knapp, President Gig Harbor Arts Center Alliance, Board Member of Peninsula Art League, and member of the Ad Hoc Committee who wrote this Arts + Culture Element. Ms. Knapp shared support to move the Arts+Culture Element forward. She said this would allow the us to be ready to take advantage of available programs, grants, and opportunities.

Charlee Glock-Jackson, Chair Gig Harbor Arts Commission, provided the background for the crafting of the Arts + Culture element for inclusion in the city's comprehensive Plan. She shared the results of a survey that was used to gauge community support of arts and culture. These results, along with research of other jurisdictions' plans and guidance from former Senior Planner Lindsey Sehmel and GHAC Vice Chair Robin Avni resulted in a proposed amendment that was submitted in 2018. She urged Council to move this amendment forward.

There were no more written comments to read and the Mayor opened the public comment period on

this comp plan amendment for those in attendance who wished to speak.

Josie Turner – 9516 Randall Drive. Ms. Turner spoke on behalf of herself and her husband in support of inclusion of the Arts and Culture Element in the comprehensive plan. She stressed the importance of recognizing these elements, as it spurns economic development and educational opportunities for young people. This confirms the community's commitment of its arts and culture.

Pat Lantz said this meeting has been an uplifting engagement in quality of life issues. She said that the recognition of the richness and inclusiveness of our cultural heritage, historic preservation, the preservation of a unique natural resource, and a prosperous economic future all falls within the rubrics of arts and culture. She asked that this move this forward and thanked Councilmember Woock for finding a creative way to fund this effort.

The Mayor asked if there was any public comment on this or the remainder of the proposed amendments. There were no written nor verbal comments on the remainder of the proposed amendments. The public hearing closed at 8:29 p.m.

Councilmember began deliberation. Councilmember Woock recommended using a consultant to work on the Culture and Arts Element amendment.

MOTION: Move to include PL-COM-18-0001: Culture and Arts Element and to move it forward into the docket.
Woock / Rodenberg –

After councilmembers shared concern with spending money and staff time on adding this element to the comp plan, Councilmember Woock agreed to amend the motion as follows.

MOTION: Move to include PL-COM-18-0001: Culture and Arts Element and to move it forward into the docket and to allocate no more than $15,000 for a consultant to perform the work on the project.
Woock / Rodenberg – four voted yes. Councilmembers Franich Markley and Abersold voted no. Motion passed 4-3.

MOTION: Move to initiate PL-COMP-21-0001 – Land Use Element Update.
Franich / Markley – motion passed 7-0.

MOTION: Move to initiate PL-COMP-21-0002 – Shoreline Master Program Periodic Update.
Franich / Woock – motion passed 6-1. Councilmember Rodenberg voting no.

Councilmember Rodenberg shared comments prior to the vote.

MOTION: Move to initiate PL-COMP-21-0003 – Shoreline Master Program – Public Arts Exemption.
Franich / Woock – motion passed 6-1. Councilmember Rodenberg voting no.

Councilmember Himes shared comments and asked questions prior to the vote on this element.

MOTION: Move to initiate PL-COMP-21-0004 – Housing Element Update.
Franich / Woock – motion passed 7-0.

4. First Reading of Ordinance – WANRack Franchise Agreement. Public Works Director Jeff Langhelm provided the background for this agreement to install fiber optic network connection between schools in city right of way. He stressed that this not a 5G installation. He answered questions. There were no public comments on this item and so this will return for a second reading at the next meeting.

COUNCIL REPORTS / COMMENTS:

Mayor Kuhn announced that an invitation went out to the ribbon cutting for the playground at Veteran's Memorial Park tomorrow afternoon.

1. Public Works Committee - February 9. Councilmember Franich reported that they discussed the WANRack Franchise agreement, the scope of work for the pavement maintenance program and commercial development access and parking stall widths. Councilmember Rodenberg asked about the discussion on fixing the ruts in the turn last on Olympic to Point Fosdick. Public Works Director Langhelm explained that due to the traffic sensors in the pavement this would be a challenging repair.

2. Boards and Commission Candidate Review - February 16. Councilmember Woock said they appointed Councilmember Abersold as Chair for 2021. He reported that the committee reviewed the interview questions asked of applicants.

Councilmember Woock requested to have a report on the follow-up on the employee survey at the next meeting.

Councilmember Franich commented that art and culture is subjective and voiced concern for what direction recommendations for culture might take.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning & Building Committee – Monday, March 1
2. City Council Study Session – Thursday, March 4

ADJOURN

MOTION: Move to adjourn at 9:27 p.m.
Himes / Franich – unanimously approved

_____
Mayor Kit Kuhn

_____
Molly Towslee, City Clerk

HARBOR HISTORY MUSEUM

Visitor Attendance Report 2020 (Qtr 1-4 FINAL)

From: HARBOR HISTORY MUSEUM (12/31/20)

To: CITY OF GIG HARBOR

CATEGORIES	QUARTER 1	QUARTER 2	QUARTER 3	QUARTER 4	TOTAL 2020
TOTAL VISITORS	2368	0 – COVID CLOSURES	412 COVID IMPACT	351 COVID IMPACT	3131
ADULT RESIDENT	196	0	68	73	323
SR/MILITARY RESIDENT	27	0	11	8	43
CHILD/YOUTH RESIDENT	108	0	15	31	153
ADULT VISITOR	587	0	100	136	818
SR/MILITARY VISITOR	78	0	24	7	107
CHILD/YOUTH VISITOR	112	0	28	26	166
HHM MEMBERS/ RENTALS/NonD	1260	0	166	70	1486
ZIP CODE REPORT					
# OUT OF STATE	240	0	37	36	316
# OUT OF COUNTRY	2	0	0	0	2
# WA State	866 (380 local)	0	260 (151 local)	267 (158 local)	1377
# WA out of area	486	0	93	113	692

Total 2020 Admission Count: 3131 (excluding web and Zoom users)

Grant Amount $30,000 (COVID IMPACT – We saw attendance drop by 9800 people from 2019)

GIG HARBOR
"THE MARITIME CITY"

Minutes Planning Commission
Gig Harbor Civic Center
Thursday, January 21st, 2021
5:00 P.M.

5:00 p.m. - Call to order, roll call Chair Greg Hoeksema, Shannon Grina, Robert Soltess, Amanda Bennett, Tom Brown and John Krawczyk
Staff Carl de Simas, Senior Planner & Michelle Thomas, Planning Technician

Approval of Minutes: December 17, 2020 Meeting Motion Krawczyk/Bennett all in favor approved as written

Agenda Items

I. Pierce County Comprehensive Plan Amendments (in Gig Harbor area)-Carl de Simas (Staff Presentation & Commission Feedback)
- County Agenda Packet 01.13.2021
- County Agenda 01.20.2021
- Comprehensive Plan Amendment Packet
- Staff Report Gig Harbor UGA Update

Other Business
Kingston Gardens and impact on the City
New Planning Commissioner Selection will be confirmed by Council February 8, 2021
Next meeting February 4th, 2021

Adjournment Motion Krawczyk/Bennett all in favor meeting adjourned at 6:45 PM

Business of the City Council
City of Gig Harbor, WA

Subject: FEMA Programmatic Review and Shoreline Master Program Update - Professional Services Contract– Grette Associates, LLC

Proposed Council Action: Authorize the Mayor to execute Professional Services Contract between the City of Gig Harbor and Grette Associates, LLC in an amount not to exceed $20,000

Dept. Origin: **Community Development**

Prepared by: Katrina Knutson, AICP KNK
Community Development Director

For Agenda of: March 8, 2021

Exhibit: Contract with exhibits

	Initial & Date
Concurred by Mayor:	KK by LT
Approved by City Administrator:	02/26/2021
Approved as to form by City Atty:	Email 2/26/21
Approved by Finance Director:	Email 2/26/21
Approved by Department Head:	KNK 2/26/21

Expenditure Required	$20,000	**Amount Budgeted**	$20,000	**Appropriation Required**	NA

INFORMATION/BACKGROUND

The Planning Division of the Community Development Department seeks professional services assistance from Grette and Associates in updating the City's Shoreline Master Program with programmatic and FEMA related updates.

Under FEMA required regulations, almost all projects within the Special Flood Hazard Area or within a 200-foot wide buffer of the shoreline must complete a habitat assessment to show that the project will not affect or will not likely adversely affect endangered species (GHMC 18.10.100). Currently, the review is conducted on a project-by-project basis, with each project paying an average of between $2,000 and $5,000 in consultant fees to prepare the assessment.

After concurrence with FEMA personnel, the City began working with Grette Associates, LLC in conducting a programmatic habitat assessment. Such programmatic assessment will identify a range of development activities that are subject to the requirements and that through the use of "program," a standardized range of project thresholds, best management practices and mitigation measures, can meet the "No Effect" or "May effect, but not likely to adversely affect" determination of the Environmental Species Act. Substantial progress has been made on this work in 2019 and 2020.

Once the programmatic assessment is accepted by FEMA, the City will amend the Flood Hazard Code in order to offer the programmatic review path to applicants that agree to the approach. This

approach will significantly decrease the time and cost associated with a full review per the city's standard approach.

Additionally, the City's Shoreline Master Program is required by the Washington State Department of Ecology to be updated for consistency with amendments to the State's Shoreline Management Act (SMA) from 2010-2020 (PL-COMP-21-0003). These updates are minor in nature. To achieve economies of scale, Grette will also review and update the SMP consistent with PL-COMP-21-0003, regarding art in the shoreline.

Attached to this Council Bill is a contract with Grette Associates LLC to provide these services. Grette Associates LLC is an established company with a local office (Tacoma) that has provided thorough and timely review of critical area reports for projects submitted to the City since 2007. They are well versed in the City's codes and work well with the planning staff.

FISCAL CONSIDERATION

The City's 2021 Budget includes funds for this work through the following:
Planning Objective #5 - $10,000
Planning Objective #8 - $10,000

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to execute Consultant Services Contract between the City of Gig Harbor and Grette Associates in an amount not to exceed $20,000.

CONSULTANT SERVICES CONTRACT BETWEEN THE CITY OF GIG HARBOR AND GRETTE ASSOCIATES

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Grette Associates LLC, a limited liability company organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, as required by FEMA, projects within the City's FEMA-designated Special Flood Hazard Area shall be compliant with the Endangered Species Act (ESA), as required under GHMC 18.10.100; and

WHEREAS, the process chosen by the City to ensure ESA compliance within the FEMA-designated Special Flood Hazard Area and the riparian buffer is the "project by project" approach. This approach entails each applicant preparing a habitat assessment to analyze the potential impacts of their project and describing any potential effects on ESA-listed species, regardless of the project scope or existing conditions within the site; and

WHEREAS, since 2015, the City has been working with the Consultant and FEMA to develop a programmatic approach to review of projects proposed under the City's Flood Hazard Construction Standards (Gig Harbor Municipal Code [GHMC] Chapter 18.10). The intent of this work was to streamline the habitat assessment review process, providing applicant's whose projects involve minimal disruption to the shoreline and/or riparian buffer a less costly and time-consuming review; and

WHEREAS, with the adoption of the new Stormwater Manual at the end of 2016 and the full implementation of the updated Shoreline Master Program, the City has the opportunity to consider additional options for compliance with FEMA standards that may provide permitting relief to all applicants within the Special Flood Hazard Area; and

WHEREAS, the City has initiated several amendments to its Shoreline Master Program that require review; and

WHEREAS, the City is required to update its Shoreline Master Program to be consistent with regulation changes to the Washington State Shoreline Management Act; and

WHEREAS, the City desires to continue previous work and continue to have the Consultant prepare a habitat assessment approach for review of development projects within the Special Flood Hazard Area and consult with FEMA and State agencies and have the Consultant review, analyze and prepare draft language for consideration in the SMP amendments; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein;

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty Thousand dollars ($20,000) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A** and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff positions not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** once the City has transmitted a copy of the signed Agreement to the Consultant. This Agreement shall expire on or before December 31, 2021, provided however, that the contract may be extended by agreement of both parties.

5. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. **Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the

Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

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

8. <u>Insurance</u>.

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a $1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than $1,000,000 per occurrence with a $2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than $1,000,000 per occurrence. All policies and coverages shall be by an 'A' rated company licensed to conduct business in the State of Washington. If such coverage is written on a claims made form, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City of Gig Harbor.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies upon request.

E. Under this Agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

9. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

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

11. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

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

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

14. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Planning Director and the City shall determine the term or provision's true intent or meaning. The City Planning Director shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

15. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
Grette Associates LLC
2102 North 30th Street
Suite A
Tacoma, WA 98403

City of Gig Harbor
ATTN: Community Development Director
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City.

17. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 8th day of March 2021.

CONSULTANT

By:_____
Its:_____

CITY OF GIG HARBOR

By:_____
Mayor Kit Kuhn

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

SCOPE OF WORK

This cost proposal is for providing assistance to the City of Gig Harbor to continue coordination with FEMA to update the City's flood ordinance code and to complete their Shoreline Master Program (SMP) periodic update process.

Coordination with FEMA includes completion of FEMA's review of the City's Flood Hazard Construction Standards (Gig Harbor Municipal Code [GHMC] Chapter 18.10) and Critical Areas Ordinance (GHMC Chapter 18.08) to be in compliance with FEMA's "Door 2b" approach. Grette Associates will also review the current status of the City's SMP update to ensure compliance with Ecology's checklist of required update issues.

Grette Associates will also assist the City in preparing an SMP amendment for Planning Commission and City Council consideration that would provide a process for the installation of public art with the shoreline zone.

Task 100: Complete FEMA Coordination

Grette Associates will review the status of coordination between the City and FEMA to determine the next steps to resolving outstanding issues with FEMA's review of the flood ordinance update language. Staff will discuss the status with City staff, and if necessary, contact FEMA staff to review the City's proposed ordinance update revisions. Grette staff will then make any required revisions to the ordinance language and submit to the City for review.

Task 100 Estimated Cost $5,440.00

Task 200: Shoreline Master Program Update Support

This Task includes time to review the City's current proposed SMP update against Ecology's periodic update checklist to determine if the City's proposed update will meet Ecology's requirements. If there are areas where the City's proposed update is deficient, Grette staff will provide recommended revisions or additional text to bring the proposed update into compliance with Ecology's requirements.

Grette Associates will be provided with the City's most recent update revisions.

Task 200 Estimated Cost $2,962.00

Task 300: Public Art Installation SMP Amendment

Grette Associates will assist the City in preparing an amendment to the SMP to provide a process for the installation of public art within the shoreline zone. Grette staff will research other local cities SMPs to find examples of where public art installations are allowed or permitted uses within the shoreline zone. Grette staff will then provide recommended amendment language for City review.

Task 300 Estimated Cost $3,538.00

Task 400: SMP Update Coordination and Support

Grette Associates will support the City during Planning Commission and City Council review and consideration of the FEMA code updates and compliance, the SMP update, and the public art SMP amendment. This includes time for preparation and attendance at one (1) Planning Commission meeting and one (1) City Council meeting.

Task 400 Estimated Cost $3,484.00

Estimated Contract Amount $15,424.00

EXHIBIT B

GRETTE ASSOCIATES
BILLING RATES
2021

Title	Rate
Principal	235.00
Biologist 5	177.00
Biologist 4	154.00
Biologist 3	138.00
Environmental Planner 3	138.00
Biologist 2	125.00
Biologist 1	111.00
Administrative Assistant	82.00
Expenses	
Subconsultants	3% MU
Expenses (excluding mileage & boat)	8% MU
Mileage	0.60
Copy Charge (per page)	0.10

Other Expense Rates Available Upon Request

GRETTE ASSOCIATES STAFF CLASSIFICATIONS

Matthew Boyle	Principal
Glenn Grette	Principal
Larry Lehman	Biologist 5
Scott Maharry	Biologist 5
Ryan Walker	Biologist 5
Jay Dirkse	Biologist 5
Syd Gebers	Biologist 4
Anne Hessburg	Environmental Planner 3
Chad Wallin	Biologist 3
Sasha Ertl	Biologist 3
Eron Drew	Biologist 2
Janae Dinkins	Biologist 1
Holly Lehmen	Biologist 1
Megan Sauer	Administrator

GIG HARBOR
"THE MARITIME CITY"

Business of the City Council
City of Gig Harbor, WA

Subject: Resolution – Surplus Equipment

Proposed Council Action:

Adopt Resolution No.1202
Surplusing the city-owned equipment.

Dept. Origin: Information Services

Prepared by: Heidi Othman

For Agenda of: **March 8, 2021**

Exhibits: **Resolution 1202**

Initial & Date

Concurred by Mayor: KK by MT
Approved by City Administrator: PL 02/26/2021
Approved as to form by City Atty:
Approved by Finance Director:
Approved by Department Head: K.S. 2/26/21 H.O.

Expenditure Required	$0	Amount Budgeted	$0	Appropriation Required	$0

INFORMATION / BACKGROUND

The city has a surplus of antiquated equipment which needs to be properly disposed. This surplus occurred due to the replacement of outdated equipment.

FISCAL CONSIDERATION

The surplus equipment will be sold to either a recycling center or charity organization to be refurbished and reused.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No.1202 surplusing this city-owned equipment.

RESOLUTION NO. 1202

A RESOLUTION OF THE CITY OF GIG HARBOR DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE FOR SALE.

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

EQUIPMENT	Quantity	SERIAL #	Asset #.
PC			
Optiplex 7050	1	99xpxm2	02502
Optiplex 9020	1	61kvz72	02350
Optiplex 7040	1	7mxghk2	02464
Optiplex 7040	1	27y1cz1	02146
Optiplex 7010	1	Hzgrcz1	02135
Optiplex 7010	1	351mp22	02273
Optiplex 9020	1	23tw482	02366
Optiplex 390	1	Bjtsm51	01962
Optiplex 380	1	Jc4btr1	01914
Optiplex 9020	1	257kl02	02211
Optiplex 9020	1	9xwxg02	02176
Optiplex 7050	1	Dl7vhl2	02480
Dell pc	1	Jjqxnn1	n/a
Dell pc	1	Hf8tgt1	n/a
Dell Precision T1650	1	D03tdx1	02093
Dell Optiplex	1	4qy5712	02245
Dell Optiplex	1	9j40x12	02236
Dell Optiplex 7050	1	Dlythl2	02481
Dell Optiplex 9020	1	H8sw12	02234
Dell Latitude 3330	1	DGMSRT1	02125
Dell Latitude 3540	1	10BJK22	02297
Dell Latitude 3540	1	108SH22	02294
Dell Precision T550	1	JJQXNN1	01851
Dell Optiplex 9020	1	CYN3R52	02335
Dell Precision T1650	1	B3KWBX1	02074

	Monitors			
	ViewSonic-vs14415	1	Swr132841449	n/a
	ViewSonic-vs13518	1	n/a	01967
	ViewSonic-va2855smh	1	U2w15450020	n/a
	ViewSonic-va2703	1	Swq121700826	01996
	ViewSonic-va2431vm	1	n/a	02057
	ViewSonic-vx245owm	1		01955
	ViewSonic-va2703	1		02030
	ViewSonic-vs14818	1	T8g1534614291153	n/a
	ASUS	1	B54MTF028891	01912
	ASUS	1	B4lmtf117014	01892
	Dell	1	Cnouh8374822077a06ks	01237
	Dell	1	Cnokm50971618847626l	n/a
	Dell	1	Mx0c9536466347182vol	01443
	Dell	1	Cnosy2327161842aab27	01133
	Dell	1	Cnojmmt26418045v041s	02251
	Dell	1	Okw14v742613bj5m5l	02115
	Dell	1	Mc0c95364663478n1w9l	n/a
			Oc730c7112323v4502	n/a
	Dell	1	JTSMBX1	02144
	ViewSonic-VX2703MH	1	T8G153461153	n/a
	Dell	1	Cnokg49t7426121a33lu	01946
	Dell	1	39vy7r1	n/a
	ASUS	1	H3lmtf039025	n/a
	Dell	1	Cn0j6hft744454cc815l	n/a
	Printers			
	Cannon Plotter	1		01644
	Plotter Scanner	1	-	01646
	Plotter PC	1		01645
	Xerox copier	1		01219
	HP OfficeJet 5610 AiO	1		01544
	Miscellaneous			

PASSED ON THIS 8th day of March, 2020.

APPROVED:

_____
MAYOR KIT KUHN

ATTEST/AUTHENTICATED:

_____
MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 02/26/2021
PASSED BY THE CITY COUNCIL: 03/08/2021
RESOLUTION NO. 1202

HARBOR HISTORY MUSEUM

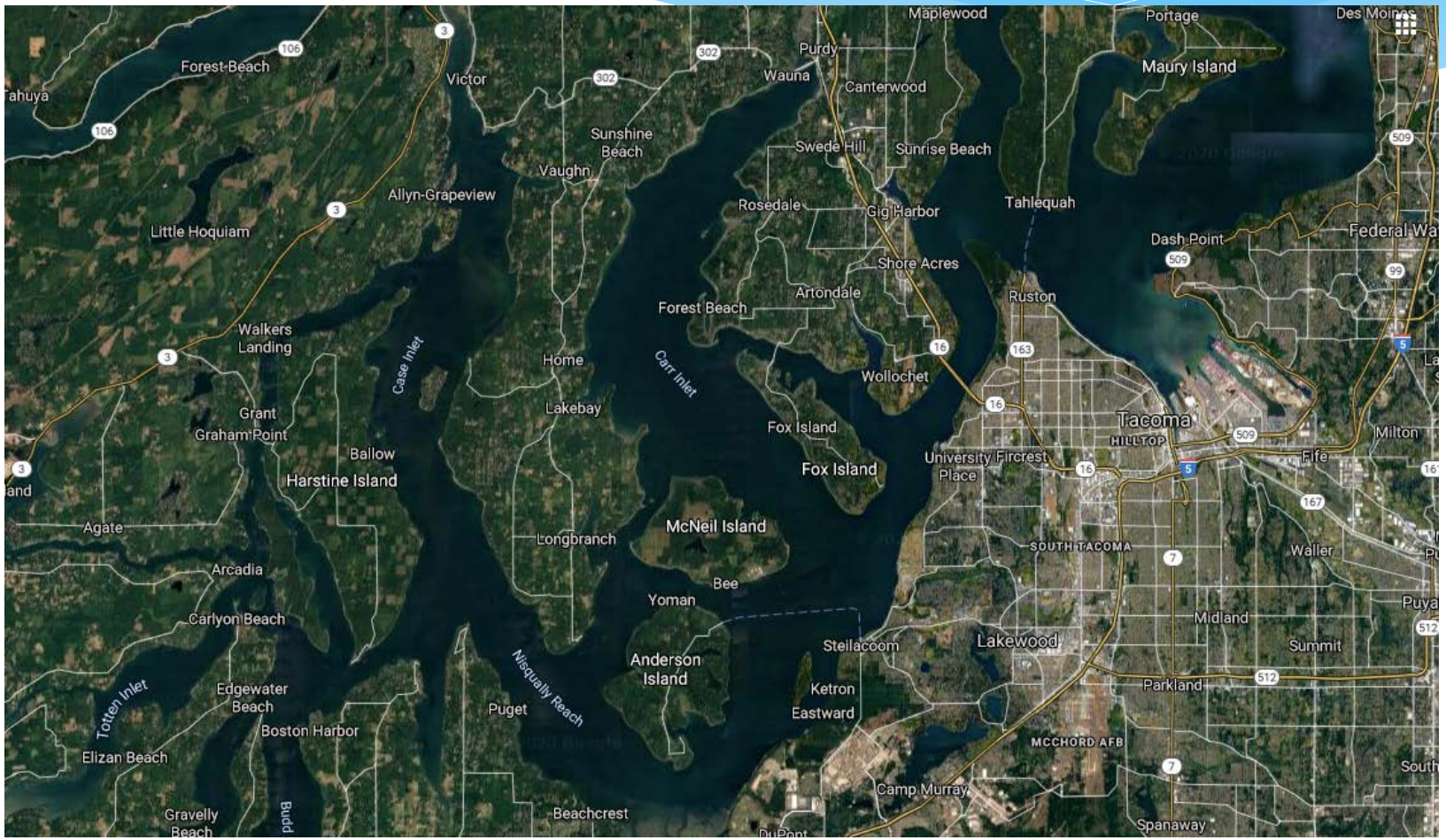
Museum Update

Native Land Acknowledgement

Thank you to the Puyallup Tribe for review and support

* The Gig Harbor Peninsula Historical Society acknowledges that the Harbor History Museum stands on the ancestral lands of the Coast Salish indigenous peoples, specifically the sxʷəbabš band of the Puyallup Tribe. We are honored to be stewards of this ancient place and to share the stories that have defined the txʷaalqəł_site over time.

Our Region


Maplewood
Portage
Des Moines
Forest Beach
Victor
Purdy
Wauna
Canterwood
Maury Island
Sunshine Beach
Vaughn
Swede Hill
Sunrise Beach
Allyn-Grapeview
Rosedale
Gig Harbor
Tahlequah
Little Hoquiam
Dash Point
Shore Acres
Artondale
Ruston
Forest Beach
Walkers Landing
Case Inlet
Home
Carr Inlet
Wollochet
Lakebay
Grant
Graham Point
Fox Island
Tacoma
HILLTOP
Milton
Ballow
Harstine Island
Fox Island
University Fircrest Place
Fife
Agate
McNeil Island
Longbranch
SOUTH TACOMA
Waller
Arcadia
Bee
Yoman
Carlyon Beach
Midland
Lakewood
Summit
Steilacoom
Anderson Island
Nisqually Reach
Ketron
Eastward
Parkland
Totten Inlet
Edgewater Beach
Puget
Boston Harbor
MCCHORD AFB
Elizan Beach
Camp Murray
Gravelly Beach
Beachcrest
Spanaway

Our 2021 Board of Directors

* Dennis Hardman, **President**
* Lee Deide, **Vice President**
* Erica Williams, **Treasurer**
* Steve Aita, **Secretary**
* Jon Kvinsland

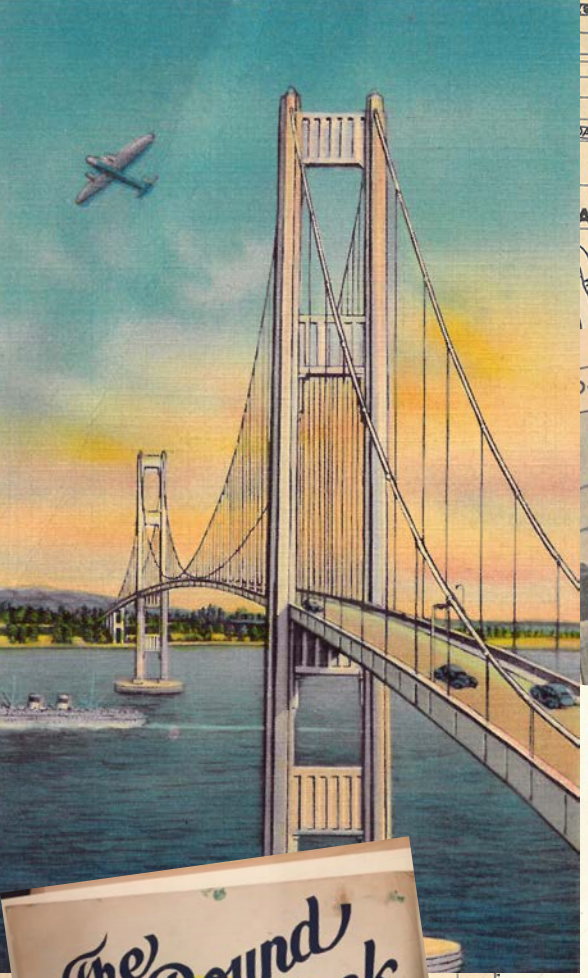
Stephanie Lile
Executive Director

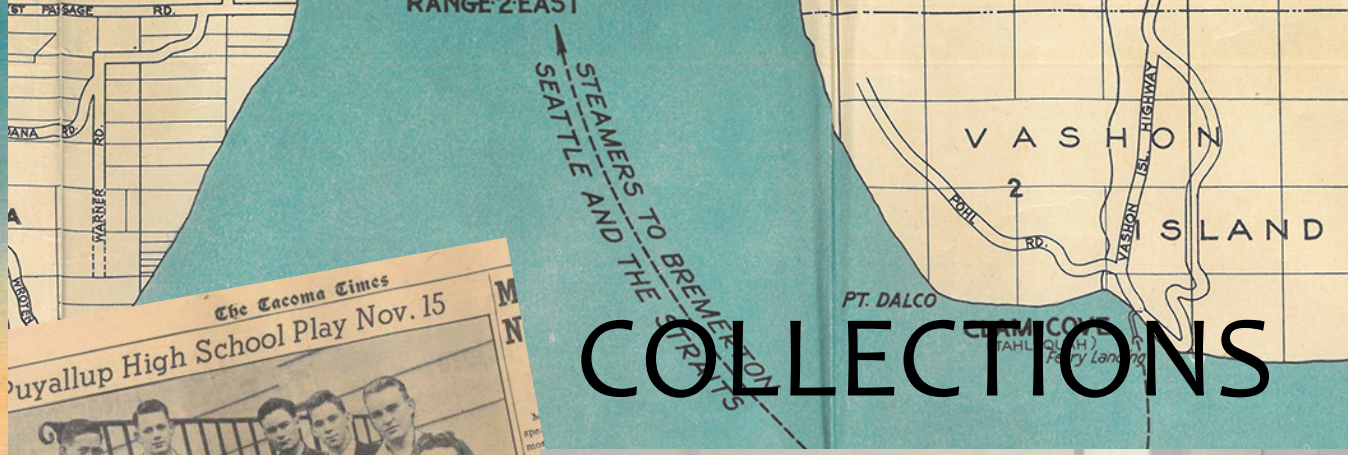
* Paul Conan
* Mark Allen
* Chris Unger
* Doug Page

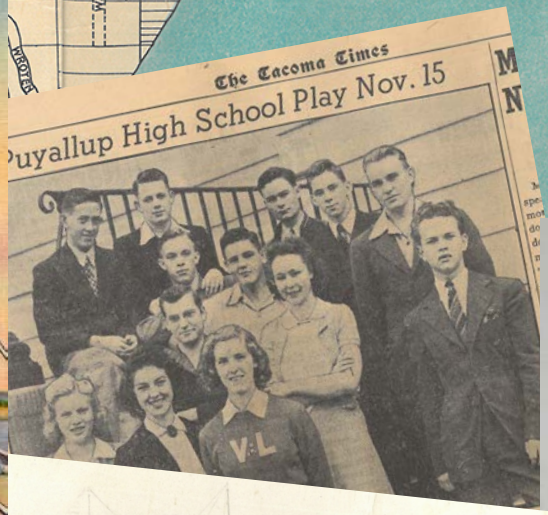
HARBOR HISTORY MUSEUM

1964 to 2021 and Beyond

COLLECTIONS

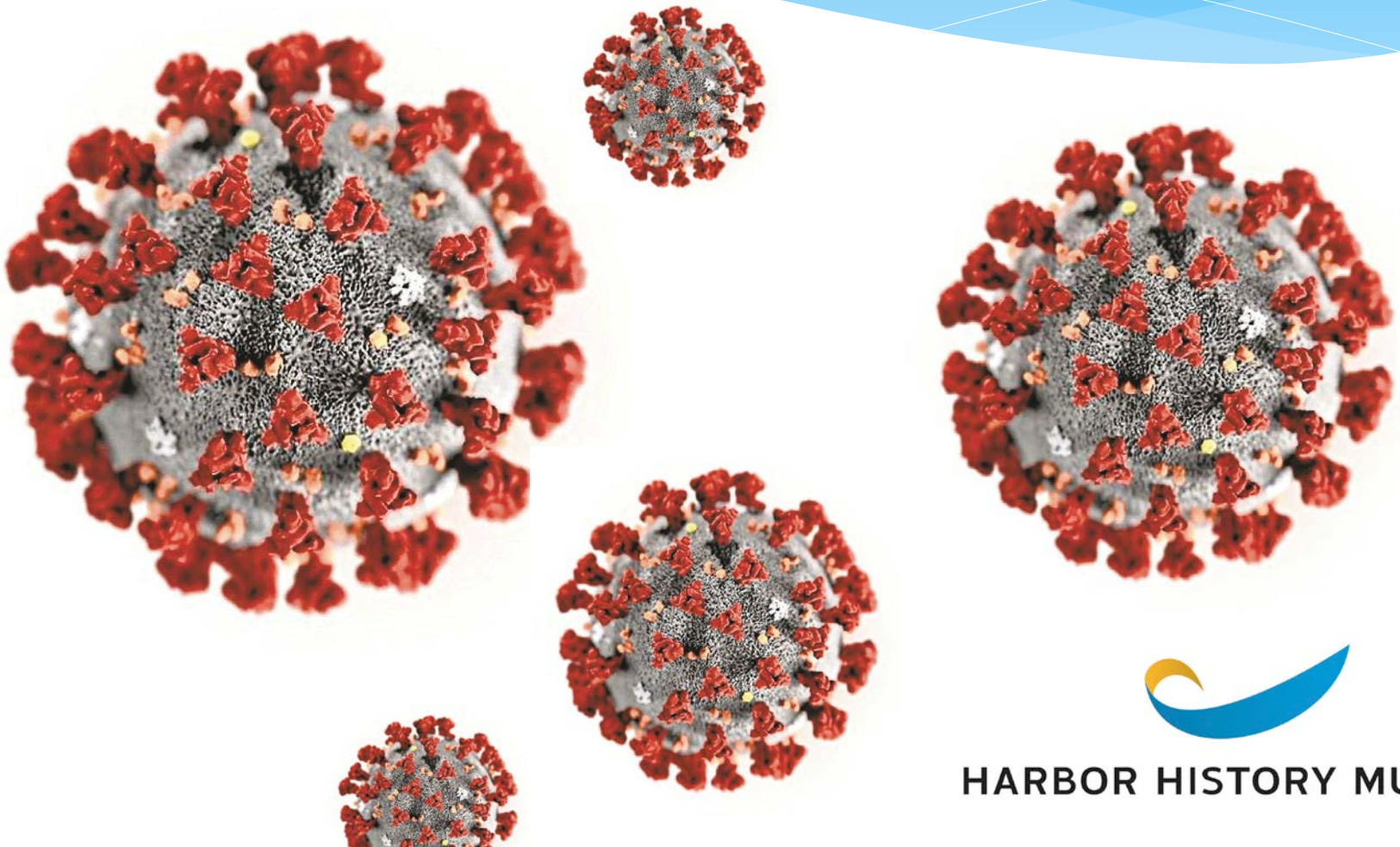






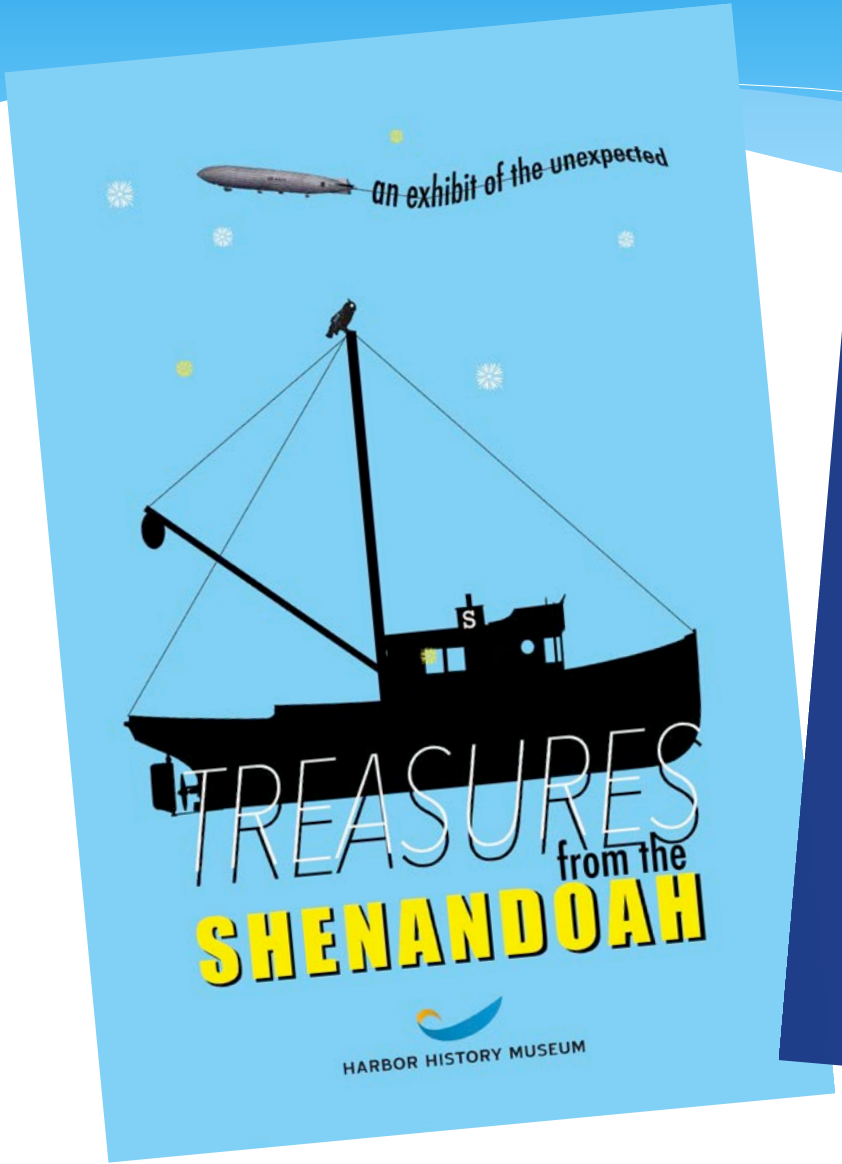
PERMANENT GALLERIES

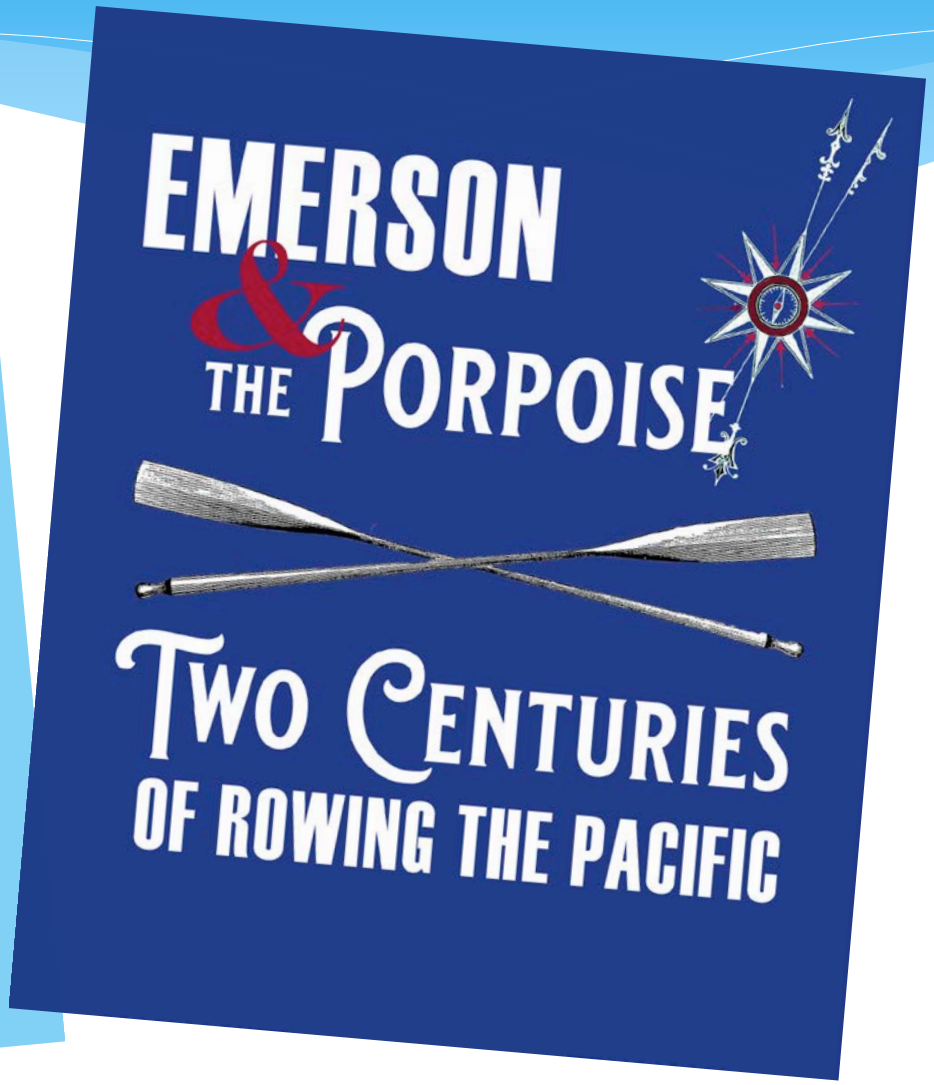
COVID-19 HIGHLIGHTS



HARBOR HISTORY MUSEUM

2021 Highlights ~ Exhibits





2021 Highlights ~ TravelingX

Bomber Boys on view at

Northwest Museum of

Art & Culture

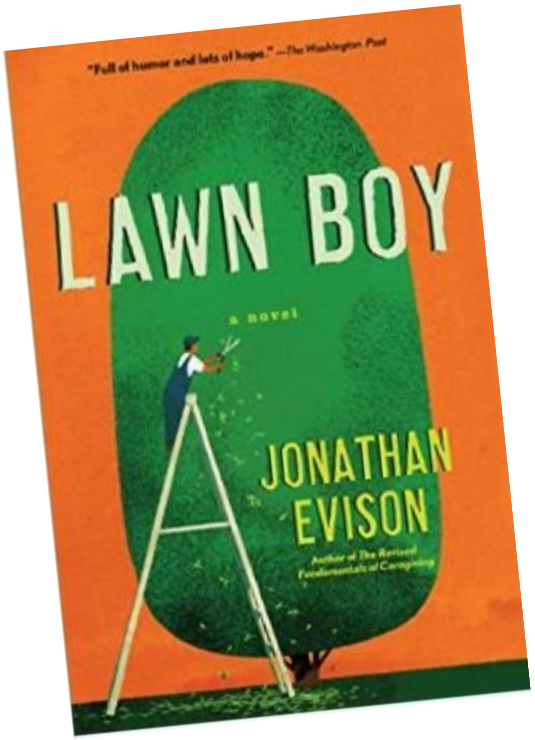
Spokane, WA

Thru May 2021

2021 Highlights ~ Hidden History

2021 Highlights ~ Hybrid Fund Raising

2021 Highlights ~ Virtual Programs



* **Literary Society ~**
Coordinated by
Cindy Hackett and
Karen Brooks!

* **Humanities in the Harbor**
Featuring fun guests like
Jacob Hendrickson

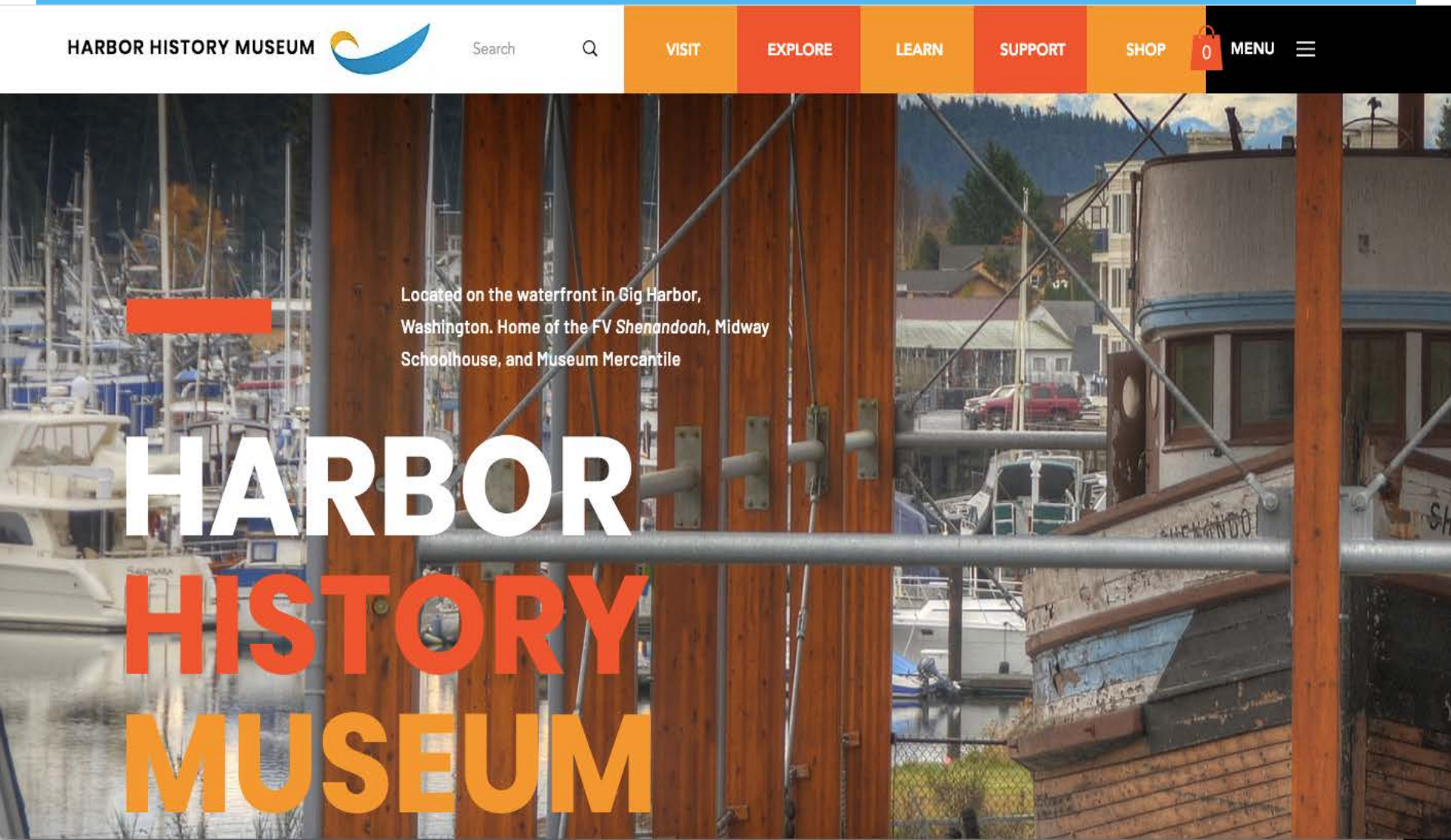
2021 Highlights ~ Collections

Collections Corner Videos

* Fishing Boots
* Starvation Heights
* 1930s Dollhouse
* Round Rocks

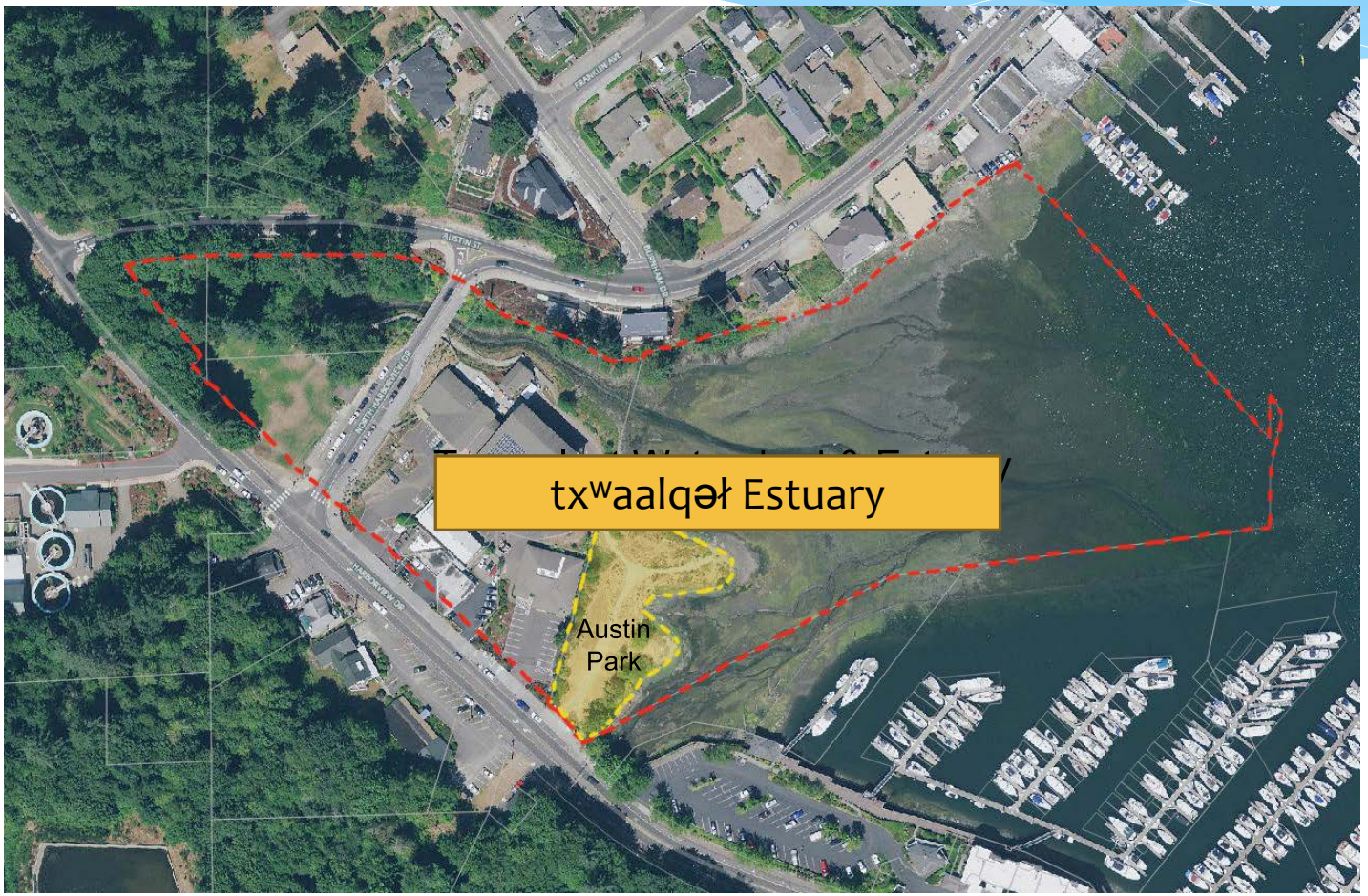
HARBOR HISTORY MUSEUM

2021 Highlights ~ New Website



MARITIME WASHINGTON NATIONAL HERITAGE AREA Anchor Organization

tx^{w}aalqəł Estuary



Capital Improvements

HARBOR HISTORY MUSEUM

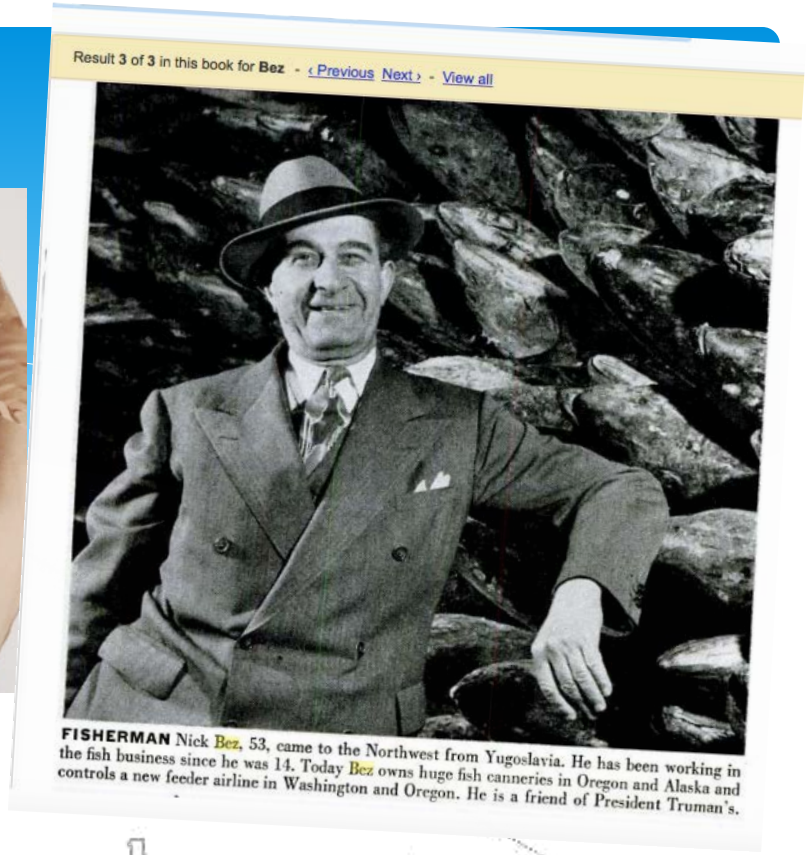
PROJECT 224606

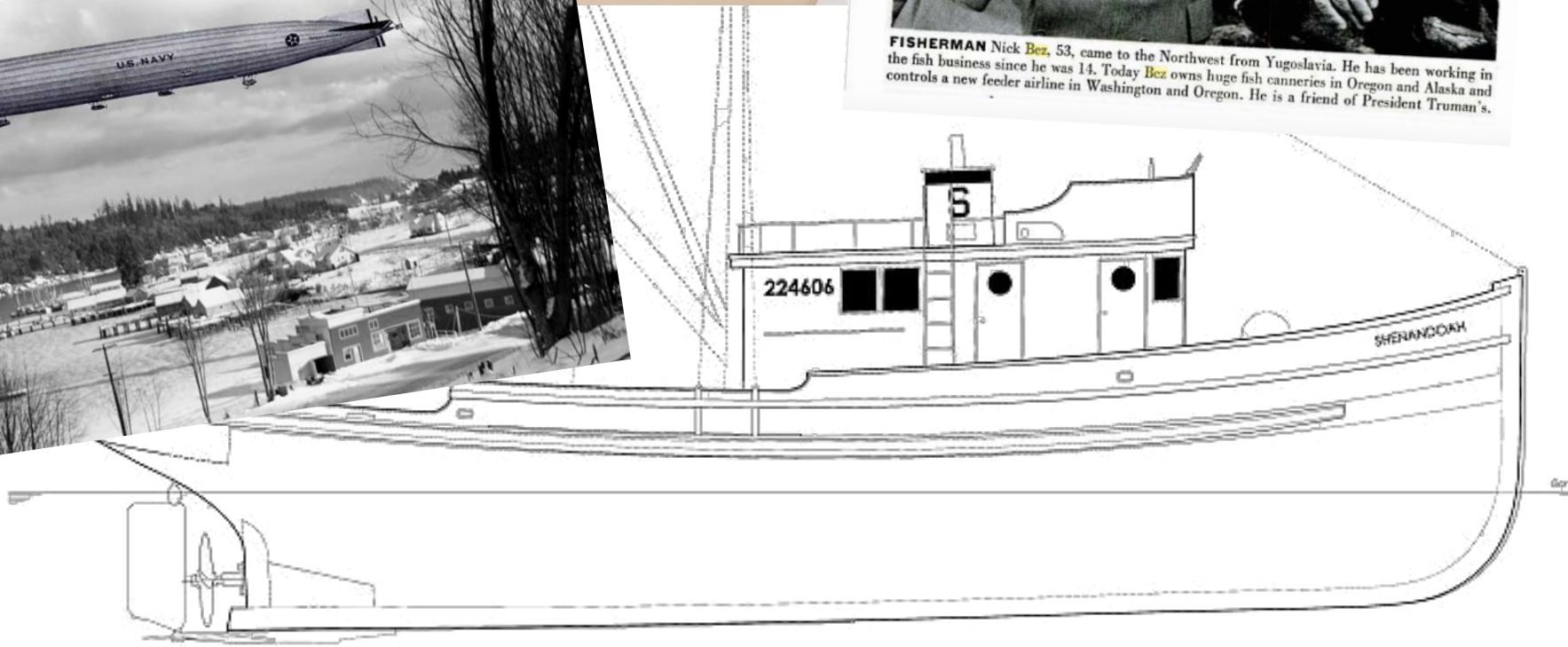
HARBOR HISTORY MUSEUM

Maritime Gallery in 2017

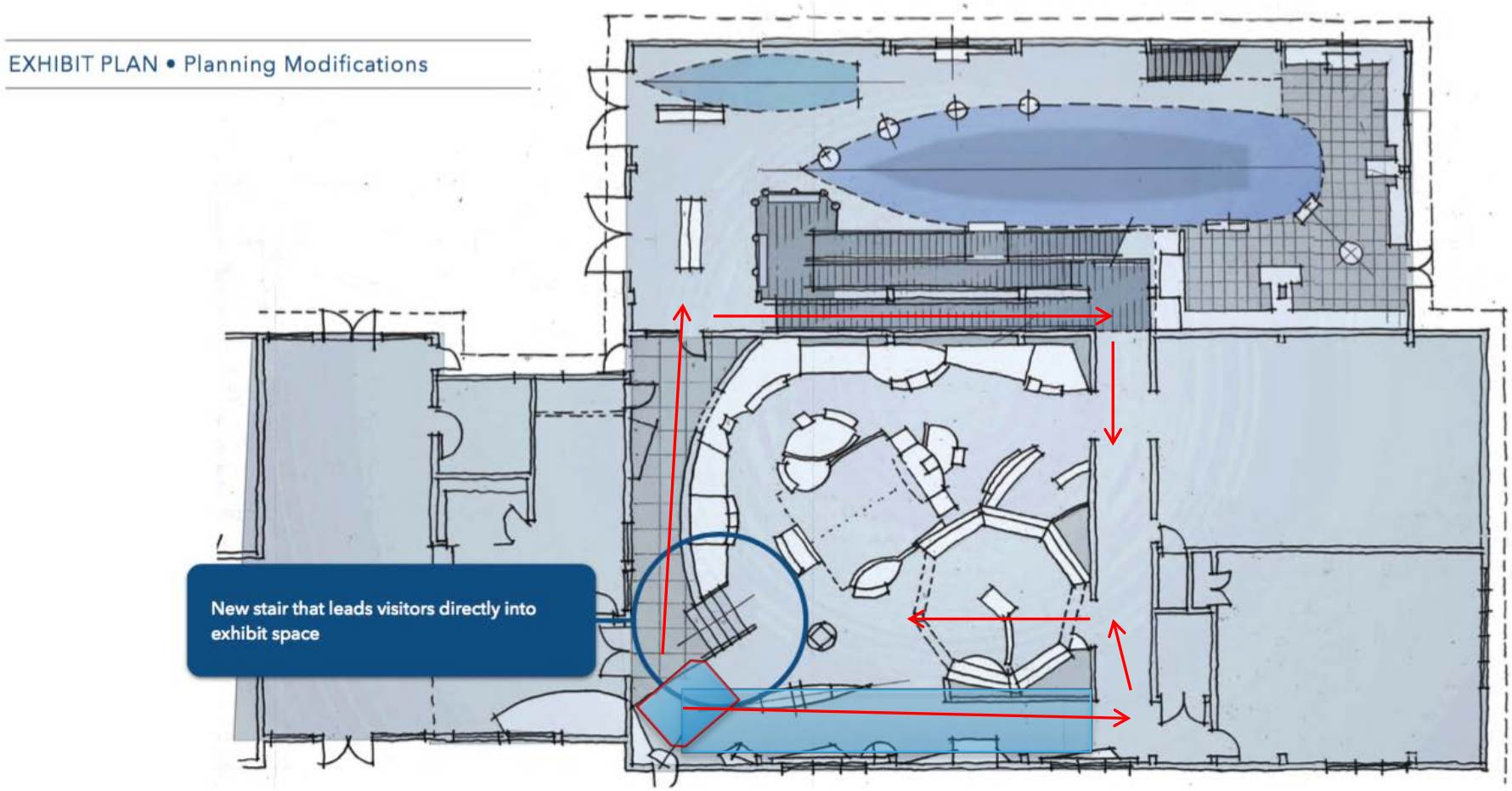
Refined Treatment Plans for Collections

OBJECT RESEARCH





Capital Project Concept Plan



Updating the Native Gallery

* Physical Space Integration
* Content Updates
* Student Participation
* Recognition of Puyallup, Nisqually, and Squaxin Tribes
* “This Place Over Time”

Annie Squally, Basketmaker

Project Accomplishments

YOUR MUSEUM IS MAKING HEADLINE

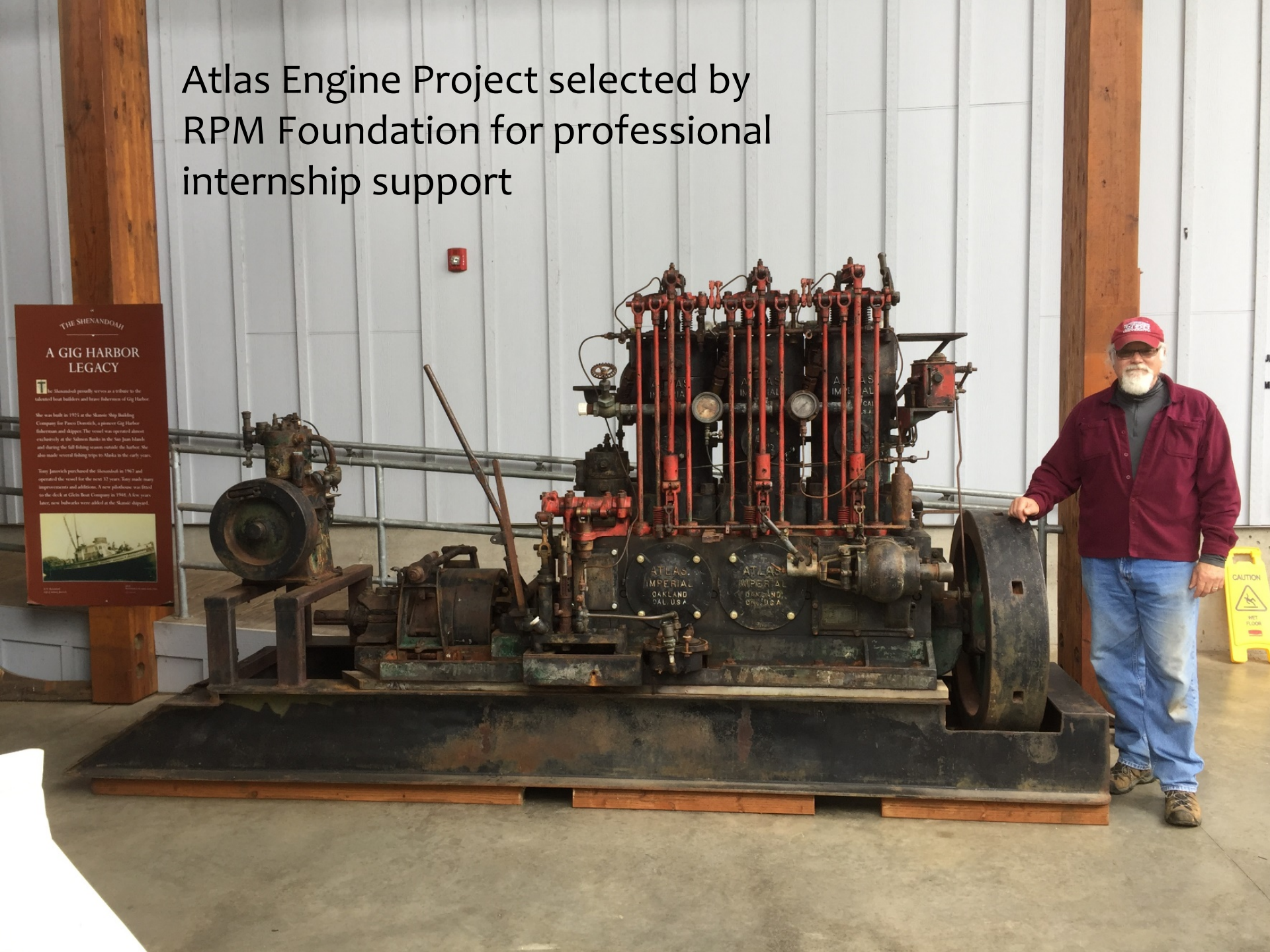
HARBOR HISTORY MUSEUM

Ranked #1 in the Heritage Capital Project Fund Grant Recommendations

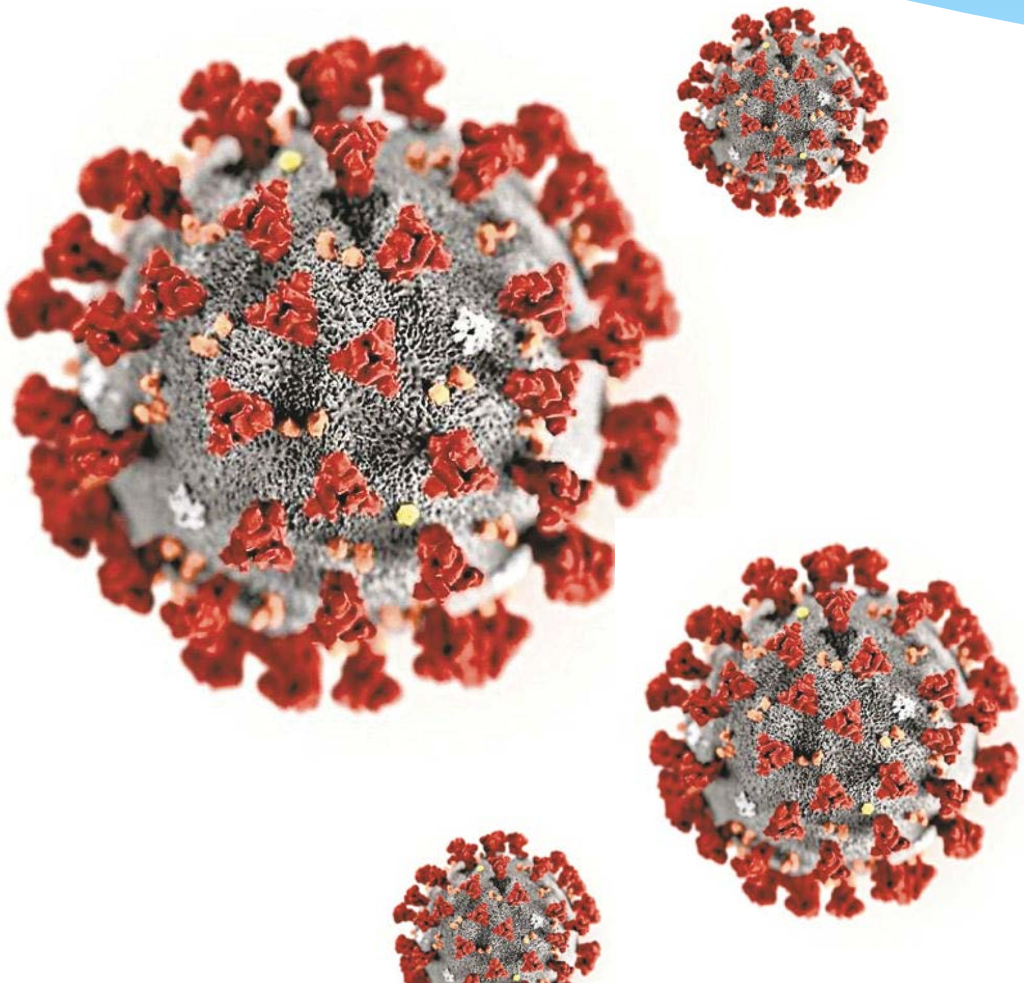
Shenandoah declared an American Treasure by IMLS/NPS Save America's Treasures grant program.

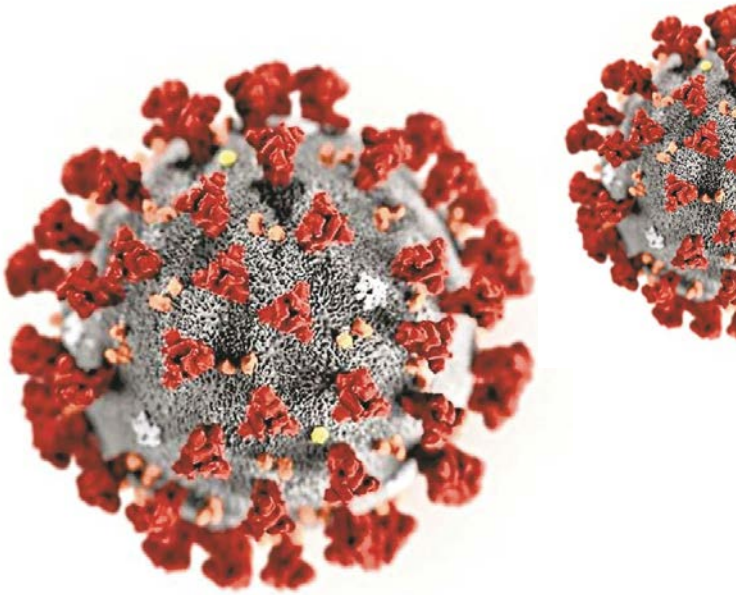
Thunderbird Hull #1 honored with a grant award from the Washington Trust for Historic Preservation for Restoration & Relaunch

Atlas Engine Project selected by RPM Foundation for professional internship support



2020 Visitor Counts & Financials



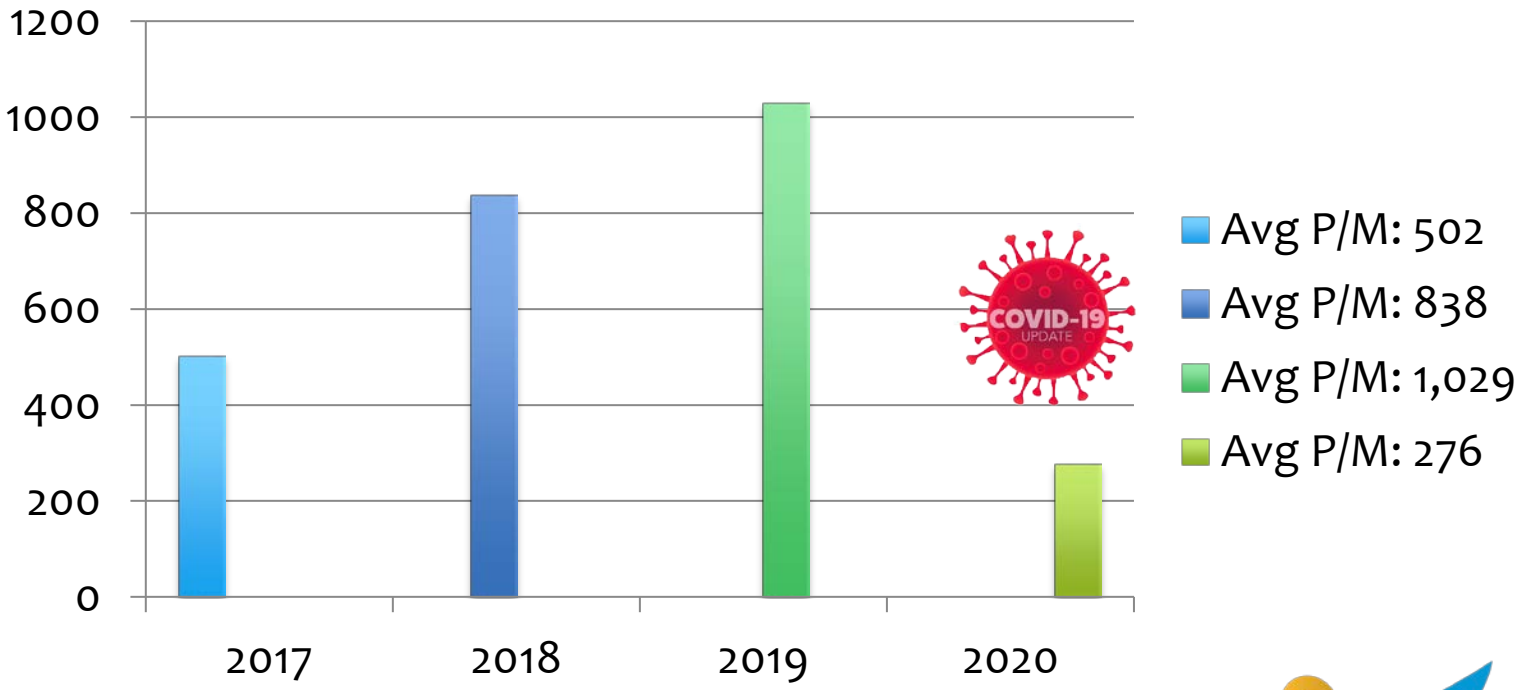


HARBOR HISTORY MUSEUM

Why is all this Important?

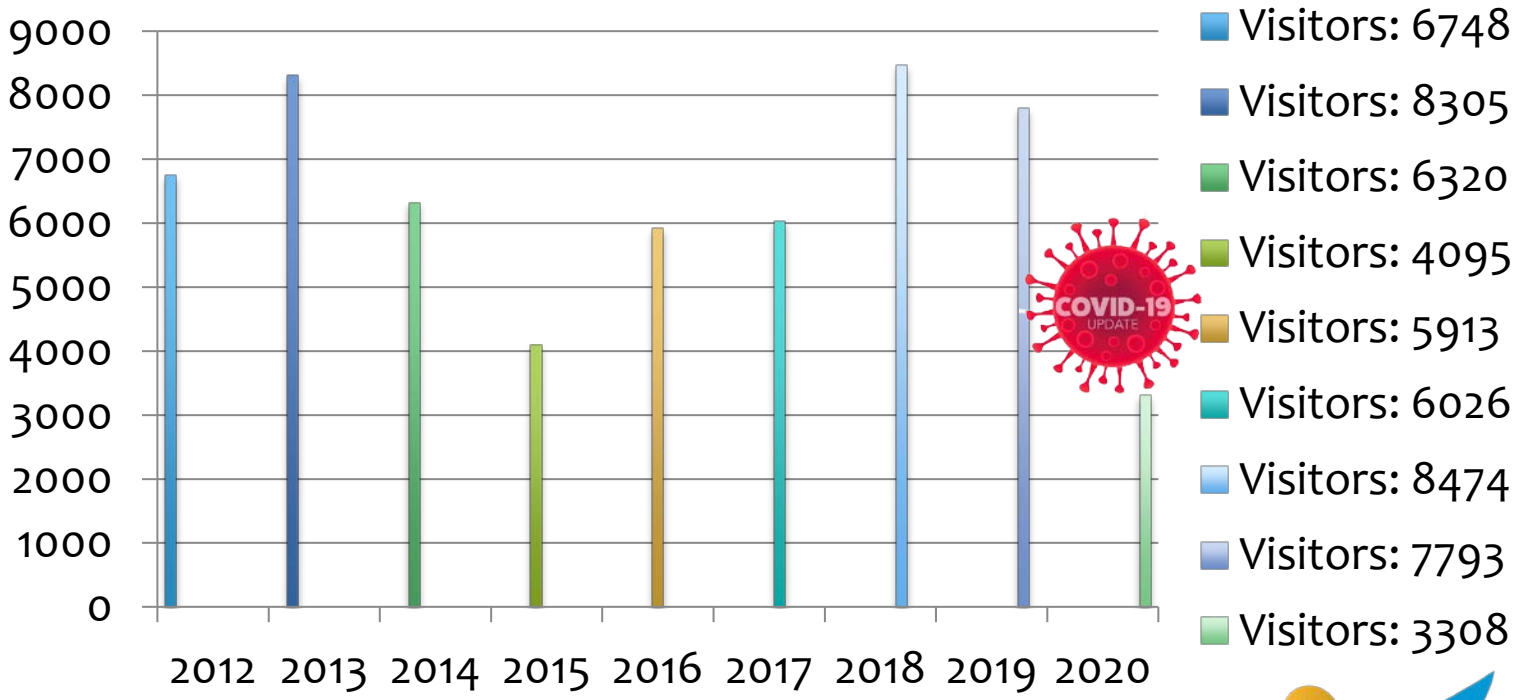
* It's our comprehensive mission to:
  * Ensure the preservation of our Community Memory
  * Provide Life-Long Learning Opportunities for All
  * Be Good Stewards of our Collection and Campus
  * Be a Resource for Residents
  * Draw Tourism to the Area (Museums average a $32 return to the local economy for every visitor)
  * Provide Jobs in our Community

Visitor Averages Per Month



HARBOR HISTORY MUSEUM

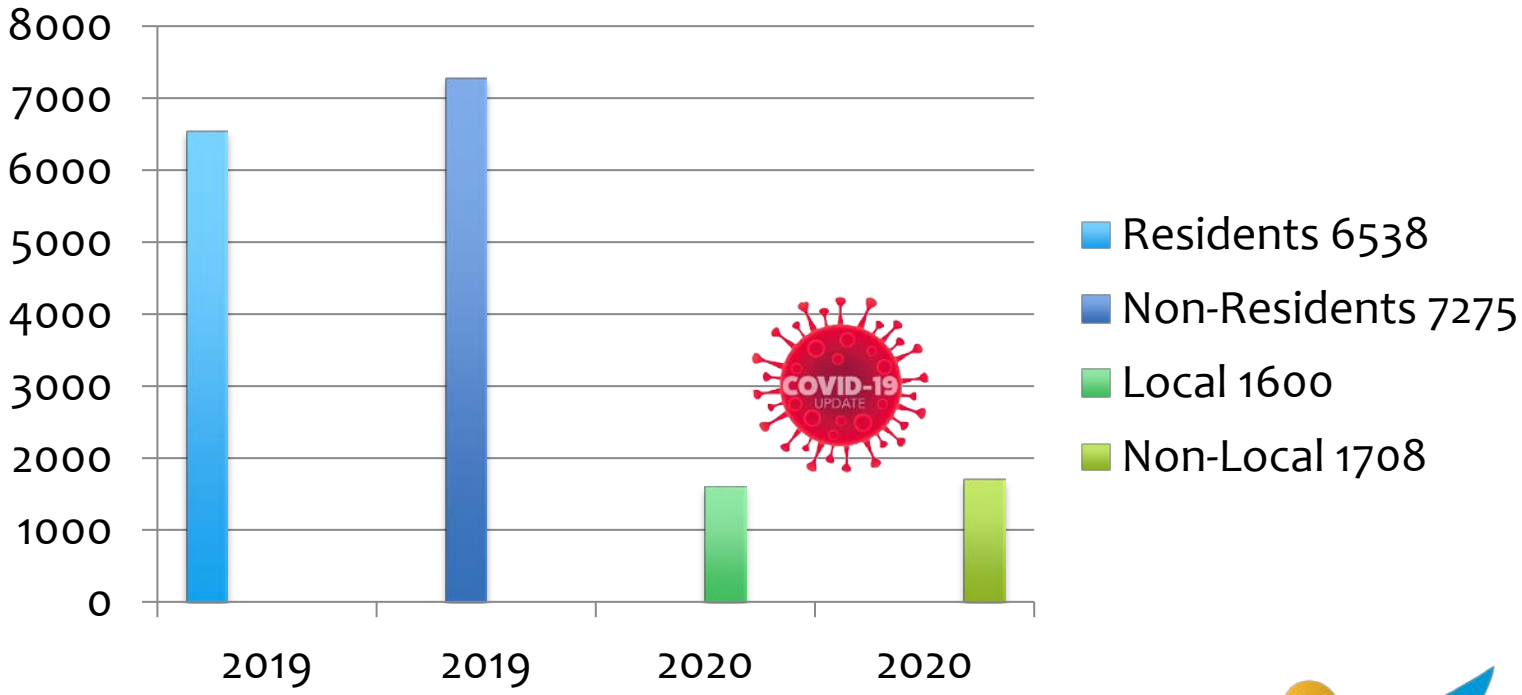
Visitor Averages Per Year



HARBOR HISTORY MUSEUM

Visitor Origins

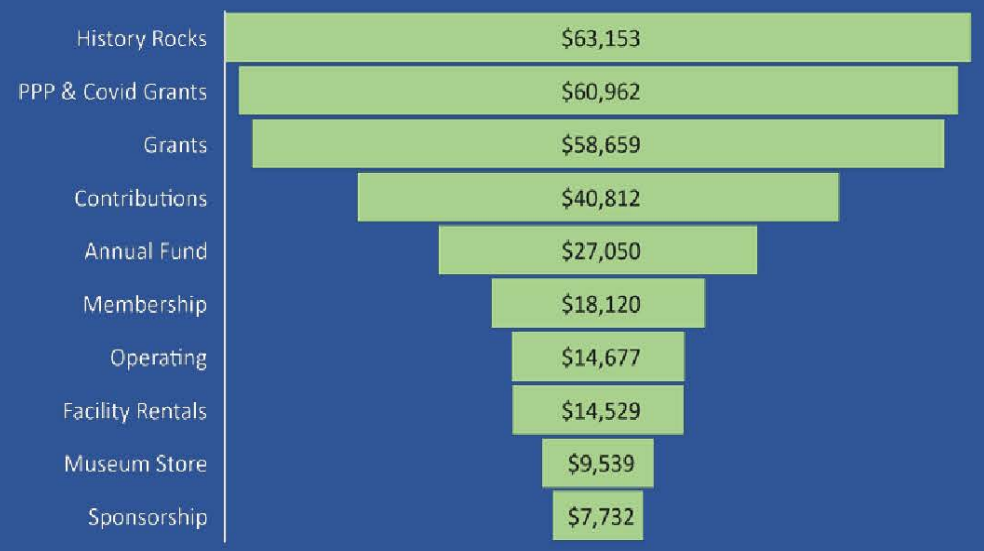
2019: 46 States & 23 Countries
2020: 33 States & 3 Countries



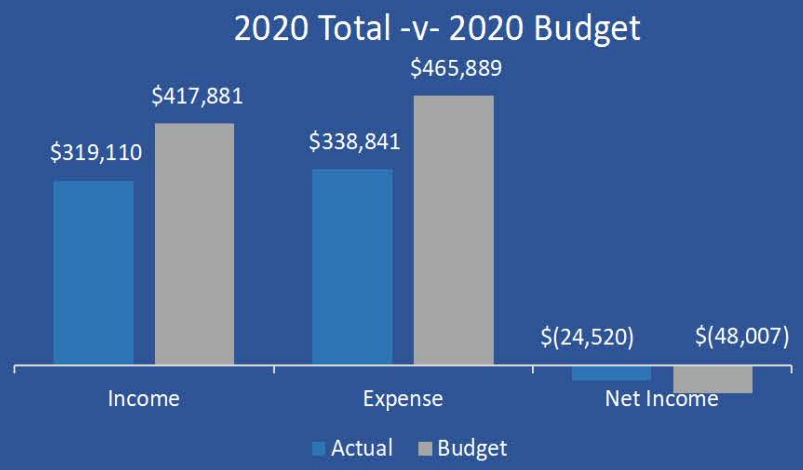
HARBOR HISTORY MUSEUM

2020 Budget

Revenue Sources



Operating - FY 2020



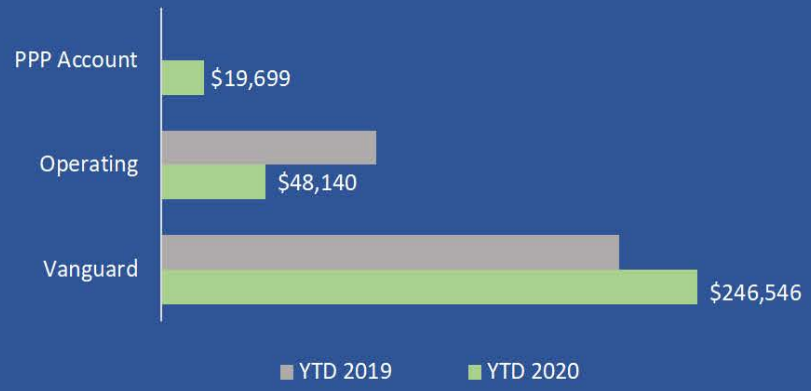
Assets

Cash on Hand

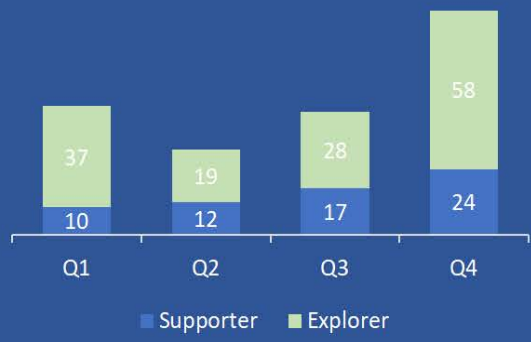
1.3 months

Cash on Hand is a decrease from 1.7 months at the end of Quarter 3.
This is primarily due to smaller History Rocks income.

Cash Assets



Membership



Total - 205

What Can You Do to Help?

* Become a Member!
* Share the news about our future plans
* Encourage people you meet to visit ~ We're now open Thurs, Friday, Sat 11-4pm
* Become a Sponsor
* Leave a Legacy Gift
* Make a Donation to support your favorite program
* Provide In-Kind Support
* Leverage RCW 27.48.010 ~ Preservation of Historical Materials

Join our Capital Project Donors

* Washington State Heritage Capital Project Fund
* James & Carolyn Milgard
* NPS Save America's Treasures Program
* The Alstead Family
* Dr. Jon Kvinsland
* Peninsula Light Company
* Pierce County Historic Preservation Commission
* And some 250 additional supporters

The Campaign is On!

Make your mark on history.

Make your pledge today.

HARBOR HISTORY MUSEUM

PROJECT 224606

We've made it over half way to our $2.5 million goal!

Shenandoah Film Project

THANK YOU!

STEPHANIE LILE ~ DIRECTOR@HARBORHISTORYMUSEUM.ORG

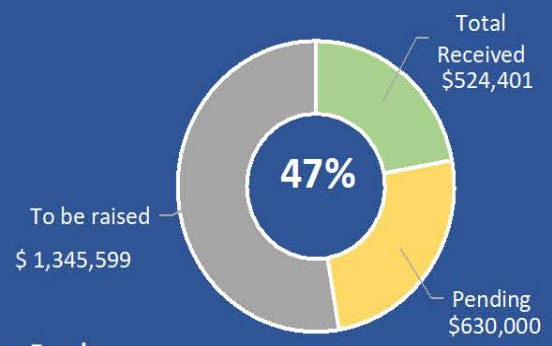
Capital Budget

FY 2020

Capital Financials

Fundraising Progress to Date

Goal: $2.5 Million

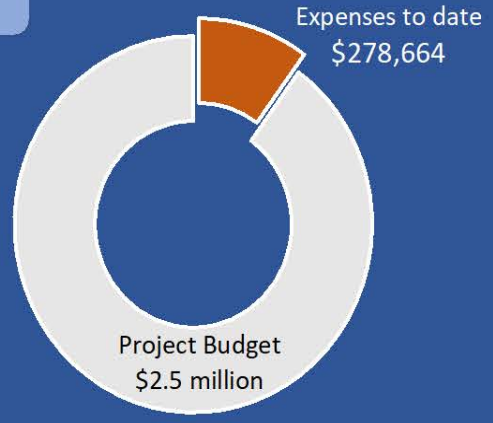


Pending Funds:

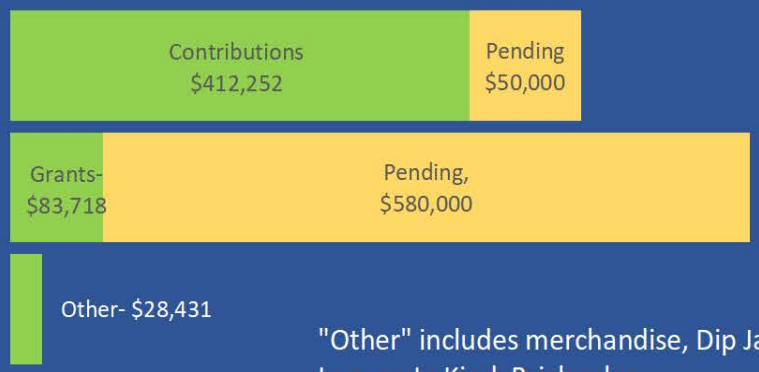
- Awarded $130,460 grant from the NPS Save America's Treasures
- Ranked #1 in 2021-23 for Heritage Capital Project Fund
- Outstanding Pledges $50,000

Capital Revenue Received

Capital Expenses



Revenue Sources to Date



"Other" includes merchandise, Dip Jar, Legacy, In Kind, Brick sales

PENINSULA
SCHOOL DISTRICT

Peninsula Schools Update

Dr. Art Jarvis
Superintendent

City of Gig Harbor
March 8, 2021

Presentation Topics

- Introduction
- Pioneer Elementary School
- Swift Water Elementary School
- Superintendent Search Update

PENINSULA
SCHOOL DISTRICT

Pioneer Elementary School

- Open to students - Jan. 19, 2021
- Ribbon-Cutting & Grand Opening - Feb. 24, 2021

PENINSULA
SCHOOL DISTRICT

PENINSULA
SCHOOL DISTRICT

PENINSULA
SCHOOL DISTRICT

Swift Water Elementary School

- Naming Process
- Construction Updates
- Opening Fall of 2021

PENINSULA
SCHOOL DISTRICT

PENINSULA
SCHOOL DISTRICT

PENINSULA
SCHOOL DISTRICT

Superintendent Search

- Interviews - March 13
- Narrowed List Interviews - March 16-18
- Possible Selection and Announcement - March 25

PENINSULA
SCHOOL DISTRICT

Questions & Answers

Thank you for your support of the Peninsula School District

PENINSULA
SCHOOL DISTRICT

Every so often we experience the loss of some significant members of our community. Though we are not always able to recognize them all I did want to mention the passing tonight of James Tallman.

Jim passed away in the peacefulness of his home on February 20, 2021 at the age of 89. He was born in Deerwood, Minnesota, but moved to Olalla where he was raised from the age of 2.

Jim was so proud of his association with Tom Morris Sr. at Purdy Realty, and their partnership which lasted 50+ years creating Talmo, Inc. which he was CEO until his illness. He actually began his real estate career at age 16 when he purchased his first 20-acre piece of property and had a neighbor co-sign for him to buy a chain saw. He went on to begin his career in logging, and property development, building commercial properties and countless residential home developments. His final project was Moses Pointe Golf Course at Moses Lake.

In his spare time, he enjoyed Restoring classic cars, Bowling, Hunting, Gardening, Playing Blackjack, holding his two dogs Suzy and Gidget, and most of all having a big piece of Prime Rib.

Jim was a very generous man in many ways, including gifting of a 1924 Porter steam engine to the Elbe Mt Rainier Scenic Railroad that still runs from Elbe to Mineral.

Jim and his wife Dian married on New Year's Eve 1970. He always kidded her by saying that he needed a tax deduction. They celebrated their Golden Anniversary this New Year's Eve 2020.

Jim spent 8 years in the National Guard, was a lifetime member of the LeMay Museum and Classic Car Club and a longtime member of the Gig Harbor Eagles.

Prior to being Mayor I knew Jim while having my jewelry store in Gig Harbor and working on various requests he had. I had a lot of respect for him and he was an honest sincere man. He will be missed and added a lot to our community.

In Lieu of any flowers, please consider any contributions to St. Anthony's Hospital, or the Gig Harbor Eagles. If you do want to send flowers either do so to the family or plant a tree in his memory.

Business of the City Council
City of Gig Harbor, WA

Subject: Second Reading of Ordinance Establishing a New Franchise Agreement – WANRack

Proposed Council Action: Adopt Ordinance 1456 establishing a new Franchise Agreement with WANRack LLC.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, PE
Public Works Director

For Agenda of: March 8, 2021

Exhibits: Draft Ordinance

	Initial & Date
Concurred by Mayor:	KK 3-1-21
Approved by City Administrator:	PL 03/01/2021
Approved as to form by City Atty:	VIA EMAIL 2/12/21
Approved by Finance Director:	
Approved by Department Head:	3/1/21

Expenditure Required	See Fiscal Consideration	**Amount Budgeted**	$ 0	**Appropriation Required**	$ 0

INFORMATION/BACKGROUND

The City is authorized through state and federal statues to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems. The City's authority to grant franchises for the use of its streets and other public properties is contained within RCW 35A.47.040 and Chapter 12.18 GHMC. These franchises, including franchises for telecommunications services, allow the City to regulate services within the City boundaries through its authority over its public rights-of-way and by other City powers and authority.

WANRack LLC has requested that the City Council grant it a nonexclusive telecommunications franchise agreement for fiber optic cable or similar facilities. WANRack desires to provide a fiber optic network connection between schools operated by the Peninsula School District within city rights-of-way and therefore the City requires a telecommunications franchise. Additional permits, including encroachment permits, will be required prior to the installation of any telecommunications equipment. City Staff has worked with the City Attorney's office to prepare the attached ordinance and franchise agreement for consideration by the City Council.

The City is required to treat similarly situated entities with competitive equity. As a result, the franchise agreement attached mirrors the MCI Metro agreement considered and approved by City Council in September of 2019. Minor revisions were made to notification requirements when there is a transfer of interest and to indemnification, which were reviewed and approved by RMSA and the City Attorney.

The draft version of this ordinance was presented at the February 22 City Council Meeting where there were no revisions requested.

FISCAL CONSIDERATION

WANRack has reimbursed the City for Attorney's fees for the preparation of the franchise agreement for council consideration. Additionally, WANRack will pay all fees for any necessary encroachment permits.

BOARD OR COMMITTEE RECOMMENDATION

A draft of this franchise agreement was presented to the Public Works Committee at their February 9, 2021 meeting. The Committee supported bringing the franchise agreement forward to the full council.

RECOMMENDATION/MOTION

Adopt Ordinance 1456 establishing a new Franchise Agreement with WANRack LLC.

ORDINANCE NO. 1456

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WANRACK, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF GIG HARBOR, WASHINGTON.

WHEREAS, WANRack, LLC ("Franchisee") has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, NOW, THEREFORE,

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

Section 1 Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), hereby grants to Franchisee, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise ("Franchise").

Section 1.2 This Franchise shall be for five (5) years, beginning on the effective date of this ordinance, set forth in Section 40. This Franchise shall automatically renew for an additional five (5) year period unless either party provides notice within one hundred eighty (180) days prior to the end of the fifth year of its desire to terminate this Franchise.

Section 1.3 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Gig Harbor, as approved pursuant to City permits issued pursuant to this Franchise. Public "Right-of-Way" means land acquired or dedicated to the public or that is hereafter dedicated to the public and maintained under public authority, including, but

not limited to, public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, utility easements and similar public property located within the franchise area but does not include: State highways; land dedicated for road, streets, highways not opened and not improved for motor vehicle use by the public; structures including poles and conduits located within the right-of-way; federally granted trust lands or forest board trust lands; lands owned or managed by the State Parks and Recreation Commission; federally granted railroad rights-of-way acquired under 43 USC § 912 and related provisions of federal law that are not open for vehicular use; or leasehold or City-owned property to which the City holds fee title or other title and which is utilized for park, utility or a governmental or proprietary use (for example, buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned or leased by the City not reserved for transportation purposes). "Facilities" as used in this Franchise means one or more elements of Franchisee's telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that placement by Franchisee of new utility poles is specifically excluded unless otherwise specifically approved by the City. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from "Facilities," to the extent such equipment is located in zoned residential areas of the City. For the purposes of this Franchise the term Facilities excludes "microcell" facilities, "minor facilities," "small wireless facilities," all as defined by RCW 80.36.375, and "macrocell" facilities, including towers and new base stations and other similar facilities (except for fiber optic cables) used for the provision of "personal wireless services" as defined by RCW 80.36.375.

Section 2 Authority Limited to Occupation of Public Rights-of-Way.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby represents that it expects to provide the following services within the City: high speed data and fiber optic services, internet protocol-based services, internet access services, conduit and dark fiber leasing, telephone, data transport and other telecommunications and information services (the "Services"). No right to install any facility, infrastructure, wires, lines, cables, or

other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public or privately owned utility poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, nor to subordinate the primary use of the Right-of-Way as a public thoroughfare. Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or personal wireless services, without obtaining a new franchise or an amendment to this Franchise approved by the City Council.

Section 2.2 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive ownership over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise, provided that leases or other commercial arrangements for the use of the Facilities installed pursuant to this Franchise may extend beyond the term of the Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, unless such rights are otherwise granted by the City.

Section 3 Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise, and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further Franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance,

establishment, improvement, dedication of same as the City may deem fit and consistent with applicable law, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4 Location of Telecommunications Network Facilities.

Section 4.1 Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Public Works Standards and the Gig Harbor Municipal Code and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), for which the City issues permits, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Franchisee specifically agrees that:

(a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5 Relocation of Telecommunications Network Facilities.

Section 5.1 Improvement Projects.

(a) The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, temporarily disconnect, relocate, remove, modify its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or

improvement of the Right-of-Way to accommodate improvement projects for purposes of and for public welfare, health, or safety. These projects may include but are not limited to, improving the Rights-of-Way for traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, regardless of the type of entity (public or private) performing the project. Collectively all such projects described in this Section 5.1(a) shall be considered an "Improvement Project".

(b) Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

(c) The City may require the relocation of Franchisee's Facilities at Franchisee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

(d) Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way any Facilities required to be temporarily disconnected or removed upon approval by the City, which approval shall not unreasonably be withheld or delayed.

Section 5.2 Upon request of the City and in order to facilitate the design of an Improvement Project, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities.

The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.3 If the City determines that the Improvement Project necessitates the relocation of Franchisee's existing Facilities, the following process shall apply:

(a) The City shall consult with the Franchisee in the predesign phase of any Improvement Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Improvement Project, or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City shall provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than ninety (90) days prior to the commencement of the construction of such Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in this Section 5.3, the City shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Improvement Project consistent with the timeline provided by the City, but subject to a Force Majeure event. Such timeline may be extended by a mutual agreement.

(f) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of

Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

Section 5.4 In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5. Further, upon a notification of a delay due to Franchisee, Franchisee agrees to work cooperatively with the City, other franchisees and utilities, and the City's third party contractor to resolve such issues.

Section 5.5 Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in an Improvement Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee's vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Improvement Project.

Section 5.6 Franchisee will indemnify, defend, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.7 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building or large object, Franchisee, upon thirty (30) days' written notice from the City, shall temporarily raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.8 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.4 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4.

Section 5.9 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6 Undergrounding of Facilities.

Section 6.1 Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles. All Facilities shall be installed underground in all areas of the City where all other telecommunications and cable facilities are located underground unless otherwise exempted from this requirement, in writing, by the City. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense; provided that the City requires all other wireline utilities, except electrical utilities, with aerial facilities in the area to convert such facilities to underground installation at the same time. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where all utilities, other than electrical utilities, are currently underground in a manner identified for utilities in the City's public works standards.

Section 6.2 Whenever the City may require the undergrounding of the Franchisee's aerial utilities (other than electrical utilities and personal wireless services facilities) in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis

of the number and size of Franchisee's Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.3 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.3. Franchisee may remove any underground cable and other related facilities from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable, conduit and other related facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 Both the City and Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the other party's placement of utilities or increase such party's actual costs and such access meets industry standards as determined by the City. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs to access the open trench and any costs associated with the delay of the completion of a public works project. The City shall pay to the Franchisee the incremental costs of providing the City such access to the open trench.

Section 6.5 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7 Maps and Records.

Section 7.1 After underground construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or engineer in a form and content acceptable to the Public Works Director or his/her designee. Following any aerial construction, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Geographic Information System (GIS) or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that the Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes, due the City in connection with the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee.

Section 7.3 Books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way and which are reasonably necessary to demonstrate compliance with the terms of this Franchise, shall, after reasonable prior notice from the City, be made available for inspection by the City at reasonable times and intervals but no more than one time each calendar year or upon the City's reasonable belief that there has been a violation of this Franchise by Franchisee; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security

Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit, or in the event the City is permitted to charge franchise fees as further described in Section 15.1, or as otherwise required in this Franchise. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 7.5 On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise and the collection of utility taxes, in accordance with GAAP. If the audit shows that tax payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

Section 8 Work in the Rights-of-Way.

Section 8.1 During any period of relocation, modification, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and

workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Section 8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, modification, or relocation of its cable or equipment, it shall apply to the City for a permit to do so. The City shall only issue permits that are in compliance with Gig Harbor Municipal Code and the City's Public Works Standards, and the City's generally applicable design standards. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise ordinance.

Section 8.3 Except as provided in this Section, Franchisee shall not break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two years after its construction and installation unless otherwise authorized by the City's Public Works Standards. For the period commencing with the third year through the seventh year, if Franchisee proposes to cut, penetrate or compromise the integrity of the surface of any street or sidewalk it shall conduct its operations only in accordance with the encroachment permit and shall provide a city performance bond as required in Section 19.1 below. The City, at its sole discretion, may permit installation of Facilities underneath a street or sidewalk during the initial two years after construction when the Facilities:

(a) Are installed using boring or other construction method which does not penetrate the street surface and when a maintenance and restoration bond is provided to ensure that no surface subsidence occurs; or

(b) Fully replaces the City street or sidewalk in accordance with City standards and provides appropriate bonding consistent with Section 19.1 and Section 19.2 below.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 8.3, the Franchisee shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) Franchisee may deny such request for safety reasons.

Section 8.5 Except for emergency situations, and only following the issuance of a permit, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area prior to any underground construction or disturbance. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least forty-eight (48) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter

onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Upon receipt of a permit (except in emergency situations), Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee's tree trimming activities shall protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming shall be at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City except to the extent it is necessary that Franchisee trims trees or vegetation upon, overhanging, or encroaching on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent such vegetation from coming in contact with Franchisee's Facilities. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way in order to provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 8.9 The provisions of this Section 8 shall survive the expiration or termination of this Franchise ordinance.

Section 9 One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10 Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 Additional standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities. If permitted pursuant to a permit, Franchisee may maintain a bundle of unused cable on an aerial facility to be used as slack for relocation or repairs; provided however, that Franchisee is permitted to use snow shoe style wire storage provided that Franchisee minimizes the usage of the snow shoes only to those situations in which is it is necessary to provide Services.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10.4 Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee consistent with Section 33.

(d) Indicate the nature of the alleged violation or unsafe condition; and

(e) Establish conditions, consistent with the applicable laws, regulations, ordinances or generally applicable standards under which work may be resumed.

Section 11 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12 Restoration after Construction.

Section 12.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way in accordance with the City's public works standards to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with the City's Public Works Standards.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time reasonably directed by the Public Works Director, or his/her designee, in order to maintain the public welfare, health or safety, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 21.2.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13 Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health or safety of any person, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Gig Harbor City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by negligence, intentional misconduct or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the negligence, intentional misconduct or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation or excavation of Facilities conducted by Franchisee as authorized by this Franchise has caused or materially contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14 Recovery of Costs.

Section 14.1 Franchisee shall pay a one-time fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise, not to exceed $5,000.00. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of this fee; further, this Franchise shall be considered void if the fee is not paid within ninety (90)

days of receipt of the invoice. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 In addition to Section 14, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Consistent with state law, Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be

included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 15 City's Reservation of Rights.

Section 15.1 Franchisee hereby represents that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a Franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 15.2 Franchisee acknowledges that its operation with the City constitutes a telecommunications business subject to the utility tax imposed pursuant to the Gig Harbor Municipal Code Chapter 3.16. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Gig Harbor Municipal Code Chapter 3.16, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Gig Harbor Municipal Code Chapter 3.16 as may be permitted by law. Nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may be lawfully assessed on Franchisee's Services.

Section 16 Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any

person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily

duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 The parties acknowledge that this Franchise may be subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, except to the extent any such damage or destruction is caused by or arises from any negligence, intentional misconduct or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, or employees.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17 Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Right-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents representatives or employees. Franchisee shall require that every contractor and subcontractor maintain insurance coverage and policy limits consistent with this Section 17. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits no less than $2,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits no less than $3,000,000 combined single limit per occurrence and $5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and

(d) Umbrella liability policy with limits not less than $10,000,000 per occurrence and in the aggregate.

Section 17.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs

and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

Section 17.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 17 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the City, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the City shall be in excess of Franchisee's insurance and shall not contribute with it.

Section 17.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 17, thirty (30) days prior to any such cancellation. Within fifteen (15) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 21below. Notwithstanding the cure period described in Section

21.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

Section 18 Abandonment of Franchisee's Telecommunications Fiber Optic Cable Network.

Section 18.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Right-of-Way within thirty (30) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Right-of-Way in accordance with the City's Public Works Standards to at least the same condition the Right-of-Way were in immediately prior to any such removal provided Franchisee shall not be responsible for any changes to the

Right-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.2 Notwithstanding Section 18.1 above, the City may permit Franchisee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.3 Any Facilities which are not removed within ninety (90) days of either the date of termination or revocation or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.4 If Franchisee leases a structure in the Right-of-Way from a landlord and such landlord later replaces, removes or relocates the structure, for example by building a replacement structure, Franchisee shall remove or relocate its Facilities within the Right-of-Way within ninety (90) days of such notification from the landlord at no cost to the City.

Section 18.5 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19 Bonds.

Section 19.1 Construction Performance Bond. Upon an application for a permit involving excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City in an amount equal to 125% of the construction cost, which should not be less than $5,000 or in accordance with the bonding requirements for the City's encroachment permit. The amount of the Performance Bond may be reduced during construction as determined by the City. The Performance Bond shall guarantee the following: (1)

timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2.

Section 19.2 Maintenance Bond. Following excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1.

Section 19.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20 Modification. The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 21 Remedies to Enforce Compliance.

Section 21.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

Section 21.2 If either party (the "Defaulting Party") shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise, the other party (the "Non-Defaulting Party") shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable

efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the Non-Defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-Defaulting Party may pursue any available remedy at law or in equity as provided in Section 21 above, or in the event Franchisee has failed to timely cure or commence cure of the breach, the City may, at its discretion, (1) revoke this Franchise with no further notification pursuant to Section 22, (2) refuse to grant additional permits, or (3) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchisee or Franchise Bond set forth in Section 19.3.

Section 22 Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the City after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred and this Franchise may be revoked by the Gig Harbor City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. This hearing does not give the right to either the City or Franchisee to conduct discovery, subpoena witnesses, or take depositions. Within thirty (30) days after the hearing, the Gig Harbor City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Gig Harbor City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Gig Harbor City Council does not grant any additional period, the Gig Harbor City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 24 Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 24 Police Powers and City Ordinances. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce, consistent with applicable law, all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations consistent with applicable law, including but not limited to 47 U.S.C. Section 253, the location, elevation, manner of construction and maintenance of Facilities by Franchisee and facilities of other similarly situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise ordinance and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 25 Cost of Publication. The cost of publication of this Franchise ordinance shall be borne by Franchisee.

Section 26 Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A within thirty (30) days of the effective date of the ordinance authorizing the Franchise. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any applicable construction Performance Bond pursuant to Section 19.1 and the Franchise Bond required pursuant to Section 19.3. The administrative fee pursuant to Section 14.1 is due within thirty days of receipt of the invoice from the City.

Section 27 Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 27, Section 28, and Section 39.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to

Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 28 Assignment.

Section 28.1 This Franchise may not be directly or indirectly assigned or transferred by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28, a change in ownership or ownership mix of Licensee is not deemed to be an assignment or transfer so long as the Licensee entity continues to exist following the change, and no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock. Section 28.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i)ownership or working control of the Franchisee's Telecommunications facilities within the City; or (ii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring written notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. The Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee's Telecommunications facilities within the City or capacity or bandwidth of Franchisee's Telecommunications facilities within the City three months prior to the closing of the transaction. The Franchisee shall notify the City of any transactions which singularly or collectively result in a change of 50% or more of the ownership of Franchisee within sixty (60) days following the closing of the transaction.

Section 29 Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 30 Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 31 Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 32 Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. If Franchisee has Facilities in the vacated portion of the Right-of-Way, the City shall use reasonable efforts to reserve an appurtenant easement for Franchisee within the vacated portion of the Right-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.2. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area, in which Franchisee is located. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 33 Notice. Any Notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF GIG HARBOR
ATTN: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335

FRANCHISEE:
WANRack, LLC
Attn: Sherrie Lynn – Project Manager
15700 College Blvd Suite 200
Lenexa, KS 66219

Section 34 Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 35 Compliance with All Applicable Laws. Each party agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Franchisee further agrees to remove all liens and encumbrances arising as a result of said use or work. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner reasonably suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the

amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 36 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 37 Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Section 38 Licenses, Fees and Taxes. Prior to constructing any Facilities, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 39 Miscellaneous.

Section 39.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

Section 39.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

Section 39.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 39.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 39.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

Section 39.6 This Franchise may be enforced at both law and equity.

Section 39.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 39.8 This Franchise is subject to all current and future applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

Section 39.9 There are no third party beneficiaries to this Franchise.

Section 39.10 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 40 Ordinance Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

_____
Kit Kuhn, MAYOR

ATTEST/AUTHENTICATED:

_____
Molly Towslee, City Clerk

APPROVED AS TO FORM:

_____
Daniel Kenny, CITY ATTORNEY

FILED WITH THE CITY CLERK: 02/02/21
PASSED BY THE CITY COUNCIL: 02/22/21
PUBLISHED: 02/25/21
EFFECTIVE DATE: 03/02/21
ORDINANCE NO.: 1456

SUMMARY OF ORDINANCE NO. 1456

City of Gig Harbor, Washington

On the 22nd day of February, 2021, the City Council of the City of Gig Harbor passed Ordinance No. 1456. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WANRACK, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF GIG HARBOR, WASHINGTON.

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

_____
Molly Towslee, City Clerk

FILED WITH THE CITY CLERK: 02/02/21
PASSED BY THE CITY COUNCIL: 02/22/21
PUBLISHED: 02/25/21
EFFECTIVE DATE: 03/02/21
ORDINANCE NO.: 1456

EXHIBIT A

STATEMENT OF ACCEPTANCE

WANRACK, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

_____

By: _____ Date: _____
Name: _____
Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this ____ day of _____, 202_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

_____
Signature

_____
NOTARY PUBLIC in and for the State of _____,
Residing at _____
MY COMMISSION EXPIRES: _____.

Business of the City Council
City of Gig Harbor, WA

Subject: Resolution – Setting public hearing date concerning assumption of Transportation Benefit District (TBD) rights, powers, functions and obligations.

Proposed Council Action: Adopt Resolution 1201

Dept. Origin: Finance

Prepared by: David Rodenbach
Finance Director

For Agenda of: March 8, 2021

Exhibit: Resolution

	Initial & Date
Concurred by Mayor:	KK 2-25-21
Approved by City Administrator:	PL 03/22/2021
Approved as to form by City Atty:	Per email
Approved by Finance Director:	

Expenditure Required	$0	**Amount Budgeted**	$0	**Appropriation Required**	$ 0

INFORMATION/BACKGROUND

Ordinance no. 1392, dated July 9, 2018 established the Gig Harbor Transportation Benefit District. The District's boundaries are contiguous with those of the City and the Gig Harbor City Council is the governing body of the district. A 0.2% sales tax was subsequently approved by the voters November 5, 2019. This is expected to bring in $1.5 million annually.

Currently, the TBD is a separate organization within the City requiring separate meetings, insurance, audits and administration. The City Council is the Governing Board of the TBD and, accordingly has absolute and complete authority and control over the TBD. Assumption of TBD powers will not change this.

Having the City Council assume all rights, powers, functions and obligations of the Gig Harbor Transportation Benefit District would simplify collection, administration, expenditure and audit of TBD funds and provide for a more efficient operation of the District. The TBD will be a Special Revenue fund.

As of December 15, 2020, the state had 110 TBD's and, in 82 of these, the city had assumed TBD powers.

This resolution sets the date and time for a public hearing on the proposed assumption of the rights, powers, functions, and obligations of the Transportation Benefit District.

FISCAL CONSIDERATION

Assumption of the TBD will save an estimated $5,000 per year in addition to relieving the city of the administrative burden of running a separate quasi municipal corporation.

RECOMMENDATION/MOTION

Adopt resolution setting the public hearing date for assumption of all rights, powers, functions and obligations of the Gig Harbor Transportation Benefit District.

RESOLUTION NO. 1201

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, SETTING THE DATE FOR A PUBLIC HEARING CONCERNING THE GIG HARBOR CITY COUNCIL'S INTENT TO ASSUME THE RIGHTS, POWERS, FUNCTIONS AND OBLIGATIONS OF THE GIG HARBOR TRANSPORTATION BENEFIT DISTRICT AS ALLOWED BY RCW 36.74.

WHEREAS, The City Council of Gig Harbor adopted Ordinance No. 1392 creating the Gig Harbor Transportation Benefit District within the same boundaries as the City limits; and

WHEREAS, RCW 36.74.020 provides that "the assumption of the rights, powers, functions, and obligations of a transportation benefit district may be initiated by the adoption of an ordinance or a resolution by the city… indicating its intention to conduct a hearing concerning the assumption of such rights, powers, functions, and obligations"; and

WHEREAS, the City of Gig Harbor is required to identify the time, date, and place for a public hearing on the proposed assumption of the rights, powers, functions, and obligations of the Gig Harbor Transportation Benefit District will take place; and

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

Section 1. The City Council will hold a public hearing on the proposed assumption of the rights, powers, functions, and obligations of the Transportation Benefit District on March 22, 2021, at 5:30 PM or shortly thereafter. The hearing will be held remotely using Zoom, a link for instructions in using Zoom will be posted along with the public hearing notice. All persons interested may appear and be heard.

Section 2. This resolution and a link to Zoom instructions shall be published at least two times during the two weeks preceding the scheduled hearing in newspapers of daily general circulation printed or published in the city.

PASSED by the City Council this 8th day of March, 2021.

_____
Kit Kuhn, Mayor

AUTHENTICATED:

_____
Molly Towslee, City Clerk

APPROVED AS TO FORM:

_____
Daniel Kenny, City Attorney

Business of the City Council
City of Gig Harbor, WA

Subject: Stinson Avenue Overlay and Intersection Improvements Project – Public Works Construction Contract Award, Contract Amendment No. 9 for Construction Support Services, and Professional Services Contract for Materials Testing Services

Proposed Council Actions:

1. Authorize the Mayor to execute a Public Works Contract with Miles Resources, LLC in an amount not to exceed $1,441,097.20 for the Stinson Avenue Overlay and Intersection Improvements Project;
2. Authorize the Mayor to execute Contract Amendment No. 9 for Construction Support Services with Exeltech Consulting, Inc., in an amount not to exceed $99,765.56;
3. Authorize the Mayor to execute a Professional Services Contract for Materials Testing with Construction Testing Laboratories, Inc., in an amount not to exceed $32,438.00;
4. Authorize the City Engineer to approve additional project expenditures up to $150,000.00.

Dept. Origin: **Public Works/Engineering**

Prepared by: Aaron Hulst, PE
Senior Engineer

For Agenda of: March 8, 2021

Exhibits:
- Public Works Construction Contract
- Amendment #9 for Construction/Bid Support and Professional Services
- Contract for Materials Testing Services Scope and Fee

	Initial & Date
Concurred by Mayor:	kk by MMT
Approved by City Administrator:	03/01/2021
Approved as to form by City Atty:	via email 2/26/21
Approved by Finance Director:	
Approved by Public Works Director:	3/1/21
Approved by City Engineer:	

Expenditure Required	$1,723,300.76	**Amount Budgeted**	$ 1,500,000.00	**Appropriation Required**	$0.00

INFORMATION/BACKGROUND

The Stinson Avenue Overlay and Intersection Improvements Project provides for full depth pavement replacement at the intersection of Stinson Avenue with Grandview Street, construction of a mini roundabout including full depth pavement replacement at the intersection of Stinson Avenue and Rosedale Street, pavement overlay of Stinson Avenue between Grandview Street and Rosedale Street, drainage improvements, channelization, illumination at the intersections of Stinson/Rosedale and Stinson/Grandview, pedestrian (ADA) improvements, and installing Rectangular Rapid Flashing Beacons (RRFBs) at Stinson/Rosedale.

BID RESULTS

The Project was competitively bid using the City's Public Works Bidding process. On February 18, 2021, the City received six (6) responsive bids for the Project. The bid amounts are shown below.

BIDDER	TOTAL BID AMOUNT
1. Miles Resources, LLC	**$ 1,441,097.20**
2. Tucci and Sons, Inc.	$ 1,489,627.00
3. Axum General Construction, Inc.	$ 1,500,810.38
4. Sound Pacific Construction, LLC	$ 1,573,645.00
5. Active Construction, Inc.	$ 1,660,660.00
6. Northwest Cascade, Inc.	$ 1,777,695.50

FISCAL CONSIDERATION

The Project is included in the 2021 Budget. A budget summary is shown in the table below:

2021 Budget Project Funding:	
Stinson Ave Pavement Overlay (Grandview to Rosedale) - Street Capital, Objective 2 – TIF Funds	$ 235,000.00
Stinson Ave Pavement Overlay (Grandview to Rosedale) – PSRC Pavement Preservation Grant	$ 515,000.00
Stinson / Rosedale Roundabout – Street Capital, Objective 4 – TIF Funds	$ 290,600.00
Stinson / Rosedale Roundabout – TIB Grant	$ 459,400.00
Total 2021 Budget:	**$1,500,000.00**
Project Expenses:	
Public Works Construction Contract – Miles Resources, LLC	($1,441,097.20)
Construction/Bid Support Services – Exeltech Consulting Group / Contract Amendment No. 9	($99,765.56)
Materials Testing Services – Construction Testing Laboratories / Professional Services Contract	($32,438.00)
City Engineer Change Order Authority Amount *	($150,000.00)
Total Remaining Budget **:	**($ 223,300.76)**

*The change order authority provides for, if required, addressing any unforeseen additional work during construction.
** We anticipate the over-budget amount will be covered by savings on other projects or by additional TIF funds.

BOARD OR COMMITTEE RECOMMENDATION

This project was presented at the December 11, 2018 Public Works Committee Meeting, as part of the Stinson Corridor Improvements and again on December 17, 2018 at a Council Study Session, and again on June 11, 2019 as part of the Six-Year Transportation Improvement Program (TIP).

RECOMMENDATION/MOTION

1. Authorize the Mayor to execute a Public Works Construction Contract with Miles Resources, LLC in an amount not to exceed $1,441,097.20 for the Stinson Avenue Overlay and Intersection Improvements Project;
2. Authorize the Mayor to execute Contract Amendment No. 9 with Exeltech Consulting, Inc., for Construction Support Services in an amount not to exceed $99,765.56.
3. Authorize the Mayor to execute a Professional Services Contract with Construction Testing Laboratories, Inc., for Materials Testing Services in an amount not to exceed $32,438.00.
4. Authorize the City Engineer to approve additional project expenditures up to $150,000.00.

PUBLIC WORKS CONTRACT

STINSON AVE OVERLAY AND INTERSECTION IMPROVEMENTS

City Project No. CSP-1502
Federal Aid Project No. STPUL-3311(001)
TIB Project No. 8-1-127(008)-1

THIS AGREEMENT, made and entered into, this ____ day of _____, 2021, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and Miles Resources, LLC, organized under the laws of the State of Washington, located and doing business at, 400 Valley Ave NE, Puyallup, WA 98372 hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary to complete the work under this contract generally consisting of repair and maintenance of asphalt concrete roadways within the City of Gig Harbor. This contract generally provides for the construction of a roundabout at Stinson Avenue and Rosedale Street; planing and inlay on Stinson Avenue between Rosedale Street and Grandview Street; full depth pavement replacement at Stinson Avenue and Grandview Street; and other work, all in accordance with the attached Contract Plans, these Special Provisions, and the Standard Specifications including the schedule of prices in the "Proposal," the sum of One Million Four Hundred Forty-one Thousand Ninety-seven Dollars and Twenty Cents ($1,441,097.20), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.

1. The Notice to Proceed will be given in accordance with Section 1-08.4 of Contract Documents. The Contractor shall commence construction activities on the project site in accordance with Section 1-08.4 of the Contract Documents. Contract time shall begin in accordance with Section 1-08.5 of Contract Documents. Work shall be substantially complete in accordance with Section 1-08.5 of the Contract Documents.
2. The Contractor agrees to pay the City for liquidated damages incurred according to Section 1-08.9 of the Contract Documents per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
3. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
4. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Bid Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Special Provisions," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2021 Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) General Special Provisions, MUTCD, WSDOT Standard Plans and City of Gig Harbor Public Works Standards.

5. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.
6. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed the day and year first hereinabove written:

CITY of GIG HARBOR:

_____
Kit Kuhn, Mayor
City of Gig Harbor
Date: _____

ATTEST:

_____
City Clerk

APPROVED FOR FORM:

_____
City Attorney

CONTRACTOR:

_____
(Signature of Official)

_____
(Print Name)

_____
(Title)

Date: _____

NINTH AMENDMENT
TO
PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
EXELTECH CONSULTING, INC.

THIS NINTH AMENDMENT is made to that certain Professional Services Contract dated June 8, 2015, (the "Agreement"), as amended on July 25, 2016, and again on July 10, 2017, and again on December 18, 2017, and again on April 22, 2019, and again on June 24, 2019, and again on June 22, 2020, and again on October 13, 2020, and again on February 8, 2021 by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Exeltech Consulting, Inc., a corporation organized under the laws of the State of Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the Stinson Avenue Roadway and Intersection Improvements 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 Ninety-nine Thousand Seven Hundred Sixty-five Dollars and Fifty-six Cents ($99,765.56), 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 1, 2022.

[Remainder of page left intentionally 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 _____, 2021.

CONSULTANT

By:_____
Its Principal

CITY OF GIG HARBOR

By:_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A

Scope of Services
City of Gig Harbor
Construction Management Services
for
Stinson Avenue Overlay and Intersection Improvements
City Project No.: CSP-1502

February, 2021

Prepared by:
Exeltech Consulting, Inc.
8729 Commerce Pl Dr NE, Suite A
Lacey, WA 98516

exeltech

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INTRODUCTION

City of Gig Harbor (hereinafter "City") is the Contracting Agency for this Scope of Services. Exeltech Consulting, Inc. (hereinafter "Consultant") will work under the City's Project Manager and will provide Construction Management (Office Engineering and Documentation Control support) services to support the City throughout the construction of the Stinson Avenue Roadway Improvements Project (hereinafter "Project"). Services generally include office engineering and documentation control support during the construction of the Project, as further detailed in this scope of services.

The Consultant's contract period will be from the City's Notice to Proceed through final acceptance of the project documentation by the City.

ASSUMPTIONS

1. The level of services is based on a Construction Schedule duration that is assumed to be 100 working days, additional days due to potential changes or delays may require a supplement to this agreement for additional effort. The Consultant's CM team will begin pre-construction activities approximately seven (7) working days prior to construction and will continue to provide post-construction activities for approximately three (3) working days after Physical Completion. The scope of services is based on a duration of 110 days. The Consultant's CM Team is assumed to include the following labor resources (on average) during the duration of the construction contract:
   - Part time Office Engineer average 20 hours per week
   - Part time (as needed) Doc Control / OE support, allocated 40 hours.
   - Part time Design Engineer support, average 8 hours per week

   Staffing levels are anticipated in accordance with attached budget estimate. Budget may be shifted between tasks, so long as the authorized amount is not exceeded. Services will be limited to these assumed hours/costs, unless additional services are authorized.
2. It is recognized that the office work will be conducted at the Consultant Lacey Office.
3. Consultant will rely on the accuracy of City provided information and takes no liability for any inaccuracies or inconsistencies.
4. City directed activities, beyond the scope of work, will require written confirmation from the City Project Manager or designee, prior to any work commencing.
5. Timely reviews of submitted deliverables at mutually agreed upon times and consideration of all review comments into one review document prior to returning to the Consultant.

6. Additional work not provided for in this Scope of Services may result in a Supplemental Services Agreement.
7. Services not specifically identified herein, are expressly excluded.

1 PROJECT MANAGEMENT

1.1 General Project Management

The Consultant will perform general coordination, as needed, between the Contractor and City staff.

Throughout the duration of the project, these activities will include coordination and oversight of the Construction activities, including office engineering and documentation control, answering questions regarding contract administration, and offering advice to the City on construction issues.

The Consultant's monthly invoices for the services provided with this Agreement will document the efforts of the CM Team.

2 CONTRACT ADMINSITRATION PRE-CONSTRUCTION ACTIVITIES

2.1 Contract Bid Support

The Consultant as requested by the City will provide more comprehensive Traffic Control sheets by generating a Detour Plan sheet and Roundabout Construction Limits sheet. This also requires that the Consultant update the plan set Cover sheet and TC1, TC2, and TC3 sheets, as well as the engineers cost estimate. Additional work by the Consultant also includes developing, stamping and signing addenda. As agreed to by the City and the Consultant, a portion of this work was paid from the Construction Support Task in Amendment #7, and the remaining fee for this additional work is outlined in the attached budget estimate (Exhibit B).

2.2 Pre-construction Services

The Consultant will support the City with the following Pre-Construction Services as needed:

- Review of project materials submittals, including catalog cuts, specifications, material certifications, and other submittals required by the contract.
- Review the Contractor's Environmental Compliance submittals, including the SPCC/Erosion Control Plan and Environmental Compliance with applicable project permit requirements.

The Consultant will support the City at the Pre-construction Conference prior to the Contractor beginning work. The City will prepare the agenda, and confirm that required submittals are provided by the Contractor at the pre-construction meeting if they haven't been submitted prior. The Consultant will take meeting minutes and provide the distribute pre-construction meeting minutes to the City for distribution. The Consultants Design Engineer and Office Engineer will attend the Pre-construction conference.

3 CONTRACT ADMINISTRATION SERVICES FOR CONSTRUCTION

3.1 Office Engineering

The Consultant will provide Office Engineering support to the City with the following Construction Services as needed:

- Prepare agendas for weekly progress meetings, attend the meeting, and take meeting minutes. Distribute meeting minutes to attendees within two days of the weekly progress meeting.
- Make technical interpretations of the plans, specifications, and contract documents.
- Facilitate responses (including the receipt, distribution, review and compilation of comments) to requests for information (RFIs) and other submittals, ensuring response timelines are met for both. Maintain RFI and submittal log to track status and responses.
- Update and maintain Record of Materials (ROM) for the project.
- Review Request for Approval of Materials (RAM's) for completeness and distribute as necessary.
- Distribution and filing of design changes, field memos, and other correspondence generated by the Contractor or other members of the CM team, and maintain the associated Logs.
- Review executed Change Orders for accuracy and completeness, and route to the City.
- Work with the field inspector on ADA construction updates to the project MEF and update the MEF file.

3.2 Field Observations

The City staff will perform the observation of the technical conduct of the construction, including providing day-to-day contact with the Contractor.

- City will provide on-site observation and monitoring to observe the technical conduct and progress of the construction.
- City will measure quantities or materials installed, equipment and staff used.
- City will verify erosion control BMP's are in place and effective.
- City will verify traffic control plans are fully and correctly followed.
- City inspectors will document work being done on force account basis including equipment, labor and materials.
- City inspectors will verify daily quantities.
- City inspectors will verify materials used are consistent with approved RAMs.
- City inspectors will collect delivery tickets and verify they contain required information.
- City inspectors will take construction photographs and progress photographs of construction.
- City staff will provide communications with utilities, residents and businesses impacted by construction.

4 CONTRACT ADMINISTRATION POST-CONSTRUCTION ACTIVITIES

4.1 Project Closeout

After Physical Completion is issued, the Consultant Construction Management team will support the City with Post-Construction Services as needed.

The Consultant may keep an electronic copy of the project documents for their records.

DELIVERABLES

The following is a summary of the deliverables contained within this scope of services, which will be delivered via electronic submittal:

1. Monthly Invoices and Progress Reports
2. Pre-construction Conference agenda and minutes
3. Maintain ROM
4. Meeting agenda's and minutes for Project meetings
5. Weekly meeting Action Items
6. Updated Project MEF
7. Project Engineer's Final Materials Certification
8. Project records in electronic copy at the completion of the contract

Exhibit B
City of Gig Harbor Stinson Avenue - CM
Hours Sheet

	Construction Manager	Office Engineer	Sr. Project Manager	Project Manager	CADD Technician	Document Control	Total Exeltech Labor Hours
TASKS/DELIVERABLES							
1.0 PROJECT MANAGEMENT							
1.1 General Project Management	8						8
2.0 CONTRACT ADMINSTRATION PRE-CONSTRUCTION ACTIVITIES							
2.1 Contract Bid Support			23	17	20		60
2.2 Pre-Construction Services		24	4			4	32
3.0 CONTRACT ADMINSTRATION FOR CONSTRUCTION							
3.1 Office Engineering		400	160			32	592
3.2 Field Observations							
4.0 CONTRACT ADMINSTRATION POST-CONSTRUCTION ACTIVITIES							
4.1 Project Closeout		24	20			4	48
TOTAL HOURS	8	448	207	17	20	40	740

Exhibit B
Consultant Fee Determination - Summary Sheet

Construction Management Services for
Stinson Avenue Overlay and Intersection Improvements
City of Gig Harbor
Consultant Fee Determination
Consultant: Exeltech Consulting, Inc.

Classification	Man Hours Hours		Rate		Dollars
Construction Manager	8	x	$62.40	=	$499.20
Office Engineer	448	x	$42.75	=	$19,152.00
Sr. Project Manager	207	x	$54.30	=	$11,240.10
Project Manager	17	x	$52.80	=	$897.60
CADD Technician	20	x	$31.00	=	$620.00
Document Control	40	x	$35.70	=	$1,428.00
Total Hours	**740**				
Total Direct Salary Cost (DSC)				=	**$33,836.90**
Overhead (162.36% X DSC)				=	**$54,937.59**
Fixed Fee (30% X DSC)				=	**$10,151.07**
Subtotal					**$98,925.56**

Reimbursables

Itemized	Quantity	Units		Rate		In Scope
Mileage	1,500	each	@	$0.56	=	$840.00
Reimbursables Total						**$840.00**
Exeltech Subtotal						**$99,765.56**
Grand Total						**$99,765.56**

PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF GIG HARBOR AND CONSTRUCTION TESTING LABORATORIES, INC.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Construction Testing Laboratories, Inc., a Washington corporation (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction of the Stinson Avenue Overlay and Intersection Improvements project and desires that the Consultant perform special inspection and testing services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein;

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

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Thirty-two Thousand Four Hundred Thirty-eight Dollars and Zero Cents ($32,438.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this

Agreement. The City shall pay the full amount of an invoice within 45 days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within 15 days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

3. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by March 1, 2022; provided however, that additional time shall be granted by the City for excusable days or extra work. Further, the parties may extend the duration of this Agreement consistent with the terms of Section 17 below.

4. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

5. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

6. **Independent Status of Consultant.** 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.

7. Indemnification.

A. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers, harmless from any and all claims, injuries, damages, losses or suits including attorneys fees, arising out of or resulting from the negligent or wrongful acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees or volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

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

B. No Limitation. The Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City of Gig Harbor's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Consultant shall obtain at no cost to the City and maintain said insurance in force for the duration of this agreement, insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Professional's profession.

D. Minimum Amounts of Insurance. The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.
3. Employer's Liability, each accident $1,000,000, Employer's Liability Disease-each employee $1,000,000, and Employer's Liability Disease - Policy Limit $1,000,000.
4. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect to the City of Gig Harbor. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
2. The City of Gig Harbor will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City of Gig Harbor will not waive its right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City of Gig Harbor, or any self-insurance, or insurance pool coverage maintained by the City of Gig Harbor.
3. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII and licensed to conduct business in the State of Washington.

G. Verification of Coverage. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

9. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

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

11. Records.

A. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

B. Consultant acknowledges that the City is an agency governed by the public records disclosure requirements set forth in chapter 42.56 RCW. Consultant shall fully cooperate with and assist the City with respect to any request for public records received by the City concerning any public records generated, produced, created and/or possessed by Consultant and related to the services performed under this Agreement. Upon written demand by the City, the Consultant shall furnish the City with full and complete copies of any such records within ten business days. Consultant's failure to timely provide such records upon demand shall be deemed a material breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, the Consultant shall indemnify and hold harmless the City as set forth in Section 7. For purposes of this section, the terms "public records" and "agency" shall have the same meaning as defined by chapter 42.56 RCW, as construed by Washington courts.

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

12. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents,

and subconsultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

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

14. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Director of Operations determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

15. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
ATTN: Chris Pedersen
Construction Testing Laboratories, Inc.
400 Valley Ave. NE, Ste. 102
Puyallup, WA 98372
253-383-8778
Email: chrisp@ctlwa.com

City of Gig Harbor
ATTN: Trent Ward, P.E.
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
253-851-6170
Email: tward@gigharborwa.gov

16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City.

17. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. If extending the duration of the Agreement only, the parties may agree to such duration extension by written instrument approved and signed by the Consultant and by the Department Director if all other terms of the Agreement are unchanged and remain in full force and effect for the entire new duration of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2021.

CONSULTANT

By: _____
Its: OPERATIONS MANAGER
Chris Pedersen

CITY OF GIG HARBOR

By: _____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Construction Testing Laboratories

400 Valley Avenue NE
Suite 102
Puyallup, WA 98372

253-383-8778
fax 253-770-8232
www.ctlwa.com

February 16, 2021

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

Attn: Aaron Hulst

RE: **Stinson Avenue Overlay & Intersection Improvements**
Special Inspection & Testing Services

Dear Mr. Hulst,

I am pleased to submit our proposal to provide special inspection and testing services for the above project.

CERTIFICATIONS:
Our firm is registered with WABO and accredited by AASTHO (R-18), in accordance with the requirements of ASTM E329, D3740 and D3666. We are routinely inspected by, and participate in proficiency testing with CCRL and AMRL. This includes the fields of soils, aggregate, masonry, concrete, and bituminous mixtures. We are also validated by the U.S. Army Corps of Engineers. Our inspectors are certified by ACI, ICC and WABO and many of them have been with us for ten to twenty years. All equipment is calibrated at regular intervals, as required by ASTM and AASHTO. Copies of all calibrations are on file.

ADMINISTRATIVE:
All project management, report preparation, clerical, engineer review of reports, final inspection report and mail distribution costs are included in the hourly/unit rates. There are no hidden charges.

BASIS OF CHARGES:
Four-hour minimum for inspection and field-testing. One-hour minimum for sampling and cylinder pick-up. Time and one half (1.5) for work in excess of eight hours per day and Saturdays. All work performed outside normal working hours (**07:00 hr. to 16:00 hr.**) Monday through Friday will be charge at 1.5 times the standard rate. Double time for Sundays and holidays. Hourly rates and mileage are portal to portal. Terms are thirty (30) days. Twenty-four (24) hour notice is required to schedule technician(s). Rush Laboratory Testing will be billed at 1½ times the applicable standard rate.

Our estimated cost does not include overtime. All parties are aware we are T&M, so you control the actual budget. The actual cost will vary, as our costs are directly dependent upon the contractor and the sub-contractor's schedule.

Our highly trained staff would be delighted to assist you in the successful completion of this project. If you have any questions regarding this proposal or if we may be of service, please call or visit our website at www.ctlwa.com.

Sincerely,
Construction Testing Laboratories, Inc. (CTL)

Chris Pedersen
Operations Manager
e-mail: chrisp@ctlwa.com
phone # 253-383-8778

Jon Price
Technical Director
e-mail: jonp@ctlwa.com

Construction Testing Laboratories

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"Exhibit A" - Estimate of Project Costs

Type of Inspection & Testing	Approximate # of hours/tests	Price per test	Estimated Cost
CONCRETE			
Concrete Technician	200	$ 60.00	$ 12,000.00
Concrete Test Cylinders	175	$ 25.00	$ 4,375.00
Fine Aggregate Grading	2	$ 185.00	$ 370.00
Course Aggregate Grading	2	$ 185.00	$ 370.00
		SUBTOTAL	**$ 17,115.00**
SOIL COMPACTION: PIPE BEDDING, NATIVE FILL			
Soil Compaction Testing Technician	100	$ 61.00	$ 6,100.00
Maximum Density Optimum Moisture-Density Curve (Proctor)	3	$ 205.00	$ 615.00
Sieve Analysis	3	$ 185.00	$ 555.00
		SUBTOTAL	**$ 7,270.00**
AGGREGATES: BASE COURSE, TOP COURSE			
Maximum Density Optimum Moisture-Density Curve (Proctor)	4	$ 205.00	$ 820.00
Sieve Analysis	4	$ 185.00	$ 740.00
Sand Equivalent	4	$ 105.00	$ 420.00
Fracture Face Count	4	$ 85.00	$ 340.00
		SUBTOTAL	**$ 2,320.00**
ASPHALT			
Asphalt Testing Technician	48	$ 61.00	$ 2,928.00
Rice Maximum Theoretical Density	6	$ 130.00	$ 780.00
Extraction/Gradation	6	$ 255.00	$ 1,530.00
Gyratory	6	$ 285.00	$ 1,710.00
COLD FEED:			
Sand Equivalent	1	$ 105.00	$ 105.00
Fracture Face Count	1	$ 85.00	$ 85.00
Uncompacted Voids	1	$ 125.00	$ 125.00
		SUBTOTAL	**$ 5,733.00**
		ESTIMATED TOTAL COST	**$ 32,438.00**

Our estimated cost does not include overtime. All parties are aware we are T&M, so you control the actual budget. The actual cost will vary, as our costs are directly dependent upon the contractor and the sub-contractor's schedule.

Construction Testing Laboratories

400 Valley Avenue NE
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"Exhibit B" - Fee Schedule

Item #	Description	Price
	Technician/Engineering Personnel	
1	Acoustic Ceiling Inspection	$ 59.00
2	Anchor Pull Testing	$ 85.00
3	Badges/Safety Classes/Time	$ 61.00
4	CESCL	$ 78.00
5	Coring Support Technician	$ 55.00
6	Coring Technician	$ 97.00
7	Emergency Lighting Inspection	$ 60.00
8	Epoxy Bolt/Anchor Bolting/Dowel Inspection	$ 60.00
9	Fire-Resistant Penetrations and Joints Inspection	$ 85.00
10	Floor Flatness	$ 130.00
11	Hazmat Technician	$ 97.00
12	High Strength Bolt Inspection	$ 70.00
13	Infiltration Testing	$ 63.00
14	Laboratory Technician	$ 75.00
15	Lateral Framing/Nailing Inspection	$ 60.00
16	Magnetic Particle or Dye Penetrant	$ 91.00
17	Moisture Vapor Through Floor/Slab	$ 70.00
	• Calcium Test Kits	$ 24.00
18	Pachometer Technician	$ 90.00
19	Piling Inspection	$ 65.00
20	Post Tension Inspection	$ 65.00
21	Rebound Number of Hardened Concrete (C-805) (Schmidt Hammer)	$ 69.00
22	Reinforcing Concrete & Masonry Technician	$ 60.00
23	Reinforcing Steel Inspection	$ 60.00
24	Relative Humidity – Concrete Floors	$ 70.00
	• RH Test Tubes	$ 45.00
25	Roofing Inspection	$ 60.00
26	Shotcrete Inspection	$ 63.00
27	Soils & Asphalt Technician	$ 61.00
28	Spray- Applied Fire-Resistive Materials Inspection	$ 63.00
29	Ultrasonic Test (UT)	$ 91.00
30	Visual Welding Inspection	$ 70.00
31	Wood Moisture Testing (In-Field)	$ 63.00

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Fee Schedule

Item #	Description	Price
	Concrete	
32	Cast by Client/Contractor Core Specimens	$ 61.00
33	Cast by Client/Contractor Cylinder Specimens *if sawing or extra handling is required a minimum rate of $61.00 each will be charged.	$ 45.00
34	Clay Lumps & Friable Particles	$ 115.00
35	Compressive Strength Tests (C-39)	$ 25.00
36	Flexural Strength, 6"x6"x22" Concrete Beam (C-293)	$ 73.00
37	Light Weight Pieces (C-123)	$ 180.00
38	Organic Impurities (C-40)	$ 90.00
39	Shotcrete Panels: 3 Cores with Compressive Strength	$ 275.00
	• Additional Cores from Panel	$ 90.00
40	Sulfate Soundness (C-88) Magnesium, per sample	$ 360.00
41	Sulfate Soundness (C-88) Sodium, per sample	$ 395.00
42	Unit Weight of Aggregate (C-29)	$ 100.00
	Masonry	
43	Compressive Strength, Masonry Composite Prisms (UBC-2405)	$ 76.00
44	Compressive Tests, Masonry Unit (C-140)	$ 66.00
45	Compressive Tests, Mortar Cubes (C-109)	$ 25.00
46	Compressive Tests, Mortar or Grout Specimens (UBC-24/23)	$ 25.00
	Soils Mechanics Laboratory Tests	
47	% Organics By Weight (D-2974)	$ 150.00
48	Aggregate Durability Index (AASHTO T-210)	$ 200.00
49	Atterberg Limits (D-424), Liquid Limit, Plastic Limit, Plasticity Index	$ 210.00
50	Flat & Elongated Pieces in Aggregate (ASTM D-4791)	$ 140.00
51	Fracture Face Count	$ 85.00
52	Laboratory Determination of Moisture Content (D-2216)	$ 80.00
53	Maximum Density Optimum Moisture-Density Curve [Proctor] (D-698, D-1557)	$ 205.00
54	Particle Size Analysis (D-422) Hydrometer (with D-854)	$ 390.00
55	Particle Size Analysis (D-422) Hydrometer (without D-854)	$ 290.00
56	pH of Soils/Aggregates (D-4972)	$ 75.00
57	Resistance to Abrasion, Los Angeles Machine (C-131, C-535)	$ 260.00
58	Sand Equivalent (D-2419)	$ 105.00
59	Sieve Analysis (Add #270, C-136, C-117 [Wet Sieve])	$ 215.00
60	Sieve Analysis (C-136, C-117 [Wet Sieve])	$ 185.00
61	Specific Gravity of Soils (D-854)	$ 145.00
62	Specific Gravity/Absorption of Coarse Aggregate (C-127)	$ 105.00
63	Specific Gravity/Absorption of Fine Aggregate (C-128)	$ 160.00
64	Uncompacted Void Content of Fine Aggregate T-304, Specific Gravity Not Included	$ 125.00
65	Wood Waste (WSDOT)	$ 75.00
66	WSDOT Degradation	$ 200.00

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Fee Schedule

Item #	Description	Price
	Asphaltic Concrete Mixes	
67	Anti-Strip evaluation TSR (D-4867) when performing mix design	$1,250.00
68	Anti-Strip evaluation TSR (D-4867) without performing mix design	*Quote Upon Request*
69	Complete Design of Bituminous Mixture by Marshall Method (Does not include anti-strip testing)	$5,000.00
70	Complete Mix Design by Gyratory Method (SHRP/Superpave) (Does not include anti-strip testing)	$5,000.00
71	Extraction and Gradation % Bitumen (T-308) (C-136 [West]) Sieve (C-117)	$ 255.00
72	Gyratory Tests (Superpave) (312)	$ 285.00
73	Hamburg, performed with Mix Design, CTL makes 2 or 4 specimens	$ 900.00
74	Hamburg, performed without Mix Design, CTL makes 2 or 4 specimens	*Quote Upon Request*
75	Hamburg, production sample	$ 700.00
76	Hamburg, test only, supplier provides 2 or 4 specimens	$ 500.00
77	IDT, performed with Mix Design, CTL makes 3 specimens	$ 360.00
78	IDT, performed without Mix Design, CTL makes 3 specimens	*Quote Upon Request*
79	IDT, test only, supplier provides 3 specimens	$ 160.00
80	Marshall Test, per Molded Specimen ([D-1559] Includes Stability, Flow, and Unit Wt.) per set of 3	$ 450.00
81	Permeability of Asphaltic Concrete	$ 350.00
82	Rice Maximum Theoretical Density (D-2041)	$ 130.00
83	Specific Gravity of Compacted Field Sample (D-2726) WSDOT 704 (Pavement Core)	$ 70.00
	Miscellaneous:	
84	Dry Density of Fireproofing Material	$ 150.00
85	Ferry Charges	*Quote Upon*
86	Mileage	*Request*
87	Per Diem (Lodging, Meals, and Etc.)	$ 0.56

Basis of Charges (Rate Charges & Notification)

Quote Upon Request

Four-hour minimum for inspection, sampling, and field testing. One-hour minimum for cylinder pick-up. Time and one half (1.5) for work in excess of eight hours per day and Saturdays. All work performed outside normal working hours (0700 hr. to 1600 hr.) Monday through Friday will be charged at 1.5 times the standard rate. Double time will be charged for Sundays and holidays. Four-hour minimum for weekend and holidays. Hourly rates and mileage are portal to portal. Terms are thirty (30) days. Prices are subject to change without notice. Twenty-four (24) hour notice is required to schedule technician(s). Six-hour notification required for cancellations for night and weekend work (a four-hour minimum charge would apply without proper notification). A 3% escalation for hourly and unit prices for multi-year contracts will apply.

Mail Distribution (Reports)

All overhead, engineer review of reports, final inspection report, and mail distribution costs are included in the hourly/unit rates.

Terms of Sale (Payment Due Date/Past Due):

All invoices are "NET" and pavement is due on the 30th day following the invoice date, unless otherwise stated on the application invoice. An account is considered past due on the 31st day following the date of invoice.
All accounts not paid by due date may be subject to suspension. A late charge of 1.5% per month annual will be imposed on past due accounts. Customers/Clients agree to pay all attorney's fees and costs of collection.

Dispatch Notification

Also, it is the responsibility of the client or designated representative to schedule and/or cancel field work with our office only, not through field personnel. CTL cannot be held responsible for scheduling and/or cancellation of services made through field inspector(s). In addition, twenty-four hour notices are required to schedule or dispatch inspector(s) for inspection and testing services.