

City Council Meeting

**May 9, 2016
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, May 9, 2016 – 5:30 p.m.**

CALL TO ORDER / ROLL CALL:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Apr 25, 2016.
2. Correspondence / Proclamations: a) Historic Preservation Month.
3. Liquor License Action: a) Special Occasion License Skansie Netshed.
4. Copier Lease Agreement.
5. 2016 ADA Ramp Improvements – Professional Services Contract / Exeltech.
6. Summer Sounds Concerts Contracts.
7. Client Assistance Memos – Consultant Services Contract Amendment – Sound Municipal Consultants.
8. Approval of Payment of Bills May 9, 2016: Checks #81137 through #81264 in the amount of \$2,039,004.63 and ACH payments in the amount of \$131,953.60.
9. Approval of Payroll for the month of April: Checks #7661 through #7672 and direct deposits in the amount of \$600,996.61.

PRESENTATIONS:

1. Giggling Up the Harbor, Downtown Waterfront Alliance - Mike Henery

OLD BUSINESS: None.

NEW BUSINESS:

1. Coordinated Permitting Professional Services Contract - Latimore Group.
2. First Reading of Ordinance – Establishing a New Franchise Agreement - Astound Broadband.
3. First Reading of Ordinance Extension of an Existing Franchise Agreement – CenturyLink.

CITY ADMINISTRATOR / STAFF REPORT:

1. Official City Newspaper – Change in Distribution Date.
2. Ancich Waterfront Park Update.

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Ancich Park Ad Hoc Committee: Tue. May 12 at 2:30 p.m.
2. Ancich Waterfront Park Public Information Session: Sat. May 14 from 9:00 a.m. to 11:00 a.m.
3. Joint City Council and Parks Commission Worksession: Mon. May 16 at 5:30 p.m.

EXECUTIVE SESSION: For approximately fifteen minutes for the purpose of discussing labor negotiations per RCW 42.30.140(4) and for consideration of a lease per RCW 42.30.110(i).

ADJOURN:

MINTUES
GIG HARBOR CITY COUNCIL
April 25, 2016 – Council Chambers

CALL TO ORDER / ROLL CALL:

Councilmembers Malich, Arbenz, Ekberg, Perrow, Lovrovich, and Kadzik.
Councilmember Payne acted as Mayor Pro Tem in Mayor Guernsey's absence.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Apr 11, 2016.
2. Liquor License Action: a) Renewals: Harbor History Museum, Morso, St. Anthony Hospital, Gig Harbor Yacht Club, The Green Turtle, Waterfront Farmers Market, Panda Garden, Happy at the Bay Teriyaki, Harbor Greens, Maritime Inn, and Gig Harbor Farmers Market at Uptown; b) Application: Pho Ever and Wok; c) Renewals: Susanne's Bakery & Deli, Walgreens, Cigar Land GH, Anthony's at Gig Harbor, Tanglewood Grill, Sunset Grill, Bistro Satsuma, and Heritage Distilling Co. (2).
3. Receive and File: a) Public Works Committee Minutes of February 8 and March 14, 2016; b) Planning Commission Minutes March 17, 2016; c) 1st Quarter Financial Report.
4. Digital Orthophotography Partner Agreement – Interagency Agreement with Pierce County for 2016-2018.
5. Settlement Agreement – Evergreen Forestry Resources.
6. Approval of Payment of Bills Apr 25, 2016: Checks #81016 through #91136 in the amount of \$582,474.17.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Kadzik - unanimously approved.

PRESENTATIONS:

1. Presentation of Lifesaving Award – Officer Garret Chapman.

Chief Kelly Busey called forward Officer Chapman and his family. He described a recent event in which Officer Chapman went over and above to help save the life of someone in need. Chief Busey presented Officer Chapman with the Department Lifesaving Award and asked Council and the audience to share in recognizing his effort.

Officer Chapman said a few words about the team effort to work together to help this person in trouble. He then introduced his children Leif, Max, and wife Mandy.

2. Law Day - Recognition of Contest Winners. Court Administrator Stacy Colberg gave a brief history of the 2016 Law Day topic on Miranda Rights. She invited the participants in the recent law day poster and essay contest to come forward to be recognized. She announced the winners and presented their awards as follows:

Poster

Elyse Miyake = 1st Place
Emma Barber = 2nd Place
Lucas Hayden = 3rd Place
Laila Douglas = Honorable Mention

Essay

Kate Everling = 1st Place
Mia Filand = 2nd Place
Justin Dennis = 3rd Place

3. [South Sound 911 Update – Andrew Neiditz, Executive Director.](#)

Mr. Neiditz used a PowerPoint Presentation to present a brief history and an update on the SS911 System.

OLD BUSINESS: [None scheduled.](#)

NEW BUSINESS:

1. [Public Hearing - Boating Infrastructure Grant \(B.I.G.\).](#) City Administrator Ron Williams presented the background for this Federal Grant application for additional recreational moorage.

[Parks Project Manager Katrina Knutson](#) continued with the presentation of information. She explained that this supports implementation of the Harbor Element Vision of the city's 2015 Comprehensive Plan which calls for additional recreational moorage; it provides economic development, and increase access to the water. This proposal would add additional moorage at Jerisich and Maritime Pier by 34 berths. She used a PowerPoint presentation to illustrate the proposal for both sites, the efforts for public outreach, to address issues and concerns, the project cost and timelines, and the next steps. She addressed several comment, questions, and concerns voiced by the Councilmembers.

[Mayor Pro Tem Payne opened the public hearing at 6:30 p.m.](#)

[Jake Bujacich](#) – 3607 Ross Avenue. Mr. Bujacich gave a brief history of the bay and his efforts to establish harbor lines to protect the view. We bought Eddon Shipyard, Jerisich Park, Sanskie Property, and finally, the Maritime Pier for that same reason. He said he is opposed to whole thing, and Council is our last defense to stop it. This is public property for the people to enjoy. He explained the potential for an accident during a tide run if pleasure boats interfere with a seiner trying to maneuver at the Maritime Pier. He asked Council to consider the residents who lives here rather than developing for those who don't live here.

[Karen McDonald - 14410 Sherman Drive.](#) She voiced appreciation that Gig Harbor has made parks a priority but opposed the development of our parks. She said there would be a very narrow channel for a view when that 'L' is in place and you will be looking at a parking lot of boats. There are few areas you can enjoy the natural beauty of the bay,

and she asked the City Council to respect Resolution 942 that protects the water view at Skansie Park. There are a lot of local people here tonight that oppose the proposed floats, she said, and she hopes Council will vote the will of the constituents.

[Linda Foster](#) 6828 96th St. NW – Ms. Foster said she is here to oppose the B.I.G. Grant. She said the large parcels purchased by the city might now need protect from city developers. She said her most serious concern is transparency and the perception that city government is holding secret meetings or changing resolutions without community input, designing buildings that do not follow the historic architecture, and making it difficult for the community to be timely informed. This creates distrust and division and prevents citizens from enjoying their free time because city government must be watched. She resents this and asked council to retain her trust by being up front with ideas. In the end it is the will of the people; let us decide, it's our right.

[Peter Norman](#) – 6911 Soundview Drive. Mr. Norman said he looks forward to the answers to Council's previous questions. He spoke in support of the proposal which he says will help the downtown.

[Guy Hoppen](#) – 8402 Goodman Drive. Mr. Hoppen disagreed with the use of the scarce public waterfront for exclusive transient moorage. He said that tonight is the public's first chance to weigh in on this plan that flips the intended usage of the Maritime Pier and impacts the character of the Skansie Brothers Park. He gave a brief history of the formation of a Maritime Pier Committee and all the things for which they advocated. Transient moorage was purposely left off the list because Jerisich Dock provided a balanced amount. He requested that council reach out to the community to see if they want a Maritime Pier for community use or for transient moorage. Mr. Hoppen then provided his own observations of boats moored at Jerisich Dock and compared it to the data in the grant application. He said existing transient space is underutilized the majority of the year, and the waterfront should meet the needs of the community first. This has been the path for the Skansie, Ancich, Eddon, and pier properties and he encouraged Council to stay this course.

[Jim O'Donnell](#) – 4420 35th Ave. NW. Mr. O'Donnell began with his family history. He said he hopes we don't do what they did in Niagara Falls; it was trashed. He shared that most of the people he talks to oppose this plan. He talked about his involvement with the Audubon Society. He ended by saying that he opposes both proposals.

[Jay Johnson](#) – 5775 Soundview Drive. Mr. Johnson, representing the Gig Harbor Chamber of Commerce and the Economic Development Council, spoke in support of the B.I.G. Grant saying it is important for the economic development of Gig Harbor. He shared data on how much has been given to charity by folks who live in the surrounding areas, how they support this community in other ways. He said that some come by boat and want facilities that allow them to enjoy the harbor. A recent study showed 21.6 billion dollars was spent on waterborne activities in Washington State. These are the type of folks that come, spend their money, and go home. We think this project should go forward, he said.

[Mike O'Donnell - 11537 Ridge Rim Trail, Port Orchard.](#) Mr. O'Donnell, a frequent visitor, stressed that this is a small harbor and we have to accept a limit for the number of boats that can be parked. We need solutions to utilize the current public and private moorage. He cited several reasons why Gig Harbor is a great place. Skansie Park is charming because you can see across the harbor. If we put a parking lot in front of that view you will take away part of the town's charm; you can't put an economic price tag on that. He urged the city to find a solution, and said that if it's about bringing people to town, figure out a way to bring people to town in vehicles.

[Dave Morris – 2809 Harborview.](#) Mr. Morris spoke in favor of these proposals for the B.I.G. Grant. He said that this is fulfillment of Resolution No. 905 in which Council recognizes Gig Harbor as a boating destination, and speaks to recreational boaters. It has been reduced in scope from a few years ago, but it's a great first step to implementing the intent of the resolution. There are around 1,100 boats in bay now. He then explained that views are subjective and that people like to look at different things. Even the tide affects views, he said. He urged Council to support this and follow through with the resolution.

[Sharon Snuffin – 8817 Franklin Avenue.](#) Ms. Snuffin shared that she is very lucky to have grown up and still live on the hill above Anthony's. A family pastime is to count boats in the harbor during big weekends. There were over 151 boats over the 4th of July. The harbor is very attractive to the boating community. She explained that in the past there weren't the amenities that we have now. People came because it was beautiful, it was quiet, it was quaint, the people friendly, there were churches, and enough restaurants. One thing we had that we don't now is a fuel dock, which was a draw. She suggested if we are to spend this kind of money to attract boat traffic it should be spent on a fuel dock. She said she is opposed to adding floats as it will crowd the harbor and make boating more difficult to get in and out. She said we could use the money and resources more effectively to attract the boating community.

[Bob Hines 6507 115th St. Ct. NW.](#) Mr. Hines read the portion of Resolution No. 942 recommending that the open waters in front of Skansie Brothers Park remain unobstructed. He cited the reasons for his concern that the structure at Jerisich Dock forms a narrow channel between there and Gig Harbor Marina 'A' Dock which forces large boats to go through. There would be limited visibility, and a variety of human-powered, low-profile crafts. He then addressed the demonstrated capacity estimates which he said doesn't come from any data from an existing dock. He said the capacity demand and financials need to be cleaned up.

[Kathy Hill – opposes the proposal.](#)

[Kit Kuhn 3104 Shyleen Street.](#) Mr. Kuhn said that as a business owner, only about 1% of sales came from boats over 26'. He briefly hit on several concerns: the property is not the cities to sell, you are setting yourself up for a lawsuit, erosion of the shoreline, he would like to see a gas station proposal, there is the danger of large boats verses small

hand-powered watercraft, the loss of visible water, shifting the reason for Maritime Pier, and larger than 26 foot boats. He voiced surprise that Mayor Guernsey isn't here and said he doesn't like the direction the city is going. The parks are neglected. Over the past few years he has completely lost faith in the city. We have to defend what we have, he said, and asked that Council please support the citizens that live here, don't sell out to others who don't...don't take it away. Please restore the faith and don't let these proposals go.

[Joni Jerkovich Dupille - 3304 Shyleen Street](#). Ms. Dupille voiced her opposition to the B.I.G. Grant. Gig Harbor is a beautiful place to live and visit. We could quickly lose its quaint appeal if these over-aggressive plans are put in place. She said there are other places you can live if you want urban blight in the name of tourism. Gig Harbor doesn't need to be one of these. Her ancestors helped settled here and she would like it preserved for her daughter and grandchildren. Once our idealistic town is gone, we can't get it back. She asked that the City Council please uphold Resolution No. 942. The drive through Gig Harbor is becoming a tunnel with all the buildings. She is going to get involved to help get the harbor back to the quaint harbor it used to be and for the residents to enjoy too.

Ms. Stanton spoke for others, and was allowed five minutes for testimony.

[Lita Dawn Ancich Stanton – 3105 Harborview Drive](#). Ms. Stanton talked about the Strong Mayor Form of Government and the important role the Council plays in representing the community if they feel misdirected by the Mayor's direction. She said there has been no community-wide disclosure for this project, and so they are forced to challenge the facts at the 11th hour. She was thankful for social media because the city's public noticing wasn't there. She said she is not against transient moorage but is against using the community's public space to get it. Ms. Stanton disagreed with the data in the spreadsheet that says the Jerisich floats are over 1/3 full during the winter, and the amount that boaters are estimated to spend per day, per visit. Extrapolating out those numbers would result in nearly 1.5 million dollars that would pour into downtown each year. She cited the Port of Bremerton study from the Army Corp of Engineers that says boaters spend \$167 per day. Ms. Stanton said what is most disturbing is the non-disclosure of Resolution No. 942 written to preserve the open waters at Skansie Park, which was approved by the Parks Commission and all Councilmembers except Guernsey. She suggested Council change the verbiage in the resolution from "recommended" to "shall," or to create an ordinance that preserves Skansie Park for us and future generations without having to "baby-sit" each new administration. She asked Council to deny the B.I.G. now and in the future; it comes with strings and the price our community is too high.

[Ronald Rourke – 13579 9th Ave. NW](#) Mr. Rourke said that there is a disconnect in Chapter 3 of the Vision Statement, Chapter 13 of the Land Use Agreement, which talks about specific goals for downtown Gig Harbor. It was adopted and reaffirmed in 2014, and yet we are here discussing why we don't want to implement that. If the goal is not to allow anything to happen you shouldn't pass these goals. He said he is empathetic by

what has been said, but this Council has said that Chapter 13 governs so you have to agree to this proposal. He said that he is in support of it. He then voiced concern and said that you can't use public funds to underprice the competition. There are three places with public moorage. He has upgraded their facilities but now the city is going to underprice by 50%. He recommended that the city put out an RFP and outsource the managing of this.

[Jeni Woock – Citizens for the Preservation of Gig Harbor – 3412 Lewis Street.](#) Ms. Woock said you voted for Resolution No. 942 and this proposed ordinance for downtown debacle is inconsistent with 942. You also voted for the Comprehensive Plan 3.3; this marina thing is inconsistent with 3.3 which is to protect the views of the bay. If you are looking to increase transient moorage then how about a clearing house for available slips where people could call ahead and find one. If you really want to increase downtown business then take this money and use it for parking space. We don't know about the return on investment. It will take from 10 to 17 years to see a profit from this \$500,000 investment. If an investment person told you they would invest your \$500,000 and it would take 17 years to see a profit, you would probably fire them.

[Judy Austin 15703 118th Ave. NW, KPN.](#) Ms. Austin concurred with comments made by Mr. O'Donnell and recommended the city obtain input from the Audubon Society and the South Puget Sound Salmon Enhancement Group. She continued to say that when you drive around Gig Harbor water you grasp for a chance to see water. It would be sad to lose some of that.

[Jim Franich 3702 Harborview Drive.](#) Mr. Franich echoed what other people have said in opposition to this B.I.G. grant. He said he hopes Council doesn't forget all the people that came here when you vote on whether to move this grant forward. He said nowhere on the public outreach slide does it include the public on the list. This made it a long way without a lot of public input.

[Tracy Irving - 3400 Harborview Drive.](#) Ms. Irving spoke against the proposal. She said she didn't know about it until the flyer on her car yesterday. She said she looks out at the wall of Ship to Shore. She explained that she and her husband are not against growth, but we need to preserve space. So many local people enjoy that park and if you add another wall, it's like the woman said, you drive around the harbor and it's hard to find open space. She said she is strongly against this.

[There were no further public comments and the public hearing closed at 7:25 p.m.](#) Mayor Pro Tem Payne thanked everyone for voicing their opinions. There is no action on the agenda this evening. He asked for Council comments or questions.

[Councilmember Perrow](#) agreed with the comments regarding the lack of public process. He said the proposal and maps in the packet were unclear. He voiced disappointment with the lack of leadership on this project. He said he's not against the B.I.G. grant, but is against the layout because it compromises Gig Harbor's most iconic site. He stressed that Resolution No. 942 was adopted unanimously; but no one asked him if the intent

has changed. This was thrown together and would need a lot of work to obtain his support. He will not support anything that blocks our most iconic site. If this means the grant can't move forward then we will have to find other means to extend these facilities. There are times that these docks will be used heavily, but we need to be doing it in a way that respects who we are and the commitments we've made.

[Councilmember Lovrovich](#) agreed, and said she too is quite frustrated. She read a quote from the last time the B.I.G. grant came forward and it was agreed we would move forward with the B.I.G. grant but with public comment. Looking back at previous processes such as Ancich Waterfront Park, there were 9 months and 10 public meetings just to determine the uses. We've had a whole year since this last came about. She said she doesn't think the B.I.G. grant is the vehicle to add transient moorage. There is a large recreational boating community that could bring in money to support our businesses, but we are also lucky enough to have the commercial fishing industry that has cultural, historic, and economic influence. Two-thirds of the 100 commercial fishing permit holders have to find moorage elsewhere. She thanked the public for taking the time to speak. She continued to explain that the Comp Plan and Shoreline Master Plan talks about balancing uses, but the B.I.G. doesn't do that. It puts too many strings on what we can do with our property, and so we need to work harder to find alternatives. She heard a suggestion tonight; one she also recommended to work with existing marinas and private dock owners to see what can be done to provide both more transient and commercial fishing moorage.

[Councilmember Ekberg](#) reiterated what the others said. He thanked the public for their comments. He said he feels the frustration when something like this pops up; it looks like a Council proposal, but it's not...it was shown to us a week ago. He said that is why he asked a lot of questions about timing. He said he can assure you that he will never support anything that takes away open space at our Skansie Park. He added that the B.I.G. grant doesn't seem to be what needed to add space to the Maritime Pier. We need to add space while remembering what the original space was for.

[Mayor Pro Tem Payne](#) agreed with his three colleagues, adding that he cannot support the B.I.G. grant as currently proposed. He cited the Maritime Pier as an example of the use of an Ad Hoc Committee that spent several years to come up with a concept; but two years of work went by the wayside. Another Ad Hoc Committee tried to address a fuel dock and boat slips at that same location. He felt it was trying to shoehorn in too much at that site which has been proven by Councilmember Lovrovich. It's clear that navigation at that site with current and tide was near impossible for the fishing fleet. He added that more of our effort needs to go to the commercial fishing fleet for moorage at Ancich Park and where we need to emphasize effort to bring back registered fishing vessels back home. As far as he is concerned, what has been proposed tonight is dead on arrival. He saw this for the first time at a Public Works Committee meeting and shared similar concerns.

[Mayor Pro Tem Payne announced a short break at 7:39 p.m.](#) Back in regular session at 7:44 p.m.

2. [Resolution No. 1035 – Setting a Hearing Date for Woodworth Avenue Street Vacation](#) – Michael K. Hall and Kristine J. Hochberg.

Public Works Director Jeff Langhelm explained that this portion of Woodworth Avenue is within the Non-User Statute area as described in municipal code. The resolution sets the public hearing date for Monday, June 27th.

MOTION: Move to adopt Resolution No. 1035 setting a hearing date for Woodworth Avenue Street Vacation.
Ekberg / Kadzik - unanimously approved.

3. [Resolution No. 1036 - Sole Source Purchase for HVAC Equipment.](#)

Public Works Director Jeff Langhelm presented the background for this request to purchase replacement equipment for the heating/air conditioning system at the Civic Center.

MOTION: Move to adopt Resolution No. 1036 waiving competitive bidding for the purchase of a global controller for the HVAC equipment from ATS Automation, the sole source supplier, and authorize the Mayor to execute a purchase order necessary for the purchase.
Malich / Ekberg - unanimously approved.

CITY ADMINISTRATOR / STAFF REPORT:

[City Administrator Ron Williams](#) offered kudos to Councilmember Ekberg for the article in the CityVision Magazine highlighting his role in the life jacket loaner program at two of the city's waterfront parks. He then announced that Pierce County Department of Emergency Management has recognized the City's Comprehensive Emergency Management Plan as one of the best in the state. They will use it as example for other cities.

[Mayor Pro Tem Payne announced](#) the upcoming open house being hosted by Olympic Property Groups in regards to the Peninsula Shopping Center. Mr. Williams said more information is on the city's website.

PUBLIC COMMENT:

[Doug Johnson – 9815 40th Ave Ct NW](#). Mr. Johnson provided an update to Council on the Peacock Meadows development and the damage to his property caused by their stormwater. He asked why the city would not enforce the code.

MAYOR'S REPORT / COUNCIL COMMENTS:

[Councilmember Malich](#) asked staff to clarify why we haven't taken steps until this can be resolved. Public Works Director Jeff Langhelm gave a brief explanation and said that the builder is not responsible for the implementation of the conditions of the final plat; that would be the developer who has received final plat approval.

[Ron Williams explained](#) he contacted Mrs. Johnson to explain the steps we are taking, and that we are pursuing options with attorneys. Councilmember Malich asked if this final plat was one that received an extension due to the downturn in 2008. Mr. Langhelm said he believed it was, adding that the extension allowed vesting to the previous standards.

[Councilmember Arbenz](#) provided a brief overview of the situation and asked if his understanding of the problem is correct, and what would be the cost to fix this. Mr. Williams explained that two options have been identified: trenching or a tight line pipe with an estimated cost of \$15,000. Councilmember Arbenz said that there has to be a manner to solve this now and figure out responsibility later. This is an opportunity for government to do the right thing.

[Councilmember Payne agreed](#) as did Councilmembers Lovrovich and Kadzik. We have citizens that may be in dire need.

[Mayor Pro Tem Payne](#) asked legal counsel if there is a way to assist in the process. He asked if there is legal concern moving forward.

[City Attorney Angela Summerfield](#) said there are concerns, and that we are looking into a way to assist in a manner that will ensure it's not a gift of public funds. Mr. Williams added that they are meeting every day to try and get this fixed.

[Councilmember Perrow](#) emphasized that this is a public health issue that needs to be fixed immediately.

[Mayor Pro Tem Payne added](#) that this issue is violating the peace of our citizens in their homes. There is a clear message from Council that we want this resolved.

[Councilmember Perrow](#) voiced his concerns regarding the Harborview Drive Sidewalk Improvements. He asked if we can we proceed with a part of the project that compliant how to bring the other sections of the sidewalk up to code.

[Director Langhelm](#) responded that this could result in costly change orders. If this is Council's desire, the best alternative would be to let money go back to TIB, redesign the project, and go back for another TIB grant. He clarified that Council's policy has been that sidewalk gap improvements have not been to do full frontage improvements. If this has changed, he needs to know.

[Councilmember Perrow](#) said that the City is exempting itself from standards that others are required to follow. This should go through a review process. This is a huge gap project and it's not clear what the property owner is going to be required to do.

Director Langhelm answered that this is a standard gap project that came up during the budget process; it's not a frontage improvement.

[Mayor Pro Tem Payne](#) suggested that Council provide Mr. Langhelm with feedback and to have this discussion come back at a full council meeting.

[Councilmember Ekberg](#) agreed with the frustration of the two standards, but pointed out what was said that this is different. This is a city gap project verses a developer improvements. The city has a responsibility to look at safety issues and complete the gap. If property develops in the future, the sidewalks can be saved. We can't wait for the developers and need to move forward.

[Councilmember Lovrovich](#) asked where we are in relation to the Eddon Boat Lease. Where are we? Ron Williams said we should have it ready to move forward next week in preparation for the next meeting.

[Mayor Pro Tem Payne](#) announced he would be absent at the next meeting and asked allowance for Councilmember Ekberg to serve as pro tem at next meeting. Council concurred.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning / Building Committee: Mon. May 2nd at 5:30 p.m.
2. Public Works Committee: Mon. May 9th at 4:00 p.m.

ADJOURN: Move to adjourn the meeting at 8:11 p.m.
Lovrovich / Kadzik - unanimously approved.

Mayor Pro Tem Ekberg

Molly Towslee, City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, Washington's heritage is rich and diverse, as represented by the numerous historic sites that have been identified and located throughout the state; and

WHEREAS, historic building rehabilitation projects generates more jobs on a dollar for dollar basis than new construction; and

WHEREAS, most of the expenditures made on historic building rehabilitation projects circulate within the local economy thereby benefiting local businesses and wage earners; and

WHEREAS, Washington's historic downtowns and neighborhood commercial districts are proven effective for starting new businesses, generating job growth, and stimulating investment in building rehabilitation; and

WHEREAS, the preservation of historic buildings is a sustainable practice that maximizes energy investments, reduces building debris entering our landfills, and reduces carbon emissions; and

WHEREAS, preservation of historic buildings stabilizes property values, boosts heritage tourism, and stimulates economic development by revitalizing historic neighborhoods and commercial districts; and

WHEREAS, preservation and protection of these sites provides educational and cultural value for all citizens; and

WHEREAS, the interpretation of these sites provides information leading to better understanding between cultures and our shared history; and

WHEREAS, many citizens contribute their time and effort to preserve and protect Washington State's unique historical buildings and sites; and

WHEREAS, the Department of Archaeology and Historic Preservation has joined with state and local officials, historical societies, universities, and private citizens to enhance public awareness of the need and value of protecting Washington's heritage;

NOW, THEREFORE, I, Steve Ekberg, Mayor Pro Tem of Gig Harbor, Washington, do hereby proclaim the month of May, 2016 as

Historic Preservation Month

in the City of Gig Harbor, and I encourage all citizens to take time to learn more about the history of our great city and the ways we can help protect and preserve this legacy for our children and future citizens.

Mayor Pro Tem, City of Gig Harbor

Date

WASHINGTON STATE LIQUOR AND CANNABIS BOARD - LICENSE SERVICES
3000 Pacific Ave SE - P O Box 43075
Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

April 29, 2016

SPECIAL OCCASION #: 094202

SKANSIE NETSHED FOUNDATION
3207 HARBORVIEW DR
GIG HARBOR WA 98332

DATE: JUNE 3, 2016

TIME: 5 PM TO 10 PM

PLACE: SKANSIE NETSHED - 3207 HARBORVIEW DR, GIG HARBOR

CONTACT: ERIN BABICH [DOB 8.15.75] 253-858-5000

SPECIAL OCCASION LICENSES

- * Licenses to sell beer on a specified date for consumption at a specific place.
- * License to sell wine on a specific date for consumption at a specific place.
- * Beer/Wine/Spirits in unopened bottle or package in limited quantity for **off** premise consumption.
- * Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objections to the issuance of the license. If additional time is required please advise.

- | | | |
|--|------------------------------|-----------------------------|
| 1. Do you approve of applicant? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2. Do you approve of location? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

<u>OPTIONAL CHECK LIST</u>	<u>EXPLANATION</u>	YES <input type="checkbox"/>	NO <input type="checkbox"/>
LAW ENFORCEMENT	_____	YES <input type="checkbox"/>	NO <input type="checkbox"/>
HEALTH & SANITATION	_____	YES <input type="checkbox"/>	NO <input type="checkbox"/>
FIRE, BUILDING, ZONING	_____	YES <input type="checkbox"/>	NO <input type="checkbox"/>
OTHER:	_____	YES <input type="checkbox"/>	NO <input type="checkbox"/>

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Business of the City Council City of Gig Harbor, WA

Subject: Copier/Printer/Scanner Service Contract

Dept. Origin: Information Technology

Proposed Council Action: Approve and authorize the Mayor to execute the Contract for Pacific Office Automation

Prepared by: Kay Johnson

For Agenda of: May 9, 2016

Exhibit: Pacific Office Automation Contract

PrisTern
Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Initial &
Date

8/2
Don W 5/2/16
by email 4.29.16
SP 5/2/16
kgj 5.2.16

Expenditure Required	Replace with lease	Amount Budgeted	\$1611 current expense	Appropriation Required	\$2012
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INFORMATION/BACKGROUND

In 2002 the city purchased large equipment supporting each department for centralized copying/printing/scanning/faxing. This equipment was quite expensive and was part of the original move to the new Civic Center. In 2007, the aging equipment was in need of professional service/overhaul and repair, the city contracted these services out to Preferred Copiers. Fast forward to today, the equipment is now 14 years old, the city has experienced a degradation in service from Preferred in addition to escalating annual contractual costs. The contract executed in 2007 included escalation clauses for aging equipment. The equipment is obsolete, tends to break down at the most crucial moments and support with Preferred has been marginal at best.

FISCAL CONSIDERATION

We have compared contractual costs and it does not make sense to expend large sums of money to purchase new equipment (and subsequent service contracts) when costs to merely lease/support/maintain brand new equipment off of the Washington State Contract in some cases is little more than our current maintenance costs on old equipment. The State contract will allow expandability, early upgrades and provides the most aggressive pricing. We are able to add some much needed features for very little such as 3 hole-punch, booklet, staple and large capacity trays. Additionally there are no escalation clauses meaning the cost is fixed and will not increase due to age of the equipment. Support and service are built into the leasing costs and includes all supplies and toner. This is a tremendous cost savings to be able to obtain brand new equipment with no capital outlay and merely pay our usual service fees receiving all the support, service, supplies built-in and with a dedicated technician on call.

Board or Committee Recommendation

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to approve and execute the contract for Pacific Office Automation.



Equipment Contract

No. _____

SOLD TO:

City of Gig Harbor
CUSTOMER NAME
 3510 Grandview Street
BILLING ADDRESS
 Gig Harbor WA 98335
CITY STATE ZIP
 (253) 853-7623
TELEPHONE
 Kay Johnson
ATTENTION

SHIP TO:

Same
CUSTOMER NAME
SHIPPING ADDRESS
CITY STATE ZIP
 ()
TELEPHONE
KEY OPERATOR

ORDER DATE		PO#		ORDERED BY		SOLD BY	
QTY	ITEM	TYPE	DESCRIPTION			UNIT PRICE	TOTAL
			* See Attachment A for details				
Minimum Monthly Payment (plus applicable taxes) \$ 2,012 Term 60 Months						Device Management	
Service/Supply Agreement	Monthly Base Images	Monthly Base Charges	Overages	Overages Billing Cycle	Term of Contract	Automated Meter Reading	
Black prints	22,400	included	.0072	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual	<input checked="" type="checkbox"/> 60 months <input type="checkbox"/> 48 months <input type="checkbox"/> 39 months <input type="checkbox"/> 36 months <input type="checkbox"/> Other _____	Auto Toner Replenishment	
Color Prints	18,300	included	.045			Advanced Scanning	
						Security	
						MFP Network Support	
						Power Filter	
CONDITIONS OF SALE, CONTINGENCIES OR COMMENTS						Delivery	included
Service includes all parts, labor and toner and is adjustable. This is priced off the pre-bid and fixed rate OETC contact.							
POA will wipe data from machines for \$100 per unit and issue a certificate of data removal. Any machine removed will be resold to return maximum value back to customer.						Subtotal	\$2,012
						Sales Tax	at rate
						Total	

By signing this Contract, Customer acknowledges and agrees: (a) this Contract is NON-CANCELABLE; (b) all terms and conditions on the reverse side are an integral part of this Contract; (c) to fully understand all terms and conditions stated herein; and (d) this Contract is the entire Agreement between Customer and Pacific Office Automation relating to the equipment and services described herein, and can be changed only by written agreement signed by both parties.

Customer Authorization

Approved by Pacific Office Automation

 SIGNATURE

 TITLE DATE

 BY

 TITLE DATE

City Of Gig Harbor

Current

Department	Police front	Police back	PubWorks/ Planning/ Copy RM	Public Works (back)	Planning	Finance/Admin
Model	LD435C	LD425	LC155	LD445C	LD445C	LD335C
Speed	35 ppm	25 ppm	55 ppm	45 ppm	45 ppm	35 ppm
Trays	2x500, 1 HC tray	2x500	2x500, 1 HC Tray	4x500	4x500	4x500
Finishing	Booklets	none	Booklet	Staple	Staple	staple
Fax	Yes	No	no	no	no	Yes
Black monthly volume	4500	2000	4700	3400	3800	4000
Black Cost-per-copy	0.0113	0.01388	0.01065	0.01065	0.008	0.008
Color monthly volume	2500	0	3800	4800	3500	3700
Color Cost-per-copy	0.0913	0	0.07986	0.07986	0.065	0.065
Monthly service cost	\$279	\$28	\$354	\$420	\$258	\$272

Summary	
Black Volumes	22400
Color Volume	18300
Total cost of operation	\$1,611

Replacement

Department	Police front	Police back	PubWorks/ Planning/ Copy RM	Public Works (back)	Planning	Finance/Admin
Model	Konica C554e	Konica 454e	Konica C554e	Konica C554e	Konica C554e	Konica C554e
Speed	55 ppm	45 ppm	55 ppm	55ppm	55 ppm	55 ppm
Trays	2x500, 1 HC tray	2x500	2x500, 1 HC Tray	4x500	4x500	2x500, 1 HC tray
Finishing	Booklets, hole punch	none	Booklet, hole punch	Staple, booklet	Staple, hole	staple, hole punch
Fax	Yes	No	no	no	no	Yes
Black monthly volume	4500	2000	4700	3400	3800	4000
Black Cost-per-copy	0.0072	0.0065	0.0072	0.0072	0.0072	0.0072
Color monthly volume	2500	\$0.00	3800	4800	3500	3700
Color Cost-per-copy	0.045	0	0.045	0.045	0.045	0.045
Monthly service cost	\$145	\$13	\$205	\$241	\$185	\$195
Lease cost	\$191	\$85	\$197	\$185	\$185	\$185
Total Monthly Cost	\$336	\$98	\$402	\$426	\$370	\$380

Summary	
Black Volumes	22400
Color Volume	18300
Total cost of operation	\$2,012



Benefits and Key Points:

1. The OETC originally started as a contract for public schools to provide lower pricing and flexibility on terms and products.
2. The contract can be extended to any local or state government, non-profit (501-c3) or education based organization.
3. The contract goes through a sealed, pre-bid process meeting the standards set by state procurement statutes.
4. The OECT contract is the most flexible pre-bid contract in Washington State allowing penalty free upgrades, lease swaps and requiring top level service benchmarks.
5. Unique software and automation solutions can be submitted for approval by certified vendors for consideration.

Best of all..... Pacific Office Automation is an OETC certified Vendor



PACIFIC OFFICE AUTOMATION

— PROBLEM SOLVED —



Business of the City Council City of Gig Harbor, WA

Subject: 2016 ADA Curb Ramp Improvements – Professional Services Contract/Exeltech Consulting, Inc.

Proposed Council Action: Authorize the Mayor to execute a Professional Services Contract with Exeltech Consulting, Inc. in an amount not-to-exceed \$53,199.37.

Dept. Origin: Public Works

Prepared by: Trent A. Ward, PE
Senior Engineer

For Agenda of: May 9, 2016

Exhibits: Professional Services Contract and related exhibits

	Initial & Date
<i>Pro Tem</i> Concurred by Mayor:	8/2 5/4/16
Approved by City Administrator:	Kon W 5/3/16
Approved as to form by City Atty:	Per email dated 4/29/16
Approved by Finance Director:	DR 5/3
Approved by Public Works Dir:	5/3/16
Approved by City Engineer:	3/2/16

Expenditure Required	\$ 53,199.37	Amount Budgeted	\$ 150,000.00	Appropriation Required	\$ 0
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INFORMATION/BACKGROUND

A budgeted objective for 2015-2016 provides for completion of the inventorying of all the City's intersection curb ramps, and development of a prioritization and replacement plan for those non-compliant curb ramps within the City. The City has completed its inventory, as part of the draft City's ADA Self-Evaluation & Transition Plan, and has identified the replacement of 4 intersection curb ramps along Pioneer Way at Butler Drive and Edwards Drive, as well as the eight ramps located at the intersection of Borgen and 51st. As additional funds become available in future years, the City will continue, on a routine basis, to replace additional non-compliant intersection curb ramps within the City.

In response to a City issued Request For Proposals, the City selected Exceltech to be the most qualified consultant for this work through an internal City selection and evaluation committee.

FISCAL CONSIDERATION

Funding for the proposed contract is provided in the 2015-16 Biennial Budget: Street Division – Operating Fund (Fund ~~412~~ 101).

2015-16 Biennial Budget for ADA City Sidewalk and Curb Ramp Upgrades	\$ 150,000.00
Anticipated 2016 Expenses:	
Exeltech Consulting, Inc. Professional Services Contract (Design)	\$ (53,199.37)
Remaining 2015-16 Budget =	\$ 96,800.63

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Authorize the Mayor to execute a Professional Services Contract with Exeltech Consulting, Inc. in an amount not-to-exceed \$53,199.37.

**PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
EXELTECH CONSULTING, INC.**

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

RECITALS

WHEREAS, the City is presently engaged in Design for 2016 ADA Improvements Project 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 Fifty-Three Thousand One Hundred Ninety-Nine Dollars and Thirty-Seven Cents (\$53,199.37) 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. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by March 1, 2017; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

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

7. **Indemnification.**

A. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers, harmless from any and all claims, injuries, damages, losses or

suits including attorneys fees, arising out of or resulting from the 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, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the 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 on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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:
Exeltech Consulting, Inc.
ATTN: Joshua Ranes, P.E.
8729 Commerce Place Drive NE, Suite A
Lacey, WA 98516
(360)357-8289

City of Gig Harbor
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

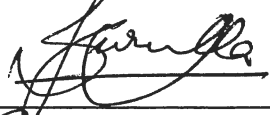
16. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit 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

CITY OF GIG HARBOR

By: 
Its: President
Santosh Kuruvilla

By: _____
Mayor Pro Tem Eckberg

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

**Scope of Services for
City of Gig Harbor**

2016 ADA Improvements

April, 2016

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



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Scope of Services for 2016 ADA Improvements

City of Gig Harbor

During the term of this Agreement, Exeltech Consulting, Inc., hereinafter referred to as the "Consultant", will perform professional services for the City of Gig Harbor, hereinafter referred to as "CLIENT". Subconsultants include Prizm Surveying Inc. for topographic survey. This scope of services includes sidewalk design, technical specifications, opinion of probable cost, pre and post bid support, and engineer of record construction support for the 2016 ADA Improvements Project.

The Consultant will actively coordinate and manage the work, identify and resolve issues in a timely manner, communicate effectively, and maintain the accuracy and overall quality of the work and work products. The Consultant will be responsible for the performance of the services described hereinafter, furnishing materials and information as needed to accomplish the work tasks. This document will be used to plan, conduct and complete the work for the Project.

I. BACKGROUND

The project is located within the City limits of Gig Harbor, Washington along Pioneer Way, at the intersection of Butler Drive and Pioneer Way and intersection of Edwards Drive and Pioneer Way. The project will also provide sidewalk ramp improvements at the roundabout of the Borgen Blvd and 51st Ave intersection. Pioneer Way is currently signed with a 25mph speed limit and Borgen Blvd is signed with a 35mph speed limit.

II. PROJECT SCHEDULE

The following project milestones dates are defined in weeks following Notice to Proceed (NTP):

60% Design Review
100% PS&E

6 Weeks after NTP
9.5 Weeks after NTP

III. PROJECT DESCRIPTION

This project will follow the CLIENTS proposal to provide curb ramp improvements at two intersections; Pioneer Way and Butler Drive and intersection of Pioneer Way and Edwards Drive. This project will also provide curb ramp improvements at four (4) crossings, eight (8) ramps total at the roundabout at Borgen Blvd and 51st Ave intersection.

IV. PROJECT ASSUMPTIONS

1. CLIENT will provide copies of available utility and roadway background information, such as plans for the existing roadway and storm drainage system, survey drawings and right-of-way reports, geotechnical reports, and other work products developed for the CLIENT related to the existing roadway.

Gig Harbor 2016 ADA Improvements

2. Project limits will be as shown in the attached Figures 1 and 2 (ADA Ramps and Sidewalk Project Limits 04-06-2016).
3. CLIENT will lead community outreach activities.
4. CLIENT will have timely reviews of submitted deliverables at mutually agreed upon times and will consolidate review comments into one review document prior to returning to the Consultant. The Project schedule assumes one week review turn-around times by the CLIENT.
5. CLIENT will keep Consultant informed as to status of reviews, invoices, and other decisions that may affect the delivery of the Project.
6. Budgeting assumes a continuous design progress from the start of design through approval of 100% PS&E. Phasing of design is not anticipated.
7. The plans, specifications, and opinion of probable cost and reports will be prepared, to the extent feasible, in accordance with the following:
 - 2016 Washington State Department of Transportation (WSDOT) Standard Specifications for Road, Bridge and Municipal Construction
 - 2015 WSDOT LAG Manual
 - Gig Harbor Public Works Standards, most current version
 - 2011 AASHTO A Policy on Geometric Design of Highways and Streets
 - 2010 City of Gig Harbor Stormwater Management and Site Development Manual
 - American with Disabilities Act (ADA)

Changes in any design specifications, guidelines, or standards after work has begun may result in supplemental services.

8. The plans will be prepared using AutoCAD 2015 software and will include listed in Table 1.
9. The AutoCAD files will be transmitted to the CLIENT via DVD or FTP site upon approval of the 100% design plans.
10. The project will be developed using English units of measure.
11. No more than twelve (12) curb ramps will be designed.
12. After review and comment of the 60% design plans, changes to the sidewalk alignments, curb ramp design, and intersection layouts may require additional hours.
13. The Consultant will not be required to model hydraulics of the existing stormwater system. The existing stormwater system will be revised to address the new curb and gutter and new catch basins, which will connect to the existing system.
14. The area of new sidewalk and ramp construction will not trigger stormwater treatment requirements for the Project. Stormwater treatment and/or detention design is excluded from this scope of services as there will be less than 5,000 square feet of new/replaced impervious.

15. The existing roadway pavement section will not be widened. The profile of the existing road and cross streets will not be modified.
16. The Construction Stormwater General Permit will be prepared by the CLIENT if required.
17. The Project will avoid impacts to environmentally sensitive or critical areas and will require no permits from state or federal regulatory agencies.
18. The Consultant will not be responsible to pay permit fees.
19. CLIENT will obtain any temporary construction easements necessary for the construction of the Project.
20. CLIENT will secure any right-of-way necessary for the construction of the Project. Right-of-way services are excluded from this scope of services.
21. CLIENT will secure necessary right of entry permits from property owners required to facilitate project design including survey.
22. No Traffic Control Plan is needed for mapping on the roadways. Consultant will take the necessary precautions such as placing advanced warning signs, using cones and paddle signs to slow traffic when working on or alongside the roadway. No lane closures will be necessary to perform this work.
23. Environmental permitting services are excluded from this Scope of Services.
24. For each design plan submittal (4) hard copies 11x17 and (4) hard copies 22x34 and an electronic PDF will be delivered to the CLIENT.
25. CLIENT directed activities, beyond the scope of work, will require written confirmation from the CLIENT Project Manager or designee.
26. Staffing levels are anticipated in accordance with attached budget estimate. Services will be limited to these assumed hours/costs, unless additional services are authorized. Hours/budget may be moved between tasks, so long as the overall budget is not exceeded.
27. Cost estimates provided are the engineer's opinion of cost.
28. Services shall be limited to those expressly set forth herein. If the service is not specifically identified herein, it is expressly excluded. Consultant shall have no other obligations, duties or responsibilities associated with the project except provided in this agreement.

V. SCOPE OF SERVICES

TASK 1 PROJECT MANAGEMENT

Task 1.1 Project Management

The Project management task includes managing scope, schedule, and budget during the course of the project by communicating with project team members. Communications will include emails, electronic and hard copy documentation control, monthly invoicing, progress reports, and coordination of project design criteria. The Project Manager will share project design technical information, and coordinate project deliverable submittals with the project team members.

Deliverable(s):

- Monthly progress report and invoice
- MS project schedule with major milestones depicted, at project startup.

Task 1.2 Design Review Meetings

The Consultant will attend up to two (2) meetings (60% Design Review and 100% PS&E review) with the CLIENT at their office in Gig Harbor, WA. Other project team meetings will be held via telephone or video conference.

TASK 2 RIGHT-OF-WAY ESTABLISHMENT AND TOPOGRAPHICAL INTERSECTION MAPPING

Task 2.1: Right-of-Way Establishment and Survey Control

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 record right-of-way information in 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 Public rights-of-way in the project area. Project Horizontal Datum will be NAD 1983/91 Washington State Plane South Zone no. 4602. Vertical Datum will be NGVD 1929.
3. Temporary benchmarks and control points will be set at convenient locations for your future reference (a minimum of 2 will be provided in the project vicinities).
4. A Professional Land Surveyor will perform mathematical computations, analyze and resolve the limits of existing public rights-of-way and the adjoining property boundaries based upon found public records. If you wish for more accurate property information, legal description and encumbrances, a title report is required. It is anticipated that the City of Gig Harbor will provide the Title reports as necessary.
5. Prepare an AutoCAD C3D drawing, drawn at an appropriate scale showing the data collected, rights-of-way and parcel boundaries and ownership information noted and will be considered the base map for the topographic exhibits.

Task 2.2: Topographical Mapping of Intersections

6. Utilizing the survey control and monumentation established and located are part of Task 2.1 above, expanding the control network as necessary to locate the visible surface features found within the project limits noted on said "Figure 1 & 2"
7. Perform a Topographic survey of the project areas, along Pioneer Way at the intersections of Butler Drive, and Edwards Drive. Together with the traffic circle of Borgen Boulevard at 51st Avenue NW. as noted on the provided exhibits "Figure 1 & 2". The topography will extend onto adjoining areas beyond the project limits as needed to show sufficient detail (if and where access is allowed) or to show possible directions. Within this area we will be locating relevant surface features deemed necessary for your future design of the project. This will include, but not limited to locating existing buildings, pavement edges, road crown, driveways,

walks or paths, curbing flowline, concrete pads, visible utility structures (including catch basins, culverts, septic & sewer facilities, water valves, fire hydrants, etc.), fences and gates, steps, planters, significant trees 6" and larger, the perimeter of any major landscaping, brush or forested areas, the top and toe of slopes, and ground shots every 25+/- feet. Building finish floor elevations will also be noted where appropriate. Roadway channelization and striping are also included. Accessible utility structures will be measured for pipe type, size, and depth. Existing utility paint lines will be located. Any Geotech, Wetland or other environmental positions (test pits, wetland flagging, etc.) identified prior to the commencement of this task will also be located and shown on the final survey.

8. Provide addition ground measurements to determine a ½ foot contour interval and spot elevations meeting NSPS Topographic Standards at each project area, with particular attention taken around handicap ramps and curb return locations.
9. For utility locates, we will call #811 the underground utility locate center. The utility locates done prior to our beginning work will be picked up as part of this Task and shown on the final survey.
10. Download the collected data, Reduce field notes, plot data obtained from the fieldwork, and using AutoCAD we will prepare a Right-of-Way and Topographic Survey drawing of the above for design use at a convenient scale (20 scale is desired) showing the data collected along with 1/2-foot interval contours and spot elevations where needed for clarity. The final Map will be reviewed, checked and certified by a Professional Land Surveyor, and provided in the client's choice of media such as AutoDesk C3D 2013 and/or PDF formats. 3D surface information for each project area will be provided in separate TIN, 3d lines, 3d contours & XML formats.

Deliverables:

- PDF's of the signed topographic survey and the AutoCAD drawing files with individual Civil 3D surfaces for each of the three (3) sites in a 2015 format on a CD.

TASK 3 ROADWAY ENGINEERING

The Consultant's internal QA/QC procedures will be utilized throughout the design effort on this Project. Drawings and details will be reviewed for constructability and conformance to the design and the approved drawing standards.

Task 3.1 Site Inspection

The Consultant will participate in up to one (1) site visit to visually assess existing site conditions (including sidewalk condition, ADA compliance and utilities).

Task 3.2 Collection and Review of Existing Data and Develop Design Criteria

The Consultant will initiate data collection activities as a first order of work. During this task, the Consultant will review existing available as-built data and technical data provided by CLIENT, including:

- Right-of-way Plans,
- As Built Plans,
- Other available information (including permitting and environmental documents, utility information, geotechnical reports, and right of way reports.).

The Consultant will review the relevant site data, and develop design constraints, design considerations, and design criteria for development of the Project.

The Consultant will create a Basis of Design (BOD) technical document to describe the design codes/references, intent of the design, and construction materials. The document will be created in conjunction with the CLIENT. A draft BOD will be sent to the CLIENT for comment and the document will be finalized for approval prior to submittal of the 60% design.

Deliverables:

- Draft/Final Basis of Design.

Task 3.3 Stormwater Design

The Consultant will prepare a stormwater memo documenting project elements and stormwater approach. The design will be based on minimum requirements #1 thru #5 of the Gig Harbor Stormwater Management and Site Development Manual. The CLIENT or Contractor will prepare a construction Stormwater Pollution Prevention Plan (SWPPP) as required by requirement #2. The Consultant will prepare a draft stormwater memo and send to the CLIENT for comment. The memo will be finalized at the 100% design submittal.

Deliverables:

- Draft/Final Stormwater memo.

Task 3.4 60% Design

The Consultant will develop and advance the project plans to a 60% design level. These plans will include development as described in the sheet list shown in Table 1. The Consultant will provide 60% design plans for review by the CLIENT. CLIENT's internal staff will review plans for adherence to City of Gig Harbor design and construction standards, environmental requirements, etc. Comments received from the 60% design will be incorporated in the 100% design submittal.

The Consultant will conduct a 60% design review meeting to discuss and resolve CLIENT comments.

Deliverables:

- 60% Plans.
- Written responses to the 60% review comments.

Task 3.5 Maximum Extent Feasible (MEF) Documentation

The Consultant will prepare an MEF for up to four (4) substandard curb ramp locations. MEF's will be submitted to the CLIENT for review. CLIENT will provide concurrence prior to the 100% design submittal.

Deliverables:

- MEF Memo.

Task 3.6 Final 100% Design

The Consultant will progress the 60% design and prepare final design (100% Plans, Specifications, and Estimate (PS&E)). The work will be in accordance with the approved Basis of Design (BOD) Memo, and plan sheet development in accordance with Table 1.

Final design will include ongoing collaboration with the CLIENT organization and documentation of the project design constraints approved by the CLIENT organization. The Consultant will prepare written responses to the final 100% PS&E.

The Consultant will conduct a 100% design review meeting to discuss and resolve CLIENT comments.

Task 3.6.1 Roadway Final Design Plans

The Consultant will prepare final design plans for the CLIENT's review.

Deliverables:

- Written Responses to CLIENT comments.
- 100% Design Plans in 22 x34 stamped paper copy and original autocad Civil 3d with bound x-references as well as pdf.

Task 3.6.2 Opinion of Probable Construction Cost

The Consultant will prepare an opinion of probable construction cost using approximate quantities of materials for some bid items and lump sum estimates for other bid items, depending on the degree of design completed. Historical bid unit prices for projects in Western Washington will be used to determine appropriate unit bid prices for the opinion of probable construction cost.

Deliverables:

- 60% Opinion of Probable Construction Cost.
- 100% Stamped Opinion of Probable Construction Cost.

Task 3.6.3 Project Specifications

The Consultant will prepare and submit 60% and 100% Project Specifications utilizing the CLIENT's formatting and template. The specs will incorporate the most current WSDOT standard specs and APWA GSP's and amendments for the CLIENT's review.

Deliverables:

- 60% Project Specifications.

- 100% Project Specifications in original MS word and pdf.

Task 3.7 Record of Materials

The Consultant will prepare a Record of Materials (ROM) to be submitted with the 100% design submittal. The ROM will provide a basis for acceptance of materials during the life of the construction contract.

Deliverables:

- Record of Materials (ROM).

TASK 4 CONSTRUCTION SUPPORT / ENGINEER OF RECORD (EOR) ACTIVITIES

The Consultant will provide the following services:

Task 4.1 Bid Support

The Consultant will provide support to CLIENT during the project advertisement for construction bids period. The Consultant will address Contractor and Supplier requests for information and interpretations of the contract documents while the project is being advertised for bids; provide Bid Item quantity checks and bid package document clarifications; review the Lump Sum Bid Price, Select Unit Prices, and Schedule of Values for the project; and process updates to the Contract Provisions and Contract revisions for Addendums. The Consultant will review the contractor bids and provide recommendations to CLIENT regarding the award of the contract.

Task 4.2 Engineer of Record Support

The Consultant will provide Engineer of Record (EOR) construction support services throughout the duration of the project, including the following:

- Review the Project Schedule for the project.
- Review the Contractor's approach to the project in their Work Plan.
- Review the Contractor's Environmental Compliance submittals, including the SPCC/Erosion Control Plan.
- Review and respond to Requests for Information (RFI's) on the project and provide clarification and interpretation of contract specifications and drawings.
- Review and provide recommended action for project materials submittals, including catalog cuts, specifications, material certifications, welding procedures, and other submittals required by the contract.
- Review and provide recommendations to the CLIENT for Contractor proposed construction materials, methods, and procedures for the various components of the project

TASK 5 RIGHT OF WAY AND CONSTRUCTION EASEMENT PLAN SHEET SUPPORT (OPTIONAL TASK)

Gig Harbor 2016 ADA Improvements

This task includes the necessary work required to prepare parcel maps, easement exhibits and legal descriptions for right-of-way conveyances and easements required to complete the project.

We anticipate up to five (5) parcels could be affected by project design. As required, each parcel will have 2 legal descriptions prepared and 2 exhibits created, each showing the parcel boundary and described areas. One legal description will be of the proposed right-of-way acquisition with a property exhibit. The second legal description will be of the proposed temporary construction easement and exhibit.

1. Coordinate with the client on the affected properties and the possible required dimensions for right-of-way acquisitions and easements.
2. Coordinate on the receipt of a title report for each affected property (up to 5) noting record legal descriptions and encumbrances. The reports are assumed to be provided by the City.
3. Utilizing data collected as part of Task 2 above, we will draft a preliminary right-of-way acquisition descriptions and easement exhibits of the requested property areas and deliver to the client for review and comment.
4. Revise the legal descriptions and or exhibits as necessary.
5. The final legal descriptions and exhibits will be reviewed, checked and certified by a Professional Land Surveyor and provided in PDF format and hard copies meeting Pierce County Auditor Recording requirements.

Assumptions:

- Title reports for the subject properties will be provided by the CLIENT.

Deliverables:

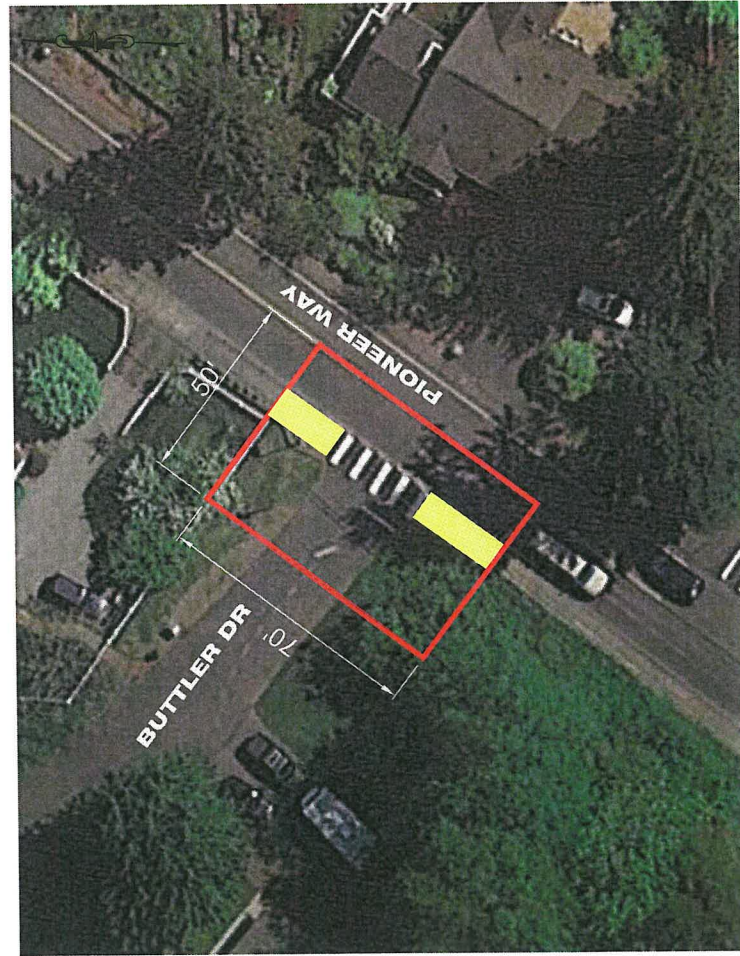
- Hardcopies and electronic files of Land Surveyor signed legal descriptions and parcel maps prepared for right-of-way acquisition and temporary construction easements for five (5) parcels.

Table 1. Assumed Design Sheet List

Sheet No.	Sheet Name	60%	100%
1	Title Sheet w/ Sheet Index and Vicinity Map	X	X
2	Legend and Abbreviations	X	X
3	Site Preparation Plan 1 of 2	X	X
4	Site Preparation Plan 2 of 2	X	X
5	Sidewalk Curb Ramp Enlargement 1 of 6	X	X
6	Sidewalk Curb Ramp Enlargement 2 of 6	X	X
7	Sidewalk Curb Ramp Enlargement 3 of 6	X	X
8	Sidewalk Curb Ramp Enlargement 4 of 6	X	X
9	Sidewalk Curb Ramp Enlargement 5 of 6	X	X
10	Sidewalk Curb Ramp Enlargement 6 of 6	X	X
11	Drainage Plan/Profile/Details	X	X
12	Temporary Traffic Control Plan 1 of 2	X	X
13	Temporary Traffic Control Plan 2 of 2	X	X
	Right-of-Way Plan (Optional Task)		

2016 ADA AND SIDEWALK
PROJECT LIMITS

CITY TO REQUEST
RIGHT OF ENTRY





PIONEER WAY AND BUTTLER DR

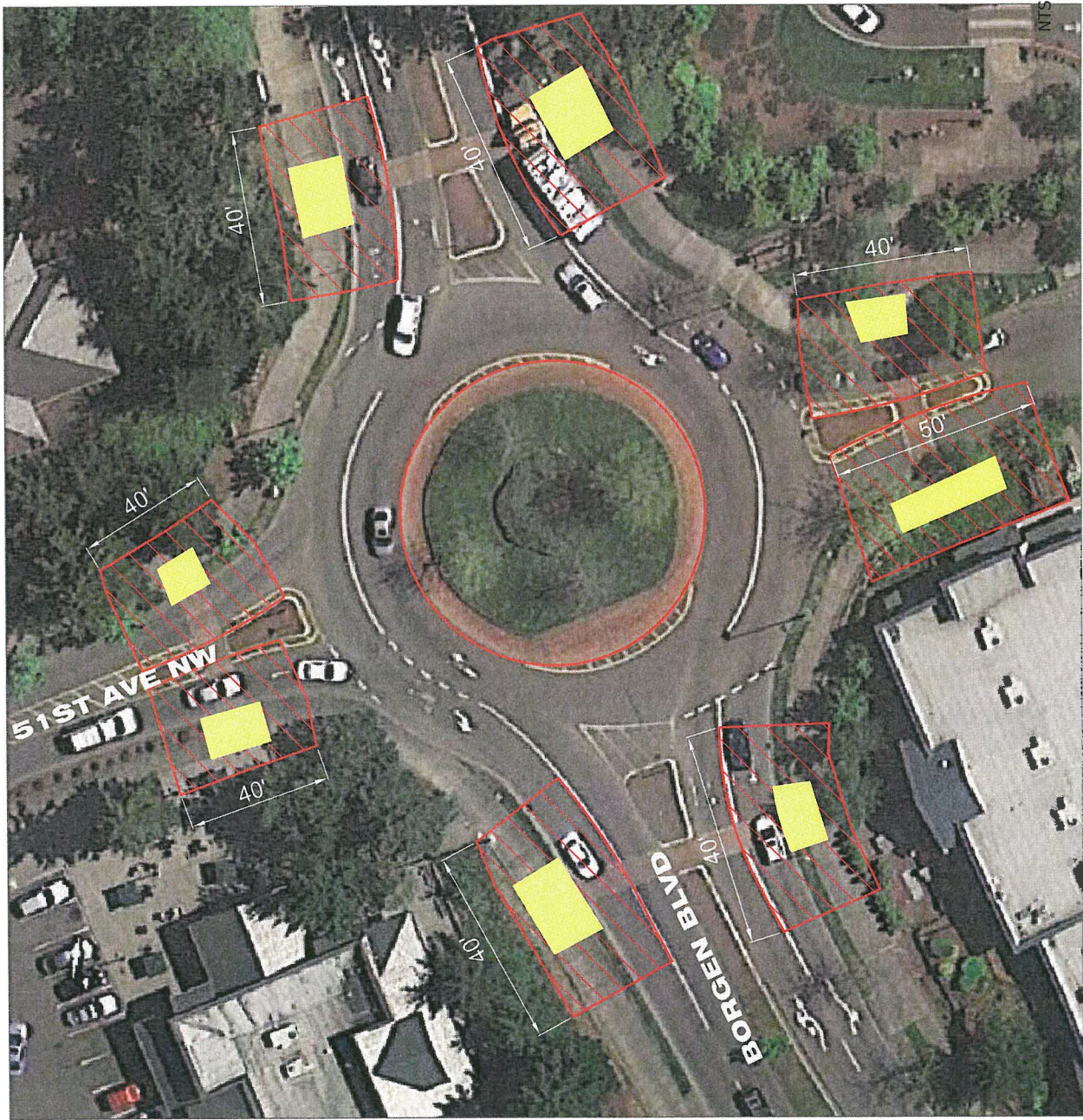


PIONEER WAY AND EDWARDS DR

LEGEND

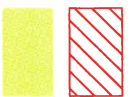
-  CURB RAMP IMPROVEMENT
-  PROJECT/SURVEY LIMITS

2016 ADA RAMP AND SIDEWALK
PROJECT LIMITS



LEGEND

CURB RAMP IMPROVEMENT



PROJECT/SURVEY LIMITS

BORGEB BLVD AND 51ST AVE

FIGURE 2



Exhibit B
City of Gig Harbor
2016 ADA Improvements Project

Summary of Cost Per Consultant

Task	Exeltech	Prizm	Total
1. PROJECT MANAGEMENT			
1.1 Project Management	\$2,743.02		\$2,743.02
1.2 Design Review Meetings	\$1,479.00		\$1,479.00
2. RIGHT OF WAY ESTABLISHMENT AND TOPOGRAPHICAL INTERSECTION MAPPING		\$10,707.50	\$10,707.50
2.1 Right of Way Establishment and Survey Control			
2.2 Topographical Mapping of Intersections			
3. ROADWAY ENGINEERING			
3.1 Site Inspection	\$986.00		\$986.00
3.2 Collection and Review of Existing Data and Develop Design Criteria	\$957.00		\$957.00
3.3 Stormwater Design	\$2,436.00		\$2,436.00
3.4 60% Design	\$9,396.00		\$9,396.00
3.5 Maximum Extent Feasible (MEF) Documentation	\$464.00		\$464.00
3.6 Final 100% Design			
3.6.1 Roadway Final Design Plans	\$9,076.25		\$9,076.25
3.6.2 Opinion of Probable Construction Cost	\$2,117.00		\$2,117.00
3.6.3 Project Specifications	\$3,262.50		\$3,262.50
3.7 Record of Materials	\$696.00		\$696.00
4. CONSTRUCTION SUPPORT / ENGINEER OF RECORD (EOR) ACTIVITIES			
4.1 Bid Support	\$1,049.80		\$1,049.80
5.2 Engineer of Record	\$1,937.20		\$1,937.20
5. RIGHT OF WAY AND CONSTRUCTION EASEMENT PLAN SHEET (OPTIONAL TASK)		\$4,842.50	\$4,842.50
TOTAL LABOR COSTS	\$36,599.77	\$15,550.00	\$52,149.77
Direct Costs	\$1,049.60		\$1,049.60
Escalation			
TOTAL	\$37,649.37	\$15,550.00	\$53,199.37

Exhibit B
Consultant Fee Determination - Summary Sheet
Cost Plus Fixed Fee

2016 ADA Improvements Project Start Date
 City of Gig Harbor
 Task Description: End Date
 Consultant Fee Determination Exeltech Project #
 Consultant: Exeltech Consulting, Inc.

Code	Classification	Man Hours		Rate	Dollars
LABOR		Hours			
	Principal	3	x	\$69.87	= 209.61
	Sr. Project Manager	0	x	\$57.93	= 0.00
	Sr. Project Engineer	91	x	\$45.00	= 4,095.00
	Project Engineer	141	x	\$40.00	= 5,640.00
	CADD Tech	90	x	\$28.00	= 2,520.00
	Environmental Planner (Lead)	0	x	\$53.39	= 0.00
	Environmental Planner	0	x	\$32.25	= 0.00
	Administration	6	x	\$26.00	= 156.00
	Total Hours	331			
	Total DSC				= 12,620.61
			% Increase	% of Work	
	Labor Escalation for '16				= 0.00
	Escalated Total DSC				= 12,620.61
	Overhead (OH Cost -- including Salary Additives)				
	OH Rate x DSC of	<u>160.00%</u>	x	<u>\$12,620.61</u>	= 20,192.98
	Fixed Fee (FF):				
	FF Rate x DSC of	<u>30.00%</u>	x	<u>\$12,620.61</u>	= 3,786.18
	Reimbursables				
	<u>Itemized</u>	Quantity	Units	Rate	In Scope
	Meals and Lodging		each	@ \$150.00	= 0.00
	Mileage	600	each	@ \$0.54	= 324.00
	Reproduction and Printing	312	Sheets	@ \$1.30	= 405.60
	Postage and Supplies	16	Est	@ \$20.00	= 320.00
	Miscellaneous Supplies	0	Est	@ \$200.00	= 0.00
	Reimbursables Total				= 1,049.60
	Exeltech Subtotal				= 37,649.37
	Management Reserve				= 0.00
	Subconsultant Costs (See Exhibit E)				= 15,550.00
	Grand Total				= 53,199.37

Exhibit B

Subconsultant Fee Determination - Summary Sheet

2016 ADA Improvements Project
 City of Gig Harbor
 Task Description: Survey
 Consultant Fee Determination
 Consultant: Prizm Surveying, Inc.

Classification	Hours		Labor Rate		Dollars
Professional Land Surveyor	8.5	x	\$95.00	=	\$807.50
2-man Survey Crew	20	x	\$130.00	=	\$2,600.00
1-man Survey Crew	29	x	\$95.00	=	\$2,755.00
Survey Technician	48.5	x	\$85.00	=	\$4,122.50
Drafting Technician	68	x	\$75.00	=	\$5,100.00
Administration	2.75	x	\$60.00	=	\$165.00
Total Hours	177				
			Total Direct Labor Cost	=	\$15,550.00

Reimbursables	Quantity	Units	Rate	In Scope
<u>Itemized</u>				
Mileage		each @	\$0.54 =	\$0.00
Meals and Lodging		each @	\$100.00 =	\$0.00
Reproduction and Printing		each @	\$0.10 =	\$0.00
Field Equipment Rental		Est @	\$1,895.00 =	\$0.00
Reimbursables Total				\$0.00

Grand Total \$15,550.00

Prepared By: _____ Date: _____



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

**Subject: Concerts in the Park
(Summer Sounds at Skansie)**

Dept. Origin: Administration - Tourism

Prepared by: Karen Scott
Tourism & Communications Director

Proposed Council Action: Authorize the Mayor to execute the contract for the 2016 Summer Sounds Concert Series at Skansie Brothers Park, for a total of \$700.

For Agenda of: May 9th, 2016

Exhibits: Contract

	<i>PNT</i>	Initial & Date
Concurred by Mayor:		<i>SK</i>
Approved by City Administrator:		<i>Ron W 5/2/16</i>
Approved as to form by City Atty:		<i>AK/General 5/2</i>
Approved by Finance Director:		<i>Q 5/2</i>
Approved by Department Head:		<i>Ken</i>

Expenditure	Amount	Appropriation
Required \$ 700	Budgeted \$ 24,000	Required 0

INFORMATION / BACKGROUND

The City Council previously approved contracts for the 2016 Concerts in the Park series at Skansie Park. Since that time, one of the performers requested a cancellation. The City was able to locate a new performer for that date, and the proposed contract is attached for City Council consideration.

FISCAL CONSIDERATION

Corporate contributions collected (\$24,000) will cover this expense. The expense is within the \$24,000 that was anticipated in the adopted 2016 budget, identified under the Parks Operating Fund, Objective No. 4.

BOARD OR COMMITTEE RECOMMENDATION

RECOMMENDATION / MOTION

Move to: Authorize the award and execution of the contract for the 2016 Summer Sounds Concert Series at Skansie Brothers Park, for a total of Seven Hundred Dollars (\$700.00).

CONTRACT FOR SUMMER CONCERT SERIES PERFORMER AGREEMENT WITH GIG HARBOR

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Danny Vernon, whose address is P.O. Box 197, Milton, WA 98354 (hereinafter the "Performer").

RECITALS

WHEREAS, the City wishes to engage the Performer to provide musical services, as part of the Gig Harbor 2016 Summer Concert Series; and

WHEREAS, the Performer agrees to perform such musical services under the terms and conditions set forth in this Contract; and

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

I. Services and Date of Performance.

The City desires to hold an outdoor, family concert on Tuesday, July 26, 2016, with an expected audience of 750-1000 persons. The concert will take place regardless of the weather, rain or shine.

The Performer agrees to provide musical services at the concert for the City on Tuesday, July 26, 2016, between the hours of 6:30 p.m. to 8:00 p.m. Sound will be provided by Pacific Stage, Inc., under separate contract with the City. The Performer may begin set up for the concert at 4:00 p.m. on Tuesday, July 26, 2016. The Performer's dress should be casual and reflect the weather. The City will provide water for the performers.

The concert will take place at Skansie Brothers Park, a City-owned public park, located at 3207 Harborview Drive in Gig Harbor. The Performers will be instructed where they should set up their equipment on the park property.

II. Payment

The City shall pay the Performer Seven Hundred Dollars (\$700.00), which shall be paid to Danny Vernon immediately following the performance on Tuesday, July 26, 2016. In order to facilitate payment the City requests that the Performer submit an invoice to the City 30 days prior to concert date.

III. Relationship of Parties

The Performer will be solely and entirely responsible for his acts and for the acts of his agents, employees, representatives and sub-consultants in fulfilling this Contract. None of the benefits provided to City employees are available to the Performers or his employees, agents and sub-consultants. The Performer shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of this Contract.

IV. General Provisions.

Any assignment of this Contract by the Performer without the written consent of the City shall be void. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Contract.

The Performer is responsible for licensing of any copyrighted music.

IN WITNESS WHEREOF, the parties have executed this Agreement on this
2 day of May, 2016.

PERFORMER

THE CITY OF GIG HARBOR

By: X *Danny Vernon*

By: _____
Mayor Pro Tem Ekberg

Danny Vernon
P.O. Box 197
Milton, WA 98354
253-691-5450

ATTEST:

Gig Harbor City Clerk

APPROVED AS TO FORM:

Gig Harbor City Attorney



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

Subject: Client Assistance Memos – Consultant Services Contract Amendment – Sound Municipal Consultants



Proposed Council Action: Authorize the Mayor to execute Consultant Services Contract Amendment between the City of Gig Harbor and Sound Municipal Consultants

Dept. Origin: Planning

Prepared by: Jennifer Kester, Planning Director 

For Agenda of: May 9, 2016

Exhibit: Contract Amendment with exhibit

	Initial & Date
<i>Proton</i> Concurred by Mayor:	 5/4/16
Approved by City Administrator:	Ron W 5/3/16
Approved as to form by City Atty:	Amgail 5/3/16
Approved by Finance Director:	DF 5/3
Approved by Department Head:	 5/3/16

Expenditure Required	\$10,000	Amount Budgeted	\$10,000	Appropriation Required	\$ 0
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INFORMATION/BACKGROUND

In November 2015, the City and Sound Municipal Consultant entered into a contract to develop client assistance memos on typical land use permit types and common planning questions to assist citizens in complying with the City’s land use code without the need for hiring consultants.

The original contract expired on April 30th, 2016. Due to unforeseen circumstances, only seven of the eleven memos were able to be produced through April; an extension of time until the end of May will allow all memos to be developed. In addition, the extension of time allows for the production of an additional memo: How to Make Public Comment. Adequate money remains in the original \$10,000 contract to cover the additional time and memo.

FISCAL CONSIDERATION

The adopted biennial budget includes \$10,000.00 for the hiring of a consultant to update client assistance memos for the Planning Department. The extension of the contract does not require an appropriation of additional funds.

RECOMMENDATION/MOTION

Authorize the Mayor to execute Consultant Services Contract Amendment between the City of Gig Harbor and Sound Municipal Consultants.

**AMENDMENT TO
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
SOUND MUNICIPAL CONSULTANTS**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Sound Municipal Consultants, a Limited Liability Company organized under the laws of the State of Washington (hereinafter the "Consultant").

THIS AMENDMENT is made to that certain Consultant Services Contract dated November 24, 2015 (the "Agreement"), by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Sound Municipal Consultants, a Limited Liability Company organized under the laws of the State of Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in Updating the Planning Department's Client Assistance Memos and desires to extend consulting services to finish the update; and

WHEREAS, Section 18 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 as follows:

TERMS

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

Section 2. Duration of Work. Section 4 of the Agreement is amended to extend the duration of this Agreement to May 31, 2016.

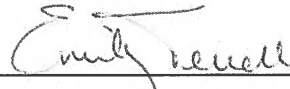
[Remainder of page intentionally left blank.]

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

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

CONSULTANT

CITY OF GIG HARBOR

By 
Its: Principal

By: _____
Mayor Jill Guernsey

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

City of Gig Harbor Customer Service Handouts - Land Use Permitting

Scope of Work

Tasks	Hours by Task	Hourly Rate	Cost by Task	Date	Deliverable (Handouts)
Researching the code (1/2 to 2 hours/handout)	16	\$125	\$2,000	Begin January 1, 2016	Pre-Application Process Intake Process
Corresponding with Staff about typical process	8		\$1,000		Typical Tenant Improvement Preliminary Long Plats w/SEPA
Drafting the handouts (2 to 6 hours/handout)	40		\$5,000		Commercial New or Remodel w/SEPA Multi-family Housing w/SEPA
Revising the handouts (1/2 to 2 hours/handout)	10		\$1,250		Tree Removal Fences Lighting Final Plats Short Plats
Presenting the handouts (individually or in groups) to Council and Chamber of Commerce	6		\$750		How to Make Public Comment
Total	80		\$10,000	31-May-16	



Business of the City Council City of Gig Harbor, WA

Subject: Permitting Processes – Consultant Services Contract with Kurt Latimore

Dept. Origin: Administration

Proposed Council Action: Approve and authorize the Mayor to execute the Consultant Services Contract with Kurt Latimore, in an amount not exceed \$45,000.00.

Prepared by: Ron Williams

For Agenda of: May 9, 2016

Exhibits: Consultant Services Contract
Scope and Fee

	Initial & Date
<p style="text-align: center;"><i>no Tex</i></p> <p>Concurred by Mayor: _____</p> <p>Approved by City Administrator: <u><i>RonW</i></u> <u><i>5/2/16</i></u></p> <p>Approved as to form by City Atty: <u><i>emc-1</i></u> <u><i>4-26-16</i></u></p> <p>Approved by Finance Director: <u><i>QF</i></u> <u><i>5/2</i></u></p> <p>Approved by Public Works Director: _____</p> <p>Approved by City Engineer: _____</p>	<p>_____</p> <p>_____</p> <p>_____</p>

Expenditure Required	\$45,000.00	Amount Budgeted	\$0	Appropriation Required	\$0
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INFORMATION/BACKGROUND

The city council proposed in their annual retreat that the city look into consulting services to help with improvements to our permitting processes. Staff and the city administrator turned to Kurt Latimore who was retained 10 years ago to perform similar services. Mr. Latimore came to two city council meetings and presented his proposal for these services. The attached proposed consultant services contract implements the proposal Mr. Latimore presented to the council.

FISCAL CONSIDERATIONS

This item was not included in the 2015-16 budget, however it appears this unanticipated expenditure will fit within current appropriations.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute the Consultant Services Contract with Latimore Consulting, in an amount not exceed \$45,000.00.

**PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
THE LATIMORE COMPANY, LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and The Latimore Company, LLC, a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the development review process 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 \$45,000 for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A**. 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. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2016; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

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

7. Indemnification.

A. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers, harmless from any and all claims, injuries, damages, losses or suits including attorneys fees, arising out of or resulting from the 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, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the 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. 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.

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. The nature of the Contractor's services and delivery of the scope of services (Exhibit A) relies on comparisons of permit processes, toolsets, reference material, forms, organizational design and performance data. The City consents to use of information obtained under this effort for this purpose.

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:
The Latimore Company, LLC
ATTN:
Mr. Kurt Latimore
11805 Ingraham Rd
Snohomish, WA 98290

City of Gig Harbor
ATTN: Ron Williams
City Administrator
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

CITY OF GIG HARBOR

By: _____
Its: _____

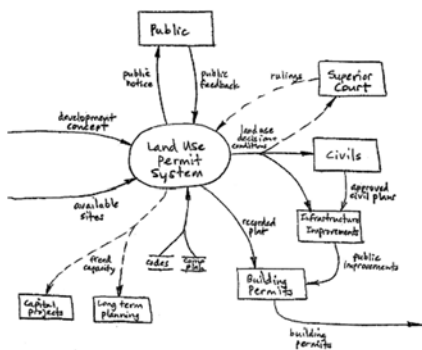
By: _____
Mayor Pro Tem Ekberg

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



The Latimore Company, LLC
11805 Ingraham Road
Snohomish Washington 98290
(360) 805-2999
klatimore@latimorecompany.com
latimorecompany.com

April 19, 2016

Ms. Jill Guernsey, Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor WA 98335

Re: Impacts of Growth – Development Review Process Improvement

Mayor Guernsey,

It is a great pleasure to work together again to improve the service of the City development review departments in response to the impacts of growth. Thank you for this opportunity.

The Latimore Company (TLC) remains a community government consulting firm dedicated to improving the predictability, efficiency and collaboration of permit operations. TLC has consulted for 22 Western Washington cities and counties to improve community permit system performance and produced *Best Practices for Local Government Permitting* for the Governor's Office of Regulatory Assistance.

TLC has organized this initiative into two tasks: establishing the current baseline 10 years later, and developing and piloting a new option for improved service to the community. Our aim is to complete both tasks and demonstrate higher performance this year.

Task 1: Establish the Current Baseline

TLC will kick off the initiative with the team, interview, and observe the operations of each department (Planning, Public Works, and Building & Fire Safety) to establish a current development review process model, similar in form and kind to that produced in our original work together (Fig. 1).

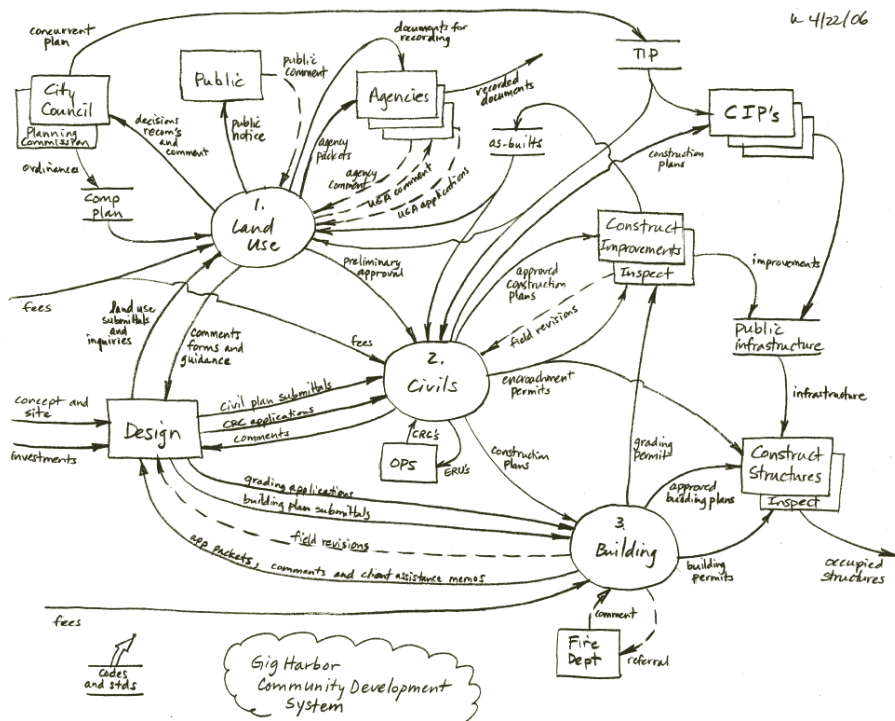


Figure 1. Process Model Illustration

This will be complemented by measurements of current performance of targeted workflows established by the team, in the form illustrated at the Council meeting to reveal timeline and iteration patterns (Fig. 2).

Iteration is the principal time burner in the permit process. Measurement will be a collaborative process between staff and TLC to collect data from tracking system and other applicable records and reduce it to indicate performance trends.

To richen the view of the process, TLC will reach out to a spectrum of applicants the City identifies to collect their insights on what works well and what should be improved in the Gig Harbor process.

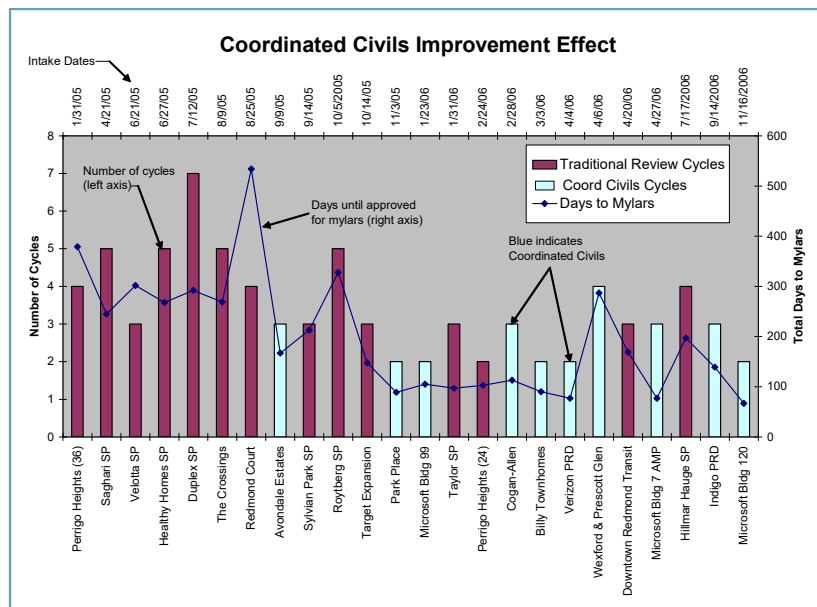


Figure 2. Performance Measure Illustration

Further, with staff assistance to arrange, TLC will conduct an outreach meeting with interested citizens to learn how today's permit process performs from their perspective as neighbors and occupants of these developments.

TLC will analyze this information, as before, and produce a report of findings and recommendations for where to focus the improvement effort.

This will be presented to staff and to Council.

Task 2: Develop and Pilot a New Option

TLC will lead the development of a new process option for plan review in the chosen workflow of focus. This will be a collaborative effort with staff.

When ready, the City will offer this new process option to applicants. TLC will guide the initial pilot applicants and City reviewers through the new process, demonstrating its new features and standards, and facilitating the new steps. TLC will work with staff to measure performance using the new option. TLC will present these results and recommended next steps to Council.

Schedule

TLC proposes a brisk schedule to strive for pilot results this year (Fig. 3). The second task is paced in part by the applicant participants and the level of service the City selects for the pilot.

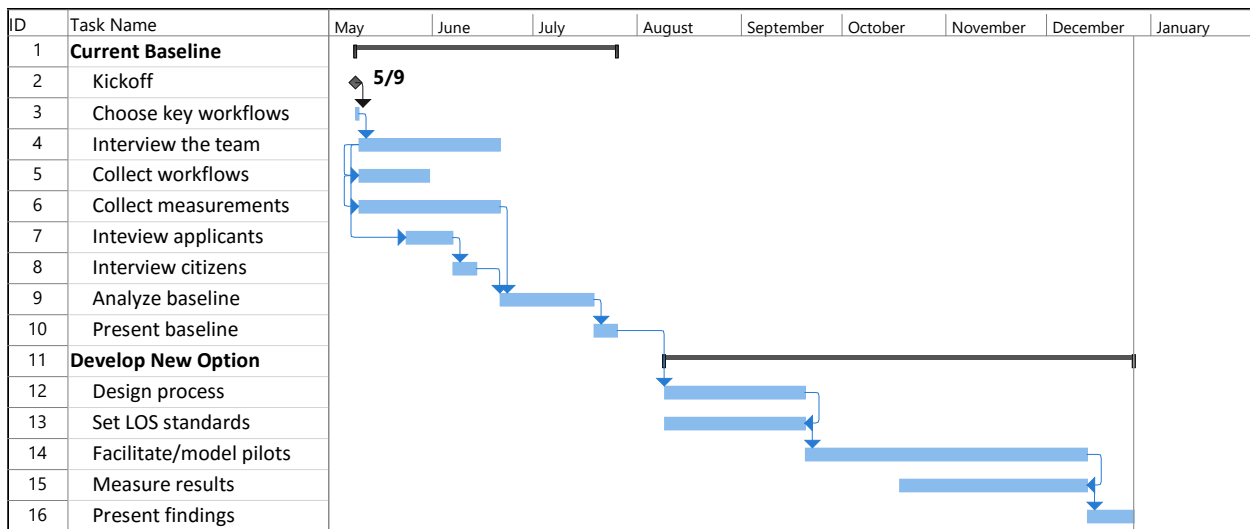


Figure 3. Schedule

Project Staffing

Kurt Latimore, TLC founder and principal, will perform these tasks, as before for Gig Harbor. He developed TLC's methodology and performs all company services. His résumé is enclosed.

Assumptions

TLC assumes that the operations scope in the evaluation is limited to application review and that the inspection process is outside of scope. These may be added to the scope if the City wishes. TLC also presumes the project can begin on May 9. This makes the most of the upcoming construction season and maximizes the opportunity for pilot project conclusions this year.

Fee Schedule

TLC's rate is \$225 per hour. Expenses such as materials and mileage for this scope of work are included in this rate. TLC estimates the following hours for the two tasks.

		<u>Hours</u>
Task 1	Establish Baseline	90 hours
Task 2	Develop and Pilot	<u>110 hours</u>
		200 hours

Thank you

Thank you for this opportunity to work together again to serve the City of Gig Harbor.

We are prepared to begin right away.

Regards,



Kurt Latimore, Member
The Latimore Company, LLC

Kurt R. Latimore

11805 Ingraham Road Snohomish, WA 98290 (360) 805-2999 klatimore@latimorecompany.com

Create performance in technical, governmental and non-profit organizations. Chart the course, innovate, implement, and deliver.

Employment History

The Latimore Company (2003-present). Management Consultant. Snohomish WA

- Consulted for 22 city and county agency clients to assess and improve interdepartmental development review operations.
- Developed and implemented a new method for commercial site and subdivision civil plan approvals for Redmond WA that streamlined timelines by 75%, cut out half of the resubmittal (rework) cycles, and accelerated groundbreaking by 8 months.
- Designed a new submittal process, trimming timelines 33% for 1200 annual building permits in Skagit County WA.
- Invented a breakthrough method for prospective applicants to assess site development complexity online and calibrate the review process to the nature of each site for Cowlitz County WA. Recognized by the local trade association for the turnaround.
- Developed the Latimore Dashboard® app, used by 4 WA cities to manage interdepartmental review of hundreds of permit applications, big and small, and deliver predictable timelines.
- Developed 5 environmentally complex properties in King and Snohomish County WA for residential home sites.
- Determined commercial site feasibility for 2 businesses and a non-profit in King, Pierce and Snohomish County WA.
- Built consensus on contentious permit fee policies for Pierce County WA by facilitating a series of workshops of elected officials, environmental groups, and trade associations.
- Led the planning commission through the development of subarea development review policies for Gig Harbor WA.
- Led strategic planning workshops for the WA Association of Building Officials, the Lutheran School Association of Snohomish County, and the Thurston County and Snohomish County Economic Development Councils.
- Developed online permit application forms for Kirkland WA, Sultan WA, Skagit County WA, and Mountlake Terrace WA on LiveCycle Designer, Adobe Acrobat, and MS Word platforms.
- Frequent industry speaker on how to increase performance of local government agencies (WA, OR, MA). Taught 3 professional development courses (NY and WA), and wrote 2 white papers for a software company.
- Published “Best Practices for Local Government Permitting” for the WA Governor’s Office of Regulatory Assistance.

The Boeing Company (1997-2003, 2010-present). Structures Engineering Manager. Everett WA

- Selected to lead a quick reaction team to solve nationally-reported technical problems with the Boeing KC-46A Tanker fuel lines.
- Led 90 Boeing engineers across 4 US cities to resolve early production problems with the KC-46A Tanker fuselage. Doubled historic norms for team output and healed strained supplier relationships. Top 5 employee engagement survey score.
- Managed engineering development of the USAF KC-46A Tanker fuselage (60 people, 1300 drawing releases, Sections 43 and 45) from proposal to factory with perfect on-time release performance. Team and individual recognition for standout performance.
- Selected as a loaned executive to the Snohomish County Economic Development Council to pilot land use reforms for a year. Recognized by the Puget Sound Regional Council for streamlining the process in 4 regional cities.
- Pioneered Critical Chain Project Management in 777 Structures Engineering and developed engineering “offload” mechanisms.

Butler Service Group (1992, 1997). Contract Engineer to Hughes and Boeing. Los Angeles CA and Everett WA

Lockheed Martin Skunk Works (1996). Design Engineer - X-33 Program. Palmdale CA

Hughes Aircraft Company (1993-1996). KBE Software Project Manager - HS-601. El Segundo CA

Rockwell International - Rocketdyne (1988-1992). Technical Staff - X-30 Program. DOD Secret clearance. Westlake Village CA

Education, Certifications, Community Service

- UCLA Bachelor’s of Science in Mechanical Engineering.
- Professional Engineer (CA No. M27870).
- Washington State University Constraints Management EM526. Jonah (TOCICO)
- Planning Commissioner. City of Sultan WA. Chairman.
- Private pilot. Multiengine instrument. Piper Seneca II.
- President, Lutheran School Assoc. of Snohomish County.
- Team sponsor and coach. Monroe Boys & Girls Club.



Business of the City Council City of Gig Harbor, WA

Subject: First Reading of Ordinance
Establishing a New Franchise Agreement –
Astound Broadband

Proposed Council Action: Consider approval
of the ordinance at the second reading.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, PE *JL*
Public Works Director

For Agenda of: May 9, 2016

Exhibits: Draft Ordinance

	Initial & Date
Concurred by Mayor: <i>Pro Tem</i>	<i>JL</i> 5/4/16
Approved by City Administrator:	<i>Pon W</i> 5/3/16
Approved as to form by City Atty: <i>via EMAIL</i>	<i>5/2/16</i>
Approved by Finance Director:	<i>JF</i> 5/3
Approved by Department Head:	<i>JL</i> 5/3/16

Expenditure Required	See Fiscal Consideration	Amount Budgeted	\$ 0	Appropriation Required	\$ 0
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INFORMATION/BACKGROUND

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

Astound Broadband, LLC, is a Kirkland-based broadband provider, and is doing business in this area as Wave Broadband. Astound desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within city limits and therefore the City requires a non-exclusive telecommunications franchise agreement. Specifically, and for the initial build-out Astound is providing telecommunications services to the Pierce County Library System and therefore is solely connecting to the Gig Harbor Library. City Staff has worked with the City Attorney’s office to prepare the attached ordinance and franchise agreement for consideration by the City Council. If this franchise is approved, Astound will still be required to obtain all appropriate permits and approvals prior to commencing construction and/or installing their facilities in the right-of-way.

Franchise ordinances must go through two readings for adoption. Today is the first reading.

FISCAL CONSIDERATION

Astound Broadband is reimbursing the City for costs associated with the City Attorneys' office preparing the franchise. Additionally, Astound Broadband will pay all fees for any necessary permits and Astound customers will pay the City's standard utility taxes.

BOARD OR COMMITTEE RECOMMENDATION

The final draft of this franchise agreement was presented to the Public Works Committee at their April 11, 2016 meeting. There was no opposition to bringing the franchise agreement forward to the full council.

RECOMMENDATION/MOTION

Consider approval of the ordinance at the second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, ESTABLISHING A NEW FRANCHISE AGREEMENT BETWEEN ASTOUND BROADBAND, LLC AND THE CITY OF GIG HARBOR AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City is authorized to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems and otherwise regulate telecommunications services within the City boundaries by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority; and

WHEREAS, Astound Broadband, LLC d/b/a Wave ("Franchisee"), desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within the City; and

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

WHEREAS, the City Council has determined that the terms of the Franchise are consistent with their desired objectives and serves the interest of the community and its citizens.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

Section 1. Franchise Granted.

1.1 Pursuant to RCW 35A.47.040, the city of Gig Harbor, a Washington municipal corporation (the "City"), grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a franchise ("Franchise") for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 41.

1.2 This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease, and use all necessary Facilities for a

telecommunications network in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City, including such additional areas as may be subsequently included in the corporate limits of the City during the term of this Franchise (the "Franchise Area"), as approved pursuant to City permits issued pursuant to Section 8.2. The phrase "Rights-of-Way" (singular "Right-of-Way") as used in this Franchise, means land or an easement acquired or dedicated for public roads and streets, but does not include state highways and other ways, land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public, structures including poles and conduits, located within the right-of-way, federally granted trust lands or forest board trust lands, lands owned or managed by the state parks and recreation commission, or federally granted railroad rights-of-way acquired under 43 U.S.C. Section 912 and related provisions of federal law that are not open for motor vehicle use. To the extent that easements are designated for only certain functions or do not permit such Facilities, such easements will not be considered part of the Rights-of-Way. "Facilities" as used in this Franchise means one or more elements of Franchisee's telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from "Facilities," to the extent such equipment is located in zoned residential areas of the City.

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

2.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City's Rights-of-Way. Such use must be in compliance with the Gig Harbor Municipal Code provisions, including and not limited to Chapter 12.18. Franchisee represents that it expects to provide the following services within the City: telecommunications services, private line, internet access services, dark fiber services and lit fiber services (the "Services"). Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services. A more detailed description of Franchisee's telecommunications system and Services is described in Exhibit A. If Franchisee desires to expand the Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service; provided, however, that Franchisee may not offer Cable Services pursuant to Section 2.3.

2.2 As described in Section 8, construction is not authorized without the appropriate permits, leases, easements, or approvals. This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City or to install Facilities on, under, over, across, or otherwise use any City owned or leased property other than the City's Rights-of-Way. This Franchise does not convey any right to Franchisee to install its Facilities on, under, over, or across any facility or structure owned by a third-party without such written approval of the third-party. Further this Franchise does not convey any right to continue in any streets, avenues, alleys, roads or public places which are eliminated from the City limits by reason of subsequent disincorporation or reduction of City limits. No substantive expansions, additions to, or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City pursuant to Section 8.2. As of the effective date of this Franchise, Franchisee has no owned Facilities located in the City's Rights-of-Way.

2.3 Under this Franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C. § 522(6).

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

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

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

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

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise.

Section 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Rights-of-Way. This Franchise shall in no

way prevent or prohibit the City from using any Rights-of-Way or affect its jurisdiction over any Rights-of-Way or any part of Right-of-Way, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of Right-of-Way as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description. Location of Telecommunications Facilities. Franchisee is maintaining a telecommunications network consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards, the Gig Harbor Municipal Code, and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area.

Section 5. Relocation of Facilities.

5.1 Pursuant to Gig Harbor Municipal Code section 12.18.220, Franchisee is on notice with respect to the existence of the City's transportation improvement plan. Franchisee has an obligation to comply with the provisions outlined in Gig Harbor Municipal Code section 12.18.220. Should the City follow the procedures outlined in Gig Harbor Municipal Code section 12.8.220, sections 5.4 and 5.5 of this Franchise and the notice provisions contained therein are inapplicable. The procedure outlined in Gig Harbor Municipal Code 12.18.220 shall take precedence over this Franchise.

5.2 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and/or improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.2 shall be borne by

Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060 and Gig Harbor Municipal Code Chapter 12.18.250.

5.3 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

5.4 If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall:

(a) At least forty five (45) days prior to commencing the project, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

(b) At least forty five (45) days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

(c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project.

5.5 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted to the City at least thirty (30) days prior to commencement of the project. The City shall

evaluate the alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5.

5.6 The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

5.7 Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 18, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

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

5.9 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.2 through Section 5.5 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 16.3 and Section 16.4.

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

Section 6. Undergrounding of Facilities.

6.1 Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles. Additionally, Franchisee shall not be permitted to run or suspend wires, cables, or other facilities on existing poles, but shall lay wires, cables, or other facilities underground in the manner required by the City, except that in areas where other telecommunications service providers run or suspend wires, cables, or other facilities on existing poles, Franchisee shall be permitted to run or suspend wires, cables, or other facilities on existing poles. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of a permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense at such time as the City requires all other utilities, except electrical utilities, with aerial facilities in the area to convert them to underground installation. Unless otherwise permitted by the City, Franchisee shall underground its Facilities according to the City's Public Works Standards which apply to all new developments and subdivisions as well as City capital projects. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions where other utilities are to be constructed underground and any development or subdivision where utilities are currently underground. In all circumstances, Franchisee must comply with the provisions included in Gig Harbor Municipal Code Chapters 12.06 and 12.16.

6.2 Franchisee is obligated to comply with the requirements of Gig Harbor Municipal Code Section 12.18.090 describing when any street or sidewalk may be broken, cut, or otherwise compromised.

6.3 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of all of the other affected utilities. The location of any relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for

common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number of conduits of Franchisee's Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. This Section 6.3 shall only apply to the extent Franchisee has existing aerial utilities in the City or is specifically authorized to build aerial utilities by the City.

6.4 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two (2) feet of the actual location.

6.5 Franchisee shall be entitled to reasonable access to open utility trenches unless those trenches include water/sewer/stormwater infrastructure, provided that such access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

6.6 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.6. Franchisee may remove any underground cable from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. If Franchisee ceases to use all or a portion of the underground cable and conduit in the Right-of-Way for a period of twelve consecutive months or more, and such cable or conduit is not removed, then it shall be deemed abandoned and title thereto shall vest in the City at no cost to the City. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground

cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

6.7 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee's Facilities.

Section 7. Maps and Records.

7.1 After construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in GIS format that are acceptable to the City and delivered electronically. Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City. Franchisee shall provide the City with updated as-builts and maps at the conclusion of any material maintenance or modification of existing Facilities.

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

7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

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

Section 8. Work in the Rights-of-Way.

8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the Gig Harbor Municipal Code or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 8 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and shall comply with the requirements of the Gig Harbor Municipal Code Chapters 12.02, 12.08 and 12.18 along with the requirements listed in the City's Shoreline Master Program which was adopted through Ordinance 1278 and available from the City's website. In addition, Franchisee shall give the City at least one working day prior written notice of its intent to commence work in the Rights-of-Way. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or in the Gig Harbor Municipal Code.

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

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

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties and in accordance with the applicable codes, rules and regulations; and

(c) To the extent reasonably possible, the Franchisee shall, at the direction of the city, cooperate with the City and provide other franchisees with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic related impacts.

(d) Either party may deny such request for safety reasons.

8.4 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least

twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

8.5 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.5 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

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

8.7 Franchisee acknowledges that it, and not the City, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC") with respect to Franchisee's Facilities, if applicable. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may, upon at least forty-eight (48) hours' prior written notice to Franchisee, either terminate this Franchise immediately if the equipment is not brought into compliance by the expiration of such notice period or may proceed to cure the conditions of noncompliance at Franchisee's expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 16.3 and Section 16.4.

8.8 The granting of this Franchise shall not preclude the City, its accredited agents or its contractors, from blasting, grading or doing other necessary road work contiguous to the Franchisee's improvements. The City shall provide Franchisee with twenty-four (24) hours written notice of any blasting, grading, excavating or doing other necessary road work contiguous to Franchisee's improvement.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities nor for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, which shall include Gig Harbor Municipal Code Chapter 12.18 and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 16.3 and Section 16.4.

10.3 Additional safety standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

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

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

10.4 **Unsafe Conditions and Nuisances in the Rights-of-Way.** Franchisee shall comply with any order issued by the Public Works Director or his/her designee regarding the correction or discontinuance of an unsafe, nonconforming or unauthorized condition within the Rights-of-Way and any stop work orders.

Section 11. Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall: Be in writing;

- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Section 12. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 13. City Conduit. Except in emergency situations, Franchisee shall inform the Public Works Director with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit, and related

structures necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.2 and Gig Harbor Municipal Code Section 12.18.290.

Section 14. Restoration after Construction.

14.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 20, at Franchisee's own cost and expense, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to a condition "as good as" or "better" than the condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. All trees, landscaping and grounds removed, damaged or disturbed as a result of the installation, construction, relocation, maintenance or repair, shall be replaced or restored, at Franchisee's cost and expense, in "as good as" or "better" than the condition the Rights-of-Way were in immediately prior to any such work. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (Chapter 332-120 WAC), and local standards and specifications. Any excavation work performed by Franchisee shall comply with the requirements of Gig Harbor Municipal Code chapter 12.08.

14.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the permits issued by the City, should any be required. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

14.3 If conditions (e.g. weather) make the complete restoration required under Section 14 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

14.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time agreed to by the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 16.3 and Section 16.4. In addition, and pursuant to Section 16.3 and Section 16.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work.

14.5 The provisions of this Section 14 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 15. Emergencies.

15.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health, or safety of any person, entity or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities and to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. Franchisee shall notify the City, verbally or in writing, as soon as practicable following the onset of the emergency. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than forty-eight hours after beginning emergency work in the Rights-of Way. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the City becomes aware of an emergency before the Franchisee, then the City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations.

15.2 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively "Endangered Property") or endangers the public, the Public Works Director or his/her designee, may direct Franchisee, at

Franchisee's own expense, to take reasonable action to protect the Endangered Property or the public, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Sections 16.3 and 16.4.

15.3 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 15 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

Section 16. Recovery of Costs.

16.1 Franchisee shall pay a grant fee in an amount not to exceed Four Thousand Five Hundred Dollars (\$4,500) for the City's legal costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 16.3.

16.2 In addition to Section 16.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Sections 16.3 and 16.4 for any and all costs the City reasonably

incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

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

16.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 17. Franchise Fees and Utility Taxes.

17.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee's Services as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include

provisions intended to regulate Franchisee's operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

17.2 Franchisee acknowledges that its operation with the City constitutes a telephone business subject to the tax imposed pursuant to the Gig Harbor City Code Section 3.16.060. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Gig Harbor City Code Chapter 3.16, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Gig Harbor City Code Chapter 3.16 as may be permitted by law.

Section 18. Indemnification.

18.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

18.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 18. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

18.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 18.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having

jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

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

18.5 Notwithstanding any other provisions of this Section 18, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise.

Section 19. Insurance.

19.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits consistent with this Section 19. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

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

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

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

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

19.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 19. Franchisee's umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies.

19.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 19 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

19.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 19, thirty (30) days prior to any such cancellation. Within five (5) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 19. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 19 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 22 below. Notwithstanding the cure period described in 22.1 and 22.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

19.5 Franchisee's maintenance of insurance as required by this Section 19 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 20. Abandonment of Franchisee's Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Notwithstanding the above, the City may permit Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of City's notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section 20 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place. The provisions of this Section 20 shall survive the expiration, revocation, or termination of this Franchise.

Section 21. Bonds.

21.1 Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety acceptable to the City equal to at least 125% of the estimated value of the work and the estimated cost to restore existing improvements as determined by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Warranty Bond as described in Section 21.2. Compliance with the performance deposit requirements described in the Gig Harbor Municipal Code Section 12.06.100 shall satisfy the provisions of this Section 21.1.

21.2 Franchisee shall furnish a two-year warranty bond ("Warranty Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on the Facilities within the Rights-of-Way. The Warranty Bond amount will be equal to fifteen percent (15%) of the actual construction costs. The Warranty Bond in this Section 21.2 must be in place prior to City's release of the Performance Bond required by Section 21.1. Compliance with the warranty deposit requirements described in the Gig Harbor Municipal Code Section 12.06.100 shall satisfy the provisions of this Section 21.2.

21.3 Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the terms of this Section 21.3 shall constitute a

material breach of this Franchise, subject to the notice and cure provisions of Section 22.2. Franchisee further agrees to replenish the Franchise Bond within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 22. Remedies to Enforce Compliance.

22.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

22.2 If either party violates or fails to comply with any of the provisions of this Franchise, or a permit issued as required by Section 8.2, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the "Defaulting Party"), the other Party (the "Non-defaulting Party") shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party

shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 22.1 above, or in the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to (1) revoke this Franchise pursuant to Section 23, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary), or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required. Liquidated damages described in this Section 22.2 shall not be offset against any sums due to the City as a tax or reimbursement pursuant to Section 16. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, from enforcement of this Franchise.

Section 23. Revocation.

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

pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

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

Section 25. Police Powers and City Regulations. Nothing within this Franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise and the franchises of similarly-situated entities, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee and other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over this Franchise.

Section 26. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 27. Acceptance. This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within thirty (30) days from the City's execution of this Franchise, in the form attached as Exhibit B. Failure of Franchisee to so accept this Franchise shall be deemed a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 19, any Performance Bonds, if applicable, pursuant to Section 21.1, and the Franchise Bond required pursuant to Section 21.3, and the costs described in Section 16.1.

Section 28. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 14, Section 15, Section 17, Section 18, Section 19, Section 20, Section 21, and Section 29 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 29. Changes of Ownership or Control.

29.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 29.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 29, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

29.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the

City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in Section 23 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 16.3 and Section 16.4, and shall pay the applicable application fee.

29.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 29.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

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

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

Section 32. Vacation. If at any time the City, by ordinance and in accordance with applicable laws, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall use reasonable efforts to reserve an appurtenant easement for public utilities within the vacated portion of the Rights-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.1. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 33. Notice. Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF GIG HARBOR
Attn: City Clerk
3510 Grandview Street
Gig Harbor WA 98335
Telephone: 253-851-8136

Astound Broadband, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO and
Byron Springer, EVP
Telephone: 425-896-1891

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

Section 35. Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 36. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 18 of this Franchise.

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

Section 38. Licenses, Fees and Taxes. Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise.

Section 39. Miscellaneous.

39.1 The City and Franchisee respectively represent that their respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such party's behalf.

39.2 This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington, and Pierce County Superior Court have proper venue for any dispute related to this Franchise.

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

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

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

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

39.7 There are no third party beneficiaries to this Franchise.

39.8 This Franchise may be enforced at both law and in equity.

Section 40. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

Section 41. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR THIS _____ DAY OF _____, 2016; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS _____ DAY OF _____, 2016.

Mayor Jill Guernsey

Attest: _____
Molly Towslee, City Clerk

APPROVED AS TO FORM:

Angela Summerfield, City Attorney

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO:

EXHIBIT A

Services: Telecommunications services, private line, internet access services, dark fiber services and lit fiber services.





EXHIBIT B

STATEMENT OF ACCEPTANCE

Astound Broadband, LLC d/b/a Wave ("Astound") for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Astound declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Astound has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Astound Broadband, LLC

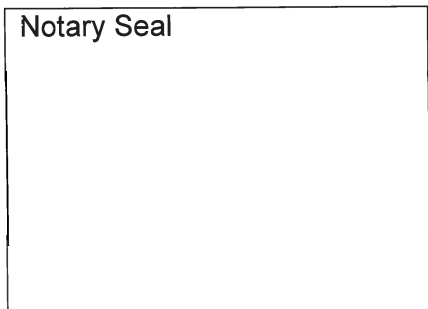
By: _____ Date: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)SS.
COUNTY OF _____)

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

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
Washington
My appointment expires: _____



Business of the City Council City of Gig Harbor, WA

Subject: First Reading of Ordinance Extending Franchise Agreement – CenturyLink.

Proposed Council Action: Consider approval of the ordinance at the second reading.

Dept. Origin: Public Works

Prepared by: Jeff Langhelm, PE *ADL*
Public Works Director

For Agenda of: May 9, 2016

Exhibits: Draft Ordinance

	Initial & Date
<i>Pro Tom</i> Concurred by Mayor:	<i>SLK</i> 5/4/16
Approved by City Administrator:	<i>For W</i> 5/3/16
Approved as to form by City Atty:	<i>VIA EMAIL</i> 5/2/16
Approved by Finance Director:	<i>CR</i> 5/3
Approved by Department Head:	<i>ADL</i> 5/3/16

Expenditure Required	See Fiscal Consideration	Amount Budgeted	\$ 0	Appropriation Required	\$ 0
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INFORMATION/BACKGROUND

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

CenturyTel of Washington, Inc. d/b/a CenturyLink operates telecommunications facilities in the City of Gig Harbor under a Franchise that was first signed in March of 1992 for the purposes of providing telephone and Internet services in and through the City of Gig Harbor. Both CenturyLink and City staff desire to negotiate a new franchise and do not wish to interrupt service to the City. This extension will provide the parties the time necessary to negotiate the franchise extension without interrupting service. The

If this franchise extension is approved, CenturyLink will still be required to obtain all appropriate permits and approvals prior to any construction, modification or installation of facilities in the right-of-way.

Franchise ordinances must go through two readings for adoption. Today is the first reading.

FISCAL CONSIDERATION

Consistent with RCW 35.21.860, the City will request recovery of actual administrative expenses associated with approving the franchise. CenturyLink will pay all fees for any necessary permits and CenturyLink customers will pay the City's standard utility taxes.

BOARD OR COMMITTEE RECOMMENDATION

None at this time.

RECOMMENDATION/MOTION

Consider approval of the ordinance at the second reading.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,
GRANTING A TELECOMMUNICATIONS FRANCHISE EXTENSION TO
CENTURYTEL OF WASHINGTON, INC. d/b/a CENTURYLINK,
HEREAFTER "CENTURYLINK," AND FIXING AN EFFECTIVE DATE.**

WHEREAS, the City of Gig Harbor (the "City") granted a telecommunications franchise to Telephone Utilities of Washington, Inc. d/b/a PTI Communications Company, Inc. by way of Ordinance No. 620 in effective March, 2, 1992 (the "Franchise"); and

WHEREAS, Telephone Utilities of Washington, Inc. changed its name to CenturyTel of Washington, Inc. d/b/a CenturyLink on April 17, 1998; and

WHEREAS, CenturyTel of Washington, Inc. d/b/a CenturyLink operates the telecommunications facilities in the City of Gig Harbor under the Franchise for the purposes of providing telephone and Internet services in and through the City of Gig Harbor; and

WHEREAS, the Franchise granted by Ordinance No. 620 expired on March 31, 2016; and

WHEREAS, both the City and CenturyLink desire to negotiate a new franchise but do not desire to interrupt service in the City; and

WHEREAS, CenturyLink and the City find it mutually beneficial to extend the existing Franchise for a reasonable period of time in order to promote and facilitate an orderly franchise negotiation and renewal process; and

WHEREAS, neither party waives any right which it enjoys under law as a result of agreeing to this extension.

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

Section 1. Franchise Extension. The term of the telecommunications franchise granted under Ordinance No. 620 (the "Franchise") is hereby extended up to and through April 1, 2017, or until such time as the parties agree upon terms of a franchise that is enacted by further ordinance and supersedes this Ordinance, whichever occurs sooner.

Section 2. Compliance with Franchise Terms. As a condition of the extension granted by this Ordinance, CenturyLink shall provide its written and acknowledged acceptance and promise to continue complying with all provisions, terms and conditions of the Franchise during this extension period except to the extent the conditions of the Franchise conflict with existing federal or state law, including Chapter 35.99 of the Revised Code of Washington and/or the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq* (collectively, "Applicable Law"). By the adoption of this Ordinance, the City agrees to continue complying with all provisions, terms and conditions of the Franchise during the extension period to the extent required by Applicable Law. All previous provisions in Ordinance No. 620 shall remain in effect throughout the duration of the Franchise extension as identified in this Ordinance, except for the provision for the duration of the Franchise which will be extended to April 1, 2017, and except for such terms as may be in conflict with Applicable Law. It is the intent of this extension to cover the period from March 31, 2016, the expiration date of the last extension, through and including April 1, 2017.

Section 3. Performance Bond and Insurance. The Performance Bond and insurance policies provided by CenturyLink pursuant to the Franchise shall remain in effect during the extension period.

Section 4. Acceptance. The rights and privileges granted pursuant to this Ordinance shall not become effective until its terms and conditions are accepted by CenturyLink in the form of a written instrument, executed and sworn to by a duly-authorized representative of CenturyLink before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Ordinance.

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

Section 6. Effective Date. This ordinance shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title. This extension is expressly conditioned upon the City's receipt of CenturyLink's written acceptance as described in Section 4.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ____ day of _____, 2016.

CITY OF GIG HARBOR

Mayor Jill Guernsey

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela G. Summerfield

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

ACKNOWLEDGEMENT OF EXTENSION OF FRANCHISE

This Acknowledgement of Extension of Franchise is made this _____ day of _____, 2016, by and between CenturyLink (formerly known as Telephone Utilities of Washington, Inc. and PTI Communications Company, Inc.) ("CenturyLink") and the City of Gig Harbor, Washington, a Washington municipal corporation (the "City").

Whereas, the City conferred a franchise on Telephone Utilities of Washington, Inc., d/b/a PTI Communications Company, Inc. in Ordinance No. 620 (the "Franchise"); and

Whereas, Telephone Utilities of Washington, Inc. changed its name to CenturyTel of Washington, Inc. d/b/a CenturyLink on April 17, 1998; and

Whereas, CenturyTel of Washington, Inc. d/b/a CenturyLink operates the telecommunications facilities in the City of Gig Harbor under the Franchise for the purposes of providing telephone and Internet services in and through the City of Gig Harbor; and

Whereas, the parties wish to agree to extend the franchise and acknowledge the continued effect of the franchise up to and through April 1, 2017;

Now, Therefore, CenturyLink and the City acknowledge and agree as follows:

1. Term. The Franchise is hereby acknowledged and agreed to be extended up to and through April 1, 2017 or until such time as the City has adopted a new franchise ordinance, whichever occurs sooner.

2. Ratification. All terms and conditions of the Franchise are hereby ratified and confirmed, except for the provision for the duration of the Franchise which is hereby extended to April 1, 2017, and except for such terms as may be in conflict with Applicable Law (as defined in the franchise extension, Ordinance ____). CenturyLink hereby accepts and promises to comply with all such provisions, terms and conditions of the Franchise during the extension period, and shall maintain during this extended term the Performance Bond and insurance policies as described in the Franchise.

CENTURYTEL OF WASHINGTON, INC. d/b/a CENTURYLINK

By: _____

Its: _____

Dated: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2016, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that was authorized to execute said instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2016.

(Signature)

(Name legibly printed or stamped)

(Seal or stamp)

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.