

City Council Meeting

January 11, 2015
5:30 p.m.



AGENDA
GIG HARBOR CITY COUNCIL
January 11, 2016 – Council Chambers

CALL TO ORDER / ROLL CALL:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes Dec. 14, 2015.
2. Liquor License Action: a) Renewals: Thai Hut Thai & Asian Cuisine, The Inn at Gig Harbor, Brix 25 Restaurant, Fondi, Ikonos Real Greek Souvlaki, Lunchbox Laboratory, Lele at Gig Harbor; b) Application: Cutters Point Coffee; c) Assumption: Haggen to Safeway; d) Renewals: El Pueblito, Discovery Village, Finholm's Grocery, 7 Seas Brewing, Gig Harbor Liquor & Wine, Domo Sushi, and Blazing Onion; e) Assumption: Forza.
3. Receive and File: a) Impacts of Growth: Human Resources, Administration, and Court – Worksession Minutes December 14, 2015.
4. Resolution 1022 – Public Works Surplus Equipment.
5. Critical Area Review Consultant Services Contract.
6. Costtree Software Licensing Agreement.
7. Federal and State Lobbyists Contract Renewal.
8. Hearing Examiner Consultant Services Contract.
9. Fire Investigation Services.
10. Approval of Payment of Bills Dec. 28, 2015: Checks #80069 through #80173 in the amount of \$313,360.79.
11. Approval of Payment of Bills for the 2015 Budget for Jan.11, 2016: Checks #80174 through #80260 in the amount of \$858,277.93.
12. Approval of Payment of Bills for the 2016 Budget for Jan.11, 2016: Checks #80261 through #80273 in the amount of \$44,535.90.
13. Approval of Payroll for the month of December, 2015: Checks #7618 through #7631 and direct deposits in the amount of \$372,282.90.

PRESENTATIONS:

Swearing in Ceremony – Councilmembers Lovrovich, Malich, and Perrow.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Resolution No. 1023 – Adopting an Official City Song.
2. Cartegraph Licensing Agreement.
3. Department of Assigned Counsel – Amendment to Contract.

CITY ADMINISTRATOR / STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Boards and Candidate Review: Tue. Jan 19th at 4:00 p.m.
2. Council Retreat: Sat. Jan. 23rd – 9:00 a.m. – 12:00 p.m.
3. Intergovernmental Affairs: Mon. Jan 25th at 4:00 p.m.

ADJOURN TO WORKSESSION: Impacts of Growth - City Revenue Sources

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

MINUTES
GIG HARBOR CITY COUNCIL
December 14, 2015 – Council Chambers

CALL TO ORDER / ROLL CALL:

Mayor - Jill Guernsey: Present
Council Member - Ken Malich: Present
Council Member - Casey Arbenz: Absent
Council Member - Steven Ekberg: Present
Council Member - Michael Perrow: Present
Council Member - Rahna Lovrovich: Present
Council Member - Timothy Payne: Present
Council Member - Paul Kadzik: Present

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes November 23, 2015.
2. Receive and File: a) Impacts of Growth: Finance, Information Services, Communications /Tourism – Worksession Minutes of Nov. 23, 2015; b) Intergovernmental Affairs Committee Minutes of Nov. 23, 2015; c) Joint City Council / Design Review Board Worksession Minutes of Nov. 30, 2015; d) Finance / Safety Committee Minutes Nov. 30, 2015; e) Public Works Committee Minutes Nov. 9, 2015.
3. Liquor License Action: a) Main & Vine Grocery; b) Main & Vine Brew; c) Special Occasion - Junior Sail Program.
4. Second Reading of Ordinance No. 1329 – Modifications to the 2015-2016 Biennial Budget.
5. Amendments to Legal Services Contract.
6. Public Safety Testing Subscriber Agreement Renewal.
7. Cloud Computing Policy.
8. State Department of Ecology Stormwater Capacity Grant Agreement.
9. Interlocal Agreement with Puget Sound Clean Air Agency.
10. Interlocal Agreement with Tacoma-Pierce County DUI and Traffic Safety Task Force.
11. Service Level Agreement with South Sound 911.

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

PRESENTATIONS:

1. Gig Harbor Chamber of Commerce – Warren Zimmerman. Mr. Zimmerman shared a brief overview of some of the successful events in 2015 and presented information on a project for a promotional video that they have been working on.
2. State Department of Agriculture – Update on Gypsy Moth. Kirk Robinson, Deputy Director for the State Dept. of Agriculture, presented information on this invasive species and the goal to prevent them from taking over in Washington State. He explained the one detection

in the Gig Harbor area and answered Council questions on the plans to prevent the further spread of the moth in this area.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Resolution No. 1020 – Fee Schedule Update. Senior Planner Lindsey Sehmel presented the background and an overview of the amendments to the fee proposed fee updates. She and City Engineer Steven Misiurak addressed Council questions.

MOTION: Move to adopt Resolution No. 1020 as presented.
Ekberg / Lovrovich - unanimously approved.

2. 2016 Planning Commission Work Program. Senior Planner Lindsey Sehmel presented the information for the proposed work program and addressed questions.

MOTION: Move to approve the 2016 Planning Commission Work Program as it aligns with the existing adopted budget for 2016.
Payne / Perrow - unanimously approved.

3. Public Hearing and Resolution No.1021 - Adopting the Six-Year Transportation Improvement Program (TIP) 2016-2021. Senior Engineer Emily Appleton presented a brief overview of the program.

Mayor Guernsey opened the public hearing at 6:32 p.m. No one came forward and the hearing closed.

MOTION: Move to adopt Resolution No. 1021 adopting the 2016-2021 Six-Year Transportation Improvement Program.
Malich / Ekberg - unanimously approved.

4. Harbor Hill Drive Extension – Ratification of Transportation Improvement Board (TIB) Grant Agreement. City Engineer Steven Misiurak presented the TIB Grant Contract background. Councilmembers complimented staff for their hard work and effort in obtaining this grant.

MOTION: Move to authorize the Mayor to sign the Grant Agreement between the City of Gig Harbor and the Transportation Improvement Board in the amount of \$8,000,000.
Kadzic / Malich - unanimously approved.

5. Smartgov Software Contract – Paladin. I.T. Manager Kay Johnson gave an overview of the contract and services that it will involve.

MOTION: Move to authorize the Mayor to execute the Contract for Paladin Smartgov Software.
Malich / Lovrovich - unanimously approved.

CITY ADMINISTRATOR / STAFF REPORT:

Parks Projects Administrator. Public Works Director Jeff Langhelm described the change in title from the proposed Parks Manager to Parks Project Administrator. The position wasn't filled mid-2015 and so staff is proposing to fill this in mid-January 2016. He gave an overview of the tasks this position would be responsible to complete. He answered Council questions.

PUBLIC COMMENT: No one signed up to speak.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Payne reported on the recent Christmas Tree Lighting Festival and acknowledge several organizations that made it such a successful program: the Public Works Department, Downtown Waterfront Alliance, Skansie Netshed Foundation, Rhubarb from Tacoma Rainiers, Fire District No. 5 for transporting Santa, and Santa himself.

Mayor Guernsey thanked Public Works for the decorations and lighting around town lending to the festive atmosphere.

Councilmember Perrow followed up with another compliment for the Public Works Department. He then reported on the meetings between the State Representatives and the Intergovernmental Affairs Committee to discuss upcoming Legislative issues.

Mayor Guernsey then reported that she had the pleasure of lighting the Menorah at Uptown. She then commented on the Chairing Award that Ron Williams was recently awarded by the Chamber of Commerce. She said she had the honor of speaking at former Mayor Wilbert's Memorial Service.

Councilmember Malich thanked the public for watching the Lighted Boat Parade in such inclement weather.

Councilmember Kadzik wished everyone a very Merry Christmas and Happy Holidays. He stressed what a pleasure it is to work with our staff.

ANNOUNCEMENT OF OTHER MEETINGS:

1. No second Council Meeting in December.
2. Civic Center Closed for Christmas - Fri. Dec. 25th.
3. Civic Center Closed for New Years – Fri. Jan. 1st
4. Planning and Building Committee – Mon. Jan. 4th

EXECUTIVE SESSION: For the purpose of discussing labor negotiations per RCW 42.30.140(4). For approximately 20 minutes at 6:53 p.m.

City Administrator Ron Williams returned to the Council Chambers at 7:14 p.m. and announced that the Executive Session would require another ten minutes.

Council returned to regular session at 7:27 p.m.

ADJOURN TO WORK STUDY SESSION:

Impacts of Growth – Human Resources / Admin / Court.

MOTION: Move to adjourn to the workstudy session at 7:27 p.m.
Malich / Perrow.

Mayor Jill Guernsey

Molly Towslee, City Clerk

C091080-2

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

DATE: 12/06/2015

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20160331

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. THAI HUT THAI CUISINE LLC	THAI HUT THAI & ASIAN CUISINE 4116 HARBORVIEW DR GIG HARBOR WA 98332 1080	078469	BEER/WINE REST - BEER/WINE
2. THE INN AT GIG HARBOR, L.L.C.	THE INN AT GIG HARBOR 3211 56TH ST NW GIG HARBOR WA 98335 0000	358941	HOTEL
3. MCKENZIE RIVER RESTAURANTS, IN	BRUX 25 RESTAURANT 7707 PIONEER WAY GIG HARBOR WA 98335 1132	074950	SPIRITS/BR/WN REST LOUNGE + OFF-PREMISES SALE WINE
4. RESTAURANTS UNLIMITED, INC.	FONDI 4621 POINT FOSDICK DR NW GIG HARBOR WA 98335 1707	403079	SPIRITS/BR/WN REST LOUNGE + OFF-PREMISES SALE WINE
5. JANDG LLC	IKONOS REAL GREEK SOUVLAKI 4920 POINT FOSDICK DR NW GIG HARBOR WA 98335 1713	419614	BEER/WINE REST - BEER/WINE
6. LUNCHBOX LABORATORY GIG HARBOR	LUNCHBOX LABORATORY 4901 POINT FOSDICK DR NW GIG HARBOR WA 98335 1841	411227	SPIRITS/BR/WN REST LOUNGE +
7. LELE@GIG HARBOR, INC.	LELE@GIG HARBOR 4747 PT FOSDICK DR NW STE 200 GIG HARBOR WA 98335 2312	404730	SPIRITS/BR/WN REST LOUNGE +

NOTICE OF LIQUOR LICENSE APPLICATION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: http://lcb.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

RETURN TO: localauthority@sp.lcb.wa.gov
DATE: 12/30/15

UBI: 601-656-355-001-0001

License: 421600 - 1U County: 27
Tradename: CUTTERS POINT COFFEE

Address: 5500 OLYMPIC DR STE A101
GIG HARBOR WA 98335-1489

APPLICANTS:

HALEY & BROTHERS, INC.

PAYNE, BROOKE ARTHUR
1966-07-31
PAYNE, JENNIFER LYNN
1967-11-28

Phone No.: 253-380-1665 BROOKE PAYNE

Privileges Applied For:
DIRECT SHIPMENT RECEIVER-IN WA ONLY
BEER/WINE REST - BEER/WINE

As required by RCW 66.24.010(8), the Liquor and Cannabis 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 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.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do you approve of applicant? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? | <input type="checkbox"/> | <input type="checkbox"/> |
| (See WAC 314-09-010 for information about this process) | | |
| 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

NOTICE OF LIQUOR LICENSE APPLICATION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: http://lcb.wa.gov

RETURN TO: localauthority@sp.lcb.wea.gov

TO: MOLLY TOWSLEE, CITY CLERK

RE: ASSUMPTION
From HAGGEN OPCO NORTH, LLC
Dba HAGGEN #2070

DATE: 12/31/15

APPLICANTS:

SAFEWAY INC.

EDWARDS, ROBERT LYNN
1955-08-15
FOX, BRADLEY S
1955-12-31
GORDON, ROBERT A
1951-09-14
DIMOND, ROBERT B
1961-06-20

License: 360178 - 1U County: 27
UBI: 600-643-518-001-0381
Tradename: SAFEWAY #3321
Loc Addr: 4831 POINT FOSDICK DR NW
GIG HARBOR WA 98335-1732
Mail Addr: MS #6531 TAX, NASC
PO BOX 29096
PHOENIX AZ 85038-9096
Phone No.: 503-517-8137 DUKE TUFTY

Privileges Applied For:
GROCERY STORE - BEER/WINE
SPIRITS RETAILER
BEER AND WINE TASTING

As required by RCW 66.24.010(8), the Liquor and Cannabis 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 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.

- | | YES | NO |
|---|--------------------------|--------------------------|
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| 2. Do you approve of location? | <input type="checkbox"/> | <input type="checkbox"/> |
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DATE

SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE

C091080-2

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

DATE: 01/07/2016

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20160430

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. LA FAMILIA LOPEZ, INC.	EL PUEBLITO FAMILY MEXICAN RESTAURANT 3226 HARBORVIEW DR STE 7 GIG HARBOR WA 98332 2182	358890	SPIRITS/BR/WN REST LOUNGE +
2. DISCOVERY VILLAGE, LLC	DISCOVERY VILLAGE 4835 BORGES BLVD # 1 GIG HARBOR WA 98332 8702	409218	BEER/WINE REST - BEER/WINE
3. UPRISE CORPORATION	FINHOLM'S GROCERY & DELI 8812 N HARBORVIEW DR GIG HARBOR WA 98335 0000	351392	BEER/WINE REST - BEER/WINE OFF PREMISES
4. 7 SEAS BREWING LLC	7 SEAS BREWING 3006 JUDSON ST GIG HARBOR WA 98335 1226	408765	MICROBREWERY
5. PREMIUM RETAIL GROUP, LLC	GIG HARBOR LIQUOR & WINE 4814 PT FOSDICK DR NW GIG HARBOR WA 98335 1711	409664	SLS SPIRITS RETAILER
6. SHIN & LEE LLC	DOMO SUSHI 4901 POINT FOSDICK DR NW B-100 GIG HARBOR WA 98335 1841	411737	BEER/WINE REST - BEER/WINE
7. D & L JONES, INC.	BLAZING ONION, BEER, WINE, AND SPIRITS 4701 POINT FOSDICK DR NW GIG HARBOR WA 98335 2319	405241	SPIRITS/BR/WN REST LOUNGE +

NOTICE OF LIQUOR LICENSE APPLICATION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: http://lcb.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK

RETURN TO: localauthority@sp.lcb.wea.gov

RE: ASSUMPTION
From FORZA, LLC
Dba FORZA COFFEE COMPANY

DATE: 1/07/16

APPLICANTS:

WAWG LLC

License: 404390 - 1U County: 27
UBI: 603-522-405-001-0002
Tradename: HARBOR FORZA
Loc Addr: 5275 OLYMPIC DR NW STE 101
GIG HARBOR WA 98335-2306

Mail Addr: 3008 S MELROSE ST
TACOMA WA 98405-2465

Phone No.: 253-225-7465 ANGELA KEEFE

KEEFE, ANGELA
1979-12-03
KEEFE, MATTHEW P
(Spouse) 1977-10-22
MARSHALL, COURTNEY J
1980-07-15
MARSHALL, OLIVER J
(Spouse) 1977-09-11

Privileges Applied For:
BEER/WINE REST - BEER/WINE
OFF PREMISES

As required by RCW 66.24.010(8), the Liquor and Cannabis 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 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.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do you approve of applicant? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? | <input type="checkbox"/> | <input type="checkbox"/> |
| (See WAC 314-09-010 for information about this process) | | |
| 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



MINUTES
GIG HARBOR CITY COUNCIL WORKSTUDY SESSION
December 14, 2015 – Council Chambers

CALL TO ORDER:

Impacts of Growth:

- Human Resources  

[Human Resource Analyst Mary Ann McCool](#) presented an overview of her background and her duties here at the City of Gig Harbor. She talked future growth and a proposed position to be shared between HR and Payroll that would help back up these two positions. She answered questions.

- [Administration](#)   City Clerk Molly Towslee shared the functions that she and Assistant City Clerk, Shawna Wise, perform. She addressed Council questions.

- Court  

[Court Administrator Stacy Colberg](#) presented the history of the Gig Harbor Municipal Court and described the organization and the function of the Court as it functions today. She talked about the growth impact on the level of service and future needs. She answered questions.

ADJOURN: At 8:32 p.m.



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

Subject: Resolution – Surplus Equipment

Proposed Council Action:

Adopt Resolution No. 1022 declaring the specified equipment surplus and eligible for sale.

Dept. Origin: Public Works
Prepared by: Greg Foote, Superintendent
Public Works

For Agenda of: January 11, 2016

Exhibits: Resolution No. 1022

	Initial & Date
Concurred by Mayor:	<i>JG 1-11-16</i>
Approved by City Administrator:	<i>RW 12/30/15</i>
Approved as to form by City Atty:	<i>NA</i>
Approved by Finance Director:	<i>[Signature] 12/25/15</i>
Approved by Department Head:	<i>[Signature] 12/18/15</i>

Expenditure Required	Amount Budgeted	Appropriation Required
\$0	\$0	\$0

INFORMATION / BACKGROUND

Staff requests authorization to surplus the following equipment:

- 2003 Ford F250 4x4 Truck
- 1999 Chevrolet Silverado 1500

This equipment is worn out and has been replaced and/or is obsolete.

FISCAL CONSIDERATION

Proceeds from the auctioning of these items will go to the General Fund.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Adopt Resolution No. 1022 declaring the specified equipment surplus and eligible for sale.

RESOLUTION NO. 1022

**A RESOLUTION OF THE CITY OF GIG HARBOR DECLARING
CITY EQUIPMENT SURPLUS AND ELIGIBLE FOR
DISPOSITION.**

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

EQUIPMENT	Quantity	SERIAL / ASSET NUMBER	MODEL INFO.
2003 Ford F250 4x4	1	1FTNX21P33EC28963/Tag #01028	F250
1999 Chevrolet Silverado Pickup ½ Ton	1	2GCEK19V4X1224553/Tag #01358	Silverado 1500

PASSED ON THIS 11th day of January, 2016.

APPROVED:

MAYOR JILL GUERNSEY

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 12/10/15
PASSED BY THE CITY COUNCIL: 01/11/16
RESOLUTION NO. 1022



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

Subject: Critical Area Review Consultant Services Contract – Grette Associates

Proposed Council Action: Authorize the Mayor to execute Consultant Services Contract between the City of Gig Harbor and Grette Associates in an amount not to exceed \$100,000.

Dept. Origin: Planning

Prepared by: Jennifer Kester, Planning Director *JK*

For Agenda of: January 11, 2016

Exhibit: Contract with exhibits

	Initial & Date
Concurred by Mayor:	<i>JK 1-5-16</i>
Approved by City Administrator:	<i>RW 1/5/16</i>
Approved as to form by City Atty:	<i>email 12/30/15</i>
Approved by Finance Director:	<i>JK 1/5/16</i>
Approved by Department Head:	<i>JK 12/30/15</i>

Expenditure Required	Up to \$100,000	Amount Budgeted	N/A – Pass Through	Appropriation Required	\$ 0
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INFORMATION/BACKGROUND

The City currently does not have an employee with the expertise to review and comment on critical area reports, mitigation plans and monitoring reports submitted in connection with land use permits. Since 2007, the City has contracted with Grette Associates LLC to provide 3rd party review of such reports. Grette Associates LLC is an established company with a local office (Tacoma) that has provided thorough and timely review of critical area reports for projects submitted to the City. They are well versed in the City’s codes and work well with the planning staff. The Planning Director desires to continue to use these services.

FISCAL CONSIDERATION

The contract amount is up to \$100,000. However, project applicants fully fund the review performed by Grette Associates. **As such, there are no costs to the City associated with the work performed by Grette.**

RECOMMENDATION/MOTION

Authorize the Mayor to execute Consultant Services Contract between the City of Gig Harbor and Grette Associates in an amount not to exceed \$100,000.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRETE ASSOCIATES**

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

RECITALS

WHEREAS, the City's critical area regulations, Chapters 18.08 and 18.10 GHMC, and Shoreline Master Program, require that various critical area reports and studies submitted by project applicants be reviewed for completeness and consistency with City's ordinances in advance of permit approval by the Planning Department; and

WHEREAS, the City's critical area regulations and Shoreline Master Program further require that project applicants may be required to develop and implement mitigation projects that require monitoring; and

WHEREAS, the City desires that the Consultant perform such report review and monitoring as described herein; 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 One Hundred Thousand Dollars (\$100,000.00) 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

{AXS983053.DOC;1/00008.900000/ }

authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B, Schedule of Rates**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 herein.

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

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

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** once the City has transmitted a copy of a critical area report to the Consultant for review. This Agreement shall expire on or before December 31, 2017, provided however, that the contract may be extended by agreement of both parties.

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 on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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

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

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

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

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

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

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

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

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

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

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all

questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

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

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

CONSULTANT:
Grette Associates LLC
ATTN: Matthew Boyle
2102 North 30th Street
Suite A
Tacoma, WA 98403

City of Gig Harbor
ATTN: Jennifer Kester
Planning Director
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

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

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

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

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Jill Guernsey

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

SCOPE OF WORK

1. Critical Area Report Review and Mitigation Monitoring Review
 - a. The Consultant will review Critical Area Reports, Mitigation Monitoring Reports and No Net Loss Studies submitted to the City for consistency with the Gig Harbor Municipal Code (18.08 and 18.10) and Shoreline Master Program.
 - b. As part of the review, the Consultant shall field verify the findings in the reports.
 - c. The Consultants will forward the results of their review and recommendations in written form to the City no later than 30 days from the date of receiving Notice to Proceed from the City.

Exhibit B

SCHEDULE OF RATES

GRETTE ASSOCIATES^{LLC}
HOURLY BILLING RATES
2016

<u>Title</u>	<u>Rate</u>
Principal	\$210.00
Associate	\$165.00
Biologist 5	\$145.00
Biologist 4	\$130.00
Biologist 3	\$115.00
Biologist 2	\$105.00
Environmental Planner 2	\$105.00
Biologist 1	\$92.00
Environmental Planner I	\$92.00
Administrative Assistant	\$74.00
Field Assistant	\$70.00
Subconsultants	8% MU
Expenses (excluding mileage & boat) ¹	8% MU
Mileage	\$0.60
Copy Charge (per page)	\$0.10
Boat (per day)	\$750.00

¹ Includes Narrows Bridge tolls

Other Expense Rates Available Upon Request



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

Subject: CostTree Software License Agreement

Proposed Council Action: Authorize the Mayor to execute the attached Software Licensing Agreement with CostTree, LLC.

Dept. Origin: Finance
Prepared by: David Rodenbach
For Agenda of: January 11, 2016
Exhibits: Software Licensing Agreement

Concurred by Mayor: JB 1-6-16
Approved by City Administrator: RonW 1/6/16
Approved as to form by City Atty: per email
Approved by Finance Director: [Signature] 1/6/16
Approved by Department Head: _____

Expenditure Required	\$7,500	Amount Budgeted	\$7,500	Appropriation Required
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INFORMATION / BACKGROUND

The purpose of this purchase is to provide the City with a tool that will assist in the preparation of an indirect cost allocation plan in-house. This system will allow us to build a plan that matches our organizational structure. It is also flexible and will simplify changes to methodology and structure as needed.

CostTree is a cloud-based application and does not require installation on city equipment. This ensures access through a web browser and that city resources will not be used to install system upgrades.

FISCAL CONSIDERATION

This product/service carries an annual fee of \$7,500. The city can cancel this agreement 30 days prior to any annual renewal date.

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the Software Licensing Agreement with CostTree, LLC.

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

This License and Service Agreement ("Agreement") is entered into, by and between CostTree LLC, a California limited liability company, ("Licensor") City of Gig Harbor, WA, ("Customer").

RECITALS

- A. Licensor provides cost allocation plan software accessible via the Internet.
- B. Customer seeks to obtain, and Licensor seeks to provide, access to the software on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, based on the foregoing premises and the promises set forth below, the parties agree as follows:

AGREEMENT

1. DEFINITIONS

- 1.1. "Confidential Information" will have the meaning set forth in sections 4.1 and 4.2.
- 1.2. "Customer Data" means all information provided by Customer to Licensor through the Service for use in conjunction with the Services and the Software, including processing, storage and transmission as part of the Services.
- 1.3. "Customer Information" means all information created or otherwise owned by Customer or licensed by Customer from third parties, including Customer Data and information created by Customer by using the Services, that is used in conjunction with the Services and the Software.
- 1.4. "Equipment" will have the meaning set forth in section 3.2.
- 1.5. "Licensor Information" means information, including the Software, created or otherwise owned by Licensor or licensed by Licensor from third parties, related to the Services and any materials prepared by Licensor pursuant to a Statement of Work.
- 1.6. "Services" means the electronic data processing, storage and transmission services offered by Licensor, which are enumerated in Exhibit A.
- 1.7. "Software" means the software used by Licensor to provide the Services.

2. SERVICES AND SUPPORT

- 2.1 Obligations of Licensor. Subject to the terms and conditions of this Agreement, Licensor will use reasonable commercial efforts to provide the Service to Customer.
- 2.2 Grant of License. Subject to the terms and conditions of this Agreement, Licensor grants to Customer a limited, nontransferable, nonexclusive license for the term of this Agreement to access and use the Services and the Software via the Internet; use of the Software and the Services is limited to the support of Customer's normal course of business for cost allocation plan development.
- 2.3 Restrictions on Use. Customer may not, directly or indirectly, (i) license, sell, lease or otherwise transfer or grant third-party access to the Services or the Software, (ii) alter, modify,

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

translate or, create derivative works based on the Software, (iii) process or permit to be processed the data of any third party, (iv) use or permit the use of the Services or the Software in the operation of a service bureau, timesharing arrangement or otherwise for the benefit of a third party, (v) disassemble, decompile, or reverse engineer the Software or any aspect of the Services, or otherwise attempt to derive or construct source code or other trade secrets from the Software, or (vi) permit any third party to do any of the foregoing.

2.4 Training Services. Licensor's current training services are set forth in Exhibit A.

2.5 Use of Customer Data/Customer Representations and Warranties. Customer shall be solely responsible for collecting, inputting and updating all Customer Data. Customer shall be solely responsible for ensuring the accuracy of all data submitted into and through the Software and for ensuring the final accuracy of all reports or other products produced by the Software or Licensor. Customer represents and warrants that its Customer Information does not and will not include anything that infringes the copyright, patent, trade secret, trademark or any other intellectual property right of any third party and does not contain anything that is obscene, defamatory, harassing, offensive, malicious or otherwise violates any other right of any third party; Customer further represents and warrants that no additional data or software, malicious or otherwise, will be uploaded to, stored in, or transmitted through the Software or any of Licensor's other property.

2.6 Passwords. Licensor shall provide Customer with passwords to access the Service, only one individual may use a single password to access the Service. Customer shall be responsible for all use of its account(s). Customer shall also maintain the confidentiality of all passwords assigned to it. Customer may not share its passwords with third parties or attempt to access the Service without providing a password assigned to it.

3. CUSTOMER RESTRICTIONS AND RESPONSIBILITIES

3.1. Compliance with Laws/Representations and Warranties. Customer represents, covenants, and warrants that Customer will use the Services and any data of third parties only as contemplated by this Agreement and in compliance with all applicable laws and policies (including but not limited to laws, government regulations, Licensor policies and any other applicable policies relating to intellectual property, employment, labor, spamming, spoofing, network security, privacy, obscenity or defamation.)

3.2. Customer Equipment. Customer shall be responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking equipment, web servers, and Internet access, but excluding the Software (collectively "Equipment"). Customer shall be responsible for ensuring that the Equipment is compatible with the Services and the Software. Customer shall also be responsible for the security and use of the Equipment.

4. CONFIDENTIALITY AND PUBLICITY

4.1. Confidentiality Obligation. "Confidential Information" means all written or oral information designated as confidential at the time of disclosure that is made accessible to the other party in connection with this Agreement including, without limitation; computer programs, software, formulas, data, information, inventions, techniques, strategies, trade secrets, know-how, plans for products or services, marketing plans, financial documents or data, processes and designs, and Service passwords, but not the terms and existence of this Agreement and other information and/or documents which may be covered by the public open records acts. Written Confidential

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

Information must be marked as "confidential" or "proprietary." Oral Confidential Information must be designated as confidential at the time of disclosure and reduced to a written summary and marked "confidential" or "proprietary" within 10 days of the oral disclosure. Each of the parties shall treat the other party's Confidential Information confidentially and with at least the same degree of care it uses to prevent the disclosure of its own Confidential Information, but in no event less than reasonable care. In addition, each party shall use the Confidential Information of the other party solely in the performance of its obligations under this Agreement and not disclose it, except to authorized employees of the receiving party or its affiliates, its legal counsel and its accountants (provided that the receiving party contractually obligates them to a duty of confidentiality no less restrictive than the duty imposed by this section 4.1 and remains jointly and severally liable for any breach of confidentiality by them). Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of its Confidential Information. Upon expiration or termination of this Agreement, each party shall return all tangible copies of any Confidential Information received from the other party.

4.2. Exclusions. Confidential Information will not include information that the recipient can prove: (i) was generally available to the public at the time it was disclosed, (ii) was known to the recipient, without restriction, at the time of disclosure by the disclosing party, (iii) is disclosed with the prior written approval of the disclosing party, (iv) was independently obtained or developed by the recipient without any use of the Confidential Information, (v) becomes known to the recipient, without restriction, from a source other than the disclosing party who does not owe a duty of confidentiality to the disclosing party and obtained the information by lawful means, or (vi) is disclosed in response to an order or requirement of a court, administrative agency, or other governmental body, a subpoena, or by the rules of a securities market or exchange on which the disclosing party's securities are traded (but only if (a) the recipient vigorously opposes the proposed disclosure and provides prompt advance notice to the disclosing party to enable it to appear and independently contest the disclosure, and (b) any Confidential Information so disclosed will otherwise remain subject to the provisions of this section 4). The burden of proof in establishing that any Confidential Information is subject to any of the foregoing exceptions will be borne by the receiving party.

4.3. Trademark License. Customer grants Licensor a limited, nonexclusive, worldwide right and license during the Term to use the names, logos and trademarks of Customer to publicize the existence of the business relationship established by this Agreement.

4.4. Compelled Disclosure. If the City is required to disclose any confidential information under chapter 42.56 RCW, the Public Records Act, the City will provide Licensor reasonable advance notice of such required disclosure and allow the Licensor the opportunity to seek a protective order to limit such disclosure. If a protective order or other remedy is not obtained, then the City may disclose such confidential information as necessary for compliance with the applicable law.

5. PAYMENT OF FEES

5.1. Fees. Customer shall pay Licensor the fees for the Services as set forth on Exhibit A. Unless otherwise specified in Exhibit A, Customer shall pay the fees set forth in the invoice to Licensor within 30 days of the invoice date. Customer agrees that unpaid fees are subject to a finance charge of 1% per month on past due balance.

5.2. Disputed Amounts. Licensor need not provide any adjustments or credits to Customer for disputed amounts billed by Licensor unless Customer provides written notice of the disputed amounts to Licensor within 60 days after the (i) closing date on the first billing statement in which the error or problem appeared, or (ii) invoice date on the first invoice in which the error or problem

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

appeared. Customer must direct any notices required under this section 5.2 (and any related inquiries) to Licensor by US mail in accordance with section 11.7.

5.3. Interest and Taxes. Unpaid fees are subject to a finance charge of 1% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection (including reasonable attorneys' fees). Customer shall be responsible for all taxes associated with the Services other than taxes based on Licensor's net income.

5.4. Annual Renewal. Unless otherwise notified by Customer, Licensor will issue annual renewal invoice 30 days prior to the lapse of the contract expiration date.

6. TERM AND TERMINATION

6.1 Term. Unless terminated earlier in accordance with section 6.2, the term of this Agreement will be one year. This Agreement will automatically renew, expressly subject to annual appropriation by the City, unless terminated as set forth below.

6.2 Termination. This Agreement may be terminated as follows:

(i) Customer may terminate this Agreement at any time by notifying Licensor in writing. Licensor will not refund any fees for the Service for the remainder of the then-current term.

(ii) Either party may terminate this Agreement immediately by written notice if the other party materially breaches this Agreement and fails to cure its breach after receipt of written notice within (a) 15 days in the case of nonpayment of any fees, or (b) 30 days in the case of all other breaches.

(iii) Either party may terminate this Agreement immediately by written notice if the other party (a) becomes insolvent, (b) makes an assignment for the benefit of creditors, (c) files or has filed against it a petition in bankruptcy or seeking reorganization, (d) has a receiver appointed, or (e) institutes a proceeding for liquidation or winding up. In the case of involuntary proceedings, a party will only be in breach if the applicable petition or proceeding has not been dismissed within 90 days.

6.3 Survival. The provisions of sections 2.3, 2.5, 2.6, 3.1, 4.1, 4.2 and 5 through 11 will survive the expiration or earlier termination of this Agreement. Customer's obligations under section 4 with respect to the Software and Services shall survive the expiration or earlier termination of this Agreement for a period of 2 years.

7. PROPRIETARY RIGHTS

7.1. Licensor's Proprietary Rights. Exclusive of Customer Information, Licensor (or its third-party licensors, if applicable) will retain all rights, title, and interest in and to the Software, Services and the Licensor Information and all legally protectable elements or derivative works thereof. Licensor may place copyright and/or proprietary notices, including hypertext links, within the Services. Customer may not alter or remove these notices without Licensor's written permission. Customer may not have the right to, and agrees not to, attempt to restrain Licensor from using any skills or knowledge of a general nature acquired during the course of providing the Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another Licensor customer.

7.2. Customer's Proprietary Rights. Customer will retain all rights, title and interest in and to the legally protectable elements of Customer Information and derivative works thereof.

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

8. INDEMNITY. To the extent allowed by law, Customer will indemnify, defend, and hold Licensor harmless from and against any and all costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claim, suit, action or proceeding brought by any third party against Licensor arising out of or relating to Customer's breach of its representations or warranties hereunder or its use of the Software and Services.

9. WARRANTY AND DISCLAIMER

9.1. Limited Warranty for Services. Licensor shall use reasonable commercial efforts consistent with prevailing industry standards to maintain the security of the Services and minimize errors and interruptions in the Services, provided that:

- (i) Customer uses the Service and the Software strictly in accordance with this Agreement,
- (ii) Customer pays all amounts due under this Agreement and is not in default of any provision of this Agreement, and (iii) Customer makes no changes (nor permits any changes to be made other than by or with the express approval of Licensor) to the Software or Service.

In addition, Customer acknowledges that the Services may be temporarily unavailable for scheduled maintenance, for unscheduled emergency maintenance, or because of other causes beyond Licensor's reasonable control. Licensor will not be liable to Customer as a result of these temporary service interruptions.

9.2. DISCLAIMER OF WARRANTIES FOR SERVICE AND SOFTWARE. NEITHER LICENSOR NOR ITS SUPPLIERS OR SERVICE PROVIDERS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY ABOUT THE RESULTS THAT MAYBE OBTAINED BY USING THE SOFTWARE OR SERVICES. EXCEPT AS EXPRESSLY AND UNAMBIGUOUSLY PROVIDED IN SECTIONS 9.1 AND 9.2, THE SOFTWARE AND SERVICE ARE PROVIDED "AS IS" AND LICENSOR, ITS SUPPLIERS AND SERVICE PROVIDERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT AND NONINFRINGEMENT. LICENSOR, ITS SUPPLIERS AND SERVICE PROVIDERS DISCLAIM ANY WARRANTY REGARDING THE ACCURACY OF ANY PRODUCT OR REPORT CREATED THROUGH CUSTOMER'S USE OF THE SOFTWARE AND ANY WARRANTY REGARDING THE CONFORMITY OF SAID PRODUCTS OR REPORTS TO THE SPECIFIC NEEDS OR REQUIREMENTS OF CUSTOMER OR CUSTOMER'S PROGRAMS.

9.3. Warranty against Infringement. Licensor warrants that the copyright in and to the Software is owned by Licensor or is distributed by Licensor under a valid current license. Licensor agrees to notify Licensee of any actual or anticipated claims made against it or its customers for patent or copyright infringement in the use of the Software. Licensor agrees to indemnify, hold harmless and defend Licensee against any and all patent or copyright infringement claims that may be brought against Licensee as the result of its use of the Software as authorized by this License. Licensee shall have the right to participate in the defense of any such claims for patent or copyright infringement at Licensee's cost and expense. In the event that it is determined that the Software infringes on any patent or copyright, Licensor may (a) modify the Software so that it becomes non-infringing but continues to provide the same functionality as the infringing Software, (b) replace the software with non-infringing software that continues to provide the same functionality as the infringing Software, or (c) if modification or replacement cannot be accomplished in a manner that continues to provide the same functionality, Licensor may terminate this License and refund all amounts paid by Licensee.

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

10. LIMITATION OF LIABILITY.

10.1 EXCLUSION OF DAMAGES AND LIMITS ON LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, LICENSOR, ITS OFFICERS, EMPLOYEES, AFFILIATES, REPRESENTATIVES, CONTRACTORS, SUPPLIERS, LICENSORS AND SERVICE PROVIDERS WILL NOT BE RESPONSIBLE UNDER ANY CONTRACT OR THEORY OF RECOVERY (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ANY: (A) INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) LOSSES CAUSED BY EVENTS BEYOND LICENSOR'S REASONABLE CONTROL (INCLUDING, WITHOUT LIMITATION, THE DISCLOSURE OF CONFIDENTIAL OR OTHER CUSTOMER INFORMATION OR DATA); AND (C) AMOUNTS THAT, IN THE AGGREGATE, EXCEED THE FEES PAID BY CUSTOMER TO LICENSOR FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE FIRST ALLEGED ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY.

10.2. CURE PERIOD FOR BREACH OR DEFECT. If Customer believes licensor has breached this Agreement or in any way damaged customer, customer shall give licensor written notice of the alleged breach or damages. The notice shall specify the error or breach alleged to have occurred and customer will cooperate with any additional information-gathering necessary to identify the exact breach. For 45 days after receipt of the written notice of breach, licensor shall have the right to cure the breach. If LICENSOR doES not cure the default within the time permitted, CUSTOMER may pursue any and all legal and equitable remedies.

11. MISCELLANEOUS

11.1. Assignment. This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns, provided that neither this Agreement nor any license hereunder may be assigned by Customer (whether by operation of law or otherwise) without Licensor's prior written consent. Notwithstanding the foregoing, Licensor may assign all or any part of its rights and obligations under this Agreement to (a) any entity resulting from any merger, consolidation or other reorganization of Licensor, (b) any operating entity controlling Licensor, or owned or controlled, directly or indirectly, by Licensor, (c) any affiliate of Licensor, or (d) any purchaser of all or substantially all of the Licensor's assets.

11.2. Force Majeure. Neither party may be held liable for any damages or penalty for delay in the performance of its obligations hereunder (other than Customer's obligation to make payments under this Agreement) when the delay is due to the elements, acts of God or other causes beyond its reasonable control.

11.3. Forum For Disputes. Any action to enforce the terms of this Agreement, or arising out of the subject matter of this Agreement, shall be commenced in the state or federal courts located in Sacramento, California.

11.4. Severability. A determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of any other part of this Agreement. Similarly, a determination that any provision is invalid or unenforceable in one application will not affect the validity or enforceability of the same provision in other contexts. To the extent possible, this Agreement shall be construed to give meaning to every provision.

11.5. Waiver and Modification. A party's waiver of any breach or its failure to enforce any term of this Agreement may not be deemed a waiver of any other breach or of its right to enforce the same term or others in the future. Any waiver, amendment, supplementation or other modification

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

or supplementation of any provision of this Agreement will be effective only if in writing and signed by both parties.

11.6. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws of the United States and the State of California, without regard to or application of California's conflicts of law rules. This Agreement will not be governed by the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of which are expressly excluded.

11.7. Notices. All notices, including any notices of deposition, required or desired to be given pursuant to this Agreement shall be given by first-class mail, Federal Express or other similar overnight delivery service, addressed as follows:

To Licensor:

Nicolie Lettini, CEO
CostTree, LLC
112 J. Street Suite 200
Sacramento, CA 95814

To Customer:

David Rodenbach
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

11.8. Relationship of Parties. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of legal association between the parties and each party is an independent contractor.

11.9. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement, or arising out of the subject matter of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs, including any and all expenses reasonably incurred, not limited to expenses provided under the California Code of Civil Procedure.

11.10. Price and Terms. Customer acknowledges and agrees that Licensor has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

11.11. Construction. This Agreement shall be deemed the joint work product of the parties and may not be construed against either party as drafter. Captions are for convenience only and may not be construed to define, limit or affect the construction or interpretation of this Agreement.

11.12. Entire Agreement. This Agreement, including Exhibits, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous written or oral statements, understandings or agreements. Except where otherwise set forth in the main body of this Agreement, in the event of a conflict between an Exhibit and the main body of this Agreement, the terms of the main body of this

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

Agreement will prevail.

COSTTREE, LLC

City of Gig Harbor

Name: Ray Bryant

Name: _____

Title: President

Title: _____

Dated: _____

Dated: _____

1.9. COSTTREE LICENSE AND SERVICE AGREEMENT

EXHIBIT A

LICENSE FEES

11.13. Organization Type Amount*

11.14. Annual License Agreement \$7,500

11.15. * Base Price includes one (1) Super User, one (1) Regular User and four (4) hours of Consulting Support

11.16. User Functionality

11.17.

Task	Super User	Regular User	Reviewer
Examine data input into the system	X	X	X
Examine supporting documentation located in the document repository	X	X	X
Run Error Check	X	X	X
Generate Cost Allocation Plan	X	X	
Add/edit/delete plan information	X	X	
Add/edit/delete plan supporting documentation in document repository	X	X	
Add/Delete users	X		
Modify user access and role	X		

11.18.

SERVICES

11.19. Included in annual license fees:

- Up to four hours of webinar training/calls with Cost Tree Team
- Upgrade and maintenance of Service
- Up to six concurrent backups of Customer Data allowed on the server
- Ability to reassign a user's password within your organization due to turnover or the replacement of a team member

11.20.

11.21. Prices listed are valid for 60 days from the date of issuance (12/7/2015).



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

Subject: Contracts for Lobbying Services

Dept. Origin: Administration

Prepared by: Ron Williams

Proposed Council Action:

For Agenda of: January 11, 2016

Exhibits: Lobbying Agreements

Authorize the Mayor to execute state & federal contracts for lobbying services with Gordon Thomas Honeywell.

Initial & Date

Concurred by Mayor:

JB 1-7-16

Approved by City Administrator:

RW 1/7/16

Approved as to form by City Atty:

N/A

Approved by Finance Director:

DF 1/7/16

Approved by Department Head:

Expenditure	Amount	Appropriation
Required \$118,000	Budgeted \$120,000	Required \$0

INFORMATION / BACKGROUND

There are two proposed contracts for consulting services with Gordon Thomas Honeywell. The first one is for state lobbying services, and the second contract is for federal lobbying services. These contracts are both one-year in duration (January-December 2016) but may be extended for one year under the same terms upon negotiation of a revised scope of work no later than December 1, 2016.

There are no proposed increases in either contract.

Under these two agreements, GTH will continue to pursue state and federal appropriations requests and will also assist on any policy/legislative matters that may affect the City.

For 2016, GTH will continue to advocate for Gig Harbor on such federal issues as:

- Identify and track all congressional legislation, federal budgets, and federal regulations that impact the City of Gig Harbor, and lobby on behalf of the City to Congress and with relevant federal agencies on those issues;
- Identify, track, and lobby for all federal funding opportunities, including federal grants. This includes legislation or regulation that supports projects that are City-specific that are available to the City of Gig Harbor, particularly those opportunities that promote the City's economic development and maritime heritage. Those opportunities include, but are not limited to: federal efforts to improve the profile and standing of the City's harbor and Puget Sound under national restoration, conservation, recovery, and economic development programs for coastal and maritime communities; reauthorization of the Land and Water Conservation Fund; federal funding for recreation and park projects,

such as the Ancich Waterfront Park and Gig Harbor North Ballfields; and federal funding for City's transportation projects, such as Harbor Hill Drive and sidewalk improvement efforts;;

- Organize for City of Gig Harbor officials, local community leaders and business leaders to support the City's federal agenda;
- Provide the City with frequent reports and updates; and
- Organize events and meetings to promote the City of Harbor to relevant members of the Washington State Congressional delegation.

GTH will also continue to advocate on behalf of the City on State issues including:

1. Pursue a transportation funding for projects identified by the West Sound Alliance, including following the corridor study of SR 16, and the EIS work on State Route 302.
2. Pursue capital funding for investments in Gig Harbor's waterfront, including Maritime Pier, Jerisich Dock, Ancich Property, and Eddon Boat.
3. Support legislation that increases the tax credit limits on the Main Street Tax Incentive Program.
4. Seek full funding of state grant/loan programs including WWRP and the PWAA.
5. Ensure that programs important to the City of Gig Harbor are not eliminated through a budget cut.
6. Work with the Association of Washington Cities to further legislation on local government finance.

The scope of work, which by adopting these contracts becomes the City's legislative agenda, is attached as an exhibit to each contract.

FISCAL CONSIDERATION

This item is identified as Objective No. 3 in the 2015-16 Administration Budget. \$120,000 is included in the 2015-16 proposed budget for these two contracts--\$40,000 for the state lobbying agreement, and \$78,000 for the federal lobbying agreement.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the attached state & federal contracts for lobbying services with Gordon Thomas Honeywell.

**WASHINGTON STATE SERVICE
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GORDON THOMAS HONEYWELL GOVERNMENTAL AFFAIRS**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gordon Thomas Honeywell Governmental Affairs, a limited liability corporation organized under the laws of the State of Washington located at 1201 Pacific Ave, Suite 2100 Tacoma, WA 98401 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City desires to obtain lobbying services; and

WHEREAS, the City desires that the Consultant perform services necessary to provide the lobbying services described herein; 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; and

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

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount not to exceed Forty Thousand (\$40,000), or Three Thousand Three Hundred Thirty Three Dollars (\$3,333) per month, beginning January 1, 2016, for the services described in Section I 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. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. 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 sub-consultant of the Consultant 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 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 sub-consultants of the Consultant. The Consultant 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 Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** beginning on January 1, 2016. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2016.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take

over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant 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 or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER 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.

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

VIII. 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, sub-consultants or sub-contractors.

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

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

D. 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.

E. 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.

F. 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.

G. 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.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. 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.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. 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 sub-consultants 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.

XIV. 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.

XV. Resolution of Disputes and Governing Law

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 Administrator and the City shall determine the term or provision's true intent or meaning. The City Administrator 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.

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 Administrator's 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 non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Tim Schellberg
Gordon Thomas Honeywell Gov. Affairs
1201 Pacific Ave., Suite 2100
Tacoma, WA 98401
(253) 620-6500

City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

XVII. Assignment

Any assignment of this Agreement by the Consultant 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.

XVIII. 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 Consultant.

XIX. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of January, 2016.

CONSULTANT

CITY OF GIG HARBOR

By: _____
President

By: _____
Mayor

Notices to be sent to:
Tim Schellberg
Gordon Thomas Honeywell Gov. Affairs
1201 Pacific Ave., Suite 2100
Tacoma, WA 98401
(253) 620-6500

City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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 Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A Scope of Work

The Consultant shall provide the City of Gig Harbor with the following Washington State legislative governmental affair services:

The Consultant shall:

1. Identify and track all legislation relevant to the City of Gig Harbor;
2. Provide the City with frequent reports and updates during the legislative session;
3. Provide monthly updates during the legislative interim.
4. Attend all relevant legislative hearings where the City of Gig Harbor's interests are directly affected;
5. Work throughout the year with the City of Gig Harbor to develop and implement legislative objectives and strategy;
6. Coordinate with City of Gig Harbor officials to testify at relevant legislative hearings; and
7. Lobby to pass, defeat or amend legislation that directly affects the City of Gig Harbor's interests.

In addition to the above, the Consultant shall perform the following specific tasks:

1. Pursue a transportation funding for projects identified by the West Sound Alliance, including following the corridor study of SR 16, and the EIS work on State Route 302.
2. Pursue capital funding for investments in Gig Harbor's waterfront, including Maritime Pier, Jerisich Dock, Ancich Property, and Eddon Boat.
3. Support legislation that increases the tax credit limits on the Main Street Tax Incentive Program.
4. Seek full funding of state grant/loan programs including WWRP and the PWAA.
5. Ensure that programs important to the City of Gig Harbor are not eliminated through a budget cut.
6. Work with the Association of Washington Cities to further legislation on local government finance.

Exhibit B Billing Rates

As described in Section II of this agreement, a monthly service fee of Three Thousand Three Hundred Thirty Three dollars (\$3,333.00) per month shall be charged to provide the services described in this agreement. This fee will cover all work performed by Briahna Taylor, and other GTHGA staff.

**FEDERAL GOVERNMENTAL AFFAIRS
CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GORDON THOMAS HONEYWELL GOVERNMENTAL AFFAIRS**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gordon Thomas Honeywell Governmental Affairs, a limited liability corporation organized under the laws of the State of Washington located at 1201 Pacific Ave, Suite 2100 Tacoma, WA 98401 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City desires to obtain lobbying services; and

WHEREAS, the City desires that the Consultant perform services necessary to provide the lobbying services described herein; 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; and

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

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant fees in amount not to exceed Seventy-Eight Thousand Dollars (\$78,000), or Six Thousand Five Hundred Dollars (\$6,500.00) per month, beginning January 1, 2015, for the services described in Section I 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. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

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

III. 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 sub-consultant of the Consultant 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 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 sub-consultants of the Consultant. The Consultant 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 Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** beginning on January 1, 2015. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2015.

V. Termination

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

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take

over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant 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 or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER 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.

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

VIII. 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, sub-consultants or sub-contractors.

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

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

D. 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.

E. 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.

F. 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.

G. 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.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. 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.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. 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 sub-consultants 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.

XIV. 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.

XV. Resolution of Disputes and Governing Law

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 Administrator and the City shall determine the term or provision's true intent or meaning. The City Administrator 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.

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 Administrator's 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 non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Tim Schellberg
Gordon Thomas Honeywell Gov. Affairs
1201 Pacific Ave., Suite 2100
Tacoma, WA 98401
(253) 620-6500

City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

XVII. Assignment

Any assignment of this Agreement by the Consultant 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.

XVIII. 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 Consultant.

XIX. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of January, 2016.

CONSULTANT

CITY OF GIG HARBOR

By: _____
President

By: _____
Mayor

Notices to be sent to:
Tim Schellberg
Gordon Thomas Honeywell Gov. Affairs
1201 Pacific Ave., Suite 2100
Tacoma, WA 98401
(253) 620-6500

City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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 Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A Scope of Work – Federal Governmental Affairs Services

The Consultant shall provide the City of Gig Harbor with the following Federal Government governmental affair services:

- Identify and track all congressional legislation, federal budgets, and federal regulations that impact the City of Gig Harbor, and lobby on behalf of the City to Congress and with relevant federal agencies on those issues;
- Identify, track, and lobby for all federal funding opportunities, including federal grants. This includes legislation or regulation that supports projects that are City-specific that are available to the City of Gig Harbor, particularly those opportunities that promote the City's economic development and maritime heritage. Those opportunities include, but are not limited to: federal efforts to improve the profile and standing of the City's harbor and Puget Sound under national restoration, conservation, recovery, and economic development programs for costal and maritime communities; reauthorization of the Land and Water Conservation Fund; , federal funding for recreation and park projects, such as the Ancich Waterfront Park and Gig Harbor North Ballfields; and federal funding for City's transportation projects, such as Harbor Hill Drive and sidewalk improvement efforts;;
- Organize for City of Gig Harbor officials, local community leaders and business leaders to support the City's federal agenda;
- Provide the City with frequent reports and updates; and
- Organize events and meetings to promote the City of Harbor to relevant members of the Washington State Congressional delegation.

Exhibit B Billing Rates

As described in Section II of this agreement, a monthly service fee of Six Thousand Five Hundred Dollars (\$6,500.00) per month shall be charged to provide the services described in this agreement. This fee will cover all work performed by Dale Learn and Paul Hoover in the Washington, DC office.



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

Subject: Hearing Examiner Consultant Services Contract.

Proposed Council Action: Authorize the Mayor to execute a contract with Stephen Causseaux and McCarthy and Causseaux, Inc., P.S. for hearing examiner services to the City.

Dept. Origin: Planning

Prepared by: Jennifer Kester, Planning Director *JK*

For Agenda of: January 11, 2016

Exhibit: Contract

	Initial & Date
Concurred by Mayor:	<i>JK 1-6-16</i>
Approved by City Administrator:	<i>Ron W 1/6/16</i>
Approved as to form by City Atty:	<i>email 12/31/15</i>
Approved by Finance Director:	<i>JK 1/6/16</i>
Approved by Department Head:	<i>JK 1/6/16</i>

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

Since 2011, the City has contracted with McCarthy and Causseaux for hearing examiner series. Stephen Causseaux serves as the City's primary hearing examiner. Mr. Causseaux is an attorney with over 25 years of experience as a hearing examiner. In addition to serving as the City's hearing examiner for the last 4 years, he has been Pierce County's hearing examiner for many years.

The Planning Department would like Mr. Causseaux and his firm to continue as our hearing examiner. As part of the new contract, Mr. Causseaux will provide a list of potential Pro Tem Examiners for City review and selection in the event of a conflict, disqualification, or scheduling difficulties. Per GHMC 17.10.020, the Council may appoint a hearing examiner for a maximum term of one year before a new contract is needed.

FISCAL CONSIDERATION

The City Council approved a master fee schedule that requires project applicants to pay the full cost of hearing examiner services. Therefore for land use permit, there is no fiscal impact to the City for hearing examiner services. Costs for appeal hearings on other topics will depend on the nature of the appeal and the frequency of the appeals.

RECOMMENDATION/MOTION

Authorize the Mayor to execute a contract with Stephen Causseaux and McCarthy and Causseaux, Inc., P.S. for hearing examiner services to the City.

LAND USE HEARING EXAMINER SERVICES AGREEMENT

The parties to this Agreement are Stephen K. Causseaux Jr., and McCarthy and Causseaux, Inc., P.S., hereinafter referred to as the "Hearing Examiner" and the City of Gig Harbor, a Washington municipal corporation, hereinafter referred to as the "City."

RECITALS

WHEREAS, the City desires to contract with the Hearing Examiner for Hearing Examiner services as set forth in this Agreement, and as provided for in the Gig Harbor Municipal Code, and the Hearing Examiner agrees to perform such services; and

WHEREAS, the Hearing Examiner warrants that he is an attorney licensed by the State of Washington, and is a member in good standing with the Washington State Bar, Now Therefore, the parties agree as follows:

AGREEMENT

Section 1. Performance of Duties. The Hearing Examiner shall at all times faithfully, and to the best of his ability and experience, perform all of the duties that are required of him pursuant to the expressed and implicit terms of this Agreement, Gig Harbor Municipal Code, and the rules of professional conduct. The provisions of chapter 17.10 of the Gig Harbor Municipal Code (as it now exists or may hereafter be amended) and RCW 35A.63.170 are incorporated into this Agreement as if fully set forth herein.

In addition to the duties set forth above, the Examiner may be requested to attend one City Council meeting annually. During this meeting, which shall be scheduled in advance with the City Council, the Examiner shall provide a summary of his services in the past year, together with any suggestions for changes to procedure or codes. The Council shall have the opportunity to provide the Examiner with feedback on his performance under this Agreement.

Section 2. Compensation. The City shall compensate the Hearing Examiner for handling the hearings and administrative duties assigned to him by the City as follows:

A. The Examiner shall provide services to the City at an hourly rate of one hundred fifty dollars (\$150.00) per hour for his performance of the duties described herein. This includes travel time not to exceed one half hour per hearing date. Pro Tem Hearing Examiner services shall be provided at an hourly rate of one hundred dollars (\$100.00) per hour. Secretarial services provided by

the Examiner shall be at an hourly rate of fifty dollars (\$50.00) per hour. In the event that a hearing clerk is provided by the Examiner the hourly rate for the hearing clerk shall be twenty five dollars (\$25.00) per hour.

B. The Hearing Examiner shall submit monthly payment invoices to the City after such services have been performed. The City shall pay the full amount of the invoice within thirty (30) days of the receipt, unless there is a dispute. In the event of a dispute, the City shall pay the amount not in dispute, and the parties shall resolve the matter pursuant to Section 9 herein.

Section 3. Liability Insurance.

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

B. Hearing Examiner's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Hearing Examiner to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. Hearing Examiner shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01, or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Hearing Examiner's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

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

D. Minimum Amounts of Insurance. Hearing Examiner shall maintain the following insurance limits:

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

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

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

1. The Hearing Examiner's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Hearing Examiner's insurance and shall not contribute with it.

2. The Hearing Examiner's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

F. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

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

Section 4. Hearing Examiner Pro Tem. In the event of a conflict or disqualification, scheduling difficulties, or in any situation in which the use of a Hearing Examiner Pro Tem is required, the Hearing Examiner must inform the Planning Director and Mayor of such need. The Hearing Examiner shall inform the Planning Director and Mayor at least one month in advance of any hearing in which the Hearing Examiner Pro Tem is required and provide a list of potential pro tem hearing examiners for City review and selection. The Mayor may decide not to approve the use of an Examiner Pro Tem suggested in this manner, and request that the hearing be rescheduled to a time that would allow the Hearing Examiner's attendance. Alternatively, the Mayor may decide to authorize the use of another Hearing Examiner by separate contract.

Section 5. Qualifications and Independent Contractor Status.

A. Throughout the term of this Agreement, the Hearing Examiner shall be an attorney licensed by the State of Washington and be a member in good standing with the Washington State Bar.

B. The Hearing Examiner is an independent contractor and shall provide professional services to the City pursuant to this Agreement. The Examiner is not an employee of the City, and shall be responsible for paying federal income tax and other taxes, fees or other charges imposed by law upon independent contractors from compensation paid to them by the City. The Hearing Examiner shall not be entitled to any benefits provided to City employees and specifically

shall not be entitled to sick leave, vacation, unemployment insurance, worker's compensation, overtime, compensatory time or any other benefit not specifically addressed and provided for in this Agreement. The Hearing Examiner shall be solely and entirely responsible for his acts during the term of this Agreement. The Examiner shall be subject to the rules of conduct for municipal officials (chapter 42.23 RCW) and the relevant personnel policies of the City, as well as the Code of Professional Conduct.

Section 6. Indemnification. The Hearing Examiner 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 fees, arising out of or resulting from the acts, errors or omissions of the Hearing Examiner in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or property caused by or resulting from the concurrent negligence of the hearing Examiner and the City, its officers, officials, employees, and volunteers, the Hearing Examiner's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Hearing Examiner's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Hearing Examiner's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 7. Term. This Agreement shall commence on January 12th, 2016 and terminate on January 11th, 2017, unless earlier terminated as provided in this Agreement. This Agreement may be terminated by the City or the Hearing Examiner with or without cause by providing a thirty (30) day written notice of termination to the other party.

Section 8. Nonexclusive Contract. This shall be a nonexclusive contract. The City reserves the right to appoint additional Hearing Examiners, to contract for additional hearing examiner services in the future, or to terminate this Agreement as provided herein. Nothing in this Agreement shall be interpreted to prohibit such future appointments. Nothing in this Agreement shall guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Hearing Examiner in the future, regardless of whether the Hearing Examiner shall be within the term of his appointment. In the event of such future appointments, the City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.

Section 9. Resolution of Disputes. 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 Administrator, who shall determine the

term or provision's true intent or meaning. If any dispute arises between the City and the Examiner which cannot be resolved by the City's determination in a reasonable period of time, or if the Hearing Examiner does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the Pierce County Superior Court, in Pierce County, Washington. The prevailing party shall be reimbursed by the other party for its costs, expenses and reasonable attorney's fees incurred in any litigation arising out of the enforcement of this Agreement.

Section 10. Integration. The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way. The entire agreement between the parties is contained in this Agreement document.

Section 11. Severability. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

Section 10. Notice. Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

Hearing Examiner: Stephen K. Causseaux Jr.
 902 South 10th Street
 Tacoma, WA 98405

City: Jennifer Kester, Planning Director
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, WA 98335
 (253) 851-6170

Section 11. Waiver and Modification. No waiver or modification of this Agreement shall be valid unless in writing and executed by the duly authorized representatives of the parties. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to

[Remainder of page intentionally left blank]

be a waiver or relinquishment of said provision in the Agreement, and the same shall remain in full force and effect.

DATED this ___ day of _____, 2016.

CITY OF GIG HARBOR

HEARING EXAMINER

By: _____
Jill Guernsey, Mayor

By _____
Stephen K. Causseaux Jr.

ATTEST:

Molly Towslee, City Clerk

APPROVED AS TO FORM:

Angela G. Summerfield , City Attorney



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

Subject: Fire Investigation Contract

Proposed Council Action:

Approve the contract with the Pierce County Fire Marshal's office for fire investigation assistance.

Dept. Origin: Administration

Prepared by: Ron Williams, City Administrator

For Agenda of: January 11, 2016

Exhibits: Proposed Contract

Initial & Date

Concurred by Mayor:

JB 1-7-16

Approved by City Administrator:

RW 1/5/15

Approved as to form by City Atty:

by email 1/7/15

Approved by Finance Director:

DZ 1/7/15

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required 3,847.81	Budgeted 5,440.00	Required 0

INFORMATION / BACKGROUND

As the local authority having jurisdiction for enforcement of the State Fire Code the City provides for investigation of fires and explosions occurring within the City limits. Because the City does not have adequate staff or funding to provide 24/7 coverage of the fire investigation function we have contracted with the Pierce Co. Fire Marshal's Office for fire investigation assistance. In recent years to control costs a policy has been put in place that instructs Gig Harbor Fire & Medic One to request response by the City fire marshal before requesting County assistance. The City fire marshal, if deemed necessary requests assistance from the County. If the City fire marshal can't be reached, GHFMO may then request County assistance directly.

FISCAL CONSIDERATION

The fee for the contract period is specified as \$1749.01 per fire, up from \$1,600 in the previous contract. This is based on a rolling average of the cost of assistance over the previous period which equates to 2.2 fires per year resulting in an amount of \$3,847.81 for 2016. Under the rolling average method with the checks now in place for requesting County assistance the cost of this service should remain in check.

BOARD OR COMMITTEE RECOMMENDATION

Because this is a renewal of an existing interlocal agreement that reduces the cost of an essential city service no board or committee recommendation was requested.

RECOMMENDATION / MOTION

Move to: Approve the Interlocal Agreement for fire investigation services between the City of Gig Harbor and Pierce County as amended for the period January 1, 2016 through December 31, 2021.

AGREEMENT FOR FIRE INVESTIGATION SERVICES

THIS AGREEMENT is made and entered into by and between PIERCE COUNTY, a political subdivision of the State of Washington, (hereinafter referred to as "County") and the City of Gig Harbor, a municipal corporation, (hereinafter referred to as "City")

WHEREAS, RCW 43.44.050(1)(a) provides that within a city the chief of a fire department has the responsibility for investigating the origin, cause, circumstances, and extent of loss of all fires within the city limits of the city; and

WHEREAS, RCW 43.44.050(1)(b) provides that within the unincorporated areas of the county, the county fire marshal or other fire official so designated by the county legislative authority has the responsibility for investigating the origin, cause, circumstances, and extent of loss of all fires within the unincorporated areas of the county; and

WHEREAS, RCW 43.44.050(3) provides that cities, towns, agencies, and counties may enter into agreements to meet the responsibility required by RCW 43.44.050; and

WHEREAS, County and City believe it to be in the best interests of their citizens that County provide fire investigation services within the City's jurisdiction in the event of a fire or explosion or related occurrence; NOW THEREFORE,

IT IS HEREBY AGREED AS FOLLOWS:

1. Purpose. It is the purpose of this agreement to provide an economical mechanism to provide for the determination of origin and cause of fires, explosions or related occurrences and to conduct such investigations in a competent manner and to pursue such fire investigations to a reasonable conclusion.

2. Duration. The duration of this agreement shall be that period commencing on the 1st day of January 2016 and terminating at midnight on the 31st day of December 2021, unless this agreement is sooner extended or terminated in accordance with the terms hereof.

3. Definitions. As used in this agreement, the following definitions will apply.

A. "Fire Investigation" means the process of determining the origin, cause, development and circumstances of a fire or explosion and following the facts to a reasonable conclusion.

B. "Fire Investigator" means an employee of the Pierce County Fire Prevention Bureau fully trained and equipped to conduct competent, complete and accurate fire investigations.

C. "On-Call" means a Fire Investigator immediately available for response (or consultation) to a Fire Investigation or related incident 24 hours per day, 7 days per week, 365 days per year.

4. Services. County shall provide fire investigation services in a professional manner and fashion utilizing recognized techniques, practices and skills as associated with fire

investigation throughout the United States. County shall perform all services as specified in Attachment "A".

5. Records Management. County shall provide copies of all complete fire investigation reports prepared by County to City. City shall be the custodian of such complete fire investigation reports pursuant to State law. County shall release no reports or information concerning any fire investigation performed for the City of Gig Harbor without written authorization by City.

6. Compensation. The City shall pay County upon execution of this agreement the sum of \$1,749.01 per fire investigation per year for all services rendered under the terms of this agreement. The numbers of Fire investigations are based on the average of the past five years, not taking into account the most recent year. The rolling average for the past five years shall be two point two (2.20) fire investigations per year. The first year (2016) compensation, based on the fire investigation per year average shall be \$3,847.81. Payment is due and payable on January 31, 2016, and on the same schedule for subsequent years of the contract. Annual increases for subsequent years shall be based upon the growth in the previous years' January to December Consumer Price Index for the Seattle urban area (as available), and the average number of fire investigation responses by County to City the past five years, using the rolling average method of calculation, and/or based upon modifications in the annual work plan as agreed upon by the parties.

7. Termination. Either party may terminate this agreement upon ninety (90) days written notice to the other party. Notices and other communications shall be transmitted in writing by U.S. Mail, postage prepaid, addressed to the parties as follows:

If to Pierce County, to: Pierce County,
DEM Director
2501 S 35th St, Suite D,
Tacoma, WA 98409

If to City, to: City of Gig Harbor
Ron Williams, City Administrator
3510 Grandview Street
Gig Harbor, WA 98335

8. Renewal. This agreement may be renewed for agreed upon terms upon the mutual agreement of the parties as signified by a Memorandum of Renewal signed by the duly authorized representatives of each of the parties.

9. Hold Harmless and Indemnification. Each party shall defend, indemnify and hold harmless the other from liability or any claim, demand or suit arising because of said party's negligence or intentional acts. Each party shall promptly notify the other of any such claim.

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 City, its officers, officials,

employees and agents, and County, its officers, officials, employees and agents, each party's liability hereunder shall be only to the extent of that party's negligence.

10. General. Neither party may assign or transfer this contract or any rights or obligations hereunder without the prior written consent of the other party. This contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever. Any changes to this contract requested by either party may only be affected if mutually agreed upon in writing by duly authorized representatives of the parties hereto.

11. Breach of Contract. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this contract shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.
Dated this ____ day of _____, _____.

PIERCE COUNTY
Recommended:

City of Gig Harbor

By _____ Date _____

Approved as to legal form only:

By _____ Date _____ By _____ Date _____
Deputy Prosecuting Attorney

Recommended:

By _____ Date _____ By _____ Date _____
Budget and Finance

Approved:

By _____ Date _____
Lowell Porter, Director

ATTACHMENT "A"

City of Gig Harbor

2016 Fire Investigation Services Work Plan

1. Provide an On-Call Fire Investigator(s) available to respond to Fire Investigation incidents 24 hours per day, 365 days per year.
2. Provide all necessary training, equipment and supplies required to respond to and conduct complete, quality Fire Investigations.
3. Provide appropriate supervision of Fire Investigation Services program and assigned personnel.
4. Provide necessary assistance to City of Gig Harbor law enforcement and prosecution personnel as it relates to Fire Investigations.
5. Provide additional support and resources (staffing and material) as necessary to conduct complete, quality Fire Investigations.
6. Provide copies of all reports completed by Fire Investigators related to Fire Investigations within City of Gig Harbor.
7. Provide Expert testimony in court relative to Fire Investigations conducted in the City of Gig Harbor.
8. Provide training for District's fire department personnel in Fire Investigation and Arson recognition.



Business of the City Council
City of Gig Harbor, WA

Subject: Resolution No. 1023 – Designate
'Under a Gig Harbor Moon' as the Official
City Song

Proposed Council Action:
Approve Resolution No. 1023

Dept. Origin: Administration

Prepared by: Shawna Wise *SW*

For Agenda of: January 11, 2016

Exhibits:

Initial & Date

Concurred by Mayor: *JG 1-4-16*

Approved by City Administrator: *Row*

Approved as to form by City Atty: *via email 12.28.15*

Approved by Finance Director: *[Signature] 12/28/15*

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$0	Budgeted \$0	Required \$0

INFORMATION / BACKGROUND

Over the years, former Mayor Gretchen Wilbert requested the Council designate "Under a Gig Harbor Moon" as the official song of the City of Gig Harbor.

FISCAL CONSIDERATION

None.

STAFF RECOMMENDATION

Staff and Mayor recommend the Council designate "Under a Gig Harbor Moon" as the official city song.

RECOMMENDATION / MOTION

Move to: Approve Resolution No. 1023

RESOLUTION NO.1023

**A RESOLUTION OF THE CITY OF GIG HARBOR DESIGNATING
'UNDER A GIG HARBOR MOON' AS THE OFFICIAL CITY SONG.**

WHEREAS, in 1996 Dick Coolen collaborated with Laurel Cole on 'Under a Gig Harbor Moon' in celebration of the City's centennial celebration; and

WHEREAS, former Mayor Gretchen Wilbert requested the Council adopt 'Under a Gig Harbor Moon' as the official city song; and

WHEREAS, it would be an honor to fulfill Mayor Wilbert's request as a tribute to her 16 years of service as Mayor of Gig Harbor.

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON HEREBY
RESOLVES AS FOLLOWS:**

'Under a Gig Harbor Moon' will be the official song of Gig Harbor, Washington.

ADOPTED by the City Council of the City of Gig Harbor, Washington, this 11th day of January, 2016.

APPROVED:

MAYOR JILL GUERNSEY

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 01/05/16
PASSED BY THE CITY COUNCIL: 01/11/16
RESOLUTION NO. 1023

EXHIBIT A

UNDER A GIG HARBOR MOON

Many a place I have come to embrace
In this beautiful world that we share
But there is one that I love best
Far above all the rest
There's a song that will take you there
There's a misty silver veil above the Harbor
And little lights reflecting on the Bay
The air so cool and clear
Serenity here, Under a Gig Harbor Moon
Shadowed Evergreens encircle the horizon
While Sailboats on their anchors gently sway
A walk along the Pier
Brings paradise here, Under a Gig Harbor Moon
The Lighthouse is the welcome of the Harbor
It beckons all the Fishing Boats ashore
And at an Inn that's nestled by the Water
A Soft Piano plays our favorite song
So come along with me and I will show you
A place where all of nature is in tune
A cozy little town where love is all around
Under a Gig Harbor Moon



Business of the City Council City of Gig Harbor, WA

Subject: Purchase Authorization –
Cartegraph Systems

Proposed Council Action: Authorize the Mayor to execute a purchasing agreement with Cartegraph Systems, Inc., in the amount of \$51,427.60 plus applicable Washington State Sales Tax.

Dept. Origin: Public Works

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

For Agenda of: January 11, 2016

Exhibits: Purchasing Agreement

	Initial & Date
Concurred by Mayor:	<i>JL</i> 1-5-16
Approved by City Administrator:	<i>RW</i> 1/5/16
Approved as to form by City Atty:	<i>via email</i> 1-5-16
Approved by Finance Director:	<i>JL</i> 1/5/16
Approved by Department Head:	<i>ALX</i> 1/5/16

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

In 2003, the City purchased Cartegraph software for tracking citizen requests and assigning work orders to Public Works Operations division. In 2010, the system was upgraded to include modules for tracking City assets such as the inventory and maintenance records for all street signs, meeting retroreflectivity regulations. Currently the City is licensed for six users to access six modules using Cartegraph’s Operations Management System (OMS) software, which is now “cloud-based”. However, the six user licenses limit the access and operation of the Cartegraph software.

The proposed purchase authorization spans years 2016-2019 and allows up to 50 users to access more than 60 available Cartegraph modules, including licensing for 50 ArcGIS Online users. The proposed purchase authorization also provides for administrative staff in Public Works Operations to receive training from Cartegraph necessary to implement new modules and to train the City’s field staff.

FISCAL CONSIDERATION

Current Year (2016): The proposed transition from six users to 50 users was not anticipated in the current biennial budget. However, due to unforeseen grant funding of the Cartegraph stormwater modules by the Department of Ecology, sufficient funds are now available in the 2015-2016 biennial budget for the 2016 portion of the proposed agreement as outlined in the table below.

2015/16 Budget for Cartegraph System Migration (Operating Funds of Parks, Streets, Water, and Storm):	\$21,800.00
Previous and Anticipated Expenses:	
2015 Cartegraph OMS Licensing and Migration Fees (non-stormwater)	(\$ 6,510.00)*
2016 Purchase Agreement – Cartegraph OMS Licensing Fees	(\$ 7,131.90)*
2016 Purchase Agreement – Cartegraph Implementation Svcs	(\$ 3,400.00)*
Total Remaining Budget:	\$ 4,758.10*

*Sales tax not included.

Future Years (2017-2019): Fees for 2017 through 2019 are included in the proposed purchasing agreement as outlined below to establish future pricing, but are contingent on future budget appropriations.

2017 Cartegraph OMS Licensing Fees	(\$ 13,131.90)*
2018 Cartegraph OMS Licensing Fees	(\$ 13,131.90)*
2019 Cartegraph OMS Licensing Fees	(\$ 14,631.90)*
Future Budget Appropriation:	\$ 40,895.70*

*Sales tax not included

BOARD OR COMMITTEE RECOMMENDATION

The proposed purchase agreement was presented to the Public Works Committee at their November 9 meeting with a recommendation to move forward to the full council for consideration.

RECOMMENDATION/MOTION

Authorize the Mayor to execute a purchasing agreement with Cartegraph Systems, Inc., in the amount of \$51,427.60 plus applicable Washington State Sales Tax.

Purchase Agreement

Cartegraph is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of Gig Harbor (hereinafter referred to as “**Customer**” or “**Licensee**” and **Cartegraph Systems, Inc.** (hereinafter referred to as “**Cartegraph**”). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement, #MA023 dated August 13, 2014 shall control.

Customer Bill To: Terri Reed City of Gig Harbor 3519 Grandview Street Gig Harbor, WA 98335 253-853-7640	Customer Ship To: Same
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Investment Summary

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

Date: January 4, 2016 **Purchase Agreement Expiration Date:** January 12, 2016 **Purchase Agreement No.:** #PA237

	Purchase Type	Citizen/Qty.	Unit Price	Total Price
CURRENT YEAR				
SOFTWARE PRODUCTS				
Cartegraph OMS – Platform - Enterprise	OMS Transition, 1/1/16 – 12/31/16 Includes OMS Platform – Enterprise, OMS Hosting, OMS Advanced Asset, User Pack Subscription – 50 Named Users	1	\$7,131.90	\$7,131.90
FIELD SERVICES				
Implementation Services	Fixed Fee Service	1	\$3,400.00	\$3,400.00
WA SALES TAX 8.5%				\$895.21
CURRENT YEAR SUB-TOTAL				\$11,427.11
YEAR 1				
SOFTWARE PRODUCTS				
Cartegraph OMS – Platform - Enterprise	Per-citizen Subscription, Cartegraph Cloud Deployment 1/1/17 – 12/31/17	7,126	\$0.50	\$3,563.00
<i>Prepaid License Deduction</i>	<i>Prepaid License, (Invoice #41127, dtd 1/28/15, OMS Standard Edition)</i>			(<i>\$1,500.00</i>)
Cartegraph OMS – Hosting	Cartegraph Cloud Shared Hosting Subscription, included in Enterprise	1	\$0.00	\$0.00
Cartegraph OMS Extension	Advanced Asset Management per-citizen Subscription	7,126	\$0.15	\$1,068.90
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,000.00	\$10,000.00
YEAR 1 SUB-TOTAL				\$13,131.90

YEAR 2				
SOFTWARE PRODUCTS				
Cartegraph OMS – Platform - Enterprise	Per-citizen Subscription, Cartegraph Cloud Deployment, 1/1/18 – 12/31/18	7,126	\$0.50	\$3,563.00
<i>Prepaid License Deduction</i>	<i>Prepaid License, (Invoice #41127, dtd 1/28/15, OMS Standard Edition)</i>			<i>(\$1,500.00)</i>
Cartegraph OMS – Hosting	Cartegraph Cloud Shared Hosting Subscription, included in Enterprise	1	\$0.00	\$0.00
Cartegraph OMS Extension	Advanced Asset Management per-citizen Subscription	7,126	\$0.15	\$1,068.90
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,000.00	\$10,000.00
YEAR 2 SUB-TOTAL				\$13,131.90
YEAR 3				
SOFTWARE PRODUCTS				
Cartegraph OMS – Platform - Enterprise	Per-citizen Subscription, Cartegraph Cloud Deployment, 1/1/19 – 12/31/19	7,126	\$0.50	\$3,563.00
Cartegraph OMS – Hosting	Cartegraph Cloud Shared Hosting Subscription, included in Enterprise	1	\$0.00	\$0.00
Cartegraph OMS Extension	Advanced Asset Management per-citizen Subscription	7,126	\$0.15	\$1,068.90
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,000.00	\$10,000.00
YEAR 3 SUB-TOTAL				\$14,631.90
TOTAL COST (3-YEAR TERM)				\$52,322.81

NOTES: This Purchase Agreement #PA237 together with the Cartegraph Master Agreement #MA023, constitutes the final, complete and exclusive statement of the agreement between the Parties pertaining to their subject matter and supersedes any and all prior and contemporaneous understandings or agreements of the Parties.

Above pricing does not include applicable Washington sales tax for years 1, 2, and 3. Sales tax will be billed to customer at the then current tax rates in those years.

Payment Terms and Conditions

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

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** **Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
 - a. \$7,738.11 due upon execution of the Purchase Agreement.
 - b. \$13,131.90 due 15 days prior to 1st year anniversary of term start date.
 - c. \$13,131.90 due 15 days prior to 2nd year anniversary of term start date.
 - d. \$14,631.90 due 15 days prior to 3rd year anniversary of term start date.
4. **Field Services Invoicing:** Invoicing for the Field Services fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
 - a. Invoicing for the Field Services fee shall occur upon the execution of the Purchase Agreement, \$3,689.00.
5. **Expenses:** In providing the services included in this Purchase Agreement, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, and meals. Out-of-pocket expenses are billed based on actual costs incurred and are due separately.
6. **Payment Terms:** All payments are due Net 30 days from date of invoice.

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

Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
(Type or print name)

Title Executive Vice President/CRO

Date _____

City of Gig Harbor

By _____
(Signature)

(Type or print name)

Title _____

Date _____

Cartegraph Systems, Inc.

Addendum A - Software Products

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

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

1. Support

- a. *Campus – www.cartegraph.com/campus***

Our User Assistance area is a convenient and easily-shareable resource designed to help you and your co-workers better understand the functions and capabilities of your Cartegraph applications. Instantly access user tips, step-by-step guides, videos, and more.
- b. *Dedicated, Unlimited, Toll-free Phone Support - 877.647.3050***

When questions need answers and difficulties arise, count on our industry-leading Support team to provide the guidance and assistance you need. Reach us as often as you need Monday-Friday, 7:00 am-7:00 pm CT.
- c. *Secure, Live Remote Support***

If your challenge requires a more hands-on approach, we have the remote support tools to fix it. Let one of our Support Team members directly interact with your system to find a fast, effective solution.

2. Training & Education

- a. *Convenient Online Resources***

All the information you need, one click away. Take advantage of online training opportunities, tutorial videos, upcoming event information, and more.
- b. *Regional User Groups***

Meet and network with similar Cartegraph users in your region. Our smaller, more personalized User Groups allow you to find out what other organizations are doing to get more from their Cartegraph Systems.

3. Software Releases & Upgrades

- a. *New Software Releases***

Be the first to know about all new Cartegraph releases, enhancements, and upgrades. Gain immediate access to the latest features and functionality, and increased system performance.
- b. *Hot Fixes***

If an issue is determined to be a software defect and falls outside the standard release cycle, Cartegraph will issue a hot fix and provide application specialists with detailed levels of product knowledge to work with you in achieving a timely and effective resolution.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT. IF CUSTOMER TERMINATES THEIR OMS SUBSCRIPTION LICENSE, THE ESRI SUBSCRIPTION WILL ALSO TERMINATE.

Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
(Type or print name)

Title Executive Vice President/CRO

Date _____

City of Gig Harbor

By _____
(Signature)

(Type or print name)

Title _____

Date _____

Cartegraph Systems, Inc.

Addendum B - Field Services (Fee for Service)

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

Cartegraph - Scope of Work

The Cartegraph scope of work includes the following professional services:

Setup

- Cartegraph will provide documentation and guidance, up to four (4) hours, for your technical GIS staff to configure Esri Basemap Services for OMS integration. Guidance will be geared towards OMS/Esri integration functionality and requirements.

Training

- Cartegraph will provide remote train-the-trainer training, up to two (2) hours, on OMS Esri integration functionality. Training topics include:
 - OMS Esri integration configuration options
 - Integration functionality (basemap and feature)
 - Overall Esri integration requirements, considerations, and Cartegraph recommended best practices
- Cartegraph will provide remote train-the-trainer training, up to four (4) hours, on OMS Administrator functionality. Training topics include:
 - Administrator:
 - User Administration, Role Administration, Import/Export, Error Log
 - Settings:
 - System Settings, Base Map Administration, Geocode Settings, GIS Integration Settings, Background Task Scheduler, Asset Color Manager
 - Manager:
 - Layout Manager, Library Manager, Preventative Maintenance, Asset Condition Manager, Notification Manager, Structure Manager
 - Cartegraph Administrator Application
 - Report Creation
- Cartegraph will provide remote train-the-trainer training, up to six (6) hours, on standard OMS functionality. Training topics will be agreed upon by both Cartegraph and customer project managers prior to scheduling.

Scope Assumptions

- Cartegraph will provide all services remotely via audio, video, and web conferences unless otherwise noted.
- All services will expire three hundred and sixty-five (365) days from date of agreement. The Cartegraph project will be closed upon service expiration.

Customer Responsibility

For the project, you will be responsible for appointing a dedicated project manager that will be responsible for:

- Reviewing the implementation scope of work
- All internal aspects of the project including, but not limited to, internal change management, internal documentation, staff coordination, task completion, and schedule commitment
- Ensuring all scheduled meetings are attended by invited staff
- Partnering with the Cartegraph Project Manager to ensure project success
- Providing leadership and insight on all relevant internal issues such as policy/procedure, organizational structure, project stakeholders, technical architecture, data, and current systems

Exclusions

The following service items are not included in the scope of this project:

- Implementation of any custom modification or integration developed by Cartegraph, your internal staff, or any third-party is not included in the scope of this project unless specifically listed above.
- Data conversion services from other software system(s) or sources (including Cartegraph Navigator databases) are not included in the scope of this project unless specifically listed above.
- Any service items discussed during demonstrations, conference calls, or other events are not included in the scope of this project unless specifically listed above.

Customer/Cartegraph Responsibilities

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

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

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

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

Not-to-Exceed Proposal

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

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

Cartegraph Systems, Inc.

City of Gig Harbor

By _____
(Signature)

By _____
(Signature)

Randy L. Skemp
(Type or print name)

(Type or print name)

Title Executive Vice President/CRO

Title _____

Date _____

Date _____



Business of the City Council
City of Gig Harbor, WA

**Subject: Amendment No. 6 to
Assigned Counsel Agreement**

**Proposed Council Action: Authorize the
Mayor to Sign the Amendment to the
Assigned Counsel Agreement with
Pierce County**

Dept. Origin: Administration

Prepared by: Ron Williams

For Agenda of: January 11, 2016

**Exhibits: Assigned Counsel Agreement
Initial & Date**

Concurred by Mayor: *JB 1-5-16*
Approved by City Administrator: *RW 1/5/16*
Approved as to form by City Atty: *via email 1-5-16*
Approved by Finance Director: *R 1/5/16*
Approved by Department Head: _____

Expenditure	Fiscal	Amount	Appropriation
Required \$69,786	Consideration \$0	Budgeted \$	Required \$0

INFORMATION / BACKGROUND:

For the past several years, Pierce County Department of Assigned Counsel (DAC) has been providing public defender services for the City's Municipal Court. The one-year agreement with Pierce County for public defender services expired 12/31/2015. The attached 6th Amendment to the original January 2007 Agreement with DAC will run through December 31, 2016.

FISCAL CONSIDERATION:

This Amendment proposes to increase the contract for 2016 from \$68,000 to \$69,786, which includes a 2.627% COLA.

The proposed Amendment contains an additional allowance of \$2,000 per year for certain contracted services (conflict counsel, expert services, and investigations).

BOARD OR COMMITTEE RECOMMENDATION

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to sign the Amendment to the Assigned Counsel Agreement.

AMENDMENT NO. 6 TO ASSIGNED COUNSEL AGREEMENT

THIS AMENDMENT NO. 6 to that certain Assigned Counsel Agreement dated January 1, 2007, as amended (the "Agreement") is made by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and PIERCE COUNTY, a political subdivision of the State of Washington (the "County"), on behalf of its Department of Assigned Counsel (the "Department").

WITNESSETH:

WHEREAS, the parties entered into an Agreement for the provision of legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2007-2008 calendar years; and extended by amendments the Agreement to cover services through the 2015 calendar year; and

WHEREAS, the parties desire to extend the term of the Agreement to cover the calendar year 2016;

NOW, THEREFORE, in consideration of the mutual promises contained in the Agreement and this Amendment, the parties hereto agree as follows:

TERMS:

Section 1. Section 1 of the Agreement is hereby amended to read as follows:

The Department will provide legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2016 calendar year. Such services will include, but are not limited, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by the Court, and at all subsequent proceedings in the Municipal Court. Indigency status will be determined by the City in coordination with the Court.

Section 2. Section 2 of the Agreement is hereby amended to read as follows:

A. In return for the services rendered to the City and to those indigent defendants represented by the Department in 2016, the City agrees to pay the County the annual sum of Sixty Nine Thousand Seven Hundred Eighty Six Dollars (\$ 69,786) which includes a 2.627% COLA increase. Payments shall be made in equal quarterly installments of Seventeen Thousand Four Hundred Forty Six Dollars and 50 Cents (\$17,446.50), due and payable at the end of each quarter for those services rendered.

B. An allowance of \$2,000 shall be available to the County to cover costs associated with conflict counsel, expert services and investigations. These costs will be paid on a reimbursement basis, after presentation of an invoice for such costs. In the event that the retention of the services in this subparagraph exceeds \$2,000, the City

shall provide additional funds for those services so that all payments for those services remain separate from the contract compensation to the County under this Agreement.

Section 3. Section 3 of the Agreement is hereby amended to read as follows:

Section 3. Compliance. The County on behalf of the Department promises and warrants that all services performed under this agreement will comply with all standards as listed under Washington Supreme Court CrRLJ 3.1 and CrR 3.1, the Washington State Bar Association Standards for Indigent Defense (September 2011), and the Rules of Professional Conduct.

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT NO. 6, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment shall become effective upon signature by the last party hereto.

CITY OF GIG HARBOR

PIERCE COUNTY

Mayor Jill Guernsey Date

Michael R. Kawamura, Director Date
Department of Assigned Counsel

Attest:

Approved as to legal form only:

City Clerk Date

By: _____
Deputy Prosecuting Attorney Date

Approved as to legal form only:

Recommended:

City Attorney Date

By: _____
Budget & Finance Date

By: _____
Executive Date