

Gig Harbor City Council Meeting

**February 25, 2013
5:30 p.m.**



**REVISED AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
February 25, 2013**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Feb. 11, 2013.
2. Liquor License Action: a) Renewals: Costco, Water to Wine, Fraternal Order of Eagles GH 2809, Gig Harbor Chevron, Gig Harbor 76, Il Lucano, Tokyo Teriyaki, Gateway to India, Gig Harbor Liquor & Wine, and Tides Tavern; b) New application: Fullers Greenhouse.
3. Second Reading of Ordinance No. 1257 – Adopting State Statutes Relating to Marijuana.
4. Lift Station 3A Wet Well Electrical Work – Contract Award.
5. Tacoma Regional Convention and Visitor Bureau Contract.
6. Safeway Development – Traffic Impact Fee Credit Reimbursement Agreement.
7. Maritime Pier – Monitoring Well Samplings Project – Consultant Services Contract Amendment #1.
8. Approval of Payment of Bills Feb. 25, 2013: Checks #71931 through #71936 in the amount of \$6,407.46 for Budget Year 2012.
9. Approval of Payment of Bills Feb. 25, 2013: Checks #71830 through #71930 in the amount of \$279,834.12 for Budget Year 2013.
10. Approval of Payroll for month of February: Checks #71821 through #71829 and ACH Payments in the amount of \$261,375.03.

OLD BUSINESS: None.

NEW BUSINESS:

1. Gig Harbor Historic Waterfront Association Contract.
2. Public Hearing on Ordinance Implementing FEMA Option #3 – Permit-by-Permit Demonstration of Compliance under the Endangered Species Act.
3. Ancich Waterfront Park Visioning Process.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Boards & Candidate Review: Mon. Feb 25th at 4:30 p.m.
2. Downtown Planning / Visioning: Wed. Feb 27th at 4:00 p.m.
3. Planning / Building Committee: Mon. Mar 4th at 5:30 p.m.
4. Parks Commission: Wed. Mar 6th at 5:30 p.m.
5. Ribbon Cutting for 56th / Pt. Fosdick: Thu. Mar 7th at 10:30 a.m.
6. Operations Committee: Thur. Mar 21st at 3:00 p.m.

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – February 14, 2013

PRESENT: Councilmembers Guernsey, Perrow, Malich, Kadzik, and Mayor Hunter. Councilmembers Ekberg, Young, and Payne were absent.

CALL TO ORDER: 5:30 p.m.

PLEDGE OF ALLEGIANCE:

City Administrator Denny Richards introduced Mary Ann Gillespie; the cities newly hired Human Resource Analyst, who was observing the proceedings.

CONSENT AGENDA:

1. Approval of City Council Minutes Jan. 28, 2013.
2. Receive and File: a) GHPD Year-end Report.
3. Liquor License Action: a) Special Occasion: GH Peninsula Fish Food Bank;
4. Appointment to Lodging Tax Advisory Committee.
5. Appointment to Design Review Board.
6. Appointment to Planning Commission.
7. Award of Official Newspaper.
8. Lift Station 3-A Rehabilitation – Contract Award.
9. Rosedale Street Paving Project – Contract Amendment #1 – H.W. Lochner, Inc.
10. Public Works Facility Permitting and Design - Consultant Services Contract.
11. Summer Sounds Concert Contracts.
12. South Sound Sports Commission Contract.
13. Approval of Payment of Bills Feb. 11, 2013: Checks #71707 through #71820 in the amount of \$318,189.11.
14. Approval of Payroll for the month of January: Checks #6825 through #6923 in the amount of \$337,273.95.

MOTION: Move to adopt the Consent Agenda as presented.
Perrow / Kadzik – unanimously approved.

Mayor Hunter explained that there were several appointments to the city's commissions on the Consent Agenda and introduced Pam Peterson, newest member of the Planning Commission. Councilmember Kadzik stressed that Ms. Peterson will be a good addition, and thanked her for serving.

OLD BUSINESS:

1. Third Reading of Ordinance – Development Agreement for Downtown Gig Harbor. Senior Planner Jennifer Kester said that language had been added to further clarify that the development agreement cannot authorize deviations from the requirements of the Shoreline Master Program. She said that there also had been a correction of a clerical error since the last reading.

MOTION: Move to adopt Ordinance No. 1256.
Kadzik / Malich – unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance – Adopting State Statutes Relating to Marijuana. Police Chief Mike Davis explained that it was necessary to adopt the newly adopted State Statutes regarding marijuana in order to charge cases and to be consistent with state law. He addressed council questions. This will return for a second reading at the next meeting.

2. Recommendation for Naming the New Park Property. City Administrator Denny Richards introduced the recommendation by the Parks Commission to name the new park property “Ancich Waterfront Park,” honoring the longtime ownership of the property by this fishing family. He introduced Rhana Lovrovich, Parks Commissioner, to speak to the recommendation.

Ms. Lovrovich said that the Parks Commission is excited about the property and hopes that the Council will honor the Ancich name.

Councilmember Malich voiced concern that naming the property “park” could define usage of a certain type of recreation activity. He said he wants to make sure that the property is available for commercial fishermen, boaters, yachters, and kayakers with no implied constraint by the name ‘waterfront park.’

Councilmember Kadzik explained that he is in the process of forming a committee to discuss recommendations for use of this property as a community boating center. He said that he has no problem using the Ancich name, but possibly it could be included with another name along the lines of “Ancich Community Boating Center.” He suggested tabling the naming of the property until the use is determined.

Councilmember Perrow said that his concern is to get a name on the property in order to leverage grant funding. He suggested that perhaps we could change the name later.

Councilmember Guernsey suggested a motion to temporarily name the property with the understanding that efforts by the committee could lead to a different name that still incorporates the Ancich name. Councilmembers and Mayor Hunter agreed.

Councilmember Guernsey thanked Ms. Lovrovich and the Parks Commission for their work on this. Ms. Lovrovich responded that the word “park” implies that it’s open to everyone, and asked that whatever the final name that it is clear that it’s a public facility.

MOTION: Move to temporarily name it the “Ancich Waterfront Park” as Parks Commission recommended with the understanding that as the we

go forward and develop a plan for this property that we may come back and make a change to the name, while keeping the Ancich name.

Guernsey / Kadzik – unanimously approved.

3. Jerisich Dock Temporary Float Permitting – Consultant Services Contract. Public Works Director Jeff Langhelm explained the need to reapply for hydraulic permits, SEPA Exemption, and Site Plan Review in order to bring in temporary floats for the 2013 Maritime Gig / Blessing of the Fleet events. This contract will allow for the necessary environmental work required to address the development activity associated with the floats. He addressed Council questions.

MOTION: Move to authorize the Mayor to execute a contract with Grette Associates for environmental work for the Jerisich Park Temporary Dock Project in an amount not to exceed \$2,190.00.

Kadzik / Perrow – unanimously approved.

STAFF REPORT:

City Administrator Denny Richards thanked the City Council for allowing the hiring of new employees this year. He reported that things are working out very well with the new receptionist.

PUBLIC COMMENT: None.

MAYOR’S REPORT / COUNCIL COMMENTS:

Councilmember Kadzik said that he was privileged to attend the KGHP Radio Station community meeting. They have just completed improvements that will allow them to do much more. The city provided \$2,500 towards keeping the station open because it is the community’s emergency notification station.

Councilmember Kadzik then reported that PenMet Parks has opened a dog park behind the Fire District Headquarters off Bujacich. He suggested that the city erect a sign at Wilkinson Farm Park directing dog owners to the new park.

Councilmember Perrow complimented the weeding and new bark around the Civic Center and suggested that some pressure washing as the weather allows would be another big improvement to the facility. He commented that the Harborview Street End Park looks great due to pressure washing.

Councilmember Guernsey invited the other Councilmembers to the upcoming meeting of the Economic Development Board to be held on March 1st.

Mayor Hunter explained that Councilmember Young was absent this evening because he was attending the Pierce Transit meeting to discuss route cuts.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Parks Commission: Wed. Feb. 13th at 5:30 p.m.
2. Civic Center Closed for President's Day: Mon. Feb. 18th
3. Operations Committee: Thu. Feb. 21st at 3:00 p.m.
4. Boards and Candidate Review: Mon. Feb. 25th at 4:30 p.m.
5. Council Workstudy Session: Mon. Feb. 25th following the Council Meeting.

ADJOURN:

MOTION: Move to adjourn at 5:56 p.m.
Perrow / Kadzik – unanimously approved.

CD recorder utilized: Tracks 1002 – 1014

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 02/07/2013

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130531

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. COSTCO WHOLESALE CORPORATION	COSTCO WHOLESALE #624 10990 HARBOR HILL DR GIG HARBOR WA 98331 8945	402117	GROCERY STORE - BEER/WINE
2. WATER TO WINE L.L.C.	WATER TO WINE 9014 PEACOCK HILL AVE STE 100A GIG HARBOR WA 98332 1029	407818	BEER/WINE SPECIALTY SHOP
3. FRATERNAL ORDER OF EAGLES GIG HARBOR AERIE NO. 2809	FRATERNAL ORDER OF EAGLES GIG HARBOR 2809 BURNHAM DR NW GIG HARBOR WA 98335 0000	360395	PRIVATE CLUB - SPIRITS/BEER/WINE
4. MI CHA KIM, INC.	GIG HARBOR CHEVRON 5006 PT FOSDICK DR NW GIG HARBOR WA 98335 0000	072786	GROCERY STORE - BEER/WINE
5. GIG HARBOR GAS & FOOD MART, IN	GIG HARBOR 76 5501 38TH AVE NW GIG HARBOR WA 98335 0000	081604	GROCERY STORE - BEER/WINE
6. OPPIDO LUCANO, LLC	IL LUCANO 3119 JUDSON ST GIG HARBOR WA 98335 1221	085087	SPIRITS/BR/WN REST SERVICE BAR
7. STOUT, PYONG SUK	TOKYO TERIYAKI 3111 JUDSON ST GIG HARBOR WA 98335 1221	085327	BEER/WINE REST - BEER/WINE
8. SINGH, SURINDER PAL	GATEWAY TO INDIA 6565 KIMBALL DR STE 102 GIG HARBOR WA 98335 1269	081255	SPIRITS/BR/WN REST SERVICE BAR

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 02/07/2013

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130531

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
9. PREMIUM RETAIL GROUP, LLC	GIG HARBOR LIQUOR & WINE 4814 PT FOSDICK DR NW GIG HARBOR WA 98335 1711	409664	SLS SPIRITS RETAILER
10. DYLAN ENTERPRISES INC.	TIDES TAVERN 2925 HARBORVIEW DR GIG HARBOR WA 98335 1910	356387	SPIRITS/BR/WN REST LOUNGE -



NOTICE OF LIQUOR LICENSE APPLICATION

DRL

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 2/12/13

UBI: 603-270-222-001-0001

License: 403430 - 1U County: 27
Tradename: FULLER GREENHOUSE RESTAURANT
Address: 4793 POINT FOSDICK DR NW STE
400
GIG HARBOR WA 98335-2315

APPLICANTS:
FULLER GREENHOUSE RESTAURANT LLC
FULLER, SCOTT BRADY
1957-01-20
FULLER, GAIL DENISE
1954-03-23

Phone No.: 360-943-4682 SCOTT FULLER

Privileges Applied For:
SPIRITS/BR/WN REST LOUNGE +

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Subject: SECOND READING- The attached Ordinance adopts by reference new state statutes relating to the limited legalization of marijuana. The attached Ordinance also updates references currently in GHMC 9.14.010 for consistency with state law.

Proposed Council Action: Adopt the attached ordinance.

Dept. Origin: Police Department

Prepared by: Chief Mike Davis *(signature)*

For Agenda of: February 25, 2013

Exhibits:

Initial & Date

Concurred by Mayor:

Approved by City Administrator: *cut Feb 14*
2/2/13

Approved as to form by City Atty: *DR 2/13*

Approved by Finance Director: *(signature)*

Approved by Department Head: *(signature) 2/15/13*

Expenditure	Amount	Appropriation
Required 0	Required 0	

INFORMATION / BACKGROUND

On November 6, 2012, Washington State voters approved Initiative 502, which provided for the limited legalization of marijuana under state law. In order to charge cases under the new law the city is required to adopt by reference the new laws codified in part in chapter 69.50 RCW. The attached ordinance will also update several references currently in GHMC 9.14.010 for consistency with state law.

FISCAL CONSIDERATION

None

RECOMMENDATION / MOTION

Move to: Adopt the attached Ordinance.

ORDINANCE NO. 1257

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 9.14 OF THE GIG HARBOR MUNICIPAL CODE TO INCORPORATE PROVISIONS OF STATE LAW REGARDING MARIJUANA AND TO UPDATE STATUTORY REFERENCES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council adopted provisions from state law relating to controlled substances in chapter 9.14 of the Gig Harbor Municipal Code; and

WHEREAS, on November 6, 2012, Washington state voters approved Initiative 502 relating to limited legalization of marijuana under state law, codified in part in chapter 69.50 RCW; and

WHEREAS, the City Council desires to incorporate certain provisions of the new state law relating to marijuana into the Gig Harbor Municipal Code; and

WHEREAS, the City Council further desires to update references currently in GHMC 9.14.010 for consistency with state law; Now, therefore,

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

Section 1. Section 9.14.010 - Amended. Section 9.14.010 of the Gig Harbor Municipal Code is amended as follows:

9.14.010 State statutes adopted by reference.

The following state statutes are adopted by reference:

RCW

69.41.010 Definitions.

69.41.020 Prohibited acts – Information not privileged communication.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited – Exceptions.

69.41.050 Labeling requirements.

69.41.060 Search and seizure.

69.41.062 Search and seizure at rental premises – Notification of landlord.

69.41.065 Violation – Juvenile driving privileges.

~~69.41.070 Penalties.~~

69.50.101 Definitions.

69.50.102 Drug paraphernalia – Definitions.

69.50.204 (c)(14)(22) Schedule I – Marijuana.

69.50.309 Containers.

~~69.50.401(e) Prohibited Acts: A – Penalties.~~

69.50.4013 Possession of controlled substance – Penalty – Possession of

- usable marijuana or marijuana-infused products.
- 69.50.4014 Possession of 40 grams or less of marijuana – Penalty.
- 69.50.408 Second or subsequent offenses.
- 69.50.412 Prohibited Acts: E – Penalties.
- 69.50.4121 Drug paraphernalia – Selling or giving – Penalty.
- 69.50.420 Violations – Juvenile driving privileges.
- 69.50.425 Misdemeanor violations – ~~Minimum-imprisonment penalties.~~
- 69.50.445 Opening or consuming package containing marijuana, usable marijuana, or marijuana-infused product in view of general public – Penalty.
- 69.50.505 Seizure and forfeiture.
- 69.50.506 Burden of proof; liabilities.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall take effect and be in full force and effect five days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of February, 2013.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK: 02/06/13
PASSED BY THE CITY COUNCIL: 02/25/13
PUBLISHED: 03/06/13
EFFECTIVE DATE: 03/11/13
ORDINANCE NO: 1257



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

Subject: Lift Station 3A Wet Well Electrical Work – Contract Award

Dept. Origin: Public Works

Proposed Council Action:

Award and authorize the Mayor to execute a Small Public Works Contract with Madsen Electric in the amount not to exceed Nine Thousand Four Hundred Eighteen Dollars, and Zero Cents (\$9,418.00) including Washington State Sales Tax for Electrical Work to Lift Station 3A Wet Well and authorize the Wastewater Treatment Plant Supervisor to approve additional expenditures up to \$1,800.00 to cover any cost increases that may result from contract change orders due to the nature of this project.

Prepared by: Darrell Winans, Supervisor
Wastewater Treatment Plant

For Agenda of: February 25, 2013

Exhibits: Public Works Contract

	Initial & Date
Concurred by Mayor:	<i>CLH 2/20/13</i>
Approved by City Administrator:	<i>R 2/20/13</i>
Approved as to form by City Atty:	<i>2/20/13 ok'd by email</i>
Approved by Finance Director:	<i>2/20/13 [initials]</i>
Approved by Department Head:	<i>DW 2/20/13</i>

Expenditure Required	\$9,418.00	Amount Budgeted	\$342,000.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

The 2013 Sewer Operating budget provides funds for electrical work to the Lift Station 3A Wet Well.

In accordance with the City's Small Works Roster Process (Resolution No. 884), staff solicited quotes from two electrical contractors and obtained the following bids for this work:

Madsen Electric	\$ 9,418.00
Totem Electric	\$17,742.00

FISCAL CONSIDERATION

The 2013 Sewer Operating budget, Objective #1 provides sufficient funds for this work.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Award and authorize the Mayor to execute a Small Public Works Contract with Madsen Electric in the amount not to exceed Nine Thousand Four Hundred Eighteen Dollars, and Zero Cents (\$9,418.00) including Washington State Sales Tax for Electrical Work to Lift Station 3A Wet Well and authorize the Wastewater Treatment Plant Supervisor to approve additional expenditures up to \$1,800.00 to cover any cost increases that may result from contract change orders due to the nature of this project.

**CITY OF GIG HARBOR
SMALL PUBLIC WORKS CONTRACT**

THIS CONTRACT is made and entered into this _____ day of _____, 2013, by and between the City of Gig Harbor, Washington (the "City"), and Madsen Electric, a Washington Corporation (the "Contractor").

FOR AND IN CONSIDERATION of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope of Work.

The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, etc. necessary to perform and complete in a workmanlike manner the work set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

2. Time of Performance and Completion.

The work to be performed under this Contract shall commence as soon as the Contractor has received a Notice to Proceed from the City and in accordance with the schedule set forth in the Scope of Work.

3. Payments.

The Contractor agrees to perform all work called for at the rate of Nine Thousand, Four Hundred Eighteen Dollars and No Cents (\$9,418.00) including applicable Washington State Sales Tax. Said sum shall constitute full compensation for all labor, materials, tools, appliances, etc. required to perform the required services. Total compensation shall not exceed Nine Thousand, Four Hundred Eighteen Dollars and No Cents (\$9,418.00).

4. Retainage.

Pursuant to RCW 60.28.011, five percent (5%) of all monies earned by the Contractor shall be retained by the City for the purposes mentioned in said statute. The Contractor elects to have these monies (check one):

_____ Retained in a fund by the City until sixty (60) days following the final acceptance of said improvement or work as completed;

_____ Deposited by the City in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: Provided, that interest on such account shall be paid to the Contractor; or

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_____ Placed in escrow with a bank or trust company by the City until sixty (60) days following the final acceptance of said improvement or work as completed. When the monies reserved are to be placed in escrow, the City shall issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the Contractor as the said interest accrues.

5. Performance and Payment Bond - 50% Letter.

A. The Contractor shall execute and deliver to the City a bond, on forms supplied or approved by the City, with an approved surety company as surety, in the sum of the full amount of the Contract plus the applicable Washington State Sales Tax, in compliance with RCW 39.08.010 through 39.08.060 and any amendments thereto. The surety on any such bond shall be a surety company duly authorized to transact surety business under the laws of the State of Washington. In lieu of such a bond, the Contractor may provide a letter of credit in the same sum and subject to the same conditions, in a form approved by the City Attorney.

B. If the amount of this Contract is Thirty-five Thousand Dollars (\$35,000) or less, the Contractor may, at its option, in lieu of the bond specified in subparagraph A, have the City retain fifty percent (50%) of the contract amount for a period of thirty (30) days after the date of completion of services, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

6. Warranty/Maintenance Bond.

The Contractor will warranty the labor and installation of materials for a two-year warranty period and shall furnish a maintenance bond in an amount and form approved by the City in order to guarantee that the work specified in Exhibit A and completed by Contractor will remain free from defects in workmanship and materials for a period of two years after completion of construction.

7. Indemnity.

A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or in connection with the 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

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persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees or volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

8. Insurance.

A. The Contractor shall secure and maintain in force throughout the duration of this Contract, business auto coverage for any auto no less than a \$1,000,000 each accident limit.

B. The Contractor shall secure and maintain in force throughout the duration of this Contract, comprehensive general liability insurance with a minimum coverage of not less than a limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury, including death, and property damage. The insurance will be written on an occurrence basis, by an 'A' rated company licensed to conduct business in the State of Washington. The general liability policy shall name the City as an additional insured and shall include a provision prohibiting cancellation, changes and reductions of coverage under said policy except upon thirty (30) days prior written notice to the City. Certificates of coverage as required by this Section shall be delivered to the City with the signed Contract. Under this Agreement, the Contractor'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 commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

C. The Contractor 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 Contractor's coverage.

D. In addition, the Contractor shall secure and maintain workers' compensation insurance pursuant to the laws of the State of Washington.

9. Prevailing Wage.

A. The prevailing rate of wage to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are attached hereto and by reference made a part of this Contract as though fully set forth herein.

B. On or before the date of commencement of the work, the Contractor shall file a statement under oath with the City and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workmen, or mechanics employed upon the work by the Contractor or any Subcontractor, which shall not be less than the prevailing rate of wage. Such statement and any subsequent statement shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

10. Termination.

A. Termination for Contractor's Default. If the Contractor refuses or fails to make adequate progress of the work, or to prosecute the work or any separable part thereof with such diligence that will insure its completion within the time specified in this Contract, or defaults under any provision or breaches any provision of this Contract, the City may serve notice upon the Contractor and its surety of the City's intention to terminate by default the right of the Contractor to perform the Contract, and unless within ten (10) days after the serving of such notice, the Contractor shall satisfactorily arrange to cure its failure to perform and notify the City of the corrections to be made, the right of the Contractor to proceed with the work shall terminate. In the event of any such termination, the City shall serve notice thereof upon the Surety and the Contractor, provided, however, that if the Surety does not commence performance thereof within twenty (20) days from the date of the mailing to such Surety of the notice of termination, the City may take over the work and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor. In the case of termination for default, the Contractor shall not be entitled to receive any further payment until the work is finished.

B. Termination by City for Convenience. The performance of work under this Contract may be terminated by the City in accordance with this paragraph in whole or in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance or work under the Contract is terminated, and the date upon which such termination becomes effective. The Contractor shall stop work on the project upon the date set forth in the Notice of Termination and shall take such actions as may be necessary, or as the City may direct, for the protection and

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preservation of the work. After receipt of a Notice of Termination, the Contractor shall submit to the City its termination claim, in the form and with the certification prescribed by the City. Such claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination. Upon approval by the City, the termination claim shall be paid.

C. Termination by Contractor. If the work should be stopped under an order of any court, or other public authority, for a period of thirty (30) days, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the City, terminate this Contract and recover from the City payment for all work executed and any proven loss sustained. Should the City fail to pay to the Contractor, within the payment period provided for in this Contract, any sum due and owing, then the Contractor may, upon seven (7) days written notice to the City, stop the work or terminate this Contract.

11. Compliance with Laws. The Contractor shall at all times comply with all applicable state and local laws, rules, ordinances and regulations.

12. Nondiscrimination. Except to the extent permitted by a bona fide occupational qualification, the Contractor agrees that the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

13. Independent Contractor. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this contract.

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

independent contractors to perform the same or similar work that the Contractor performs

15. Legal Action. In the event that either party shall bring suit to enforce any provision of this Contract or to seek redress for any breach, the prevailing party in such suit shall be entitled to recover its costs, including reasonable attorneys' fees.

16. Entire Agreement. This Contract, together with all attachments, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and agreements, whether written or oral. This Contract may be amended only by written change order, properly signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first written above.

CITY OF GIG HARBOR

CONTRACTOR

MAYOR CHARLES L. HUNTER
Date:_____

By:_____
Title:_____
Date:_____

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
Office of the City Attorney



License # MADSEE*140P8
Ph: 253-383-4546 Fx: 253-564-6049

February 19, 2013

Nancy Nayer @
City of Gig Harbor WWTP
Phone: (253) 853-7753

Project: Pump Station 3A Channel Monster and VFD work

CARL T. MADSEN D/B/A MADSEN ELECTRIC IS PLEASED TO PROPOSE TO PERFORM THE FOLLOWING ELECTRICAL WORK:

LABOR.....	L/S	\$4,534.00
MATERIAL.....	L/S	\$1,964.00
2 YEAR MAINTENANCE BOND.....	L/S	\$150.00
CONTINGENCY.....	L/S	\$2,032.00
TAX.....	L/S	\$738.00
TOTAL.....	L/S	\$9,418.00

SCOPE:

1. Provide and install (1) 3/4" GRC conduit from existing gutter in electric room to wet well room at this point change to 3/4" PVC coated GRC conduit and seal. Continue conduit through wet well floor to new Class 1 Div 1 J-box in wet well.
2. All hardware to be stainless steel in wet well.
3. Provide and install #12 THHN wire from new Channel Monster CP to J-box in wet well.
4. Install new Channel Monster CP (provided by owner).
5. Terminate cables from Channel Monster skid into new J-box using Class 1 Div 1 CGB's.
6. Disconnect existing Sewage Pump #1 VFD and remove.
7. Install new owner provided VFD in old VFD's location in MCC P-102
8. Provide 3 days of labor only contingency to be used at city's discretion.
9. Provide (1) core drill into wet well.
10. Work hours to be Monday thru Friday 7a.m. to 3:30 p.m.

Exclusions:

1. Lift Rental

General Conditions:

1. Our proposal does not include Washington State Sales Tax.
2. Our proposal does not include a payment/performance bond, use 1.5% if needed.

Madsen Electric, a Division of Carl T. Madsen,
Inc.

Owner Print Name

Owner Signature
Date:_____

BY: _____
Travis Sharp, Project Manager
Contractor

This Proposal is subject to owner's written acceptance within 30 days including the terms and conditions on the reverse side of this proposal.



Subject: Approval for 2013 Contract for Services through Tacoma Regional Convention and Visitor Bureau

Proposed Council Action: Approve and authorize the Mayor to execute the Agreement to provide support to the Tacoma Regional Convention and Visitor Bureau in the amount of five-thousand dollars (\$5,000).

Dept. Origin: Administration - Marketing

Prepared by: Laureen Lund

For Agenda of: February 25, 2013

Exhibits:

1 referenced contract

Initial & Date

Concurred by Mayor:

CLH 2/19/13

Approved by City Administrator:

R 2/18/13

Approved as to form by City Atty:

Approved by Finance Director:

10 2-19

Approved by Department Head:

SS 2/13/13

Expenditure Required	\$5,000.00	Amount Budgeted	\$ 5,000.00	Appropriation Required	0
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INFORMATION / BACKGROUND

As outlined in the 2013 Narrative of Objectives, the Marketing Office has budgeted to contract with the Tacoma Regional Convention and Visitor Bureau (\$5,000) to continue partnership with the TRCVB. This partnership capitalizes on shared resources for leisure travel, tour operators, meetings and conventions, and advertising and promotion opportunities.

FISCAL CONSIDERATION

This item has already been approved in the 2013 Marketing Budget from Lodging Tax dollars and will not exceed the budgeted amount of \$5,000.00.

BOARD OR COMMITTEE RECOMMENDATION

Recommend that Council authorize and accept the contract for Tacoma Regional Convention and Visitor Bureau.

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the Agreement to support the Tacoma Regional Convention and Visitor Bureau in the amount of \$5,000.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
Tacoma Regional Convention and Visitor Bureau**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Tacoma Regional Convention and Visitor Bureau, a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in tourism promotion activities 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 five thousand dollars and no cents (\$5,000.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement.

B. The total funding provided to the City to Tacoma Regional Convention and Visitor Bureau under this Agreement shall not exceed Five Thousand Dollars (\$5,000.00) and will be paid quarterly upon receipt of invoice from the Tacoma Regional Convention and Visitor Bureau. Tacoma Regional Convention and Visitor Bureau shall expend the funds prior to December 31, 2013. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and

shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

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

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2013; provided however, that additional time shall be granted by the City for excusable days or extra work.

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

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

by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

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

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

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

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

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

8. Insurance.

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

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

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and

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

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

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

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

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

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

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

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

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

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

14. Resolution of Disputes and Governing Law.

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

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

prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

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

CONSULTANT:
Tacoma Regional Con. & Vis. Bureau
ATTN: Bennish Brown, President & CEO
1119 Pacific Ave., Ste. 500
Tacoma, WA 98402
(253) 284-3250

City of Gig Harbor
ATTN: Laureen Lund
3510 Grandview Street
Gig Harbor, WA 98335
(253) 853-3554

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: Bennish D. Brown
Its: PRESIDENT / CEO

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A. Scope of Activities. The City shall provide Five Thousand Dollars (\$5,000.00) in funding to the Tacoma Regional Convention and Visitor Bureau to perform the following activities:

- A. The Convention and Visitor Bureau staff will support Gig Harbor in marketing to and selling to small meetings and convention operators for our city and region.
- B. Promotion and Marketing- The Convention and Visitor Bureau Staff will market Gig Harbor and include Gig Harbor as part of the following aspects of the Convention and Visitors Bureau; website, Tacoma - Pierce County Visitors Guide 2013.
- C. Web Presence – The Convention and Visitor Bureau staff will provide Gig Harbor focused visitor information and links from www.traveltacoma.com and allow a current Events Listing for Gig Harbor on the Convention and Visitor Bureau Website.
- D. New Projects- The Convention and Visitor Bureau Staff will provide Gig Harbor the opportunity to participate in new projects as appropriate and available and as agreed upon with the Gig Harbor Marketing Director, including but not limited to Meet In Your City, Glass Roots, tour operator fams, travel writer and editor visits and co-op advertising opportunities.
- E. Results- The Convention and Visitor Bureau Staff will produce an annual report with complete details of activities for presentation at the Gig Harbor Lodging Tax Advisory Committee meetings.



Subject: Safeway Development – Traffic Impact Fee Credit Reimbursement Agreement

Dept. Origin: Public Works/Engineering

Proposed Council Action: Authorize the Mayor to sign a Reimbursement Agreement with Property Development Centers, Inc., to allow for transportation impact fee credit reimbursement in accordance with the City of Gig Harbor Municipal Code.

Prepared by: Emily Appleton, P.E.
Senior Engineer

EA 2.20.13

For Agenda of: February 25, 2013

Exhibits: Reimbursement Agreement

Initial & Date

Concurred by Mayor:

CLB 2/20/13

Approved by City Administrator:

iz 2/20/13

Approved as to form by City Atty:

per email 2.13.13

Approved by Finance Director:

PT 2.20.13

Approved by Public Works Director:

JWA 2/20/13

Approved by City Engineer:

EA 2-20-13

Expenditure Required	Amount Budgeted	Appropriation Required
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INFORMATION/BACKGROUND

When Property Development Centers, Inc., (PDC) redeveloped their Safeway project, the City required, as a condition of permit approval, construction of offsite improvements to mitigate the project's impact to the City's transportation infrastructure. One of the improvements was a project on the City's Six-Year TIP and, therefore, the project costs were eligible for transportation impact fee reimbursement. PDC paid for the design and construction of the Six-Year TIP project. They requested and were granted a transportation impact fee credit in accordance with the City of Gig Harbor Municipal Code. Because of the privately negotiated agreements with their tenants, some of the transportation impact fee amounts were paid by parties other than PDC. In order for the City to issue a single reimbursement check to PDC, instead of issuing checks to the various parties that paid the fees but did not contribute to the project construction cost, a reimbursement agreement was necessary. The executed agreement will hold harmless and indemnify the City from any action that may result from paying the impact fee credit directly to PDC. Improvements constructed by PDC included the additional additional right-of-way and northbound right lane at Olympic Drive/Point Fosdick as well as the new signalized intersection at 48th/Point Fosdick intersection and associated turn lane improvements.

FISCAL CONSIDERATION

The transportation impact fees collected are available for reimbursement as allowed by the Gig Harbor Municipal Code, and this reimbursement has been accounted for in the City's 2013 budget.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Authorize the Mayor to sign a Reimbursement Agreement with Property Development Centers, Inc., to allow for transportation impact fee credit reimbursement in accordance with the City of Gig Harbor Municipal Code.

**CITY OF GIG HARBOR AND PROPERTY DEVELOPMENT CENTERS INC.
POINT FOSDICK ROAD TRAFFIC IMPROVEMENT FEE REIMBURSEMENT
AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of January, 2013, by and between the CITY OF GIG HARBOR, a municipal corporation, hereinafter referred to as the “City”, and PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company, hereinafter referred to as “PDC.”

I. RECITALS

1. WHEREAS, PDC has received discretionary permits from the City for the construction of a Safeway grocery store and retail shopping complex (“Point Fosdick Square”) located at the Southeast corner of Point Fosdick Rd. and Olympic Drive, Gig Harbor, Washington that is legally described on **Exhibit A**.

2. WHEREAS, as a condition of approval for the construction of Point Fosdick Square, PDC was required to dedicate land and design and construct certain off-site road, lighting, sidewalk, and traffic control improvements (the “Offsite Improvements”) associated with a right-hand turn lane at the intersection of Point Fosdick Road and Olympic Drive that was listed on the City’s six-year Traffic Improvement Plan (“TIP”). A sketch of the Offsite Improvements is attached as **Exhibit B**.

3. WHEREAS, the City has determined that PDC is entitled to a credit of traffic impact fees paid in conjunction with the permitting of the Point Fosdick Square development in an amount of \$748,911.89, or the net traffic impact fee paid to the City for the development plus applicable interest at the time of disbursement, whichever is less (the “Reimbursement Amount”).

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertakings and covenants herein, the parties agree as follows:

1. City Payment Of Impact Fee Credits Directly To PDC. Because PDC incurred the costs to design and construct the Offsite Improvements, the City agrees, subject to PDC indemnifying and holding the City harmless, that it will provide reimbursement, up to the amount of credit allowed in the Transportation Impact Fee Credit Decision issued by the City on November 16, 2012 for PDC, of traffic impact fees that were paid to the City that are associated with any additional development within Point Fosdick Square directly to PDC, even though another entity may pay, or has paid, traffic impact fees when applying for a building permit or other regulatory approval for development of a particular building or parcel within Point Fosdick Square.

2. PDC Agreement To Hold Harmless And Indemnify The City. PDC warrants that it is entitled to receive the impact fee reimbursements and that it has not transferred or bargained away its reimbursement right. PDC further agrees to defend, hold harmless, and indemnify the City from all claims, demands, actions, suits, liability, loss, penalties, fees, costs and damages of any nature whatsoever that the City incurs as a result of paying the impact fee reimbursements directly to PDC as set forth in Paragraph 1, except to the extent that they are caused by the gross negligence or willful misconduct of the City.

3. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

4. Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on

behalf of the entity for which he or she is signing, and that he or she will defend and hold harmless the other parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the parties and will constitute as against each party a valid, legal and binding obligation that will be enforceable against each party in accordance with the terms herein.

5. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall lie in Pierce County Superior Court.

6. Notices. All notices, requests, demands, and other communications called for or contemplated by this Agreement shall be in writing, and shall be deemed to have been duly given by mailing the same by nationally recognized overnight delivery service or first-class mail, postage prepaid; or by delivering the same by hand, to the following addresses, or to such other addresses as the parties may designate by written notice in the manner aforesaid, provided that communications that are mailed shall not be deemed to have been given until three business days after mailing:

Property Development Centers LLC
5918 Stoneridge Mall Road
Pleasanton, CA 94588
Attn: Chief Operating Officer

City of Gig Harbor
Dave Rodenbach
Director of Finance
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

7. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation

of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

8. Counterparts; Facsimile. This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement. Signatures transmitted by facsimile are sufficient.

9. Equal Opportunity to Participate in Drafting. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language.

10. Recitals Incorporated By Reference. The Recitals are incorporated by reference into this Agreement and constitute material terms of the Agreement.

11. Full Understanding and Complete Agreement. The parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this agreement after sufficient review and understanding of its contents. This Agreement constitutes the final and complete agreement between the parties and cannot be changed or modified other than by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above written.

City of Gig Harbor, a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

City Attorney

Property Development Centers LLC
a Delaware limited liability company

By: Safeway Inc.
a Delaware corporation
Its Sole and Managing Member

By: Linda S. Macdonald

Name: LINDA S. MACDONALD

Title: Assistant Vice President

By: Denise M. Roman

Name: Denise M. Roman

Title: Assistant Secretary

Lsm

STATE OF WASHINGTON
COUNTY OF PIERCE

ss.

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

Dated this _____ day of _____, 2013.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

My appointment expires _____

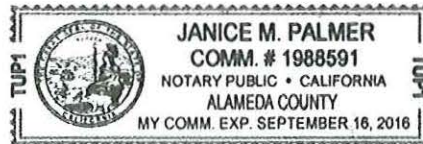
STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On January 16, 2013, before me, Janice M. Palmer, Notary Public, personally appeared Linda S. MacDonald and Denise M. Roman who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Janice M. Palmer
Signature



(Seal)

EXHIBIT A
FULL LEGAL DESCRIPTION FOR
POINT FOSDICK SQUARE - GIG HARBOR BINDING SITE PLAN

That portion of the Southwest quarter of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian, in Pierce County, Washington, lying Southerly of a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive, and lying Southwesterly of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive, plan dated March 19, 1970;

EXCEPT those portions conveyed to Pierce County by Quit Claim Deeds recorded March 17, 1976 under Recording Nos. 2594930 and 2594931 for 48th Street N.W.;

AND EXCEPT Point Fosdick-Gig Harbor County Road (30th Avenue N.W. a/k/a Point Fosdick Drive N.W.);

AND EXCEPT that portion conveyed to Pierce County for right of way for 107th Avenue N.W. a/k/a Point Fosdick Drive N.W. by deed recorded under Recording No. 2549648.



Subject: Maritime Pier–Monitoring Well Samplings Project – Consultant Services Contract Amendment #1

Proposed Council Action:

Move to: Approve and authorize the Mayor to execute the Contract Amendment No. 1 with Robinson Noble for the Maritime Pier–Monitoring Well Samplings for the not-to-exceed amount of \$4,253.05.

Dept. Origin: Public Works/Engineering

Prepared by: Marcos McGraw
Project Engineer *mm*

For Agenda of: February 25, 2013

Exhibits: Consultant Services Contract Amend. #1 with Exhibit A – Scope of Work and Exhibit B – Schedule of Rates an Estimated Hours

Initial & Date

Concurred by Mayor: *CH 2/20/13*
Approved by City Administrator: *R 2/20/13*
Approved as to form by City Atty: *approved via email 2/20/13*
Approved by Finance Director:
Approved by Public Works Director: *JHK 2/20/13*
Approved by City Engineer: *2/20/13*

Expenditure	Amount	Appropriation
Required \$4,253.05	Budgeted \$122,000.00	Required \$0

INFORMATION / BACKGROUND

The previous owners of the Maritime Pier site were required by the Department of Ecology to establish monitoring wells after cleaning up the contaminated soils. After the clean-up was complete and the wells established a document was written binding the owners to a regular sampling and testing of the groundwater every 18 months. The obligations described within this “Environmental Covenant” transfer to the new owners of the associated parcel. This contract provides for the continued groundwater monitoring for this site as required by the Environmental Covenant.

FISCAL CONSIDERATION

Funding for this Consultant Services Contract is part of the Parks Development Budget Objective #14.

Parks Development Budget	\$ 122,000
Anticipated 2013 Expenses:	
Robinson Noble Consultant Services Contract	\$ (4,253.05)
<i>Consultant Services Contract for design</i>	\$ (35,000.00)
<i>Project construction – Public Works Contract</i>	\$ (82,746.95)
Remaining 2013 Budget =	\$ 0

Note: Expenses in *italics* are estimated.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the Contract Amendment No. 1 with Robinson Noble for the Maritime Pier–Monitoring Well Samplings for the not-to-exceed amount of \$4,253.05.

FIRST AMENDMENT
TO
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ROBINSON NOBLE

THIS FIRST AMENDMENT is made to that certain Consultant Services Contract dated January 10, 2011 (the "Agreement"), by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Robinson Noble, a corporation organized under the laws of the State of Washington (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently contracting with the Consultant for Well Monitoring at the Maritime Pier;

WHEREAS, the City desires to extend consultation services with the Consultant in connection with the aforementioned services; 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 in this Amendment as follows:

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

Section 2. Compensation. Section 2(A) of the Agreement is amended to increase compensation to the Consultant for the work to be performed as described in **Exhibit A** in an amount not to exceed Four Thousand Two Hundred Fifty-Three Dollars and Five Cents (\$4,253.05), as shown in **Exhibit B**, attached to this Amendment and incorporated herein.

Section 3. Duration of Work. Section 4 of the Agreement is amended to extend the duration of this Agreement to March 1, 2014.

EXCEPT AS EXPRESSLY MODIFIED BY THIS FIRST AMENDMENT, ALL TERMS AND CONDITIONS OF THE AGREEMENT ARE HEREBY RATIFIED AND INCORPORATED INTO THIS AMENDMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT.

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its Principal

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



ROBINSON
NOBLE

February 4, 2013

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

Subject: Confirmation groundwater monitoring scope of work and cost estimate for 3003 Harborview Drive, Gig Harbor, Washington (parcel no. 0221081187)

Dear Mr. McGraw,

Robinson Noble is pleased to provide this scope and cost estimate for conducting groundwater monitoring at the above-referenced site. This monitoring will be completed as outlined in the Confirmation Groundwater Monitoring Plan Appendix to the Environmental Covenant on the property as required by the Washington State Department of Ecology (Ecology).

The monitoring plan calls for monitoring in 18-month intervals. The first sampling event was in January 2011. The plan also calls for brief data reports to be submitted to Ecology for the first two events, followed by a detailed summary report subsequent to the third monitoring event.

Since the time of the first sampling event, construction activities at the site substantially altered its configuration. Based on our site visit of January 18, 2013, one of the monitoring wells is now located underneath the decking of the new dock. This presents complications to the proper sampling of the well. The other well (AC-5) is openly accessible and presents no problems for sampling.

We propose the following tasks:

1. The existing wellhead is modified by a licensed well driller to be flush with the existing decking. Robinson Noble staff will then sample the well.
2. A report documenting the sampling and analytical activities will be prepared and submitted for your use.

The following table outlines the estimated costs based on our understanding of the project. The estimated costs include laboratory charges, sampling, field-monitoring equipment, drilling sub-contractor charges, and completion and submittal of a report to Ecology.

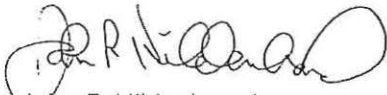
Marcos McGraw
City of Gig Harbor
February 4, 2013
Page 2

Estimated Project Costs	
Robinson Noble professional services, supplies, and equipment	\$2,343.45
Subcontracted laboratory charges (includes 15% subcontract fee)	\$ 300.00
Subcontracted drilling contractor charges (includes 15% subcontract fee)	\$1,609.60
<i>Estimated Total</i>	<i>\$4,253.05</i>

Should you decide to pursue the work discussed above, please provide us with an authorized purchase order or your contract for our review and execution that includes the preferred option selected. Unless unexpected conditions are found to exist, the estimated completion time for the project is 20 working days following the return of the executed purchase order or contract.

We hope this scope of work and cost estimate is adequate for your needs. Please contact us if we can provide additional information or modify the scope of work to better assist you. If at any time prior to or during this project you identify a concern or problem with our work or progress that cannot be resolved by the assigned Robinson Noble project manager, please contact Joseph Becker, our company President, and he will make every effort to resolve the issue to your satisfaction. We can be reached at (253) 475-7711.

Sincerely,
Robinson Noble, Inc.



John F. Hildenbrand
Associate Environmental Scientist
Environmental Services Manager

attachments

Project Estimate
Gig Harbor
3003 Harborview Drive
February 5, 2013



Estimated Labor Costs

Staff Position	Rate	Total Estimated Hours	Estimated Labor Cost
Principal Hydrogeologist/Engineer	\$177.00	1.00	\$177.00
Sr. Associate Hydrogeologist/Scientist/Engineer	\$158.00	3.00	\$474.00
Associate Hydrogeologist/Scientist/Engineer	\$135.00	0.00	\$0.00
Senior Hydrogeologist/Scientist/Engineer	\$120.00	0.00	\$0.00
Sr. Project Geologist/Scientist/Engineer	\$111.00	0.00	\$0.00
Project Geologist/Scientist/Engineer	\$101.00	10.50	\$1,060.50
Staff Geologist/Scientist/Engineer	\$83.00	0.00	\$0.00
Field Technician	\$68.00	0.00	\$0.00
Technical Illustrator	\$90.00	0.00	\$0.00
Administrative Services	\$78.00	1.50	\$117.00
Clerical Services	\$68.00	0.00	\$0.00
Labor Totals		16	\$1,828.50

Estimated Direct Costs

General Office Supplies	--		\$30.00
Insurance Fees / Miscellaneous Costs	--		\$0.00
Travel Mileage	(0.565) \$0.57	30	\$16.95
Low-Flow Bladder Pump	\$175.00	1	\$175.00
PID or Electronic Interface Probe (per day)	\$75.00	1	\$75.00
YSI Water Quality Meter (per day)	\$200.00	1	\$200.00
PPE (per person per day)	\$50.00	0.5	\$25.00
Direct Cost Subtotal			\$521.95
Handling Fee			\$5.50
Total Direct Costs			\$527.45

Estimated Subcontract Advancement/Reimbursements

Holt Services			\$1,399.65
Diesel and/or Oil TPH	\$65.00	2	\$130.00
Gasoline TPH	\$60.00	2	\$120.00
Advancements/Reimbursements for Subcontractors			\$1,649.65
Handling Fee			\$247.45
Total Subcontracted Costs			\$1,897.10

Total Estimated Project Costs \$4,253.05

See Attached Fee Schedule

Holt Services Inc

10621 Todd Road East
 Edgewood, WA 98372
 253 604-4878

ESTIMATE 1/24/2013

Client: Robinson Noble
 Contact: John Hildenbrand
 Email: jhildenbrand@robinson-noble.com
 Tel: 253 475-7711
 Fax:

Project: Gig Harbor Well Repair - Gig Harbor, WA
 Drill Type: Well Repair

Description	Unit	Quantity	Price	Total
Mobilization/Demobilization	EA	1	\$ 350.00	\$ 350.00
DOE NOI/Well log	EA	1	\$ 65.00	\$ 65.00
Well repair	HR	4	\$ 150.00	\$ 600.00
2-inch PVC - misc	EA	1	\$ 50.00	\$ 50.00
8-inch flush cover	EA	1	\$ 125.00	\$ 125.00
Concrete mix	EA	10	\$ 10.00	\$ 100.00
Subtotal				\$ 1,290.00
Sales Tax				8.5% \$ 109.65

Scope:

Raise and finish one 8-inch flush surface completion within wood planked pier. Suitable access provided by others.

Total Cost Estimate
 Prepared by: Dale Abernathy

\$ 1,399.65

Notes/Assumptions:

No work hour restrictions. Stand-by rates apply if work hours are restricted.
 Standard labor rates. No state prevailing or Davis Bacon.
 Utility locates, traffic control & site security provided by others.
 If penetration is less than 10 feet per hour; drilling will continue by the hour.
 Construction/Sealing rates are based on actual borehole size volumes.
 Subject to final review of terms and conditions; net 30 payment terms.



Subject: Gig Harbor Historic Waterfront Association (GHHWA) 2013 Contract

Proposed Council Action: Motion to Approve 2013 Contract with the GHHWA

Dept. Origin: Administration

Prepared by: Mayor Hunter

For Agenda of: February 25, 2013

Exhibits: 2013 Contract

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Initial & Date

CLH Feb 7/2013

R 2/7/13

by email 2/7/13

JP 2/7/13

Expenditure		Amount		Appropriation	
Required	\$35,000	Budgeted	\$35,000	Required	-0-

INFORMATION / BACKGROUND

Background – GHHWA is a 501c(3) corporation that encourages and supports historic preservation and economic vitality of the historic Gig Harbor waterfront district under the Washington State Main Street Program. Since the organization formed in 2008, the City has provided funding in the amount of \$35,000 each year (\$191,750.00). The attached contract is for \$35,000 in 2013.

Currently, the City Administrator designates one *historic preservation representative* as a member of the GHHWA Board as support and to maintain policies consistent with the state’s economic development objectives through historic preservation under the CLG (certified local government) program.

Until this year only one member of City Council requested and was appointment to the GHHWA Board. This year, two members would like to be appointed. I am advising against it and am including it as new language in this year’s contract (see page 4, section T). There are two reasons for the recommendation:

- As a community organization, GHHWA’s recommendations and requests are voted on by City Council. Two or more members of Council make this process less objective.
- As a funding source for GHHWA, City Council members vote general budget funds to support the organization each year. Members of Council who act as GHHWA Board members and also vote on their annual funding levels make this process less objective.

As GHHWA continues its work in the community, I believe their "lobbying" work is best served by community representatives that do not also serve on City Council.

FISCAL CONSIDERATION

2013 Budget - \$35,000.00

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to approve the 2013 contract with the Gig Harbor Historic Waterfront Association in an amount not to exceed \$35,000.

**2013 AGREEMENT
BETWEEN THE CITY OF GIG HARBOR AND
THE GIG HARBOR HISTORIC WATERFRONT ASSOCIATION**

THIS AGREEMENT is entered into this _____ day of _____ 2013, by and between the City of Gig Harbor, Washington, an optional code municipal corporation organized under the laws of the state of Washington, hereinafter referred to as the "City" and the Gig Harbor Historic Waterfront Association, a nonprofit corporation organized under the laws of the State of Washington, hereinafter referred to as "GHHWA."

WHEREAS, the City is governed by Title 35A RCW, but the City also has "all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate . . ." (RCW 35A.21.160); and

WHEREAS, RCW 35.21.703 provides that "it shall be a public purpose for all cities to engage in economic development programs," and "cities may contract with nonprofit corporations in furtherance of this and other acts relating to economic development"; and

WHEREAS, GHHWA, a 501c(3) corporation with UBI # 602 799 246, encourages and supports historic preservation and economic vitality of the historic Gig Harbor waterfront district; and

WHEREAS, the City Council is interested in contracting with the GHHWA for the activities and services described herein, in order to promote and encourage historic preservation and economic vitality in the historic waterfront district of Gig Harbor; and

WHEREAS, the City Council values the concepts embodied in the Main Street™ Approach and recognizes the ability to increase local investment through access to Washington State's Main Street Tax Credit Incentive Program, access to Washington State staff resources (if available) and grant opportunities afforded by Main Street Program; and,

WHEREAS, the City Council recognizes that it is not the sole financial contributor to the work of GHHWA;

NOW THEREFORE, in consideration of the mutual off-setting benefits and conditions hereinafter contained, the parties hereto agree as follows:

TERMS

1. Purpose of the Agreement. In the execution of this Agreement, the City and GHHWA seek to foster historic preservation and economic vitality and development in the historic waterfront district.

2. General Provisions of the Agreement. The City and the GHHWA acknowledge that:

A. The programs authorized and/or funded by this Agreement are municipal, educational and community purposes, designed to foster historic preservation and economic vitality development in the historic waterfront district.

B. Any funding provided by the City under this Agreement will be derived from the City's General Fund.

3. Organization and Responsibilities of GHHWA. GHHWA shall organize a thriving association of stakeholders, as defined in GHHWA Bylaws, with an interest in preservation and economic stability and vitality of the Gig Harbor historic waterfront district. In furtherance of the City's economic development GHHWA shall implement the following:

A. Provide an Annual Report of activity from October 1, 2012, through September 31, 2013. which includes information on all events, projects and programs completed by GHHWA, expenses, net returns, participating businesses, sponsorships, partners, publicity materials, use of volunteers, estimated participants or attendees, and any other relevant information associated with GHHWA's performance during the year;

B. Maintain full Washington State Main Street authorized participant status;

C. Facilitate the retention and reinvestment of tax monies within the local community by making available a mechanism for local businesses to obtain Washington State B&O Tax credits available through the Washington State Main Street program and maintain a current list of B&O contributors / GHHWA income;

D. Provide access to Washington State staff resources (if any) and grant opportunities afforded by the Main Street program;

E. Create and/or maintain a written funding plan for the GHHWA to obtain funding from various sources other than the City to establish and maintain a viable organization and to implement all of the activities contained in this Agreement;

F. Demonstrate local support by obtaining significant funding from community sources including individuals, commercial property owners in the district, businesses, and organizations;

G. Manage, promote and conduct events in the historic waterfront district which will attract members of the public to the historic waterfront district, thereby stimulating economic vitality;

H. Develop and coordinate marketing efforts with the City in keeping with the existing brand and theme of the City of Gig Harbor using the City of Gig Harbor logo on promotional materials developed by the GHHWA each year to show the City's sponsorship support;

I. Maintain a communications strategy for informing GHHWA's membership about GHHWA's activities and priorities;

J. Produce (at a minimum) a quarterly newsletter for the membership;

K. Maintain a webpage with links to City's marketing website, *gigharborguide.com*, using a separate domain name for GHHWA that includes a current calendar of events and GHHWA Main Street boundary map;

L. Hold (at a minimum) quarterly meetings for waterfront district stakeholders to promote improved business vitality and communications as a whole, which should include updates on any activities relating to:

1. GHHWA sponsored events;
2. Historic preservation activities;
3. GHHWA District city code and design standard updates;
4. GHHWA (4) Committee updates;
5. Business marketing updates;
6. Parking updates or improvements;
7. Business Management updates; and
8. Any other activities relevant to GHHWA members;

M. Work with City leaders and staff, business and property owners to enhance the attractiveness and maintain the historic character of the historic waterfront business district, in keeping with city codes and design standards.

N. Develop data and trend information useful in development of long term solutions to economic and business issues in the historic waterfront area. Use this information to assist City leaders and staff in preservation and development topics for the historic waterfront area in Gig Harbor, such as:

1. Maintaining a business inventory of the historic waterfront district; and
2. Maintaining data on parking analysis and membership input within the historic waterfront district;

- O. Provide an Annual Report, as described above, for the period October 1, 2012, through September 30, 2013, no later than October 30, 2013,
- P. Work with the City to define grant opportunities and other opportunities for each party to pursue in furtherance of their mutual goals (the City maintains discretion over the types of grants it chooses to pursue);
- R. Submit quarterly financial and performance reports due on or before the last day of March, June, September, and December of each contract year to the City regarding activities conducted by GHHWA and proposed activities for the remainder of the term of the contract;
- S. Provide a royalty-free, fully paid license to the City for use of the GHHWA logo;
- T. GHHWA Board membership shall include one historic preservation representative designated by the City Administrator as an active member of the GHHWA Board and a maximum of one City Council member.
- U. Provide early communication to the City regarding any GHHWA projects, programs or events that may require City Planning, Building, Engineering, Operations, Marketing, or Historic Preservation consideration or review; and
- V. Provide a fully paid annual GHHWA membership to the City of Gig Harbor.

4. City's Responsibilities.

- A. **Funding for Services Described in this Agreement:** Annual funding for GHHWA is subject to City Council approval. GHHWA shall submit their funding request in writing no later than September 30 of the Agreement calendar year. This calendar year (2013) the City will pay \$35,000.00 in four installments of \$8,750.00 due the first business day of the *contract year* in February, April, July, and October. Payment will be made within 30 days of receipt of an invoice from GHHWA;
- B. Provide a royalty-free, fully paid license to GHHWA for use of the City logo. Use of the City logo requires approval by the City Marketing Department;
- C. Provide a link to GHHWA's website on the City's website (www.gigharborguide.com).

5. Duration of Contract. This Agreement shall be in effect January 1 through December 31, 2013 unless sooner terminated as provided herein. The first payment under this Agreement shall be made no later than 30 days after execution by duly authorized representatives of both parties.

6. Independent Contractor. The parties intend that an independent contractor-client relationship will be created by this Agreement. No agent, employee, representative or sub-consultant of the GHHWA shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the GHHWA is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the GHHWA. The GHHWA will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the GHHWA performs hereunder.

7. Indemnification and Defense. The GHHWA shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection of the reports described herein, or the City's execution of this Agreement (requiring the GHHWA to provide certain services) shall not be grounds to avoid any of these covenants of indemnification.

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 GHHWA and the City, its officers, officials, employees, agents and volunteers, the GHHWA's liability hereunder shall be only to the extent of the GHHWA's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE GHHWA's WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE GHHWA's WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE GHHWA's EMPLOYEES DIRECTLY AGAINST THE GHHWA.

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

8. Insurance.

A. The GHHWA 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 GHHWA's own work including the work of the GHHWA's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before execution of this Agreement, and on the anniversary date of the execution of this Agreement, the GHHWA 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

C. All policies and coverage's shall be on an occurrence made basis.

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

E. The City of Gig Harbor shall be named as an additional insured on the GHHWA'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 Agency's insurance policies.

F. Under this agreement, the GHHWA'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 GHHWA's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

G. The GHHWA 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 Agency's coverage.

9. City's Right of Inspection, GHHWA's Responsibility to Comply with Law. Even though the GHHWA is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the performance of

services must meet the general approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The GHHWA 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 GHHWA's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

10. Record Keeping and Reporting.

A. The GHHWA shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended for the activities described herein and claimed as reimbursement along with any other such records as may be deemed necessary to the City to ensure proper accounting for all funds contributed by the City for the performance of this Agreement and compliance with this Agreement. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the City.

B. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit during the performance of this Contract by the City. The City shall have the right to an annual audit of the GHHWA's financial statements and condition.

11. Termination.

A. The City may terminate this Agreement, for public convenience, the GHHWA's default, the GHHWA's insolvency or bankruptcy, or the GHHWA's assignment for the benefit of creditors, at any time. If delivered to the GHHWA in person, termination shall be effective immediately upon the GHHWA's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Except in the situation where this Agreement has been terminated for public convenience, the GHHWA shall be liable to the City for any additional payments made by the City for which no services were rendered.

C. If the GHHWA's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement.

12. Discrimination Prohibited. The GHHWA shall not discriminate against any employee, applicant for employment, or any person seeking the services of the GHHWA to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, sexual orientation, marital status or presence of any sensory, mental or physical handicap.

13. Assignment and Subcontract. Any assignment of this Agreement by the GHHWA without the written consent of the City shall be void. If the City shall give its consent to any

assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

14. Notices. Notices required by terms of this Agreement shall be sent to the other party at the following addresses, unless otherwise requested, in writing, by one of the parties hereto:

TO THE CITY:

Attn: City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

TO THE GHHWA:

Attn: Executive Director
Gig Harbor Historic Waterfront Association
PO Box 771
Gig Harbor, WA 98335

15. Applicable Law, Venue, Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in Pierce County, Washington or the U.S. District Court, Western District. The prevailing party in any such action shall be entitled to its reasonable attorney's fees and costs of suit.

16. Modification. 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 GHHWA.

17. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

18. Agreement Not Enforceable by Third Parties. This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

19. Severability. If any section, sentence, clause or phrase of this Agreement is 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, clause or phrase of this Agreement.

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

CITY OF GIG HARBOR

**GIG HARBOR HISTORIC
WATERFRONT ASSOCIATION**

Charles L. Hunter, Mayor

Attest:

Molly Towslee, City Clerk

Approved as to form:

Angela Belbeck, City Attorney

Dear Councilmembers:

The Gig Harbor Historic Waterfront Association (GHHWA) is an independent 501 (c)(3) private, non-profit organization certified as a Main Street™ by the State of Washington and the National Trust for Historic Preservation. ***Our mission for the downtown waterfront is to encourage economic vibrancy and stability consistent with preservation of the historic character of the waterfront.*** We have contracted with the City of Gig Harbor since 2008 to provide services related to our mission in exchange for financial support and city endorsement.

We work with the City, businesses and other organizations in a step by step process to accomplish our mission. A large number of volunteers and four committees are engaged to promote our downtown, encourage design improvements, stimulate economic impact and efficiently organize and operate the Association.

We operate and support many programs to help the City. For example, we partner with the City to coordinate the Flower Basket Beatification program formerly handled by City employees. This program alone with labor and materials is valued at about \$18,000. We also work with the City on Christmas promotions, Community Image Building, Parking & Economic studies, Tourist enhancement, and in many other areas. Recently we sponsored a well-received community branding workshop which brought together many different citywide stakeholders; and we are about to embark on a Storefront Design Studio in coordination with the University of Washington school of Architecture. We are proud of our “partnership” with the City and of our accomplishments.

There are 13 Washington Main Street Programs. All have similar missions in to help maintain and improve their cities’ downtown areas. All but one receives funding from their respective Cities. Average city funding per Main Street™ is \$43,200 or about 27% of their program budget. The GHHWA City contract, \$35,000, is 24% of our budget.

We feel our relationship is mutually beneficial to the City and GHHWA and encourage approval of our 2013 contract.

We would like to clarify a few points in the Council Bill narrative presented to the council associated with a new provision in the contract:

3.T GHHWA Board membership shall include one historic preservation representative designated by the City Administrator as an active member of the GHHWA Board and a maximum of one City Council member.

Our bylaws allow for the Mayor to appoint either the City Administrator or Deputy Administrator to our Board. This was a mutually agreed upon condition of our original endorsement by the city. In actual practice, with the exception of our first year, this city position on our Board has been neither. The city has chosen to appoint staff more closely associated with historic preservation than with City Administration. This has worked well but was not previously included in any contract. We do not feel this city appointed position should be prescriptive and that the condition should not be added to this contract. The Mayor should be free to appoint whomever he/she feels will best serve the city *and* our organization.

We feel the GHHWA, like any other independent organization, needs to follow its bylaws in constructing its Board and operating the organization. The Council Bill narrative suggests that “two members would like to be appointed”. The reality is that we already have two Board members who happen to be elected members of the City Council. They were each duly elected by our members in accordance with our Bylaws. They were selected for their skills, passion for the GHHWA mission and past involvement on our Design and Economic committees; not because they are council members. We suggest that council members should be free to choose their community involvement in any non-profit organization.

The Council Bill narrative also references what is described as “lobbying” work. The GHHWA is “mission driven” and we provide services and assistance and support and encourage programs and activities that will promote economic stability and preservation of our culture. We will continue to encourage consideration of programs and policies to help the downtown waterfront, and provide input to policy makers, but we do not get involved in political issues and do not feel our actions should or could be considered “lobbying”.

We are pleased with our role in supporting the City of Gig Harbor. We are proud of how we’ve been able to help in encouraging preservation and economic vitality in our Downtown. We feel our contributions going forward will be even more positive.

Again, we encourage adoption of the contract, but without paragraph 3.T. This paragraph should be removed for the following reasons:

1. The Mayor should not be contractually obligated as to whom the city chooses to be on the GHHWA Board.
2. Our organization, just like any community non-profit should be allowed to operate in accordance with its own bylaws.
3. Council members should be free to make their own personal choices and volunteer commitments.
4. There is no provision within the WAC, the Public Disclosure Commission, or The Appearance of Fairness Doctrine that would require a limitation on Councilmember’s participation in non-profit organizations.

Thank you for your consideration.

Gary Glein
President, Gig Harbor Historic Waterfront Association



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

Subject: Public Hearing and First Reading of Ordinance for Ordinance Implementing FEMA Option #3 - Permit-by-Permit Demonstration of Compliance under the Endangered Species Act

Dept. Origin: Planning Department/Legal
Prepared by: Peter Katich, Sr. Planner *PK*
Angela Belbeck, City Attorney

Proposed Council Action: Hold a public hearing and First Reading of Ordinance.

For Agenda of: February 25, 2013

Exhibits: Proposed Ordinance

Concurred by Mayor: *CLH 2/21/13*
Approved by City Administrator: *R 2/21/13*
Approved as to form by City Atty: *see e-mail dated 2.21.13*
Approved by Finance Director:
Approved by Department Head: *TD 2/21/13*

Expenditure Required	\$ n/a	Amount Budgeted	\$ n/a	Appropriation Required	\$0
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INFORMATION/BACKGROUND

On September 24, 2012, the City Council with a majority of plus one vote of the whole Council passed an interim ordinance at first reading (Ordinance No. 1248). The interim ordinance established development regulations that apply to all non-exempt development within FEMA established Special Flood Hazard Areas and within all areas 200 feet landward of Special Flood Hazard Areas. The development regulations require the preparation of a Habitat Assessment or letter from the National Marine Fisheries Service (NMFS) or FEMA that establishes compliance with the requirements of the Endangered Species Act relative to listed threatened and endangered species and associated habitat areas.

In regard to the background associated with the interim ordinance, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. FEMA, et al.*, 345 F. Supp. 2d 1151 (2004), the U.S. District Court for the Western District of Washington ruled that FEMA must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region. As a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, documenting the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales. The Biological Opinion can be viewed at:

https://pcts.nmfs.noaa.gov/pls/pcts-pub/pcts_upload.summary_list_biop?p_id=29082.

The Biological Opinion has generated numerous questions in implementing its requirements, and staff has attended workshops heavily attended by many of the 122 jurisdictions affected in the State of Washington. John Graves from FEMA's Mitigation Division sent a letter dated

September 21, 2011 (received September 23, 2011) acknowledging receipt of the City's Option 2 submittal package, acknowledging that the City is defaulting to Option 3, and included a "Frequently Asked Question" memo regarding Option 3 implementation.

In order to maintain eligibility in the NFIP, participants must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option 1 - adopt the FEMA-developed ESA compliant model ordinance; Option 2 - meet FEMA checklist for ESA compliance with current regulations; or Option 3 - permit by permit demonstration of ESA compliance. The model ordinance under Option 1 is drafted for communities with rivers and does not work with the City's developed shoreline. The City originally requested review by FEMA for Option 2 but that option would not become effective until the City completes the update of its Shoreline Master Program in 2013. If a jurisdiction does not implement Options 1 or 2, the default is to Option 3. This requires the City to maintain documentation from the applicant obtained from a habitat assessment or Section 7 consultation with NMFS that demonstrates compliance with the ESA.

Interim Ordinances No's. 1223 and 1234 adopted by the city on September 26, 2011 and March 12, 2012, respectively, implemented FEMA's Option 3 to address the requirements of the NMFS Biological Opinion over the past year as the city has continued to move forward on the update of the master program. Interim Ordinance No. 1234 was to expire on September 26, 2012 and was replaced by Ordinance No. 1248, which is substantively the same as those regulations originally adopted under Ordinance No. 1223 and 1234. Ordinance No. 1248 will expire on March 23, 2013.

At its meeting of December 17, 2012, the City Council passed Resolution No. 921 which authorized staff to submit the city's draft Shoreline Master Program to the Department of Ecology for its review. Ecology received the city's Shoreline Master Program submittal package on January 14, 2013 and deemed the submittal complete on February 7, 2013. Ecology's formal review process is approximately 180 days in length followed by a 60-day appeal process with any appeal of the master program decided by the State Growth Management Hearings Board.

Due to this lengthy and somewhat uncertain time period, and the success of the Option 3 approach over the past year and a half, staff proposes the adoption of the FEMA Option 3 approach on a permanent basis.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION/MOTION

Hold a public hearing and First Reading of Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT IN AREAS OF SPECIAL FLOOD HAZARD AND WITHIN 200 FEET LANDWARD OF AREAS OF SPECIAL FLOOD HAZARD; MAKING FINDINGS OF FACT; AMENDING CHAPTER 18.10 OF THE GIG HARBOR MUNICIPAL CODE TO REQUIRE A HABITAT ASSESSMENT OR LETTER FROM NMFS OR FEMA ESTABLISHING COMPLIANCE WITH THE ENDANGERED SPECIES ACT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency, et al.*, 345 F. Supp. 2d 1151 (2004), the United States District Court for the Western District of Washington ruled that the Federal Emergency Management Agency ("FEMA") must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region; and

WHEREAS, as a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, that documented the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales; and

WHEREAS, cities that participate in the NFIP must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option #1 - adopt the FEMA-developed ESA compliant model ordinance; Option #2 - meet FEMA checklist for ESA compliance with current regulations; or Option #3 - permit by permit demonstration of ESA compliance; and

WHEREAS, the City originally pursued review by FEMA for Option #2 but that option could not become effective until the City completes the update of its Shoreline Master Program, so the City adopted Option #3 on an interim basis under Ordinance No. 1223, as extended by Ordinance No. 1234, then on September 24, 2012 re-adopted the provisions on an interim basis under Ordinance No. 1248 for a period of six months; and

WHEREAS, permanent adoption of Option #3 would require the City to maintain documentation from the applicant obtained from a habitat assessment or Section 7 consultation with NMFS, that demonstrates compliance with the ESA. This

documentation would be maintained by the City with the applicable permit file and available for FEMA review upon request; and

WHEREAS, pursuant to RCW 36.70A.106(3), the proposed regulations were forwarded to the Department of Commerce on September 17, 2012 and review was granted on September 18, 2012; and

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance for this ordinance on February 13, 2013; and

WHEREAS, on February 25, 2013, the Gig Harbor City Council held a public hearing and first reading of this ordinance; and

WHEREAS, the Gig Harbor City Council has determined that adoption of Option #3 is in the best interests of the public health, safety and welfare;

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

Section 1. Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council's findings in support of the development regulations established by this ordinance.

Section 2. Section 18.10.040 – Definitions – Amended. Section 18.10.040 of the Gig Harbor Municipal Code is hereby amended to incorporate the following definitions in alphabetical order, with subsection designations and internal references amended accordingly:

"Biological Opinion" means that certain opinion issued by the National Marine Fisheries Service on September 22, 2008, recommending changes to the implementation of the National Flood Insurance Program in order to meet the requirements of the Endangered Species Act in the Puget Sound watershed.

"Biologist, qualified" means a person who possesses a bachelor's degree from an accredited college in biology, a branch of biology, limnology, biometrics, oceanography, forestry or natural resource management, with experience preparing reports for the relevant type of habitat.

"Endangered Species Act" or "ESA" means 16 U.S.C. 1531 *et seq.*, as amended.

"Habitat Assessment Report" means a report prepared by a qualified biologist that assesses the proposed development and identifies potential impacts, required mitigation, and whether or not the development adversely affects water quality, water quantity, flood volumes, flood

velocities, spawning substrate and/or floodplain refugia for listed salmonids under the requirements of the Endangered Species Act.

“Likely to Adversely Affect” or “LAA” means the effects of the development will result in short- or long-term adverse effects on listed species or designated habitat area.

“May Affect, Not Likely to Adversely Affect” or “NLAA” means the effects to the listed species or designated critical habitat are insignificant and/or discountable.

“No Effect” or “NE” means the development has no effect whatsoever to the listed species or designated critical habitat.

“Riparian Buffer Zone” includes all parcels located within 200 feet landward from the +9 elevation (NGVD 1929 datum).

Section 3. Section 18.10.050 – Amended. Subsection A of section 18.10.050 of the Gig Harbor Municipal Code is amended as follows:

18.10.050 General Provisions.

A. Lands to Which this Chapter Applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Gig Harbor. Section 18.10.100 also applies to areas that include Riparian Buffer Zone within the jurisdiction of the city of Gig Harbor.

Section 4. New Section 18.10.100 – Compliance with Endangered Species Act – Added. A new section 18.10.100 is added to the Gig Harbor Municipal Code to read as follows:

18.10.100 Compliance with Endangered Species Act.

A. No development permits may be issued on any parcel partially or fully within the Area of Special Flood Hazard or Riparian Buffer Zone unless the Planning Director or designee, after review of a Habitat Assessment Report provided by applicant, has determined the development meets the standards of NE or NLAA, or the applicant submits a letter from the National Marine Fisheries Service or the Federal Emergency Management Agency stating that the development complies with the requirements under the Biological Opinion and the ESA.

B. The Planning Director or designee shall review the Habitat Assessment Report to determine whether the development meets the standard of NE, NLAA or LAA. If the Planning Director or designee determines that the development is LAA, then the City may not issue the development permit unless the development is redesigned to a point

where the assessment is NLAA or NE. If a development cannot be redesigned to meet the standard of NLAA or NE, the development may only be permitted if the applicant submits a letter from National Marine Fisheries Service or the Federal Emergency Management Agency demonstrating concurrence through a consultation under Section 7 or 4(d) of the ESA or issuance of an incidental take permit under Section 10 of the ESA. The Habitat Assessment Report and/or concurrence letter from National Marine Fisheries Service or the Federal Emergency Management Agency shall be retained in the permit file.

Section 5. New Section 18.10.110 – Exemptions – Added. A new section 18.10.110 is hereby added to the Gig Harbor Municipal Code to read as follows:

18.10.110 Exemptions. The following development is exempt from the requirement for Habitat Assessment review and concurrence letter set forth in Section 18.10.100:

- A. Repair or remodel of an existing building in its existing footprint, including buildings damaged by fire or other casualties;
- B. Removal of noxious weeds;
- C. Replacement of non-native vegetation with native vegetation;
- D. Lawn and garden maintenance;
- E. Removal of hazard trees;
- F. Normal maintenance of public utilities and facilities; and
- G. Restoration or enhancement of floodplains, riparian areas and streams that meet federal and state standards.

Section 6. Code Reviser's Note. The Code Reviser is hereby requested to remove the note preceding the provisions of chapter 18.10 of the Gig Harbor Municipal Code.

Section 7. Repeal; Savings. Ordinance No. 1248 is hereby repealed, and shall remain in force and effect until the effective date of this ordinance.

Section 8. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 9. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor,
this 11th day of March, 2013.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

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



Subject: Ancich Waterfront Park Visioning Process

Proposed Council Action: Request the Parks Commission initiate a visioning process for Ancich Waterfront Park utilizing the steps identified in this Council Bill.

Dept. Origin: Administration

Prepared by: Tom Dolan, Planning Director

For Agenda of: February 25, 2013

Exhibits: Memo dated 2/19/13

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty:

Approved by Finance Director:

Approved by Department Head:

Handwritten initials and dates: CLH 2/19/13, D 2/19/13, PJ 2/19/13, TD 2/19/13

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values are 0, 0, 0.

INFORMATION / BACKGROUND

As indicated in the attached memo, the Mayor is recommending that the City undertake a number of steps to build consensus and develop a shared vision for the development and usage of Ancich Waterfront Park. Those steps include:

- 1. The City Council asks the Parks Commission to initiate a "visioning process" for Ancich Waterfront Park.
2. Include key stakeholders in the vision process including representatives of the fishermen, marina operators, the Kayak Club, business owners and Millville residents. Also include representation from the City Council and staff.
3. Conduct at least one broadly noticed open house where all citizens can have a voice and state their opinion. (Use the open house for the downtown vision as a model.)
4. As part of the process, prioritize use of the park.
5. Ask the Parks Commission to present a draft vision for the park by the first City Council meeting in September 2013.
6. After the Parks Commission has presented their recommendation, ask that the City Council conduct their own public hearing on the vision prior to adoption.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Request the Parks Commission initiate a visioning process for Ancich Waterfront Park utilizing the steps identified in this Council Bill.



DEVELOPMENT SERVICES

To: Members of the City Council
From: Mayor Hunter
Subject: Visioning for Ancich Park
Date: February 19, 2013

ISSUE: Last year the City purchased the Burton/Steele property on Harborview Drive. The property is one of the last undeveloped sites on Gig Harbor Bay and compliments other City parks along our waterfront. The intent of purchasing the property has always been to develop the site as a park as funding became available. At this time I do not believe that there is a consensus in our City as to how the park should ultimately be developed. One of the reasons the Donkey Creek project has taken so long is that a shared vision of the park was not developed until late in the process.

To build consensus and develop a shared vision for the park I want to recommend the following steps:

1. The City Council asks the Parks Commission to initiate a "visioning process" for Ancich Park.
2. Include key stakeholders in the vision process including representatives of the fishermen, marina operators, the Kayak Club, business owners and Millville residents. Also include representation from the City Council and staff.
3. Conduct at least one broadly noticed open house where all citizens can have a voice and state their opinion. (Use the open house for the downtown vision as a model.)
4. As part of the process, prioritize use of the park.
5. Ask the Parks Commission to present a draft vision for the park by the first City Council meeting in September 2013.
6. After the Parks Commission has presented their recommendation, ask that the City Council conduct their own public hearing on the vision prior to adoption.

I strongly believe that including all of our citizens in the visioning process for Ancich Park is necessary to continue the tradition of great parks development associated with our City in the recent past. Examples of outstanding parks development include the Maritime Pier property, Eddon Boat, Skansie Park/Jericich Dock, KLM Park, Donkey Creek and Austin Estuary Park. Having a fully vetted vision will also make it easier to obtain grant funding for the park.

I am confident that if we all work together to develop a vision for Ancich Park, we will ultimately have a better park – and have it sooner.

GHCKRT - paracanoes kayak storage

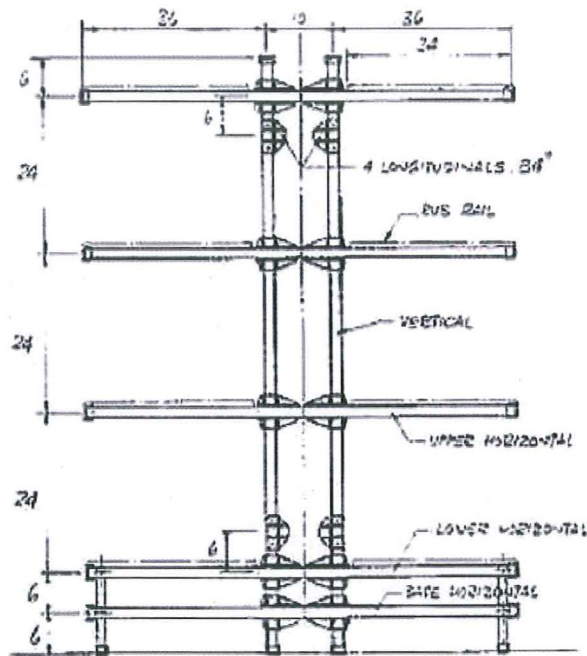
Skansie Park / Jerisich Dock



location



section through rack



DOUBLE TEE RACK
2 CANOES
ITEM # 19305

locking system

