City Council Meeting

May 10, 2021
5:30 p.m.

GIG HARBOR®

"THE MARITIME CITY"

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
Monday, May 10, 2021 – 5:30 p.m.

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

Comments are only allowed during designated portions of the meeting. To speak during the meeting, press the Raise Hand button near the bottom of your Zoom window or press *9 on your phone. Please refrain from "raising your hand" until the Mayor has announced that he has opened the public comment portion of the meeting.

Your name or the last four digits of your phone number will be called out when it is your turn to speak. When using your phone to call in, you may need to press *6 to unmute yourself. All speakers will have up to three minutes to speak.

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

CALL TO ORDER / ROLL CALL:

PLEDGE OF ALLEGIANCE:

CHANGES TO THE AGENDA:

CONSENT AGENDA:

1. City Council Minutes April 25, 2021
2. Receive and file: a) Planning Commission Minutes Apr. 15, 2021; b) Planning/Building Committee Minutes Apr. 5, 2021; c) City Council Special Meeting Apr. 22, 2021; d) City Council Study Session Apr. 29, 2021
3. Annexation Analysis - Professional Services Contract
4. Purchase Authorization – RRFB Assemblies
5. Resolution 1207-GHAC Endeavor Grant Award
6. Comprehensive Plan Update – Professional Services Contract
7. Approval of Payroll for the month of April: Checks #8267 through #8273 and direct deposit transactions in the total amount of $468,879.08
8. Approval of Vouchers for May 10, 2021: Checks #95234 through 95318 and ACH payments in the amount of $2,231,908.07.

MAYOR'S REPORT:

1. COVID-19 Phasing Update
2. Donations Update

CITY ADMINISTRATOR'S REPORT:

PUBLIC COMMENT ON NON-AGENDA ITEMS:

STAFF REPORT:

1. Conservation Futures Property – Public Works Director Jeff Langhelm
2. Stinson / Rosedale Roundabout Project – Public Works Director Jeff Langhelm

OLD BUSINESS: None.

NEW BUSINESS:

1. First Reading and Adoption of Ordinance 1461 amending GHMC 5.28 Special Events
   a) Report: Assistant City Clerk Josh Stecker
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

2. Gig Harbor Canoe and Kayak Race Team Lease at Ancich Park – Second Amendment
   a) Report: Public Works Director Jeff Langhelm
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

3. Murphy's Landing Marina Navigation Channel Dredge Agreement
   a) Report: Public Works Director Jeff Langhelm
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

4. On-Call Private Development Review Assistance – Professional Services Contract
   a) Report: Public Works Director Jeff Langhelm
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

5. Sports Complex Lease Agreement – YMCA
   a) Report: City Administrator Bob Larson
   b) Clarifying questions from Council
   c) Public Comment
   d) Council deliberation and action

COUNCIL REPORTS / COMMENTS:

1. Planning/Building Committee – Councilmember Himes
2. Parks Commission – Councilmember Abersold

ANNOUNCEMENT OF OTHER MEETINGS:

1. Public Works Committee – Tu. May 11 at 3:00 p.m.
2. Intergovernmental Affairs Committee: Mon. May 24 at 4:00 p.m.

ADJOURN:

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

MINUTES FOR GIG HARBOR CITY COUNCIL MEETING
Monday, April 26, 2021 – 5:30 p.m.

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

CALL TO ORDER / ROLL CALL:

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

Staff: Administrator Larson, Community Development Director Knutson, Chief Busey, Public Works Director Langhelm, Finance Director Rodenbach, Building Official/Fire Marshall Rice, Tourism/Communications Director Pettitt, City Clerk Towslee, Assistant City Clerk Stecker and City Attorney Daniel Kenney.

Guests: Lindsey Stover, Sharon Bishop and Monica Veles

PLEDGE OF ALLEGIANCE:

CHANGES TO THE AGENDA:

Councilmember Woock asked that Old Business 1 be moved up before the Staff Report to allow the public to provide testimony without having to wait. Mayor Kuhn clarified that the Staff Report would be quite brief as a study session has been scheduled to discuss the budget status report in depth.

Councilmember Rodenberg asked that Consent Agenda No. 3 Resolution 1206 – Lodging Tax Grants be moved off.

Attorney Kenny said the removal of the item from the Consent Agenda would not need a vote but moving the Old Business item would. Councilmember Woock made the motion to amend the agenda by moving Old Business before the Staff Report, but the motion died for lack of a second.

CONSENT AGENDA:

1. City Council Minutes April 12, 2021
2. Receive and File: a) Eddon Boat Shop 2020 Year End Report; b) Parks Commission Minutes Mar.3, 2021; c) Planning Commission Minutes Apr. 1, 2021; d) Proclamation - Essential Workers Appreciation Week
3. ~~Resolution 1206 - Lodging Tax Grants~~
4. Change Order #1 to Well No. 3 Maintenance Contract
5. Approval of vouchers for Apr. 26, 2021: Checks 95145 through 95233 and ACH payments in the amount of: $513,500.74

MOTION: Move to approve the Consent Agenda as amended to move out number 3. Markley / Abersold – unanimously approved.

3. Resolution 1206 - Lodging Tax Grants. Councilmember Rodenberg recused himself from the vote as he is President of the Sportsman's Club, one of the grant applicants.

Tourism / Communications Director Laura Pettitt addressed questions and comments from Councilmember Franich, Abersold and Markley regarding using grant funds for tree replacement at the Sportsman's Club. The Mayor asked for public comment.

Linda Ada – Purdy Drive. Ms. Ada agreed with Councilmember Franich that tree replacement isn't a good use of taxpayer money. She also asked why the Pledge of Allegiance was conducted in silence. The Mayor explained that it was to avoid the confusion of several voices.

There were no further public comments and so Council began deliberation on the merits of the grant recommendations.

MOTION: Move to adopt Resolution 1206 as presented
Woock / Markley – roll call vote:

Woock – aye; Denson – aye; Franich- no; Himes – no; Markley – aye; Abersold – aye. Rodenberg abstained. Motion passed 4-2

PRESENTATION:

1. Harbor Wildwatch Year-end Report – Executive Director Lindsey Stover provided information on how the organization delivered programs by transitioning to digital format when schools closed due to the pandemic. She thanked the city for the support.

2. Eddon Boat Shop – Sharon Bishop, Business Manager and Monica Veles, Special Projects Coordinator shared an overview of how the Boatshop navigated 2020 by providing virtual programs, an online auction, and using social media for community outreach. They provided a recap of 2020 programs, visitors, volunteer hours and financial data and shared plans for 2021 programming.

MAYOR'S REPORT:

1. Proclamation - Essential Workers Appreciation Week. The Mayor credited Councilmember Franich for recommending a proclamation to recognize our grocery and retail workers. He added that Councilmembers supported this idea and provided input to add additional essential workers. He read the proclamation.

2. YMCA Sports Complex - Brief Update. Mayor Kuhn said they have worked through the remaining issues and the lease will come to council during a study session on May 6.

CITY ADMINISTRATOR'S REPORT: COVID-19 Update. Administrator Larson provided a summary of the new American Rescue Plan (ARP) Corona virus State and Local Fiscal Recovery Fund. He said staff will develop an estimated cost for each of the items on the preliminary list for use of the funds to facilitate our discussion with council.

STAFF REPORT:

1. 1st Quarter Finance Report & 1st Quarter Budget Status Report. Finance Director David Rodenbach introduced the financial report. He said we are on track for revenues around 11% for expenditures. He said the departmental objective reports will be addressed during the study session on Thursday and offered to answer questions.

2. Auditor's Exit Conference. Director Rodenbach shared that the city came out with a clean fiscal audit for 2019. We've complied with state laws for material for operations.

PUBLIC COMMENT ON NON-AGENDA ITEMS:

Thomas Wick – Hunt Street NW. Mr. Wick said the development appears to be accelerating at the Courtyards / Skansie drainage which was approved under the auspice of a stormwater conveyance ditch across his property that doesn't exist. He wants to know what the end game is, what happens now with a new mayor, and why hasn't the construction stopped to evaluate the drainage.

No one else asked to speak and the public comment closed.

OLD BUSINESS:

1. Second Reading of Ordinance 1460 Amending Fireworks Regulations.

Building Official / Fire Marshal Paul Rice provided a summary of the public comments that were received: 74% support a 1-day celebration; 11% wanted it left to the current 4 days; 11% asked that fireworks be banned; and 4% had "other" comments. He addressed Council questions and comments.

Mayor Kuhn asked Council to consider reducing the penalty for a fireworks violation from $1,000. Council deliberated whether to reduce the fine.

The Mayor opened the public comment period. Administrator Larson and Clerk Towslee took turns reading the comments submitted in writing.

Ericka Dietrich - 59th St. Ct. NW, asked Council to keep the current 4 days as an American Tradition.

Heather McFarland - Sherman Drive, asked that the celebration be limited to the 4th of July. She suggested soundless fireworks.

Dave Willis - 6707 Rainer Avenue, said he is not in favor of changing it to one day.

Kevin Kennedy - 9805 43rd Avenue, asked that fireworks be banned or at least restricted to one day.

Jane Kennedy – 9805 43rd Avenue, voiced support of limiting fireworks to only July 4.

Linda Plumb and Barry Lewis – 2812 Harborview Drive, asked to limit fireworks to 1 day on the 4th of July.

Kent Holder – 917 Kamas Way, urged council to consider limiting the damage to the 4th of July only.

Bea Mezei-Rhodes – 5415 36th Avenue, requested Council consider amending the fireworks ordinance to one day only – July 4th.

Linda Hiser – Fox Island, asked the city to limit the use of dangerous, loud fireworks to July 4th only.

Nancy Jerkovich – 3710 Harborview Drive, asked Council to limit fireworks to one day.

Bob and Vonnie Marsic – 4223 Overlook Court, are in full support of reducing the use of fireworks to 1 day, July 4th only.

Kristen Sutich – 6563 McDonald Avenue, said she is for one day of fireworks on July 4th.

Carrie Barker – 6715 Rosedale, said she votes for 1 day only.

Jean Farrington – 6810 Starboard Lane, asked that Council either limit the day or eliminate the sale of fireworks.

Rebecca Floyd – 7634 84th Ave Ct. NW, supports 1 day, July 4th only for fireworks in Gig Harbor.

Keri Leigh – 4004 105th St. Ct. NW, said fireworks should be banned entirely and asked council to take a step toward common sense by limiting fireworks to one day.

Kara Aley – 13520 Crescent Valley Drive, registered her support of fireworks for just 1 day – July 4th.

Dave Miller, Tyler Miller, Joey Hugo, Ana Hugo, and Kevin Jansen, Managers of a TNT Fireworks Stand expressed their opposition to the proposal to amend the hours of allowable discharge of fireworks.

Barbara Turecky – 4409 88th Avenue NW, asked Council to limit the use of fireworks to just one day, July 4 and dedicate staff to monitor illegal fireworks.

Randy and Maret Wahab – 11321 Heather Place, voiced support of the proposed fireworks ordinance limiting the use in Gig Harbor to 1 day, July 4th.

Yesenia Lamm – 4106 31st Avenue Ct., spoke against reducing the days of use of fireworks.

Eric Grenseman – Harbor Crossing, share support for transitioning fireworks from 4 days to 1 day.

Paul Beatty – 10823 64th Avenue Ct. NW, supports one day of fireworks in Gig Harbor.

Dale Schultz – 4207 31st Avenue Ct., supports one day – July 4th only for fireworks in Gig Harbor.

Don and Barbara Pearson – 4493 Copper Court, said they support 1 day, July 4th for fireworks in Gig Harbor.

Tom Walsh –10909 63rd Avenue NW, said his choice is for one day only for fireworks displays.

Turi Janes - 1102 136th St. NW, said she supports one day, July 4th only for fireworks in Gig Harbor.

Lynne Bouquet – 8208 77th St. Ct. NW, supports 1 day, July 4th only for fireworks in Gig Harbor

Harris Atkins – 3139 Anne Marie Court, supports 1 day, July 4th only for fireworks in Gig Harbor and would prefer fireworks eliminated except in permitted or organized events.

Michelle Kuelbs and Bruce Winhold – 10981 Echo Rock Place, support 1 day, July 4th only for fireworks in Gig Harbor.

Susan and Gary Elston – 6269 Harbor Sunset Lane, expressed preference for zero days of fireworks, but vote for 1 day.

Eric Anderson – Artondale, wrote in support of the proposed ban of fireworks in Gig Harbor outside of July 4th.

Marti Beeck – city limits, supports 1 day, July 4th only for fireworks in Gig Harbor, but strongly supports no fireworks at all.

Williams Kapes – 7009 92nd Ave. Ct. NW, supports maintaining the 4-day period of fireworks.

Charles Carlson – Harborview Drive, supports 4 days of fireworks for the Independence celebration.

Doug Sorensen – 9409 No. Harborview Dr., shared support for 1 day, July 4th only for fireworks in Gig Harbor and enforcement of illegal fireworks.

Jeanette Sorensen – 9409 No. Harborview Dr., supports 1 day, July 4th only for fireworks in Gig Harbor.

This was all the written comments. The Mayor opened it up to callers.

Robert Wood – 2709 43rd Street, supports limiting fireworks to one day for all the reasons stated.

Nancy Webster - shared all the reasons she supports one day to celebrate and said it should be limited to designated areas.

Dave Higby – 9527 Crescent Cove Place, supports eliminating or limiting the sale and discharge to July 4th.

Randy Curly, Area Manager for TNT Firework Sales, shared his reasons for opposing the limiting of fireworks discharge to one day.

Brenda Lykins – 11610 Arrowhead Drive, spoke in support of any limits on fireworks; and said limit it to one day.

Angela Sisney – 8026 Goodman Drive, spoke in support of limiting it to one day.

Michael Davis - 11611 Arrowhead Drive, supports discharge only on the 4th of July.

John Harrington – 6740 Soundview Drive, spoke in favor of limiting it to one day.

(Mr. Carter, speaking on behalf of wife Pamela Carter) – 4003 35th St. NW, urged the city to

limit fireworks to one day.

Rini Ing – 11007 66th Ave. Ct. NW, echoed the support for limiting fireworks to one day.

Jasmine Myers – 10540 Sentinel Dr., reiterated everything said about limiting to one day.

Thomas Wick – Hunt Street, suggested that the city should provide two consecutive days of fireworks display over the harbor.

Frances Walker – 7806 Skansie Ave., supports a ban on fireworks and in favor of the $1000 penalty.

John Johnson – Asst. Fire Chief, provided data on calls the past five years and support for limiting discharge to one day. The Fire Department would like to partner in the education efforts.

Jim Lykins – 11610 Arrowhead Drive, shared support of the limit to one day but could also support a ban on fireworks.

There were no more hands raised and the Mayor closed public comment at 7:57 p.m.

Mayor Kuhn said he hopes that Council will vote for this, adding that he does not support a city firework show across the harbor.

Councilmember Woock thanked everyone who submitted comments and spoke and offered a motion.

MOTION: Move to adopt Ordinance No. 1460.
Woock / Denson –

Councilmember Franich shared his view and proposed an amendment to allow someone to celebrate if they work on the 4th.

AMENDMENT: Move to amendment the ordinance to also allow fireworks on the 4th of July and the Saturday's that follow the 4th of July.
Franich / Rodenberg –

Chief Busey asked for a clarification on the amendment, saying the following Saturday could fall into the days past what the State allows. Councilmember Franich changed his motion to be the Saturday preceding the 4th and Councilmember Rodenberg concurred.

A brief break was called at 8:06 p.m. The meeting resumed at 8:16 p.m.

Council deliberated the amendment and the City Attorney provided asked for clarification because this amendment could result in two Saturdays. There was discussion on not allowing the additional Saturday and the number of those who spoke in favor of an outright ban.

AMENDMENT: Move to amendment the ordinance to also allow fireworks on the 4th of July and the Saturday's prior to the 4th of July.
Franich / Rodenberg – roll call vote:

Woock – no; Denson – no; Rodenberg – yes; Franich – yes; Himes – no; Markley – yes; Abersold – no. Motion failed 4-3

Council continued deliberation including direction to the Finance and Safety Committee to revisit the civil penalty for a fireworks infraction.

MOTION: Call the question.
Woock / Franich – unanimously approved.

MOTION: Move to adopt Ordinance No. 1460 as presented.
Woock / Denson –

Woock – aye; Denson –aye; Rodenberg – no; Franich – aye; Himes – aye; Markley – aye; Abersold – aye. Motion passed 6-1

The Mayor stressed that it is all about public outreach and education. It was mentioned that it won't take affect until 2022 and so there is plenty of time for that to occur.

NEW BUSINESS:

1. 2021 Regional Decant Facility Beneficial Use Agreement – Port Orchard Interlocal Agreement. Public Works Director Jeff Langhelm provided the background for this action to enter into an agreement for disposal of the city's vactor waste. He answered questions.

There was no public comment and the following motion was offered:

MOTION: Move to authorize the Mayor or his designee to allow Public Works to utilize City of Port Orchard's decant facility for stormwater vacuum eductor truck waste.
Woock / Himes – motion passed 7-0

2. Austin Honoring Art – Artist Services Contract Amendment No. 2. Public Works Director Jeff Langhelm presented the details for this contract amendment.

There was no public comment and the following motion was offered:

MOTION: Move to approve and authorize the Mayor to execute Amendment #2 to the Artist Services Contract with Guy Capoeman for the Austin Honoring Art.
Denson / Woock – motion passed 7-0

3. Eddon Boat Brick House – Professional Services Contract Amendment No. 6 / SHKS. Director Langhelm explained that this is the same scope of work presented at the last meeting less the $500 for evaluating the chimney. He said if the chimney is not replaced the building will be removed from the Historical Registry and Eddon Boat may have to return their grant funds. He responded to council questions and comments.

There was no public comment and the following motion was offered:

MOTION: Move to approve and authorize the Mayor to execute Amendment No. 6 to the Professional Services Contract with SHKS Architects in an amount not to exceed

$4,760.00
Woock / Rodenberg – roll call vote:

Woock – aye; Denson –aye; Rodenberg – aye; Franich – aye; Himes – aye; Markley – aye; Abersold – aye. Motion passed 7-0

COUNCIL REPORTS / COMMENTS:

Councilmember Rodenberg commented on the number of city positions that need to be filled. He said he'd like an emphasis on hiring. Mayor Kuhn said there would be more information on this topic coming Thursday.

Councilmember Himes concurred with these comments on hiring, adding that 1/3 of the year is gone.

Councilmember Franich reported on the Public Works Committee meeting and the three items that were discussed: 1) Murphy's Landing harbor dredging; 2) the pavement rating system; and 3) Water Franchise Agreements.

Councilmember Woock commented on the 1st Quarter Finance Status Report saying it provides transparency for the citizens. She said she looks forward to the discussion on Thursday and thanked all those who worked to put this together.

Councilmember Franich voiced appreciation for the council support for the Essential Workers Appreciation proclamation. He said that his intention was to bring extra attention to the retail workers who are the lowest paid employees.

Councilmember Abersold recognized the efforts of the Peninsula High School Key Club and their recent pancake drive. They brought in 600 pounds of pancake mix for those in need.

Councilmember Rodenberg also voiced appreciation for the proclamation and the focus on retail clerks but said there are many others that were excluded. He is thankful that we live in a community that makes sure that others receive essential care. Our retail clerks are among the very best.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning/Building Committee – Mon. May 3 at 3:00 p.m.
2. Parks Commission – Wed. May 5 at 5:30 p.m.

ADJOURN:

MOTION: Move to adjourn at 9:16 p.m.
Franich / Himes – unanimously approved

_____ _____

Mayor Kit Kuhn Molly Towslee, City Clerk

Minutes Planning Commission
Gig Harbor Civic Center
Thursday, April 15th, 2021 5:00 P.M.

5:00 p.m. - Call to order, roll call Commissioner Krawczyk, Commissioner Grina, Commissioner Brown, Commissioner Soltess, Chair Hoeksema & Commissioner Bradbury joined at 5:10
Carl de Simas, Senior Planner; Kim Mahoney, Associate Planner; Michelle Thomas, Planning Technician

Approval of Minutes April 1, 2021 Meeting Motion Grina/Krawczyk all in favor minutes approved as written

Chair Report attendance of City Council meeting, volunteer appreciation week and open Council positions

Agenda Items

I. Shoreline Management Program –Public Art Regulation – Discussion Staff and Commission: Public Art Definition, Public Art in the Wetland Buffer, and criteria

Other Business
Next Meeting April 29, 2021 Special Meeting if needed will keep on the calendar and make decision by April 22nd, 2021
May 6, 2021 6:00 PM Joint Public Hearing expectations and Planning Commissioner's roles and different start time

Adjournment Motion Brown/Soltess all in favor meeting adjourned at 6:16

GIG HARBOR
"THE MARITIME CITY"

COMMUNITY DEVELOPMENT
PLANNING DIVISION

Minutes
Planning & Building Committee

Monday, April 5, 2021
3:00 P.M. – 4:30 P.M.

3:00 p.m. - Call to order, roll call Councilmember Markley, Councilmember Franich, Community Development Director; Katrina Knutson, Senior Planner; Carl deSimas, Planning Technician; Michelle Thomas, City Administrator; Bob Larson, Gary Glein Downtown Waterfront Alliance & Building Official/Fire Marshal; Paul Rice, Mayor Kit Kuhn

Approval of Minutes: March 1, 2021 Motion Franich/Markley all in favor minutes approved as written

Agenda Items:
I. Downtown Waterfront Alliance Parking Analysis – Gary Glein presentation & committee discussion
II. Growth Target Allocation Update – Carl de Simas, Senior Planner monthly update and discussion. No meeting and Towns meeting sine last Planning & Building Committee meeting next meeting is April 7, 2021
III. SSHAP Update – Carl de Simas, Senior Planner update and discussion
IV. Council Comments – Councilmember discussion – Himes Variance process & criteria

Other Business

Next Meeting Monday, May 3, 2021

Adjournment Motion Franich/Markley all in favor meeting adjourned at 4:31 PM

3510 GRANDVIEW STREET – GIG HARBOR WASHINGTON 98335 – (253) 851-6170 – WWW.CITYOFGIGHARBOR.NET

MINUTES FOR GIG HARBOR CITY COUNCIL SPECIAL MEETING
Thursday, April 22, 2021 – 3:00 p.m.

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

CALL TO ORDER / ROLL CALL: Mayor Kuhn called the meeting to order and called roll. Those present: Councilmembers Abersold, Rodeberg, Himes, Markley, and Woock. Councilmembers Denson and Franich were absent.

Staff present: City Administrator Bob Larson, Assistant City Clerk Josh Stecker, Finance Director Dave Rodenbach, and Senior Accountant Jaci Auclair-Tomlinson. Zachary Wilson and Carol Ehlinger were present from the State Auditor's Office.

Audit Exit Conference: Council received the audit exit report for 2019 from Zachary Wilson and Carol Ehlinger. The City received a clean audit report with no negative findings.

ADJOURN: The meeting adjourned at 3:21 p.m.

MINUTES FOR GIG HARBOR CITY COUNCIL STUDY SESSION
Thursday, April 29, 2021 – 3:00 p.m.

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

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

Staff present: City Administrator Bob Larson, Assistant City Clerk Josh Stecker, Public Works Director Jeff Langhelm, City Clerk Molly Towslee, HR Director Kameil Borders, ITS Manager Keith Smith, Senior Accountant Jaci Auclair-Tomlinson, and Finance Director Dave Rodenbach.

DISCUSSION ITEMS:

1st Quarter Budget Status Report – Detailed Discussion: Bob Larson gave an overview of the City's 2021 Budget first quarter status report. Kameil Borders identified some of the difficulties the City is facing with filling vacancies across departments. Department Heads addressed the status of each of their budget funds and informed Council of reasons for identified delays or cost overruns.

ADJOURN: The meeting adjourned at 5:25 p.m.

Business of the City Council
City of Gig Harbor, WA

Subject: Annexation Analysis - Professional Services Contract– BERK Consulting

Proposed Council Action: Authorize the Mayor to execute Professional Services Contract between the City of Gig Harbor and BERK Consulting in an amount not to exceed $49,420

Dept. Origin: **Community Development**

Prepared by: Carl de Simas
Senior Planner

For Agenda of: May 10, 2021

Exhibit: Contract with exhibits

	Initial & Date
Concurred by Mayor:	KK 5-3-21
Approved by City Administrator:	AL 05/03/2021
Approved as to form by City Atty:	DK Email 4/29/21
Approved by Finance Director:	4/30/2021
Approved by Department Head:	KNK Email 4/30/21

Expenditure Required	$49,420	**Amount Budgeted**	$50,000	**Appropriation Required**	NA

INFORMATION/BACKGROUND

The Planning Division of the Community Development Department seeks professional services assistance from BERK Consulting to assist in the analysis of the City's Urban Growth Area for the purposes of identifying and prioritizing potential annexation areas.

Berk would provide the necessary staff support and technical analysis to conduct a thorough, thoughtful, and public process. Broadly, BERK would provide: project management and coordination assistance to staff; support for public engagement and public meetings/open houses; technical analysis of the urban growth area and synthesis of the data in order to formulate priority recommendations to Planning Commission and City Council; assistance in coordinating final reporting and project documentation.

Attached to this Council Bill is a contract with BERK Consulting to provide these services. BERK Consulting is an established company with a local office (Seattle) that has worked with the City on past projects. They are well versed in the City's codes and manuals and work well with the staff.

FISCAL CONSIDERATION

The City's 2021 Budget includes funds for this work through the following:
Planning Objective #10 - $50,000

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to execute Consultant Services Contract between the City of Gig Harbor and BERK Consulting in an amount not to exceed $49,420.

PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF GIG HARBOR AND BERK CONSULTING

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and BERK Consulting, a corporation (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in an Annexation Analysis of the City's Urban Growth Area and desires that the Consultant perform services necessary to conduct the analysis and assist in prioritizing Potential Annexation Areas; and

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

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

TERMS

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

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Forty-nine Thousand Four Hundred and Twenty Dollars ($49,420) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A** and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within 45 days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the

same within 15 days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

3. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2021; provided however, that additional time shall be granted by the City for excusable days or extra work. Further, the parties may extend the duration of this Agreement consistent with the terms of Section 17 below.

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

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

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

7. Indemnification.

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

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

8. Insurance.

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

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

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

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

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.
3. Employer's Liability, each accident $1,000,000, Employer's Liability Disease-each employee $1,000,000, and Employer's Liability Disease - Policy Limit $1,000,000.
4. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim.

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

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

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

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

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

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

11. Records.

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

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

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

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

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

or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

14. Resolution of Disputes and Governing Law.

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

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

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

CONSULTANT: BERK Consulting ATTN: Maria Santiago 2200 6th Ave Suite 1000 Seattle, WA 98121	City of Gig Harbor ATTN: Carl de Simas City of Gig Harbor 3510 Grandview Street Gig Harbor, WA 98335 (253) 851-6170

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20____.

CONSULTANT

By:_____
Its:_____

CITY OF GIG HARBOR

By:_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"
Scope of Work
BERK Consulting

Project Workplan

This project will consist of four distinct tasks:

Task 1: Project Management & Ongoing Coordination

Task 2: Engagement Program Support

Task 3: UGA Analysis

Task 4: Final Report and Project Documentation

TASK 1: PROJECT MANAGEMENT & ONGOING COORDINATION

Timeline: May to December 2021

BERK will work with City staff to organize and facilitate a project kick-off meeting. This meeting will include a review of the following:

- Project scope and expectations
- Roles and responsibilities of staff and consultants
- Requests for data and other resources
- A schedule of intended engagement activities
- Engagement with County staff on data and review of findings
- Project management protocols, communication, and scheduling of future meetings and City staff presentations
- Timelines and project schedule

Based on discussion at this first meeting, BERK will develop a refined scope and project schedule and submit this to the City project manager for final approval.

After this meeting, BERK will also set up a regular meeting schedule for coordination with the City project manager and other designated staff to communicate progress and any potential project challenges. These meetings will typically be coordinated by phone or video call, with in-person meetings as required and in compliance with state and local health restrictions.

Deliverables:

- Updated project charter, including a scope of work and schedule updated to consider the input and feedback received at the kick-off meeting.
- Monthly progress reports, to be submitted with regular invoicing.
- Bi-weekly project team meetings, to be coordinated during the kick-off meeting.

TASK 2: ENGAGEMENT PROGRAM SUPPORT

It is assumed for this project that City staff will lead the public engagement efforts during the development of the Annexation Feasibility Study. This effort will be supported by the BERK team, which will help facilitate the process in a largely support role.

This task is intended to cover the two different elements of public engagement involved with the development of this study:

- Broader public engagement to provide information and collect feedback from city and UGA residents and other impacted stakeholders.
- Engagement with Planning Commission and City Council to develop the overall strategy for the Comprehensive Plan.

BERK's role in supporting the City in these engagement efforts will be determined during the startup meeting and may be adjusted from the proposed work plan here.

These efforts will be guided by the processes developed by the International Association of Public Participation (IAP2), and we will provide guidance based on key strategies to engage and retain stakeholder interest in the process. These project materials will be accessible to all members of the community.

Note that this process is envisioned to occur simultaneously with Task 3 and will be informed by elements from that analysis.

Task 2.1: Develop Public Participation Plan

Timeline: May to June 2021

As part of this work, BERK will coordinate with City staff to assist in the development of a project Public Participation Plan. This will include work by our team to support the City in the following:

- Clarifying the decision-making process and the role of different parties and the public at-large
- Identifying the City's needs for public engagement
- Providing an initial landscape survey of potential stakeholders to determine their needs for engagement
- Planning appropriate engagement events as part of a multi-faceted approach to meet the needs of identified stakeholders, including interviews, focus groups, and "open house" style events
- Identify appropriate opportunities for alternate online engagement, including a project web portal and story mapping that can query relevant project information
- Scheduling key milestones and events in public participation, including all major engagement opportunities and final deadlines for engagement reporting

Additionally, this Public Participation Plan will also highlight the ongoing role of the BERK team in the process, including expectations for contributions to the engagement process and timelines for providing supporting materials.

BERK will coordinate with City staff to develop a draft Public Participation Plan to describe these steps, support an internal review by the City, and provide final revisions.

Deliverables:

- Draft Public Participation Plan for City staff review
- Final Public Participation Plan submitted to the City Project Manager for final approval

Task 2.2: Support for Public Engagement

Timeline: June to November 2021

BERK's support for the City's efforts in public engagement will be focused on providing materials and advice to assist at each stage of the process. This may include the following content:

- An initial fact sheet about annexation for public distribution during engagement
- Design of meeting invitation materials, including initial surveys and RSVPs
- Meeting agendas and activity/discussion guides
- Slide deck for presentations of summary materials from Task 3
- A final fact sheet summarizing the annexation process for future outreach
- Website materials for project information portal, including materials from the fact sheets formatted for the City's webpage

In addition to these materials, BERK will also support City staff in developing a "What We Heard" report to summarize the outcomes from public engagement activities. This will work to highlight major findings from the engagement process and implications for the Planning Commission and Council to consider in their process.

Deliverables:

- Public engagement materials to support City engagement efforts (to be finalized through negotiation with staff)
- Revisions to the "What We Heard" Report provided by City staff

Task 2.3: Support for Planning Commission and City Council Engagement

Timeline: August to November 2021

BERK will provide support for City staff with the Planning Commission and City Council, which will be focused on supporting presentations and workshops to inform them about the process and the need and develop a prioritization scheme for annexation of the PAAs. The nature of this support will be determined through discussions with staff, both at the kick-off meeting and on an ongoing basis.

It is expected that the overall process of engagement to proceed as follows:

- Provision of an initial information packet to the Commission and Council to describe the requirements of the process and the intended outcomes.

- An initial online survey to solicit perspectives on annexation, including major topics and locations of concern. This survey would include both an online SurveyMonkey questionnaire, as well as an interactive online map that would allow respondents to review information about the proposed PAAs.
- Coordination of the first workshop session to review materials developed under Task 3 to date, and provide a high-level, principles-based approach for prioritizing proposed PAAs through a consensus-based process.
- Development of an approach to prioritize PAAs based on direction from the workshop.
- Creation of a preliminary approach for PAA prioritization and high-level annexation scheduling, with an associated rationale based on the process developed from the workshop sessions.
- Coordination of a second workshop session to review the results of the scoring rubric and preliminary ranking and adjust as necessary.
- Development of a final report for inclusion in the final Annexation Feasibility Study to summarize the process and rationale for PAA prioritization and detail the expected phasing for annexation of the identified PAAs.
- A project brief to supplement the report and provide a guide for new Planning Commission and Council members about annexation and the recommendations from the report. This may update and adapt materials from the initial information packet.

This process is preliminary and would be subject to refinement in cooperation with City staff. As noted, BERK's role in this process will primarily be one of support, focused on development of key materials such as:

- Initial information packets
- Online surveys and interactive maps
- Workshop slide decks
- Project workbooks for the preliminary ranking
- Working maps for use during sessions

BERK will also support the City in the development of the final report from this process by providing report materials such as maps, charts, and figures, and coordinating a review of the draft.

Deliverables:

- Engagement materials to support engagement efforts with the Planning Commission and City Council (to be confirmed and finalized through negotiation with staff)
- Revisions to the final PAA prioritization report provided by City staff

TASK 3: UGA ANALYSIS

BERK will also provide substantive support to the City in their efforts to evaluate the UGAs for annexation through a comprehensive assessment of current conditions and potential impacts from annexation. In addition to providing supporting materials for the engagement process in Task 2, this is also intended to present resources for City staff in ongoing efforts to manage the annexation process.

As noted above, this analysis will focus on providing the following information about the individual PAAs:

- **Current conditions**, including existing population and housing characteristics, current land uses and potential conflicts, and availability of buildable lands.
- **Required infrastructure and services**, highlighting the needs for infrastructure and services in each area to meet City standards after annexation. This will rely on existing system and capital plans and discussions with service providers/departments.
- **Fiscal impacts of annexation**, including all costs associated with annexation of individual areas for the City.

The product of this work is envisioned to be the development of a summary report, highlighting overall conditions and impacts for annexation of PAAs, as well as a summary of designated PAAs and individual characteristics of each of these areas.

Under each task, BERK will provide initial materials to summarize the process to date. These memos will be developed to summarize the materials that will be included in the final report and allow for a review by City staff as needed. These materials will also provide staff with supporting materials to keep decision-makers updated about the progress and findings of the project.

Task 3.1: Initial Data Collection

Timeline: May to June 2021

As part of this effort, BERK will work with City and County staff to compile all necessary information for the UGA analysis. This will focus on information specific to the City and the UGAs, including current and expected infrastructure and services capacity and local infrastructure needs, and fiscal data from the City necessary to evaluate impacts from annexation. This effort will be coordinated at the project startup meeting, and an evaluation of the data and potential gaps will be provided to the City project manager.

Deliverables:

- A memo detailing the status of available data and any gaps or data quality issues that may impact the findings from this work.

Task 3.2: Summary of Conditions

Timeline: June to July 2021

Based on the data collected in Task 3.1, BERK will provide a summary of overall conditions in the Gig Harbor UGAs, based on available information collected. As noted above, this will include:

- **Current conditions,** including population and housing characteristics

- **Current and expected infrastructure and services**, including a description of required infrastructure and services in UGAs to meet future needs

BERK will provide broad summaries of these areas based on the identified characteristics, and provide summary charts, tables, and graphics to highlight these characteristics and major implications of annexation. These summaries will be provided at the UGA level and highlight any potential areas of concern for the annexation process.

Deliverables:

- A memo providing a high-level summary of the UGAs, including major charts, tables, and graphics to be incorporated into the final report. This will be developed to allow it to be used by staff for updates to the Planning Commission and Council as needed.

Task 3.3: Preliminary Fiscal Impact Analysis

Timeline: July to August 2021

From the information developed in Tasks 3.1 and 3.2, BERK will coordinate an analysis of the potential impacts of annexation. The current operating fiscal structure and the potential fiscal impact of annexation of the UGAs overall will be assessed, highlighting differences in incremental costs by area. The planning-level model will use factors in the land base (such as population, employment, commercial activity, and levels of development/redevelopment) to understand both demand for services and the tax base, this analysis can be more geographically specific, highlighting differences in costs in different parts of the Gig Harbor UGAs.

BERK will also develop a series of indicators (e.g. costs and revenue per capita, possible changes to City staffing) to demonstrate how individual portions of the UGAs compare to the city as a whole and how serving the area would impact the City fiscally. This information will be provided to the City for discussion and review.

Deliverables:

- A memo detailing overall fiscal impacts of annexation of the UGAs to the City, as well as maps and charts highlighting the differences in these impacts by geography. This will be developed to allow it to be used for updates by staff to the Planning Commission and Council as needed.

Task 3.4: Preliminary Delineation of PAAs

Timeline: August to September 2021

In addition to the summary of conditions and overall fiscal impacts, BERK will also prepare a recommended delineation of PAAs for use in ongoing engagement. These PAAs will be developed in coordination with City staff and will attempt to identify distinct areas that could be feasibly incorporated into the City as part of individual annexations. The criteria for developing these areas would be confirmed with City staff, and would consider:

- Natural boundaries and traditional neighborhood boundaries
- Available capacity and planned extensions of infrastructure and services

- Distinct agglomerations of land use and development
- Differences in effective costs of annexation

BERK will provide a summary of the conditions for each of the identified areas, as well as a more detailed examination of the expected fiscal impacts of annexation of each of these areas, and a set of summary indicators for use in evaluation.

Deliverables:

- A memo detailing the proposed boundaries of PAAs and summary information for conditions and fiscal impacts for each area. This will be developed to allow it to be used for updates by staff to the Planning Commission and Council as needed.

Task 3.5: Review of the UGA Analysis

Timeline: September to October 2021

From the materials developed from Tasks 3.1 through 3.4, BERK will compile a UGA Analysis Report detailing the characteristics of the UGAs overall as well as information about the distinct PAAs. A review of this report with City staff will be coordinated to walk through our findings, the implications of the fiscal model results, and the proposed delineation of the PAAs.

Based on the feedback and input received from City staff during this review, BERK will coordinate revisions to the report. In addition to any clarifications and additional information required, this may also involve adjustments to the boundaries of the PAAs and updates to relevant cost estimates and statistics. The intended changes to the report will be summarized in a memo to confirm these changes with the City project manager.

In addition, BERK will also work with City staff during this review process to develop long-term scenarios for land use and development for these areas. This would not be intended to provide specific planning expectations for these areas, but instead to inform longer-term thinking about the implications of future growth in these areas.

Deliverables:

- Draft UGA Analysis, compiled from the deliverables in Tasks 3.1 through 3.4 and provided to City staff for review.
- A memo detailing the input received from staff and the expected changes to be coordinated to respond to this feedback.

Task 3.6: Revisions and Development of Final Report

Timeline: October to December 2021

As part of developing the final draft of the UGA analysis, BERK will revise the report according to the feedback received in Task 3.5. Updates for summaries of the individual PAAs will also be coordinated based on any boundary adjustments included.

In addition to this work, BERK will also coordinate two additional components to be included in the final report:

- A review of the long-term fiscal impacts of annexation, based on the identified land-use scenarios discussed with staff in Task 3.5. This will not be intended as a projection of expected fiscal impacts into the future, but instead as a means to identify potential long-term implications to growth, development, and fiscal sustainability.
- Recommendations for annexation priorities, based on expectations of fiscal sustainability and the needs for accommodating growth efficiently in the future. These recommendations will be included to help support actions by the Planning Commission and City Council to prioritize and schedule the annexation of individual PAAs over the next decade.

Deliverables:

- Final UGA Analysis, provided to the City project manager for review and final comment.

TASK 4: PROJECT DOCUMENTATION AND CLOSEOUT

Timeline: October to December 2021

To conclude the project, materials will be provided to City staff to ensure effective ongoing support for the annexation of PAAs over time. These materials will include:

- Copies of all project deliverables in readable electronic formats.
- All project maps, charts, and figures in high-resolution vector or raster formats, to allow for their use in future materials as required.
- All base mapping data used in the project, including ArcGIS mapping files in MXD and map package formats and source mapping information in ArcGIS shapefile formats.
- A compilation of all other project data used in the development of the UGA Analysis in Excel or flat-file formats.
- An overall data manifest and metadata for each dataset, including details on original data sources.
- A technical memo documenting the steps used in the analysis of the UGAs, including all assumptions and guidance for any future analyses.

Although this data transfer will not include our internal proprietary fiscal model, BERK will provide detailed outputs to highlight expected fiscal impacts by PAAs.

This work will conclude with a project close-out meeting, which will be intended to review and confirm the receipt of all project deliverables, discuss next steps for City staff, and review overall project performance.

Deliverables:

- Compilation of all project materials, as listed above, provided on physical media.
- A technical memo, detailing the UGA analysis methodology and major project steps.

Schedule of Project Deliverables and Meetings

MONTH	DELIVERABLE
Regular products	▪ Monthly progress reports (Task 1) ▪ Bi-weekly project team meetings (Task 1)
April/May 2021	▪ **Project Kick-off Meeting** ▪ Updated project charter (Task 1) ▪ Data availability and status memo Task 3.1)
May/June 2021	▪ Draft Public Participation Plan for City staff review (Task 2.1)
June 2021	▪ Final Public Participation Plan submitted to the City Project Manager for final approval (Task 2.1) ▪ Public engagement materials to support City engagement efforts (Task 2.2, ongoing)
July 2021	▪ A memo providing a high-level summary of the UGAs, including major charts, tables, and graphics to be incorporated into the final report. (Task 3.2)
August 2021	▪ A memo detailing overall fiscal impacts of annexation of the UGAs to the City, as well as maps and charts highlighting the differences in these impacts by geography. (Task 3.3) ▪ Engagement materials to support engagement efforts with the Planning Commission and City Council (Task 2.3, ongoing)
September 2021	▪ A memo detailing the proposed boundaries of PAAs and summary information for conditions and fiscal impacts for each area. (Task 3.4)
September/October 2021	▪ **Workshop 1: Principles and Priorities** ▪ **Staff Review Meeting** ▪ Draft UGA Analysis, compiled from the deliverables in Tasks 3.1 through 3.4 and provided to City staff for review. (Task 3.5) ▪ A memo detailing the input received from staff for the Draft UGA Analysis and the expected changes to be coordinated. (Task 3.5)
October/November 2021	▪ **Workshop 2: Review of Results**
November 2021	▪ Revisions to the "What We Heard" Report provided by City staff (Task 2.2) ▪ Revisions to the final PAA prioritization report provided by City staff (Task 2.3)
December 2021	▪ **Project Close-Out Meeting** ▪ Final UGA Analysis, provided to the City project manager ▪ Compilation of all project materials ▪ Technical memo detailing the UGA analysis methodology

Preliminary Data Request

GIS DATA

- Political boundaries (City + UGAs)
- Available parcel data + property information (County)
- Buildable lands data (City)
- Historical / active building permit data (City/County)
- Infrastructure data (City/County)
- Public facilities locations (City/County)

FISCAL DATA

- City budget data (Excel)
- City budget projections (Excel)
- City capital facilities planning + expected costing information

OTHER INFORMATION

- Pierce County 30-year growth targets for Gig Harbor (City + UGAs)
- Council / Planning Commission schedule of meetings
- Council / Planning Commission minutes on previous discussions related to annexation
- Preliminary lists of stakeholders that should be engaged as part of the process

Preliminary Timeline

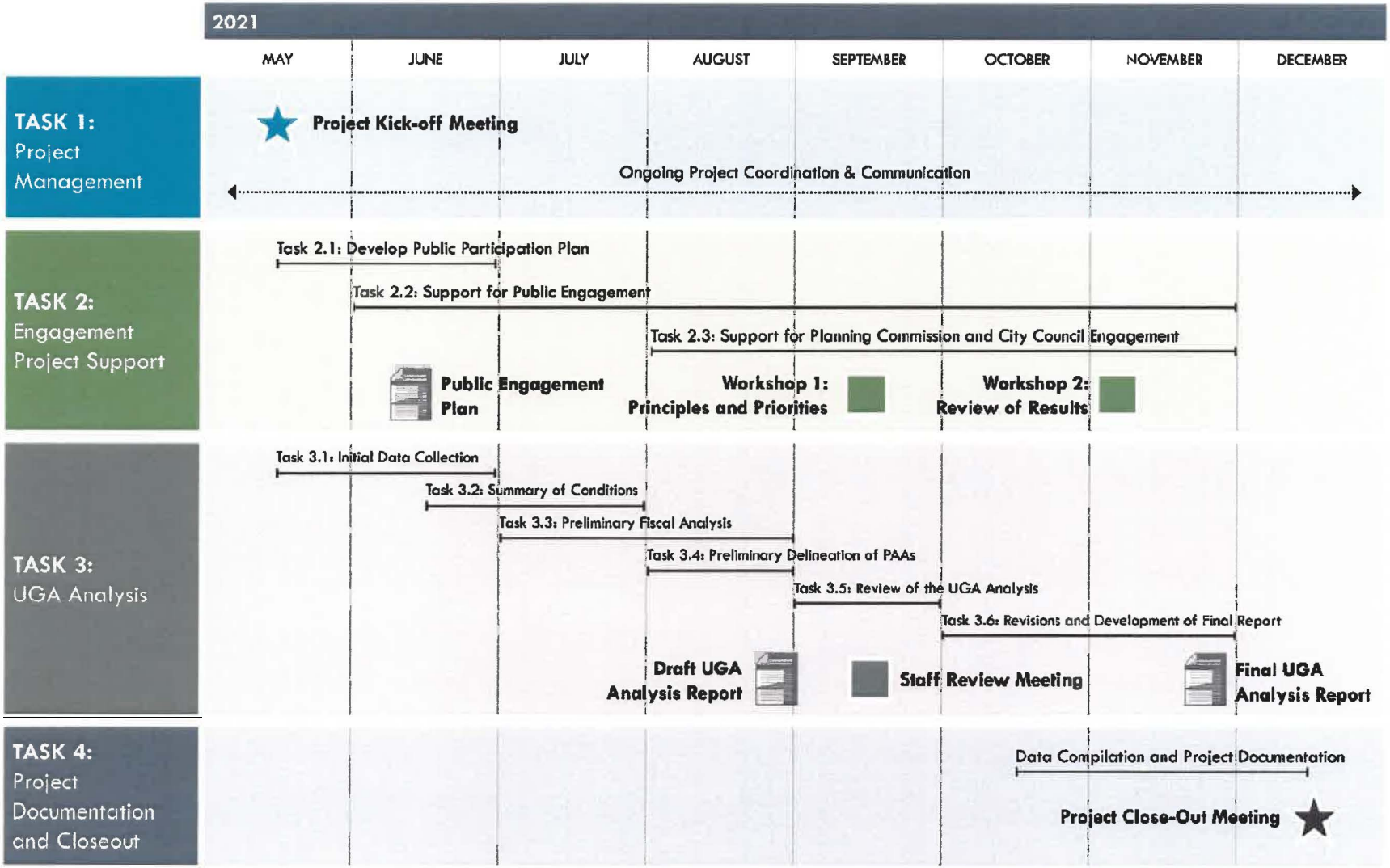

Exhibit "B"
Schedule of Rates and Estimated Hours
BERK Consulting

Budget

	BERK Consulting				
	Andrew Bjorn Project Manager	**Dawn Couch** Outreach Lead	**Kristin Maidt** Financial Analyst	**Kevin Gifford** GIS Analyst	**Total Hours and Estimated Cost by Task**
2021 Hourly Rate	**$170**	**$170**	**$160**	**$160**	
Task 1: Project Management & Ongoing Coordination					
Subtotal	16	4	4	4	28
					$4,680
Task 2: Engagement Program Support					
Task 2.1: Develop Public Participation Plan	4	16	-	-	
Task 2.2: Support for Public Engagement	4	16	4	4	
Task 2.3: Support for Planning Commission and City Council Engagement	4	16	4	4	
Subtotal	12	48	8	8	76
					$12,760
Task 3: UGA Analysis					
Task 3.1: Initial Data Collection	2	-	-	4	
Task 3.2: Summary of Conditions	2	-	4	24	
Task 3.3: Preliminary Fiscal Impact Analysis	4	-	36	-	
Task 3.4: Preliminary Delineation of PAAs	4	-	4	16	
Task 3.5: Review of the UGA Analysis	4	-	8	8	
Task 3.6: Revisions and Development of Final Report	16	-	8	8	
Subtotal	32	-	60	60	152
					$24,640
Task 4: Project Documentation and Closeout					
Subtotal	8	4	8	16	36
					$5,880
Total Estimated Hours	68	56	80	88	292
Cost (Hours*Rate)	$11,560	$9,520	$12,800	$14,080	$47,960

Subtotal Consultant Cost	$47,960
CoStar data	$500
Project Expenses at ~2% of Project Budget	$960
Estimated Project Total	$49,420

Business of the City Council
City of Gig Harbor, WA

Subject: Purchase Authorization – RRFB Assemblies

Proposed Council Action: Approve and authorize the Mayor to execute the purchase of RRFB assemblies from Western Systems for their price quotation of $119,325.40.

Dept. Origin: Public Works

Prepared by: Trent A. Ward, PE, City Engineer TW

For Agenda of: May 10, 2021

Exhibits: Purchase Agreement

	Initial & Date
Concurred by Mayor:	KK 5-3-21
Approved by City Administrator:	RL 05/03/2021
Approved as to form by City Atty:	email 4/30/21
Approved by Finance Director:	4/30/21
Approved by Department Head:	4/30/21

Expenditure Required	$119,325.40	**Amount Budgeted**	$470,000.00	**Appropriation Required**	$ 0

INFORMATION/BACKGROUND

The City of Gig Harbor identified Street Division – Capital Objective 9 – Pedestrian Crosswalk Improvements – Gig Harbor North in the 2021 Budget.

Due to materials availability concerns, and to assure completion of this project this summer, the City desires to procure the RRFB assemblies during project design. These purchased materials will be provided to the contractor at the time of award of the associated Public Works contract this summer.

This purchase is made in accordance with Resolution 1066 through an interlocal cooperative purchasing agreement with Washington State Department of Enterprise Services (DES State Contract #04616) through Western Systems, an authorized vendor. Western Systems was selected as the vendor as they have supplied the City with RRFB assemblies in the past and they distribute the RRFB assembly products manufactured by Carmanah, which has been installed throughout the City over the past several years, meets the City's Public Works Standards, and supports the City's Operations division in standardizing such systems for future maintenance and operation.

FISCAL CONSIDERATION

Project Funding:	
2021 Budget Street Capital, Objective 9	$ 470,000.00
2021 expenditures	
Western Systems Purchase Order	($119,325.40)
Public Works Construction Contract and Materials Testing	TBD
Remaining Budget:	$350,674.60

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute the purchase of RRFB assemblies from Western Systems for their price quotation of $119,325.40.

Purchase Quotation Worksheet
(Interlocal Cooperative Purchase Agreement)

Purchase Threshold	Purchasing Process Alternatives	Authorization
From $15,000 and less than $50,000	Interlocal Cooperative Purchase Agreements	City Administrator or Mayor

Purchase Threshold	Purchasing Process Alternatives	
$50,000 or more	Interlocal Cooperative Purchase Agreements- DES State Contract #04616	City Council

	#1 – (Awarded To)	#2	#3
Firm Name	**Western Systems**		
Contact Name	**Holton Ferguson**		
Phone Number	**425-438-1133**		
Quote Date	**4/28/2021**		
Description	**Total Quote**	**Total Quote**	**Total Quote**
10 ea. Rectangular Rapid Flashing Beacons and associated hardware for CSP-2104 Pedestrian Crosswalks Improvements-Gig Harbor North	$107,266.38		
BUDGETED PURCHASE (Y) or N **ITEM#/DEPT** Engineering **BARS#102-018-595-30-63-28** **BUDGET AMOUNT** $470,000			
Estimated Freight Charges	$2,508.60		
Sub-Total	$109,774.98		
Tax (8.7 %)	9,550.42		
Total	119,325.40		

Person Receiving Quotes: Trent Ward, City Engineer **Department: Engineering**

Signature – City Administrator or Mayor: **Date:**

City Council Award Date:

GIG HARBOR
"THE MARITIME CITY"

Western Systems
Innovative Transportation Solutions

QUOTATION

Date: April 28, 2021
Quote #: WSQ WA-HF582-1
Estimator: Holton Ferguson

Project: City of Gig Harbor: Roundabout RRFB
Attention: Estimator
Bid Opening: 04/27/2021

We are pleased to provide you this quotation. If you have any questions, please let us know immediately.

Bid Item # 1, E1

Costco Entrance

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following: (No Median)
	(1) Control Cabinet (SC315-G) AC, Natural Finish
	Carmanah Part # **84577**
	(4) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
	Carmanah Part # **87668**
	(300) Cable 18AWG AC 600V Stranded Shielded
	*For Light Bars
	Olympic Wire Part # **8203S**
	(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
	Polara Part # **INX9WN0-Y**
	(150) Cable 18/8 X Button (Belden 27601A)
	*For Push Buttons
	ATP Part # **ATPXCABLE**
	(2) Pole Galvanized Steel 4 ½" Schedule 40 12'
	Pelco Products Part # **PB-5200-12-GLV**
	(2) Pole Cap Dome 4 ½" OD Aluminum
	Pelco Products Part # **PB-5402-PNC**
	(2) Pedestal base Aluminum Square with Aluminum Door
	Pelco Products Part # **PB-5334-PNC**
	(4) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
	NW Safety Signs Part # **W11-2-30X30 VIP FRS**
	(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
	NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
	(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
	NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**

Harbor Hill Dr (North)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following:
	(1) Control Cabinet (SC315-G) AC, Natural Finish
	Carmanah Part # **84577**
	(6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
	Carmanah Part # **87668**
	(400) Cable 18AWG AC 600V Stranded Shielded
	*For Light Bars
	Olympic Wire Part # **8203S**
	(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
	Polara Part # **INX9WN0-Y**
	(200) Cable 18/8 X Button (Belden 27601A)

Western Systems
Innovative Transportation Solutions

QUOTATION

*For Push Buttons
ATP Part # **ATPXCABLE**
(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
Pelco Products Part # **PB-5200-12-GLV**
(3) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(3) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Harbor Hill Dr (South)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following:

(1) Control Cabinet (SC315-G) AC, Natural Finish
Carmanah Part # **84577**
(6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
Carmanah Part # **87668**
(400) Cable 18AWG AC 600V Stranded Shielded
*For Light Bars
Olympic Wire Part # **8203S**
(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
Polara Part # **INX9WN0-Y**
(200) Cable 18/8 X Button (Belden 27601A)
*For Push Buttons
ATP Part # **ATPXCABLE**
(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
Pelco Products Part # **PB-5200-12-GLV**
(3) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(3) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

$30,277.84 Lump sum

Bid Item # 2, E2

Borgen Blvd (West)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following:

(1) Control Cabinet (SC315-G) AC, Natural Finish

Western Systems
Innovative Transportation Solutions

QUOTATION

Carmanah Part # **84577**
(6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
Carmanah Part # **87668**
(400) Cable 18AWG AC 600V Stranded Shielded
*For Light Bars
Olympic Wire Part # **8203S**
(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
Polara Part # **INX9WN0-Y**
(200) Cable 18/8 X Button (Belden 27601A)
*For Push Buttons
ATP Part # **ATPXCABLE**
(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
Pelco Products Part # **PB-5200-12-GLV**
(3) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(3) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Borgen Blvd (East)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following:

(1) Control Cabinet (SC315-G) AC, Natural Finish
Carmanah Part # **84577**
(6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
Carmanah Part # **87668**
(400) Cable 18AWG AC 600V Stranded Shielded
*For Light Bars
Olympic Wire Part # **8203S**
(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
Polara Part # **INX9WN0-Y**
(200) Cable 18/8 X Button (Belden 27601A)
*For Push Buttons
ATP Part # **ATPXCABLE**
(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
Pelco Products Part # **PB-5200-12-GLV**
(3) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(3) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Western Systems
Innovative Transportation Solutions

QUOTATION

Harbor Hills Dr (South)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following:
	(1) Control Cabinet (SC315-G) AC, Natural Finish
	Carmanah Part # **84577**
	(6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
	Carmanah Part # **87668**
	(400) Cable 18AWG AC 600V Stranded Shielded
	*For Light Bars
	Olympic Wire Part # **8203S**
	(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
	Polara Part # **INX9WN0-Y**
	(200) Cable 18/8 X Button (Belden 27601A)
	*For Push Buttons
	ATP Part # **ATPXCABLE**
	(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
	Pelco Products Part # **PB-5200-12-GLV**
	(3) Pole Cap Dome 4 ½" OD Aluminum
	Pelco Products Part # **PB-5402-PNC**
	(3) Pedestal base Aluminum Square with Aluminum Door
	Pelco Products Part # **PB-5334-PNC**
	(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
	NW Safety Signs Part # **W11-2-30X30 VIP FRS**
	(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
	NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
	(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
	NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
	(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
	NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Harbor Hills Dr (North)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following: (No Median)
	(2) Control Cabinet (SC315-G) Solar, Natural Finish
	Carmanah Part # **84539**
	(2) Battery 55AH
	Carmanah Part # **88026**
	(2) 50-Watt Solar Panel
	Carmanah Part # **74387**
	(2) Top of Pole Mount, 3.5-4.5" OD Round, for 50-Watt Solar Panel
	Carmanah Part # **89334**
	(2) Solar Panel Harness, MC4 to Spade Terminals, 16'
	Carmanah Part # **88154**
	(4) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black)
	Carmanah Part # **87668**
	(4) Harness, 16', Terminal Block to Light Bar, RRFB, SC315
	Carmanah Part # **78225**
	(2) Solar Engine (R920-E) RRFB (Unfinished)
	Carmanah Part # **84303**
	(2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow
	Polara Part # **INX9WN0-Y**
	(2) Harness, 16', Polara, G-Series
	Carmanah Part # **84507**
	(2) Pole Galvanized Steel 4 ½" Schedule 40 14'
	Pelco Products Part # **PB-5200-14-GLV**

Western Systems
Innovative Transportation Solutions

QUOTATION

(2) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(2) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(4) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**

$45,278.70 Lump sum

Bid Item # 3, E3

Borgen Blvd (West)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following: (1) Control Cabinet (SC315-G) AC, Natural Finish Carmanah Part # **84577** (6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black) Carmanah Part # **87668** (600) Cable 18AWG AC 600V Stranded Shielded *For Light Bars Olympic Wire Part # **8203S** (2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow Polara Part # **INX9WN0-Y** (400) Cable 18/8 X Button (Belden 27601A) *For Push Buttons ATP Part # **ATPXCABLE** (3) Pole Galvanized Steel 4 ½" Schedule 40 12' Pelco Products Part # **PB-5200-12-GLV** (3) Pole Cap Dome 4 ½" OD Aluminum Pelco Products Part # **PB-5402-PNC** (3) Pedestal base Aluminum Square with Aluminum Door Pelco Products Part # **PB-5334-PNC** (6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum NW Safety Signs Part # **W11-2-30X30 VIP FRS** (2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum NW Safety Signs Part # **W16-7PL-24X12 VIP FRS** (2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum NW Safety Signs Part # **W16-7PR-24X12 VIP FRS** (2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Borgen Blvd (East)

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following: (1) Control Cabinet (SC315-G) AC, Natural Finish Carmanah Part # **84577** (6) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black) Carmanah Part # **87668** (600) Cable 18AWG AC 600V Stranded Shielded *For Light Bars Olympic Wire Part # **8203S** (2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow

Western Systems
Innovative Transportation Solutions

QUOTATION

Polara Part # **INX9WN0-Y**
(400) Cable 18/8 X Button (Belden 27601A)
*For Push Buttons
ATP Part # **ATPXCABLE**
(3) Pole Galvanized Steel 4 ½" Schedule 40 12'
Pelco Products Part # **PB-5200-12-GLV**
(3) Pole Cap Dome 4 ½" OD Aluminum
Pelco Products Part # **PB-5402-PNC**
(3) Pedestal base Aluminum Square with Aluminum Door
Pelco Products Part # **PB-5334-PNC**
(6) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum
NW Safety Signs Part # **W11-2-30X30 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PL-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**
(2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR/L) Right and Left Down Arrow .080 Aluminum
NW Safety Signs Part # **W16-7PR/L-24X12 VIP FRS**

Olympus Way

Qty	Description
1	Rectangular Rapid Flashing Beacon system to include the following: (No Median) (1) Control Cabinet (SC315-G) AC, Natural Finish Carmanah Part # **84577** (4) Lightbar with Confirmation Lights (Includes Universal Mounting Bracket) (Black) Carmanah Part # **87668** (300) Cable 18AWG AC 600V Stranded Shielded *For Light Bars Olympic Wire Part # **8203S** (2) Pushbutton iNX Xwalk PPB w/9X12 R10-25 Sign, No Braille, Standard Message, Yellow Polara Part # **INX9WN0-Y** (150) Cable 18/8 X Button (Belden 27601A) *For Push Buttons ATP Part # **ATPXCABLE** (2) Pole Galvanized Steel 4 ½" Schedule 40 12' Pelco Products Part # **PB-5200-12-GLV** (2) Pole Cap Dome 4 ½" OD Aluminum Pelco Products Part # **PB-5402-PNC** (2) Pedestal base Aluminum Square with Aluminum Door Pelco Products Part # **PB-5334-PNC** (4) Sign (Crossing Walking Man Symbol) 30" X 30" Fluorescent Yellow 3M VIP Series 3981 (W11-2) .080 Aluminum NW Safety Signs Part # **W11-2-30X30 VIP FRS** (2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PL) Left Down Arrow .080 Aluminum NW Safety Signs Part # **W16-7PL-24X12 VIP FRS** (2) Sign (Arrow) 24" X 12" Fluorescent Yellow 3M VIP Series 3981 (W16-7PR) Right Down Arrow .080 Aluminum NW Safety Signs Part # **W16-7PR-24X12 VIP FRS**

$31,709.84 Lump sum

GENERAL CONDITIONS OF SALE

Validity Period: All information contained within this quote is valid for 30 days from the date of the quotation.
Acceptance of Quotation: The acceptance of this quotation implies the acceptance of the following terms and conditions which cannot be varied or waived except by express written authorization by a Western Systems representative. These terms govern the sale of goods and services supplied by Western Systems. Differing terms from Buyer in any purchase order or written communication shall not be binding on Western Systems.

TERMS AND CONDITIONS

425.438.1133 | kwahl@westernsystems-inc.com | www.westernsystems-inc.com | 1122 Industry Street, Bldg. B, Everett, WA 98203

Western Systems
Innovative Transportation Solutions

QUOTATION

Purchase Order: All purchases require a formal purchase order. Emails or verbal communication does not constitute an acceptable purchase order.
Delivery: 45-90 days if released // Material lead time will be revised upon release date to better reflect current conditions. During the Covid-19 outbreak, Western Systems lead time dates will be estimates based on our best information available. We cannot guarantee deliveries during times of natural disasters.
Freight Terms: Freight Pre-paid and Added to Invoice. Shipping cost will be added to invoice.
Shipping Clarification During Covid-19: FOB Destination and FOB Destination Prepay & Add terms as quoted imply that the customer will be available to receive material deliveries. Any repeated delivery attempts, trucking reroutes, in route cancellations or product factory returns which incur additional shipping costs shall be billed to the customer.
Taxes/Fees: Unless current resale certificate is on file with Western Systems, purchaser shall be responsible for all tariffs, duties, sales or use taxes as applicable, in addition to the prices quoted herein. Any taxes listed in this quotation are estimated totals and should be verifies against local requirements.
Payment Terms: Payment terms are based on approval of credit. If credit is approved, terms are Net 30 days / we impose a surcharge of 2% on the transaction amount on purchases using VISA or Master Card. We are unable to accept other types of credit cards for payment. We do not surcharge VISA and Master Card debit cards. All prices are quoted as USD funds.
Non-Payment Penalties: If payment has not been received within terms, the purchaser will be considered in default. Western Systems will be entitled, without prejudice to our other rights, without serving notice of default, to charge the purchaser for all costs incurred such as administration, storage, legal advice etc. The unpaid portion of any amount due to Western Systems will bear interest at the rate of 1.5% per month simple interest. Western Systems reserves the right to hold goods until customer balances their account. Western Systems will not be subject to contract penalties due to product holds on a delinquent account.
Project Retainage: Western Systems will not be subject to any project retainage of any kind. Material purchases are due and payable in accordance with customer terms. Any unpaid balances will be subject to Non-Payment Penalties.

Collections: Upon Buyer default of these terms, Western Systems may, in addition to any other rights or remedies at contract or law, declare the entire balance of Buyer's account immediately due and payable. If unpaid balance is referred for collections, Buyer agrees to pay Western Systems, to the extent permitted by law, reasonable attorney fees in addition to all damages otherwise available, plus any court costs or expenses incurred by Western Systems, plus any finance charges accrued on any unpaid balance owed by Purchaser.

Deferment or Cancellation Policy: Order deferment or cancellation once materials have been released will be subject to cancellation and/or restocking fees.
Documentation: Any operational documentation supplied as a part of this quotation remains the property of Western Systems and may not be copied, reproduced, transmitted or communicated to 3rd parties without the express written consent of Western Systems.
On-Site Services: On-site services such as signal or video system turn-on support shall be scheduled three weeks in advance. If services need to be cancelled or postponed, any non-reimbursable travel expenses will be billed to purchaser. This quotation does not provide nor imply any on-site support services unless mentioned specifically herein. If on-site support services are required, and not included as part of this proposed scope of work, please contact Western Systems for a revised quotation.

Warranty: Standard one-year warranty on material goods manufactured or supplied by Western Systems from the date of manufacturers factory shipment, unless superseded by an additional manufacturer's warranty, provided such goods are maintained and operated in accordance with manufacturers standard method of operation. For additional information on Western Systems warranty, please send an email to info@westernsystems-inc.com
Return and Restocking Policy: Western Systems will be the sole source in determining whether any item is eligible for return. To be eligible the item(s) must be standard product models, new and unused, in the original packaging, and invoiced within the last 90 days. Restocking fees are applied to all returns and can vary between 20-50% based on annual sales activity. In no case will Western Systems be obligated to take returns for materials, including items that are obsolete, custom orders, or past the 90-day invoice period.
Delivery Inspection: All materials deliveries must be inspected upon receipt from freight carrier. Any freight damages must be reported to the carrier at the time of receipt of goods. Any materials shortages or inaccuracies in shipment must be reported to Western Systems within ten days receipt of goods. Thereafter, any discrepancies will be considered incidental and the responsibility of the receiver.
Force Majeure: Western Systems, Inc. shall in no event be responsible for delays in performance due to actions beyond its reasonable control including without limitation acts of God, epidemics, strikes, labor shortage or disturbance, fire, accident, war, civil disturbance or carrier delays.

Western Systems, Inc. accepts no liability for errors or omissions or the accuracy or the completeness of this quotation. It has been prepared to the best of our knowledge per plans, specifications, documentation and communications provided but we do not guarantee these to be accurate or of the latest revision. Determination of accuracy of this quotation and final quantities are the sole responsibility of recipient. Western Systems, Inc. shall in no event be liable for any special, consequential, incidental or liquidated damages (including without limitation damages for loss of use of facilities or equipment, loss of revenue, loss of profits or loss of goodwill), regardless of whether seller (a) has been informed of the possibility of such damages or (b) is negligent.

Sincerely,
WESTERN SYSTEMS
Halton Ferguson
hferguson@westernsystems-inc.com
Estimator

Business of the City Council
City of Gig Harbor, WA

Subject: GHAC Creative Endeavor Program Grant Award

Proposed Council Action:
Adopt Resolution 1207 Authorizing the Award of the Creative Endeavor Grants Round 2 as recommended by the Gig Harbor Arts Commission

Dept. Origin: Gig Harbor Arts Commission

Prepared by: Molly Towslee, City Clerk

For Agenda of: May 10, 2021

Exhibits: Resolution No.1207, Application

	Initial & Date
Concurred by Mayor:	KK 5-6-21
Approved by City Administrator:	ML 05/07/21
Approved as to form by City Atty:	email 3/11/21
Approved by Finance Director:	
Approved by Department Head:	

Expenditure Required:	Amount Budgeted:	Appropriation Required:
$5,000	$25,000	$0

INFORMATION / BACKGROUND

A budgeted objective for 2021 authorized the Arts Commission to provide $25,000 in funding for events that benefit the Gig Harbor community. The goal is to support as many new artistic projects by individuals and organizations as possible. In March there were $25,000 in grants awarded, but one of the applicants declined the award because they didn't think they would be able to follow through with the project.

FISCAL CONSIDERATION

One grant application was received during this second round requesting $5,000. The total amount remaining in the 2021 budget is $5,000.

BOARD OR COMMITTEE RECOMMENDATION

On May 6 the Arts Commission held virtual interviews with the applicant to learn more about their proposal and made a recommendation to award the grant outlined in the attached resolution.

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 1207 Authorizing the award of the second round of 2021 Creative Endeavor Grants as recommended by the Gig Harbor Arts Commission.

RESOLUTION NO. 1207

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, APPROVING 2021 CREATIVE ENDEAVOR GRANT EXPENDITURES

WHEREAS, the City Council established An Arts Commission in GHMC Chapter 2.49 to make recommendations to the Council; and,

WHEREAS, the City Council adopted the 2021 Budget allocation of $25,000 for the Creative Endeavors Grant Program; and

WHEREAS, on March 10, 2021, the Commission met to review the twelve grant applications and adopted its recommendations for 2021 Grant Awards; and,

WHEREAS, one of the applicants declined their award of $5,000 in grant funds;

WHEREAS, the Commission has opened a second round for grant requests for that amount;

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

Section 1. The City Council adopts Round 2 of the 2021 recommendations for recipients and expenditures of Creative Endeavor Grant Program in substantially the same form as at Exhibit A.

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

Section 3. This Resolution takes effect on its adoption.

PASSED by the City Council this 10th day of May, 2021.

_____
Kit Kuhn, Mayor

AUTHENTICATED:

_____
Molly Towslee, City Clerk

FILED WITH THE CITY CLERK: 05/05/21
PASSED BY THE CITY COUNCIL: 05/10/21
RESOLUTION NO. 1207

EXHIBIT A

2021 Gig Harbor Arts Commission Creative Endeavor Grant Phase 2 Recommendations

Project	Organization Name	Contact	Reccmd Award
Greater Gig Harbor Poetry Series	Greater GH Poetry	Larry Fowler	5,000.00

GIG HARBOR
"THE MARITIME CITY"

GIG HARBOR ARTS COMMISSION

CREATIVE ENDEAVOR GRANTS 2021

APPLICATION

We encourage applicants to submit the application as an attachment to an email. Applications must be received by **Noon, May 5, 2021**. Applicants should be prepared to attend an informal discussion of their proposed project with Arts Commission members on **Thursday May 6 beginning at 5:00 p.m.**

PLEASE NOTE: Project proposals must follow the State of Washington's COVID-19 guidelines.

Grants will be announced after council approval on May 10, 2021.
Please return completed applications to Cityclerk@gigharborwa.gov

Date of Application	May 4, 2021		
Organization Name or Individual's Name	Dennis Larry Fowler		
Name of Contact	Larry Fowler		
If applicant is under the age of 18, please provide the name of an adult willing sign an agreement with the City on the applicant's behalf.			
Address	11524 Cartier Lane, Gig Harbor WA 9833		
Phone Number	[redacted]	**Email**	[redacted]
Project Title	Greater Gig Harbor Poetry Series		
Date(s) of Project *Final project report and invoice must be received by **December 8, 2021**.*	Poetry readings will be held on three Sunday afternoons in August through October 2021. One youth poet workshop and readings will be held during the same period.		
Amount Requested	$5,000		
Total Budget *Attach a proposed detailed budget for this project.*	Total Budget $5,000 $ includes venue rent $2,000; poet/workshop honoraria $1,000; marketing $2,000		
Admission Charged	$None		
Donations Accepted		☐ Yes	☐ No
Is there at least one free or "pay what you wish" performance?		☐ Yes	☐ No
Has this project received Arts Commission funding in the past?		☐ Yes	☐ No
Please list other sponsoring Agencies to whom you have applied.	None		

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PLEASE LIMIT RESPONSES TO 500 WORDS OR LESS, PER QUESTION.

1. Provide a summary of the project for which you are requesting financial support.

We seek funding for a poetry series to benefit residents of the Greater Gig Harbor area and guests from surrounding areas. Many Gig Harbor residents have fond memories of a poetry series at the Gig Harbor Library in years past and wish to continue the concept with 2021 panache and enthusiasm.

Poets will be selected from lists of published Pacific Northwest poets, such as those found in "Washington State Book Awards," and by conferring with small, local presses.

The series will feature at least one poet per event, to include at least one regionally acclaimed poet and at least two who are less well known. Readings will be held in a suitable location to be arranged near the Gig Harbor waterfront. They will be held four Saturday evenings or Sunday afternoons in August through October of 2021.

2. Please describe the benefit to the community (see Funding Guidelines) and explain how this project will directly engage the audience and/or participants.

Events will be free and open to the public. The readings will be aimed at bringing poetry to a broad cross-section of Greater Gig Harbor residents, including but not limited to students and educators, arts and garden communities, retirees, and lovers of the literary arts in general and poetry in particular.

This poetry series will support, nurture and enhance one of the strengths of the area: the literary and artistic ambiance embedded in our community.

There is currently no public, live poetry series in the Greater Gig Harbor area. This series will fill a void, offering live poetry for all who wish to experience the deeper level of meaning so often evoked from a live poetry reading.

The series will expand arts-enrichment offerings during August through October of 2021 when we anticipate COVID restrictions will be sufficiently relaxed to permit larger indoor gatherings. Should that not be the case, we will adapt the program to either outdoor venues or to a virtual format.

Attendees of this poetry series may well plan extra time to explore many features of the Gig Harbor waterfront, including the Harbor History Museum's outstanding collections, exhibits and programs, providing educational benefits to those who do, and/or they may decide to avail themselves of excellent dining, shopping and other offerings in the vicinity, benefiting the overall economic vitality of the Gig Harbor community.

GIG HARBOR
"THE MARITIME CITY"

3. Explain how the City's funding will support this project. If the project can still be done without City funding, show how the requested funds will improve the project, even if only partially funded.

Creative Endeavor Grants 2021 funding will allow this community-enriching series to occur. It will pay poets' fees, it will pay for venue, and it will pay to advertise and promote the events.

The Gig Harbor Arts Commission, through the City of Gig Harbor, will be the sole source of funding for the project, though considerable volunteer time will help make it happen and contribute to its success.

4. Explain how the project will target Gig Harbor residents or, if the event is designed to bring in visitors from outside the area, how you will advertise to those visitors.

The reading of live poetry enables and encourages engagement and connection between poets and their listeners. The voice of the poet, with his or her own inflection and dynamics, brings added layers of depth to the artist's work.

Following each reading, our visiting poet will share insights into their work with the audience in the context of a lively question-and-answer period. This will draw listeners into a deeper contextual understanding of the artist and their poetry, while creating an interactive experience for audience members and poet alike.

The youth poet workshops and readings will give students the opportunity to learn and gain inspiration from the artistic journeys of published poets they might otherwise not have exposure to.

We intend to reach out to teachers of high school literary arts classes in Greater Gig Harbor for help identifying promising young poets. Based on recommendations we receive, we will invite one high school student per event to read one of their poems.

Advertising will include timely posters placed in strategic locations in the Greater Gig Harbor area; social media posts to local poetry and literary groups; mailings via USPS; email lists; and placement of attractive, informative flyers pertaining to the series in and around Greater Gig Harbor.

Publicity will include outreach to various Gig Harbor media and publications for inclusion in their schedule of events and/or possible articles pertaining to the poetry series. Additional outreach will be made to Greater Pierce County literary organizations, such as Creative Colloquy, Puget Sound Poetry Connection, and local bookstores.

Visitors from areas outside of Greater Gig Harbor will be by invitation from members of the Greater Gig Harbor community and word of mouth. If time and resources permit, outreach to surrounding communities (Tacoma. Port Orchard, Bremerton) will be undertaken consistent with the general approach for the Greater Gig Harbor area.

GIG HARBOR
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VENUE ACCESSIBILITY INFORMATION		
If this project involves a venue – is the venue ADA accessible*?	☐ Yes	☐ No
If No, share what considerations for accessibility have been made?		
**Accessible means that anyone in a wheelchair, scooter, walker or on crutches or cane(s) can gain access and entry to and enjoy/participate in the event being held as can anyone who is temporarily able-bodied - this includes access to parking, building entry, and accessible restroom/ toilet facilities*		

Business of the City Council
City of Gig Harbor, WA

Subject: Comprehensive Plan Land Use Amendment/Arts and Culture Element - Professional Services Contract – SCJ Alliance Consulting Services

Proposed Council Action: Authorize the Mayor to execute Professional Services Contract between the City of Gig Harbor and SCJ Alliance Consulting Services in an amount not to exceed $24,835

Dept. Origin: **Community Development**

Prepared by: Carl de Simas
Senior Planner

For Agenda of: May 10, 2021

Exhibit: Contract with exhibits

	Initial & Date
Concurred by Mayor:	KK 5-4-21
Approved by City Administrator:	PW 05/03/2021
Approved as to form by City Atty:	DK email 4/29/21
Approved by Finance Director:	5/3/21
Approved by Department Head:	KNK email 4/30/21

Expenditure Required	$24,835	**Amount Budgeted**	$25,000	**Appropriation Required**	NA

INFORMATION/BACKGROUND

The Planning Division of the Community Development Department seeks professional services assistance from SCJ Alliance Consulting Services (SCJ) to assist in processing Application No. PL-COMP-21-0001 and PL-COMP-18-21-0001.The applications are relative to an amendment to the Land Use Element of the Comprehensive Plan and adding a new element pertaining to Arts and Culture.

The Land Use Element Amendment process would entail an analysis of the element, potentially to include the Housing Element, for the purpose of identifying and recommending updates that would align the Comprehensive Plan with recent changes to Title 17 of the Gig Harbor Municipal Code.

The Arts and Culture Element is a new element proposed by the City of Gig Harbor Arts Commission. SCJ would provide services to assist staff in incorporating the new element into the Comprehensive Plan ensuring consistency with other elements of the plan.

SCJ, broadly, would provide the following services: assist in process planning; project administration assistance; analysis of the Comprehensive Plan relative to the proposed amendments; assistance with public engagement and public meeting preparation; draft elements and meeting materials.

FISCAL CONSIDERATION

The City's 2021 Budget includes funds for this work through the following:
Planning Objective #1 - $10,000

The City Council voted in favor of moving Application #PL-COMP-18-0001, Arts and Culture Element, forward to the 2021 Comprehensive Plan Amendment Docket and to allocate no more than $15,000 for professional consulting services to assist staff in processing the application.

For efficiency, the two applications have been combined and advertised as one project. Therefore, the budget item (Planning Objective #1) and the Council allocated dollars are shared as there will be overlapping services provided, such as: administration, public engagement, action plans, consistency analysis, meeting materials and preparations. Overall, the consultant is proposing an estimated fee that is under the combined budget/allocation.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to execute Consultant Services Contract between the City of Gig Harbor and SCJ Alliance Consulting Services in an amount not to exceed $24,835.

PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF GIG HARBOR AND SCJ ALLIANCE CONSULTING SERVICES

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and SCJ Alliance Consulting Services, a corporation (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in processing amendments to the City's Comprehensive Plan and desires that the Consultant perform services necessary to fully process City of Gig Harbor Permit Numbers: PL-COMP-18-0001 and PL-COMP-21-0001 to include analysis of the specified elements, ensure consistency with the plan, and recommendations and materials as necessary to complete the legislative process; and

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

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

TERMS

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

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Twenty-four Thousand Eight Hundred and Thirty-five Dollars ($24,835) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A** and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

3. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by September 30, 2021; provided however, that additional time shall be granted by the City for excusable days or extra work. Further, the parties may extend the duration of this Agreement consistent with the terms of Section 17 below.

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

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

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

7. Indemnification.

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

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

8. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Records.

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

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

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

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

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

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

14. Resolution of Disputes and Governing Law.

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

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

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

CONSULTANT: SCJ Alliance	City of Gig Harbor
ATTN: William Grimes, AICP	ATTN: Carl de Simas
429 E. Sprague Ave	City of Gig Harbor
Spokane, WA 99202	3510 Grandview Street
(509) 835-3770	Gig Harbor, WA 98335
	(253) 851-6170

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20____.

CONSULTANT

By:_____
Its:_____

CITY OF GIG HARBOR

By:_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

SCJ ALLIANCE
CONSULTING SERVICES

Exhibit A
Scope of Work

Comprehensive Plan Land Use Amendment/Arts and Culture Element
City of Gig Harbor, WA

Prepared For: Carl DeSimas
Prepared By: William Grimes
Date Prepared: April 22, 2021

SCJ staff team William Grimes, AICP
Aaron Qualls, AICP
Alicia Ayars
Rachel Granrath
Technical staff, as appropriate

Overview

The City wishes to examine the comprehensive plan, zoning, subdivision regulations, and the draft arts and culture element and ensure consistency, adjust plan policy as necessary, incorporate the new element into the plan, and prepare staff reports to summarize it all for Planning Commission and City Council deliberation. This is technical work, but it must also be conducted in public view, resulting in a conversation about the broader policy implications and celebrating the community's involvement in making its policy guidance clear, comprehensive, and responsive to community need.

Understanding

Our work consists of two separate phases. The first focuses on the land use element, addressing consistency between the element and the zoning and subdivision regulations recently adopted. The second focuses on translating the draft arts and culture plan into a component element of the comprehensive plan, building on work already done by the Arts Commission.

Phase 1: Project Administration

This project will require active coordination, communication, and administration to ensure the scope stays contained within the bounds of this study, that the City remains up to speed on project progress, and that the process remains fully transparent throughout. We will prepare regular progress reports and propose twice monthly coordination meetings with the City to keep communication lines open. This project demands responsiveness on our part, and this phase provides the communication necessary to anticipate, identify, and resolve issues.

Deliverables

- *Meeting coordination and general correspondence*
- *Twice monthly coordination meetings*
- *Monthly invoicing and progress reporting*
- *Availability on-call to discuss project progress*

Phase 2: Comp Plan Land Use Element

Ultimately, we will prepare a revised land use element with updated policies reflecting the City's recent zoning and subdivision amendments. We will also prepare a staff report, consistent with the City's format, to inform the Planning Commission's and City Council's conversations about the new element and the reasons for its amendment. The work to amend the plan and deliver the staff report will involve the following tasks:

Consistency assessment

We will evaluate the comprehensive plan land use and housing policy framework and development regulations. Our first task will be to "skeletonize" your existing land use and housing elements into a unified policy framework, listing your comprehensive plan's goals and policies in a single document and pinpointing policies in need of revision. We will then review and summarize your recent zoning and subdivision amendments, identifying their potential policy implications and linking them to the specific policies needing attention. Finally, we will produce a consistency assessment, listing each code amendment, the corresponding policies, and our recommendations for moving forward.

Engagement plan

We will ensure the public is aware of this effort and their ability to be involved in it to the extent they desire. We will design an engagement plan to stimulate community interest in these topics, showing how and why they are important and providing an accessible vehicle to take part in the conversation. We expect to employ several techniques in this engagement effort, intended to be used either in person or virtually. We understand the City will consolidate the public conversation on these comp plan amendments with its overall work on the comp plan, and we plan to augment it by:

- Conducting a series of "orientation interviews" with community members and local officials, to develop a more in-depth understanding of these zoning and subdivision changes and how policy should respond.
- Creating material for posting to the City's website, with information and opportunities to offer comment, and to facilitate online presentation of the materials this process produces.
- Running an online questionnaire allowing community members to review and consider our policy proposals, encouraging them to improve on what we suggest and to comment on the new arts and culture element.

Land use and housing elements

We will update the land use and housing elements to reflect the findings from the consistency assessment and the public conversation, producing draft elements with revised policies and programs as suggested by what we have learned. We may also identify other related planning policies which may need consideration considering the zoning and subdivision amendments, particularly those related to transportation, capital facilities, and economic development. While our focus is on producing updated land use and housing elements, we may also offer ideas on ways to ensure consistency and optimize the plan's effectiveness. We will write a staff report, per your specifications, to serve as a "study guide" for the amended elements, suitable for delivery to the Planning Commission and City Council.

Deliverables

- *Detailed action plan*
- *Public engagement program*
- *Consistency assessment*
- *Updated land use and elements*
- *Staff report and presentation materials*

Phase 2: Arts and Culture

This third phase transforms the material prepared by the Arts Commission into a new arts and culture element for the comprehensive plan. The new element will take the place of the existing cultural arts programs and resources text in the current plan, elevating the topic to full element status. We will format the document to fit the comprehensive plan style and configure goals, policies, and implementation strategies to fit within the comprehensive plan context. We will also prepare a staff report for the Planning Commission and City Council, describing the new element, its relationship to the Arts Commission's work, and how it wraps into the comprehensive plan. Our staff report will also identify other comprehensive plan policies and implementation strategies related to the arts and culture element to highlight the element and advance its implementation.

We will interweave this work into the engagement activities on the land use element, using a single, integrated process to create a public interface into both comprehensive plan elements.

Deliverables

- *New arts and culture element*
- *Staff report and presentation materials*

Expenses

Expenses will be invoiced on a time and materials basis and include items such as mileage, plan reproduction/hard copies, submittal delivery, copies, etc.

Draft Schedule

Task	M	J	J	A	S
Action plan					
Consistency assessment					
Public participation plan					
Orientation interviews					
Website materials					
Questionnaire					
Land use element					
Staff report/presentation materials					
Arts and culture element draft					
Arts and culture element staff report/presentation materials					

SCJ ALLIANCE
CONSULTING SERVICES

Exhibit B
Schedule of Billing Rates

Comprehensive Plan Land Use Amendment/Arts and Culture Element
City of Gig Harbor, WA

Fee Estimate Table

Project Phase	Est. Fee
PHASE 1	$4,465
PHASE 2	$16,105
PHASE 3	$4,265
Expenses	$0
Total Estimated Fee	**$24,835**

The estimated fee is based upon a time and materials not-to-exceed (T&M NTE) amount subject to amendments authorizing additional scope and budget.

Billing Rate Table

		Estimated hours by phase			
Staff team member	**Rate**	**Phase I**	**Phase 2**	**Phase 3**	**Total**
Grimes	$190	12	22	7	41
Qualls	$135	8	72	3	83
Ayars	$135		3	18	21
Granrath	$140		10		10
McCoy	$100		4	1	5
Lee	$125	5			5
Brown	$120	4			4

GIG HARBOR
"THE MARITIME CITY"
ADMINISTRATION

May 6, 2021

Pastor Mark Toone and the Leadership Team
Chapel Hill Presbyterian Church
7700 Skansie Avenue
Gig Harbor, WA 98335

Subject: Chapel Hill Vaccination Site

Dear Pastor Toone and the Chapel Hill Leadership Team,

The City of Gig Harbor would like to thank you and all the volunteers for the use of the Chapel Hill campus for multiple vaccination events. The events have been well-coordinated, and the site provides the perfect venue.

Your generosity has provided the opportunity for many in our community to become vaccinated and to allow us to move towards a more normal existence during this pandemic.

Please share our sincere appreciation for the use of the Chapel Hill campus with your congregation.

Sincerely,

Kit Kuhn

Kit Kuhn
Mayor

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ADMINISTRATION

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Sincerely,

Kit Kuhn

Kit Kuhn
Mayor

Business of the City Council
City of Gig Harbor, WA

Subject: First Reading of Ordinance 1461 Related to Special Events

Proposed Council Action: Move to approve Ordinance 1461.

Dept. Origin: **Administration**

Prepared by: Joshua Stecker

For Agenda of: May 10, 2021

Exhibits: Ordinance 1461

	Initial & Date
Concurred by Mayor:	VK 5-3-21
Approved by City Administrator:	RWL 04/29/2021
Approved as to form by City Atty:	email
Approved by Finance Director:	N/A
Approved by Department Head:	N/A

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

INFORMATION/BACKGROUND

As we approach the summer, staff has been receiving numerous inquiries about holding special events amidst the uncertainty of the COVID-19 pandemic. Event organizers would like to make plans for potential gatherings as restrictions begin to lessen, but our current municipal code language does not allow us the flexibility to refund application fees for events that are cancelled.

In addition, cities across the nation have seen an increase in demand for "special expressive events" that allow citizens to convey ideas, opinions, or thoughts through words or conduct. Examples of special expressive events include political demonstrations and/or rallies, picketing, and similar types of free speech or conduct typically given a higher level of constitutional protection than commercial speech.

This ordinance is intended to:

- Allow the city administrator to revoke Special Event permits that would not be in compliance with public health restrictions.
- Allow the City to issue refunds on application fees for Special Events cancelled due to COVID-19 or other emergencies.
- Allow us to approve events that are being held with less than 60 day notice due to COVID or other emergencies (i.e. graduation events moved outdoors, rescheduling parades/events, etc.).
- Waive the 60-day requirement and other restrictions for special expressive events.

Because event planning is a time-sensitive endeavor and because the recent roll back to Phase 2 may threaten events already planned, staff recommends that Council adopt this ordinance at first reading. Adopting the Ordinance at first reading allows staff to apply the effects of the ordinance starting on May 17.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Move to approve Ordinance 1461.

ORDINANCE NO. 1461

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATED TO SPECIAL EVENTS; AMENDING CHAPTER 5.28 OF THE GIG HARBOR MUNICIPAL CODE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City requires a special event permit for all gatherings of more than 30 people and certain other events and these permits require an application fee and 60-day advance notice; and

WHEREAS, the City Council desires to provide a mechanism to refund special event application fees when events must be cancelled due to public health directives or other emergencies; and

WHEREAS, the City Council desires to provide flexibility in accommodating special expressive events that allow citizens to convey ideas, opinions, or thoughts through words or conduct. Examples of special expressive events include political demonstrations and/or rallies, picketing, and similar types of free speech or conduct typically given a higher level of constitutional protection than commercial speech;

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

Section 1. Section 5.28.060 – Revised. Section 5.28.060 of the Gig Harbor Municipal Code is revised to read as follows:

5.28.060 Permit – Application – Filing period.

A. A complete application for a special events permit shall be filed with the city administrator or their designee not less than 60 days nor more than 365 days before the date on which the event will occur. Applications received with less than 60 days until the event will not be reviewed and will be disapproved, with the following exceptions:

1. Applications for events that are scheduled or rescheduled with less than 60 days' notice due to a public health directive or declaration of a state or local emergency may be approved at the discretion of the city administrator or their designee.

2. Applications for special expressive events received with less than 60 days' notice shall be reviewed in accordance with the other provisions of this chapter.

B. The city administrator or their designee shall notify the applicant in writing of approval or disapproval, no later than 20 days following the date of the application.

Section 2. Section 5.28.100 – Revised. Section 5.28.100 of the Gig Harbor Municipal Code is revised to read as follows:

5.28.100 Traffic control.

A. The chief of police may require any reasonable and necessary traffic control. If such traffic control cannot be handled by the sponsor and shall require the deployment of additional police personnel, the permittee shall be responsible for the expense. The chief of police or his designee shall notify the applicant(s) of the actual projected expense.
B. If a special event constitutes a road closure, request for such closure must be submitted in the special event application no less that~~t~~n 90 days prior to the event. Road closure requests for special expressive events with less than 90 days' notice shall be reviewed in accordance with the other provisions of this chapter.
C. Road closure requests not associated with a city or city-sponsored event must receive approval from the city's finance and safety committee. This requirement does not apply to special expressive events.
D. Events with grandfathered road closure approvals are: Maritime Gig Festival, Beatnik's Concert, National Night Out, Trick or Treat, PAL Arts Festival, Turkey Trot and Race for a Soldier.
E. Roads that may not be closed: Olympic Drive, Point Fosdick Drive, 56th Street, Soundview Drive (between Olympic Drive and Grandview Street), Stinson Avenue (between Pioneer Way and Rosedale), Borgen Boulevard (between Burnham Drive and Harbor Hill Drive), Wollochet Drive, 38th Avenue (between 56th Street and Hunt Street), Skansie Avenue (between 72nd Street and Rosedale Street), and Rosedale Street (between Skansie Avenue and 54th Avenue).
F. Harborview Drive may not be closed more than once per calendar month for special event purposes.

Section 3. Section 5.28.120 – Revised. Section 5.28.120 of the Gig Harbor Municipal Code is revised to read as follows:

5.28.120 Permit – Revocation.

The city administrator or their designee shall have the authority to revoke a permit upon application of the standards for issuance as herein set forth. The city administrator or their designee shall also have the authority to revoke a permit if an event cannot be held due to a public health directive or declaration of a state or local emergency. If a permit is revoked due to a public health directive or other emergency measures, the application fee shall be refunded to the applicant. In the event of revocation, the city administrator or their designee shall notify the permittee of the revocation, in writing, as soon as reasonably possible.

Section 4. Section 5.28.150 – Revised. Section 5.28.150 of the Gig Harbor Municipal Code is revised to read as follows:

5.28.150 Skansie Brothers Park, Eddon Boat Park, and Ancich Waterfront Park.

A. During the months of May through September, no more than two weekend special events shall be permitted per calendar month at Skansie Brothers Park, Eddon Boat Park and Ancich Waterfront Park. City-sponsored events and special expressive events do not count toward the limit of two weekend special events.
B. At Eddon Boat Park, special events shall be limited to a maximum of 30 people for the entire park area, excluding the Boat Yard Building.
C. Skansie Brothers Park may be reserved for periods of 120 minutes maximum. All setup and cleanup must be completed within the 120-minute event limit. City-sponsored events and special expressive events are not subject to the 120-minute event limit. An application must be submitted for this rental.
D. The view platform at Skansie Brothers Park shall not be reserved for special events.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective Date. This ordinance shall take effect and be in full force and effect five days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 10th day of May, 2021.

CITY OF GIG HARBOR

_____
Mayor

ATTEST/AUTHENTICATED:

_____
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

_____
Office of the City Attorney

FILED WITH THE CITY CLERK: 4/27/21
PASSED BY THE CITY COUNCIL: 5/10/21
PUBLISHED: 5/13/21
EFFECTIVE DATE: 5/18/21
ORDINANCE NO: 1461

Business of the City Council
City of Gig Harbor, WA

Subject: Gig Harbor Canoe and Kayak Race Team Lease at Ancich Park – Second Amendment

Proposed Council Action: Approve and authorize the mayor to execute the Second Amendment to the Ancich Park Lease and Agreement for Services with the Gig Harbor Canoe and Kayak Race Team.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, PE
Public Works Director

For Agenda of: May 10, 2021

Exhibits: Second Amendment

	Initial & Date
Concurred by Mayor:	KK 5-3-21
Approved by City Administrator:	PL 05/03/2021
Approved as to form by City Atty:	VIA EMAIL 4/30/21
Approved by Finance Director:	5/3/21
Approved by Department Head:	5/3/21

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

INFORMATION/BACKGROUND

The City and Gig Harbor Canoe and Kayak Race Team (Team) have been engaged in discussions since 2017 to coordinate the construction of the human-powered watercraft floats at Ancich Park, now known as the Community Paddler's Dock (Dock). As part of the Agreement the Team agreed to attempt to fund raise $500,000 towards the $1.2 million project costs of the Dock. Subsequently, the Team donated $60,421.86 towards the project costs between 2018 and February 2020.

At that time the City intended on pursuing the design and construction of the Dock with a goal of completing the Dock in 2020. By March 2020 the first lease amendment was adopted that established fundraising obligations of the Team and the mandatory milestones for the donations whereby the Team would donate no less than $500,000 towards the $1.4 million project costs estimated in 2020.

In August 2020 a change in the layout for the Dock was adopted by the City due to the City subleasing a portion of an existing private aquatic lease. This change in the layout for the Dock provided less view blockage of Gig Harbor bay from the shoreline and lowered project costs for the Dock. Prior to the design consultant providing an initial cost estimate for the revised scope the City Council adopted the 2021 budget to fully fund the Dock without additional donations from GHCKRT based on the anticipated project cost of $400,000. However, the Dock is in the final design phase with the project cost now estimated at $730,000 and the City is considering alternatives to provide additional funding for the Project.

The proposed second amendment to the Ancich Park Lease and Agreement for Services provides for the City and the Team to work together to fund the Dock by adjusting the terms of the existing lease for the new donation amount to be not less than $100,000, not including any previous donations provided from the Team.

FISCAL CONSIDERATION

The proposed second amendment will reallocate funding for the Community Paddler's Dock by reducing the City's obligation by at least $100,000.

BOARD OR COMMITTEE RECOMMENDATION

This second amendment has not been presented to a board or committee for their review.

RECOMMENDATION/MOTION

Approve and authorize the mayor to execute the Second Amendment to the Ancich Park Lease and Agreement for Services with the Gig Harbor Canoe and Kayak Race Team.

SECOND AMENDMENT
TO
AGREEMENT FOR SERVICES BETWEEN
THE CITY OF GIG HARBOR AND
GIG HARBOR CANOE/KAYAK RACING TEAM

THIS SECOND AMENDMENT is made to that certain Agreement for Services dated December 18, 2017 (the "Agreement") by and between the City of Gig Harbor, a Washington municipal corporation (hereafter the "City"), and Gig Harbor Canoe/Kayak Racing Team (hereafter "GHCKRT") a Washington nonprofit.

RECITALS

WHEREAS, the Parties have been engaged in discussions since 2017 to coordinate the construction of the human-powered watercraft floats at Ancich (the "Project"); and

WHEREAS, as part of the Agreement the GHCKRT agreed to attempt to fund raise $500,000 towards the $1.2 million project costs of such floats estimated in 2018; and

WHEREAS, between 2018 and February 2020, GHCKRT donated $60,421.86 towards the project costs; and

WHEREAS, in March 2020 the Parties desired to formally include within this lease agreement the fundraising obligations of the GHCKRT and the mandatory milestones for such donations as part of first lease amendment; and

WHEREAS, when the first lease amendment was adopted in March 2020 the City intended on pursuing the Project with a goal of completion in 2020 and proceeded with the understanding that GHCKRT would donate no less than $500,000 towards the $1.4 million project costs estimated in 2020 ; and

WHEREAS, the first amendment was executed along with a Memorandum of Understanding of Funding Obligation (UFO); however, the project has evolved since the UFO was executed and the proposed second amendment no longer requires the UFO; and

WHEREAS, the City revised the scope of the Project in August 2020 due to the City subleasing a portion of an existing private aquatic lease, provided less view blockage of Gig Harbor bay from the shoreline, and lowered project costs; and

WHEREAS, prior to the design consultant providing an initial cost estimate for

the revised scope the City Council adopted the 2021 budget to fully fund the Project without additional donations from GHCKRT based on an anticipated project cost of $400,000; and

WHEREAS, the Project is at final design and the project cost is estimated at $730,000 so the City is considering alternatives to provide additional funding for the Project; and

WHEREAS, the City and GHCKRT agrees to work together to fund the Project by adjusting the terms of the existing lease for the new donation amount to be not less than $100,000, not including any previous donations provided from GHCKRT to the City for this project.

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

1. **Rent Adjustments**. Section 3.2 of the Agreement is amended to read as follows:

> Rental Adjustments. Beginning January 1, 2019, the base rent under this Agreement shall increase <u>or decrease</u> annually in an amount equal to the increase or decrease in the CPI for the Seattle-Tacoma-Bellevue area for the June-to-June time period for the prior year, if any.

2. **Rent Credit**. Section 3.3 of the Agreement shall be deleted and replaced with the following:

> GHCKRT agrees to undertake a Capital Campaign no later than 2021 with the goal of raising funds towards the development and construction of a public low-profile float system at the Property. The City agrees that GHCKRT shall have a credit against any current and future rent or other monies owed by GHCKRT under this Lease and any extensions in the same amount as any and all funds donated to the City by GHCKRT for the Project or for design, permitting, or construction of watercraft storage racks to be used by the public installed in the public portion of the Ancich Waterfront Park Boat Storage Building. In no case will any credit be in excess of actual monies owed under this lease or any extensions.

3. **Extensions and Conditions.** Section 4.2 of the Agreement shall be deleted and replaced with the following:

> GHCKRT shall donate to the City an amount not less than $100,000, not including any previous payments, and may extend this Lease for two additional 5-year terms upon written notice to the City subject to the limitations below. GHCKRT must provide such notice six (6) months in advance of the expiration of the then current term.

The Parties agree that the term and extensions for this Lease will be controlled by the following terms:

i. If an initial installment of $50,000 is not donated by GHCKRT to the City on or before October 1, 2021, the GHCKRT will only be entitled to the initial 5-year term and will not have any right to extend this Agreement. GHCKRT may request such an extension from the City, but the City is under no obligation to grant any extension request.
ii. If the second installment of $50,000 is not donated by GHCKRT to the City within 24 months of the effective date of the second amendment to the lease, GHCKRT will not have any rightto extend this Agreement and any extension remains solely in the discretion of the City, consistent with above.
iii. Donations may be made on a rolling basis, no more often than every 90 days, as long as the cumulative total of all donations within the relevant period meet or exceed the required installment amounts.

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

IN WITNESS WHEREOF, the parties have executed this Amendment on this 29 day of April, 2021.

GIG HARBOR CANOE/KAYAK RACE TEAM

By: _____
Signature

TEREZ GRADY
Printed

BOARD PRESIDENT

CITY OF GIG HARBOR

By: _____
Mayor Kit Kuhn

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Business of the City Council
City of Gig Harbor, WA

Subject: Murphy's Landing Marina Navigation Channel Dredging Agreement

Proposed Council Action: Approve and authorize the mayor to execute the Dredging Agreement with the Murphy's Landing Marina.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, PE
Public Works Director

For Agenda of: May 10, 2021

Exhibits: Dredging Amendment and Vicinity Map

	Initial & Date
Concurred by Mayor:	VK 5-3-21
Approved by City Administrator:	RJ 05/03/2021
Approved as to form by City Atty:	VIA EMAIL 5/3/21
Approved by Finance Director:	DP 5/3/21
Approved by Department Head:	JDL 5/3/21

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

INFORMATION/BACKGROUND

Murphy's Landing Marina (Marina) is located at the confluence of Donkey Creek and an unnamed creek that discharges through stormwater infrastructure directly west of the Marina. The sediment naturally flowing from both Donkey Creek and the unnamed creek accumulates throughout the north western portion of the Marina, which caused the Marina to originally dredge this sediment in 1985 from Gig Harbor bay to create a basin for the Marina to have sufficient depth to moor vessels.

In 2010 the City installed an effluent marine outfall pipe from the City's wastewater treatment plant under the seabed in the bay to the north east of Donkey Creek. The effluent pipe is covered by approximately 24 inches of gravel and the gravel was slightly mounded in accordance with the project permit.

As the sediment continued to naturally flow from Donkey Creek and the unnamed creek, the Marina re-dredged portions of the basin in 2012 and installed a deflection barrier along the north western portion of the basin at the level of the seabed. This deflection barrier prevented the sediment from naturally being deposited and accumulating in the western portion of the basin and encouraged the sediment to flow beyond the basin and out into the bay.

By 2017 the natural sedimentation began to once again fill in the basin with sediment at the eastern edge of the deflection barrier. The Marina and the City discussed the cause of this sedimentation and the City had a 2018 study prepared to identify the source of this sedimentation. The study found the gravel mounded over the effluent pipe caused a portion of the flow of water from Donkey Creek and

the associated sediment to flow towards the Marina. The Study notes that over time the gravel covering the effluent pipe naturally shifted and rills developed, which permitted the water and sediments to flow out into the bay in its natural course and without being diverted towards the Marina.

Due to the temporary disruption of the natural sedimentation process of Gig Harbor bay from the mounding of gravel over the effluent pipe, the City and Murphy's Landing verbally agreed in 2019 to resolve this issue by having the City perform the design and permitting of a future dredging operation that will be constructed and paid for by the Marina. The Marina also agrees this will be the last such dredging activity at the Marina that will involve the City.

FISCAL CONSIDERATION

The proposed Dredging Agreement requires to the City to pay for the design and permitting associated with the future dredging. The City allocated $35,000 in the Wastewater Capital fund of the 2021 Budget to pay for this work.

BOARD OR COMMITTEE RECOMMENDATION

A draft of the dredging agreement was supported by the Public Works Committee at their April 13 meeting.

RECOMMENDATION/MOTION

Approve and authorize the mayor to execute the Dredging Agreement with the Murphy's Landing Marina.

DREDGING AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

AGREEMENT

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

1. Location and Description of Dredging.

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

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

2. Responsibilities.

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

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

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

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

3. Term and Timeline.

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

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

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

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

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

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

4.1 By written agreement of the Parties, or

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

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

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

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

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

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

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

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

The addresses of the parties are:

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

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

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

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

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

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

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

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

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

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

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

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

CITY

By:_____ Date: _____
Mayor Kit Kuhn

Attest: _____

Approved as to Form: _____

MURPHY'S LANDING

By:_____ Date:_____

Title: _____

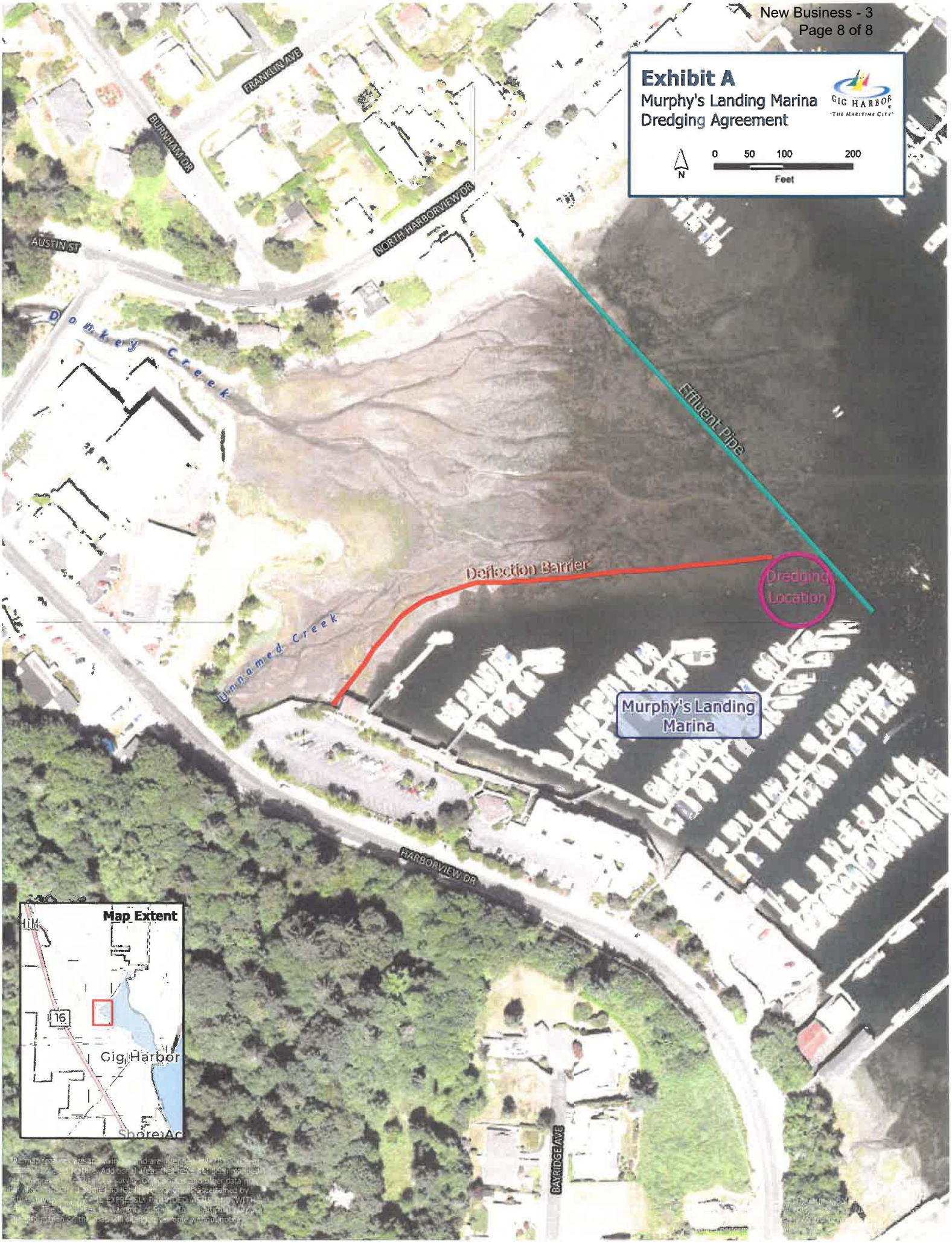
Exhibit A
Murphy's Landing Marina
Dredging Agreement
GIG HARBOR
"THE MARITIME CITY"
N
0 50 100 200
Feet
FRANKLIN AVE
BURNHAM DR
NORTH HARBORVIEW DR
AUSTIN ST
Donkey Creek
Effluent Pipe
Deflection Barrier
Dredging Location
Unnamed Creek
Murphy's Landing Marina
HARBORVIEW DR
BAYRIDGE AVE
Map Extent
16
Gig Harbor

Business of the City Council
City of Gig Harbor, WA

Subject: On-Call Private Development Review Assistance – Professional Services Contract

Proposed Council Action: Approve and authorize the Mayor to execute a Professional Services Contract with 3J Consulting, Inc. for on-call private development review assistance to support Public Works Engineering Division private development review processes, in an amount not to exceed $60,060.00

Dept. Origin: Public Works

Prepared by: Trent A. Ward, PE TW
City Engineer

For Agenda of: May 10, 2021

Exhibits: Professional Service Contract with Scope and Fee

	Initial & Date
Concurred by Mayor:	VK 5-3-21
Approved by City Administrator:	RL 04/30/2021
Approved as to form by City Atty:	Per email 4/29/2021
Approved by Finance Director:	4/30/21
Approved by Public Works Dir.:	4/30/21

Expenditure Required	$60,060.00	**Amount Budgeted**	$0	**Appropriation Required**	$0

INFORMATION/BACKGROUND

The Public Works Engineering division is considered a General Fund division of Public Works that is also supported by other Public Works funds. One of the responsibilities of the Engineering Division is the review of private developer funded development projects, including various permit reviews of all development that affects public infrastructure, in coordination with the Community Development Department land use permitting and Building Permitting processes.

Due to the resignation of two Engineering division staff in early 2021, remaining Engineering division staff and pending workloads does not allow for the Engineering division to perform said private development review responsibilities to meet the timelines obligated under state RCW for land use reviews, nor to a satisfactory level of service for the development community customers without additional staff support. In order to fill-the-gap until such time as the two vacated staff positions are re-filled, the Engineering division seeks professional engineering plan review support from a consulting firm familiar with and well versed in the City's codes and permitting process.

The proposed Professional Services Contract with 3J Consulting, Inc. provides the desired qualifications and necessary permitting consultant services to accomplish this assistance.

FISCAL CONSIDERATION

These services are not funded in the City's 2021 Budget.
The expenses associated with private development project review are in-part reimbursed by developers on a cost-recovery basis through plan review and permit fees. Additionally, there will be salary and benefits savings as a result of the vacant staff positions that will be realized until such time as the two vacant positions are re-filled.

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute a Professional Services Contract with 3J Consulting, Inc. for on-call private development review assistance to support Public Works Engineering Division private development review processes, in an amount not to exceed $60,060.00

PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF GIG HARBOR AND 3J CONSULTING, INC.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and 3J Consulting, Inc., a State of Oregon corporation (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in providing Private Development project review and desires that the Consultant perform services necessary to provide the following consultation services; and

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

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

TERMS

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

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Sixty Thousand Sixty Dollars and No Cents ($60,060.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

3. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2021; provided however, that additional time shall be granted by the City for excusable days or extra work. Further, the parties may extend the duration of this Agreement consistent with the terms of Section 17 below.

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

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

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

7. Indemnification.

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

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

8. Insurance.

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

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

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

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

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less

than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Employer's Liability, each accident $1,000,000, Employer's Liability Disease-each employee $1,000,000, and Employer's Liability Disease - Policy Limit $1,000,000.
4. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim.

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

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

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

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

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

10. City's Right of Inspection. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be

subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

11. Records.

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

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

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

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

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

14. Resolution of Disputes and Governing Law.

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

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

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

CONSULTANT:
ATTN: Brian Feeney, PE
3J Consulting, Inc.
9600 SW Nimbus Way, Ste 100
Beaverton, OR 97008

City of Gig Harbor
ATTN: Trent A. Ward, PE
City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 20____.

CONSULTANT

By: John Howorth
Its: President

CITY OF GIG HARBOR

By:_____
Kit Kuhn, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

Contract Statement of Work
Delivery Schedule and Summary of Estimate for Services

PROFESSIONAL SERVICES – PROJECT REVIEW ASSISTANCE

City of Gig Harbor
City Engineer: Trent Ward, PE
3510 Grandview Street
Gig Harbor, Washington
253-853-7637

tward@gigharborwa.gov

3J Consulting, Inc.
Project Manager: Brian K. Feeney, PE
9600 SW Nimbus Ave, Ste 100
Beaverton, Oregon 97008
503-946-9365, Ext 205

brian.feeney@3j-consulting.com

PROJECT UNDERSTANDING AND WORK SCOPE FOR COMPLETE PROJECT

Background
The City needs additional engineering services to assist in the reviews of pre-applications, land use submittals, public works variances, engineering plans, storm drainage reports, traffic studies, water & sewer hydraulic reports and other plan review administrative tasks related to the successful operation of the Public Works Department.

The City is requesting Engineering Services from a consultant well versed in the City's code and permitting process. 3J has assigned Josh Gilchrist, PE to the project to aid the City in their requested review tasks. Josh is a past City employee and is well versed in the City's processes.

SPECIFIC SCOPE OF SERVICES

The following services are for the professional services requested by the City of Gig Harbor, which will be provided by 3J staff. The deliverables are listed for each task.

The Professional Services Work Scope outlined below is anticipated to begin in May 2021 and end December 31, 2021.

Task 1.0 Management and Administration
Task 2.0 Professional Services – Plan Review and Coordination

TASK 1.0 Management and Administration

Project Management

The following tasks are included:
- Provide management, coordination, and direction to the project team for completing the professional services as described within this scope of services.
- Track project costs and budgets on a monthly basis.
- Prepare monthly invoices for project and monthly summary reports. Eight (8) invoices and summary reports are included.

Task 1.0 Deliverables:

The following deliverables are part of this task:

- Monthly Summary Reports and Invoices.

TASK 2.0 Professional Services – Plan Review

Plan Review

- Consultant shall provide technical construction plan review for development engineering projects for the Public Works Division. 3J will provide a qualified professional to conduct preliminary and final engineering review of development applications for compliance with the City of Gig Harbor Design Standards and the Conditions of Approval, if any. All reviews and review comments will be provided via Bluebeam review sessions. It is assumed the City will provide the session link to 3J to perform reviews.
- Consultant shall review pre-application submittals, land use submittals, public works variances, storm drainage reports, traffic studies, water & Sewer hydraulic reports, and any other reports requested by the City.
- Consultant shall assist with review of applications, research, technical analysis and findings, design review of engineered construction plans, field site visits to verify accurate representation of field conditions, and other related tasks as assigned. Reviews and review comments will be provided via Bluebeam review sessions. It is assumed the City will provide the session link to 3J to perform reviews.
- Consultant shall attend weekly engineering meetings and bi-weekly development team meeting, as needed or requested.
- Consultant shall attend development related meetings, including but not limited to, pre-application meetings, developer meetings, or other meeting as needed or requested by the City.
- Consultant shall meet review times established by the City review processes - Land Use review timelines established by the Community Development Department, and Engineering review timelines established by the Public Works Department.

Task 2.0 Deliverables:

- Plan reviews & comments via Bluebeam Session as desired by City.
- Attendance and participation at meetings as required by City.

REIMBURSABLE EXPENSES

Customary reimbursable expenses are the actual expense incurred in direct connection with the project. The following schedule applies for Reimbursable Expenses:

Vehicle mileage is reimbursed at the current IRS rate per mile for project related travel.

The following project related expenses are reimbursed at cost:

- Copy and Reproduction Services
- Bridge Tolls and other Travel Expenses, other than private vehicle mileage
- Postage, Messenger Services, Etc.

Professional Services - Plan Review
Professional Services Hourly Breakdown
3J Consulting

EXHIBIT B

Task No.	Task Description	3J Consulting, Inc. Sr. Project Manager BKF Hours	Fee $180.00	Civil Engineer I JKG Hours	Fee $126.00	Admin. Project Specialist BLB Hours	Fee $106.00	Admin. Staff ALJ Hours	Fee $88.00	3J Consulting, Inc. Totals Hours	Fee	Expenses	Scope + Reimb.	Contingency	Total Budget
1.0	Management and Administration														
	Project Management	12.00	$2,160.00	0.00	$0.00	24.00	$2,544.00	2.00	$176.00	38.00	$4,880.00	$0.00	$4,880.00		$4,880.00
	Sub-Total Management and Administration	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	38.00	$4,880.00	$0.00	$4,880.00	$0.00	$4,880.00
2.0	Professional Services - Plan Review														
	Plan Review	0.00	$0.00	430.00	$54,180.00	0.00	$0.00	0.00	$0.00	430.00	$54,180.00	$1,000.00	$55,180.00		$55,180.00
	Sub-Total Professional Services - Plan Review	0.00	$0.00	430.00	$54,180.00	0.00	$0.00	0.00	$0.00	430.00	$54,180.00	$1,000.00	$55,180.00	$0.00	$55,180.00
Original Contract Total		12.00	$2,160.00	430.00	$54,180.00	24.00	$2,544.00	2.00	$176.00	468.00	$59,060.00	$1,000.00	$60,060.00	$0.00	$60,060.00
Contract Grand Totals															$60,060.00

Total Scope Fee	$59,060.00
Total T&M Budget	$0.00
Total Reimbursables	$1,000.00
Total Project Fee	$60,060.00

Business of the City Council
City of Gig Harbor, WA

Subject: YMCA Sports Complex Lease	**Dept. Origin:** Public Works
Proposed Council Action: Authorize the Mayor to sign a lease agreement with the YMCA of Pierce and Kitsap Counties in a form substantially similar to the lease attached	**Prepared by:** Daniel Kenny, City Attorney
	For Agenda of: May 10, 2021
	Exhibits: Draft YMCA Lease

	Initial & Date
Concurred by Mayor:	KK 5-4-21
Approved by City Administrator:	RL 05/04/2021
Approved as to form by City Atty:	via email 05/04/21
Approved by Finance Director:	5/4/21
Approved by Public Works Director:	via phone 05/04/21

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

INFORMATION/BACKGROUND

The City of Gig Harbor and the YMCA of Pierce and Kitsap Counties have been engaged in negotiations for the lease of City property next to the Tom Taylor Family YMCA. The leased property would be used by the YMCA to create a Sports Complex.

The sports complex construction that will occur on the leased area 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. This is referred to as Phase 1A, and the Phase 1A Improvements. The YMCA has committed to funding the entire Phase 1A Improvements. The City will provide the YMCA with $350,000 from a YAF Grant to be used for the project. The Improvements will be owned by the YMCA. Construction of the improvements will be complete by December 31, 2024 or such other date for completion as set forth by the YAF Grant Agreement as the same may be amended.

In exchange for this lease, the YMCA agrees to build the Phase 1A Improvements and provide public access and use of the fields.

The YMCA must provide community use and benefit as consideration for this lease. The community benefit will include the following topics, which will be further fleshed out in the forthcoming Services Agreement:

- Affordable rental fees and program rates as further described in this Lease as well as the Services Agreement.
- 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.

The Services Agreement will also include details on scheduling, maintenance (all improvements are maintained by the YMCA as its cost), public coordination, use rates (reviewed annually by the city and approved by the Mayor once per year), rules for users, insurance for the improvements, capital reserve fund (maintained at a level mutually agreed to by the parties and sufficient to address both short and long-term needs of the improvements), donations, etc.

The lease has a 35-year initial term with three (3) renewal periods of 20 years each following the initial term. If the YMCA proposes changes to the terms of the lease at a renewal juncture, the City will consider the extension with revised terms and will make a determination. The City can also propose changes to the terms of the lease at such renewal juncture. Any changes to the Lease at any time will require the parties' mutual agreement in writing.

If the lease is terminated, the YMCA has the option to purchase the leased property from the City at fair market value. The lease prescribes a process to come to the fair market value. The option to purchase is not available at the conclusion of the final renewal period.

If the parties cannot agree upon the price for the YMCA's purchase of the premises and the YMCA chooses to not purchase the premises, the City will then be required to purchase the Phase 1A Improvements at fair market value. The method to come to the fair market value of the improvements is prescribed.

The lease further outlines the scope and process for the Phase 1A Improvements. This includes an application deadline (June 30, 2023) for the YMCA to submit necessary permits for the Phase 1A Improvements. If the necessary permits are not submitted by this date, then either party may terminate this agreement with no penalty. Also included is a listing of City contributions to the Phase 1A improvements which range from sewer line installation to construction of a restroom/concession stand. By approving this lease, the City is committing to these contributions.

Finally, there is a section outlining the Phase 1B project, which is entirely a city project and is distinct from the YMCA project. The City will commence the Phase 1B project entirely at its cost, but with certain required timelines that will help facilitate the Phase 1A Improvements. By approving this lease, the City is committing to complete the Phase 1B project within these timelines.

This summary does not speak to every lease provision contained in the agreement.

FISCAL CONSIDERATIONS

The YMCA will pay to the City a lease payment of $1 monthly for the duration of the lease agreement. The City is committing to both the completion of the City contributions to Phase 1A as well as the completion of its own project (Phase 1B) within certain timelines.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Authorize the mayor to sign a lease agreement with the YMCA of Pierce and Kitsap Counties in a form substantially similar to the lease attached.

Gig Harbor YMCA Sports Complex Lease Agreement

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LEASE AGREEMENT

THIS LEASE (this "**Lease**" or "**Agreement**") is made and entered into this _____ day of _____, 2021, 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. 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.
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. The YAF Grant funds may only be used/available to Tenant if the project meets the YAF Grant requirements.
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.

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.

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

A. Recitals. All of the above Recitals A through J 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. Landlord shall deliver to Tenant the Premises in its as-is condition.

C. Term and Extensions.

a. This Lease is effective on _____, 2021 (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. YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by June 30, 2023 (the "**Application Deadline**"). If the YMCA will not meet the Application Deadline it must provide Landlord with written notice no later than the Application Deadline informing Landlord that the Application Deadline will not be met. If all necessary applications for the development of Phase 1A are not submitted by the Application Deadline, then either party may terminate this Agreement within 30 days of the Application Deadline with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution as outlined in Section S, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline. The necessary applications include, at a minimum:
   i. Major Site Plan
   ii. Design Review
   iii. Critical Area Review
   iv. SEPA Review
   v. Binding Site Plan

b. 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 Section 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.

c. In the event that the City's Determination Notice denies the changes proposed, the City shall state the reasons therefor with particularity 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.

d. 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.

e. 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.

f. 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.

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

h. 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.

i. 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**").

j. 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 MAI 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. Representations and Warranties.

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 the Project and complete construction of Phase 1A of the Gig Harbor Sports Complex no later than December 31, 2024, or such later date for completion set forth in the YAF Grant Agreement, effective October 23, 2019, as the same may be amended thereafter (collectively, the "**YAF Grant Agreement**"). Should Tenant not comply with the YAF Grant requirements and all or a portion of the YAF Grant funds are unavailable as a result thereof, Tenant shall nonetheless be responsible to fund the Project.

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 at Landlord's sole cost and expense.

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 at Landlord's sole cost and expense. 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. Construction of Phase 1A Improvements.

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,

b. *Completion Date*. Design, development, and construction of Phase 1A Improvements is entirely the responsibility of Tenant and must be completed no later than December 31, 2024, or such other date for completion as set forth by the YAF Grant Agreement as the same may be amended (the "**Phase 1A Improvements Construction Completion Date**"). Landlord will manage the distribution of the YAF Grant funds to the YMCA in coordination with the RCO Contact appointed in the YAF Grant Agreement and will, immediately after mutual acceptance of this Agreement, request an extension of the timeline for the Project performance and completion, from September 30, 2022 to December 31, 2024. However, the YMCA understands that such extension is not guaranteed. Notwithstanding, Landlord acknowledges that it, as the "Sponsor" under the YAF Grant Agreement, may request and shall use best efforts to request as many extensions of the period of performance as may be necessary for the YMCA to reasonably complete the project and have access to the YAF Grant funds, so long as the YMCA provides it with sufficient notice of the need for an extension such that the Landlord can submit such a request to the RCO Contact at least 60 days before the Phase 1A Improvements Construction Completion Date.

c. *Payment on the YAF Grant.* In order to receive and use the YAF Grant funds on the Project, Tenant shall submit to the City the necessary documentation required by the YAF Grant with each request for reimbursement from the YAF Grant. The City will process and submit to RCO the reimbursement request with 10 business days of the request for reimbursement. Upon payment of the reimbursement from RCO the City will provide the reimbursement payment to YMCA within 14 business days. The Phase 1A Improvements Construction Completion Date may be further modified by mutual written agreement of the Parties as needed to address further phasing and/or requirements of funding for the Project, and if so modified, the City agrees to use best efforts to promptly seek the approvals necessary of the Washington State Recreation and Conservation Office to such modifications so that the YAF Grant funds will continue to be available toward the Project based on the adjusted Phase 1A Improvements Construction Completion Date.

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

e. *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.
   i. YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by the Application Deadline. If the YMCA will not meet the Application Deadline it must provide Landlord with written notice no later than the Application Deadline informing Landlord that the Application Deadline will not be met. If all necessary applications for the development of Phase 1A are not submitted by this date, then either party may terminate this Agreement within 30 days of the Application Deadline , with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution as outlined in Section S, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline . The necessary applications include, at a minimum:
      1. Major Site Plan
      2. Design Review
      3. Critical Area Review
      4. SEPA Review
      5. Binding Site Plan

   If no such termination is timely given, then this Agreement will not terminate and the YMCA agrees to submit the required applications as soon as reasonably practical after the Application Deadline. If either Landlord or Tenant decides to terminate this agreement, Landlord is entitled to all design and permitting documentation generated up until that point upon payment to Tenant of the documented cost thereof. Landlord may forgo the option to obtain and pay for the design and permitting documentation and instead proceed without receiving such materials.

f. *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.

g. *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.

h. *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.

i. *Landlord Contributions to Phase 1A Improvements.* Landlord commits to contributing the following elements to the Phase 1A Improvements at its sole cost and expense:
   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 on Phase 1B connected to that water main,
   iii. Approximately 40% of the East/West retaining walls (shown in red on AHBLs drawing attached hereto as Exhibit E)
   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.
   v. To ensure that there are operational restrooms serving the Phase 1B project, Landlord will design and construct, initially at Landlord's cost, the concession stand/restroom structure and will build out the restroom to a functional state on the same timeline as the Phase 1B project. If no termination occurs pursuant to Section e above, Tenant is responsible to reimburse Landlord for all design, permitting, and construction costs incurred by Landlord for the concession stand/restroom within 18 months of the completion of the concession stand/restroom. Further, Landlord will maintain the concession stand/restroom structures until the Phase 1A Improvements Construction Completion Date.

J. <u>Phase 1B Obligations</u>.
   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 to complete all elements of Phase 1B, including but not limited to the clearing, grubbing, and grading and related erosion control to the subgrade, at its sole cost and expense. The water and sewer mainline connections shall be completed no later than June 30, 2022, and the remainder shall be completed no later than the Phase 1A Improvements Construction Completion Date (the "**Phase 1B Improvements Construction Completion Date**"). At all times until such Phase 1B Improvement work is completed, the City shall provide, at its sole cost and expense, adequate, safe, and ADA accessible pedestrian access from the Tom Taylor Family YMCA facility parking lot through or around Phase 1B Improvement work area, to the Phase 1A Improvement work area. The Phase 1B Improvements Construction Completion Date may be further modified by mutual written agreement of the Parties as needed to address further phasing and/or requirements of funding for the Project, and if so modified, the City agrees to use best efforts to promptly seek the approvals necessary of the Washington State Recreation and Conservation Office to such modifications to the extent that the delay of completion of the Phase 1B Improvements may affect the availability of the YAF Grant funds toward the Project.
   c. *Ownership*. The Phase 1B Improvements are exclusively the property of Landlord.
   d. *Funding.* Landlord is entirely responsible for all funding of the Phase 1B Improvements.

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. Compliance with Laws. 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. Successors and Assigns.

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. Dispute Resolution.

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. Miscellaneous.

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 YAF Grant Agreement governing the YAF Grant funds, 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 YAF 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 _____, 2021, 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 _____, 2021, 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 _____, 2021, 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 _____, 2021, 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

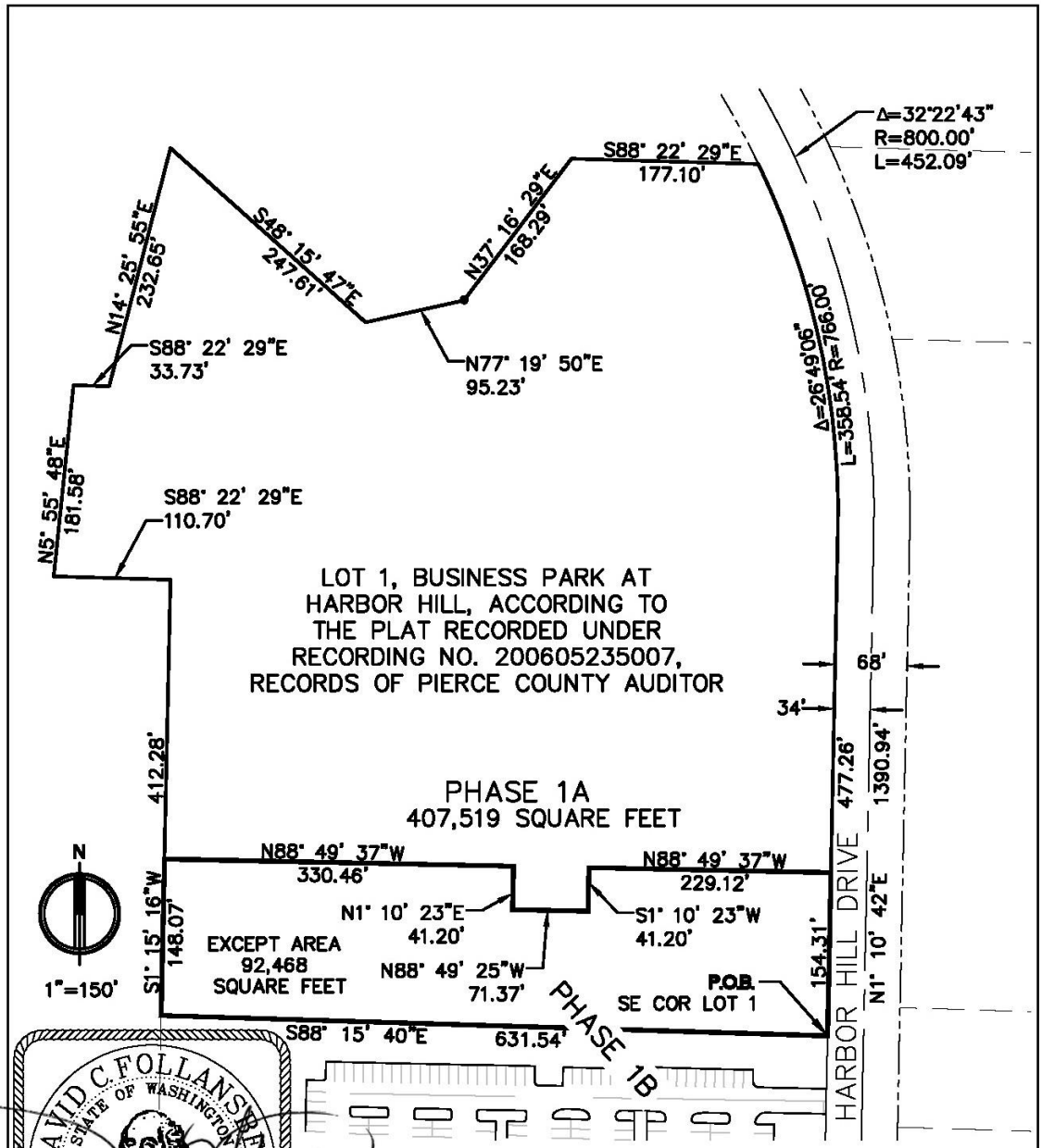
Δ=32°22'43"
R=800.00'
L=452.09'
S88° 22' 29"E
177.10'
N37° 16' 29"E
168.29'
S48° 15' 47"E
247.61'
N14° 25' 55"E
232.65'
S88° 22' 29"E
33.73'
N77° 19' 50"E
95.23'
Δ=26°49'06"
L=358.54' R=766.00'
N5° 55' 48"E
181.58'
S88° 22' 29"E
110.70'
LOT 1, BUSINESS PARK AT
HARBOR HILL, ACCORDING TO
THE PLAT RECORDED 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'
HARBOR HILL DRIVE
N1° 10' 42"E
P.O.B.
SE COR LOT 1
1"=150'
S88° 15' 40"E
631.54'
PHASE 1B
DAVID C. FOLLANSBEE
STATE OF WASHINGTON
45161
REGISTERED
PROFESSIONAL LAND SURVEYOR
01/15/2021
2215 North 30th Street,
Suite 200,
Tacoma, WA 98403
253.383.2422 TEL
253.383.2572 FAX
AHBL
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:\sdskpro\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.

The YMCA will design and construct Phase 1A of the Gig Harbor Sports Complex, described in Recital E, further detailed in Exhibit E, limited to the following features/components:
Gig Harbor Sports Complex Phase 1A:

- Two (2) artificial, synthetic turf fields, approximately 360' x 210'
- Field Lighting
- 100 parking stalls
- Ingress/egress into the Phase 1A parking lot
- Landscaping for the Phase 1A improvements
- Restrooms/Concessions structure
- Fencing around the two artificial, synthetic turf fields

EXHIBIT C
List of Encumbrances on Premises

1. Any and all offers of dedication, conditions, restrictions, easements, boundary discrepancies or encroachments, notes and/or provisions shown or disclosed by Short Plat or Plat of Business Park at Harbor Hill recorded under recording number 200605235007.
"Affidavit of Minor Correction of Survey" recorded July 24, 2006 under Recording No. 200607240465.

Modification and/or amendment by instrument:
Recording Information: 201712275011

2. The terms and provisions contained in the document entitled "Storm Water Facilities Maintenance Agreement and Restrictive Covenant"
Recorded: May 25, 2006
Recording No.: 200605250980

3. The terms and provisions contained in the document entitled "Declaration of Storm Water Facility Easement"
Recorded: May 25, 2006
Recording No.: 200605250981

4. The terms and provisions contained in the document entitled "Storm Water Facility Maintenance Agreement"
Recorded: May 25, 2006
Recording No.: 200605250982

5. Covenants, conditions, restrictions and/or easements contained in Recording No.: 200605250984

Modification and/or amendment by instrument:
Recorded: November 29, 2007
Recording Information: 200711290681

6. The terms and provisions contained in the document entitled "Harbor Hill Water Tank and Mainline Extension Latecomers Agreement"
Recorded: April 21, 2009
Recording No.: 200904210526

7. The terms and provisions contained in the document entitled "Harbor Hill Development Agreement"
Recorded: November 16, 2010
Recording No.: 201011160780

Modification and/or amendment by instrument:
Recording Information: 201212040216, 201405010313 and 201806280130

8. The terms and provisions contained in the document entitled "Harbor Hill Development Agreement"
Recorded: January 24, 2010
Recording No.: 201011241249

9. The terms and provisions contained in the document entitled "Joinder Agreement"
Recorded: December 02, 2010
Recording No.: 201012020196

Modification and/or amendment by instrument:
Recording Information: 201806280130

10. Covenants, conditions, restrictions and/or easements contained in Recording No.: 201712290500

11. The terms and provisions contained in the document entitled "Partial Assignment and Assumption Agreement: Harbor Hill Development Agreement"
Recorded: December 29, 2017
Recording No.: 201712290501

12. Full Reconveyance: LOT 1, BUSINESS PARK AT HARBOR HILL, RECORDED MAY 23, 2006 UNDER RECORDING NO. 200605235007, IN PIERCE COUNTY, WASHINGTON

13. 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

EXHIBIT E
Retaining Wall Diagram.