

# **Gig Harbor City Council**

**September 8, 2014**

**5:30 p.m.**



**AGENDA**  
**GIG HARBOR CITY COUNCIL MEETING**  
**Monday, September 8, 2014 – 5:30 p.m.**

**CALL TO ORDER / ROLL CALL:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of City Council Minutes Aug. 11, 2014.
2. Correspondence / Proclamations: a) Alzheimer's Awareness Month; b) Constitution Week; c) Prostate Cancer Awareness Month.
3. Point Fosdick Sidewalk Project – Construction Testing Services Contract and Contract Amendment/HDR Engineering.
4. Harbor Hill N-2 Street Names.
5. Cartegraph Work Order and Asset Management Software Migration – Purchase Authorization.
6. Survey and Legal Description Creation – Consultant Services Contract.
7. Eddon Boat Parcel – Grant Agreement with the Dept. of Ecology.
8. Approval of Payment of Bills Aug. 25, 2014: Checks #76178 through #76280 in the amount of \$334,034.24.
9. Approval of Payment of Bills Sep. 8, 2014: Checks #76281 through #76404 in the amount of \$643,293.76.
10. Approval of Payroll for the month of August: Checks #7352 through #7372 and direct deposits in the amount of \$371,596.67.

**PRESENTATIONS:**

1. State of the Library – Neel Parikh.
2. Alzheimer's Awareness Month – Christopher D'Attilio and Vicky Parker.
3. Prostate Awareness Month – Bob Freeborn.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Updates to Marijuana Code 17.63.

**NEW BUSINESS:**

**CITY ADMINISTRATOR / STAFF REPORT:**

1. Farmers Market Update.
2. Jerisich Dock Water / Power Update.

**PUBLIC COMMENT:**

**MAYOR'S REPORT / COUNCIL COMMENTS:**

1. Civic Center Seating Donation.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Lodging Tax Advisory Committee: Tue. Sep. 9<sup>th</sup> at 7:30 a.m.
2. Finance / Safety Committee: Mon. Sep. 15<sup>th</sup> CANCELLED.
3. Planning / Building Committee: Tue. Sep. 16<sup>th</sup> at 5:30 p.m.

**EXECUTIVE SESSION:** For the purpose of discussion property acquisition per RCW 42.30.110(1)(c).

**ADJOURN:**

## MINUTES OF GIG HARBOR CITY COUNCIL MEETING – August 11, 2014

**PRESENT:** Councilmembers Malich, Arbenz, Ekberg, Perrow, Lovrovich, Payne, Kadzik and Mayor Guernsey.

**CALL TO ORDER:** 5:30 p.m.

### **PLEDGE OF ALLEGIANCE:**

### **CONSENT AGENDA:**

1. Approval of City Council Minutes Jul 28, 2014.
2. Correspondence / Proclamations: a) Recognizing the Three-Time National Champion Gig Harbor Canoe and Kayak Racing Team; b) Morning Rotary 40<sup>th</sup> Birthday Proclamation and Recognition of Alan Bucholz.
3. Liquor License Action: a) Application: Pho Ever; b) Application: The Harbor General Store.
4. Receive and File: a) Lodging Tax Advisory Committee Minutes from July 1, 2014; b) Parks Commission Minutes June 4, 2014.
5. Appointment to Gig Harbor Arts Commission.
6. Energy Efficiency Implementation Agreement – Peninsula Light Company.
7. Pt. Fosdick Sidewalk Improvement Project - Bid Award and Consultant Services Contract for Materials Testing.
8. Employment Contract – Chief of Police.
9. Approval of Payment of Bills Aug. 11, 2014: Checks #76075 through #76177 in the amount of \$694,065.47.

Councilmember Payne acknowledged the Pt. Fosdick Sidewalk Project, thanking staff and the neighborhoods of Quail Run, Quail Park, and Heronwood for their efforts in making this possible.

Mayor Guernsey introduced Mary Manning, newest appointee to the Gig Harbor Arts Commission.

**MOTION:** Move to adopt the Consent Agenda as presented.  
**Payne / Malich** – unanimously approved.

**SWEARING IN CEREMONY:** Mayor Guernsey performed the ceremony to appoint Kelly Busey to the position of City of Gig Harbor Chief of Police. His mother performed the official pinning on of his badge and Chief Busey introduced the three former Chiefs that he has worked under: Dennis Richards, Mitch Barker, Mike Davis, and former Lieutenant, Bill Colberg.

John Moist came forward to present an engraved statue to Chief Busey. He explained that he was representing all citizens that were pulling for Kelly during the selection process and thanked Chief Busey for his dedication and enduring service.

Chief Busey then introduced the members of his family.

### **PRESENTATIONS:**

1. US Open Presentation. Pierce County Executive Pat McCarthy said that we delighted to be hosting the 2015 US Open Golf Tournament at Chambers Bay Golf Course in June. She

gave a brief overview of what the event will encompass over the seven day period and introduced Danny Sink.

Danny Sink, US Open Championship Director, thanked Mayor, Council and Staff for working with him over the past two years. He stressed the importance of this regional event and described some of what has happened to date to work towards a successful championship event. He praised the Chambers Bay Golf Course for its public amenities and talked about the direct and positive affect this event will have on Gig Harbor hotels, restaurants, and other amenities.

2. Recognizing the Three-Time National Champion Gig Harbor Canoe and Kayak Racing Team. Mayor Guernsey introduced the Gig Harbor Canoe and Kayak Racing Team who brought forward a banner announcing their championship status. Alan Anderson gave a brief introduction of his fellow coaches, and talked of the hard work by the team, and the support of the parents and community that helped make this possible. Mayor Guernsey presented a proclamation praising the accomplishment to Mr. Anderson.

3. Morning Rotary 40<sup>th</sup> Birthday Proclamation and Recognition of Alan Bucholz. Mayor Guernsey presented the proclamation to Dick Vanburg who gave a brief history of this Rotary Club. He explained that Alan Bucholz is the sole remaining charter member of the organization.

4. Recognition of Service to the City: Maureen Whitaker – 20 years and Marco Malich, 30 years. Mayor Guernsey announced that two city employees, Maureen Whitaker, and Marco Malich, have been with the city a long period of time and said the city would like to recognize them for their length of service.

Councilmember Ekberg said that it's been a great pleasure working with both employees, who are a real testament to the kind of employees we have at the city. They don't view this as a job, but take the city to heart and go above and beyond. It's wonderful to have them here and it's great to know them, he added.

Councilmember Payne echoed the sentiments, and added that Maureen's honest opinion has been a breath of fresh air, and that she does a fantastic job in Public Works. He then thanked Marco for the support given to his wife during the efforts to bring forth the playground, and stressed that Marco has always been responsive and customer service oriented throughout the years.

**OLD BUSINESS:** None scheduled.

**NEW BUSINESS:**

1. Grandview Forest Park Tree Evaluation – Consultant Services Contract. Public Works Director Jeff Langhelm presented this contract to evaluate and make recommendations for the trees in Grandview Forest Park for laminated root rot. He addressed Council questions.

Councilmember Ekberg said he would abstain from the vote as he has used the contractor for a number of years.

**MOTION:** Move to authorize the Mayor to execute a Consultant Services Contract with Thundering Oak Enterprises in an amount not to exceed One Thousand Two Hundred Sixty Dollars and Zero Cents.

**Payne / Perrow** – six voted in favor. Councilmember Ekberg abstained.

2. Public Hearing and Resolution No. 971 – Canterwood Utility Extension Agreement. Public Works Director Jeff Langhelm presented the background for this agreement to provide sewer utility service to eleven connections at the request of The Canterwood Development Company. He addressed Council's questions on the impact of these additional connections.

The Mayor opened the public hearing at 6:05 p.m.

Eva Hill – 2020 Squawk Mountain Loop Road, Issaquah. Ms. Hill, representative for The Canterwood Development Company, explained that this request is similar to previous utility extension agreements with the city and offered to answer any questions.

There were no further comments and the public hearing closed at 6:07 p.m.

**MOTION:** Move to approve Resolution 971 for a sewer Utility Extension Agreement with the Canterwood Development Company.  
**Kadzik / Payne** – unanimously approved.

3. Public Hearing and First Reading of Ordinance – Updates to Marijuana Code 17.63. Senior Planner Lindsey Sehmel presented the procedural history and then an overview of the proposed amendments directed by City Council. She said that several public comments had been received and provided to Council.

Mayor Guernsey opened the public hearing at 6:18 p.m.

Jill Williams – 6409 Rosedale St. NW. Ms. Williams, a chemical dependency educator, voiced grave concern what allowing this will do to our community. She asked about neighborhoods that with home schooled children, and whether they too will be included in the buffer zones. She said a Gig Harbor Policewoman said this is going to cause great difficulty. As a contractor for the Department of Corrections, she said this will be a nightmare for the police. She said she understands that the Council is shackled by those who voted for this, but said there were a lot that voted against it as well. Our concern has to be with the children of the community, and she hopes the city can do something about what she considers a plague upon the community. As a mother and grandmother she voiced appreciation to be able to speak, and then said that like it or not, it's in this community and this makes it more accessible to kids.

Charlotte Gerlof – 7712 73<sup>rd</sup> St. Ct. NW. Ms. Gerlof said that I-502 passed with a majority of 54% and it's important for City Council and all people to take note and respect the wishes of the voters. Regardless if its marijuana or liquor or some other "so called vice" the law is the law and it is alarming that City Council is intending to negate the votes. You are public servants and this is not a moral issue or a God-driven issue or some anomaly. Turn back the clock and the same thing happened with liquor; and she finds it alarming that we will have a vodka dispensary where there was a candy store, but it's the law. We need to step back from the fear and anxiety generated by the idea of something might happen and work through the law. There are several attorneys on the City Council and urged them to take a look at that. She said she takes exception for the remark made that the voters of Gig Harbor did not know what they were voting for. People are savvy, and it was written quite clearly and they know exactly what they voted for; they just didn't vote the way the City Council would have liked. She is concerned that the maps only show where retail can't occur, not where retail could operate. Whether you like it or not, marijuana is here to stay; this is not a bubble community and all this protection for the children and vulnerable adults being generated with this fear-mongering has to be taken into context. She would really like to see a map where the retailers could have that opportunity.

The Mayor assured Ms. Gerlof that although hard to see on the overhead maps, the locations where retail sale are allowed is shown and she should make arrangements to view the maps after the meeting.

Sara Sexton – 10915 65<sup>th</sup> Ave NW. Ms. Sexton asked the city not to confuse the vote for I-502 as a vote for retail store in Gig Harbor. She is a twelve year resident living in Henderson Bay Estates and though not in city limits, she said she considers herself a defacto resident and every decision the city makes affects her family personally. She stressed that she doesn't want a retail store on Burnham Drive; she doesn't want it anywhere in Gig Harbor. Precinct 301 voted no to I-502 and that is where a retail store could locate. She said if it moves forward, she would like the definition of parks to include undeveloped land intended for parks and neighborhood playgrounds owned by HOA's. If Gig Harbor becomes known as "pot friendly" will people still call this the greatest place to live? We have this wonderful, successful group of Canoe and Kayak Team members that we are very proud of; so will we be sending them a mixed message? She addressed Councilmember Kadzik by saying "Dr. Kadzik, I remember you when you came into my classroom in Purdy and talked about dental hygiene, and you became their dentist. I know you care about kids and I want you to please remember that and remember the common good of the community when you make this decision about marijuana in Gig Harbor."

Jon Sexton – 10915 65<sup>th</sup> Ave. NW. Mr. Sexton said they have lived here twelve years. They chose Gig Harbor because it's a special place with a strong reputation for being a family-friendly place to live. He said that it's unbelievable to him that the city, who said no to Walmart and just recently, no to their schools, is going to say yes to drugs. You can say it's not a moral issue, but it's very much a moral issue. And it's not fear-mongering but responsible grown-ups and parents looking out for the safety of their community and protecting their children. If we aren't willing to put it right in the middle of downtown, then find the clusters of people who support I-502 and put it next to their homes and neighborhoods. The employment district suitable for retail marijuana sales happens to be right next to two giant neighborhoods with a bus stop right up the hill. There are playgrounds, and it is within a two mile radius of the two high schools, a middle school, and an elementary school. He said he considers putting retail marijuana into our community to be madness. If it's not right for the waterfront in our beautiful city, then you've answered the question...it's not right for Gig Harbor. The safety of our children overwhelmingly trumps the right of businessmen to sell retail pot in Gig Harbor, he said, adding that his concern is crime, the example we set for our young people, traffic, stoned drivers, and our reputation. It is legal, it's regulated and it's taxed; but so are strip clubs and adult book stores and casinos...what about those ventures? He said he's all for capitalism up until it harms the common good. If he were looking for a place to call home today and knew Gig Harbor had retail pot, he would scratch it from his list considering it undesirable and sleazy.

Mayor Guernsey asked the audience to hold their applause to expedite the testimony.

Monte Maenhout - 4704 Saddleback Drive NW. Mr. Maenhout said he voted against this law, but is thankful that the city is taking the time to look into this further. He has three teenagers and appreciates what the city has done on this difficult issue. As a parent, he is responsible for his children's actions and what they are going to do and the decisions they make. He doesn't think it's the city's right to decide what his children do and he understands wanting to make this a safe place for everybody, but parents have that responsibility as well. He said he's done a 180 and is not against having this passed. He lives close to one of the proposed areas and doesn't have a problem with it because the state regulates it. He doesn't know if it's the greatest or worst thing for the city but nobody knows. He doesn't think it's going to be bad and the people

going to run it will probably do a fine job. The naysayers have a right to be concerned. He said any land the city owns that might be a park is burdensome and shouldn't regulate where a business could go today.

Sharon Dahl – 6309 110<sup>th</sup> St. NW. Ms. Dahl begged the city not to put that in her neighborhood. There are so many young families in Henderson Bay Estates already talking about moving. It will bring down property values, and people are unhappy. We have such a great area up there. She has lived in Gig Harbor 42 years so she's not a newbie and worked for the school district. This is such a wonderful place. Her daughter moved to Puyallup and came back to raise her kids here. If the Councilmembers don't want it next to their houses, think of her; she doesn't want it next to her house.

Don Dahl – 6309 110<sup>th</sup> St. NW. Mr. Dahl voiced support for what has been said, but asked about parks. He said there are 90 plus homes in the two developments Horizon West and Henderson Bay Estates, and two parks in each. He asked if there is or isn't a radius of 1000 feet from their parks, and if not, don't their kids count? He's lived here his entire life and thought we had a good quality system and we need to be careful on how we take this step and not make a mistake.

Lee Van Komen – 6208 110<sup>th</sup> St. Ct. NW. – Mr. Van Komen, a father of five and resident of the Gig Harbor area for 11 years, knows this is a great place to live. They chose the area for the family community with playgrounds, parks, and everything they wanted. It has grown so much over the years, and with all the talk about development, Gig Harbor is a unique place. He used the inability to rent tools at our Home Depot as an example of doing things differently here, and asked why we need to be like everybody else and why do we need to pass this ordinance? He mentioned the feeling that 54% majority is a huge majority, and as stated, precinct 301 actually voted no on 502. This is the area being proposed for the shop. The Gallery is another thing he finds interesting, he said. It has the image of an art store yet sells pot. Why can't it just be a pot shop and not hide behind the face of art? He proposed that we look to the future and remember these parks. We've done a great job of creating this community with wonderful parks and atmosphere. Respect the opinion of the voters in that area. Apply the most restrictive ordinance possible including these future city parks if necessary or continue the moratorium. We don't need to be the first community to see how this affects us. His daughter likes to eat candy and will sneak off and hide the wrappers. Are we trying to hide the wrappers for the profit this will come into the community?

Bruce Monell – 165 Island Blvd, Fox Island. Mr. Monell, a resident of the Gig Harbor area for 30 years, said he has first-hand knowledge of what pot can do to families. The school district has said alcohol use and smoking are going down because of prevention programs. We don't have that for drugs. The D.A.R.E. was proven ineffective and so there isn't a program to truly deal with drug prevention. Our young people can get hurt, especially those predetermined genetically to have these problems. We don't want to bring this into our community. The county has restricted the sale of marijuana so Gig Harbor would be the base if allowed. You don't want to take a community that was in the top ten retirement communities in the nation and one of the best family communities anywhere and bring something in against our youth. In the long-term against our adults as well because it's a gateway drug. Many studies have shown and proven this and we need to recognize that and take the strong step other cities have taken. Recognize it's time to ban, not to have an ordinance.

Marlyn Jensen – 6409 Rosedale St. NW. Ms. Jensen, who has lived here 33 years, loves this community and referred to it as Heaven on Earth. She raised four children here and has two

grandchildren. She said she is proud of the City Council for the moratorium on marijuana. This isn't something to be done quickly. As a property manager in Tacoma, she sees problems with young people smoking marijuana and having problems functioning. She doesn't want to bring it here. We don't need to give more temptation to our young people who are having enough problems with substance abuse. We don't need to bring marijuana to our beautiful community. She said everyone tonight has said wonderful things and there is not much left for her to say. We need to think of the health of our young and vulnerable students and children, and be good role models. She thanked Council and said she hopes we keep the moratorium going as long as we can.

Mayor Guernsey said that everyone who signed up to speak has spoken and asked if anyone else wished to come forward.

Maria Orlan (sp?) – 10905 64<sup>th</sup> Ave. NW. Ms. Orlan said they looked everywhere for a house and moved here when there were only six houses in the neighborhood, but now there are 95. She wants her kids to be in a nice neighborhood in a nice city with good schools. They made the right decision to move here; Gig Harbor is in the *Coastal Magazine* as one of the best towns to live and she is proud to live here. She became an American Citizen five years ago and one of the first things she did is to register to vote in order to elect those who will do the right things for her family. She did not vote for I-502 and honestly believes this is not a good thing for our community. Some people don't see it that way because they do not have kids. It is not good for the city; not good for our houses; it's not good for anybody. She is already looking to move as she doesn't want to live here if it is going to happen. If people want to smoke marijuana, they can go and drive somewhere else.

Jan Vance – 3503 Harborview Drive. Ms. Vance said she doesn't need to continue to plead or present evidence of how bad marijuana retail would be for this community. She said her understanding is this is the last opportunity to comment on where it's going to be because the city has already decided to allow it. When she thinks of all the testimony, and all the time that has gone into finding a way to make it possible to sell marijuana in the community rather than to slow this down so we can get more information; this is a mess, she added. From the State; it's against Federal Law; it's absolutely a mess and yet countless hours have gone into find a way to open retail stores. She is perplexed, and asked if she is wrong in assuming the decision has been made to allow the sale.

Senior Planner Lindsey Sehmel responded that in September of last year Council adopted permanent regulations for marijuana related uses. Since then we have taken a "time-out" to address additional concerns recognizing that the State Attorney General states that cities have the ability to control retail use within their jurisdiction. We are here tonight to make amendments to the permanent regulations in 17.63.

Ms. Vance asked if her understanding that the Attorney General gave cities the option of whether they would allow marijuana in their cities was correct. The first hearing on this went by her and asked if there was a public hearing. She asked again for the Council to reconsider this for the sake of Gig Harbor.

Jeni Woock – 3412 Lewis Street. Ms. Woock said that Council has her comments on the ordinance. In reference to 502, on August 7<sup>th</sup> we read the statement by Attorney General Bob Ferguson stating that it is his job to assure that the will of the people is upheld and if anyone seeks to overturn state laws his office will defend the law. Pierce County prosecutes about 10,000 cases a year, she continued. In 2012, 48 of those were for marijuana with 502



parameters. Those were dropped and the county no longer prosecutes these cases. The majority of Gig Harbor voters voted in favor of a law. As public servants it is your duty to carry out the vote of the majority in a safe and responsible manner in accordance with Washington State Laws. It's not good public relations for this council to be seen as a third-world power that throws out the majority votes of the citizens. What to do? Throw out the Washington State regulations and make up our own rules and regulations? You think no one notices that these are different than the states'? Your vote is not more important than any others vote and our country is about the majority vote not how to get around that. If there is a lawsuit, while it might be easy to ignore the citizens' vote, it will not be easy with the Attorney General's office. It will cost a lot of money; how much more are you willing to spend to go against the vote of the majority?

Heidi Canda – 2525 Cliffside Lane. Ms. Canda is new to the Harbor, but said it's the most beautiful place on the planet. They moved here for the school district. The teachers, the community, the downtown, the mountain are all fabulous. She said she voted against the marijuana issue because the state isn't regulating anything, but here we are and she appreciates Council taking the time on this serious issue. She disagrees with points made that we don't have drug prevention programs. There are programs she went through that prevented her from following in her parents footsteps such as Little League, Harbor Premier, and other positive things we have in our community. This is a great place and whether QFC sells alcohol or tobacco isn't going to affect her children. Whether there is a marijuana store / hemp café up the street...there are temptations everywhere, and we all know the truth about the internet and magazines. As a community and as a parent all we can do is raise our children the best we can through these programs. The Saloon is close to Dairy Queen, but that doesn't stop her from going for ice cream. She appreciates what Council is doing to protect her children, but it's not as harmful as people are claiming it to be. Be on the positive side and support the schools, teachers and programs. The kayak team is amazing...that's why she moved to the harbor.

Michelle Henry – 4615 Saddleback. Ms. Henry said everyone moved to Gig Harbor because it's an incredible place for kids. It's a wonderful, beautiful community. There isn't anyone who lives here that wants to create an unsafe place for kids. When I-502 came up; before she voted and since she has become part of the conversation, she researched the legalization verses prohibition issue. She said the people react in passion and their first response is "oh my gosh, it's drugs." We all grew up with the 'gateway drug' idea and to be afraid. But we aren't bringing marijuana to Gig Harbor; it's already here, it's all over the State of Washington, it's all over the United States, it's everywhere and our kids can get access to it. She has an intelligent, straight A student at Harbor Ridge Middle School that they talk to about the legalization of marijuana. She says that even though it's legal doesn't mean she is supposed to do it just as because alcohol is three aisles away from back to school section at Target means that it's okay for her to drink. What we can do for our kids and our community is to be educated. She did research on Colorado since they have legalized it. They have the most progressive legalization in the country and basically every negative consequence: the increase in crime, car accidents and fatalities in car accidents, teenage use, decrease in tourism, all the things you would be worried about have all turned out to have had the opposite effect, especially in the past six months. It's possible that these things aren't going to happen as we are seeing the results of legalization. Alcohol and tobacco use is down with the kids, and in Colorado, use of marijuana by kids is down. She encouraged those that are scared and fearful to actually consider this as our chance to win against marijuana; our chance to give our police to regulate and control it; our chance to protect our children which we aren't able to do now.

Carolyn Wright – 6423 111<sup>th</sup> Street NW. Ms. Wright said her husband has been in the army for 30 years and is currently serving overseas. His job is to keep this country safe. They planned on

retiring in Gig Harbor but she doesn't know if he will come home to a safe neighborhood since they want to build a pot store down the street from her house. She doesn't think the Council should be intimidated by the threat of lawsuits. The law says you may sell marijuana in the State of Washington, but it doesn't say you *have* to sell it.

There were no further public comments and so the public hearing was closed at 7:01 p.m.

Senior Planner Sehmel explained that the second reading of the ordinance is scheduled for September 8<sup>th</sup>. She said any proposed changes to the ordinance need to be discussed and to let her know before second reading.

City Attorney Summerfield clarified that if Council makes changes at the September 8<sup>th</sup> meeting, Council may adopt the ordinance at that second reading and it would probably be brought back for ratification at the following meeting, as long as the amendments are on the same topics that were the subject of this public hearing.

Councilmember Ekberg suggested that Council consider the public testimony this evening on and come back at the next meeting to discuss each amendment. Councilmember Malich agreed.

Councilmember Payne asked if it would be possible to do a permanent ban at that time. Ms. Summerfield responded that if that is the direction Council wished to go, we would need a new public hearing.

Councilmember Perrow said he is ready to hold a discussion this evening, but he is willing to wait if others feel the need to look at it closer.

Councilmember Arbenz commented that this isn't an issue any of them take lightly. Speaking for himself, he said the reason this has dragged on is because he is attempting to be open-minded and listen to everyone who has an opinion in order to make the best decision for Gig Harbor.

Councilmember Payne commented on the public testimony that we were unable to consider a ban. He clarified that January 16<sup>th</sup> the Attorney General put out an opinion that said a city could ban marijuana sales. We are considering this ordinance to try and determine a reasonable balance. Everything is still on the table.

Mayor Guernsey announced that the next Council meeting will be on September 8<sup>th</sup> and encouraged those interested to be present.

#### **CITY ADMINISTRATOR / STAFF REPORT:**

City Administrator Ron Williams presented several announcements:

- 1) Last week the Washington State Heritage Capital Project Fund listed their priority of projects to be funded in the 2015-17 cycle, and the Ancich Netshed Restoration Project made number 12 on the list for a grant of \$661,000.00. On the alternative list, the Eddon Boatyard House Restoration joint application looks good as well.
- 2) The Department of Ecology paid a surprise visit to our Wastewater Treatment Plant for an inspection last week. They were pleased with what is going on and made only minor adjustments.
- 3) Karen Scott, Tourism and Communications Director, received a letter of praise from a statewide tourism agency calling Gig Harbor's tourism operation the best in the state.

**PUBLIC COMMENT:**

Jerry Gibbs – 4811 100<sup>th</sup> Ave Court. Mr. Gibbs said the election is over and the voters have spoken considering the school funding issues. Elections have consequences; the Peninsula School District stated throughout the campaign that the overcrowding in Gig Harbor North was leading to a lot of pressure on the Purdy Elementary. He has toured these schools and seen it for himself. Over the next few months we are probably going to hear a lot of ideas, options, and solutions and he urged the City Council to be engaged in that discussion. Schools need to be factored into the growth of this community. Schools need to be factored in like sewer capacity, electricity, and roads before you issue a building permit. He does not believe that the capacity of schools to absorb the growth has been factored into these decisions before 1500 building permits were issued. It needs to be and the City Council must be open to ideas that can temper or lessen the impact of growth in Gig Harbor North if the school comes up with proven data. The taxpayers / voters didn't like the plan that was floated. Unchecked growth in Gig Harbor North continues to pressure the schools. The second thing he addressed is that the election divided the community and unethical tactics like sign theft were rampant and perpetuated the divide. His community lost over 300 signs costing \$1600. Two complaints were filed with the city police and sheriff's department. They find it odd that they couldn't catch the persons who stole the signs two hours after they were put up. They took it upon themselves to catch the person and the case is being reviewed by the prosecutor. When the City Council endorses a political issue like Prop 1 and Prop 2, does it send a signal to the Public Works and Police Department that they should take a different stance on enforcement? He stressed better sign ordinances and sign enforcement before the next election.

**MAYOR'S REPORT / COUNCIL COMMENTS:**

Mayor Guernsey mentioned that last Friday was Military Appreciation Day at Sehmel Park; a fabulous event that packed the park. PenMet Parks, the Chamber of Commerce, A.U.S.A. and others all contributed to the success of the event.

Mayor Guernsey then said she went out on the Marine Patrol Boat with Officer Chet Dennis who did a wonderful job. He is friendly and well accepted on the water.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. No second Council meeting in August.
2. Civic Center closed for Labor Day: Mon. Sept. 1<sup>st</sup>.
3. Planning/Building Committee: Tue. Sep. 16<sup>th</sup> at 5:30 p.m.
4. Public Works Committee: Mon. Sep 8<sup>th</sup> at 4:00 p.m.
5. Lodging Tax Advisory Committee: Tue. Sep 9<sup>th</sup> at 7:30 a.m.

**ADJOURN:**

**MOTION:** Move to adjourn the meeting at 7:16 p.m.  
**Kadzik / Perrow** – unanimously approved.

CD recorder utilized: Tracks 1002 – 1044

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Jill Guernsey, Mayor

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Molly Towslee, City Clerk

## PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

*Whereas, for every 69 seconds, someone in America is diagnosed with Alzheimer's, and*

*Whereas, Alzheimer's disease is a progressive degenerative disease of the brain causing deterioration in memory, thinking, judgment, and reasoning ability, and affects behavior, emotions, and the ability to perform self-care; and*

*Whereas, an estimated 5.4 million Americans have Alzheimer's disease. As many as 200,000 of those are individuals under age 65 who have younger-onset Alzheimer's; and*

*Whereas, Alzheimer's disease is the sixth leading cause of death in the United States. This eventually fatal disease is a serious and growing threat to the health of our world; and*

*Whereas, the human cost of Alzheimer's disease is staggering. More than 15 million caregivers provided over 17.4 billion hours of unpaid care in 2011; and*

*Whereas, in 2013, Alzheimer's will cost the nation \$203 billion. This number is expected to rise to \$1.2 trillion by 2050; and*

*Whereas, while there is currently no cure for Alzheimer's disease, there is help for families, friends, and patients in the form of education, support, and services available statewide; and*

*Whereas, the City of Gig Harbor recognizes the efforts of the Alzheimer's Association to raise funds and promote awareness to fight Alzheimer's disease and related disorders, thereby improving the quality of human life for those living with Alzheimer's disease and their caregivers.*

**NOW THEREFORE, BE IT RESOLVED, THAT, I, Jill Guernsey, Mayor of the City of Gig Harbor, do hereby proclaim the month of **September 2014**, as**

### **Alzheimer's Awareness Month**

*in the City of Gig Harbor as a special time to honor those who have been diagnosed, and honor the families and friends, caregivers and the advocates whose lives has been affected. I encourage all citizens to join me in showing support by wearing purple during the designated period. In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 8<sup>th</sup> day of September, 2014.*

---

**Mayor, City of Gig Harbor**

---

**Date**

# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

*WHEREAS, the Constitution of the United States of America, the guardian of our liberties, is a product of reflection and choice, embodying the principles of limited government in a Republic dedicated to rule by law, not by men; and*

*WHEREAS, September 17, 2014 marks the two hundred twenty-seventh anniversary of the drafting of the Constitution of the United States of America by the 1787 Constitutional Convention; and*

*WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate this grand occasion; and*

*WHEREAS, Public Law 915 guarantees the insuring of a proclamation each year by the President of this great country designating September 17 through 23 as Constitution Week,*

*NOW, THEREFORE, I, Jill Guernsey, Mayor of the City of Gig Harbor, hereby declare the week of September 17 through September 23 as*

## CONSTITUTION WEEK

*and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.*

*In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 8th day of September, 2014.*

---

Jill Guernsey, Mayor

---

Date

## PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

**WHEREAS**, September is national Prostate Cancer Awareness Month; and

**WHEREAS**, prostate cancer is the second leading cause of cancer death in men; recognizing that while all men are at risk for prostate cancer, African American and Hispanic men have the highest incidence and mortality of prostate cancer in the world; and

**WHEREAS**, there will be an estimated 232,000 new cases of prostate cancer nationally in the year of 2014, and there will be over 30,000 deaths from prostate cancer in this same year; about one man in six will be diagnosed with prostate cancer during his lifetime according to the American Cancer Society; and

**WHEREAS**, in 2013 there were 5,700 new cases of prostate cancer diagnosed and 730 deaths from prostate cancer in Washington State; and

**WHEREAS**, the Washington State Prostate Cancer Coalition along with the Tacoma Prostate Cancer Support Group provide programs and materials to advocate and educate men to have an informed discussion with their healthcare provider about prostate cancer by age 50 and by age 45 if they have a family history of the cancer,

**NOW, THEREFORE**, I, Jill Guernsey, Mayor of the City of Gig Harbor, do proclaim the month of September, as

### Prostate Cancer Awareness Month

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 8th day of September, 2014.

---

Mayor, City of Gig Harbor

---

Date



**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Point Fosdick Drive NW Sidewalk Improvements – Consultant Services Contracts Amendment and Award (HDR and PSI)

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

**Proposed Council Action:**

**Prepared by:** Stephen Misiurak, P.E.  
City Engineer

1. Authorize the Mayor to execute an Amendment to the Consultant Services Contract with HDR, Inc. in an amount not exceed \$12,985.70 for construction support services related to the Point Fosdick Drive NW Sidewalk Improvement Project; and

**For Agenda of:** September 8, 2014

**Exhibits:** Consultant Services Contract Amendment (HDR), Consultant Services Contract (PSI)

2. Authorize the Mayor to execute a Consultant Services Contract with Professional Service Industries, Inc. in an amount not exceed \$8,517.00 for materials testing and special inspection services related to the Point Fosdick Drive NW Sidewalk Improvement Project.

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Public Works Director:**

**Approved by City Engineer:**

Initial & Date  
 SM 9/4/14  
 RW 9/4/14  
 cis per email 8/27/14  
 JG 9/3  
 JG 9/2/14  
 JG 8/27/14

<b>Expenditure Required</b>	\$21,502.70	<b>Amount Budgeted</b>	\$ 390,000	<b>Appropriation Required</b>	\$0
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**INFORMATION/BACKGROUND**

Award of the construction contract (Schedules A and B) for this project was authorized at the August 11, 2014 council meeting. The contract was awarded to Macnak Construction, LLC in the amount of \$341,018 with an additional \$20,000 authorized as a contingency for potential contract change orders. The project also requires construction support services such as construction staking, materials testing, special inspection and engineering support.

If approved, this council action will:

- Authorize an amendment to the existing consultant services contract with HDR, Inc., to provide engineering support and survey/staking services during construction; and
- Authorize the execution of a consultant services contract with Professional Service Industries, Inc., to provide materials testing and special inspection services on an as-needed basis for quality assurance during construction.

These construction support expenses are shown along with the already approved construction contract expenses under the "Fiscal Consideration" section and represent the total anticipated construction costs.

**FISCAL CONSIDERATION**

This project is included in the City of Gig Harbor 2014 Annual Budget with a budgeted amount of \$390,000 from the Street Capital Fund to construct a sidewalk along Point Fosdick Drive. The budget summary for this item is provided in the table below. All prices include applicable WSST.

2014 Budget amount for Construction – Street Capital, Objective 8	\$ 390,000
Construction Expenses:	
Bid Schedule A – west side of Point Fosdick Drive	\$ 203,643
Bid Schedule B – east side of Point Fosdick Drive	\$ 137,375
Change Order Authority for Public Works Contract	\$ 20,000
Construction Support Services Engineering & Construction Staking – HDR, Inc.	\$ 12,985
Consultant Services Contract for Testing and Special Inspection – PSI	\$ 8,517
Total Construction Expenses:	\$ 382,520

**BOARD OR COMMITTEE RECOMMENDATION**

The Public Works Committee received a verbal update on the project status at the September 8, 2014 meeting.

**RECOMMENDATION/MOTION**

1. Authorize the Mayor to execute an amendment to the Consultant Services Contract with HDR, Inc. in an amount not exceed \$12,985.70 for construction support services related to the Point Fosdick Drive NW Sidewalk Improvement Project; and
2. Authorize the Mayor to execute a Consultant Services Contract with Professional Service Industries, Inc., in an amount not exceed \$8,517.00 for materials testing and special inspection services related to the Point Fosdick Drive NW Sidewalk Improvement Project.



**COPY**

**FIRST AMENDMENT  
TO  
CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
HDR ENGINEERING, Inc.**

THIS FIRST AMENDMENT is made to that certain Consultant Services Contract dated February 11, 2014, (the "Agreement"), by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and HDR Engineering, Inc., a limited liability company organized under the laws of the State of Washington (hereinafter the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in completing the Design for Point Fosdick Drive NW Sidewalk Project and desires to revise consultation services in connection with the project; and

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

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

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

**Section 2. Compensation.** Section 2(A) of the Agreement is amended to increase compensation to the Consultant for the work to be performed as described in **Exhibit A** in an amount not to exceed Twelve Thousand Nine Hundred Eighty-Five Dollars and Seventy Cents (\$12,985.70), as shown in **Exhibit A**, attached to this Amendment and incorporated herein,

**Section 3. Duration of Work.** Section 4 of the Agreement is amended to extend the duration of this Agreement to March 1, 2016,

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  
25<sup>th</sup> day of August, 2014.

CONSULTANT

By: Karen [Signature]  
Its Principal

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## **CITY OF GIG HARBOR**

### **SCOPE OF SERVICES**

#### **Point Fosdick Drive NW Sidewalk Project**

#### **Amendment 1**

#### **Construction Support Services**

- Construction Survey Staking
- Construction Support Services
- Assistance with Record Drawings

Prepared by:

**HDR Engineering Inc.**  
4717 97<sup>th</sup> Street NW  
Gig Harbor, WA 98332

## **Exhibit B Scope of Services**

### **Point Fosdick Drive Sidewalk Project Amendment**

#### **I. Introduction**

During the term of this AGREEMENT, HDR Engineering (CONSULTANT) will perform professional services for the City of Gig Harbor (CITY) in association with the Point Fosdick Drive Sidewalk project. This document will be used to plan, conduct, and complete the work described.

This scope of work is a supplement to the professional services contract between the City of Gig Harbor and HDR Engineering, Inc for the Point Fosdick Drive NW Sidewalk Project (Original AGREEMENT). During the term of this amended AGREEMENT, the CONSULTANT together with PriZm Surveying (SUBCONSULTANT) will perform professional services for the CITY in connection with the Point Fosdick Improvement Project. Work items include:

- Project Management
- Construction Survey Staking
- Construction Support Services
- Preparation of Record Drawings

The work identified above is authorized by the signing of this amendment to the original AGREEMENT. Work on subsequent phases or additions to this project may be authorized by supplements to the original AGREEMENT, after negotiation and approval of any additional scope of service and budget.

The CONSULTANT's work for this phase of project is expected to start in August 2014 and be completed by December of 2014. The CONSULTANT's work performed during this period is identified in Section III of this Scope of Services for the Point Fosdick Sidewalk Project.

The CONSULTANT will provide Construction Support Services and Construction Survey Staking during the construction of the project. The project includes the construction of the following features:

- Pedestrian Sidewalk
- Low Impact Development (LID) Storm Water Run Off Features as follows:
  - Pervious Concrete Installation
  - LID bio-filtration swale
- Pedestrian illumination system

## **II. Design Criteria**

The design criteria will remain unchanged from the original AGREEMENT. The CITY will designate the basic premises and criteria for the design. Reports and plans, to the extent feasible, will be developed in accordance with the scope of services and amendments as of the date of the signing of this AGREEMENT. Changes in any design standards or requirements after work has begun may result in Extra Work.

## **III. Detailed Scope of Services**

### **Task 1 Project Management/CONSULTANT Coordination**

This task consists of planning, performing, and controlling the various elements of the project to meet or exceed the needs and expectations of the CITY and other project stakeholders.

#### ***Assumptions:***

The CONSULTANT's project manager will meet with the CITY's project manager on a monthly basis throughout the duration of the project. Estimated duration is 4 months.

The CONSULTANT will submit monthly invoices with a written summary of project progress completed to-date and activities expected to be completed during the next invoicing period.

#### ***Task 1.1 Project Reporting/Project Management***

This task consists of Administration of the project and coordinating with the CITY to facilitate efficient progress and timely completion. Elements of work in this task include:

- Project Start Up/Close out. This work will consist of updating the project file structure for storing relevant project documentation. This work also includes closing out the project, compiling and submitting all required documents to the CITY and closing project files.
- Develop and update a baseline project construction schedule
- Develop and submit monthly progress reports/invoices
- Evaluate and monitor project budget
- Update of Project Guide
- Develop and maintain the communication plan between the CITY, team members and sub-consultants

- Establish a collaborative project approach and resolution strategies regarding project challenges
- Be an extension of CITY staff and actively promote the project forward

**Task 1.2 Meetings**

In addition to attending specific meetings as described in other tasks, the CONSULTANT project manager will attend the following meetings:

Meetings	Purpose(Frequency)	Preparation/Documentation
CITY/CONSULTANT	Coordination meetings to discuss progress, action items, budget, schedule, upcoming issues (monthly)	None anticipated

**Assumptions**

- There will be 4 CITY/CONSULTANT Meetings
  - CITY/CONSULTANT meetings are assumed to be 1 hour in duration and be attended by the CONSULTANT Project Manager.
  - Meetings will be considered face to face meetings held at the City of Gig Harbor. If at the request of the CITY project manager, meetings may be conducted as conference call meetings held between the CITY/CONSULTANT project managers.

**Task 1 Deliverables**

- Monthly progress reports and invoicing (1 copy each month)

**Task 2 Construction Survey Staking**

This work will consist of furnishing one time to the contractor all principal lines, grades and measurements deemed necessary by the CITY and section 1-05.4(1) of 2005 APWA supplement to the WSDOT Standard Specifications.

**Task 2.1 Construction Survey Staking**

The Sub-CONSULTANT will provide construction staking based upon the approved construction drawings for the Point Fosdick Pedestrian Improvement project.

- The CONSULTANT will have the project surveyor (PriZm Surveying) research Pierce County right-of-way and easement records and Department of Natural Resources records to substantiate existing boundary control, property ownerships, Right-of-Way limits, and survey control monumentation within the limits of the project area.

- The SUB-CONSULTANT will provide horizontal and vertical survey control adequate to control the Construction Survey.
- The Sub-CONSULTANT will verify and identify the existing right-of-way, adjacent property boundaries, easements and encumbrances.
- The Sub-CONSULTANT will furnish construction staking one time of all principal lines, grades and measurements deemed necessary by the CITY. This shall consist of the following:
  - Slope stakes for establishing grading
  - Curb grade stakes
  - Center line finish grade staking (as needed)
  - Offset points to establish line and grade for underground utilities such as water, sewers and storm drainage features.
- The sub-CONSULTANT shall provide to the CITY survey data cut sheet of the survey info provided.

Assumptions:

*\*the Contractor will be responsible for coordinating "one-call" utility locates within the project limits.*

### **Task 3 Construction Support Services**

The CONSULTANT will assist CITY staff as requested and budgeted during the construction phase of the project. This assistance in general will consist of submittal review and recommendation, providing design clarifications if requested by the CITY, and reviewing and provided recommended responses for project Request for Information requests.

#### **Task 3.1 Construction Support Services**

The CONSULTANT will provide construction support services to the CITY through the construction of the sidewalk project. Those base services are assumed to be the following activities:

- Attend a pre-construction meeting
- Attend weekly construction meetings (when requested by the CITY)
- Develop resolution strategies with the CITY regarding project challenges
- Review shop drawings and project material submittals (as requested by CITY).
- Review requests for information (as requested of the CITY).

#### **Task 3.2 Record Drawings Assistance**

The CONSULTANT will review and provide comments/recommendations on the CITY prepared "Record Drawings" for the Point Fosdick Sidewalk Project.

### **Task 3.2 Department of Ecology Project Documentation Assistance**

The CONSULTANT will review and provide assistance to the CITY for project conformance and completion documentation required by Department of Ecology.

#### Assumptions:

*\*CONSULTANT will have no responsibility for the execution of the bidding process or management/ observation of the Contractor during construction.*

*\*CONSULTANT will provide responses to Client technical questions only in written form of an email and/or PDF drawing sketches.*

*\*CONSULTANT will not prepare any formal bid document or construction contract documentation (such as addenda, requests for information, change orders), but will provide input and feedback to Client as requested by Client within the available labor hours budgeted for this task.*

*\*CITY will provide one consolidated marked up set of drawing changes to CONSULTANT that CITY wishes to have added to the "Record Drawings". Consultant is not responsible for the accuracy of the Client provided information.*

*\*Weekly construction meetings are assumed to be 1 hour in duration. The CONSULTANT will attend these meetings at the request of the CITY and assumed to be only as needed to assist in resolving project challenges.*

#### Task 3 deliverables

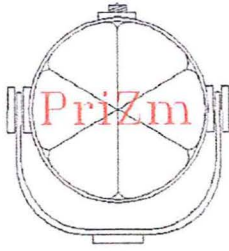
*Record Drawings based on CITY provided plan markups.*



City of Gig Harbor Point Fosdick Sidewalk Improvement Project (Construction Support) HDR Engineering Inc. - HOURLY ESTIMATE						
WORK ELEMENT	Principal	Project Manager	Design Lead Civil	Project Controller	TOTAL HOURS	TOTAL Labor Cost
3.1	Ron Ohlsen	Gus Garcia	Brad Shea	Liya		
Loaded Labor Rate	252.41	149.71	170.85	134.95		
<b>WORK ELEMENT 1: Project Management</b>						
1.1 Reporting and Management	1	1		8	10	
1.2 Meetings		1			1	
1.3 Project Schedule		1			1	
Subtotal Work Element 1	1	3	0	8	12	
HDR Labor	252.41	449.13		1079.6		1,781.14
<b>WORK ELEMENT 2: Construction Survey</b>						
2.1 Construction Surveying			1		1	
2.2 Cut sheet preparation					0	
Subtotal Work Element 2	0	0	1	0	1	
HDR Labor			170.85			170.85
<b>WORK ELEMENT 3: Construction Support</b>						
3.1 Preconstruction Meeting		1	2		3	
3.2 Support as requested and budgeted		6	8		14	
3.2 Record Drawing Assistance		4	4		8	
					0	
					0	
					0	
					0	
Subtotal Work Element 3	0	11	14	0	25	
HDR Labor		1646.81	2391.9			4,038.71
<b>SUBTOTAL</b>						
	1	14	15	8	38	
<b>GRAND TOTAL HOURS</b>						
	1	14	15	8	38	5,990.70
	252.41	2095.94	2562.75	1079.6		

HDR Labor Cost		5,990.70
<b>Direct Expenses:</b>		
Mileages: @0.56/per mile	150.00	
Permit fee		
Conference Call	0.00	
Printing cost	0.00	150.00
<b>HDR Total</b>		<b>6,140.70</b>
<b>Subconsultants:</b>		
PriZm Surveying	6,845.00	
		6,845.00
<b>Total Cost</b>		<b>12,985.70</b>

Loaded labor = 3.1 x DL rate + \$3.70/hr tech



**PRIZM**  
**SURVEYING INC.**

P.O. Box 110700  
Tacoma, WA 98411  
Office: 253-404-0983  
Fax: 253-404-0984  
[gletzring@prizmsurveying.com](mailto:gletzring@prizmsurveying.com)  
[www.prizmsurveying.com](http://www.prizmsurveying.com)

---

Mr. Gus Garcia  
HDR One Company / Many Solutions  
4717 97<sup>th</sup> Street NW  
Gig Harbor, WA 98332

August 8, 2014

Re: Point Fosdick Drive N.W. Construction Survey Estimate.

Dear Mr. Garcia,

**PriZm Surveying** is pleased to provide you with this proposal for Surveying Services. The below estimate is based upon our regular rates, and does not cover any Prevailing Wage requirements (if such exist for this project). The following is our proposed scope of work for the project.

**Task 1 –Construction Surveying:**

This estimate is based on staking each item one time only, unless otherwise noted. Offsets will be coordinated with the contractor.

1. Request electronic CADD plans of this project from the client.
2. Using the plans provided for the project, we will calculate and prepare a work sheet for field use identifying positions for field staking.
3. Field layout of proposed construction limits & erosion control.
4. Field layout and grade of proposed concrete sidewalk.
5. Field layout of proposed block walls.
6. Field layout of the proposed channelization.
7. Reduce the field notes, check and verify positional tolerance.
8. Provide field note copies and/or cut sheets to the contractor as necessary.

**The estimated cost for Task 1 services is \$6,845.00**

- Professional Land Surveyor .5 hours @ \$95.00 /hour
- 2-man survey crew 46 hours @ \$125.00 /hour
- Survey Technician 6 hours @ \$85.00 /hour
- Administration 4 hours @ \$60.00 /hour
- Materials \$300.00

Point Fosdick Drive N.W.

Page 2 of 2

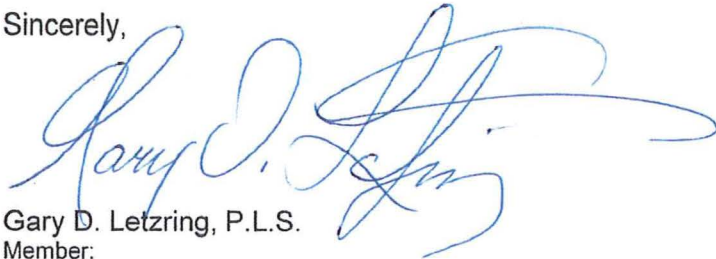
PriZm Surveying has tried to include all items pertinent to this project, but if additional staking or restaking is necessary, our regular rates will apply as follows:

- 2-man survey crew \$125 an hour
- GPS survey crew \$137.50 an hour
- Licensed Land Surveyor \$95 an hour
- Survey Technician \$85 an hour

PriZm Surveying carries policy limits for errors and omission insurance at \$1,000,000 and liability insurance at \$1,000,000

We look forward to working with you on your project, and if you have any questions or comments regarding this proposal, please call me at (253) 404-0983.

Sincerely,



Gary D. Letzring, P.L.S.

Member:

Land Surveyor's Association of Washington,  
National Society of Professional Land Surveyors,  
American Congress on Surveying and Mapping

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
PROFESSIONAL SERVICE INDUSTRIES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Professional Service Industries, Inc. (PSI) a corporation organized under the laws of the State of Washington (the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the [insert description of work] 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 Eight Thousand Five Hundred Seventeen Dollars and Zero Cents (\$8,517.00) 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 B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

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

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by March 2015; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

**7. Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

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

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

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

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

**8. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 per project aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 per occurrence. All policies and coverages shall be by an 'A' rated

company licensed to conduct business in the State of Washington. If such coverage is written on a claims made form, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City of Gig Harbor.

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

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

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

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

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

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

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

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

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

14. **Resolution of Disputes and Governing Law.**

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City 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:  
Professional Service Industries, Inc.  
ATTN: Bret Reid, P.E.  
10025 South Tacoma Way  
Lakewood, WA 98499  
Phone: 253-589-1804

City of Gig Harbor  
ATTN: Stephen Misiurak  
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. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 2nd  
day of September, 2014.

CONSULTANT

CITY OF GIG HARBOR

By:   
Its: Branch Manager

By: \_\_\_\_\_  
Mayor Jill Guernsey

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



## EXHIBIT A

July 3, 2014

Mr. Kyle Neiman  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Phone: (253) 851-6174  
Fax: (253) 853-7597

Email: [neimank@cityofgigharbor.net](mailto:neimank@cityofgigharbor.net)

Re: Proposal for Construction Materials Testing and Special Inspection Services  
Point Fosdick Drive NW Sidewalk Improvements  
Gig Harbor, Washington  
PSI Proposal Number 0742-127371

Dear Mr. Neiman:

Professional Service Industries, Inc., (PSI), is pleased to submit the following proposal for providing construction materials testing and special inspection services for the above referenced project.

PSI is operated by registered professional engineers and meets criteria set forth by (ASTM E-329) and the American Association of Laboratory Accreditation (A2LA). In addition we are also accredited by the American Association of State Highway and Transportation Officials (AASHTO) and the US Army Corps of Engineers (USACE). The International Code Council (ICC) and the Washington Association of Building Officials (WABO) certify our inspectors and technicians. PSI understands that our services will consist of:

- Soils Compaction Testing
- Testing of Concrete
- Hot Mix Asphalt Compaction Testing

PSI proposes to provide the described services on a unit-price basis. Total fees will be determined by the actual amount of technical time expended for this project and the actual quantity of laboratory tests performed. For preliminary budgeting purposes, PSI has prepared the following estimated budget for testing services based on information supplied on [www.bxwa.com](http://www.bxwa.com), and a telephone conversation on July 3, 2014, which included a review of the construction plans, Sheets 1 to 24, and specifications dated June 2014. PSI retained electronic copies of the project documents. The work performed by PSI will depend on the actual construction schedule. All work will be performed at the direction of the contractors' representative on an **On-Call** basis. PSI requires that service requests be made prior to the close of business the day preceding the activity. A project manager fee may be assessed to coordinate service requests that are made without adequate notification. Prior to starting work on the project it would be beneficial to meet to discuss a detailed schedule of your testing needs after which we can more accurately determine the total project testing budgets.

Please note that our services do not include supervision or direction of the actual work. Also, be aware that neither the presence of our field representative nor the observation and testing by our firm shall imply PSI's responsibility for defects discovered in the construction work. It is understood that

our firm will not be responsible for job or site safety on this project. The job site safety program will be the sole responsibility of others. PSI will observe and follow the portions of the program as related to our services.

### **PROJECT DESCRIPTION**

The project will generally consist of the construction of a porous sidewalk and bio retention swale along the east and west sides of Point Fosdick Drive NW. The project work will generally consist of clearing and grubbing the Right of Way, grading for bio retention swales, placement and compaction of subbase materials, placement of porous pavement for sidewalks, landscaping, and maintenance of disturbed areas. The project is split into two distinct Schedules. Schedule A is the primary schedule and is the portion of work on the west side of Point Fosdick Drive NW. Schedule B is an alternate to the work and consists of the work on the east side of Point Fosdick Drive NW.

### **DEFINED SCOPE OF WORK**

Provide Special Inspection and materials testing in accordance with the 2012 International Building Code and project specifications as directed by the client and/or their designated site representative. Special inspections anticipated are soils/asphalt compaction, reinforced concrete construction, structural masonry, structural steel welding and bolting, and lateral framing construction. The following is a description of the anticipated services.

**Soils Compaction and Control Services** – The on-site inspector will observe and monitor compaction fills. Soils and base materials will be sampled for laboratory analysis for compliance with the project specifications. Laboratory analysis can typically include maximum dry density determination (Proctor) and grain size distribution (sieve). The on-site inspector will monitor fill operations and perform in-place density testing by nuclear densometer.

Professional Service Industries, Inc. will not provide the role of Geotechnical Engineer of Record.

**Asphalt Compaction** - The on-site inspector will monitor delivery of hot mix asphalt and verify tickets for compliance with the approved mix design. The hot mix asphalt will be monitored for temperature as delivered and placed. During placement of hot mix asphalt the on-site inspector will perform in-place compaction by use of a nuclear densometer. Samples of the hot mix asphalt delivered to the site will be tested for the Theoretical Maximum Specific Gravity (AASHTO T 209). Also, the material will have an Extraction (AASHTO T 308) and Gradation (AASHTO T 11 & T 27) performed for compliance with the approved mix design requirements.

The Hot Mix Asphalt, per section 5-04.3(7)A3 is considered a commercial evaluation, and therefore, sampling and testing is at the option of the Engineer.

**Cast-In-Place Concrete** - The on-site inspector will monitor placement of cast-in-place concrete for adherence to the project specifications. Concrete will be checked for proper mix design, water/cement ratio, batch weights, as well as proper methods of placement and consolidation. Slump, temperature, air content and compressive strength will be tested at intervals designated in the project specifications.

**Porous Concrete** - The on-site inspector will monitor placement of cast-in-place concrete for adherence to the project specifications. Porous concrete will be checked for proper mix design,

City of Gig Harbor  
PSI Proposal No. 0742-127371  
July 3, 2014

water/cement ratio, batch weights, as well as proper methods of placement and consolidation. During placement, the porous concrete will be tested for density and voids per ASTM C 1688. As an option for compressive strength of the porous concrete, a test panel constructed by the contractor can be utilized for cast-in-place cylinders. The cast-in-place cylinders would be molded in the same manner as the placement of the porous concrete, and removed at a later time for compressive strength testing.

## EXHIBIT B

### PROJECTED BUDGET ESTIMATE

The projected rates below are for special inspections and materials testing for the Point Fosdick Drive NW Sidewalk Improvements Project in Gig Harbor, Washington. Based upon the anticipated scope of work, the total estimated budget is **\$4,487.00 for Schedule A, \$4,030 for Schedule B, and \$8,517.00 combined**. The attached cost estimate is anticipated to be used as a budget for services only it does not represent a maximum or minimum fee. Services requested but not listed herein will be billed at our standard unit rates. This proposal is subject to the attached terms and conditions.

A representative of PSI will be contacting you to confirm receipt of this proposal and to discuss any questions that you may have. PSI appreciates the opportunity to offer its services and looks forward to working with you on this project

Respectfully submitted,  
**Professional Service Industries, Inc.**



Bret Reid, P.E.  
Branch Manager



Daniel Kuhn  
Project Manager

Attachments: Estimated Cost Budget  
Schedule of Service and Fees  
General Conditions

ANTICIPATED PROJECT BUDGET FOR POINT FOSDICK DRIVE NW SIDEWALK IMPROVEMENTS					
TYPE		UNITS	UNIT RATE		TOTAL
<b>Schedule A</b>					
<b>Soil/Asphalt Compaction Testing</b>					
Soils Compaction Testing	40	hours	\$48.00	/ hr	\$1,920.00
Asphalt Compaction Testing	8	hours	\$48.00	/ hr	\$384.00
Proctor	3	each	\$195.00	/ea	\$585.00
Sieve Analysis	3	each	\$95.00	/ea	\$285.00
Rice Specific Gravity	1	each	\$105.00	/ea	\$105.00
Extraction/Gradation	1	each	\$235.00	/ea	\$235.00
Nuclear Gauge Usage Fee	10	each	\$50.00	/ea	\$500.00
Vehicle Usage Fee	10	each	\$20.00	/ ea	\$200.00
Report Preparation & Distribution	10	each	\$20.00	/ ea	\$200.00
Project Management	5	hours	\$90.00	/ hr	\$450.00
					<b>Subtotal \$2,944.00</b>
<b>CONCRETE</b>					
Concrete Technician	16	each	\$48.00	/ ea	\$768.00
Concrete Compressive Strength Samples	15	each	\$20.00	/ ea	\$300.00
Sample Pick Up	3	each	\$45.00	/ ea	\$135.00
Vehicle Usage Fee	4	each	\$20.00	/ ea	\$80.00
Report Preparation & Distribution	4	each	\$20.00	/ ea	\$80.00
Project Management	2	hours	\$90.00	/ hr	\$180.00
					<b>Subtotal \$1,543.00</b>
<b>Schedule A Subtotal</b>					<b>\$4,487.00</b>

<b>Schedule B</b>					
<b>Soil/Asphalt Compaction Testing</b>					
Soils Compaction Testing	36	hours	\$48.00	/ hr	\$1,728.00
Asphalt Compaction Testing	8	hours	\$48.00	/ hr	\$384.00
Proctor	3	each	\$195.00	/ea	\$585.00
Sieve Analysis	3	each	\$95.00	/ea	\$285.00
Rice Specific Gravity	1	each	\$105.00	/ea	\$105.00
Extraction/Gradation	1	each	\$235.00	/ea	\$235.00
Nuclear Gauge Usage Fee	9	each	\$50.00	/ea	\$450.00
Vehicle Usage Fee	9	each	\$20.00	/ ea	\$180.00
Report Preparation & Distribution	9	each	\$20.00	/ ea	\$180.00
Project Management	4.5	hours	\$90.00	/ hr	\$405.00
					<b>Subtotal \$2,809.00</b>
<b>CONCRETE</b>					
Concrete Technician	12	each	\$48.00	/ ea	\$576.00
Concrete Compressive Strength Samples	15	each	\$20.00	/ ea	\$300.00
Sample Pick Up	2	each	\$45.00	/ ea	\$90.00
Vehicle Usage Fee	3	each	\$20.00	/ ea	\$60.00
Report Preparation & Distribution	3	each	\$20.00	/ ea	\$60.00
Project Management	1.5	hours	\$90.00	/ hr	\$135.00
					<b>Subtotal \$1,221.00</b>
					<b>Schedule B Subtotal \$4,030.00</b>
<b>BUDGET TOTALS</b>					
<b>TYPE</b>					<b>TOTAL</b>
Schedule A					\$4,487.00
Schedule B					\$4,030.00
<b>ANTICIPATED PROJECT TOTAL</b>					<b>\$8,517.00</b>
<b>ASSUMPTIONS</b>					
1. Gig Harbor representatives will direct PSI as to the amount and frequency of tests.					
2. Coring may be used for compressive strength of porous concrete at the standard unit rates.					



**SCHEDULE OF SERVICES AND FEES**  
Effective: January 1, 2014

**A. PROFESSIONAL SERVICES**

Special Inspection <sup>1</sup>	48.00/hr
Compaction Testing, Densometer/Sand Cone (ASTM D 6938, D 1556 D-2950)	48.00/hr
Project Management, Report Review & Evaluation	90.00/hr
Staff Geotechnical Engineer/Geologist	125.00/hr
Project Geotechnical Engineer/Geologist	150.00/hr
Senior Geotechnical Engineer	175.00/hr
Administrative Staff/Report Preprocessing	20.00/visit

**B. STRUCTURAL STEEL**

Special Inspection, Structural Steel <sup>2</sup>	60.00/hr
Non-Destructive Examination ( UT, MT, PT ) <sup>3</sup>	75.00/hr
Tension Calibrator	85.00/day
Ground/Concrete Penetrating Radar (steel detection)	240.00/hr

**C. CONCRETE LABORATORY TESTING**

Compression Strength Test, Each, (ASTM C 39)	20.00/ea
Compression Strength Test, Cast/Delivered by Others, Each, ( ASTM C 39)	55.00/ea
Compression Strength Test for Core Specimen, Each, (ASTM C 42, C 513)	50.00/ea
Flexural Strength Test, Each, (ASTM C 78, C 293)	75.00/ea
Density Test, Normal & Light Weight Concrete, Each Specimen (ASTM C 642)	40.00/ea
Splitting Tensile Test, Each, (ASTM C 496)	75.00/ea
Concrete Cylinder Molds, Each	5.00/ea
Concrete Coring	90.00/hr
Penetration Resistance of Hardened Concrete (ASTM C 803)	90.00/hr
Penetration Resistance of Hardened Concrete charges per set of three	35.00/set
Concrete Mix design Quoted Per Project	Quoted Per Project
Concrete Batchplant Certification	Quoted Per Project

**D. SHOTCRETE LABORATORY TEST**

Compression Test, Three Cores Per Panel (ASTM C 1140)	145.00/ea
Additional Cores, Each	50.00/ea

<sup>1</sup> Reinforced Concrete, Reinforced Masonry, Pre-Stressed and Post-Tensioned Concrete  
<sup>2</sup> Roofing, Nailing, Wood Structures, Piling, Sprayed-on Fireproofing, Shotcrete, and Concrete Batchplant  
<sup>3</sup> Ultrasonic, Magnetic Particle and Dye Penetrant





**SCHEDULE OF SERVICES AND FEES**  
Effective: January 1, 2014

**E. MASONRY LABORATORY TESTING**

Mortar Compressive Strength Test, Each, (ASTM C 780)	22.00/ea
Grout Compression Strength Test, Each, (ASTM C 1019)	22.00/ea
Prisms, Grouted/Ungouted, 8"x8"x16", Each, ( UBC 21-17)	110.00/ea
Masonry Units, Each, (ASTM C 140)	95.00/ea
Youngs Modulus of Elasticity (ASTM E 111)	220.00/ea
Efflorescence Test (ASTM C 67 Article 10)	330.00/ea
Freezing and Thawing (ASTM C 67, Article 8, Maximum Cycle)	2,200.00/ea
Brick Compressive Strength Test (ASTM C 67, Article 6)	120.00/ea

**F. SOILS LABORATORY TESTING**

Sieve Analysis (ASTM C 136, C 117, D 1140)	95.00/ea
Hydrometer Analysis (ASTM D 422)	235.00/ea
Moisture/Density Relationship (ASTM D 698, D 1557)	195.00/ea
Sand Cone Density Test, Each, (ASTM D 1556)	40.00/ea
Natural Moisture Content (ASTM D 2216).	40.00/ea
Organic Content Test (ASTM D 2974)	160.00/ea
Permeability (ASTM D 5084)	500.00/ea
Permeability Test, Constant Head (ASTM D 2434)	290.00/ea
Specific Gravity (ASTM D 854)	105.00/ea
Atterberg Limits (ASTM D 4318)	220.00/ea
Visual Soil Classification (ASTM C 2488)	40.00/ea
California Bearing Ratio (ASTM D 1883)	550.00/ea
Topsoil PH (ASTM D 4972)	100.00/ea

**G. AGGREGATE LABORATORY TESTING**

Clay Lumps and Friable Particles (ASTM C 142)	125.00/ea
Organic Impurities (ASTM C 40)	145.00/ea
Fracture Face Count (WSDOT 103, ASTM D 5821)	158.00/ea
Sand Equivalent (ASTM D 2419)	100.00/ea
Sulfate Soundness (ATSM C 88)	500.00/ea
Abrasion (ASTM C 131, C 535)	185.00/ea
Unconfined Compressive Test, Intact Rock Cores, Each, (ASTM D 2938)	130.00/ea
Coarse Aggregate Specific Gravity (ASTM C 127)	85.00/ea
Fine Aggregate Specific Gravity (ASTM C 128)	85.00/ea
Aggregate Unit Weight (ASTM C 29)	100.00/ea
Resistivity (ASTM D 2844)	230.00/ea
Ethylene Glycol Expansive Breakdown CRD (C-145)	550.00/ea
Degradation (WSDOT T-113)	245.00/ea
Weight of Slag	200.00/ea
Reactive Aggregates (ASTM C 1260)	400.00/ea
Concrete Freezing – Thaw Cycles (ASTM C 666)	5,000.00/ea
Lightweight Particles	200.00/ea
Vibrating Table Maximum Density (ASTM D 4253)	350.00/ea



**SCHEDULE OF SERVICES AND FEES**  
Effective: January 1, 2014

Vibrating Table Minimum Density (ASTM D 4254)	350.00/ea
Flat & Elongated Particles (ASTM D 4791)	150.00/ea

**H. ASPHALTIC CONCRETE**

Marshal Stability and Flow, 3 Specimens (ASTM D 1559, AASHTO T 245)	260.00/ea
Rice Density (ASTM D 2041, AASHTO T 245)	100.00/ea
Bulk Specific Gravity, Cores, (ASTM D 2726, AASHTO T 166)	70.00/ea
Extraction/Gradation (ASTM D6307) (AASHTO T308)	215.00/ea
Mix Design, Marshal Method, 3 Trials and Specimens (ASPHALT INST. MS 2)	Quoted Per Project
Mix Design, Marshal Method, 6 Trials and Specimens (ASPHALT INST. MS 2)	Quoted Per Project

**I. OTHER MATERIALS**

Sprayed-on Fireproofing Dry Unit Weight (ASTM E 602)	58.00/ea
Adhesion/Cohesion Test (ASTM E 726)	50.00/ea
Anchor Bolt Pull Test, One Man Crew	85.00/hr
Anchor Bolt Pull Test, Two Man Crew	125.00/hr
Concrete Floor Moisture Test, Each	45.00/ea
Pachometer Inspection	90.00/hr

**J. MISCELLANEOUS**

All Outside Expenses ( i.e., Subsistence, Equipment Rental, Materials, Sub contract, Airfare, etc.)	Cost Plus 30%
Vehicle Usage Fee	20.00/trip
Nuclear Density Gauge (Daily)	50.00/day
Compressive Strength Sample Pick-up / Delivery	45.00/ea
Floor Flatness Testing	95.00/hr

**Remarks:**

1. *Inspection services overtime is charged at 1.5 times the basic rate. Overtime rate applies to all work in excess of 8 hours per day, 40 hours per week, work performed before 7:00 AM or after 3:30 PM, and on Sundays & Saturdays. Work performed during PSI-recognized holidays is charged 2.0 times the basic rate.*
2. *To better serve our clients field inspection services should be scheduled by 3:30 PM the day before services are required.*
3. *A minimum of <sup>2</sup> hours will be charged portal to portal per assigned field inspector and any late cancellations. All time charged to the project will be billed in full hour increments.*
4. *All contaminated soils and material tests will be charged twice the amount indicated in this fee schedule and the material will be returned to client for disposal, after the test is performed.*
5. *All samples will be disposed of after completion of testing. Samples with Non-conformance test results will be retained for 10 days after completion of testing.*
6. *Should it be necessary, tests not capable of being performed in our Seattle laboratory will be sub-contracted to a qualified testing provider. The use of outside testing sources shall not jeopardize quality and shall be clearly identified on the final report should they be used.*
7. *ACI 301-10 section 1.6.2.2.d, states that the contractor is responsible for "[providing] space and source of electrical power on the project site for facilities to be used for initial curing of concrete test specimens as required by ASTM C31/C31M, for the sole use of the Owner's quality assurance testing agency."*
8. *PSI understands the term "space" to mean "an environmentally controlled and secure space" for initial curing in the field, and the contractor is required to provide electricity and security of the space. Accordingly, this proposal does not include provisions or the associated fee for PSI to provide this service. The initial curing box can be provided by PSI at the project site for additional fees which shall include the daily rental cost and associated mobilization cost of the curing box. In the event the curing box is stolen or damaged as the site security is the responsibility of the contractor, PSI shall invoice our client the cost of the same at cost plus 15%.*
9. *The services proposed herein are conventional in nature and do not include any special services that may lessen the risk of conditions that can contribute to moisture, mold or other microbial contaminate amplification in buildings. You may be aware that mold is abundant throughout nature and is comprised of a wide variety of microscopic fungi. Due to its nature, the potential for mold infestations cannot be completely eliminated. However, PSI offers a wide array of professional Moisture, Waterproofing, Roofing and Indoor Air Quality/Mold Consulting services that can help minimize the likelihood of future occurrences. PSI is interested in discussing these service options with you to suit your specific needs and project objectives. If requested, PSI will submit a proposal for these additional services under a separate cover for your review and authorization.*



**Business of the City Council  
City of Gig Harbor, WA**

**Subject: Street Names – Harbor Hill N-2**

**Proposed Council Action: Approve the naming of the streets within the Olympic Property Group’s Harbor Hill Phase N-2 Final Plat as described.**

**Dept. Origin:** Building/Fire Safety

**Prepared by:** Paul Rice  
Building Official/Fire Marshal

**For Agenda of:** September 8, 2014

**Exhibits:** Map and request letter

Initial & Date

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Department Head:**

*PR 9-14-14*  
*RW 9/3/14*  
*N/A*  
*N/A*  
*PR 9/3/2014*

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

The residential plat of Harbor Hill Phase N-2 is located on the North side of Borgen Blvd. The developer has requested to name the public streets within the development as; **Arrowhead Drive, Copper Court, Lena Place, Buckhorn Place, and Olympus Way**. These names are consistent with the approved Olympic Peaks for the Harbor Hill development. The development is not within the “historic name area”.

GHMC 12.12.030 (K) states that “All proposed names for new or existing ways-of-travel and private roads must be reviewed and approved by the Gig Harbor City Council”.

Staff has reviewed the applicable codes and finds the names of the proposed roadways within the Harbor Hill Phase N-2 Final Plat are appropriate and consistent with City requirements.

**FISCAL CONSIDERATION**

There is no fiscal impact to the City.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to: Approve the naming of the streets within the Olympic Property Group’s Harbor Hill Phase N-2 Final Plat as described.**



11505 Burnham Drive NW, Suite 103  
Gig Harbor, WA 98332  
P 253-851-7009  
www.harbor-hill.com  
www.orm.com

August 22, 2014

Paul Rice  
**City of Gig Harbor**  
3510 Grandview Street  
Gig Harbor, WA 98335

RECEIVED BY  
AUG 26 2014  
CITY OF GIG HARBOR

Re: Harbor Hill N-2 Final Plat Street Names

Dear Paul:

Last year the Council approved our use of names of Olympic Peaks for street names in Harbor Hill. For our N-2 Phase, we are submitting for consideration the following street names; Arrowhead Drive, Copper Court, Lena Place, and Buckhorn Place. See the attached Exhibit showing the streets and names requested.

If you have any questions, or need any additional information, please contact me at 253-851-7009, or in my absence please contact Brian Hansen at 425-821-8448.

Sincerely,

John Chadwell  
Vice President – Land Development  
**OPG Properties LLC**  
*A Pope Resources Company*

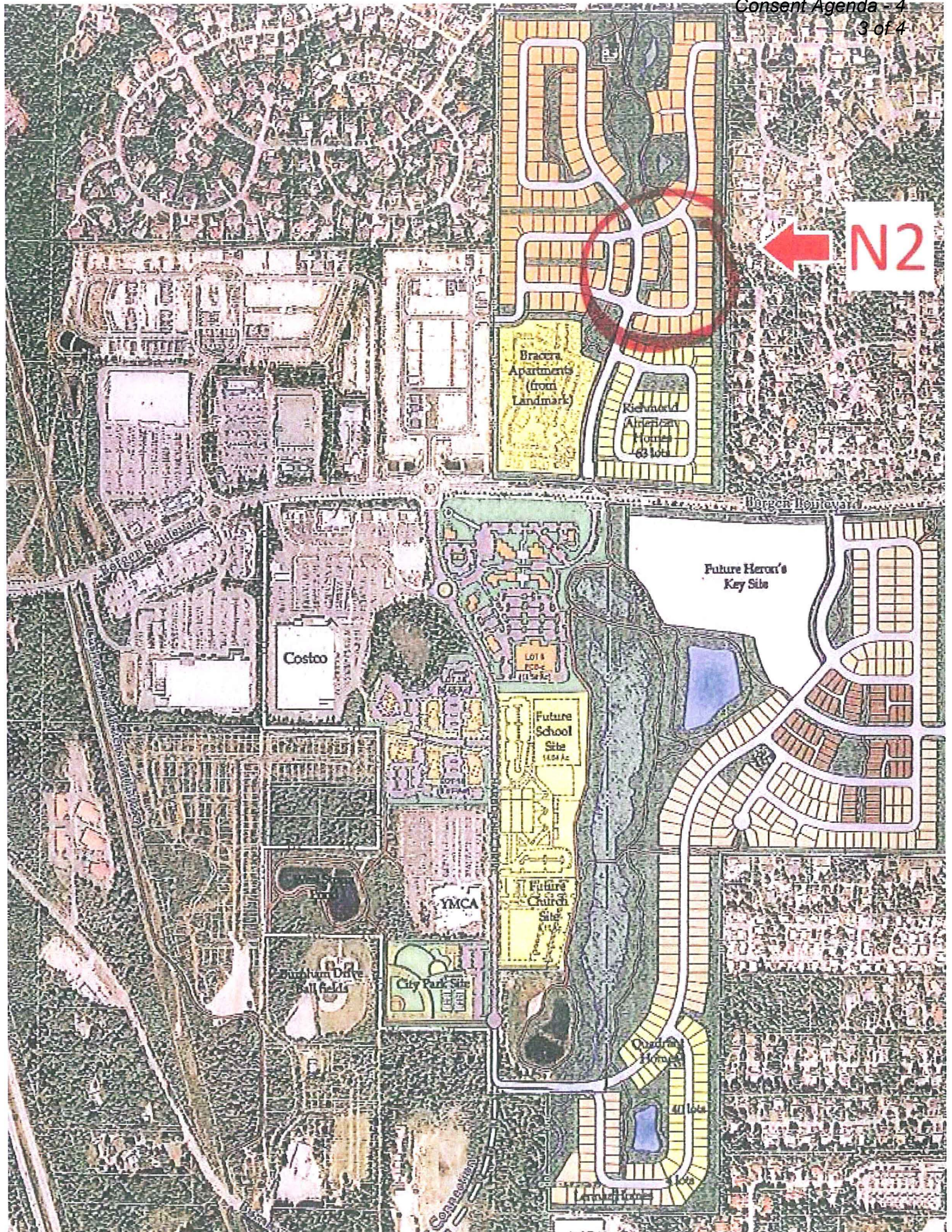
Cc: Diane McBane  
Brian Hansen, Triad Associates

A subsidiary of Olympic Property Group, a Pope Resources company.

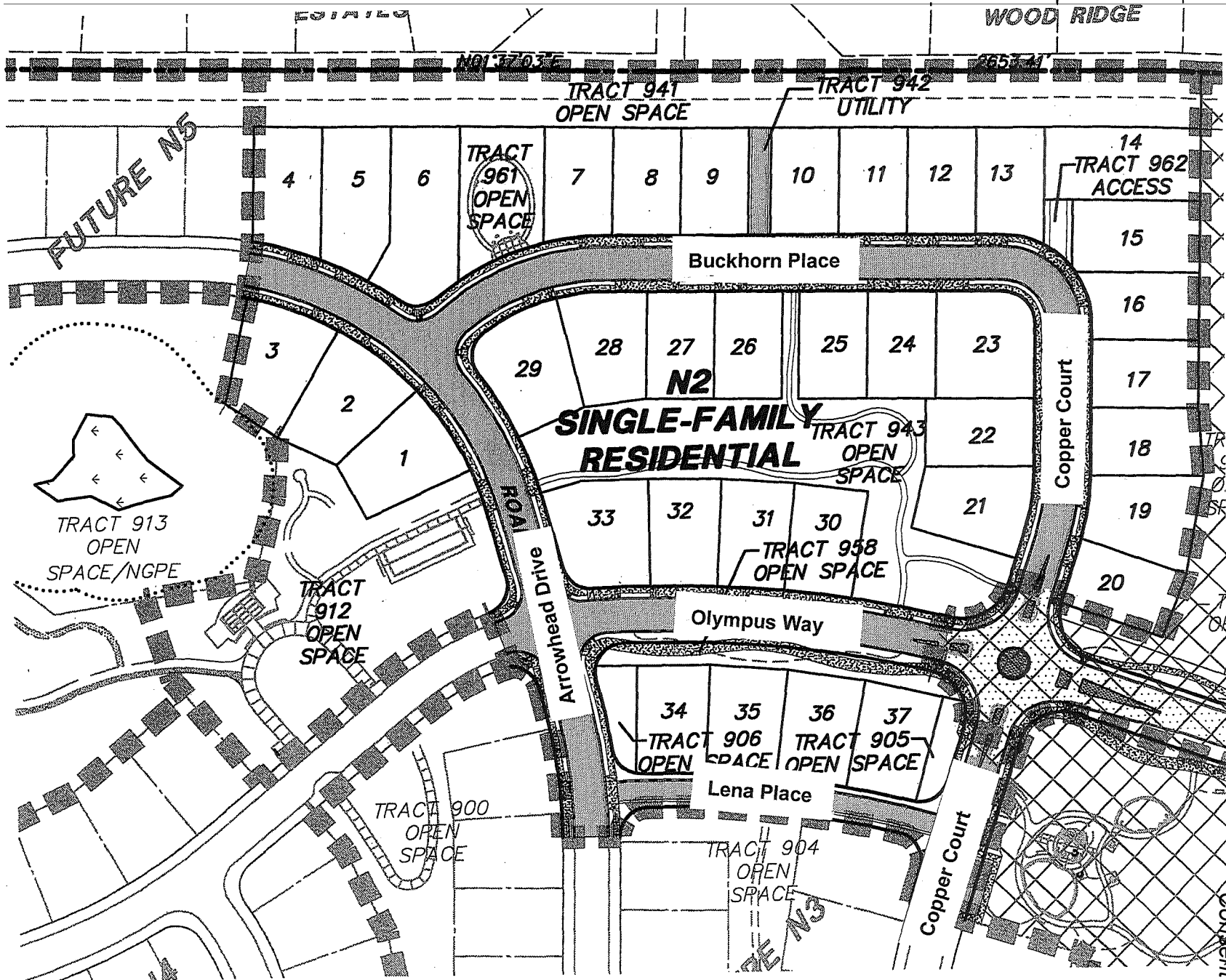
*Excellence in Northwest Master Planned Communities:*

Port Gamble; Port Ludlow; Broadmoor, Seattle; West Hills, Bremerton;  
Arborwood, Kingston; Harbor Hill, Gig Harbor.





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**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Cartegraph Work Order and Asset Management Software Migration – Purchase Authorization

**Proposed Council Action:** Authorize the Mayor to execute a Purchase Agreement with Cartegraph Systems, Inc. for Software Migration.

**Dept. Origin:** Public Works  
**Prepared by:** Jeff Langhelm, P.E.  
Public Works Director  
**For Agenda of:** September 8, 2014  
**Exhibits:** Purchase Agreement

**Concurred by Mayor:** *[Signature]* 9/2/14  
**Approved by City Administrator:** *[Signature]* 9/2/14  
**Approved as to form by City Atty:** via email  
**Approved by Finance Director:** *[Signature]* 9/2/14  
**Approved by Department Head:** *[Signature]* 9/2/14

Expenditure Required	\$9,600	Amount Budgeted	\$0	Appropriation Required	*See Fiscal Below
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**INFORMATION / BACKGROUND**

In 2003, the City purchased Cartegraph software for tracking citizen requests and assigning Public Works department work orders. In 2010, the system was upgraded to include modules for tracking City assets such as the inventory and maintenance records for all street signs, meeting retroreflectivity regulations.

The proposed software migration implements Cartegraph’s Operations Management System (OMS), which is a cloud-based asset and work management system. OMS will allow Public Works to enter requests, manage work and resources, maintain assets, and optimize day-to-day operations. This will include the ability to enter data in the field and visually locate assets on a map.

**FISCAL CONSIDERATION**

Sufficient funds are available for the implementation of this migration in the professional services categories of the Parks, Streets, Water, Stormwater and Wastewater funds to cover this expense. The current annual license has already been paid and will remain in place through September 16, 2015 (Year 1 of the agreement). After September 16, 2015 the renewal of the licenses for three standard users (\$4,500) and two iPad mobile users (\$1,500) will apply (Years 2 and 3 of the agreement).

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to execute a Purchase Agreement with Cartegraph Systems, Inc. for Software Migration.



**Cartegraph Master Agreement**

Agreement No. #MA023

This Agreement is by and between **Cartegraph Systems, Inc.**, an Iowa corporation having its principal place of business at **3600 Digital Drive, Dubuque, Iowa, 52003** ("Cartegraph"), and **City of Gig Harbor** ("Customer") with an address of **3510 Grandview Street, Gig Harbor, WA 98335**, dated **August 13, 2014**.

This Agreement is intended to serve as the primary controlling agreement between the parties. This Agreement includes the following terms and conditions, as well as all Exhibits and Addendums to this Agreement, Purchase Agreements, and all other future agreements referencing this Agreement which Cartegraph and Customer may execute from time to time for the purchase of Software, Support, Services and Hosting. Collectively these are referred to as "Products". The terms and conditions herein provided shall be controlling as between Cartegraph and Customer unless specifically superseded by an Exhibit to this Agreement, a contemporaneously or subsequently executed Purchase Agreement, or any other contemporaneously or subsequently executed agreement specifically referencing this Agreement.

BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

**City of Gig Harbor**

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Signature)

Randy L. Skemp  
(Type or print name)

\_\_\_\_\_  
(Type or print name)

Title Executive Vice President/CRO \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

The following are the terms and conditions under which Cartegraph licenses its Software and provides Support, Services and Hosting as listed in the Exhibits and Purchase Agreements referencing this Agreement.

**1. Grant of License to Software.**

- A. Cartegraph is licensed by third parties ("Third Party Licensors") to sublicense certain third party software products to Customer and to offer services to Customer for these third party software products under this Agreement.
- B. Each Software product, including all data programs or set of programs, or routines and subroutines, consisting of a series of instructions or statements in machine readable form, and including any documentation relating to or describing such Software, such as, but not limited to manuals, online documentation and user instructions, flow charts, database schemas and improvements or updates provided by Cartegraph (collectively "Software"), is furnished to Customer under a personal, non-exclusive, nontransferable limited license solely for Customer's own internal use on Host Computer System (as defined below) and with Customer's Clients.
  - 1. Host Computer Systems, if applicable, are Servers owned or controlled by Cartegraph that Customer may access under this Agreement (the provision of this service is herein referred to as "Hosted" or "Hosting").
  - 2. Servers are personal computers, minicomputers, mainframes, workstations, and terminal devices that interact with Client Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.
  - 3. Server Software is a copy of Software residing on a server, multiple servers, or a Host Computer System.
  - 4. Clients are personal computers, minicomputers, mainframes, workstations, mobile devices, and terminal devices that interact with Server Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.
  - 5. Client Software is a copy of Software residing on a Client that interacts with Server Software.
  - 6. Data Files are those files which contain data that is input by the Customer during the use of the Software.
- C. Customer agrees that the number of users licensed will be listed in the Purchase Agreement and only that number of users may use the Software at any given time.
  - 1. If Customer has purchased a Per-User License, as indicated in the Purchase Agreement, only a finite number of licenses have been purchased by Customer and only that finite number of users may access and use the Software at any given time. The specific number of licenses purchased shall be identified in the Purchase Agreement.
  - 2. If Customer has purchased an Unlimited License, as indicated in the Purchase Agreement, all employees of Customer are considered to be licensed to access and use the Software at any given time. Such Unlimited License applies only to employees of Customer and does not allow the access or use of the Software by any independent contractors, affiliated entities or organizations, or any other individual, party, or entity that is not an employee of Customer.
- D. Customer agrees the Software license for the Software is limited as follows:
  - 1. Browser Based User – Each browser based user is defined by unique ID and password.
  - 2. For Server Software – one copy of Server Software for each Server or, if Hosted, no copies of Server Software for a Server that is not a Host Computer System.
- E. Customer agrees that this license does not permit Customer to: (1) use the Software for a service bureau application or (2) sublicense the Software.
- F. Except as set forth in this Agreement or as may be permitted in writing by Third Party Licensors, Customer shall not use, provide or otherwise make available the Software or any part or copies thereof to any third party.
- G. Customer shall not reverse engineer, decompile or disassemble the Software or any portion thereof, nor otherwise attempt to create or derive the source code.
- H. Customer may make copies of the Client Software for archival purposes. The Server Software may not be copied, in whole or in part.

**2. Title to Software and Data Files.**

- A. Ownership of the Software, any portions thereof and any modifications, translations, or derivatives thereof, even if unauthorized, remains with Cartegraph or Third Party Licensors, as do all applicable rights in patents, copyrights and trade secrets and any other proprietary rights in the Software. Software provided hereunder is valuable, proprietary and unique, and Customer agrees to be bound by and observe the proprietary nature thereof as provided herein.
- B. Customer acknowledges that unauthorized reproduction, use, or disclosure of the Software or any part thereof may cause irreparable injury to Cartegraph or Third Party Licensors, who may therefore be entitled to injunctive relief to enforce these license restrictions, in addition to any other remedies available at law, in equity, or under this Agreement.

- C. Customer agrees that Cartegraph or Third Party Licensors may audit Customer's Software usage remotely or on-site during Support, Services or Hosting or upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement.
- D. Cartegraph agrees that ownership of data in Data Files remains with Customer. However, Customer agrees that Cartegraph may access Data Files and grants Cartegraph a license to use the data for 1) internal business purposes to evaluate the use and operation of the Software, Support, Services or Hosting; and 2) marketing purposes provided that any information shared with third parties is anonymized and/or aggregated so that Customer cannot be identified from the information.

**3. License Fees, Support Charges, Services and Hosting Charges.**

- A. Customer agrees to pay the license fees for the Software, Support charges, Services charges and Hosting charges as set forth in the Purchase Agreement for each Product.
- B. Cartegraph agrees that the total amount listed in the Purchase Agreement shall be considered the not-to-exceed price for the Software, Support, Services and Hosting included in that Purchase Agreement.
- C. Customer agrees that all payments are due 30 days from date of invoice and Customer shall be in default if amounts due have not been received in that time period. Customer's default will constitute sufficient cause for Cartegraph to suspend or terminate the Software license, Support, Services and Hosting under this Agreement.
- D. Customer shall be invoiced for Software, Support, Hosting and hardware upon delivery. Customer shall be invoiced for Services as set forth in the Purchase Agreement.
- E. Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Support, Services or Hosting. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred. Estimated expenses shall be included in each Purchase Agreement and include the number of trips to customer site. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

**4. Delivery and Installation.**

**A. On-Site Installation**

- 1. This subsection "A" regarding On-Site Installation shall apply if Customer elects, as indicated in the Purchase Agreement, to have Software and Products installed on Customer's Servers and Client computers at Customer's facilities ("On-Site") instead of utilizing Cartegraph Hosting Services.
  - a. Execution of a Purchase Agreement by Customer shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Products identified in the Purchase Agreement.
  - b. Delivery of Software and Support shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Software to Customer in a downloadable form. Notification by Cartegraph that Software is available for download shall constitute delivery of Software and Support, regardless of when Customer downloads the Software.
  - c. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.
  - d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.
  - e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

**B. Hosting**

- 1. This subsection "B" regarding Hosting shall apply if Customer elects, as indicated in the Purchase Agreement, to utilize the Hosting services offered by Cartegraph instead of having the Software installed On-Site, as described in the previous subsection.
  - a. Execution of a Purchase Agreement shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Software and Services as indicated in the Purchase Agreement.
  - b. Delivery of Software, Support, and Hosting shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Server Software to Customer on a Host Computer System. Notification by Cartegraph that Server Software is available for access shall constitute delivery of Server Software, Support and Hosting, regardless of when Customer first accesses the Server Software.
  - c. Cartegraph shall be responsible for installation of the Server Software on Cartegraph's Host Computer System. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.

- d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.
- e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

2. Hosting Services

- a. Cartegraph will install, and operate Server Software on one or more Host Computer Systems.
- b. Cartegraph will provide all equipment, software and services necessary for the operation, maintenance and support of one or more Host Computer Systems and the Server Software. Cartegraph may contract with third parties for all or part of such equipment, software and services ("Third Party Hosts"). Cartegraph reserves the right to change the configuration of the Host Computer System and the Server Software and to change or delete such equipment or software at any time, but Cartegraph shall make the Software compatible with such change or deletion without additional charge to Customer.
- c. Customer shall have access to and be permitted to use the Server Software via Clients.
- d. Customer shall provide a computing and networking environment that meets the minimum requirements set forth in Cartegraph's published specifications.
- e. Customer shall be responsible for all bandwidth between Host Computer System and Clients and in such amounts as to provide reasonable responsiveness of the system.
- f. Cartegraph shall perform a full back-up of data files on a daily basis. The daily full back-up will be retained for (14) fourteen days and then deleted unless customer contracts for additional days. Cartegraph's hosting services uses RAID 10 which both mirrors the data and stripes across multiple drives creating redundancy. Cartegraph hosting services have dual redundancy with offsite back-up storage and a back-up data centers
- g. The Host Computer System shall be used by Customer only for purposes relating to Customer's own use of the Software. Customer shall have no right to assign any of its rights under this section.
- h. Customer agrees that it shall be bound by the terms and conditions of any agreement between Cartegraph and any Third Party Hosts that relate to the use and operation of Host Computer Systems. Cartegraph will apprise Customer of the terms and conditions of such agreements from time to time.
- i. Cartegraph will take reasonable precautions to guard against unauthorized access to Data Files. However, Cartegraph assumes no responsibility that the Software will be used properly.
- j. Customer shall have the right to receive Data Files within sixty (60) days of termination of any Hosting on the condition that customer has paid all outstanding invoices owed to Cartegraph.

3. Availability of Host Computer System.

- a. If Cartegraph contracts with a Third Party Host to provide Hosting, the service level provided by the Third Party Host shall be the service level provided by Cartegraph to Customer, except as required for Cartegraph to provide Support under this Agreement.
- b. In general, Server Software will be available for use and access by Customer 24 hours a day, 7 days a week, except for scheduled maintenance to take place at commercially reasonable times. Furthermore, if access to the Server Software becomes a problem, then Cartegraph shall provide Support in view of the severity of the problem.
- c. Server Software will be available for use and access by Customer during back-up activities performed by Cartegraph.

5. Support.

- A. Scope of Support. Support includes the response to and resolution of Customer-encountered problems with the Software as reported to Cartegraph by Customer.
  - 1. Resolution of Customer-encountered problems shall, at Cartegraph's option, consist of (1) maintenance provided through telephone, email or remote access; (2) correction of the problem in the Software program; or (3) delivery of bug fixes or workarounds limited to the current or immediate prior Software release.
  - 2. Cartegraph will only support licensed Software located on Servers or Clients. Cartegraph will use commercially reasonable efforts to respond to Customer problems according to the priority level of the problem.
  - 3. Support may also include upgrades to Software.

- B. Support Limitations. Any Support is dependent upon the use by Customer of unmodified Software (except as authorized by Cartegraph) operated in accordance with Cartegraph's documentation. Support specifically excludes the following: (1) Support to a version of Software other than the current or immediate prior release; (2) efforts to restore a release of the Software beyond the current or immediate prior release; (3) efforts to restore a Customer Data File beyond the most recent back-up; and (4) efforts to convert a Customer Data File to another format.

As part of Support, Cartegraph is under no obligation to modify the Software so that the modified Software would depart from Cartegraph's published specifications for the Software.

**6. Professional Services.**

- A. The professional consulting services and deliverables to be performed or delivered by Cartegraph under this Agreement may include, but are not limited to: consulting, network engineering, systems integration, hardware installation, special studies, pre-installation support, installation of Client Software, installation support, training, custom Software modification, tools/utilities components, programming and documentation, data conversion, application design and development, systems analysis and design, conversions, implementing planning and implementation of the Software (collectively referred to as the "Services").
- B. Services shall only be provided as the result of a Purchase Agreement and any attached statements of work.
- C. Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

**7. Customer's Responsibilities.**

- A. Customer is responsible for maintenance and installation of any Clients, common carrier equipment or communication equipment related to the operation of the Software and not furnished by Cartegraph. Before Customer introduces equipment not within Cartegraph's published specification, Cartegraph must approve the additional equipment.
- B. Customer is responsible for charges incurred for communication facilities at Customer's facilities, whether incurred by Customer or by Cartegraph Support representatives while performing Support on the Software.
- C. Customer is responsible for performing Software back-ups in accordance with published documentation.
- D. Customer shall notify Cartegraph of any problem and shall allow Cartegraph reasonable access to the Software for performing Support, Services or Hosting.
- E. Customer shall furnish Cartegraph, at Customer's expense, all technical data and information as may be necessary to furnish Support, Services or Hosting.
- F. Customer shall grant Cartegraph access to Servers and Clients as may be necessary for the adequate delivery of the Support, Services or Hosting.

**8. Software Modification.** Cartegraph and Third Party Licensors will not be responsible to Customer for loss of use of the Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs which are made to the Software by Customer or third parties. Cartegraph reserves the right to terminate the Software license, Support, Services or Hosting under this Agreement upon written notice to Customer if any such alteration, addition, adjustment or repair adversely affects Cartegraph's ability to render Support, Services or Hosting.

**9. Term.**

- A. Unless terminated by Cartegraph in accordance with this Agreement, the term of the Software license, Support and Hosting shall begin upon the execution of a Purchase Agreement and shall continue for the period of time identified in that Purchase Agreement.
- B. Support for any subsequently added components or upgrades shall be either coterminous with the term of Support applicable to the Software initially covered or as otherwise agreed and stated in the Purchase Agreement.
- C. If Customer elects to purchase Services, then Services shall terminate as agreed in the appropriate Purchase Agreement.
- D. Unless otherwise stated in the most recently executed Purchase Agreement, this Agreement and the Purchase Agreement shall automatically renew at the then current rates for a one (1) year term beginning on the first day following the date identified in the Purchase Agreement as the end of the term of this Agreement. Such automatic renewal shall continue after the end of each successive year until a new Purchase Agreement is executed or until Customer or Cartegraph terminate this Agreement as provided for herein.
- E. If this Agreement and the most recently executed Purchase Agreement are automatically renewed under the terms of the previous paragraph "D", there shall be an automatic increase of up to five percent (5%) annually to all prices that were in effect during the immediately previous term.
- F. If Customer wishes not to renew this Agreement, Customer must provide written notice of Customer's intent not to renew this Agreement at least ninety (90) days prior to the end of the term then in effect.

- G. Notwithstanding anything to the contrary in this Section, Support, Services and Hosting shall terminate immediately upon termination of this Agreement.

**10. Termination.**

- A. Notwithstanding the foregoing, Cartegraph shall have the right to terminate this Agreement if Customer fails to pay any and all required license fees, Support charges, Services charges, Hosting charges or otherwise fails to comply with this Agreement.
- B. Upon expiration of the license term or upon notice of such termination, Customer shall immediately return or destroy the Software and all portions and copies thereof as directed by Cartegraph or Third Party Licensors and, if requested by Cartegraph or Third Party Licensors, shall certify in writing as to the destruction or return of the same.
- C. Any termination of this Agreement shall automatically terminate Support, Services and Hosting provided under any Purchase Agreement or Statements of Work, unless otherwise agreed. All confidentiality and non-disclosure obligations shall survive any such termination.
- D. Customer shall have the right to terminate this Agreement, according to the terms provided herein, by returning or destroying the Software and all portions and copies thereof and certifying in writing as to the destruction or return of the same.
- E. If Customer wishes to terminate this Agreement prior to the end of the term of this Agreement as identified above or in the appropriate Purchase Agreement, Customer must provide Cartegraph with written notice of such intent to terminate at least ninety (90) days prior to such termination. Any such termination by Customer shall subject Customer to the cancellation fee identified below.
- F. If Customer terminates before the date set in the Purchase Agreement, Customer shall pay a cancellation fee equal to 80% of the remainder of licensing fees, Support charges and Hosting charges due under this Agreement. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.
- G. Provided however, if Customer is a governmental entity and Software, Support, Services or Hosting are not funded for future fiscal years under the appropriate legal budgeting process for such governmental entity, Customer may terminate for future fiscal years with the cancellation fee identified in the previous paragraph reduced from 80% to 20%. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.
- H. Cartegraph shall have the right to terminate Hosting, if Hosting services are being provided, by giving at least ninety (90) days written notice that Cartegraph cannot meet its obligations of availability of the Host Computer System.
- I. In addition to the right of termination provided to Cartegraph under other sections of this Agreement, Cartegraph shall have the right to terminate the Software license, Support, Services and/or Hosting upon the occurrence of any of the following events:
  - 1. Customer's oldest invoice is ninety (90) days past due. Support hold will be initiated when customer's oldest invoice is thirty (30) days past due or,
  - 2. Subject to applicable law, the appointment of a receiver, trustee in bankruptcy or similar officer for the equity or assets of Customer, or
  - 3. There is an assignment of this Agreement without the prior written consent of Cartegraph.
- J. Termination shall not be Cartegraph's exclusive remedy and termination shall not adversely affect any claim for damages against Customer.

**11. Limited Warranty.**

- A. Cartegraph warrants that it has the right to sublicense the Software being licensed hereunder pursuant to the terms provided herein.
- B. Cartegraph warrants that the Software will conform to Cartegraph's published specifications until Support ends.
- C. Provided that the Software is used in a manner for which it was designed as set forth in the Software, Cartegraph's sole obligation and liability hereunder for the Software shall be to use reasonable efforts to remedy any substantial non-conformance which is reported to Cartegraph. In the alternative, Cartegraph may refund amounts paid by Customer pursuant to Purchase Agreements for such Software products.
- D. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE LICENSED HEREUNDER.
- E. SUPPORT, SERVICES AND HOSTING SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE. SUPPORT, SERVICES AND HOSTING PROVIDED UNDER THIS AGREEMENT DO NOT ASSURE THE UNINTERRUPTED OPERATION OF THE SOFTWARE.

- F. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THE SOFTWARE LICENSE, SUPPORT OR SERVICES. THE REMEDY SET FORTH IN THIS SECTION IS CARTEGRAPH'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN LIEU OF ALL OTHERS, FOR ANY BREACH BY CARTEGRAPH OF ITS SOFTWARE, SUPPORT, SERVICES AND HOSTING WARRANTIES HEREUNDER.

**12. Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW:

- A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF DATA, HOWEVER ARISING, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;
- B. EXCEPT FOR DAMAGES RESULTING FROM BODILY INJURY OR PATENT OR COPYRIGHT INFRINGEMENT, AS DISCUSSED BELOW, IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER TO CARTEGRAPH DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING CAUSE TO SUCH LIABILITY.
- C. If Cartegraph will provide Support or Services at Customer's location, liability of Cartegraph arising out of bodily injury, shall not in any event exceed the limits of its insurance coverage.

**13. Insurance.** If Cartegraph will provide Support or Services at Customer's location, Cartegraph will carry commercial general liability insurance with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit, business auto liability insurance with a limit of \$1,000,000 and workers compensation insurance with statutory coverage. Cartegraph agrees to hold harmless and defend Customer and its agents, officials and employees from bodily injury and property damage claims related to or caused by the sole negligence of Cartegraph employees or contractors.

**14. U.S. Government Restricted Rights.** The Software is commercial software and the Software is provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software Clause at DFARS 252.227-7013 of subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

**15. Employees and Conflicts of Interest.** This Agreement shall not prevent Cartegraph from performing similar services or restrict Cartegraph's use of the employees or contractors provided under this Agreement.

**16. Proprietary Rights and Confidential Information of Cartegraph.**

- A. Certain information and materials supplied by Cartegraph with the Products, such as, without limitation, deliverables, manuals, diagrams, drawings, plans, flowcharts, software, technical processes and formulae, source codes, product designs, sales, costs and other unpublished financial information, product and business plans, usage rates, relationships, projects and data, are Cartegraph's or Third Party Licensors' confidential or proprietary trade secrets (the "Confidential Information") and Cartegraph furnishes them solely to assist Customer in the installation, operation and use of Software. Customer must not reproduce, copy or disclose such Confidential Information except as is reasonable and necessary to properly use Software. Nothing herein shall restrict Customer from complying with its obligations under any law requiring disclosure, but Customer shall give Cartegraph five days prior notice before any release of Confidential Information.
- B. Customer acknowledges and agrees that Cartegraph or Third Party Licensors shall suffer irreparable injury not compensable by money damages and therefore shall not have an adequate remedy at law in the event of an unauthorized use of proprietary rights or an unauthorized use or disclosure of any Confidential Information in breach of the provisions of this Agreement. Accordingly, Cartegraph or Third Party Licensors shall be entitled to injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that Cartegraph or Third Party Licensors may have at law or in equity.

**17. Proprietary Information of Customer.**

- A. In order to provide Products under this Agreement, Customer may, from time to time, disclose to Cartegraph certain information respecting Customer's technical, financial, statistical and personnel data, (hereinafter "Information"). Any such Information which is submitted in writing to Cartegraph by the Customer and which is clearly and conspicuously marked as confidential shall be protected by Cartegraph against unauthorized disclosure by using the same degree of care and discretion that Cartegraph uses with similar Information which Cartegraph does not want disclosed to third parties. However, Cartegraph shall not be required to protect Information which (a) is or becomes publicly available, (b) is already in Cartegraph's or its related companies' possession, (c) is independently developed by Cartegraph outside the scope of this Agreement, or (d) is rightfully obtained from third parties. Cartegraph's obligations under this Section shall cease immediately upon return to Customer or destruction by Cartegraph of such Information.

- B. Cartegraph shall not be required to protect any ideas, concepts, know-how, or techniques relating to data, electronic document processing and image processing developed or resulting from the Information or the Services provided under this Agreement.

**18. Infringement Indemnification.**

- A. Cartegraph or Third Party Licensors will defend any action, suit or proceeding brought against Customer if based on a claim that Products infringe any United States patent or copyright of any third party ("Intellectual Property") provided that Customer promptly notifies Cartegraph or Third Party Licensors immediately and gives Cartegraph or Third Party Licensors full authority, information and assistance for the action's defense. Cartegraph or Third Party Licensors will pay all damages and costs awarded therein against Customer, but shall not be responsible for any compromise made without its consent. Cartegraph or Third Party Licensors may, at any time it is concerned over the possibility of such an infringement, at its option and expense, replace or modify Products so that infringement will not exist. In the alternative, Cartegraph may remove a component of Products involved and refund to Customer the price as depreciated by an equal annual amount over five (5) years.
- B. Cartegraph and Third Party Licensors shall have no liability to Customer if any Intellectual Property infringement or claim thereof is based upon the use of Products in connection or in combination with equipment, devices, or software not supplied by Cartegraph or used in a manner not expressly authorized by this Agreement or in a manner for which Products were not designed, or if the claim of infringement would have been avoided but for Customer's use of software other than the latest, unmodified release of Software made available to Customer by Cartegraph.
- C. Customer shall indemnify and hold Cartegraph and Third Party Licensors harmless from any loss, cost or expense suffered or incurred in connection with any claim, suit or proceeding brought against Cartegraph or Third Party Licensors so far as it is based on a claim that the use, sale or licensing of any Products delivered hereunder and modified or altered or combined with any products, device, or software not supplied by Cartegraph hereunder constitutes an infringement because of such modification, alteration or combination.

**19. Miscellaneous.**

- A. Taxes. Customer shall pay all taxes, levies and similar governmental charges, however designated, and all liabilities with respect thereto which may be imposed by any jurisdiction, including, without limitation, customs, privilege, excise, sales, use, value-added and property taxes levied or based on gross revenue or operation of this Agreement, except those taxes based upon Cartegraph's net income.
- B. Relationship of the Parties: Cartegraph and Customer are independent of each other. This Proposal does not and is not intended to create in any way or manner or for any purpose an employee/employer relationship or a principal-agent relationship. Neither party is authorized to enter into agreements for or on behalf of the other, to create any obligation or responsibility, express or implied, for or on behalf of the other, to accept payment of any obligation due or owed the other, or to accept service of process for the other. Cartegraph is an independent contractor, customarily engaged in the performance of similar services for other parties.
- C. Attorney's Fees/Legal Proceedings: In the event of any litigation or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals and other relief to which that party may be entitled.
- D. Export. Customer agrees that the Software, Support, Services and Hosting purchased hereunder will not be exported directly or indirectly, separately or as part of any system, without first obtaining a license from the U.S. Department of Commerce or any other appropriate agency of the U.S. Government, as required.
- E. Assignment. Customer may not assign, voluntarily or by operation of law, any of its rights or obligations in this Agreement except with Cartegraph's prior written consent. This Agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- F. Waiver. The parties' rights and remedies are separate and cumulative. Neither parties' waiver nor failure to exercise in any respect any right or remedy provided in this Agreement is a waiver of any future right or remedy hereunder.
- G. Force Majeure. If any cause beyond Cartegraph's reasonable control prevents Cartegraph from performing under this Agreement by a given date or time, Cartegraph's performance will be automatically postponed.
- H. Choice of Law. Cartegraph agrees that jurisdiction and venue are proper in the state where the Customer has its principal place of business and that the law of the state where the Customer has its principal place of business shall govern any litigation that results from this Agreement.
- I. Severability. The invalidity of any provision of this Agreement will not affect the validity and binding effect of any other provision.
- J. Notice. Notices hereunder must be sent to the addresses on the face of this Agreement, or to such other addresses as specified by a notice complying with this provision. Notice is effective on the earlier of actual receipt or five days after deposit in the mail. Notices in the form of a fax or email are acceptable. Notices must be sent to the attention of the person signing on behalf of the party.



- K. Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral between Cartegraph and Customer. This Agreement is not an acceptance of any conflicting terms and conditions and will prevail over any conflicting Customer's terms and conditions.
- L. Amendment. Only a writing executed by authorized representatives of the parties and referenced as an amendment to this Agreement may modify, supplement, or change this Agreement.

## Purchase Agreement

**Cartegraph** is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of Gig Harbor (hereinafter referred to as "**Customer**" or "**Licensee**") and **Cartegraph Systems, Inc.** (hereinafter referred to as "**Cartegraph**"). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement dated August 20, 2014 shall control.

<b>Customer Bill To:</b> Marco Malich City of Gig Harbor 3510 10 Grandview Street Gig Harbor, WA 98335 253-853-7630	<b>Customer Ship To:</b> Same
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### Investment Summary

**Cartegraph's** proposed fees for this project are included in the summary below.

**Date:** August 21, 2014                      **Purchase Agreement Expiration Date:** September 30, 2014                      **Purchase Agreement No.:** #PA023

	Purchase Type	Qty.	Unit Price	Total Price
<b>YEAR 1</b>				
<b>SOFTWARE PRODUCTS</b>				
Cartegraph OMS – Standard Edition	Per-user Subscription License, Cartegraph Cloud Deployment	3	\$1,500.00	\$4,500.00
Cartegraph iPad Mobile User License	Per-user Subscription License, Cartegraph Cloud Deployment	2	\$750.00	\$1,500.00
<b>FIELD SERVICES</b>				
Implementation Services	Fixed Fee Service	1	\$9,600.00	\$9,600.00
<b>YEAR 1 SUB-TOTAL</b>				<b>\$15,600.00</b>
<b>YEAR 2</b>				
<b>SOFTWARE PRODUCTS</b>				
Cartegraph OMS – Standard Edition	Per-user Subscription License, Cartegraph Cloud Deployment	3	\$1,500.00	\$4,500.00
Cartegraph iPad Mobile User License	Per-user Subscription License, Cartegraph Cloud Deployment	2	\$750.00	\$1,500.00
<b>YEAR 2 SUB-TOTAL</b>				<b>\$6,000.00</b>

<b>YEAR 3</b>				
<b>SOFTWARE PRODUCTS</b>				
Cartegraph OMS – Standard Edition	Per-user Subscription License, Cartegraph Cloud Deployment	3	\$1,500.00	\$4,500.00
Cartegraph iPad Mobile User License	Per-user Subscription License, Cartegraph Cloud Deployment	2	\$750.00	\$1,500.00
<b>YEAR 3 SUB-TOTAL</b>				<b>\$6,000.00</b>
<b>TOTAL COST (3-YEAR TERM)</b>				<b>\$27,600.00</b>

## Payment Terms and Conditions

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In consideration for the Services and Products provided by **Cartegraph** to **Customer**, **Customer** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** **Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
  - a. \$6,000.00 due 15 days prior to 9/17/2015.
  - b. \$6,000.00 due 15 days prior to 1st year anniversary of term start date, 9/17/2016.
  - c. \$6,000.00 due 15 days prior to 2nd year anniversary of term start date, 9/17/2017.
4. **Field Services Invoicing:** Invoicing for the Field Services fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
  - a. Invoicing for the Field Services fee shall occur upon the execution of the Purchase Agreement.
5. **Expenses:** In providing the services included in this Purchase Agreement, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, and meals. Out-of-pocket expenses are billed based on actual costs incurred and are due separately.
6. **Payment Terms:** All payments are due Net 30 days from date of invoice.
7. **Additional Terms:** Customer has paid their 2014 Renewal Invoice #R04531 for \$2,412.00, which allows them to use the OMS system thru 9/16/2015. After this date, the Software Invoicing Payment Terms and Conditions for their software subscription listed above apply.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Randy L. Skemp  
(Type or print name)

Title Executive Vice President/CRO

Date \_\_\_\_\_

**City of Gig Harbor**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_

## **Cartegraph Systems, Inc. Addendum A - Software Products**

Cartegraph hereby pledges to issue software licenses in the agreed upon quantities specified in your Investment Summary. The "Software," as defined in Master Agreement #MA023, consists of developed and supported technology products available from Cartegraph.

***In addition to full access to Cartegraph licensed software, your organization will receive:***

### **1. Unlimited Technical Support**

Mon – Fri, 7am – 7pm (Central time)

- a. Phone: 877 647.3050 (toll free)
- b. Email: [support@cartegraph.com](mailto:support@cartegraph.com)

### **2. User Assistance**

- a. ***Remote Assistance***  
Use the WebEx Remote Assistance link at [cartegraph.com](http://cartegraph.com) and get hands-on Technical Support delivered via the web.
- b. ***Live Chat***  
Get your technical questions answered quickly and conveniently using the Live Chat option located in the Client Center and your Cartegraph Operations Management System.
- c. ***Email***  
Send Application Log and trace files electronically and let Cartegraph staff analyze how the system was being used when the issue arose.
- d. ***File Transfer Protocol (FTP)***  
Easily exchange large files and communicate with Cartegraph staff using our secure FTP site.

### **3. Updates and Enhancements**

- a. Priority notification about upgrades and enhancements available for your Cartegraph software.
- b. Complimentary assistance from Cartegraph Technical Support staff as you navigate the software upgrade process.

### **4. Client Center Access**

- a. Visit the Client Center at [cartegraph.com](http://cartegraph.com) to search and browse the extensive library of Cartegraph learning resources, including technical documents and instructional videos.

- b. Sign-up for free online Cartegraph training sessions focused on topics that will help you and your staff use the software more effectively.

**5. User Events**

- a. Get live training and meet other Cartegraph users in your region at free Cartegraph User Group meetings.

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BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Randy L. Skemp  
(Type or print name)

Title Executive Vice President/CRO

Date \_\_\_\_\_

**City of Gig Harbor**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_

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## Cartegraph Systems, Inc.

### Addendum B - Field Services (Fee for Service)

The Fee for Field Service Implementation Services as listed in the *Investment Summary* of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below and any descriptions that may be found in the Purchase Agreement's Exhibits. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes. This is an addendum to Customer's Master Agreement #MA023.

#### Implementation of our Operations Management System (OMS) - Standard Edition includes the following:

- Hosted installation support
- System navigation training
- System dashboard training
- Security roles set-up and support
- Implementation and training on the Request Management portion of the system
- Implementation and training on the Work Management portion of the system
- Implementation and training on three Assets – Light Fixture, Marking and Sign
- Implementation and training on Cartegraph for iPad
- Training on system reports and on-screen analytics
- Create one custom report
- Training on the use of Google mapping within the system
- Implementation of the Citizen Request portal for smartphones and web
- Dedicated Cartegraph Project Manager to facilitate the resource scheduling, timing and other project tasks
- All training and consultation done via web
- Conversion of Cartegraph database (v.8.3 or higher) to OMS specific to the following:
  - Assets
    - Parent Records
    - Attachments
    - Events
    - Inspections
      - Survey Categories
    - Startup Data
      - Prediction Groups
      - Minimum Conditions
      - Deterioration Curves
      - Condition Categories
      - Ranking
      - Impacts
  - Labor, Equipment, Materials
    - Attachments
    - Current Rates
  - Vendors
    - Attachments
    - Contracts
  - Routes
  - Special Libraries
    - Citizen

**During the duration of the project, the client will appoint a project coordinator to be responsible for the following aspects of the project:**

- Approve the Project Status Report
- Authorize the project work
- Acceptance of deliverables defined in the Project Status Report
- Ensure the project is in compliance with and satisfies the requirements of the Project Status Report
- Consult with the Cartegraph Project Manager on a continuing basis
- Provide leadership on all issues related to the client, such as policy, organization, staff, technical architecture, data, and current systems.

- Monitor progress of the project, including the review of Cartegraph regular status reports and managing internal resources.

## Customer/Cartegraph Responsibilities

Project representatives from Customer and Cartegraph accepts responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Master Agreement or in this Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.
2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both Personal Computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's System Requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation.
4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology.

Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Cartegraph Software will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Software within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.

5. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.



## Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Software or services are required.

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BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

### Cartegraph Systems, Inc.

By \_\_\_\_\_  
(Signature)

Randy L. Skemp  
\_\_\_\_\_  
(Type or print name)

Title Executive Vice President/CRO

Date \_\_\_\_\_

### City of Gig Harbor

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_

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**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Survey and Legal Description  
Creation – Consultant Services Contract

**Proposed Council Action:** Authorize the Mayor to execute a Consultant Services Contract with Prizm Surveying, Inc., for the creation of a real property legal description in an amount not to exceed \$2,180.85.

**Dept. Origin:** Public Works

**Prepared by:** Jeff Langhelm

**For Agenda of:** September 8, 2014

**Exhibits:** Consultant Services Contract  
with Scope and Fee

Initial &  
Date

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Department Head:**

*BJL 9.4.14*  
*RW 9/4/14*  
*VIA EMAIL 9/3/14*  
*DR 9/3*  
*ADK 9/3/14*

<b>Expenditure Required</b>	\$ 2,180.85	<b>Amount Budgeted</b>	See Fiscal Consideration	<b>Appropriation Required</b>	\$0
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**INFORMATION/BACKGROUND**

The City entered into an agreement with ETC on July 28, 2014 to settle a legal dispute regarding the ownership of Thurston Lane in Gig Harbor. To assist in completing the agreement a survey of the land must be conducted and a legal description must be prepared by a surveyor licensed in the state of Washington.

The attached proposed scope of work from Prizm Surveying will provide the City with the necessary survey and legal description.

**FISCAL CONSIDERATION**

This survey was not budgeted for the 2104 Budget. However, sufficient funds exist at this time in the City's Streets Operating fund (102) to pay for the proposed contract.

**BOARD OR COMMITTEE RECOMMENDATION**

This contract work was based on City Council action on July 28, 2014. No separate board or committee recommendation was made for this matter.

**RECOMMENDATION/MOTION**

Authorize the Mayor to execute a Consultant Services Contract with Prizm Surveying, Inc., for the creation of a real property legal description in an amount not to exceed \$2,180.85.

**PROFESSIONAL SERVICES CONTRACT**  
**(Architects, Engineers, Land Surveyors, Landscape Architects)**  
**BETWEEN THE CITY OF GIG HARBOR AND**  
Prizm Surveying, Inc.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Prizm Surveying, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in establishing a survey and legal description 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 Two Thousand One Hundred Eighty Dollars and Eighty-Five Cents (\$2,180.85) 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 A – Scope of Work**. 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 A**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

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

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by October 10, 2014; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

7. Indemnification.

A. The Consultant 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 attorney's fees, arising out of or resulting from the 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. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then 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 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.

C. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

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

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

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required

to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

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

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

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

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

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

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

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

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

14. **Resolution of Disputes and Governing Law.**

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

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director 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:  
Prizm Surveying, Inc  
ATTN: Gary Letzring, PLS  
PO Box 110700  
Tacoma, WA 98411  
(253) 404-0983

City of Gig Harbor  
ATTN: Jeff Langhelm, PE  
Public Works Department  
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. If applicable, any subconsultants approved by the City

at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONSULTANT

By:   
Its: President

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Mayor Jill Guernsey

ATTEST:

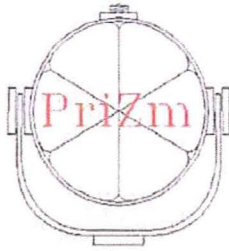
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



EXHIBIT 'A'



**PRIZM**  
**SURVEYING INC.**

P.O. Box 110700  
Tacoma, WA 98411  
Office: 253-404-0983  
Fax: 253-404-0984  
[gletzring@prizmsurveying.com](mailto:gletzring@prizmsurveying.com)  
PrizmSurveying.com

Mr. Stephen Misiurak, P.E.  
City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

September 2, 2014

Re: Thurston Lane Survey and Legal Description

Dear Mr. Misiurak,

Prizm Surveying is pleased to provide you with this proposal for Surveying Services. The following is our proposed scope of work for the project.

**Task 1 – Thurston Lane Traveled Way Survey:**

1. Perform office research of the City of Gig Harbor, Pierce County, the Department of Natural Resources and other sources for relevant Survey control, monumentation and other relevant survey control performed in the vicinity of the project area.
2. Perform a random field traverse or GPS control survey to locate existing survey control and monumentation necessary for the accurate orientation and determination of the parcel boundaries and rights-of-way in the project area.
3. Complete a horizontal only topographic survey of an area roughly described as a corridor lying west of the building located at 3105 Judson Street, and east of the building located 3119 Judson Street. The located area will start at the centerline of Judson Street and extend northerly to the northerly line of Adams Avenue extended westerly. Within this area we will be locating surface features such as: existing edge of paving, concrete curbing, driveways, painted parking areas or stalls, storm drainage and sewer facilities, building corners and canopy, visible utility structures, landscaped areas, fences, walks, walls, etc. Generally locating features deemed important to any future right-of-way conveyance.
4. At our office, a Professional Land Surveyor will perform mathematical computations, analyze and resolve the limits of existing rights-of-way and the boundary lines of adjoining parcels including 3105 & 3119 Judson Street based upon available public records.
5. Reduce the field notes, plot data obtained from the fieldwork, and prepare an AutoCAD drawing, drawn at an appropriate scale showing the data collected, rights-of-way and parcel boundaries and ownership information noted. The final Survey will be reviewed and certified by a Professional Land Surveyor and provided in electronic format and paper copies for your review.

**The estimated cost for Task 1 services is \$1,635.00 and can be completed in 12 working days.**

- |                              |           |               |
|------------------------------|-----------|---------------|
| • Professional Land Surveyor | 1 hour @  | \$95.00/hour  |
| • 2-man Survey Crew          | 8 hours @ | \$125.00/hour |
| • Survey Technician          | 6 hours @ | \$85.00/hour  |
| • Administration             | ½ hour @  | \$60.00/hour  |

**Task 2 – Legal description Creation:**

We anticipate only one legal description will be required, Should you require additional legal descriptions, please let me know and we will provide a modified proposal.

1. Coordinate with the client on the required dimensions for such legal description.
2. Utilizing data collected as part of Task 1 above, we will draft a preliminary easement exhibit and legal description of the requested strip as needed and deliver to the client for review and comment.
3. Revise the legal description and or exhibit as necessary.
4. The final legal description and exhibit will be reviewed, checked and certified by a Professional Land Surveyor and provided in electronic format and hard copies for your use.

**The estimated cost for Task 2 is \$375.00**

- Professional Land Surveyor      2 hours @    \$95.00/hour
- Survey Technician                2 hours @    \$85.00/hour
- Administration                    ¼ hours @    \$60.00/hour

If you require a written proposal and authorization for additional services, this should be addressed at the time the work is requested and is subject to modification in accordance with Prizm's most current hourly rates (Time and Material Rates).

- 2-man survey crew                \$125 an hour
- GPS survey crew                 \$135 an hour
- Licensed Land Surveyor        \$95 an hour
- Survey Technician                \$85 an hour

Prizm Surveying will send you an invoice each month for work in progress. In the event your invoices are not paid according to the terms of the contract, your project will not receive priority scheduling until payment arrangements are made.

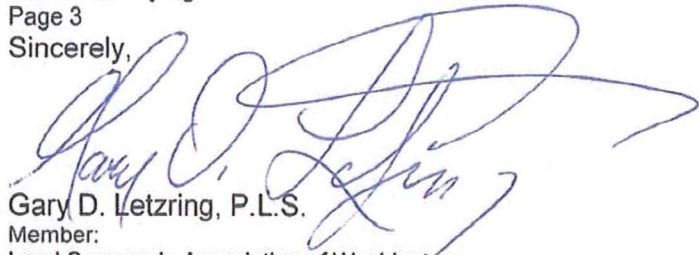
Specifically excluded from our described scope of services are geotechnical studies, wetland or traffic studies, landscaping, or any engineering services. The costs outlined in this proposal are an estimate only, based on the circumstances presented by you and perceived by Prizm Surveying at the time of contract preparation. They are not a guarantee that the costs will not exceed the amount of this estimate. Prizm Surveying is hereby authorized to exceed the estimated costs by up to five percent without prior written notice to the Client if circumstances encountered in the performance of Prizm's obligations result in an overrun.

Any part of this proposal is negotiable pending your particular survey requirements. We look forward to working with you, and if you have any questions or comments regarding this proposal, please don't hesitate to call me at (253) 404-0983.

Prizm Surveying Inc.

Page 3

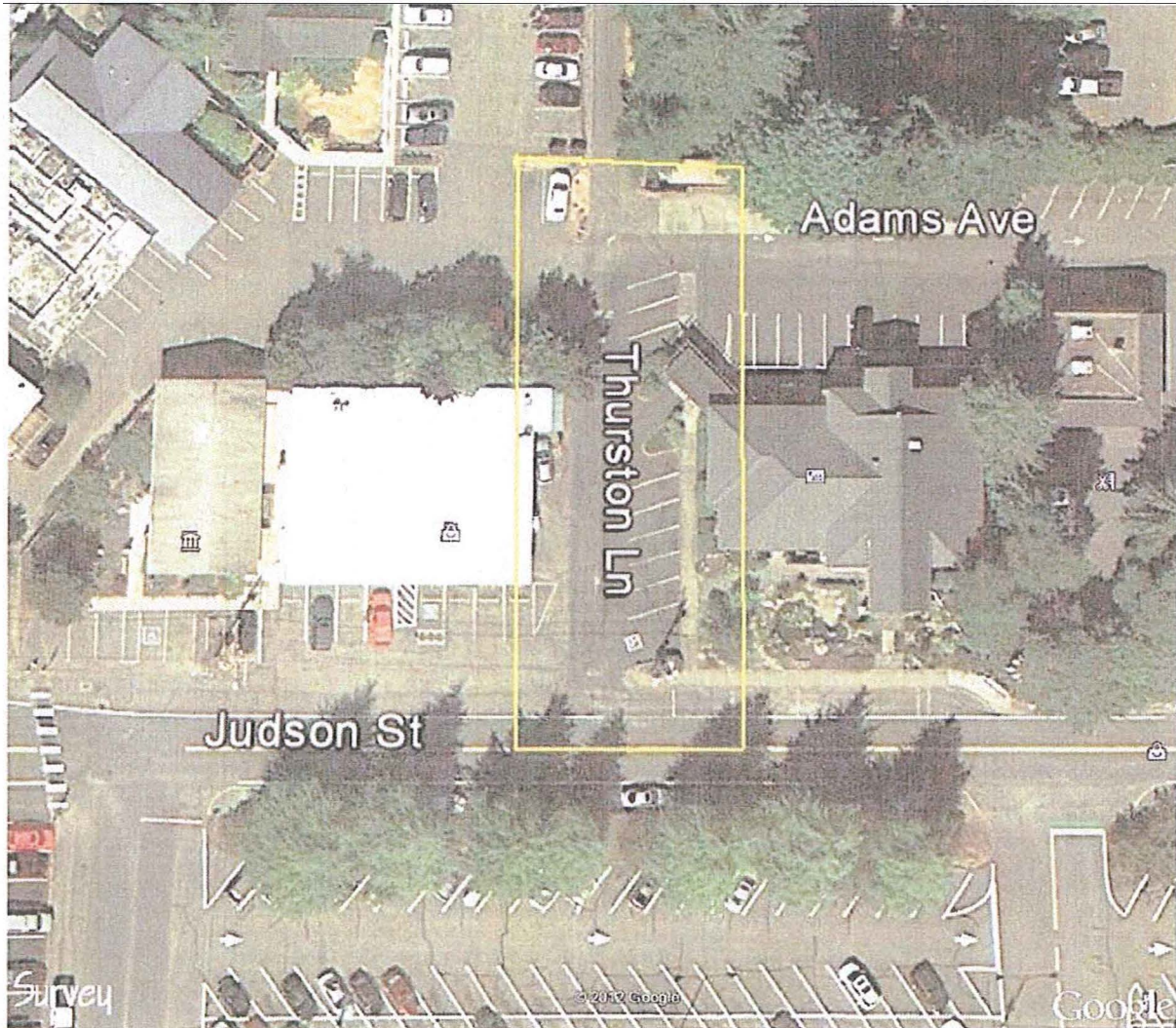
Sincerely,



Gary D. Letzring, P.L.S.

Member:

Land Surveyor's Association of Washington,  
National Society of Professional Land Surveyors,



The approximate topographic limits shown in yellow.



**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Dept of Ecology Grant of \$140,000 for environmental investigation of two parcels (3807 & 3809 Harborview Drive) adjacent to Eddon Boat Park.

**Proposed Council Action:**  
Authorize the Mayor to execute a contract with the Dept of Ecology for \$140,000.

**Dept. Origin:** Administration

**Prepared by:** Lita Dawn Stanton  
Special Projects *AS*

**For Agenda of:** September 8, 2014

**Exhibits:** DOE Agreement

	Initial & Date
<b>Concurred by Mayor:</b>	<i>SW 9/4/14</i>
<b>Approved by City Administrator:</b>	<i>AW 9/3/14</i>
<b>Approved as to form by City Atty:</b>	<i>skayemail</i>
<b>Approved by Finance Director:</b>	<i>mp OR</i>
<b>Approved by Department Head:</b>	_____

Expenditure Required	-0-	Amount Budgeted	-0-	Appropriation Required	-0-
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**INFORMATION / BACKGROUND**

In 2012, the City was awarded an RCO grant to purchase two parcels adjacent to Eddon Boat Park known as the Nikolich Property. Preliminary findings during a Phase I investigation of the property revealed that the site is currently on DOE's "Watch List" for contamination. An Integrated Planning Grant (IPG) was awarded to the City to conduct a records review, carry out a site characterization, complete a Remedial Investigations report, prepare a feasibility study, and conduct planning to evaluate cleanup options in order to make a decision about whether to proceed with the acquisition of the two parcels. The agreement from DOE is attached.

Current funding sources for the project:	RCO Grant .....	\$302,328
	City Funds (match) .....	359,927
	DOE Grant .....	140,000

**FISCAL CONSIDERATION**

This is a reimbursement grant.

**BOARD OR COMMITTEE RECOMMENDATION**

City Council approved the decision to apply for IPG funds in order to evaluate environmental conditions prior to acquiring the property.

**RECOMMENDATION / MOTION**

Move to: Authorize the Mayor to execute a contract with the Dept of Ecology Grant of \$140,000 for environmental investigation of two parcels (3807 & 3809 Harborview Drive) adjacent to Eddon Boat Park.

Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS



## Agreement TCPRA-2014-GigHPW-00008

Toxics Cleanup Remedial Action Grant Program AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF GIG HARBOR PUBLIC WORKS

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and CITY OF GIG HARBOR PUBLIC WORKS, hereinafter referred to as the "RECIPIENT" to carry out with the provided funds activities described herein.

### GENERAL INFORMATION

Project Title:	Nikolich Property (aka Eddon Boat Park Expansion)
Total Cost:	\$140,000.00
Total Eligible Cost:	\$140,000.00
Ecology Share:	\$140,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	08/01/2014
The Expiration Date of this Agreement is no later than	06/30/2015
Project Type:	Integrated Planning Grant

#### Project Short Description:

The City proposes to use an IPG of \$140,000 to conduct a records review, carry out site characterization, complete an RI report, prepare a feasibility study, and conduct planning to evaluate cleanup options and make a decision about whether to proceed with acquisition of the 2 parcels known as the Nikolich Property that are listed on Ecology's HSL in order to expand the adjacent Eddon Boat Park for public access.

#### Project Long Description:

The City of Gig Harbor (City) is considering acquisition of two parcels adjacent to their recently completed Eddon Boat Park (EBP) cleanup, habitat restoration, public art, and park development project. The City has been awarded a Washington State Recreation and Conservation Office (RCO) development grant of approximately \$300,000 to purchase the two parcels and convert them to public use with water access. The RCO grant would be matched by a local contribution of approximately \$360,000. Therefore, this project builds on a completed cleanup nearby that was completed with local, state, and federal public investment and also has the potential to leverage significant future public investment in the site.

Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

The Nikolich Property, which has a WARM ranking of 1 on Ecology's Hazardous Sites List (HSL), is located on the parcels that the City is planning to acquire for the expansion of Eddon Boat Park. The City can only use the RCO grant funds to purchase the parcels after Ecology has determined that cleanup is complete or no further cleanup action is needed based on the intended future use of the property. Therefore, the City would like to use an IPG to evaluate the risks associated that may be associated with cleanup and acquisition of the property. This IPG would potentially expedite a cleanup that would otherwise not occur while also supporting the City's goals to provide opportunities for public recreation and habitat restoration.

The Nikolich Property is the site of a former dry cleaner building that burned down in 1959. Potential contaminants of concern on the property include tetrachloroethylene/perchloroethylene (PCE) and daughter products, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), and arsenic. The City proposes to use an IPG of \$140,000 to conduct a records review, carry out site characterization, complete an RI report, prepare a feasibility study, and conduct planning for the site's future use as needed to evaluate cleanup options and make a decision about whether to proceed with acquisition of the property.

In 2012, Ecology listed the site on the Confirmed and Suspected Contaminated Sites List (CSCSL) as Facility Site ID 20826. Steven Nikolich once owned the two contiguous parcels, and First Savings Bank Northwest now owns both parcels. The City of Gig Harbor (City) currently is negotiating an agreement to purchase the parcels from First Savings Bank Northwest pending environmental findings.

Both parcels are undeveloped and heavily vegetated. Harborview Drive borders the property on its west side, with a mix of vacant land and single family dwellings across the street. The western-most edge of the property sits approximately 20-feet above mean sea level along the street. From there, the ground slopes downward toward the east for almost 90-feet before it reaches the shoreline. The property boundaries of each parcel extend beyond the shoreline into the tidelands of the harbor. The small privately-owned property to the north provides private access to a boathouse, boat dock, and historic netshed. The City owns the adjacent property to the south, which is called Eddon Boat Park (illustrated as dark green parcels in Figure 1).

The City remediated the Eddon Boat Park parcels under an Agreed Order (DE-5597 dated 8-8-2008) with Ecology. The City carried out remedial actions at the Eddon Boat Park parcels prior to converting that property for recreational use. Following completion of the 5-year sediment monitoring plan required at the site, Ecology provided a final approval letter in September 2013, and the public notice process to de-list the Eddon Boat Park site is now complete. The vicinity map in Figure 1 illustrates the project's location within the region.

Both parcels are undeveloped and heavily vegetated. Harborview Drive borders the property on its west side, with a mix of vacant land and single family dwellings across the street.

Overall Goal:

Outcomes of the IPG project will include:

- An assessment of environmental conditions at the Nikolich Property site as they relate to potential acquisition and reuse of two parcels of waterfront property.
- An evaluation how cleanup could be cost effectively integrated with site development activities as the property is converted to its future use.
- A comparison of cost estimates for cleanup alternatives and recommendations about remedy selection and administrative pathways to inform the City's decision-making about how to proceed.

Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

Following completion of the IPG, if the City chooses to proceed with acquisition, the City's preference would likely be for the cleanup to also be carried out on an accelerated timeline, in order to maintain their eligibility for the Washington State RCO property acquisition grant. Such a need for urgency makes this site a good candidate for the flexible, streamlined approach to cleanup planning that is possible under an IPG.

Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**RECIPIENT INFORMATION**

Organization Name: CITY OF GIG HARBOR PUBLIC WORKS

Federal Tax ID: 91-6001435

DUNS Number: 014365621

Mailing Address: 3510 Grandview Street  
 Gig Harbor, WA, 98335

Physical Address: 3510 Grandview Street  
 Gig Harbor, Washington, 98335

**Contacts**

<p><b>Project Manager</b></p>	<p>Lita Dawn Stanton                  Special Projects</p> <p>3510 Grandview Street                  Gig Harbor, Washington, 98335                  Email: stantonl@cityofgigharbor.net                  Phone: (253) 853-7609</p>
<p><b>Billing Contact</b></p>	<p>JANIS GIBBARD                  FINANCE TECHNICIAN</p> <p>3510 GRANDVIEW STREET                  GIG HARBOR, Washington, 98335                  Email: gibbardj@cityofgigharbor.net                  Phone: (253) 853-7696</p>
<p><b>Authorized Signatory</b></p>	<p>Lita Dawn M Stanton                  Special Projects</p> <p>3510 Grandview Street                  Gig Harbor, Washington, 98335                  Email: stantonl@cityofgigharbor.net                  Phone: (253) 853-7609</p>



Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Toxics Cleanup  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Toxics Cleanup  
300 Desmond Drive  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Dan Koroma  P.O. Box 47600 Olympia, Washington, 98504-7600 Email: dkor461@ecy.wa.gov Phone: (360) 407-7187
<b>Financial Manager</b>	Dan Koroma  P.O. Box 47600 Olympia, Washington, 98504-7600 Email: dkor461@ecy.wa.gov Phone: (360) 407-7187



Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$62,000.00**

Task Title: Assessments and Remedial Investigations (J003)

Task Description:

Develop a work plan for Ecology review and approval, to assess the nature and extent of contamination. Incorporate the findings of the records review and any other site-specific requirements as recommended by the Ecology site manager, which may include a quality assurance plan or safety plan, into the work plan. Conduct field sampling. This includes associated items such as traffic control, providing access to the site for equipment, and disposal of investigation wastes. Conduct lab analysis. Develop a preliminary report, with maps and tables showing data, that provides an initial data interpretation. Review sample results with Ecology. Develop an additional work plan and conduct follow-up sampling if needed to fill data gaps and ensure enough information is available to develop cleanup scenarios and cost estimates. Produce a remedial investigation report with maps, tables, data interpretation, and conceptual site model.

Task Goal Statement:

Develop information to understand the nature and extent of contamination such that cleanup alternatives and cost estimates can be developed.

Task Expected Outcome:

An assessment of environmental conditions at the Nikolich Property site as they relate to potential acquisition and reuse of two parcels of waterfront property.

Recipient Task Coordinator: Lita Dawn Stanton

**Assessments and Remedial Investigations (J003)**

**Deliverables**

Number	Description	Due Date
1.1	A report documenting an assessment of environmental conditions at the Nikolich Property site.	06/30/2015

Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**SCOPE OF WORK**

Task Number: 2 **Task Cost: \$15,000.00**

Task Title: Feasibility Study and Remedy Selection (J004)

Task Description:

Conduct a detailed evaluation of cleanup action alternatives. Draft a Feasibility Study (FS) report consistent with MTCA requirements. Review the FS report with Ecology. Work with Ecology to select a preferred alternative. The FS will provide recommended approaches and actions with cost estimates for implementing institutional controls, remediation, or some combination of actions that would satisfy the requirements of MTCA. Depending on the results of the Feasibility Study, the City and their consultant may work with Ecology to prepare a draft Cleanup Action Plan that meets MTCA requirements under this subtask. Preparation of a draft Cleanup Action Plan would provide a greater level of details regarding the preferred cleanup option, would better prepare the City to move forward with cleanup, and has the potential to expedite the cleanup process if the City chooses to proceed with cleanup.

Task Goal Statement:

To develop cleanup alternatives and cost estimates based on the results of the remedial investigations

Task Expected Outcome:

An evaluation of how cleanup could be cost effectively integrated with site development activities as the property is converted to its intended future use.

Recipient Task Coordinator: Lita Dawn Stanton

**Feasibility Study and Remedy Selection (J004)**

**Deliverables**

Number	Description	Due Date
2.1	A feasibility Study Report	06/30/2015

Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**SCOPE OF WORK**

Task Number: 3 **Task Cost: \$38,000.00**

Task Title: Integrated Planning Activities (J008)

Task Description:

The Recipient will conduct a prooperty appraisal that meets the city's needs for due dilligence; prepare a preliminary site development plan that will be used for cleanup and reuse planning, coordination, and land use permitting. Utilize the services of an Engineering Consultant and a Biologist to carry out the following activities:

- Removal of existing creosote-treated timber bulkhead.
- Removal of concrete rubble and dilapidated float sections from the tidelands.
- Beach restorations for habitat gravel and energy dissipation that are compatible with the City’s existing 36-inch diameter storm water outfall.
- Trail(s) that will connect Harborview Drive with the water’s edge.

The Biologist will prepare three additional reports necessary to plan for the site’s intended intended future use—a Critical Habitat Assessment and Habitat Management Plan, a Biological Evaluation, and a Federal Emergency Management Agency (FEMA) Flood Hazard Analysis.

Provide a record of survey, topographic survry, and detailed survey documents and files.

Develop a preliminary landscaping design consistent with the intended use and within engineering constraints.

Task Goal Statement:

To expedite cleanup of the Nikolich Property site by integrating planning and studies related to cleanup, acquisition, and reuse of the site.

Task Expected Outcome:

A comparison of cost estimates for cleanup alternatives and recommendations about remedy selection and administrative pathways to inform the City's decision-making about how to proceed.

Recipient Task Coordinator: Lita Dawn Stanton

**Integrated Planning Activities (J008)**

**Deliverables**

Number	Description	Due Date
3.1	A Property Appraisal; a Preliminary Site Development Plan; a Critical Habitat Assessment and Habitat Management Plan; a Biological Evaluation; FEMA Flood Hazard Analysis; Survey Documents; Landscape Design.	06/30/2015

Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**SCOPE OF WORK**

Task Number: 4 **Task Cost: \$25,000.00**

Task Title: Grant and Project Administration (J008)

Task Description:

City costs for project management and grant administration and contingency, staff time including grant billing and reporting, data management, contracting costs, and reports or studies related to multiple tasks. Attend training events approved in advance, including related travel costs. Purchase services, supplies, tools, and equipment needed to accomplish grant tasks.

Task Goal Statement:

To fund Recipient's costs ECOLOGY deems reasonable and necessary to administer and manage the grant.

Task Expected Outcome:

A well managed grant that ensures the goals and expectations of the project are met in a timely manner.

Recipient Task Coordinator: Lita Dawn Stanton

**Grant and Project Administration (J008)**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	A plan that will help the City reduce uncertainty and manage risk surrounding the potential cleanup and acquisition of the Nikolich property.	06/30/2015

Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**BUDGET**

**Funding Distribution EG150009**

Funding Title: State and Tribal Response Program  
 Funding Type: grant Funding Expiration Date: 09/15/2014  
 Funding Effective Date: 08/01/2014  
 Funding Source:

Title: State and Tribal Response Program - Federal  
 Type: Federal  
 CFDA: 66.809  
 Assistance Agreement: RP-00J78301  
 Description:

Recipient Match %: 0  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

State and Tribal Response Program	Task Total
Assessments and Remedial Investigations (J003)	\$ 62,000.00

**Total: \$ 62,000.00**

Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**BUDGET**

**Funding Distribution EG150020**

Funding Title: LTCA - Local Toxics Control Account  
 Funding Type: grant Funding Expiration Date: 06/30/2015  
 Funding Effective Date: 08/01/2014  
 Funding Source:

Title: LTCA – Local Toxics Control Account  
 Type: State  
 CFDA:  
 Assistance Agreement:  
 Description:

Recipient Match %: 0  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

<b>LTCA - Local Toxics Control Account</b>	<b>Task Total</b>
Feasibility Study and Remedy Selection (J004)	\$ 15,000.00
Integrated Planning Activities (J008)	\$ 38,000.00
Grant and Project Administration (J008)	\$ 25,000.00

**Total: \$ 78,000.00**



Agreement No: TCPRA-2014-GigHPW-00008  
 Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
 Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
State and Tribal Response Program	0.00 %	\$ 0.00	\$ 62,000.00	\$ 62,000.00
LTCA - Local Toxics Control Account	0.00 %	\$ 0.00	\$ 78,000.00	\$ 78,000.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 140,000.00</b>	<b>\$ 140,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

General Federal Requirements : The RECIPIENT must comply with federal cross-cutting requirements. These requirements include, but are not limited to minority business enterprise (MBE)/women’s business enterprise (WBE) requirements found at 40 CFR Part 33; nondiscrimination statutes, including Title VI of the Civil Rights Act of 1964, and EPA’s implementing regulations found at 40 C.F.R. Parts 5 and 7; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti-Kickback Act (40 USC 276c); and Section 504 of the Rehabilitation Act of 1973, as implemented by Executive Orders 11914 and 11250

Federal agencies providing grants, cooperative agreements, and loans with Brownfields funding shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant construction contracts that are in excess of \$2,000.

**SPECIAL TERMS AND CONDITIONS**

**GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

**CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneously by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have

Agreement No: TCPRA-2014-GigHPW-00008  
Project Title: Nikolich Property (aka Eddon Boat Park Expansion)  
Recipient Name: CITY OF GIG HARBOR PUBLIC WORKS

the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department for assistance in obtaining a copy of those regulations..

4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

Federal Funding Accountability And Transparency Act (FFATA) Reporting Requirements:

RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any RECIPIENT that meets each of the criteria below must also report compensation for its five top executives, using FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award; and
- Receives more than 80 percent of its annual gross revenues from federal funds; and
- Receives more than \$25,000,000 in annual federal funds

ECOLOGY will not pay any invoice until it has received a completed and signed FFATA Data Collection Form. ECOLOGY is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

**GENERAL TERMS AND CONDITIONS**

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition". <https://fortress.wa.gov/ecy/publications/SummaryPages/1401002.html>
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring

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all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.

d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

## 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

## 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. Activities associated with archaeological and cultural resources are an eligible reimbursable cost subject to approval by ECOLOGY.

RECIPIENT shall:

- a) Immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this Agreement.
- b) Immediately notify the Department of Archaeology and Historic Preservation at (360) 586-3064, in the event historical or cultural artifacts are discovered at a work site.
- c) Comply with Governor Executive Order 05-05, Archaeology and Cultural Resources, for any capital construction projects prior to the start of any work.
- d) Comply with RCW 27.53, Archaeological Sites and Resources, for any work performed under this Agreement, as applicable. National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact cultural or historic properties.

## 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to understand if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible may require approval by ECOLOGY prior to purchase.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email

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payeehelpdesk@des.wa.gov.

- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, have been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement and, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT should submit final requests for compensation within thirty (30) days after the expiration date of this Agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable Federal, State and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal

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decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this contract will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL STANDARDS

- a) RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: <http://www.ecy.wa.gov/eim>.
- b) RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: <http://www.ecy.wa.gov/services/gis/data/standards/standards.htm>. RECIPIENTS shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.
- c) RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

#### 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

#### 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act

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or omission of that party or that party's agents or employees arising out of this Agreement.

#### 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

#### 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission, or gift in return for award of a subcontract hereunder.

#### 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any provisions or terms incorporated herein by reference including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

RECIPIENT shall obtain ECOLOGY's approval for all communication materials or documents related to the fulfillment of this Agreement, steps for approval:

- a) Provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution of any documents or materials compiled or produced.
- b) ECOLOGY reviews draft copy and reserves the right to require changes until satisfied.
- c) Provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets, such as a refrigerator magnet with a message as well as media announcements, and any other online communication products such as Web pages, blogs, and Twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT must provide a complete description including photographs, drawings, or printouts of the product that best represents the item.

RECIPIENT shall include time in their project timeline for ECOLOGY's review and approval process.

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RECIPIENT shall acknowledge in the materials or documents that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT shall submit the Closeout Report within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY. RECIPIENT shall use the ECOLOGY provided closeout report format.

#### 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of ECOLOGY; present papers, lectures, or seminars involving information supplied by ECOLOGY; use logos, reports, maps, or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
  - a. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  - b. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
  - c. Conversions. Regardless of the agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such

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property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluation performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.



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#### 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

#### 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

#### 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post consumer recycled paper.

For more suggestions visit ECOLOGY's web pages: Green Purchasing, <http://www.ecy.wa.gov/programs/swfa/epp> and Sustainability, [www.ecy.wa.gov/sustainability](http://www.ecy.wa.gov/sustainability).

#### 27. TERMINATION

##### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

##### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms

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of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

28. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

29. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



**Business of the City Council  
City of Gig Harbor, WA**

**Subject: Second Reading of Ordinance No. 1301 – Amendments to Marijuana Related Uses – GHMC 17.63**

**Proposed Council Action:**

City Council will deliberate one by one on the items heard at the August 11<sup>th</sup>, 2014 public hearing and first reading in order to provide staff direction in preparing the final ordinance for third reading and adoption on September 22, 2014.

**Dept. Origin:** Planning Department

**Prepared by:** Lindsey Sehmel, AICP LS

**For Agenda of:** September 8, 2014

**Exhibit:** Draft Ordinance No. 1301

	Initial & Date
Concurred by Mayor:	SL 9/4
Approved by City Administrator:	KW 9/3
Approved as to form by City Atty:	Via email 9/3
Approved by Finance Director:	N/A
Approved by Department Head:	JK 9/3/14

Expenditure Required	Amount Budgeted	Appropriation Required	\$ 0
<b>INFORMATION/BACKGROUND</b>			

**INFORMATION/BACKGROUND**

Initiative 502 was approved by the voters of Washington State in November of 2012, approving recreational marijuana use for adults. The Washington State Liquor Control Board (WSLCB) has been working to outline the process and procedures for implementation of the new law, establishing rules for the growing, processing, and retail of recreational marijuana.

In January 2014, the Washington State Attorney General (AG) issued an advisory opinion identifying that cities are not pre-empted by the passage of I-502 to define land use regulations appropriate for the citing of such uses.

Additionally, the Court of Appeals, on March 31, 2014 in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses.

On April 14, 2014 City Council approved Ordinance No. 1290 immediately establishing an emergency moratorium for all marijuana related uses within the City of Gig Harbor. This ordinance directed staff to prepare amendments to the municipal code to address concerns around a lack of protection from 'non-traditional' school sites in addition to the repeal of medical marijuana uses within city limits.

A public hearing on Ordinance No 1290 was held on June 9, 2014 specific to the adopted

moratorium.

On June 23, 2014 City Council directed staff to expand the scope of pending amendments identified in Ordinance No. 1290 to address additional items of concern.

On July 21, 2014 City Council held a special study session meeting to address the concerns raised by the community and consider the best approach to amend Gig Harbor Municipal Code 17.63. Staff was directed to make amendments to GHMC 17.63 relating the following:

- Amending the definition of Elementary School and Secondary School to include 'non-traditional school sites' that provide state funded educational services to students as well as clarifying the inclusion of private schools approved by Washington State Superintendent of Public Instruction.
- Amending the definition of Recreational Center or Facility to include for-profit organizations.
- Amending the definition of Public Park to include publically owned parks and trails that provide recreational services.
- Inclusion of vacant undeveloped property owned by the City and Peninsula School District as sensitive uses requiring a 1,000 foot buffer.
- Adding a new sensitive use relating to privately owned and operated playgrounds that are open to the general public.
- Making permanent a 2,500 foot separation requirement between marijuana related uses. This is currently an interim regulation set to expire in February 2015.
- Adding the Employment District (ED) zone as a designated zone suitable for recreational marijuana retail uses.
- Adding a definition of Marijuana Concentrates to address changes in state law since initial adoption.
- Repealing allowance of Medical Marijuana Uses in consistency with the recent ruling of Cannabis Action Coalition v. City of Kent.

The attached Ordinance addresses the items identified in the bullets above as directed by City Council on July 21, 2014.

August 11, 2014 City Council held first reading and a public hearing on the proposed amendments.

On September 8<sup>th</sup>'s second reading, City Council shall consider their desired direction with each of the proposed items above and deliberate. After discussion and direction made on each item one final motion will be required to direct staff to move forward with preparation of the ordinance for third and final reading. Staff will provide assistance with this process through the use of a PowerPoint presentation.

Additional considerations not identified above would require a new public hearing and first reading, however, items proposed can be stricken from the draft ordinance.

### **RECOMMENDATION/MOTION**

City Council will deliberate one by one on the items heard at the August 11<sup>th</sup>, 2014 public hearing and first reading in order to provide staff direction in preparing the final ordinance for third reading and adoption on September 22, 2014.

**ORDINANCE NO. 1301**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING FOR MARIJUANA RELATED USES; AMENDING CHAPTER 17.63 GHMC--MARIJUANA RELATED USES-- TO REVISE DEFINITIONS TO ADDRESS INCONSISTENCIES WITH THE INTENT OF INITIATIVE 502, TO ADD THE DEFINITION OF "MARIJUANA CONCENTRATES," AND TO PROHIBIT MEDICAL CANNABIS COLLECTIVE GARDENS; REPEALING INTERIM REGULATIONS ADOPTED UNDER ORDINANCE NO. 1285; TERMINATING THE MORATORIUM ESTABLISHED UNDER ORDINANCE NO. 1290; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, Initiative 502 was passed by the voters of the State of Washington in November 2012, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, in response and after a public hearing the Gig Harbor City Council approved Ordinance No. 1271 on September 23, 2013, adopting permanent regulations relating to marijuana uses; and

WHEREAS, the Gig Harbor City Council, after a public hearing and consideration of testimony given, adopted Ordinance No. 1285 establishing of a twelve month interim regulation for a 2,500 foot separation requirement between Marijuana Retail Uses; and

WHEREAS, the Gig Harbor City Council adopted Ordinance No. 1290 establishing a six month emergency moratorium on all marijuana uses on April 14, 2014 and a work program to address concerns regarding 'non-traditional school sites' within 1,000 feet of proposed retail locations as well as prohibition of medical marijuana uses within city limits, for which the City Council held a public hearing on June 9, 2014 in accordance with RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, on January 16, 2014, the Washington State Attorney General opined that I-502 does not preempt local authority to regulate marijuana businesses beyond the minimum requirements of state law; and

WHEREAS, on March 31, 2014, the Court of Appeals, Division I, in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses; and

WHEREAS, the Gig Harbor City Council directed staff to propose amendments to the definitions of "Elementary School", "Secondary School", "Perimeter", "Public Park", and "Recreation Center or Facility" to establish clarification consistent with the intent of Initiative 502; and

WHEREAS, this year the Washington State legislature added a definition for "marijuana concentrates" and revised other definitions to address the change, and the City Council desires to amend the definitions in GHMC 17.63.020 for consistency with state law; and

WHEREAS, the Gig Harbor City Council held a public hearing on July 14, 2014, to take public testimony relating to this ordinance; and

WHEREAS, the Gig Harbor City Council further held a workstudy session on July 21, 2014, to further consider options for regulation of marijuana uses; and

WHEREAS, the City Council deems it to be in the public interest to amend the permanent regulations to protect the health, safety and welfare of citizens of the City; and

WHEREAS, nothing in this Ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

**Section 1. Purpose.** Chapter 17.63 is hereby amended in the Gig Harbor Municipal Code, which shall read as follows:

Chapter 17.63  
MARIJUANA RELATED USES

17.63.010	Purpose and Intent
17.63.020	Definitions
<u>17.63.025</u>	<u>Medical Marijuana Uses - Prohibited</u>
17.63.030	Marijuana Related Uses

**17.63.010 Purpose and Intent.**

The purpose and intent of requiring standards for Marijuana related uses and facilities is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the City. In addition, these provisions are intended to acknowledge the authority for ~~collective gardens set forth in RCW 69.51A.085~~ and enactment by Washington voters of Initiative 502 and state licensing procedure to permit, but only to the extent required by state law, ~~collective gardens~~, marijuana producers,

marijuana processors, and marijuana retailers to operate in designated zones of the city.

**17.63.020 Definitions.**

All definitions used in this chapter apply to this chapter only and, except as otherwise revised below, shall have the meanings established pursuant to RCW 69.50.101 and WAC 314-55-010, as the same exist now or as they may later be amended. Select definitions have been included below for ease of reference.

“Child care center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC. ~~WAC 314-55-010 (4)~~

“Collective Garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of cannabis for medical use as ~~set forth~~ described in chapter 69.51A RCW and subject to the limitations ~~therein~~ in state law.

“Elementary school” means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction. ~~WAC 314-55-010 (5)~~. This includes non-traditional school sites that provide educational services to state funded students.

“Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted. ~~WAC 314-55-010 (7)~~. In addition a “game arcade” includes a secondary use within entertainment venues open to persons under the age of 21.

“Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation. WAC 314-55-010 (8)

“Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than zero point three percent (.3%) on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination.

“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty percent.

“Marijuana infused products” means products that contain marijuana or marijuana extracts and are intended for human use, and have a THC concentration greater than zero point three percent (0.3%) and no greater than sixty percent (60%). The term “marijuana infused products” does not include usable either marijuana or marijuana concentrates.

“Marijuana related use” means any use where a marijuana producer, marijuana processor, marijuana retailer, ~~and collective garden~~ are established or proposed.

“Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into usable marijuana ~~and~~, marijuana infused products, and marijuana concentrates, package and label usable marijuana ~~and~~, marijuana infused products, and marijuana concentrates for sale in retail outlets, and sell usable marijuana ~~and~~, marijuana infused products, and marijuana concentrates at wholesale to marijuana retailers.

“Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana ~~and~~, marijuana infused products, and marijuana concentrates in a retail outlet.

“Perimeter” means a property line that encloses an area WAC 314-55-010(14).

“Playground” means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, ~~owned and/or managed by a city, county, state, or federal government.~~ WAC 314-55-010 (16).

“Public park” means an area of land for the enjoyment of the public, having facilities for rest and recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district, including established trails and trailhead parks. ~~Public park does not include trails.~~ WAC 314-55-010 (17).

“Public transit center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers. WAC 314-55-010 (18)

“Publicly owned future sites” means real property owned by the City of Gig Harbor or the Peninsula School District that has been identified as a future location for a public park or elementary or secondary school.

“Recreational center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a ~~charitable~~ nonprofit organization, for profit organization, city, county, state, or federal government. ~~WAC 314-55-010(19).~~

“Secondary school” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction. ~~WAC 314-55-010 (21).~~ This includes non-traditional school sites that provide educational services to state funded students.

“Useable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include either marijuana infused products or marijuana concentrates.



**17.63.025 Medical Marijuana Uses - Prohibited.**

Medical marijuana (cannabis) collective garden uses are prohibited, consistent with the holding by the Washington State Court of Appeals, Division I, in *Cannabis Action Coalition v. City of Kent*, issued March 31, 2014.

**17.63.030 Marijuana Related Uses.**

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Gig Harbor is an authorization to circumvent federal law or to provide permission to any person or entity to violate federal law. ~~In addition to collective gardens,~~ Only Washington State licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Gig Harbor and then only pursuant to a license issued by the State of Washington.

B. Permits Required

1. Major site plan review as described in Chapter 17.96 GHMC.  
2. Development regulations and performance standards shall conform to the requirements of the applicable land use zone.

3. Parking standards, as defined in GHMC 17.72.030 apply as followed:

a) ~~Collective gardens,~~ Marijuana producers and marijuana processors shall calculate parking per the standards under Industrial Level 2.

b) Marijuana retailers shall calculate parking per the standards under Sales Level 1.

~~C. Collective gardens may locate only in the Employment District (ED) zoning district and are subject to the following conditions:~~

~~1. A collective garden must be in a permanent structure designed to comply with the City Building Code and constructed under a building permit from the City regardless of the size or configuration of the structure.~~

~~2. Outdoor collective gardens are prohibited.~~

~~3. No production, processing, or delivery of cannabis may be visible to the public.~~

~~4. A collective garden must meet all requirements under RCW 69.51A.085, including but not limited to limitations on the number of members, number of plants, amount of useable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.~~

~~5. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden.~~

~~6. A collective garden must meet the separation provisions set forth in GHMC 17.63.030G.~~

DC. Marijuana producers may be located only in the Employment District (ED) zone of the city. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law and Chapter 17.63 GHMC.

ED. Marijuana processors may locate only in the Employment District (ED) zone of the city, but only at designated sites licensed by the state of Washington and fully conforming to state law and Chapter 17.63 GHMC.

FE. Marijuana retailers may locate only in the following zones but only at designated sites licensed by the state of Washington and fully conforming to state law and this chapter and only when marijuana retailers are separated by a minimum of 2,500 feet measured from the perimeter of any other marijuana retailer, to be determined by Pierce County assessor-treasurer tax parcels:

1. Commercial District (C-1);
2. General Business District (B-2) and;
3. Employment District (ED) ~~only if subordinate to the principal tenant use of Marijuana producer or marijuana processor, and occupy no more than 25 percent of the gross floor area of the principal tenant use.~~

GF. No marijuana processor, marijuana producer, or marijuana retailer ~~or collective garden~~ shall locate within 1000 feet, measured from the perimeter, in the manner set forth in WAC 314-55-050(10), from any of the existing uses as defined in GHMC 17.63.020:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Childcare center;
5. Public park;
6. Public transit center;
7. Library; or
8. Game arcade; or
9. Publicly owned future sites.

H. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the city attorney under the applicable provisions of this code or state law, including but not limited to the provisions of Chapter 1.16 GHMC, Chapter 8.10 GHMC, Chapter 17.07 GHMC, and Chapter 19.16.

**Section 2. Findings.** The City Council adopts the recitals set forth above in support of the amendments set forth above. In addition, the Gig Harbor City Council makes the following findings:

A. The definitions adopted by the State Liquor Control Board regarding “Elementary School”, “Secondary School”, “Playground”, “Public Park”, and “Recreation Center or Facility” require amendment in order to protect the general health, safety and welfare of the public, consistent with the intent of Initiative 502.

B. The City has a grant of constitutional authority to enact legislation regulating land uses within its jurisdiction so long as such local legislation is consistent with the general laws (Constitution Article XI, Section 11).

C. Nothing in Initiative 502 decriminalizing certain possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Control Board to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the City of Gig Harbor from

exercising its land use regulatory authority and amending definitions set forth in the Washington Administrative Code to meet the general health, safety and welfare needs of the City.

D. Initiative 502 and chapter 69.51A RCW do not *require* that any city allow the location of marijuana production, processing or retailing facility, or collective garden, within its jurisdiction. The City retains jurisdiction under the state constitution and state law to adopt and enforce land use regulations intended to preserve and promote the general health, safety and welfare of its community.

**Section 3. Transmittal to Department.** Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

**Section 4. 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 5. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 6. Effective Date.** This Ordinance shall be published and shall take effect and be in full force five (5) days after the date of publication.

**Section 7. Repeal of Interim Regulations.** The interim regulations established in Ordinance No. 1285 are hereby repealed. The Code Reviser is requested to remove the related reference note in GHMC 17.63.030.

**Section 8. Termination of Moratorium.** The moratorium established under Ordinance No. 1290 is hereby terminated.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this \_\_\_\_\_ day of September, 2014.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Jill Guernsey

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

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FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO: 1301