AGENDA FOR GIG HARBOR CITY COUNCIL STUDY SESSION
Thursday, March 11, 2021 – 3:00 p.m.

Due to public health concerns, this meeting will be only accessible by following the instructions below:

Join Meeting: **https://zoom.us/j/97489928862**
Or Dial: +1 253 215 8782 Webinar ID: 974 8992 8862

CALL TO ORDER / ROLL CALL:

PLEDGE OF ALLEGIANCE:

DISCUSSION ITEMS:

1. Sports Complex Phase I-A Lease Agreement
2. Bogue Building Lease Agreement – Chamber of Commerce

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.

the YMCA

FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335-5136

To our valued friends at the Y,

Over the last 10 months, I have heard from many of you expressing concern about our Y, understanding how deeply we, like so many other social service organizations, have been impacted by this health crisis. I can assure you that your concern for the Y and your encouragement have been greatly appreciated by me and our entire organization. Knowing you care means a lot to all of us.

On January 31, 2021, our finance team closed the books on 2020 and we officially turned the page on the most fiscally tumultuous year in our history. I want to share the results from 2020 with you. You are an important part of this organization, you are invested in our mission and cause, and I believe it is valuable for you to understand how this crisis has impacted our Y.

We entered 2020 with a $75 million operating budget, having finished 2019 in a strong financial position and directly serving more than 150,000 people through our community centers and programs. We finished 2020 with a final budget of $34.6 million and a service base of 51,000 people, one-third of what we once were. More than half of our 2020 revenue was booked in the first quarter. Toko Thompson, Vice President and Chief Financial Officer, will say that she had to use every skill she has learned in her 30-year career in finance to reach the end of the year without us needing to borrow a single dollar. Toko was able to renegotiate a number of contracts to more favorable terms, as well as extricate us from a couple leases we no longer needed. Toko was also able to defer $2.1 million in long-term debt payments to the bank, which we intend to pay over the next few years.

One of the most difficult challenges we faced during this crisis was being forced to reduce payroll by over 67% in order to reduce expenses enough to ensure there would still be a Y in 2021 and beyond. Many of the positions eliminated had been filled by long-time employees. In total, 1,900 full- and part-time staff were laid off. A day does not go by that I do not think about the many individuals who poured their hearts into their work at our Y and into the members and communities they served, who are no longer with us. It changed me – and our organization – forever.

We did receive state and county support for the childcare services we provided to families of healthcare workers and first responders, for the showers we provided to homeless individuals in downtown Tacoma, Lakewood, and Puyallup, and for the meals we prepared from our YMCA Camp Seymour kitchen, which were delivered to isolated seniors in Gig Harbor and Bremerton. In addition to those grants, we also received over $2 million in private donations. This was a tremendous demonstration of generosity from our loyal members and the community at-large who supported the work we did throughout the past year. In total, contributed revenue amounted to slightly over $4 million.

Throughout these past 339 days, our Y has continued to respond to community needs and fought hard to find ways to remain relevant. Our team has been innovative in delivering services virtually and in-person, while being safe and physically distanced. I marvel when I see our arts team provide a variety of dance and visual arts classes virtually to over 500 youth. Our camp team has transformed the dining hall into a distance learning center to help address the needs of youth on the Key Peninsula. Our outreach center – the YMCA Center for Community Impact – converted our childcare mini-busses in order to deliver meals, school supplies, food, and basic household supplies to those living in underserved communities. We understand we will not be the same organization we once were, but I also know we are adapting to remain viable. We have a strong partnership with the school districts so we can help address the mental and emotional well-being of the youth in our community. We are currently serving 650 youth in our childcare program and 88 youth in our early learning program. We have 1,025 youth in our swim lesson program, 500 youth in the arts, and 250 youth in gymnastics.

I am really proud of our Y. We have not blinked once. We remain steadfast in our commitment to redefining how we work and what we need to do to remain a force committed to serving our community. I also know we cannot do that without your support. We are grateful to have you in our corner.

Thank you. Stay strong and stay with us!

Charlie Davis

Charlie Davis | President and CEO

YMCA OF PIERCE AND KITSAP COUNTIES
ASSOCIATION OFFICE
4717 S 19th St Ste 201, Tacoma WA 98406
P 253-534-7800 **F** 253-566-9657 **W** ymcapkc.org

M E M O R A N D U M

DATE: March 3, 2021

TO: Gig Harbor City Council

FROM: Daniel P. Kenny

RE: YMCA Lease Key Terms

Summarized below are the key terms contained in the draft YMCA lease agreement. To review the unabridged terms, please refer to the sections referenced in each area below. Further, not all lease terms are included in this summary.

____

Term - See Section C(a): There is an initial term of 35 years.

Renewal Periods - See Section C(c): There are 3 renewal periods of 20 years each after the initial term

- If the YMCA wants changes to terms for the next extension period, the City must approve that request at least 90 days before the end of the term.
- The City may also propose changes in its response to the YMCA's request for changes prior to the commencement of any Extension Period.
- If the YMCA does not propose changes, the City would not have an opportunity to make changes.

Termination and Right of First Refusal to Purchase - See Section D:

- If the City denies changes proposed by the YMCA for a renewal period, the YMCA can terminate the lease or propose different terms.
- If the parties cannot agree upon proposed changes, and they are material and consistent with the overall structure, spirit, intent of the agreement, then either party may terminate the agreement with notice.
  - During the notice period the parties must submit the disagreement to dispute resolution.
- If the City rejects changes at a renewal juncture, and the YMCA terminates the agreement, the YMCA has the exclusive option to purchase the Premises for Fair Market Value. There is a defined way to get to the fair market value.
- If the YMCA chooses not to purchase the property following the process to determine the Fair Market Value, the City shall be required to purchase from the YMCA the Phase 1A Improvements at the then current fair market value of such improvements with appropriate depreciation for wear, tear, and credit for remaining useful life. There is a process outlined to determine the Fair Market Value for the phase 1A improvements.
- If the YMCA does purchase the Premises, any funds remaining in the Capital Reserve Fund shall go to Tenant.
- If the City purchases the improvements, the appraiser used to obtain the fair market value of the improvements shall calculate the cost to improve the fields to "like new" condition. "Like new" condition is the point where the improvements have at least 75% of the normal useful life that a

brand-new field would have. The capital reserve fund is then reduced by the calculated cost to improve the fields to "like new" condition with that reduced amount going to the YMCA along with the fair market value payment for the improvements. The remaining amount in the capital reserve fund goes to Landlord with the field purchase. If the fields are already in "like new" condition or better, no reduction in the capital reserve fund is made and the entire capital reserve fund goes to Landlord with the field purchase.

Obligation to Complete Fundraising and Project- See Section E(b)(v): Tenant will use commercially reasonable and diligent efforts to fully and completely fund not less than $3.5 million dollars and complete construction of Phase 1A of the Gig Harbor Sports Complex within the timeline prescribed by the RCO Grant.

- **New Term** -- The City agrees to pursue a two-year extension to the RCO grant timeline, which would dictate the timeline for Phase 1A Improvement completion. See Commencement – Section I(a).

Rent – See Section F: Annual rent is $1 with community benefit provided.

Community Benefit – See Section G: During the entire term of the lease, YMCA must provide community benefit. Many of these requirements will be further defined in the Services Agreement.

- Affordable rental fees and program rates.
- Financial assistance to those residents/households meeting the United States Department of Health and Human Services Poverty Guidelines to participate in YMCA programs and activities as well as for rental of the facilities.
- Provide designated times/hours for free public use of the improvements.
- Work in collaboration with the City and other community agencies to host free public or special events on the improvements.
- Clean and maintain the parking lot (D3 and D6), restroom/concessions facilities (E1), and internal and perimeter landscaping.
    - **New Term** - For the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms.
        - Approx. Value - $30,000.

Services Agreement – See Section H: The Services Agreement will outline the structure for the use, maintenance, and control of the Phase 1A Improvements for both the Tenant's and the public's use. The Services Agreement will include, but is not limited to, the following:

- *General Public Use*. The general public shall be allowed to use the Phase 1A Improvements subject to reasonable time, place, and manner restrictions. At minimum, any time the Phase 1A Improvements are not being utilized by Tenant for programming or are not otherwise reserved, the Phase 1A Improvements shall be open to the general public.
    a. City must approve the days and hours which the Premises will be available for Public use.
- *Scheduling*. Tenant will provide its internet-based field/team management software, *PlayerSpace* or equivalent, to enable individuals and families, local sports groups, other community groups, and the general public the ability to reserve use of the fields.

  - All scheduling and management of field use is the sole responsibility of Tenant. Tenant will provide view-only access to these systems to the City.
- *Maintenance*. At all times during the Lease Term, or any extension thereof, Tenant shall keep and maintain the Premises and the Phase 1A Improvements in good order, condition and repair at Tenant's sole expense. The fields must be able to meet the minimum field condition standards required to host tournaments as specified by the Washington State Interscholastic Athletic Association or other appropriate standards for the majority of user groups.
  - The City and Tenant will annually review the maintenance and condition of the facilities against the standards.
  - **<u>New Term</u>** - City maintenance of restrooms until Phase 1A Improvements are constructed and operational (see language in Community Benefit – section G above), also included here.
- *Public Coordination*. Once per quarter, Tenant will host a public coordination meeting with local sports and community groups, individuals, families, and frequent users of the Phase 1A Improvements to schedule and coordinate rentals.
  - A use lottery may be used in the event multiple individuals or groups request use on the same dates and times.
  - Tenant will provide the City with a list of all users quarterly and/or upon request.
- *Use Rates*. Tenant will consider utilizing field rental fee rates established by Peninsula School District or other comparable market rates for similar facilities.
  - These rates will be reviewed annually by the City of Gig Harbor Parks Manager, and must be approved by the Mayor or his/her designee once per year.
- *Field Coordinator*. Tenant will hire/assign a Field Coordinator to oversee day-to-day cleaning, maintenance, and scheduling.
- *Rules for All Users*. To protect the quality of the synthetic turf fields and provide a healthy and clean environment, Tenant will establish rules for all users
- *Insurance for Phase 1A Improvements*. Tenant will maintain appropriate insurance covering the Phase 1A Improvements including, but not limited to: building and outdoor property (includes synthetic turf fields, bleachers, fences, etc.), equipment, and replacement cost valuation.
- *Capital Reserve Fund*. The YMCA shall establish a separate, interest-bearing Capital Reserve Fund. The Capital Reserve Fund shall be maintained at a level mutually agreed to by the Parties and will support the maintenance, repair, and replacement of the Phase 1A Improvements for the duration of the Lease Term and any extension thereto.
  - The fund level established must be sufficient to address both short-term as well as long-term needs.
  - All rental fees collected by Tenant for use of the Premises for any non-Tenant activity and all donations or sponsorships received by Tenant not directly used for the construction of the Phase 1A Improvements shall be placed into the Capital Reserve Fund.
  - The City and Tenant will review the status of the Capital Reserve Fund annually.
  - Surplus Capital Reserve funds shall be reinvested in the Phase 1A Improvements or, if no such reinvestment is possible or beneficial, reinvested into the General Public's use of the facilities through reduced rental rates or other similar uses. Reinvestment in the Phase 1A Improvements does not include reimbursement to Tenant for the initial costs incurred in constructing those improvements.

- *Donations*. Tenant may offer sponsorship opportunities to individuals or businesses that wish to donate funds to support the ongoing operation, maintenance, and replacement of the Phase 1A Improvements.
    - o All such donations shall be placed into the Capital Reserve Fund unless received and used for the initial construction of the Phase 1A Improvements.
    - o The facility shall be named the Gig Harbor Sports Complex with any naming right being a ribbon above the main sign.
    - o The City has the right to reject any sign or naming right if it believes such is not in the best interests of the Gig Harbor community.

City Contributions – See Section I(h): **New Section** -- Landlord commits to contributing the following elements to the Phase 1A Improvements:

- The sewer line between the restrooms, including the connection in Harbor Hill drive, which will be completed in conjunction with Landlord's construction of Phase 1B.
    - o *Approx. Value = $100,000.*
- The water main between McCormick Creek Drive and Harbor Hill Drive and all fire hydrants for Phase 1A connected to that water main.
    - o *Approx. Value = $110,000.*
- Approximately 40% of the East/West retaining walls (shown in red on AHBLs drawing attached as an Exhibit)
    - o *Approx. Value = $60,000.*
- Landlord will coordinate with Tenant to provide access to and use of the Phase 1B facilities and amenities such that Tenant can operate existing levels of Tenant programming and existing levels of general public use until such time as the synthetic turf fields are available.
    - o *Approx. Value = $24,000*

Phase 1B – See Section J: **Revised Section**. Phase 1B is exclusively the responsibility of the City.

- Originally $60,000 of clearing and grading would be provided by the YMCA. That is no longer included.

Reconstruction – See Section K: If any aspect of the Phase 1A Improvements are damaged or destroyed following the Commencement Date, Tenant shall repair, restore or reconstruct the Phase 1A Improvements so as to restore the Phase 1A Improvements to the condition as it existed immediately prior to such damage or destruction.

- Only when insurance proceeds fail to cover full reconstruction of the Phase 1A Improvements, Tenant may choose to use the Capital Reserve Funds to further cover the reconstruction. At that point if the insurance proceeds along with the capital reserve funds are insufficient to reconstruct the Phase 1A Improvements, Tenant may restore the Premises to the condition it was in prior to the Commencement Date and this Lease shall automatically terminate when the restoration to pre-Commencement Date condition is complete with the capital reserve fund going to Landlord.

Utilities – See Section L: Tenant shall pay all charges for public or private utility services, including but not limited to, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage. Landlord agrees storm drainage is not separately metered and storm drainage charges will be apportioned to Tenant by Landlord.

Indemnification – See Section N:

- The YMCA will indemnify the City from claims incurred arising out of, or in connection with, or incident to the design, development, or construction of the Facility by the YMCA.
- The City will indemnify the YMCA from claims incurred arising out of, in connection with, or incident to the maintenance, use and occupancy of the Facility by the City, its agents, servants, employees or invitees.
- The full indemnification terms are in Section N.

Insurance – See Section O:

- The City will provide insurance covering bodily injury, personal injury, and property damage arising out of and relating to the general public's use of the Premises outside of any YMCA programming or use.
- The YMCA will provide insurance covering bodily injury, personal injury, and property damage arising out of the design, development, construction or use of the Premises by the YMCA, its agents, servants, employees or invitees.

Default – See Section R: There is a process where the defaulting party has an opportunity to remedy the failure within 60 days after written notice from the non-defaulting party. If the lease is terminated by Landlord for a material breach and failure to cure, Tenant must surrender the Premises in a good and safe condition and relinquishes rights to all Improvements which shall immediately become property of Landlord upon termination of the lease following a material breach and failure to properly cure. There is also a dispute resolution process outlined in Section S that must be addressed by the parties when there is a dispute not arising to the level of a material breach.

Gig Harbor YMCA Sports Complex Lease Agreement

1. Table of Contents

THIS LEASE (this “Lease” or “Agreement”) is made and entered into this _____________ day of _____________, 2020, by and between the City of Gig Harbor, Washington, a municipality of the State of Washington (“Landlord” or “City”), and YMCA of Pierce and Kitsap Counties, a nonprofit corporation organized and existing under the laws of the State of Washington (“Tenant” or “YMCA”).

RECITALS

A. Landlord owns certain real property located in Gig Harbor, Washington consisting of approximately twenty (20) acres (the “Property”). The Property is legally described in **Exhibit A-1**.
B. Tenant is a nonprofit organization headquartered in Tacoma, Washington. Among others, it owns and operates the Tom Taylor Family YMCA and its eleven (11) acres and its facility adjacent to the Premises (collectively, the “YMCA Property”).
C. Landlord intends to develop or have developed approximately eight (8) acres of its Property (the “Sports Complex Area”) into a public and private sports complex (the “Sports Complex”) that would serve the Gig Harbor community. The development efforts of the Sports Complex Area for the Sports Complex is referred to herein as the “Project.”
D. Tenant desires to lease from Landlord, and Landlord desire to lease to Tenant, a portion of the Sports Complex Area of the Property, upon which the YMCA will develop a portion of the Sports Complex Area with certain phased improvements (described below), and this portion will be referred to herein as the “Premises”, which is outlined on **Exhibit A-2**, attached hereto and incorporated herein by this reference and made a part hereof.
E. The first phase of improvements to the Premises will consist of two (2) synthetic turf playfields approximately 360’ x 210’ each, with field lighting, fencing around the turf playfield, a restroom facility and concession stand, 100 surface parking stalls, ingress and egress driveways and curb cuts (the “Phase 1A Improvements”). The Phase 1A Improvements are more fully described in **Exhibit B,** attached hereto and incorporated herein by this reference and made a part hereof.
F. The Phase 1A Improvements will be developed during what will be commonly referred to as “Phase 1A” of the Project with funding from the City from the YAF Grant (described below) as well as private efforts of Tenant.
~~G. Tenant agrees to provide site preparation and related erosion control to that portion of the Sports Complex Area referred to herein as the “Phase 1B Area” as a part of Phase 1B of the Project, which will include clearing, grubbing, and grading and related erosion control to subgrade (collectively, the “Phase 1B Improvements”), and the Phase 1B Improvements will be constructed at the time that the Phase 1A Improvements are constructed. The cost of the Phase 1B Improvements is estimated to cost Tenant $60,000, based on initial conceptual designs.~~
~~H.~~G. Landlord has been awarded $350,000 in funding through the Washington State Recreation and Conservation Office through a Youth Athletics Facility (the “YAF Grant”). The YAF Grant is required to be spent on the Phase 1A Improvements being constructed during Phase 1A of the Project.
~~I.~~H. The Project is anticipated to cost a minimum of $3.85 million dollars. $350,000 of it will be paid for by the YAF Grant and the remaining amount will be funded by the YMCA through fundraising and other sources.
~~J.~~I. Landlord has the authority to lease the Premises to Tenant, and Tenant has agreed to lease the Premises from Landlord, for a minimum of thirty-five (35) years, and Tenant shall have three (3) options to renew the lease for twenty (20) years each, provided, a key term of such extensions will be that the lease shall have a nominal rental fee for each year of each renewal period, as

consideration for the public benefit that is provided by the YMCA in leasing, operating, and maintaining the Sports Complex according to the terms of the Services Agreement.

~~K.~~J. Tenant has agreed to construct the Project and operate and maintain the Sports Complex on the conditions set forth herein and in the Services Agreement.

LEASE AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree to the following terms and conditions:

A. Recitals. All of the above recitals A through K are incorporated herein by this reference as if first stated herein.

B. Description. For and in consideration of Tenant's covenant to pay the rental and other sums provided for herein, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant, and Tenant leases from Landlord the Premises situated in the County of Pierce, State of Washington, described more particularly in **Exhibit A-2**, for the purpose of the construction and development of a sports complex and the subsequent maintenance and operation thereof (the "Permitted Use"). During the Term of the Lease Tenant will design, develop and construct the Phase 1A Improvements~~ and the Phase 1B Improvements that will facilitate both Tenant's as well as the public's ongoing use and enjoyment of the Sports Complex~~. Landlord shall deliver to Tenant the Premises in its as-is condition.

C. Term and Extensions.

   a. This Lease is effective on ___________________________, 2021~~0~~ (the "Commencement Date"). This Lease shall continue from and after the Commencement Date until midnight on the date that is thirty-five (35) years after the Commencement Date (the "Initial Term"), and the Lease term may be extended according to the provisions herein.

   b. Tenant is entitled to possession of the Premises on the Commencement Date.

   c. The YMCA may extend the Lease for up to three (3) renewal periods of twenty (20) years each (each, an "Extension Period"). At least 180 days prior to end of the then current Lease term, the YMCA shall have the option to exercise, by written notice to the City (the "Extension Notice"), an Extension Period. If the YMCA intends to propose any changes to the terms of the Lease at that time, they shall be included with the Extension Notice, which changes shall be subject to the City's approval. A key term of any and all such Extension Periods, which is hereby approved and not subject to further City approval, however, is that the YMCA will always be able to lease, during each proposed Extension Period, the Premises for a nominal rental fee each year of each Extension Period as consideration for the public benefit that is provided by the YMCA to the City in leasing, operating, and maintaining the Sports Complex according to the terms of the Services Agreement. Any changes to the Lease at any time will require the parties' mutual agreement in writing, with the proper authority and signed by the parties to be bound. The City of Gig Harbor's City Council shall decide on any changes proposed in the Extension Notice in writing at least 90 days prior to end of the then current lease term (the "Determination Notice"). In addition to Tenant's ability to propose changes in an Extension Notice, Landlord may also propose changes in the Determination Notice prior to the commencement of any Extension Period. Any changes to the Lease will be made in the form of an amendment to the Lease within 30 days of the issuance of the Determination Notice.

   d. Upon exercise of this option, Landlord and Tenant shall prepare a notice thereof in recordable form and cause the same to be recorded in the then applicable recording office of Pierce County, State of Washington. Upon exercise of this option, "Term'' as used herein shall include the exercised Renewal Period.

D. Termination; Option to Purchase; Fair Market Value.

a. This Lease, or any then current lease Extension Period, automatically terminates at the expiration of the then current lease term unless the Extension Notice has been timely submitted to the City. In the event that either party proposes changes to the Lease prior to the Extension Period as allowed in C above the YMCA shall be entitled to continue the Lease on a month to month basis past the then current lease expiration date under the terms of the then current Lease until the proposed changes are resolved.

b. In the event that the City's Determination Notice denies the changes proposed, the City shall state the reasons therefor and provide an opportunity for the Tenant to terminate the Lease in writing with notice to the City or, propose new or different terms, either of which shall be elected within ten (10) days of receipt of the City's Determination Notice, and if the YMCA proposes further changes, the City shall make a decision on such proposed changes within thirty (30) days of receipt thereof.

c. If the parties cannot mutually agree upon a proposed change made by either party by the time for the Extension Period to begin, and that was material and reasonably consistent with the overall structure, spirit and intent of the Agreement, then either party may terminate the lease with at least 180 days' prior written notice, provided, however, during such 180 day period, the parties must submit the disagreement to the dispute resolution process described in Section S below.

d. If upon receipt of the City's Determination Notice, the YMCA elects to terminate the Lease, Tenant will have the exclusive option to purchase (the "Option to Purchase") the Premises for its then current Fair Market Value as defined below.

e. The Option to Purchase is not available to Tenant if tenant does not make a request to Extend the Lease when additional Extension Periods remain available to the Parties.

f. Further, the Option to Purchase is not available to Tenant at the conclusion of the third Extension Period.

g. Any Option to Purchase is contingent upon the City's ability to legally subdivide or adjust the boundaries of the property such that the Premises can properly exist and be insured as a separate legal lot and the cost of such subdivision will be at the City's sole expense.

h. If the YMCA chooses to exercise its Option to Purchase, then the YMCA shall, within 15 days following its receipt of the Determination Notice, or at least 60 days prior to the expiration of the then current lease term, whichever is earlier, provide its written notice to Landlord of its intent to exercise the Option to Purchase(the "Option to Purchase Notice").

i. Fair Market Value.

    i. After the YMCA provides the City with the Option to Purchase Notice, the City and YMCA shall make a good faith effort to determine and agree upon the then current fair market value ("Fair Market Value") of the Premises. Fair Market Value of the Premises shall consider the value of comparable land parcels of similar size, use, improvements, zoning, location and quality in the Pierce County market. In the calculation of the then current Fair Market Value of the Premises under any one of the three methods of valuation, Tenant shall be given full credit for the value of the Phase 1A Improvements that were made by the Tenant during the lease term, taking into account as a credit, the value of those improvements as they exist at the time of the Fair Market Value assessment of the Premises as a whole, with appropriate depreciation for wear and tear and due consideration given for remaining useful life. Provided, the valuation of the Premises will not take into account (or will be credited to the YMCA) the YMCA services, income generated or other in-kind consideration provided by the YMCA. In the event that the Phase 1A Improvements are determined to diminish the Fair Market Value of the Premises, the Fair Market Value shall be reduced accordingly.

ii. If the Parties are unable to agree upon the Fair Market Value of the Premises and/or value of the Phase 1A Improvements for credit within thirty (30) days after Tenant delivers its Option to Purchase Notice, the City shall then have ten (10) days to select one real estate appraiser to determine the Fair Market Value of the Premises and value of the Phase 1A Improvements for credit, either positive or negative. Any appraiser selected pursuant to this section shall be a Member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least ten (10) years' experience appraising commercial properties in the commercial leasing market in Pierce County, or equivalent. The appraiser appointed by the City shall determine the Fair Market Value of the Premises and value of the Phase 1A Improvements according to the confines of subsection (i) above, within thirty (30) days of appointment. The City shall bear the expense of the appraiser's fees for the appraiser selected by the City.

iii. Should the Tenant not agree with the City's appraiser's valuation, but the Tenant still wishes to nonetheless buy the Premises, the Tenant may hire its own real estate appraiser to determine the Fair Market Value of the Premises and value of the Phase 1A Improvements for credit. The Tenant's appraiser selected pursuant to this section shall be a Member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least ten (10) years' experience appraising commercial properties in the commercial leasing market in Pierce County, or equivalent. The appraiser appointed by the Tenant shall then determine the Fair Market Value of the Premises and value of the Phase 1A Improvements according to the confines of subsection (i) above, within thirty (30) days of appointment. The Tenant shall bear the expense of the appraiser's fees for the appraiser selected by the Tenant.

iv. Should the City not agree with the Tenant's appraiser's valuation, then, if the Tenant still wishes to purchase the Premises, the price that the Tenant shall pay to the City for the Premises shall be the median price between that which the City appraiser calculated and the Tenant own appraiser calculated as fair market value for the Premises, applying the Tenant credit described above and the parties shall proceed to closing as described below.

v. Should the Tenant choose not to purchase the Premises after reviewing the City's appraisal and its own appraisal, the Tenant shall reimburse the City for its appraisal costs, and the City shall be required to purchase from Tenant the Phase 1A Improvements at the then current fair market value of such improvements with appropriate depreciation for wear, tear, and credit for remaining useful life as described in Section (i) above. In this circumstance, Tenant shall have ten (10) days to select one property appraiser to determine the fair market value of the Phase 1A Improvements. The appraiser selected will have at least ten (10) years' experience appraising improvements such as that which makes up the Phase 1A Improvements. The appraiser appointed shall determine the fair market value within thirty (30) days of appointment. Tenant shall bear the expense of the appraiser's fees for the appraiser selected by Tenant.

vi. Should the City not agree with the Tenant's appraiser's valuation, the City may hire its own appraiser under the same qualification requirements above to determine the Fair Market Value of the Phase 1A Improvements. The appraiser appointed by the City shall then determine the value of the Phase 1A Improvements according to the confines of subsection (i) and (v) above, within thirty (30) days of appointment. The City shall bear the expense of the appraiser's fees for the appraiser selected by the City.

vii. Should the Tenant not agree with the price that the City's appraiser recommends for the Fair Market Value of the Phase 1A Improvements, then the price that the City shall pay to Tenant for the Phase 1A Improvements shall be the median price between that which the City appraiser calculated for the improvements when generating the credit value and the Tenant appraiser's fair market value. If this results in a negative figure, it shall be deemed to be zero-dollar value.

viii. Immediately after either mutual agreement of the Fair Market Value for Tenant's Option to Purchase, or calculation of the fair market value of the Phase 1A Improvements for the City's purchase, the purchasing party shall take all necessary steps outlined below to close on the purchase and pay the other party with full completion of said purchase no later than the earlier of: (a) 180 days following the final price determination; or (b) the date the BLA is recorded as necessary to create a separate legal lot, and such date shall be referred to herein as the "Purchase Closing Date" and the following additional terms shall apply to the closing:

1. If the Tenant purchases the Premises, within ten (10) days of the final price determination, the City shall use commercially reasonable efforts to commence the steps necessary to prepare a boundary line adjustment ("BLA") or other subdivision of the Property to create the Premises as a separately purchasable lot through a surveyor of its choice at the City's cost and expense and use commercially reasonable efforts to cause the BLA to be approved and recorded within 180 days following the final price determination. Further, the title report shall be updated to reflect the BLA on record prior to closing and the title company shall be willing to insure the Premises as a separate legal lot/parcel.
2. The purchasing party shall pay the agreed upon or determined Fair Market Value of the Premises or fair market value of the Phase 1A Improvements, as the case may be to the selling party.
3. If Tenant purchases the Premises, any funds remaining in the Capital Reserve Fund shall go to Tenant.
4. If the City purchases the improvements, the appraiser used to obtain the fair market value of the improvements shall calculate the cost to improve the fields to "like new" condition. "Like new" condition is the point where the improvements have at least 75% of the normal useful life that a brand-new field would have. The capital reserve fund is then reduced by the calculated cost to improve the fields to "like new" condition with that reduced amount going to the YMCA along with the fair market value payment for the improvements. The remaining amount in the capital reserve fund goes to Landlord with the field purchase. If the fields are already in "like new" condition or better, no reduction in the capital

reserve fund is made and the entire capital reserve fund goes to Landlord with the field purchase.

5. The selling party shall convey the Premises or Phase 1A Improvements as the case may be to the purchasing party by bargain and sale deed, provided that the selling party shall provide the buying party with good and marketable title and be able to deliver possession on the Purchase Closing Date.
6. The selling party shall pay the premium for the standard ALTA title insurance policy and the purchasing party shall pay the cost of any endorsements and the premium for extended coverage.
7. The terms of the sale shall be that the purchasing party is buying the Premises or the Phase 1A Improvements, as the case may be, "AS IS" "WHERE IS" "WITH ALL FAULTS" and in its then condition and state of repair.
8. All revenues and all expenses of the Premises or the Phase 1A Improvements being purchased, including, but not limited to, real and personal property taxes, special assessments, Assessments, rents, water, sewer and utility charges, amounts payable under other contracts, if any, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses normal to the ownership, use, operation and maintenance of the Premises or the Phase 1A Improvements shall be prorated as of 12.01 a.m. on the Purchase Closing Date. If any revenue or expense amount cannot be ascertained with certainty as of the Purchase Closing Date, it shall be prorated on the basis of the Parties' reasonable estimate of such amounts, and shall be the subject of a final proration sixty (60) days after the Purchase Closing Date or as soon thereafter as the precise amounts can be ascertained. Either Party owing the other Party a sum of money based on adjustments made to the prorations after the Purchase Closing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefore to the date of payment if payment is not made within ten (10) days after the delivery of a statement therefor.
9. Selling party shall deliver such certificates or other documents or agreements as shall be reasonably required by the purchasing party or the title company in connection with the closing.
10. Selling party shall perform, execute and deliver, or cause to be performed, executed and delivered any and all such further acts, deeds and assurances as the purchasing party may reasonably require to evidence and vest in the purchasing party the ownership and title to the applicable interest; and otherwise consummate the purchase contemplated hereunder.

E. <u>Representations and Warranties</u>.

   a. *Landlord's Warranties*. Landlord represents and warrants that:

      i. The title to the Premises is vested in Landlord, subject to no defects or encumbrances except as set forth on Exhibit C attached hereto and incorporated herein by this reference

ii. Except for liens or encumbrances created by or through Tenant that are the responsibility of Tenant under this Lease, Landlord shall not, after the date hereof, agree to or create any liens or encumbrances on the Premises which are not specifically stated in writing to be subordinate to this Lease and to any amendments or modifications hereto. Landlord shall, at or prior to the Commencement Date, cause the Premises to be free of all liens and encumbrances except as shown on Exhibit C.
iii. Landlord has the authority to enter into this Lease subject to the approval of the Gig Harbor City Council and its execution and delivery by Landlord has been duly authorized by Gig Harbor City Council; and,
iv. Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold and enjoy the Premises, subject to the terms of this Lease.
v. Landlord has provided to Tenant copies of all environmental and soils reports ("Reports") and land surveys in the possession of Landlord, as listed on Exhibit D hereto, to the extent related to the Premises. Landlord has no actual knowledge of any environmental or soils conditions affecting the Premises except as set forth in those Reports and is not aware of any Hazardous Materials present on the Premises in any material amount, or any violation of any Environmental Laws, or any requirement to remediate any environmental condition. Tenant shall make its own investigation of the condition of the Premises prior to the Commencement Date. In the event any soils conditions require environmental remediation as the result of the discovery of Hazardous Materials (as defined below) after the Effective Date, but prior to substantial completion of the Phase 1A Improvements to the Project, Landlord shall, at Landlord's sole discretion, either: (i) pay for any legally required remediation; or (ii) reimburse Tenant for all reasonable, out-of-pocket funds expended for design and construction of the Project and terminate this Lease. As used herein, "Hazardous Material" means any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the state of Washington and/or the federal government, including, but not limited to, any material, substance, waste or similar term which is: (i) defined as a hazardous material under the laws of the state of Washington; (ii) defined as a hazardous substance under section 311 of the federal water pollution control act (33 U.S.C. §1317); (iii) defined as a hazardous waste substance under section 101 of federal resource conservation and recovery act (42 U.S.C. §6901 et. Seq.); (iv) defined as a hazardous waste substance under section 101 of the comprehensive environmental response, compensation and liability act, (42 U.S.C. §9601 et. Seq.); (v) defined as a hazardous waste or toxic substance, waste, material or similar term in any rules and regulations, which are adopted by any administrative agency including, but not limited to the environmental protection agency, the occupational safety and health administration, and any such similar state or local agency having jurisdiction over the Property whether or not such rules and regulations have the force of law; or (vi) defined as a hazardous or toxic waste, substance, material or similar term in any statute, regulation, rule or law enacted by local authorities, the state of Washington, and/or the federal government and in each case such hazardous or toxic substance is present in quantities or amounts requiring remediation.

b. *Tenant's Warranties*. Tenant represents and warrants that:

i. Tenant has the authority and power to enter into this Lease and perform its obligations herein;
ii. The execution and delivery by Tenant of this Lease has been duly authorized and the person authorized to execute this Lease on behalf of Tenant has been duly authorized to do so;
iii. Tenant will operate the Premises in accordance with all of the provisions of this Lease;
iv. Tenant will comply with local, state, and federal law and will obtain all necessary permits for any improvements or operations at the Premises;
v. Tenant will use commercially reasonable and diligent efforts to fully and completely fund not less than $3.5 million dollars and complete construction of Phase 1A of the Gig Harbor Sports Complex within the timeline prescribed by the RCO Grant.

F. Rental Payment. During the Initial Lease Term, and each of the Extension Periods unless mutually agreed to otherwise, Tenant covenants and agrees to pay Landlord in equal monthly installments, on or before the Commencement Date, and continuing on the first anniversary of the commencement date thereafter, the sum of One Dollar ($1.00) (the "Rent"). Rent and other sums to be paid by Tenant shall be payable in lawful money of the United States of America. All payments shall be made by Tenant to Landlord without notice or demand, deduction or offset, at such address as Landlord may specify. Tenant may prepay all monthly rent due for the then current term at the outset of the term.

G. Community Benefit Provided. For the duration of the Lease and any extension thereto, Tenant will provide the following community benefits to the City and its residents including:
   a. Affordable rental fees and program rates as further described in this Lease as well as the Services Agreement.
   b. Financial assistance to those residents/households meeting the United States Department of Health and Human Services Poverty Guidelines to participate in YMCA programs and activities as well as for rental of the facilities.
   c. Provide designated times/hours for free public use of the improvements.
   d. Work in collaboration with the City and other community agencies to host free public or special events on the improvements.
   e. Clean and maintain the parking lot (D3 and D6), restroom/concessions facilities (E1), and internal and perimeter landscaping. For the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms.

H. Services Agreement. Prior to the substantial completion of construction of the Phase 1A Improvements for any purpose the Parties must enter into the Services Agreement which will outline the structure for the use, maintenance, and control of the Phase 1A Improvements for both the Tenant's and the public's use. The Services Agreement must include, but is not limited to, the following terms:
   a. *General Public Use*. The general public shall be allowed to use the Phase 1A Improvements subject to reasonable time, place, and manner restrictions. At minimum, any time the Phase 1A Improvements are not being utilized by Tenant for programming or are not otherwise reserved, the Phase 1A Improvements shall be open to the general public. City must approve the days and hours which the Premises will be available for Public use. The structure for public use and the extent of public use of the Premises will be defined in the Services Agreement and approved by the City.

b. *Scheduling*. Tenant will provide its internet-based field/team management software, *PlayerSpace* or equivalent, to enable individuals and families, local sports groups, other community groups, and the general public the ability to reserve use of the fields. Reservations can also be made by contacting Tenant's Field Coordinator (to be hired/assigned by Tenant prior to the Phase 1A Construction Completion Date). All scheduling and management of field use is the sole responsibility of Tenant. Tenant will provide view-only access to these systems to the City.

c. *Maintenance*. At all times during the Lease Term, or any extension thereof, Tenant shall keep and maintain the Premises and the Phase 1A Improvements in good order, condition and repair at Tenant's sole expense. Notwithstanding, for the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms. Tenant is not required to complete such maintenance if the Premises or Phase 1A Improvements are damaged by any negligence or intentional act of Landlord, or Landlord's agents or employees. The fields must be able to meet the minimum field condition standards required to host tournaments as specified by the Washington State Interscholastic Athletic Association or other appropriate standards for the majority of user groups. The City of Gig Harbor City Administrator or his/her designee and Tenant will annually review the maintenance and condition of the facilities against the standards established therefor by the mutual agreement of the parties hereto. The Services Agreement may establish further specific requirements of frequency and type of maintenance of the Phase 1A Improvements. Failure to properly maintain and repair the Phase 1A Improvements is a material breach of this agreement.

d. *Public Coordination*. Once per quarter, Tenant will host a public coordination meeting with local sports and community groups, individuals, families, and frequent users of the Phase 1A Improvements to schedule and coordinate rentals. A use lottery may be used in the event multiple individuals or groups request use on the same dates and times. Tenant will provide the City with a list of all users quarterly and/or upon request.

e. *Use Rates*. Tenant will consider utilizing field rental fee rates established by Peninsula School District or other comparable market rates for similar facilities. The parties understand there may be instances where varying from this schedule may be necessary. These rates will be reviewed annually by the City of Gig Harbor Parks Manager, and must be approved by the Mayor or his/her designee once per year.

f. *Field Coordinator*. Tenant will hire/assign a Field Coordinator to oversee day-to-day cleaning, maintenance, and scheduling. The Field Coordinator, or an assigned staff person, will be responsible for enforcing the field rules and ensuring compliance with the reservation schedule. Tenant will also monitor the facilities during non-programmed/open times for misuse of or damage to the facilities.

g. *Rules for All Users*. To protect the quality of the synthetic turf fields and provide a healthy and clean environment, Tenant will establish rules for all users that may prohibit pets (except those to assist persons with disabilities), sports/energy/soft drinks, coffee and tea, alcohol, snacks, food, glass containers, sunflower seeds, gum, tobacco or vaping products, fireworks or open flame, bicycles, metal cleats or spikes, golfing, shot putting, javelin, discus throwing, unauthorized use of model planes and rockets (including drones), stakes, spikes, and other pointed objects, from the synthetic turf fields. Signage prohibiting these uses will be posted at all field entry points. Tenant is responsible for the enforcement of all rules of use.

h. *Insurance for Phase 1A Improvements*. Tenant will maintain appropriate insurance covering the Phase 1A Improvements including, but not limited to: building and outdoor property (includes synthetic turf fields, bleachers, fences, etc.), equipment, and replacement cost valuation.

i. *Capital Reserve Fund*. Immediately upon Commencement of this Lease Tenant shall establish a separate, interest-bearing Capital Reserve Fund. The Capital Reserve Fund shall be maintained at a level mutually agreed to by the Parties and will support the maintenance, repair, and replacement of the Phase 1A Improvements for the duration of the Lease Term and any extension thereto. The fund level established must be sufficient to address both short-term as well as long-term needs. All rental fees collected by Tenant for use of the Premises for any non-Tenant activity and all donations or sponsorships received by Tenant not directly used for the construction of the Phase 1A Improvements shall be placed into the Capital Reserve Fund. The City of Gig Harbor City Administrator or his/her designee and Tenant will review the status of the Capital Reserve Fund annually, including but not limited to the amounts contributed, used, and any surpluses available. Surplus Capital Reserve funds are those funds above the required Capital Reserve Fund level established by the Parties. Amounts in the Capital Reserve Fund that are considered surplus shall be reinvested in the Phase 1A Improvements or, if no such reinvestment is possible or beneficial, reinvested into the General Public's use of the facilities through reduced rental rates or other similar uses. Reinvestment in the Phase 1A Improvements does not include reimbursement to Tenant for the initial costs incurred in constructing those improvements.

j. *Donations*. Tenant may offer sponsorship opportunities to individuals or businesses that wish to donate funds to support the ongoing operation, maintenance, and replacement of the Phase 1A Improvements. All such donations shall be placed into the Capital Reserve Fund unless received and used for the initial construction of the Phase 1A Improvements. Tenant shall inform the City of Gig Harbor City Administrator in advance of any proposed sponsorship which includes any sign or naming right. The facility shall be named the Gig Harbor Sports Complex with any naming right being a ribbon above the main sign. The City has the right to reject any sign or naming right if it believes such is not in the best interests of the Gig Harbor community.

I. <u>Construction of Phase 1A Improvements</u>.

a. *Commencement*.

i. Tenant will commence construction of the Phase 1A Improvements only upon satisfaction of the following conditions:

1. Receipt of all applicable permit(s);
2. The approval of the YMCA's Board of Directors;
3. City will review and approve the construction documents for consistency with this lease agreement; and,
4. Tenant's receipt from the City of 100% of the RCO YAF Grant funds. In conjunction therewith, the City hereby represents and warrants to provide Tenant with the RCO YAF Grant funds no later than the Commencement Date of this Lease.

b. *Completion Date*. Design, development, and construction of Phase 1A Improvements is entirely the responsibility of Tenant and is anticipated, but not guaranteed, to take place between March 2019 and August 2022 (the "Phase 1A Improvements Construction Completion Date"). This Phase 1A Improvements Construction Completion Date is outlined in the RCO Grant Agreement entered into by the City, which funding will be used for the project. Landlord will manage the RCO Grant and will request up to one additional two (2) year extension of the timeline for the Grant to facilitate the construction of the Phase 1A Improvements. Such extension is not guaranteed and will require approval from the Washington State Recreation and Conservation Office. The Phase 1A Improvements Construction Completion Date may be modified by mutual written agreement of the Parties as needed to address further phasing and/or requirements of funding for the project.

c. *Ownership*. The Phase 1A Improvements are exclusively the property of Tenant unless purchased by Landlord through the process outlined in Section D.i.v

d. *Permits*. Tenant shall be responsible for obtaining any and all applicable permits for all work associated with improvements on the Premises, including but not limited to the Phase 1A Improvements.

e. *Prevailing Wage*. Tenant will solicit bids from highly-qualified local general contractors to construct the Phase 1A Improvements. Should any law or agreement require payment of prevailing wage, Tenant must comply with such requirement unless they are able to demonstrate that they are exempt from prevailing wage requirements and shall adhere to all applicable federal, state, and local laws.

f. *Inspections*. During Tenant's construction of the Phase 1A Improvements, Landlord may, during normal business hours, be entitled to make such inspections as Landlord deems reasonably necessary, provided that the inspection is scheduled at least 48 hours in advance with the Tenant, the scope of the inspection is included in detail in the scheduling notice, Landlord is accompanied by a Tenant representative at all times during the inspection, Landlord follows the Tenant's protocols for onsite safety during visitation, Landlord carries its own property and liability insurance that will insure against any damage caused by Landlord's inspection, and Landlord shall indemnify Tenant against and hold Tenant harmless from any claims, liens, causes of action, or obligations by persons or entities not a party to this Lease which arise out of or are in any way related to Landlord's inspection at, on or under the Property. The City, as the permitting agency, shall have access to the Phase 1A Improvements consistent with the Gig Harbor Municipal code and the permit requirements.

g. *Funding.* Tenant is entirely responsible for all funding of the Phase 1A Improvements with the exception of the YAF Grant fund, which will serve as a contribution toward said improvements.

h. *Landlord Contributions to Phase 1A Improvements.* Landlord commits to contributing the following elements to the Phase 1A Improvements:

   i. The sewer line between the restrooms, including the connection in Harbor Hill drive, which will be completed in conjunction with Landlord's construction of Phase 1B,

   ii. The water main between McCormick Creek Drive and Harbor Hill Drive and all fire hydrants for Phase 1A connected to that water main,

   iii. Approximately 40% of the East/West retaining walls (shown in red on AHBLs drawing attached hereto as Exhibit XX)

   ~~g.~~iv. Landlord will coordinate with Tenant to provide access to and use of the Phase 1B facilities and amenities such that Tenant can operate existing levels of Tenant programming and existing levels of general public use until such time as the synthetic turf fields are available.

J. Phase 1B Obligations.

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a. *Phase 1b Improvements*. The Phase 1B Improvements generally include event lawn, playground(s), bocce ball, pickleball courts, and associated parking. These Phase 1B Improvements fall entirely outside the leased Premises and Tenant has no rights or privileges as it pertains to the Phase 1B Improvements stemming from this Lease.

b. *Construction of Phase 1B*. Landlord is exclusively responsible for all elements of Phase 1B, including but not limited to the clearing, grubbing, and grading and related erosion control to the subgrade. ~~Tenant agrees to pay all costs associated with the Phase 1B Improvement clearing, grubbing, and grading and related erosion control to subgrade. Tenant must obtain proper City permits to complete the site preparation and related erosion control. Except those agreed upon site preparation and related erosion control costs, Tenant has no further financial obligations pertaining to the Phase 1B Improvements except for any damage caused by any negligent or intentional act of Tenant, or Tenant's agents or employees, during construction of either Phases 1A or 1B, or the ongoing use of the Premises, which shall be Tenant's sole cost and expense.~~

K. Damage and Reconstruction. In the event any aspect of the Phase 1A Improvements are damaged or destroyed following the Commencement Date, Tenant shall repair, restore or reconstruct the Phase 1A Improvements so as to restore the Phase 1A Improvements to the condition as it existed immediately prior to such damage or destruction, as nearly as practicable in full compliance with all legal requirements; provided, however, that Landlord shall be responsible for any damage caused by Landlord. Modifications may be made to conform to applicable laws, rules and regulations or available means of construction. Only when insurance proceeds fail to cover full reconstruction of the Phase 1A Improvements, Tenant may choose to use the Capital Reserve Funds to further cover the reconstruction. At that point if the insurance proceeds along with the capital reserve funds are insufficient to reconstruct the Phase 1A Improvements, Tenant may restore the Premises to the condition it was in prior to the Commencement Date and this Lease shall automatically terminate when the restoration to pre-Commencement Date condition is complete with the capital reserve fund going to Landlord.

L. Utilities. Tenant shall pay or cause to be paid when due, and shall indemnify, protect and hold harmless Landlord and the Premises from all charges for public or private utility services to or for the Premises during the Term, including but not limited to, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage. Landlord agrees storm drainage is not separately metered and storm drainage charges will be apportioned to Tenant by Landlord.

M. Taxes and Assessments. Tenant shall pay when due each and every one of the following (unless exempted, as may be allowed by law):

a. All real property taxes or payments in lieu thereof due with respect to the Premises or any portion thereof;

b. Taxes due or which may be due upon or with respect to the leasehold estate created by this Lease, or the rents payable or paid by Tenant to Landlord, including any business and occupation taxes and leasehold excise taxes, but excluding any tax measured by net income;

c. All taxes imposed on or with respect to personal property and intangibles located in or used in connection with the Premises;

d. All assessments for public improvements or benefits which are assessed during the Term pertaining only to the Tenant's improvements, and similar assessments and charges that pertain only to the Tenant's Improvements; provided however, that if such assessments pertain to the Sports Complex, then in proportion based on the taxable value of each portion thereof (i.e., one portion may be income generating and another may not); and

e. All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof.

f. Tenant at its sole cost and expense may by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, or any other lien, encumbrance or charge against the Premises arising from work done or materials provided to or for Tenant, if: (a) such proceedings suspend the collection thereof from Landlord, Tenant and the Premises, unless Tenant has furnished security as provided in section (b) below; (b) Tenant shall have furnished such security, if any, as may be required in the proceedings or is reasonably satisfactory to Landlord; and (c) Tenant shall give Landlord reasonable notice of, and information pertaining to, such contest and regular progress reports with respect thereto. Tenant shall indemnify, protect and hold harmless Landlord and the Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses related thereto.

N. Indemnification.

a. The City agrees to indemnify, defend, save and hold harmless the YMCA, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits or judgements, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to the maintenance, use and occupancy of the Facility by the City, its agents, servants, employees or invitees as stipulated in the contract, except those damages solely caused by the gross negligence or willful misconduct of the YMCA, its officials, employees, volunteers, and agents.

b. The YMCA agrees to indemnify, defend, save and hold harmless the City, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits or judgements, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the design, development, or construction of the Facility by the YMCA, its agents, servants, employees or invitees as stipulated by the contract, except for those damages solely caused by the gross negligence or willful misconduct of the City, its officials, employees, volunteers, and agents.

O. Insurance.

a. The City shall procure and maintain, without cost or expense to the YMCA, on or before the commencement date of this Agreement and throughout the Agreement term or as long as the City continues to use the Premises, commercial general liability insurance on a form equivalent to the ISO CG 00 01, or equivalent self-insurance coverage, covering bodily injury, personal injury, and property damage arising out of and relating to the general public's use of the Premises outside of any YMCA programming or use with liability limits of not less than $1,000,000, per occurrence, $2,000,000 annual aggregate. The City shall provide the YMCA with a certificate or certificates providing evidence of such coverage, within ten (10) days of the execution of this Agreement.

b. The YMCA shall procure and maintain, without cost or expense to the City, on or before the commencement date of this Agreement and throughout the Agreement term or as long as the YMCA remains in possession of the Premises, commercial general liability insurance on a form equivalent to the ISO CG 00 01, covering bodily injury, personal injury, and property damage arising out of the design, development, construction or use of the Premises by the YMCA, its agents, servants, employees or invitees, and including as additional insureds the City, its agents, servants, employees or invitees, with liability limits of not less than $1,000,000, per occurrence, $2,000,000 annual aggregate. These same insurance requirements will be required of any contractor and subcontractors the YMCA hires for design, construction, or maintenance of the improvements. At the YMCA's option, the YMCA may also procure abuse and molestation, workers' compensation, automobile, and professional liability insurance coverage on terms acceptable to the YMCA.

c. The YMCA's insurance shall be written on an "occurrence form", with a company that has a current A.M. Best rating of at least "A:VII" or better and licensed to do business in the State of Washington. The City shall be included by endorsement, or blanket policy language, as an additional insured on the YMCA's commercial general liability policy or policies. The YMCA shall not cancel or modify any policies for any reason without fifteen (15) days prior written notice to the City. The YMCA shall provide the City with a certificate or certificates of such insurance, including the required endorsements, within ten (10) days of the execution of this Agreement. The YMCA's insurance coverage shall be primary insurance with respect to the City for matters addressed under N.b., of this Agreement. Any insurance, self-insurance, or insurance pool coverage maintained by either party otherwise shall be primary and non-contributory. The City shall not waive the City's right to subrogation against the YMCA's insurance coverage.

d. The City's insurance shall be written on an "occurrence form". The City shall not cancel or modify any policies for any reason without fifteen (15) days prior written notice to the YMCA. The City shall provide the YMCA with a certificate or certificates of such insurance, including the required endorsements, within ten (10) days of the execution of this Agreement. The City's insurance coverage shall be primary insurance with respect to the YMCA for matters addressed under N.a, of this Agreement. Any insurance, self-insurance, or insurance pool coverage maintained by the YMCA shall be in excess of the City's insurance and non-contributory. The YMCA shall not waive the YMCA's right to subrogation against the City's insurance coverage.

P. <u>Compliance with Laws</u>. Tenant shall at all times during the Term of this Lease, at Tenant's sole cost and expense, perform and comply with laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated which are applicable to the Premises, Tenant's use of the Premises, or any improvements made by Tenant.

Q. <u>Successors and Assigns</u>.

a. Successors and Assigns of Landlord.

i. From and after the commencement of the Initial Term of this Lease, Landlord shall have the right to sell, transfer, donate, convey, assign, lease or otherwise dispose of any part of the Premises, whether voluntarily, involuntarily, by operation of law or otherwise, to a Successor Public Owner without the prior written consent of Tenant, but with ninety (90) days' notice to Tenant, provided that any such Successor Public Owner shall assume Landlord's obligations hereunder by execution and delivery of assumption agreements in form and substance satisfactory to the Tenant.

ii. From and after the date that the Phase 1A Improvements are substantially completed, any sale, transfer, donation, conveyance, assignment, lease, or other disposition of the Premises or any portions thereof or any interest therein to any Person other than a Successor Public Owner shall be subject to the prior written consent of Tenant, the execution of any necessary and appropriate amendments to this Lease to reflect the fact that the new owner is a private person and not a Successor Public Owner and the assumption by such person of Landlord's obligations under this Agreement, as amended, by execution of assumption agreements in form and substance satisfactory to the Parties to this Agreement.

b. *Successors and Assigns of Tenant*. YMCA shall not assign its rights or delegate its duties under this Lease to any other person or entity without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. In the event of such permitted assignment, such person or entity shall assume the rights and duties and obligations under this Agreement and shall enter into an assumption agreement reasonably satisfactory to Landlord.

R. Default.

a. *Defaults and Remedies*. In the event any Party shall fail to perform, keep or observe any material term, covenant, agreement or condition contained in this Agreement and any such failure shall remain unremedied for a period of sixty (60) days after written notification thereof shall have been given by any Party to the non-performing Party, the non-performing Party shall be in default under this Agreement; provided, however, that if the default is of such a nature that it is not susceptible of cure within sixty (60) days and if the non-performing Party commences to cure the default within said sixty (60) day period, the non-performing Party shall not be in default under this Agreement so long as it is diligently prosecuting said cure to completion. From and after the date of such default, the non-defaulting Parties shall have, in addition to any other rights or remedies available under this Agreement or otherwise available at law or equity, an action for actual damages (including reasonable attorneys' fees and costs), the right to demand and have specific performance of this Agreement, and an injunction or order to compel the defaulting Party to observe or perform its covenants and obligations hereunder, or shall have the right to immediately terminate this Lease with written notice to the non-performing party following the sixty (60) day period to cure without any obligation to proceed to Dispute Resolution. If the lease is terminated by Landlord for a material breach and failure to cure, Tenant must surrender the Premises in a good and safe condition and relinquishes rights to all Improvements which shall immediately become property of Landlord upon termination of the lease following a material breach and failure to properly cure.

b. *Rights and Remedies Cumulative*. Notwithstanding any provision of this Agreement to the contrary, (1) the rights and remedies of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same time or different times, of any other such remedies for the same default or breach by the other Parties, and (2) consequential damages and damages which are speculative or remote are not recoverable under this Agreement even if such damages would otherwise be available under law or equity. No waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of any other obligation of any other Party. No such waiver shall be valid unless it shall be made in writing duly signed by the Party waiving the right or rights.

c. *Excuses for Nonperformance*. Notwithstanding anything in this Agreement to the contrary, neither Landlord nor Tenant shall be excused from performing any obligation under this Agreement and any delay in the performance of any obligation under this Agreement, shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, riots, mob violence, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, operation of law, pandemics, epidemics, mandates or orders of governmental or military authorities. In the event any Party is enjoined from performing or prohibited as a matter of law from performing any of its obligations under this Agreement by reason of a court order, such Party shall upon receipt of such court order immediately provide a copy of same to the other Parties. The Party subject to the court order shall either comply with the court order or, at its sole cost and expense, engage counsel selected by such Party and undertake the defense of such action, lawsuit or proceeding and thereafter prosecute the defense of such action, lawsuit or proceeding in good faith and diligently prosecute the same to completion, including the prosecution of appeals from the decision of any trial court or court of intermediate jurisdiction until there has been a final judgment entered by a court of competent jurisdiction which is no longer the subject of a good faith appeal. The Party subject to the court order shall not adjust or settle any such action, lawsuit or proceeding without the prior written consent of the other Parties which consent shall not be unreasonably withheld, conditioned or delayed. The other Parties shall have the right, but not the obligation, to engage counsel and to intervene in any such action, lawsuit or proceeding to protect their interest under this Agreement.

d. *No Waivers*. No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach.

S. <u>Dispute Resolution</u>.

a. *Policy*. The parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the parties arising under this Agreement (each a "Matter in Dispute") using the procedures set forth herein.

b. *Notice and Resolution*. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior officer of its management with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the parties shall submit the Matter in Dispute to Mediation as provided in Section S.c. below as a condition precedent to pursuing other alternative dispute procedures or litigation.

c. *Mediation*. The parties shall proceed in good faith to resolve any and all Matters in Dispute as expeditiously as possible and shall cooperate so that the terms of this Lease are effectuated. If, however, the parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the parties may agree in writing to waive this condition.

d. *Mediation Process*. The parties, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either Landlord or Tenant or an affiliate of either who shall also be a real estate professional and/or construction expert, as may be applicable to the dispute in question, with at least five (5) years' experience in Pierce County handling matters such as that which caused mediation to arise ("Mediator"). Landlord shall have the responsibility to identify a mediator meeting these qualifications and if such qualifications are met the mediator shall be appointed to handle the matter.

e. *Consideration of Disputes or Claims*. Upon receipt by the Mediator of written notice of a dispute, from either party, the Mediator shall convene a hearing to review and consider the dispute. Both parties shall be given the opportunity to present their evidence at this hearing. Both parties are encouraged to provide exhibits, calculations and other pertinent material to the Mediator prior to the hearing, for review.

f. *Site Visit*. The Mediator may visit the Premises as necessary to develop familiarity with the issue(s) surrounding the dispute. The frequency, exact time, and duration of these visits shall be as mutually agreed upon among the Mediator and the parties, but only as necessary to address a dispute.

g. *Procedures*. Upon the first referral to the Mediator of a dispute hereunder, the Mediator shall, with the agreement of the parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. Unless the parties agree otherwise, the Mediator shall issue its recommendation as soon as possible but, in any event, not later than sixty (60) days following referral of the dispute to the Mediator.

h. *Independence of Mediator*. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by the parties, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the parties.

i. *Records*. The Parties shall furnish the Mediator with all relevant documents each might have along with any document requested by the Mediator.

j. *Coordination*. The parties will coordinate to effectively assist the Mediator's operation.

k. *Payment*. The fees charged by the Mediator shall be shared equally by the parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator, which in any event shall not exceed the usual and customary rate or rates prevailing in Pierce County, Washington, for mediation services of the sort described herein.

l. *Litigation*. Only after the mediation has concluded may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

T. <u>Miscellaneous</u>.

a. *No Partnership*. Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.

b. *Time of the Essence*. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

c. *Interpretation*. This Lease shall be construed according to and governed by the laws of the state of Washington. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant. If any provision of this Lease (other than those relating to payment of rent) or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. In the event of any conflict between this Lease and the MOU, the terms of this Lease will control and be binding on the parties. In the event of any conflict between this Lease and the Services Agreement, the terms of this Lease will control and be binding on the Parties.

d. *Survival*. Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

e. *Memorandum of Lease*. The parties agree to execute and acknowledge an appropriate memorandum of this Lease.

f. *Commissions*. Tenant shall save and hold Landlord harmless from any and all claims or demands, requests by real estate brokers, agents or finders with whom Tenant may have dealt in connection with this Lease.

g. *Notices*. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other party may be given personally or may be delivered by nationally recognized overnight carrier or by certified mail, return receipt requested, postage prepaid, properly addressed, and sent to the following addresses:

Landlord:	City of Gig Harbor Attn: City Clerk 3510 Grandview Street Gig Harbor, WA 98335
Tenant:	YMCA of Pierce & Kitsap Counties Attention: Charlie Davis, President/CEO 4717 S 19th St, Ste. 201 Tacoma WA 98405
With Copy to:	Gordon Thomas Honeywell LLP

Attention: Jemima J. McCullum, Esq.
1201 Pacific Avenue, Ste. 2100
Tacoma, WA 98401

or to such other address as either party may from time to time designate by written notice to the other.

h. *Attorneys' Fees*. In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach thereof, or in any proceeding to recover the possession of the Premises, the prevailing party shall be entitled to recover from the other party as a part of prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

i. *Interest*. Except as otherwise specifically provided herein, any amounts due one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement accrues at the “prime rate” published or publicly announced most recently prior to such date in the Wall Street Journal; provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law.

j. *Heirs and Assigns*. All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

k. *Entire Agreement; Amendments in Writing*. Except for the Services Agreement and the RCO Grant Agreement, the terms of each which supplements, but does not supersede, the terms of this Lease, this Lease contains the final and complete expression of the parties relating in any manner to the leasing, use and occupancy of the Premises and other matters set forth in this Lease. Except for the Services Agreement and the RCO Grant Agreement, no prior agreements or understanding pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

l. *Waiver Implied*. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The acceptance by Landlord of rent with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Landlord or Tenant, as the case may be, to or of any act by the other party requiring consent or approval, shall not be deemed to waive or render unnecessary Landlord's or Tenant's consent or approval, as the case may be, to or of any subsequent similar acts by the other party.

m. *Hazardous Substances*. Tenant covenants and agrees that hazardous substances or materials, as defined in federal, state, and local laws, shall not be generated, processed, stored, transported, handled or disposed of on the Premises by Tenant, its agents, employees, contractors, or invitees. Tenant shall immediately notify Landlord if Tenant becomes aware of (i) any hazardous substance release, or other hazardous substance problem or liability with respect to the Premises; (ii) any actual or alleged violation with respect to the Premises of any environmental law, or (iii) any lien or action with respect to any of the foregoing. Tenant shall, at its sole expense, take all actions as may be necessary or advisable for the cleanup of hazardous substances with respect to the Premises which may be necessitated as a result of Tenant's violation of this Section, including, without limitation, all removal, containment and remedial actions in accordance with applicable environmental laws and shall further pay or cause to be paid all cleanup, administrative and enforcement costs of governmental agencies if obligated to do so by environmental law. Tenant agrees to defend, indemnify and hold Landlord harmless from any and all claims, demands, costs, fees, penalties, charges and expenses incurred by or asserted or assessed against Landlord as a result of any hazardous substance placed on the Premises by Tenant, its agents, employees, contractors or invitees.

n. *Landlord Cooperation*. Landlord shall reasonably cooperate with Tenant to facilitate Tenant's construction, maintenance and operation of the Premises from and after the Effective Date and throughout the Term.

o. *Ownership of Improvements*. The Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of Landlord for fair market value paid to the Tenant, as provided in Section D (Termination, Option to Purchase, Fair Market Value) above, unless the Premises is purchased by Tenant.

p. *Leasehold Mortgages Authorized*. On one or more occasions Tenant may mortgage or otherwise encumber Tenant's leasehold estate to an institutional investor under one or more leasehold mortgages and assign this Lease as security for such leasehold mortgage; provided, Tenant shall not place or create any mortgage, deed of trust, or other lien or encumbrance affecting Landlord's fee interest in the Property.

Signature Page to Follow

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD: GIG HARBOR, WASHINGTON, a
a municipal corporation in the State of Washington

By ___________________________________
Kit Kuhn, Mayor

TENANT: YMCA OF PIERCE & KITSAP COUNTIES,
a Washington nonprofit corporation

By ___________________________________
Its Charlie Davis, CEO & President

By ___________________________________
Its Toko Thompson, CFO & Vice President

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this ______ day of ____________, 2020, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ______________________________, to me known to be the ____________________________ of ____________________________, a _______________________________, the ______________________ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

____
Notary public in and for the state of
Washington, residing at ___________________________

My appointment expires ___________________________

STATE OF WASHINGTON)
) ss.

COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this _____ day of _______________, 2020, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ______________________________________, to me known to be the _________________________ of _____________________________, a ________________________________, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

____
Notary public in and for the state of
Washington, residing at _____________________________

My appointment expires ____________________________

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this ______ day of ____________, 2020, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ________________________________, to me known to be the ______________________________ of ______________________________, a _________________________________, the ________________________ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

____
Notary public in and for the state of
Washington, residing at ______________________________

My appointment expires _____________________________

EXHIBIT A-1

Legal Description of the Gig Harbor property

Lot 1, BUSINESS PARK AT HARBOR HILL, according to Plat recorded June 05, 2006, under recording No. 20060523507, records of Pierce County Auditor.

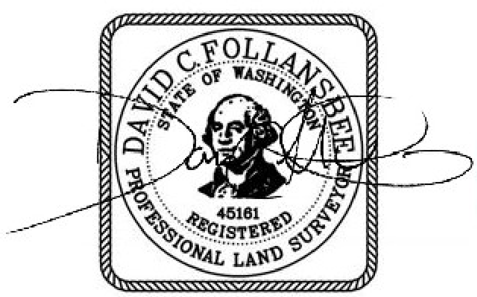
Situate in the City of Gig Harbor, County of Pierce, State of Washington

Exhibit A-2

Legal Description and Map of the Lease Premises

ALL OF LOT 1, BUSINESS PARK AT HARBOR HILL, ACCORDING TO THE PLAT RECORDED UNDER RECORDING NO. 200605235007, RECORDS OF PIERCE COUNTY AUDITOR;
EXCEPT THE FOLLOWING:
BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1;
THENCE ALONG THE EAST LINE OF SAID LOT 1, NORTH 01°10'42" EAST, 154.31 FEET;
THENCE LEAVING SAID EAST LINE, NORTH 88°49'37" WEST, 229.12 FEET;
THENCE SOUTH 01°10'23" WEST, 41.20 FEET;
THENCE NORTH 88°49'25" WEST, 71.37 FEET;
THENCE NORTH 01°10'23" EAST, 41.20 FEET;
THENCE NORTH 88°49'37" WEST, 330.46 FEET MORE OR LESS TO THE WEST LINE OF SAID LOT 1;
THENCE ALONG SAID WEST LINE, SOUTH 01°15'16" WEST, 148.07 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1;
THENCE ALONG THE SOUTH LINE, SOUTH 88°15'40" EAST, 631.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 407,519 SQUARE FEET, OR 9.36 ACRES MORE OR LESS.



01/15/2021

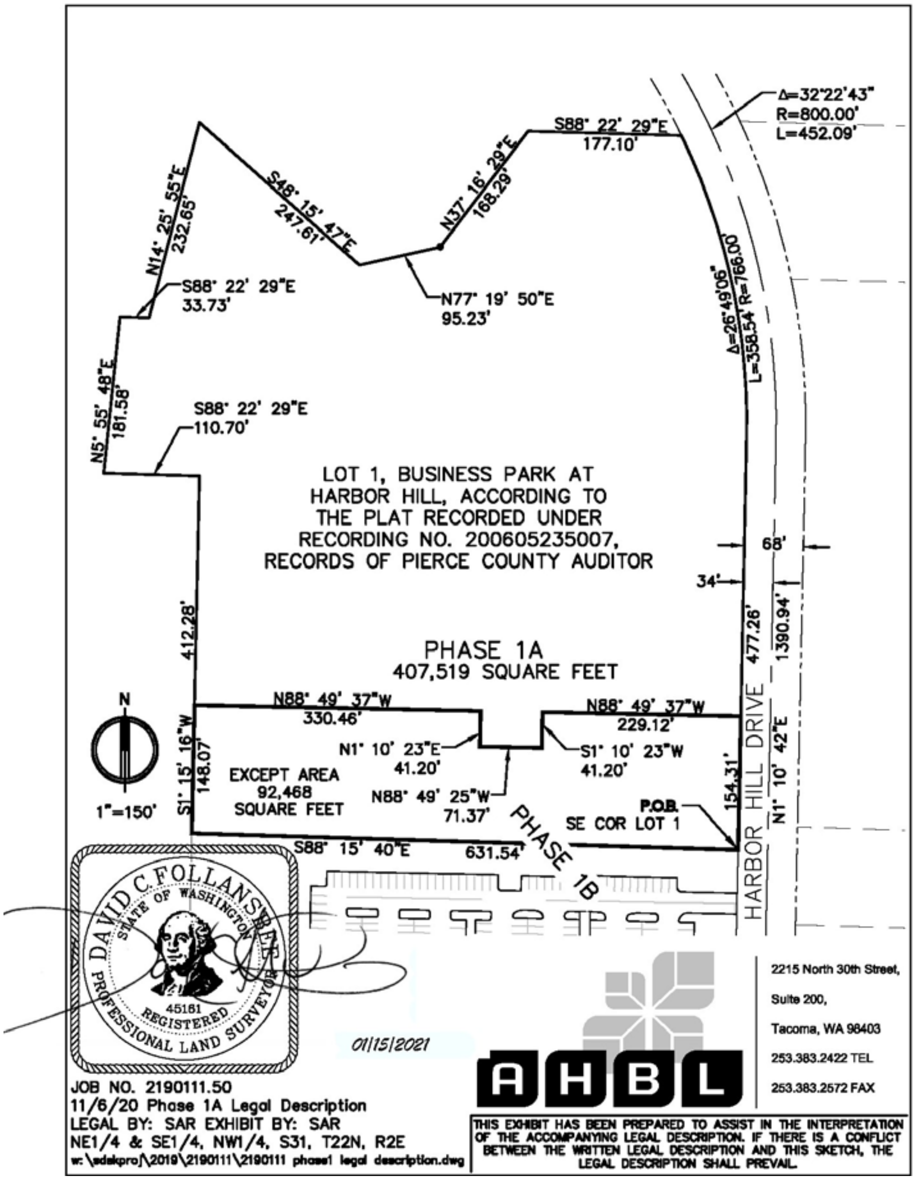

Δ=32°22'43"
R=800.00'
L=452.09'
S88° 22' 29"E
177.10'
N37° 16' 29"E
168.29'
S48° 15' 47"E
247.61'
N14° 25' 55"E
232.65'
S88° 22' 29"E
33.73'
N77° 19' 50"E
95.23'
Δ=26°49'06" R=766.00'
L=358.54'
N5° 55' 48"E
181.58'
S88° 22' 29"E
110.70'
LOT 1, BUSINESS PARK AT
HARBOR HILL, ACCORDING TO
THE PLAT RECORDED UNDER
RECORDING NO. 200605235007,
RECORDS OF PIERCE COUNTY AUDITOR
68'
34'
412.28'
477.26'
1390.94'
PHASE 1A
407,519 SQUARE FEET
N
N88° 49' 37"W
330.46'
N88° 49' 37"W
229.12'
N1° 10' 23"E
41.20'
S1° 10' 23"W
41.20'
S1° 15' 16"W
148.07'
EXCEPT AREA
92,468
SQUARE FEET
N88° 49' 25"W
71.37'
154.31'
P.O.B.
SE COR LOT 1
HARBOR HILL DRIVE
N1° 10' 42"E
1"=150'
S88° 15' 40"E
631.54'
PHASE 1B
DAVID C. FOLLANSBEE
STATE OF WASHINGTON
45161
REGISTERED
PROFESSIONAL LAND SURVEYOR
01/15/2021
AHBL
2215 North 30th Street,
Suite 200,
Tacoma, WA 98403
253.383.2422 TEL
253.383.2572 FAX
JOB NO. 2190111.50
11/6/20 Phase 1A Legal Description
LEGAL BY: SAR EXHIBIT BY: SAR
NE1/4 & SE1/4, NW1/4, S31, T22N, R2E
w:\sdskproj\2019\2190111\2190111 phase1 legal description.dwg
THIS EXHIBIT HAS BEEN PREPARED TO ASSIST IN THE INTERPRETATION OF THE ACCOMPANYING LEGAL DESCRIPTION. IF THERE IS A CONFLICT BETWEEN THE WRITTEN LEGAL DESCRIPTION AND THIS SKETCH, THE LEGAL DESCRIPTION SHALL PREVAIL.

EXHIBIT B

Detailed Description of the Phase 1A Improvements.

EXHIBIT C

List of Encumbrances on Premises

Amendment No. 2 to Development Agreement Between the City of Gig Harbor and Harbor Hill LLC for the Harbor Hill Development: AFN 201405010313

Amendment No. 1 to Harbor Hill Development Agreement: AFN 201212040216

Joinder Agreement: AFN 201012020196

Harbor Hill Development Agreement: AFN 201011241249

Harbor Hill Development Agreement: AFN 201011160780

Harbor Hill Water Tank and Mainline Extension Latecomers Agreement: AFN 200904210526

Amendment No. 1 to Declaration of Covenants, Conditions, and Restrictions: AFN 200711290681

Declaration of Covenants, Conditions, and Restrictions: AFN 200605250984

Storm facility maintenance agreement: AFN 200605250982

Declaration of Storm Water Facility Easement: AFN 200605250981

Storm Water Facilities Maintenance Agreement and Restrictive Covenant: AFN 200605250980

Full Reconveyance: AFN 200605230507

Quit Claim Deed: AFN 200605030287

EXHIBIT D

Environmental and Soils Reports and Land Surveys for the Premises

D-1: Phase 1 Environmental Site Assessment, Dated November 10, 2017

D-2: Cultural Resources Assessment, Dated October 24, 2018

D-3: Business Park at Harbor Hill Plat/Survey, Dated 05/22/2006, AFN 200605235007

GIG HARBOR

"THE MARITIME CITY"

MEMORANDUM

DATE: March 5, 2021

TO: Gig Harbor Mayor and City Council

FROM: City Administrator Bob Larson

SUBJECT: Bogue Building Lease with the Chamber of Commerce

The Chamber of Commerce leases the City's commercial building located at 3125 Judson Street and has done so since November 2010. The lease is up for renewal and staff has been in discussions with chamber representatives since early January. Until such time a successor lease is approved and signed by both parties, the chamber is leasing the building on a month-to-month basis. This report includes files containing copies of 1) the current lease agreement dated 02-23-16 (pages 4-11), 2) an addendum to the 2016 lease (pages 12-17) and 3) the original lease agreement dated November 2010 (pages 18-23). Two other files included in this report are explained and discussed below.

While it hasn't been discussed with the chamber, the city needs to determine if they want to continue having two visitor centers, the second one being located in the Skansie House. Based on the information in the file labeled *Skansie and Chamber Visitor Comparison Numbers 2013 – 2019* (page 24), the number of visitors at both locations have generally increased over the past several years but an increasing greater number of visitors have been coming into the Skansie House since 2016. **Council direction is desired on this issue.**

The six issues listed below are those which the city provided to the chamber in January and the chamber has agreed these should be on the list of items that will be included in our negotiations for a successor lease agreement:

1. <u>Pandemic Rent Freeze</u> – The City has proposed no rent increase on a successor lease agreement until we reach Phase 4 of the COVID-19 pandemic or - if a different designation is used by the state - all businesses are eligible to be fully operational.

2. Duration – The city has proposed an initial five-year term for the period 2021 – 2026 with an option for a second five-year term (to be mutually agreed upon by both parties)

3. Sale of property – The city has proposed a clause to cover a sale of the property which is a standard clause for any lease; however, we understand Council has indicated its not interested in selling the property.

4. Equal Employment Opportunity - The city has proposed a clause that the chamber board will adopt an EEO statement that conforms with federal law. The chamber has notified us it does conform with EEO law.

5. Rent - The initial market value under the original lease agreement in 2010 was established at $2,000 per month with 50% ($1,000 in-kind) of that attributed to governmental purposes (visitor center) and 50% ($1,000) to non-governmental purposes (chamber). Of the $1,000 amount attributed to the non-governmental (chamber) purposes, one-half of it ($500) was paid to the city as rent and the other half ($500) was for in-kind services the chamber provided towards operating the visitors center. The in-kind total amount is $1,500 and the remaining $500 is paid to the city as rent.

   The base rent value hasn't been adjusted since inception of the original lease agreement. While there was a clause in the original 2010-2016 lease that the city could adjust the rent if we determined the fair market value had changed, the City apparently never invoked it and that language did not carry over to the current (2016-2021) lease agreement.

   The City has proposed to establish a new rent based on adding inflationary adjustments over each of the past 10 years. A cumulative CPI inflationary adjustment from 2011 through 2020 would have added approximately 22.4% to the base rental amount and, if it had been done, would have yielded a rent of $2,448 ($2,000 x 22.4% = 448 + $2,000 = $2,448) with one-half or $1,224 being attributable to the chamber's purposes and the other half attributable to the visitor center, if the city decides to continue having one at this location.

   The City has also proposed to change or convert the in-kind portion of the rent the chamber has been credited for the non-governmental (chamber) purposes of operating the visitors center to a cash payment which will result in a new cash rent amount of $1,224 or 50% of the total rent value. This higher cash rent amount would provide the city much-needed income to cover capital maintenance and replacement costs including the roof, heating, ventilation and air conditioning (HVAC). The chamber has agreed with the CPI adjustments and the new rent value but not with the city's proposal to allocate between 50% cash and 50% in-kind.

   If the City were to decide to discontinue having a visitor center in the Bogue building, then we will need to determine how much rent to charge the chamber for use of the property for chamber-purposes only.

6. Rent Adjustment – The city has proposed an annual CPI adjustment in a successor agreement to keep the rent current with the market.

The primary issues that have been discussed with the chamber to date have been a) the in-kind portion of the rent, b) building maintenance, c) equipment replacement like heating, ventilation and air conditioning (HVAC) and roof replacement and d) landscaping including plant maintenance. The chamber has provided a response on these and other issues in the file entitled *Visitor Center Lease – Chamber response February 22, 2021* (pages 25-26).

Here is a summary of the city's position on these issues:

Item a) the in-kind vs. cash portion of the rent was discussed above with the City proposing it be split equally between the two. **Council direction is desired on this item.**

Item b) building maintenance: According to the lease agreement, the chamber at its sole cost and expense shall maintain the (premises) building in a good state of repair. This does not include capital maintenance (see item c) below). **Direction from Council is not necessary on this item.**

Item c) equipment replacement: According to our city attorney, the city is required under an implied warranty of habitability to maintain and replace capital items including the HVAC system and roof. Further, the roof and HVAC system typically have natural life cycles of 20 - 25 years. We have the roof replacement in the city's budget to do in 2021 and, if funding allows, we will include the HVAC system as part of the roof replacement project. **Direction from Council is not necessary on this item.**

Item d) landscaping including plant maintenance: According to the lease agreement, the City is responsible for maintaining the landscaping and grounds monthly. We will have staff place this on the City's list of properties that our crews maintain. **Direction from Council is not necessary on this item.**

LEASE AND AGREEMENT FOR SERVICES

THIS LEASE AND AGREEMENT FOR SERVICES ("Lease") is made and entered into this 23rd day of February, 2016, by and between CITY OF GIG HARBOR, a municipal corporation of the State of Washington ("Landlord") and GIG HARBOR CHAMBER OF COMMERCE, a Washington non-profit corporation ("Tenant"). In consideration of the following mutual promises, the parties agree as follows:

1. LEASED PREMISES. Landlord does hereby lease to the Tenant and the Tenant does hereby lease from the Landlord the following described premises: those certain premises located at 3125 Judson Street, Gig Harbor, WA 98335 (the "Premises).

2. TERM.

2.1 Term. This Lease shall commence on February 1, 2016, for a term of five years unless terminated as provided herein.

2.2 Condition of Premises. Tenant shall accept the Premises in the condition then existing as of the commencement of this Lease, with the understanding that the parties will later address painting of the lobby area, replacement of the door entry, replacement of the carpet with vinyl hardwood flooring, and carpet cleaning for the remaining office and common areas.

2.3 Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, or following any other termination hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due shall be payable in the amount and at the time specified in this Lease, and such month to month tenancy shall be subject to every other term, covenant and agreement contained herein.

3. RENT AND OTHER CONSIDERATION.

3.1 Rent. The rent shall be Five Hundred Dollars ($500) per month, due and payable in full on the first day of each month, commencing on February 1, 2016. Payment shall be made to Landlord at the following address: Finance Director, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335, or such other address as Landlord may designate from time to time in writing.

3.2 Leasehold Excise Taxes. In consideration of in-kind services to be provided by Tenant, Landlord agrees to pay, pursuant to Chapter 82.29A RCW, leasehold excise taxes on the Rent, (See WAC 458-29A-100(2)(f)(iii).)

3.3 Services to be Provided. As additional consideration for this Lease, the Tenant agrees to provide the services set forth on Exhibit A, attached to and incorporated into this Lease by this reference.

3.4 Utilities. Tenant shall, during the term hereof, pay prior to delinquency all charges for utilities supplied to the Premises and shall hold Landlord harmless from any liability therefrom.

4. USE. The Premises shall be used for office and meeting space and a visitor center, and for no other purpose without the prior written consent of Landlord.

5. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS.

5.1 Maintenance and Repairs.

5.1.1 Tenant, at its sole cost and expense, shall maintain the Premises in a good state of repair. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear excepted, and shall promptly remove or cause to be removed at Tenant's expense from the Premises any signs, notices and displays placed by Tenant.

5.1.2 Tenant agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, moveable partition or permanent improvements or additions, including without limitation thereto, repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Tenant's sole cost and expense.

5.1.3 In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such work and diligently prosecute it to completion then Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at eighteen percent (18%) per annum from the date of such work.

5.1.4 Tenant shall do all acts required to comply with all applicable laws, ordinances, regulations and rules of any public authority relating to its maintenance obligation as set forth herein, and shall indemnify Landlord from all costs and expenses, including attorneys fees, resulting from any related claim or demand.

5.2 Alterations and Additions. Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without first obtaining the prior written consent of Landlord.

5.3 Janitorial and Landscaping Services. Tenant shall be responsible for all costs associated with janitorial services and Landlord shall maintain landscaping for the premises, including repair and maintenance of the water display, by providing monthly clean up and attention to planted areas.

6. ENTRY BY LANDLORD. Landlord reserves and shall at all times have the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, and to post "for lease" signs.

7. LIENS. Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant.

8. INDEMNITY.

8.1 Indemnity. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, costs and expenses arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorneys' fees, expenses and liabilities incurred by Landlord in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord.

9. INSURANCE.

9.1 Liability Insurance. Tenant, at its expense, shall maintain at all times during the term of this Lease, comprehensive liability insurance, contractual liability insurance, property damage liability insurance and such other insurance as Landlord may require from time to time in respect of the Premises and the conduct or operation of business therein, with Landlord as an additional insured, with One Million Dollars ($1,000,000) minimum combined single limit coverage, or its equivalent. The limits of such insurance shall not limit the liability of Tenant. All such insurance shall also insure the performance by Tenant of the indemnity agreement set forth in Section 8 of this Agreement. For insurance required to be maintained by Tenant under these Sections 9.1 and 9.2, and upon the request of Landlord, Tenant shall deliver to Landlord certificates of insurance, in such form reasonably requested by Landlord, issued by the insurance company or its authorized agent.

9.2 Property Insurance. Tenant shall maintain fire and extended coverage insurance on the Premises, subject to such reasonable deductibles as Landlord may establish. Landlord shall have the right to place on the Premises any other insurance as Landlord shall deem necessary. Tenant shall obtain and bear the expense of casualty insurance insuring the property of Tenant and tenant improvements on the Premises against such risks and naming Landlord and any superior mortgagee of the Premises of whose identity Tenant is notified, as additional insureds.

9.3 Acceptable Insurance Companies. All insurance policies required to be carried by Tenant hereunder shall be issued by responsible insurance companies authorized to issue insurance in the State of Washington and otherwise deemed acceptable by Landlord.

10. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which consent shall be subject to Landlord's sole discretion.

11. DEFAULT, REMEDIES.

11.1 Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

11.1.1 Any failure by Tenant to pay the Rent or any other monetary sums required to be paid hereunder on the date such payment is due;

11.1.2 The abandonment or vacation of the Premises by Tenant;

11.1.3 A failure by Tenant to observe and timely perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after such act or omission; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

11.2 Remedies. In the event of any such default or breach by Tenant, Landlord may, at any time thereafter, without notice, without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach:

11.2.1 Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due, without terminating the Lease, irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate this Lease, Landlord shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises, as Landlord deems reasonable and necessary without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such reletting occurs, Tenant shall remain liable for any rent deficiency and all costs and expenses of reletting, including costs of any remodeling to meet a new tenants' needs. Notwithstanding that Landlord fails to elect to terminate the Lease initially, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

11.2.2 Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including attorneys fees; plus (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Landlord in its sole discretion deems reasonable and necessary. As used in (i) above, the "worth at the time of award" is computed by allowing interest at the rate of eighteen percent (18%) per annum from the date of default. As used in (ii) and (iii) the "worth at the time of award" is computed by discounting such amount at the discount date of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). The term "rent," as used in this section, shall be deemed to be and to mean the Rent to be paid pursuant to Section 3 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

12. MISCELLANEOUS.

12.1 Governing Law, Jurisdiction and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. The parties agree to submit themselves to venue and jurisdiction in the appropriate court in Pierce County, Washington.

12.2 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby.

12.3 Waiver. No covenant, term or condition of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

12.4 Notices. All notices or demands of any kind required or desired to be given by Landlord or Tenant shall be in writing and deemed delivered upon actual delivery or forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, and shall be addressed:

If to Landlord at:	If to Tenant at:
City of Gig Harbor Attn: Ron Williams 3510 Grandview Street Gig Harbor, WA 98335	Gig Harbor Chamber of Commerce Attn: Warren Zimmerman P.O. Box 102 Gig Harbor, WA 98335

Or at such other address as the parties may designate by written notice to the other.

12.5 Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant relative to the Premises. This Lease may be amended only by a written instrument signed by Landlord and Tenant. Landlord and Tenant agree hereby that all prior oral agreements relating to this agreement are merged in or revoked by this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year first above written.

LANDLORD:	TENANT:
CITY OF GIG HARBOR	GIG HARBOR CHAMBER OF COMMERCE
Jill Guernsey	By: Warren Zimmerman
Mayor Jill Guernsey	Its: PRESIDENT / CEO
Date: Feb 22, 2016	Date: 3/2/16

APPROVED AS TO FORM:
Office of the City Attorney

Angela Summerfield

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Warren Zimmerman is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Executive Director of GIG HARBOR CHAMBER OF COMMERCE, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 2, 2016

SHAWNA D WISE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES 07-16-18

Shawna Wise
Printed: Shawna Wise
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 7/16/18

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that JILL GUERNSEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF GIG HARBOR, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: Feb 22, 2016

MOLLY M. TOWSLEE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES 12-02-2019

Molly M Towslee
Printed: Molly M. Towslee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/2/19

EXHIBIT A

Scope of Services

1. The Chamber will include the City of Gig Harbor logo on the visitor center signage.

2. The Chamber will run the visitor center at least six hours per day, five days per week throughout the year. The Chamber may also choose to close the visitor center on nationally recognized holidays. Additional closure days can be agreed upon mutually on a case-by-case basis.

4. The Chamber staff and/or volunteers will greet and provide quality customer service to walk-in visitors at the visitor center. The Chamber will run the functions and operations normally associated with a visitor center. The Chamber may also use the building for Chamber-related functions and activities.

5. In the front room of the visitor center and on the exterior of the building, the Chamber will retain sufficient space for visitor information materials, including racks for rack cards and brochures. The City will continue to manage the visitor racks elsewhere around town.

6. By the 30th day following the end of each calendar quarter (January – March, for example), the Chamber will provide to the City a written report on visitor center activities, including number of walk-in visitors each month, number of visitor-related phone calls each month, and number of referrals to local hotels each month.

7. The Chamber will recruit, train, supervise, and manage the visitor center volunteers.

8. If it wishes, the Chamber may take over the selling of Gig Harbor retail items in the visitor center, including shirts, hats, coats, and vests with the City logo. The Chamber can purchase additional inventory and set prices at its discretion.

9. Chamber staff, board members, and volunteers will not park their vehicles in the parking spaces fronting the visitor center on Judson Street (disabled parking spaces are the exception to this rule).

10. The Chamber may request the City to contribute lodging tax dollars to the Chamber to pay for some operational costs. The request must be submitted in writing to the Chair of the City's Lodging Tax Advisory Committee ("LTAC"). Within 100 days of the Chamber's request, the LTAC will consider and make a recommendation on the Chamber's request to the City Council. Within 60 days of receiving the LTAC recommendation, the City Council will consider and approve, or deny the LTAC's recommendation on the Chamber's request. If the City Council denies the LTAC's recommendation, then the Chamber may terminate this Lease with 30 days written notice, within an effective date of termination no sooner than December 31, 2016.

FIRST ADDENDUM TO LEASE AND AGREEMENT FOR SERVICES BETWEEN THE CITY OF GIG HARBOR AND GIG HARBOR CHAMBER OF COMMERCE

THIS FIRST ADDENDUM is made to that certain Lease and Agreement for Services between the CITY OF GIG HARBOR (the "City"), as Landlord, and GIG HARBOR CHAMBER OF COMMERCE (the "Chamber"), as Tenant, dated February 23, 2016 (the "Lease"), as follows:

WHEREAS, the City currently leases to the Chamber that certain property located at 3125 Judson Street, Gig Harbor, Washington (the "Premises") under the Lease; and

WHEREAS, Section 2.2 of the Lease acknowledged the condition of the Premises and the parties' intent to provide for future improvements to the Premises; and

WHEREAS, it is in the City's best interest to assist with a portion of improvements to the Premises in order to assure that the visitor center area of the Premises is presentable to the public and visitors of the City, and as such the City desires to participate in the costs of tenant improvements;

NOW, THEREFORE, the parties hereto agree as follows:

1. Tenant Improvements. The Chamber agrees to construct the following Tenant Improvements:

- Flooring. Remove existing carpet from the outer area/visitor center and replace with laminate flooring as specified in Exhibit A, estimated cost \$5,906.74.

- Painting. Repaint the visitor center area, including minor repairs and prep work as specified in Exhibit B, estimated cost \$2,186.28.

- Electrical work. Minor adjustments to outlets in the visitor center outer area, as necessary to accommodate the flooring and painting work.

- Front Doors. Replace front doors to the visitor center with new custom doors with approval of the City Administrator.

2. Reimbursement. The City agrees to reimburse the Chamber for the costs associated with the Flooring and Painting identified above up to the amount of Eight Thousand Ninety-three and 02/100's Dollars (\$8,093.02) after the Chamber has completed all Tenant Improvements identified above. The Chamber shall provide invoices evidencing the costs of such improvements along with proof that the conditions in Section 3 have been met, and the City agrees to reimburse the Chamber for such costs within 30 days.

3. Prevailing Wage. Any improvements under this Agreement, the costs of which will be reimbursed by the City, are considered public work projects and subject to prevailing wages as set forth in chapter 39.12 RCW. All bids and contracts for these improvements must contain a provision stating that the required prevailing rates of pay will be paid.

4. Auditing of Records. The Chamber shall maintain all books, records, documents and other materials that reflect the expenditures for those improvements for which reimbursement of costs is made. The City Finance Director and any of his/her representatives shall have full access and the right to examine and copy, during normal business hours, all of the records of the Chamber related to the improvements identified in this Agreement. Such rights shall last for six (6) years from the date the reimbursement is made hereunder.

5. Term. This Addendum shall become effective upon full execution of the parties and shall remain in effect until such time as all obligations under this Agreement have been satisfied.

ALL TERMS AND CONDITIONS OF THE LEASE SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year written below, effective upon full execution by the parties.

CITY OF GIG HARBOR	GIG HARBOR CHAMBER OF COMMERCE
By: Jill Guernsey	By: [signature]
Mayor Jill Guernsey	Its: President / CEO
Date: August 14, 2016	Date: 9/6/16

Tracy's Quality Painting, Inc.

3008 14TH AVE N.W.
GIG HARBOR, WA. 98335
(253)858-8242

Proposal

Date
9/4/2015

Proposal Submitted To:	Site Address:
CHAMBER OF COMMERCE JAMIE TAYLOR 3125 JUDSON STREET GIG HARBOR, WA 98335	

Email Address	Contact	Customer Phone
jtaylor@gigharborchamber.com	JAMIE	253.851.6865

SCOPE OF WORK	Total
PROTECT ADJACENT SURFACES. REPAIR WALLS AS NECESSARY. PREP AND PAINT MAIN AREA AND BATHROOM. UP TO 2 COLORS. RODDA MASTER PAINTER SATIN. OPTION TO ADD 3RD COLOR: $210.00 (NOT REFLECTED) ESTIMATE GOOD THROUGH DECEMBER 2016	2,015.00T
SALES TAX (SHIP TO: GIG HARBOR-2708)	171.28
The undersigned accepts this proposal as a binding contract. Customer also acknowledges they have reveiwed the Notice to Customer and Terms and Conditions found at http://tracysqualitypainting.com/termsandconditions.php Visa and MasterCard accepted with a 2% convenience fee.	Total $2,186.28

Purchaser ______________________

Estimator Madaline Rutt
Madaline Rutt

First of all we would like to thank you for choosing Tracy's Quality Painting, Inc. for your painting needs! We have received your signed contract, and will be in touch soon for scheduling. We look forward to working with you!

Enclosed is a document called the Notice to Customer. The Department of Labor and Industries requires us to send and retain a signed copy of this document for all work we perform. Please read the document and return a signed copy by mail or fax. We understand that this document can be a bit confusing, even scary, so below you will find answers to some questions you may have regarding the document.

Why am I getting this?

You have received this document because a contractor, Tracy's Quality Painting, Inc., is providing you with professional services on your property. The Department of Labor and Industries requires us to send this to you to inform you of your lien rights.

Is this a lien? Will you lien my property?

No, this is not a lien. The only time a lien is placed on a property is for non-payment of services. The Notice to Customer protects us, the contractor, and you, the homeowner, against non-payment.

Do you hire sub-contractors to perform your work?

No. All persons working on your project are hired employees of Tracy's Quality Painting, Inc.

Will you provide me with a lien release?

Yes! Per your request, upon receipt of payment in full, and after the completion of your project, we will gladly provide you with a lien release.

Hopefully we have answered any questions you may have about the Notice to Customer. If you have any further questions, please do not hesitate to call our office at (253) 858-8242. Someone will be happy to answer any further questions you may have.

NOTICE TO CUSTOMER

3008 14th Ave NW
Gig Harbor, WA 98335
(253) 858-8242
Fax (253) 858-8244
www.tracysqualitypainting.com
TRACYQP033RR

This contractor is registered with the state of Washington, Registration No. TRACYQP033RR, as a general/specialty contractor and has posted with the State a bond or cash deposit of $12,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is 7/12/2017.

THIS BOND OR CASH DEPOSIT MAY NOT BE SUFFICIENT TO COVER A CLAIM WHICH MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.
This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to the amount of your contract that you and other customers, suppliers, subcontractors or taxing authorities may have.

FOR GREATER PROTECTION, YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.
You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.
If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN WAIVER" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.
The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Department of Labor and Industries.

I have received a copy of this disclosure statement.

____
Customer Date

____
Printed Name

CS FLOORS

Your Satisfaction is Our Priority

CARPET LAMINATE VINYL TILE STONE HARDWOOD

Gig Harbor Chamber of Commerce
Attention: Jamie Taylor
PO Box 102
3125 Judson Street
Gig Harbor, WA 98335
253-851-6865 fax@ 253-851-6881 e-mail: jtaylor@gigharborchamber.com

July 12, 2016

CONTRACT

CS Floors will furnish and install the following at the above address:

Luxury Vinyl Tile (LVT) ***Please Note:** New price reflects latest price increase $5,444.00
Kamdean LVT, style Van Gough, color ____________________
installed over existing concrete sub-floor in Entry, Lobby and Desk Area off bathroom.

Installation Includes: All materials, sundries and prep. Removal and disposal of existing carpet, cushion and tack strip. Remove and reset wood base.

Installation Excludes: Moving and resetting any furniture, appliances, equipment and/or personal belongings. Any paint touch up if needed.

Sub-total	$5,444.00
Tax @8.5%	$462.74
Total	**$5,906.74**

******Contractor Pricing, must be paid by cash or check. No other discounts are available.******

Terms: 50% DOWN - Balance due upon completion. Interest of 2.0% begins accruing 7 days from bill date and every 30 days thereafter.
Signed contract and paid down payment must be received by CS Floors before any materials will be ordered and installation scheduled.

Customer's Personal Guarantee Date Alan Van Cleave/CS Floors Date
(over)

LEASE AND AGREEMENT FOR SERVICES

THIS LEASE AND AGREEMENT FOR SERVICES ("Lease") is made and entered into this 23 day of November, 2010, by and between CITY OF GIG HARBOR, a municipal corporation of the State of Washington ("Landlord") and GIG HARBOR CHAMBER OF COMMERCE, a Washington non-profit corporation ("Tenant"). In consideration of the following mutual promises, the parties agree as follows:

1. LEASED PREMISES. Landlord does hereby lease to the Tenant and the Tenant does hereby lease from the Landlord the following described premises: those certain premises located at 3125 Judson Street, Gig Harbor, WA 98335 (the "Premises).

2. TERM.

2.1 Term. This Lease shall commence on February 1, 2011, for a term of five years unless terminated as provided herein.

2.2 Condition of Premises. Tenant shall accept the Premises in the condition then existing as of the commencement of this Lease with the exception that the Landlord will clean carpets and paint any area showing wear and tear from previous occupancy. Landlord makes no representation, express or implied, as to any aspect of the land, building, improvements, environmental condition, or any other aspects of the Premises.

2.3 Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, or following any other termination hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due shall be payable in the amount and at the time specified in this Lease, and such month to month tenancy shall be subject to every other term, covenant and agreement contained herein.

3. RENT AND OTHER CONSIDERATION.

3.1 Rent. The initial fair market value of the Premises is $2,000 per month of which 50% is attributed to governmental purposes (Visitor Center services) and 50% to non-governmental, Tenant purposes. As such, the monthly rental shall be 50% of the fair market value (the "Rent"). Landlord shall accept the first half of the Rent in in-kind services (included in this Agreement) and Tenant shall pay the second half of the Rent in an initial monthly amount of Five Hundred Dollars ($500), due and payable in full on the first day of each month, commencing on February 1, 2011. Payment shall be made to Landlord at the following address: Finance Director, City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335, or such other address as Landlord may designate from time to time in writing. Every two years commencing on February 1, 2013, the Finance Director may adjust the Rent using the above formula if the Finance Director determines the fair market value has changed.

3.2 Leasehold Excise Taxes. In consideration of in-kind services to be provided by Tenant, Landlord agrees to pay, pursuant to Chapter 82.29A RCW, leasehold excise taxes on the Rent, as may be adjusted pursuant to Section 3.1. (See WAC 458-29A-100(2)(f)(iii).)

3.3 Services to be Provided. As additional consideration for this Lease, the Tenant agrees to provide the services set forth on Exhibit A, attached to and incorporated into this Lease by this reference.

3.4 Utilities. Tenant shall, during the term hereof, pay prior to delinquency all charges for utilities supplied to the Premises and shall hold Landlord harmless from any liability therefrom.

4. USE. The Premises shall be used for office and meeting space and a visitor center, and for no other purpose without the prior written consent of Landlord.

5. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS.

5.1 Maintenance and Repairs.

5.1.1 Tenant, at its sole cost and expense, shall maintain the Premises in a good state of repair. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear excepted, and shall promptly remove or cause to be removed at Tenant's expense from the Premises any signs, notices and displays placed by Tenant.

5.1.2 Tenant agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, moveable partition or permanent improvements or additions, including without limitation thereto, repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Tenant's sole cost and expense.

5.1.3 In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such work and diligently prosecute it to completion then Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at eighteen percent (18%) per annum from the date of such work.

5.1.4 Tenant shall do all acts required to comply with all applicable laws, ordinances, regulations and rules of any public authority relating to its maintenance obligation as set forth herein, and shall indemnify Landlord from all costs and expenses, including attorneys fees, resulting from any related claim or demand.

5.2 Alterations and Additions. Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without first obtaining the prior written consent of Landlord.

5.3 Janitorial and Landscaping Services. Tenant shall be responsible for all costs associated with janitorial services and Landlord shall maintain landscaping for the premises.

6. ENTRY BY LANDLORD. Landlord reserves and shall at all times have the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, and to post "for lease" signs.

7. LIENS. Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant.

8. INDEMNITY.

8.1 Indemnity. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, costs and expenses arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorneys' fees, expenses and liabilities incurred by Landlord in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord.

9. INSURANCE.

9.1 Liability Insurance. Tenant, at its expense, shall maintain at all times during the term of this Lease, comprehensive liability insurance, contractual liability insurance, property damage liability insurance and such other insurance as Landlord may require from time to time in respect of the Premises and the conduct or operation of business therein, with Landlord as an additional insured, with One Million Dollars ($1,000,000) minimum combined single limit coverage, or its equivalent. The limits of such insurance shall not limit the liability of Tenant. All such insurance shall also insure the performance by Tenant of the indemnity agreement set forth in Section 8 of this Agreement. For insurance required to be maintained by Tenant under these Sections 9.1 and 9.2, and upon the request of Landlord, Tenant shall deliver to Landlord certificates of insurance, in such form reasonably requested by Landlord, issued by the insurance company or its authorized agent.

9.2 Property Insurance. Tenant shall maintain fire and extended coverage insurance on the Premises, subject to such reasonable deductibles as Landlord may establish. Landlord shall have the right to place on the Premises any other insurance as Landlord shall deem necessary. Tenant shall obtain and bear the expense of casualty insurance insuring the property of Tenant and tenant improvements on the Premises against such risks and naming Landlord and any superior mortgagee of the Premises of whose identity Tenant is notified, as additional insureds.

9.3 Acceptable Insurance Companies. All insurance policies required to be carried by Tenant hereunder shall be issued by responsible insurance companies authorized to issue insurance in the State of Washington and otherwise deemed acceptable by Landlord.

10. ASSIGNMENT AND SUBLETTING. Tenant shall not assign or sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which consent shall be subject to Landlord's sole discretion.

11. DEFAULT, REMEDIES.

11.1 Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

11.1.1 Any failure by Tenant to pay the Rent or any other monetary sums required to be paid hereunder on the date such payment is due;

11.1.2 The abandonment or vacation of the Premises by Tenant;

11.1.3 A failure by Tenant to observe and timely perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after such act or omission; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

11.2 Remedies. In the event of any such default or breach by Tenant, Landlord may, at any time thereafter, without notice, without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach:

11.2.1 Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due, without terminating the Lease, irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate this Lease, Landlord shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises, as Landlord deems reasonable and necessary without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such reletting occurs, Tenant shall remain liable for any rent deficiency and all costs and expenses of reletting, including costs of any remodeling to meet a new tenants' needs. Notwithstanding that Landlord fails to elect to terminate the Lease initially, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

11.2.2 Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including attorneys fees; plus (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law. Upon any such re-entry Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Landlord in its sole discretion deems reasonable and necessary. As used in (i) above, the "worth at the time of award" is computed by allowing interest at the rate of eighteen percent (18%) per annum from the date of default. As used in (ii) and (iii) the "worth at the time of award" is computed by discounting such amount at the discount date of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). The term "rent," as used in this section, shall be deemed to be and to mean the Rent to be paid pursuant to Section 3 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

12. <u>MISCELLANEOUS</u>.

12.1 <u>Governing Law, Jurisdiction and Venue</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. The parties agree to submit themselves to venue and jurisdiction in the appropriate court in Pierce County, Washington.

12.2 <u>Severability</u>. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby.

12.3 <u>Waiver</u>. No covenant, term or condition of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

12.4 Notices. All notices or demands of any kind required or desired to be given by Landlord or Tenant shall be in writing and deemed delivered upon actual delivery or forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, and shall be addressed:

If to Landlord at:	If to Tenant at:
City of Gig Harbor Attn: Rob Karlinsey, City Administrator 3510 Grandview Street Gig Harbor, WA 98335	Gig Harbor Chamber of Commerce PO BOX 102 Gig Harbor, WA 98335

or at such other address as the parties may designate by written notice to the other.

12.5 Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant relative to the Premises. This Lease may be amended only by a written instrument signed by Landlord and Tenant. Landlord and Tenant agree hereby that all prior oral agreements relating to this agreement are merged in or revoked by this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year first above written.

LANDLORD:	TENANT:
CITY OF GIG HARBOR	GIG HARBOR CHAMBER OF COMMERCE
Mayor Charles L. Hunter Date: Nov 23, 2010	By: Its: Chairman of Board Date: 12/10/10

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Skansie / Chamber Visitor Comparison Numbers

	2012	2013	2014	2015	2016	2017	2018	2019
Skansie House Visitor & Interpretive Center / Harbor WildWatch								
1st qtr	n/a	n/a	n/a	419	392	n/a	1210	507
2nd qtr	n/a	n/a	n/a	1735	1677	1325	1965	2650
3rd qtr	n/a	n/a	1935	n/a	2640	2949	3432	4245
4th qtr	n/a	n/a	422	336	190	294	957	887
	0	**0**	**2357**	**2490**	**4899**	**4568**	**7564**	**8289**
Gig Harbor Chamber								
1st qtr	n/a	1450	969	471	437	951	609	228
2nd qtr	n/a	n/a	341	925	855	1202	64	477
3rd qtr	n/a	n/a	1102	1064	1015	1045	526	
4th qtr	n/a	n/a	465	431	351	621		343
	0	**1450**	**2877**	**2891**	**2658**	**3819**	**1199**	**1048**

From: wzimmerman@gigharborchamber.com <wzimmerman@gigharborchamber.com>
Sent: Monday, February 22, 2021 3:53 PM
To: Robert (Bob) Larson <rlarson@gigharborwa.gov>
Cc: 'Keith W Page' <keith@legacyguttercleaning.com>; 'Allen Woodard' <allenwoodard@sabininvest.com>
Subject: Visitor's Center Lease

Good afternoon, Bob.

Thank you again for your time on Friday to meet with Keith, Allen, and me to discuss the Chamber lease renewal. As discussed, the seven items in your correspondence of January 8th have been revised to eliminate item #4, which leaves us with six items on which you and we agree.

The primary subjects of concern discussed during our meeting included: in-kind rent, building maintenance, equipment replacement and landscaping revisions/maintenance.

As you know, the maintenance items have not received the attention called for in previous leases, and our concerns center on how they will be addressed in the new lease agreement and how the City will be accountable for taking care of them on an ongoing basis. We look forward to how the City will address them in your lease language.

We conveyed our understanding of the City's need to receive a fair market rate for its leased properties, and we agree with you that it is important to increase the Chamber's rent to reflect the market. Your proposed calculation would bring the rental rate up to date totaling approximately $2450 per month by employing a CPI method that makes sense to us.

Connected with the inflation adjusted rent concept we stated that the Chamber's visitor's center service-related costs (itemized in the prior leases) also increase over time. That being the case, we would expect that the $1500 for in-kind services in our current lease should also be increased by the same CPI method. We would be happy to provide documentation supporting these increased costs. In that spirit, below is a bit of background:

The Chamber began its occupancy of the Judson Street building back in 2010. The City wanted us to take over the visitor center operations, and that gave the Chamber the ability to house its staff and operations in the same building. So, it was a win-win opportunity. The City's proposal was based in part on the cost to continue paying two City employees to manage the visitor centers operations and supervise its volunteers.

The City's hourly wage for staff was higher than the Chamber's then, and we suspect that it is still higher. In today's market the Chamber pays at least $17.00 per hour, or approximately $2040 per month (not including benefits), to provide the 30 hours of service per week defined in previous leases. Although we did not specifically discuss the visitor center's hours of operation on Friday, we believe this would continue to be the expectation for visitor center operations.

Due to the current Covid-19 considerations being granted by the City you commented that we have plenty of time to draw up this agreement. Technically that's true, but for practical and planning reasons we would like to proceed with finalizing the lease document in the next 60 days. That allows the Chamber to plan for any changes that may impact operating expenses for the remainder of this year.

On behalf of Keith, Allen, and me we look forward to working with you and thank you again for providing this initial proposal.

Best regards,

Warren Zimmerman

Warren Zimmerman, President/CEO

Gig Harbor CHAMBER of Commerce

P: 253.851.6865 / F: 253.851.6881

[Website](#) | [Go Gig Harbor App](#) | [Chamber App](#)