

# Everett City Council Agenda

## 6:30 p.m. February 17, 2016

### City Council Chambers

Roll Call

Approval of Minutes: February 10, 2016

Mayor's Comments

Pledge of Allegiance

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

COUNCIL BRIEFING AGENDA: (These items come before the City Council serving as a Council Committee of the Whole and are likely to be scheduled at a future meeting.)

(1) Further discussion on the limitation of additional retail marijuana stores to be discussed at Planning Commission meeting of March 1, 2016.

(2) Golf Update.

Documents: [Golf Update.pdf](#)

(3) Metropolitan Center Sub Area Plan.

(4) Authorize the Mayor to sign the Fuel Tax Grant Agreement with the State of Washington Transportation Improvement Board for Downtown Streetscape Improvements.

Documents: [Fuel Tax.pdf](#)

(5) Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvements to Ariston Pacific, Inc. in the amount of \$1,062,314.79 including Washington State sales tax.

Documents: [Citywide-1.pdf](#)

(6) CB 1602-08 – 1st Reading – Adopt the Proposed Ordinance adding "Community Center" as a new Special Property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19) (3rd and final reading and public hearing on 3-2-16)

Documents: [CB 1602-08.pdf](#)

(7) CB 1602-09 – 1st Reading – Adopt the Proposed Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a Special Property Use permit, amending Ordinance No. 1671-89, as amended. (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16) (3rd and final reading and public hearing on 3-2-16)

Documents: [CB 1602-09.pdf](#)

(8) CB 1602-10 – 1st Reading – Adopt the Proposed Ordinance creating a Special Improvement Project entitled, “Downtown Streetscape Phase 3,” Fund 303, Program 109, to accumulate all costs for the improvement. (3rd and final reading on 3-2-16)

Documents: [CB 1602-10.pdf](#)

#### PROPOSED ACTION ITEMS:

(9) CB 1602-05–2nd Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled “Duplex –Phone and Data Room Remodel Project”, Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room. (3rd and final reading on 2-24-16).

Documents: [CB 1602-05.pdf](#)

(10) CB 1602-06 – 2nd Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled “Police Headquarters Masonry Restoration Project”, Fund 342, Program 020, authorizing the design and restoration of the existing masonry at Police Headquarters. (3rd and final reading on 2-24-16).

Documents: [CB 1602-05.pdf](#)

(11) CB 1602-07 – 2nd Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled “South Precinct Roof Replacement Project”, Fund 342, Program 022, authorizing the roof replacement at the South Precinct (3rd and final reading on 2-24-16).

Documents: [CB 1602-07.pdf](#)

#### CONSENT ITEMS:

(12) Adopt Resolution No. \_\_\_\_ authorizing claims against the City of Everett in the amount of \$772,730.27 for the period of January 30, 2016 through February 5, 2016.

Documents: [res-74.pdf](#)

#### PUBLIC HEARING:

(13) CB 1601-03 –3rd and final Reading – Adopt the Proposed Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26th Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05

Documents: [CB 1601-03.pdf](#)

#### ACTION ITEMS:

(14) CB 1601-04– 3rd and final Reading – Adopt the Proposed Ordinance creating a Special Improvement Project entitled “Forest Park Swim Center Improvements Project”, Fund 354, Program 048, to accumulate all costs for the improvement project.

Documents: [CB 1601-04.pdf](#)

(15) Authorize the Mayor to sign the Waste 2 Resources Coordinated Prevention Grant Agreement with the Department of Ecology to implement waste reduction and recycling programs, in the amount of \$148,958.00.

Documents: [Waste 2.pdf](#)

(16) Authorize the Mayor to sign the Professional Services Agreement with CG Engineering

Inc. for the sewer structure access retrofit project for an amount not to exceed \$39,945.00.

Documents: [CG Engineering-6.pdf](#)

Executive Session

Adjourn

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Golf Update

2/17/16 Briefing  
 \_\_\_\_\_ Proposed Action  
 \_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
 \_\_\_\_\_ First Reading  
 \_\_\_\_\_ Second Reading  
 \_\_\_\_\_ Third Reading  
 \_\_\_\_\_ Public Hearing  
 \_\_\_\_\_ Budget Advisory

COUNCIL BILL # \_\_\_\_\_  
 Originating Department Parks  
 Contact Person Lori Cummings  
 Phone Number 425-257-8353  
 FOR AGENDA OF February 17, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA db  
 Council President [Signature]

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
American Legion and Walter Hall golf courses	N/A	N/A	Parks & Recreation

Amount Budgeted		
Expenditure Required		
Budget Remaining		
Additional Required		

**DETAILED SUMMARY STATEMENT:**

Between 2006 and 2010, the City Council was provided an annual update regarding the status of municipal golf operations. This included progress made regarding implementation of a new business strategy in 2007 to improve the operation's financial performance, including the repayment of debt incurred in the late 1990's and early 2000's to renovate American Legion Golf Course. Since 2011, annual updates have been primarily related to green-fee revisions. The Board of Park Commissioners has continued to receive an annual report.

This year, the City Council briefing will provide an update regarding recent operational performance, industry and local golfing trends and implications, and staff's current work related to updating the current business strategy.

**RECOMMENDATION (Exact action requested of Council):**

Briefing.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Fuel Tax Grant Agreement	_____	Briefing	COUNCIL BILL #	_____
with the State of Washington	_____	Proposed Action	Originating Department	Public Works
Transportation Improvement	_____	Consent	Contact Person	Ryan Sass
Board for Downtown	_____	Action	Phone Number	425-257-8942
Streetscape Improvements	_____	First Reading	FOR AGENDA OF	Feb 17, 2016
	_____	Second Reading		
	_____	Third Reading		
	_____	Public Hearing		
	_____	Budget Advisory		

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President \_\_\_\_\_

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Rucker Avenue from Pacific to Everett Avenues		TIB Grant Agreement, Project Status Form	Public Works

Amount Budgeted	\$ 7,629,502	
Expenditure Required	\$ 7,629,502	Account Number(s): PW 3640
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The Public Works Department was successful in obtaining grant funds from the Washington State Transportation Improvement Board (TIB) for construction of Downtown Streetscape Improvements.

These improvements were developed as part of the Downtown Plan and the Downtown Streetscape Plan and will include: curbs, gutters, sidewalks, pavement, lighting, signs, traffic signals and streetscaping. The project will also include Americans with Disabilities Act required improvements.

The total cost of improvements is estimated to be \$7,629,502 with the TIB grant providing \$4,103,982 and the balance of \$3,525,520 from local matching funds.

**RECOMMENDATION (Exact action requested of Council):**

Authorize the Mayor to sign the Fuel Tax Grant Agreement with the State of Washington Transportation Improvement Board for Downtown Streetscape Improvements.



Transportation Improvement Board  
**Project Funding Status Form**

Agency: **EVERETT**

TIB Project Number: **8-1-138(035)-1**

Project Name: **Rucker Avenue  
 Pacific Avenue to Everett Avenue (SR 529)**

Verify the information below and revise if necessary.

Return to:  
 Transportation Improvement Board  
 PO Box 40901  
 Olympia, WA 98504-0901

**PROJECT SCHEDULE**

	Target Dates
Construction Approval Date	January 31, 2017
Contract Bid Award	March 31, 2017
Contract Completion	February 28, 2018

**PROJECT FUNDING PARTNERS**

List additional funding partners and amount.

Funding Partners	Amount	Revised Funding
EVERETT	3,525,520	
WSDOT	0	
Federal Funds	0	
<b>TOTAL LOCAL FUNDS</b>	<b>3,525,520</b>	

Signatures are required from two different agency officials. Return the originally signed form to the TIB office.

Mayor or Public Works Director

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Printed or Typed Name Title

Financial Officer

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Printed or Typed Name Title



City of Everett  
8-1-138(035)-1  
Rucker Avenue  
Pacific Avenue to Everett Avenue (SR 529)

**AGENCY**

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of Everett  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the Rucker Avenue, Pacific Avenue to Everett Avenue (SR 529) (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Everett, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of \$4,103,982 for the project specified above, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable



amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

#### 5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

#### 6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

#### 7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

#### 8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### 9.0 DEFAULT AND TERMINATION

##### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

##### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:



- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

### 9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

## 10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

## 11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for costs incurred in excess of the grant amount. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the original ratio between TIB funds and total project costs.



## 12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

## 13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

## 14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.



15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form  
Attorney General

By:

Signature on file

\_\_\_\_\_  
Guy Bowman  
Assistant Attorney General

Lead Agency

Transportation Improvement Board

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvement projects to Ariston Pacific, Inc.

\_\_\_\_\_ Briefing  
 \_\_\_\_\_ Proposed Action  
 \_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
 \_\_\_\_\_ First Reading  
 \_\_\_\_\_ Second Reading  
 \_\_\_\_\_ Third Reading  
 \_\_\_\_\_ Public Hearing  
 \_\_\_\_\_ Budget Advisory

COUNCIL BILL # \_\_\_\_\_  
 Originating Department Public Works  
 Contact Person Ryan Sass  
 Phone Number 425-257-8942  
 FOR AGENDA OF February 17, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA db  
 Council President [Signature]

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Various	City Council authorized Call for Bids December 16, 2015	Bid Summary	Public Works

Amount Budgeted	\$1,230,000	
Expenditure Required	\$1,230,000	Account Number(s): PW3523 and PW3524
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

Bids for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvements projects were opened on January 26, 2016 with eight (8) bid proposals received for the construction projects. The lowest responsive and responsible bidder, Ariston Pacific, Inc., submitted a bid for \$1,062,314.79.

These improvements will include increasing the visibility of pedestrians in crosswalks, upgrading pavement markings, installing permanent radar speed signs, improving traffic signal phasing and installing police enforcement "telltale" lights at certain intersections.

The funding sources for these projects are:

Federal Grant – HSIP-000S (330)	\$ 450,000
Federal Grant – HSIP-000S (331)	<u>780,000</u>
Total Funds:	<u><u>\$1,230,000</u></u>

**RECOMMENDATION (Exact action requested of Council):**

Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvement projects to Ariston Pacific, Inc. in the amount of \$1,062,314.79 including Washington State sales tax.

**BID SUMMARY**

**PACIFIC/BROADWAY & CITYWIDE SAFETY IMPROVEMENTS**

**W.O.# PW3523 & PW 3524**

**Date** 1/27/2016

For: Corey Hert, Project Engineer

Bidder Name:	Bidder Totals:
ENGINEER'S ESTIMATE	\$922,112.78
Ariston Pacific, Inc.	\$1,062,314.79
Totem Electric	\$1,106,236.00
Global Contractors, LLC	\$1,138,107.46
Colacurcio Brothers, Inc.	\$1,182,209.00
SRV Construction	\$1,188,261.00
Faber Construction	\$1,213,133.37
Kamins Construction	\$1,219,408.78
Transportation Systems, Inc	\$1,266,994.44

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance adding  
 "community center" as a  
 new special property use  
 allowed in all zones,  
 amending Ordinance No.  
 1671-89, as amended (EMC  
 Title 19)

_____	Briefing
_____	Consent
<u>3/2/16</u>	Action
<u>2/17/16</u>	First Reading
<u>2/24/16</u>	Second Reading
<u>3/2/16</u>	Third Reading
<u>3/2/16</u>	Public Hearing

COUNCIL BILL #  
 Originating Dept.  
 Contact Person  
 Phone Number  
 FOR AGENDA OF

CB1602-08  
Planning  
Allan Giffen  
425-257-8725  
February 17, 2016

Initialed by:  
 Department Head  
 CAA  
 Council President

\_\_\_\_\_  
*do*  
 \_\_\_\_\_  
*SPM*

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
City-wide	Planning Commission Resolution 16-03	Ordinance	Legal, Planning

Amount Budgeted	N/A	
Expenditure Required	N/A	
Budget Remaining	N/A	
Additional Required	N/A	

**DETAILED SUMMARY STATEMENT:**

The City received a request to amend the zoning code to allow consideration of "community center" as a new use to be permitted through the special property use permit process. The Planning Commission held public workshops on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to the request. The Planning Commission held a public hearing on January 19, 2016 to consider public testimony and recommends that the City Council approve the attached ordinance.

**RECOMMENDATION (Exact action requested of Council):**

Adopt an Ordinance adding "community center" as a new special property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19).

ORDINANCE NO. \_\_\_\_\_

**An Ordinance adding “community center” as a new special property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19).**

WHEREAS, the City of Everett Zoning Code contains regulations for special property uses to allow in certain cases a use in a zone that is not specifically allowed in that zone; and

WHEREAS, it is necessary from time to time to update zoning regulations to provide clarification or create additional standards related to specific uses; and

WHEREAS, the City received a request to amend the Zoning Code to allow consideration of “community center” as a new use to be permitted through the special property use permit process; and

WHEREAS, the proposed amendment to the Zoning Code will provide for additional opportunities for the community to access recreational, educational, social, and cultural activities; and

WHEREAS, the proposed amendments were submitted for the mandatory 60-day state agency review; and

WHEREAS, the Planning Commission held a public workshop on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to community center as a new use; and

WHEREAS, the Planning Commission held a public hearing on January 19, 2016 to consider public testimony and make a recommendation concerning zoning regulations for community center as a new use; and

WHEREAS, after holding a public hearing, The Planning Commission found that the proposed amendments are consistent with the Comprehensive Plan Policies; and

WHEREAS, the City Council finds the following:

1. The proposed amendments are consistent with the applicable provisions of the Everett Management Comprehensive Plan; and
2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and

2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and
3. The proposed amendments promote the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

**Section 1.** Section 4 of Ordinance No. 1671-89, as amended (EMC 19.4.020), is hereby amended by the addition of the following:

- (a) **“Community Center”** means a building or other enclosed structure open to the general public that is owned and operated by a public agency or nonprofit corporation, organization or association registered by Washington State, and that is used primarily for cultural, educational, recreational, or social purposes, and may include other minor supporting uses or activities. Not included in the category of community center as a primary use are those businesses and occupations defined by this title as clinics, medical-related activities, personal services, service businesses, government administrative offices or uses such as churches, schools, private clubs or fraternal organizations.

**Section 2.** Section 5 of Ordinance No. 1671-89, as amended (EMC 19.5, Table 5.2), which reads as follows:

Table 5.2 Nonresidential uses.

ZONE USE	A-1	R-2	R-S	R-1(A)	R-3(L)	R-3	R-5	B-1	B-2	B-2(B)	B-3	BMU	E-1	MUO	C-1	C-1R	C-2	C-2ES (60)	W-C	M-S	M-M	M-1	M-2 (70)	
<b>SPECIAL PROPERTY USES</b> See Section 41.150.C for general evaluation criteria, and Section 41.150.D for specific use criteria																								
Aircraft landing facilities	III (32)		III (32)																		III	III	III	
Church	III (33)	I	I	(66)	I	I	I	I	I	I	I	III (54)	III		I	I	I							
Crematorium		III (34)				III (34)			I			I	I	I	I	I	I	I				I	I	I
Day care, commercial	III (30)	I	I		I	I	I	I	I	I	I	I			I	I	I							

is hereby amended to read:

Table 5.2 Nonresidential uses.

ZONE USE	R-S	R-1(A)	R-1	R-2(A)	R-3(L)	R-3	R-5	R-4	B-1	B-2	B-2(B)	B-3	BMU E-1	MUO C-1	C-1R	C-2	C-2ES	W-C	M-S	M-M	M-1	M-2
	A-1	R-2(A)	R-1	R-2(A)	R-3(L)	R-3	R-5	R-4	B-1	B-2	B-2(B)	B-3	BMU E-1	MUO C-1	C-1R	C-2	C-2ES	W-C	M-S	M-M	M-1	M-2
<b>SPECIAL PROPERTY USES</b> See Section 41.150.C for general evaluation criteria, and Section 41.150.D for specific use criteria																						
Aircraft landing facilities	III (32)	III (32)																		III	III	III
Church	III (33)	I	I	I (66)	I	I	I	I	I	III (54)	III	I	I	I								
Community Center	III (72)	I	III	I	I	I	I	I	I	I (54)	I	I	I	I								
Crematorium			III (34)				III (34)	III (34)		-1		I	I	I		I	I			I	I	I
Day care, commercial	III (30)	I	I	I	I	I	I	I	I		I	I	I									

**Section 3.** Section 5 of Ordinance No. 1671-89, as amended (EMC 19.5, Table 5.2), is amended by the addition of the following special regulations:

(72) Refer to Section 41.150.D.2.d

**Section 4.** Section 41 of Ordinance No. 1671-89, as amended (EMC 19.41.150), which reads in part as follows:

41.150.D.2. Community Service Facilities.

- a. Public and Private Elementary and Secondary Schools, Colleges, Universities and Public Vocational Education Centers.
  - (1) This section does not apply to private training schools such as beauty schools, business colleges or technical training facilities, which shall be treated as commercial uses by this title.
  - (2) Elementary and middle schools may be located on local or arterial streets. High schools shall be located adjacent to or within four hundred feet of collector or arterial streets.
  - (3) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties. Buildings over twenty-five feet in height shall have an additional setback of one foot for each foot over twenty-five feet in height.
  - (4) Temporary classrooms of any size, and accessory structures smaller than one thousand square feet shall be reviewed using Review Process I.
- b. Churches.
  - (1) New church structures shall be located a minimum of fifteen feet from adjacent residentially zoned properties.
  - (2) Church buildings shall comply with the height requirements of the zone in which it is located. Steeples may exceed the maximum building height.
  - (3) Where churches are located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street.
- c. Hospital.
  - (1) Hospitals and directly related hospital functions shall only be located in areas which are designated "Hospital" (2.4) on the Everett general plan.
  - (2) Hospital-owned or hospital-operated uses which are the same as uses which are permitted in the underlying zone shall be reviewed using Review Process I.
  - (3) Vehicle, pedestrian and ambulance traffic shall be directed toward the nearest collector or arterial street and away from local residential streets.
  - (4) Hospitals and hospital-related structures shall be set back a minimum of fifty feet from adjacent residentially zoned lots.
  - (5) Hospitals and hospital-related uses shall be screened from adjacent residentially zoned lots by the landscaping requirements of Landscape Category B.

**Is hereby amended to read as follows:**

41.150.D.2. Community Service Facilities.

- a. Public and Private Elementary and Secondary Schools, Colleges, Universities and Public Vocational Education Centers.

- (1) This section does not apply to private training schools such as beauty schools, business colleges or technical training facilities, which shall be treated as commercial uses by this title.
- (2) Elementary and middle schools may be located on local or arterial streets. High schools shall be located adjacent to or within four hundred feet of collector or arterial streets.
- (3) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties. Buildings over twenty-five feet in height shall have an additional setback of one foot for each foot over twenty-five feet in height.
- (4) Temporary classrooms of any size, and accessory structures smaller than one thousand square feet shall be reviewed using Review Process I.

b. Churches.

- (1) New church structures shall be located a minimum of fifteen feet from adjacent residentially zoned properties.
- (2) Church buildings shall comply with the height requirements of the zone in which it is located. Steeples may exceed the maximum building height.
- (3) Where churches are located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street.

c. Hospital.

- (1) Hospitals and directly related hospital functions shall only be located in areas which are designated "Hospital" (2.4) on the Everett general plan.
- (2) Hospital-owned or hospital-operated uses which are the same as uses which are permitted in the underlying zone shall be reviewed using Review Process I.
- (3) Vehicle, pedestrian and ambulance traffic shall be directed toward the nearest collector or arterial street and away from local residential streets.
- (4) Hospitals and hospital-related structures shall be set back a minimum of fifty feet from adjacent residentially zoned lots.
- (5) Hospitals and hospital-related uses shall be screened from adjacent residentially zoned lots by the landscaping requirements of Landscape Category B.

d. Community Center.

- (1) A community center shall be located adjacent to or within four hundred feet of collector or arterial streets.
- (2) A community center shall be located within ¼ mile of transit routes.
- (3) Where a community center is located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street. The Review Authority may allow other means of access through the review process to provide for safe circulation and emergency vehicle access.
- (4) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties.
- (5) Community center buildings shall comply with the height requirements of the zone in which it is located, however the Review Authority may consider allowing a greater height provided the additional height is necessary to accommodate the functional needs of the facility and that the facility is designed to be the lowest height that will accommodate the functional needs.
- (6) All freestanding signs shall be monument signs with a maximum height of eight feet and shall include low plantings around the base of the sign to make it a part of the landscape.

**Section 5.** Section 34 of Ordinance No. 1671-89, as amended (EMC 19.34, Table 34-1), which reads in part as follows:

**TABLE No. 34-1**

**Off-Street Parking for All Zones Except the B-3 Zone**

<b>Use</b>	<b>Parking Requirement</b>
------------	----------------------------

**NONRESIDENTIAL USES**

**SPECIAL PROPERTY USES**

Aircraft landing facilities	See Section 34.030
Church	1 per each 5 seats in nave or chapel
Crematorium	See Section 34.030
Day care, commercial	1 per each 10 children or 1 employee, whichever is greater, plus 1 loading space for each 20 children

**Is hereby amended to read as follows:**

**TABLE No. 34-1**

**Off-Street Parking for All Zones Except the B-3 Zone**

<b>Use</b>	<b>Parking Requirement</b>
------------	----------------------------

**NONRESIDENTIAL USES**

**SPECIAL PROPERTY USES**

Aircraft landing facility	See Section 34.030
Church	1 per each 5 seats in nave or chapel
<u>Community Center</u>	<u>See Section 34.030</u>
Crematorium	See Section 34.030
Day care, commercial	1 per each 10 children or 1 employee, whichever is greater, plus 1 loading space for each 20 children

**Section 6.** Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 7.** Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 8.** Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**Section 9.** General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

\_\_\_\_\_  
**Ray Stephanson, Mayor**

**ATTEST:** \_\_\_\_\_  
**CITY CLERK**

**Passed:** \_\_\_\_\_

**Valid:** \_\_\_\_\_

**Published:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16)

_____	Briefing
_____	Consent
<u>3/2/16</u>	Action
<u>2/17/16</u>	First Reading
<u>2/24/16</u>	Second Reading
<u>3/2/16</u>	Third Reading
<u>3/2/16</u>	Public Hearing

COUNCIL BILL # CB1602-09  
 Originating Dept. Planning  
 Contact Person Allan Giffen  
 Phone Number 425-257-8725  
 FOR AGENDA OF February 17, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA db  
 Council President [Signature]

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
City-wide	Planning Commission Resolution 16-02	Ordinance	Legal, Planning

Amount Budgeted	N/A	
Expenditure Required	N/A	
Budget Remaining	N/A	
Additional Required	N/A	

**DETAILED SUMMARY STATEMENT:**

The City received a request to amend the special property use regulations to allow consideration of alternative uses for a change of an existing non-residential use in a residential zone, such as a church that would otherwise not be permitted. The Planning Commission held public workshops on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to adaptive reuse of non-residential buildings in residential zones. The Planning Commission held a public hearing on January 19, 2016 to consider public testimony and recommends that the City Council approve the attached ordinance.

**RECOMMENDATION (Exact action requested of Council):**

Adopt an Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16)



ORDINANCE NO. \_\_\_\_\_

**An Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16).**

WHEREAS, the City of Everett Zoning Code contains regulations for special property uses to allow in certain cases a use in a zone that is not specifically allowed in that zone; and

WHEREAS, the City of Everett Zoning Code contains regulations for adaptive reuse of properties located within a historic overlay zone; and

WHEREAS, it is necessary from time to time to update zoning regulations to provide clarification or create additional standards related to specific uses; and

WHEREAS, the City received a request to amend the special property use regulations to allow consideration of a change to existing non-residential uses in residential zones, such as a church, that would otherwise not be permitted; and

WHEREAS, the proposed amendment to the Zoning Code will provide for greater economic feasibility and improve neighborhood stabilization; and

WHEREAS, the proposed amendments were submitted for the mandatory 60-day state agency review; and

WHEREAS, the Planning Commission held a public workshop on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to adaptive reuse of non-residential buildings in residential zones; and

WHEREAS, the Planning Commission held a public hearing on January 19, 2016 to consider public testimony and make a recommendation concerning zoning regulations for adaptive reuse of non-residential buildings in residential zones; and

WHEREAS, after holding a public hearing, The Planning Commission found that the proposed amendments are consistent with the Compressive Plan Policies; and

WHEREAS, the City Council finds the following:

1. The proposed amendments are consistent with the applicable provisions of the Everett Management Comprehensive Plan; and
2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and
3. The proposed amendments promote the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

**Section 1.** Section 4 of Ordinance No. 1671-89, as amended (EMC 19.4.020), is hereby amended by the addition of the following definitions:

- (a) **“Adaptive reuse”** means the process of reusing a building for a purpose or use other than for which it was built or designed.
- (b) **“Business incubator”** means an organization designed to facilitate the growth and success of entrepreneurial companies through a variety of business support resources and services that could include physical space, capital, coaching, common services, and networking connections.
- (c) **“Redevelopment”** means the process to rebuild, restore or develop an area or property that has previously been developed for a specific use or purpose.
- (d) **“Religious facility”** means a place where religious services are conducted as the principal purpose, such as a church, mosque, synagogue or temple, and includes accessory uses in the primary or accessory buildings such as religious education, reading rooms, assembly rooms, and residences for pastoral staff.

**Section 2.** Section 41 of Ordinance No. 1671-89, as amended (EMC 19.41.150), which reads in part as follows:

41.150.E. Notification. Notification for special property use applications shall be provided according to the required review process, as specified in Title 15, Local Project Review Procedures.

F. Review Authority Decisions.

1. Conditions and Restrictions. If the review authority approves a special property use permit, conditions and restrictions may be applied thereto, which exceed the minimum standards required by this title, when necessary to assure that the proposed use complies with all requirements of this title and is compatible with surrounding land uses.
2. Time Limit on Approval. The effective time period in which the applicant may establish the use proposed by an approved special property use permit shall be five years from the date of the written order granting approval of the permit. The written order may specify a

shorter time period if the review authority determines that it is in the public interest to authorize a shorter period of time in which to establish the use. The planning department may authorize one extension of time for a period of not more than one year if it can be found that circumstances beyond the control of the applicant prevented the establishment of the use.

3. Appeals.

- a. Review Process II. The planning director's Review Process II determination may be appealed as provided by Title 15, Local Project Review Procedures.
- b. Review Process III. No administrative appeal is provided for Review Process III decisions.

**Is hereby amended to read as follows:**

41.150.E. Adaptive Reuse of Non-Residential Buildings in Residential Zones.

1. Purpose. The purpose of this section is to allow for adaptive reuse of non-residential buildings in residential zones that are functionally obsolete in order to improve the economic feasibility of a property by considering uses that are not otherwise permitted, but which, if properly designed and managed, would not create unacceptable impacts on surrounding properties or the immediate vicinity in general. This process differs from the unlisted use process listed in EMC Section 19.02.080 in that uses that are not specifically authorized in the underlying residential zone may be considered using the process described herein.

2. Procedures. Any request to allow a use that is not otherwise permitted in the underlying residential zone shall be processed as a special property use. If the property is in or within 500 feet of a single family residential zone, the application shall be reviewed using Review Process III. If the property is more than 500 feet from a single family residential zone but is in or within 150 feet of a multiple family residential zone, the application shall be reviewed using Review Process II. If the property is outside a historic overlay zone but listed on a historic register or as a contributing structure in a historic register district, the historical commission shall review the proposal and make a recommendation to the hearing examiner using Review Process III.

3. Circumstances. The city may allow a use in a residential zone that is not specifically allowed in that zone if it is necessary to encourage adaptive reuse of a building under the following circumstances:

- a. It is unlikely that the primary building on the subject property could be preserved if only uses permitted in the underlying zone were allowed.
- b. Allowing a different use would enhance the character of the building and immediate vicinity.
- c. The use would not have a detrimental effect upon surrounding properties or the immediate vicinity.

4. Uses. The following uses may be considered for adaptive reuse of an existing building in a residential zone:

- a. Dwelling units. Density based on underlying zoning plus one additional dwelling unit;
- b. Assisted living facilities;
- c. Libraries;

- d. Museums and art galleries;
- e. Social service facilities;
- f. Public services;
- g. Business incubator;
- h. Artist studios;
- i. Music venue;
- j. Cafes and bistros;
- k. Live-work units;
- l. Bed & Breakfast
- m. Other uses not listed above if determined through the review process to be compatible with surrounding properties and the immediate vicinity.

5. Review Criteria. The following criteria shall be used as the basis for determining compatibility with surrounding uses and approving, denying, or conditionally approving a request to allow the adaptive reuse of a non-residential building in a residential zone:

- a. General evaluation criteria of 41.150.C.
- b. The adaptive reuse would promote or aid in the preservation or rehabilitation of the primary building.
- c. No significant adverse impacts to public safety.
- d. Compliance with building and fire codes.
- e. Hours of the day of proposed use or activity.
- f. Proposed management and operational procedures to minimize and mitigate potential impacts.
- g. Expansions to the primary building shall not exceed 10% of the existing footprint or 500 square feet, whichever is greater, and will not detrimentally affect the outside character of the building.
- h. Other factors not specified herein that would create adverse impacts to the immediate vicinity.

6. Any proposal that would adversely affect properties in the immediate vicinity shall be denied. The city shall retain the right to revoke a permit issued under this section that fails to comply with any conditions of approval of said permit, or which operates in a manner inconsistent with representations made in the application, pursuant to EMC Title 1 Chapter 1.20.

F. Notification. Notification for special property use applications shall be provided according to the required review process, as specified in Title 15, Local Project Review Procedures.

G. Review Authority Decisions.

1. Conditions and Restrictions. If the review authority approves a special property use permit, conditions and restrictions may be applied thereto, which exceed the minimum standards required by this title, when necessary to assure that the proposed use complies with all requirements of this title and is compatible with surrounding land uses.

2. Time Limit on Approval. The effective time period in which the applicant may establish the use proposed by an approved special property use permit shall be five years from the date of the written order granting approval of the permit. The written order may specify a shorter time period if the review authority determines that it is in the public interest to authorize a shorter period of time in which to establish the use. The planning department

may authorize one extension of time for a period of not more than one year if it can be found that circumstances beyond the control of the applicant prevented the establishment of the use.

3. Appeals.

- a. Review Process II. The planning director's Review Process II determination may be appealed as provided by Title 15, Local Project Review Procedures.
- b. Review Process III. No administrative appeal is provided for Review Process III decisions.

**Section 3.** Section 3B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.080), which reads as follows:

**Decisions included.**

A. Review Process II applications include the following administrative decisions:\*

1. Alteration of a designated significant feature within an historic overlay zone;
2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);
3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);
4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;
5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);
6. Comprehensive design plan permits as provided by Section 19.36.210;
7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;
8. Determination of proportionality for correctional facilities;
9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);
10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);
11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);
12. Deviation from historic overlay zone standards and guidelines;

13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);
14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));
15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));
16. Final PDO development plan as provided by Section 19.29.110;
17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));
18. Land divisions, as follows:
  - a. Preliminary binding site plan;
  - b. Preliminary binding site plan with site plan approval;
  - c. Preliminary residential condominium binding site plan;
  - d. Preliminary short subdivision alteration or vacation;
  - e. Preliminary short subdivision of nine lots or less;
  - f. Preliminary short subdivision with nonconforming structures;
  - g. Preliminary subdivision of fifty lots or less;\*\*
  - h. Preliminary subdivision alteration or vacation;
  - i. Subdivision or short subdivision variance as provided in Section 18.32.010;
19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);
20. Minor expansion of an existing special property use;
21. Outdoor use, activity, and storage: modification of standards;
22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);
23. Parking reduction with transportation management plan (Section 19.34.070(D));

24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;
25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;
26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;
27. Project review for public projects that are not categorically exempt under SEPA;
28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);
29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);
30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B);
31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);
32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;
33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);
34. Wetland alteration for category I, category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.120(B)(1), (2), and (3);
35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);
36. Clinic- and medical-related activities as provided by Section 19.16.040(C);
37. All other review processes listed in the zoning code as Review Process II;
38. All Review Process I and project permit applications that are not categorically exempt under SEPA;
39. Alternative best available science decisions as provided by Section 19.37.050(E);
40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);

41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);
42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);
43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d);
44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030;
45. Buffer management as provided by Section 19.37.060(B)(2);
46. Removal of nonhazardous trees as provided by Section 19.37.060(B)(3)(c).

\* SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.

\*\* An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii) either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

**Is hereby amended to read as follows:**

**Decisions included.**

- A. Review Process II applications include the following administrative decisions:\*
1. Alteration of a designated significant feature within an historic overlay zone;
  2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);
  3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);
  4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;
  5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);

6. Comprehensive design plan permits as provided by Section 19.36.210;
7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;
8. Determination of proportionality for correctional facilities;
9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);
10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);
11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);
12. Deviation from historic overlay zone standards and guidelines;
13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);
14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));
15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));
16. Final PDO development plan as provided by Section 19.29.110;
17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));
18. Land divisions, as follows:
  - a. Preliminary binding site plan;
  - b. Preliminary binding site plan with site plan approval;
  - c. Preliminary residential condominium binding site plan;
  - d. Preliminary short subdivision alteration or vacation;
  - e. Preliminary short subdivision of nine lots or less;
  - f. Preliminary short subdivision with nonconforming structures;
  - g. Preliminary subdivision of fifty lots or less;\*\*

- h. Preliminary subdivision alteration or vacation;
  - i. Subdivision or short subdivision variance as provided in Section 18.32.010;
19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);
  20. Minor expansion of an existing special property use;
  21. Outdoor use, activity, and storage: modification of standards;
  22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);
  23. Parking reduction with transportation management plan (Section 19.34.070(D));
  24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;
  25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;
  26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;
  27. Project review for public projects that are not categorically exempt under SEPA;
  28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);
  29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);
  30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B);
  31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);
  32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;
  33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);

34. Wetland alteration for category I, category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.120(B)(1), (2), and (3);
35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);
36. Clinic- and medical-related activities as provided by Section 19.16.040(C);
37. All other review processes listed in the zoning code as Review Process II;
38. All Review Process I and project permit applications that are not categorically exempt under SEPA;
39. Alternative best available science decisions as provided by Section 19.37.050(E);
40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);
41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);
42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);
43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d);
44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030;
45. Buffer management as provided by Section 19.37.060(B)(2);
46. Removal of nonhazardous trees as provided by Section 19.37.060(B)(3)(c).
47. Adaptive reuse of non-residential buildings in residential zones as provided by Section 19.41.150.E.

\* SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.

\*\* An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii)

either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

**Section 4.** Section 4B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.110), which reads as follows:

**Review Process IIIA.**

A. Review Process IIIA applies to the following actions for which the examiner issues a final decision on the application after an open public hearing:

1. Appeals of Review Process I and II planning director decisions, including appeals of the application of development standards by the director;
2. Clinic and medical related activities overlay and office overlay as provided by Section 19.16.020(B) and 19.16.040(B);
3. Change in manufacturing activities which do not comply with M-1 zone uses and standards as provided by Section 19.27.040(C);
4. Commercial daycare in all residential zones and A-1 and B-1 zones;
5. Conditional use permits;
6. Detached accessory building which exceeds fifteen feet in height or one thousand square feet in area as provided by Section 19.07.020(K);
7. Expansion of a nonconforming use (greater than twenty-five percent);
8. Jails and correctional facilities siting in the B-3 and C-1 zones as provided by Section 19.39.105;
9. Land divisions, as follows:
  - a. Preliminary cluster subdivision or cluster short subdivision;
  - b. Preliminary subdivision of more than fifty lots;
  - c. Preliminary subdivision of fifty lots or less if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);
  - d. Subdivision or short subdivision alteration or vacation if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);
10. Land uses in WRM zone consistent with adopted management plan located in areas subject to a city shoreline substantial development permit as provided by Section 19.30A.020;

11. Parking modification requests for Review Process III projects (Section 19.34.070(A)(1)) and quantity and location of parking for Review Process III projects as provided by Section 19.34.060(F);
12. Public utility and infrastructure exception under Sections 19.33D.400(E) and 19.37.050(C);
13. Shoreline permits (one acre or more of the project footprint is within shoreline jurisdiction);
14. Shoreline permits requiring a shoreline variance or shoreline conditional use permit;
15. Special property use permits listed as Review Process III in city ordinance;
16. Time extension for nonconforming adult use business as provided by Section 19.39.025(B)(3);
17. Variances in accordance with Section 19.30.080, 19.41.130, 19.34.070(A)(2), or 20.08.180;
18. Waivers, exceptions, variances, and appeals from the city's street and sidewalk codes and commute trip reduction ordinance;
19. All other review processes listed in the zoning code as Review Process III;
20. Any other action not explicitly listed herein which the examiner is given jurisdiction over and for which a review process is not identified shall be processed using Review Process III.

**Is hereby amended to read as follows:**

**Review Process IIIA.**

A. Review Process IIIA applies to the following actions for which the examiner issues a final decision on the application after an open public hearing:

1. Appeals of Review Process I and II planning director decisions, including appeals of the application of development standards by the director;
2. Clinic and medical related activities overlay and office overlay as provided by Section 19.16.020(B) and 19.16.040(B);
3. Change in manufacturing activities which do not comply with M-1 zone uses and standards as provided by Section 19.27.040(C);
4. Commercial daycare in all residential zones and A-1 and B-1 zones;
5. Conditional use permits;

6. Detached accessory building which exceeds fifteen feet in height or one thousand square feet in area as provided by Section 19.07.020(K);
7. Expansion of a nonconforming use (greater than twenty-five percent);
8. Jails and correctional facilities siting in the B-3 and C-1 zones as provided by Section 19.39.105;
9. Land divisions, as follows:
  - a. Preliminary cluster subdivision or cluster short subdivision;
  - b. Preliminary subdivision of more than fifty lots;
  - c. Preliminary subdivision of fifty lots or less if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);
  - d. Subdivision or short subdivision alteration or vacation if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);
10. Land uses in WRM zone consistent with adopted management plan located in areas subject to a city shoreline substantial development permit as provided by Section 19.30A.020;
11. Parking modification requests for Review Process III projects (Section 19.34.070(A)(1)) and quantity and location of parking for Review Process III projects as provided by Section 19.34.060(F);
12. Public utility and infrastructure exception under Sections 19.33D.400(E) and 19.37.050(C);
13. Shoreline permits (one acre or more of the project footprint is within shoreline jurisdiction);
14. Shoreline permits requiring a shoreline variance or shoreline conditional use permit;
15. Special property use permits listed as Review Process III in city ordinance;
16. Time extension for nonconforming adult use business as provided by Section 19.39.025(B)(3);
17. Variances in accordance with Section 19.30.080, 19.41.130, 19.34.070(A)(2), or 20.08.180;
18. Adaptive reuse of non-residential buildings in residential zones as provided by Section 19.41.150.E.
19. Waivers, exceptions, variances, and appeals from the city's street and sidewalk codes and commute trip reduction ordinance;

20. All other review processes listed in the zoning code as Review Process III;

21. Any other action not explicitly listed herein which the examiner is given jurisdiction over and for which a review process is not identified shall be processed using Review Process III.

**Section 5.** Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 6.** Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 7.** Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**Section 8.** General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

\_\_\_\_\_  
**Ray Stephanson, Mayor**

**ATTEST:** \_\_\_\_\_  
**CITY CLERK**

**Passed:** \_\_\_\_\_

**Valid:** \_\_\_\_\_

**Published:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance creating a special improvement project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement

- Briefing
- Proposed Action
- Consent
- Action
- First Reading
- Second Reading
- Third Reading
- Public Hearing
- Budget Advisory

COUNCIL BILL # CB1602-10  
 Originating Department Public Works  
 Contact Person Ryan Sass, PE  
 Phone Number 425-257-8942  
 FOR AGENDA OF February 17, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA db  
 Council President [Signature]

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Rucker Avenue from Pacific to Everett Avenues		Proposed Ordinance Vicinity map	Public Works

Amount Budgeted	\$ 7,629,502	
Expenditure Required	\$ 7,629,502	Account Number(s): PW3640
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

This project will complete Streetscape Improvements on Rucker Avenue from Pacific Avenue to Everett Avenue in accordance with the Downtown Plan and the Downtown Streetscape Plan.

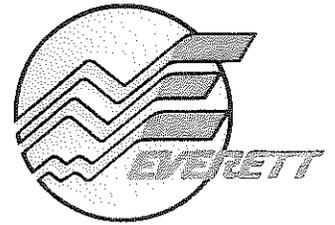
The improvements included in the project are curbs, gutters, sidewalks, pavement, lighting, signs, traffic signals and streetscaping. The project will also include Americans with Disability Act required improvements.

The budget for this project is \$7,629,502 and the sources of funds are:

Transportation Improvement Board (TIB) Grant	\$ 4,103,982
CIP 4	<u>3,525,520</u>
Total sources of funds	\$ 7,629,502

**RECOMMENDATION (Exact action requested of Council):**

Adopt an Ordinance creating a special improvement project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE creating a special improvement project entitled,  
"Downtown Streetscape Phase 3," Fund 303, Program 109, to  
accumulate all costs for the improvement.

WHEREAS, the City of Everett is committed to a planned streetscape improvement program;  
and

WHEREAS, the City of Everett has identified the need and obtained funds to construct certain  
streetscape improvements to Rucker Avenue; and

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

A special improvement project is hereby established as Fund 303, Program 109, entitled  
"Downtown Streetscape Phase 3," to accumulate all costs for the improvement.

Section 2:

Authorization is hereby given to accumulate costs and distribute payments from Fund 303,  
Program 109, for the improvement project.

Section 3:

Authorization is hereby granted for the "Public Works Director" or "City Engineer," under  
direction of the Mayor, to assume full and complete responsibility for conducting all tasks and  
doing all things to accomplish the actions authorized in this ordinance.

Section 4:

The sum of \$7,629,502 is hereby appropriated to Fund 303, Program 109, "Downtown  
Streetscape Phase 3," as follows:

A. Estimated Project Costs

Design & Construction	\$ 7,629,502
Total Estimated Cost	<u>\$ 7,629,502</u>

B. Source of Funds

Transportation Improvement Board Grant	\$ 4,103,982
CIP 4	3,525,520
Total Estimated Funds	<u>\$ 7,629,502</u>

C. This appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of reappropriation.

Section 5:

The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

Section 6: Severability.

If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

\_\_\_\_\_  
RAY STEPHANSON, Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

Passed:

Valid:

Published:

Effective:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room

\_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
 2/10 First Reading  
 2/17 Second Reading  
 2/24 Third Reading  
 \_\_\_\_\_ Public Hearing

COUNCIL BILL # CB1602-05  
 Originating Department Facilities  
 Contact Person Scott Pattison  
 Phone Number 425-257-8846  
 FOR AGENDA OF February 10, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President db  
sm

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
9425 Holly Drive	None	Ordinance	Facilities, Information Technology

Amount Budgeted	\$140,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 021
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The City-owned Duplex located between the South Library and Fire Station No. 6 has been abandoned for years and has become an attractive nuisance. An existing City phone and data hub is located in a garage in the Duplex. The plan for this project is to demolish the existing Duplex and create a solid and secure structure around the existing phone and data room. The proposed Ordinance will fund the design and remodel of the existing Duplex Phone & Data Room.

The estimated cost of the project is as follows:

Design	\$ 10,000
Construction	\$ 120,000
<u>Project Costs</u>	<u>\$ 10,000</u>
TOTAL	\$ 140,000

The source of funds will be CIP 1.

**RECOMMENDATION:** Adopt an Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.**

**WHEREAS,** the City Council has recognized the need to remodel the Duplex phone and data room located at 9425 Holly Drive.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

Section 1: A special construction fund is hereby established as Fund 342, Program 021 entitled "Duplex – Phone & Data Room Remodel Project" to accumulate the design and construction costs required to remodel the phone and data room at the Duplex.

Section 2: Authorization is hereby granted to the Facilities/Property Management Director under the administration of the Mayor, to assume full responsibility for conducting all tasks and performing all necessary steps to accomplish the actions authorized by this Ordinance.

Section 3: The estimated cost of the project is \$140,000.00 including costs related to design, construction, equipment and contract administration.

Section 4: The sum of \$140,000.00 is hereby appropriated to Fund 342, Program 021 "Duplex – Phone & Data Room Remodel Project".

A. Use of Funds

Design	\$ 10,000
Construction	120,000
Project Costs	<u>10,000</u>
Total	\$ 140,000

B. Source of Funds

CIP 1	\$140,000
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C. The appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of re-appropriation.

Section 5: The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

Section 6: Severability. If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

**CITY OF EVERETT**

\_\_\_\_\_  
Ray Stephanson, Mayor

Attest:

\_\_\_\_\_  
Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room

\_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
 2/10 First Reading  
 2/17 Second Reading  
 2/24 Third Reading  
 \_\_\_\_\_ Public Hearing

COUNCIL BILL # CB1602-05  
 Originating Department Facilities  
 Contact Person Scott Pattison  
 Phone Number 425-257-8846  
 FOR AGENDA OF February 10, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President db  
sm

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
9425 Holly Drive	None	Ordinance	Facilities, Information Technology

Amount Budgeted	\$140,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 021
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The City-owned Duplex located between the South Library and Fire Station No. 6 has been abandoned for years and has become an attractive nuisance. An existing City phone and data hub is located in a garage in the Duplex. The plan for this project is to demolish the existing Duplex and create a solid and secure structure around the existing phone and data room. The proposed Ordinance will fund the design and remodel of the existing Duplex Phone & Data Room.

The estimated cost of the project is as follows:

Design	\$ 10,000
Construction	\$ 120,000
<u>Project Costs</u>	<u>\$ 10,000</u>
<b>TOTAL</b>	<b>\$ 140,000</b>

The source of funds will be CIP 1.

**RECOMMENDATION:** Adopt an Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.**

**WHEREAS,** the City Council has recognized the need to remodel the Duplex phone and data room located at 9425 Holly Drive.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

Section 1: A special construction fund is hereby established as Fund 342, Program 021 entitled "Duplex – Phone & Data Room Remodel Project" to accumulate the design and construction costs required to remodel the phone and data room at the Duplex.

Section 2: Authorization is hereby granted to the Facilities/Property Management Director under the administration of the Mayor, to assume full responsibility for conducting all tasks and performing all necessary steps to accomplish the actions authorized by this Ordinance.

Section 3: The estimated cost of the project is \$140,000.00 including costs related to design, construction, equipment and contract administration.

Section 4: The sum of \$140,000.00 is hereby appropriated to Fund 342, Program 021 "Duplex – Phone & Data Room Remodel Project".

A. Use of Funds

Design	\$ 10,000
Construction	120,000
Project Costs	<u>10,000</u>
Total	\$ 140,000

B. Source of Funds

CIP 1	\$140,000
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C. The appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of re-appropriation.

Section 5: The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

Section 6: Severability. If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

**CITY OF EVERETT**

\_\_\_\_\_  
Ray Stephanson, Mayor

Attest:

\_\_\_\_\_  
Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.

\_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
 2/10 First Reading  
 2/17 Second Reading  
 2/24 Third Reading  
 \_\_\_\_\_ Public Hearing

COUNCIL BILL # CB1602-07  
 Originating Department Facilities  
 Contact Person Scott Pattison  
 Phone Number 425-257-8846  
 FOR AGENDA OF February 10, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President 

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
1121 SE Everett Mall Way	None	Ordinance	Facilities

Amount Budgeted	\$500,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 022
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The existing Everett Police Department South Precinct roof has suffered numerous leaks and membrane bubbles in recent years and needs to be replaced. The proposed Ordinance will fund the design and replacement of the South Precinct roof.

The estimated cost of the project is as follows:

Design	\$ 50,000
Construction	\$ 440,000
<u>Project Costs</u>	<u>\$ 10,000</u>
TOTAL	\$ 500,000

The source of funds will be CIP 1.

**RECOMMENDATION:**

Adopt an Ordinance creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.**

**WHEREAS**, the City Council has recognized the need to replace the existing roof at the South Precinct located at 1121 SE Everett Mall Way.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

Section 1: A special construction fund is hereby established as Fund 342, Program 022 entitled "South Precinct Roof Replacement Project" to accumulate the design and construction costs required to replace the existing roof.

Section 2: Authorization is hereby granted to the Facilities/Property Management Director under the administration of the Mayor, to assume full responsibility for conducting all tasks and performing all necessary steps to accomplish the actions authorized by this Ordinance.

Section 3: The estimated cost of the project, including costs related to design, construction, equipment, and contract administration shall be determined at the completion of design development.

Section 4: The sum of \$500,000.00 is hereby appropriated to Fund 342, Program 022 "South Precinct Roof Replacement Project".

A. Use of Funds	
Design	\$ 50,000
Construction	440,000
Project Costs	<u>10,000</u>
Total	\$ 500,000

B. Source of Funds	
CIP 1	\$500,000

C. The appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of re-appropriation.

Section 5: The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

Section 6: Severability. If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

**CITY OF EVERETT**

\_\_\_\_\_  
Ray Stephanson, Mayor

Attest:

\_\_\_\_\_  
Sharon Fuller, City Clerk

Passed:

Valid:

Published:



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26<sup>th</sup> Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05

<u>2/3/16</u>	Briefing
_____	Proposed Action
_____	Consent
_____	Action
<u>2/3/16</u>	First Reading
<u>2/10/16</u>	Second Reading
<u>2/17/16</u>	Third Reading
<u>2/17/16</u>	Public Hearing

COUNCIL BILL #	<u>CB1601-03</u>
Originating Department	<u>Planning</u>
Contact Person	<u>Allan Giffen</u>
Phone Number	<u>(425) 257-8725</u>
FOR AGENDA OF	<u>February 3, 2016</u>
	<u>February 10, 2016</u>
	<u>February 17, 2016</u>

Initialed by:

Department Head \_\_\_\_\_

CAA \_\_\_\_\_

Council President \_\_\_\_\_

dg  
82

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
East side of 2600 block of Rockefeller Avenue	Ordinance No. 2847-05; Development Agreement, April 2006	Ordinance; Planning Commission minutes January 5, 2016	Planning, Legal

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

In 2005, the City Council approved an amendment to the comprehensive plan land use map and a rezone for a specific multi-family building proposal on the east side of the 2600 Block of Rockefeller (see attached vicinity map). The property was rezoned to R-5 (Core Residential), and the City and applicant entered into a Development Agreement tied to the specific building design. The reason for the Development Agreement was that the Planning Commission and City Council did not feel that the multiple family development standards that existed at the time were well-suited for properties in the core residential area, and were geared for more suburban style developments.

In 2006, the City Council approved an amendment to the Development Agreement (attached) based on a change in the design of the proposed building. The building has never been built.

In 2008, the City Council adopted the Core Area Residential Standards that apply specifically to the neighborhoods surrounding the downtown. These standards are designed for the north Everett block and lot patterns. The Core Area standards are codified in Chapter 33G of the Zoning Code. The Planning Commission held a public hearing on January 5, 2016, and has recommended that the City Council authorize the Mayor to execute an agreement with RAL to terminate the development agreement.

**RECOMMENDATION (Exact action requested of Council):**

Adopt an Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26<sup>th</sup> Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05.

**Ordinance No. \_\_\_\_\_**

**An Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26<sup>th</sup> Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05.**

WHEREAS, the City Council finds the following:

1. Ordinance No. 2847-05 rezoned property located on the east side of Rockefeller Avenue between 26<sup>th</sup> Street and Everett Avenue from R-4 (Multiple Family High Density) to R-5 (Core Residential) with a development agreement between the City and Rockefeller Avenue LLC (RAL) allowing for the development of a building with 40 multiple-family dwelling units, subject to a number of conditions related to the design of the proposed structure in order to promote greater compatibility with the surrounding neighborhood;
2. The original development agreement was amended by the City Council with a revised building plan in 2006;
3. The property has not developed since the original rezone action and execution of the development agreement and the subsequent amended development agreement;
4. In 2008, the City Council adopted Ordinance No. 3072-08 establishing the Core Area Residential Standards for housing within the area surrounding downtown Everett, including the block in which the subject property is located;
5. The Core Area Residential Standards address site and building design standards for the entire area that better address design compatibility with the surrounding development than previous design regulations;
6. RAL has acquired additional contiguous property to include in a residential redevelopment proposal;
7. RAL wishes to change the design of the structure to a different configuration than required by the amended development agreement;
8. RAL wishes to design a building that meets the requirements of the 2008 Core Residential Area Standards and to void the Development Agreement;

And;

WHEREAS, the City Council concludes:

1. The building plan in the amended development agreement does not conform with the larger amount of land RAL has assembled in the subject block;
2. The Core Area Residential Standards have improved the quality of the City's design-related land use regulations in the subject area;

3. The revocation of the applicable development agreement for a portion of the property assembled by RAL is justified by:
  - a. the increased size of the ownership;
  - b. the improved design standards now applicable to the subject area and surrounding neighborhood;
4. the changes proposed to Ordinance No. 2847-05 and revocation of the amended development agreement:
  - a. are consistent with the applicable policies of the comprehensive plan;
  - b. bears a substantial relation to public health, safety or welfare; and
  - c. promotes the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAINS:

**Section 1.** Section 1 of Ordinance No. 2847-05, which reads as follows:

Approval.

1. That the Comprehensive Plan land use map for the area depicted in Exhibit B-1 and described under Exhibit “E” is herein amended from Multi Family – High Density (1.7) to Multi Family – Core Residential (1.8).
2. That the subject area depicted in Exhibit B-2 is herein rezoned from R-4 (Multiple Family High Density) to R-5 (Core Residential) subject to a Development Agreement attached hereto as Exhibit “F”.
3. That the Planning Department is instructed to amend the Comprehensive Plan map and Zoning maps to reflect the noted amendment and rezone.

**Is hereby amended to read as follows:**

1. That the Comprehensive Plan land use map for the area ~~depicted in Exhibit B-1 and described under Exhibit “E”~~ is herein legally described in this section is hereby amended from Multi Family – High Density (1.7) to Multi Family – Core Residential (1.8).
2. That the subject area ~~depicted in Exhibit B-2~~ is herein rezoned from R-4 (Multiple Family High Density) to R-5 (Core Residential) ~~subject to a Development Agreement attached hereto as Exhibit “F”~~.
3. That the Planning Department is instructed to amend the Comprehensive Plan map and Zoning maps to reflect the noted amendment and rezone.

Legal Description:

That portion of Section 20, Township 29 North, Range 5 East, SW quarter, more particularly described as follows:

Lots 1 through 12 inclusive of Block 610, Plat of Everett, including all public right-of-way located between said lots and the centerline of abutting rights-of-way. Situate in the City of Everett, County of Snohomish, State of Washington.

**Section 2.** Section 2 of Ordinance No. 2847-05, which reads as follows:

1. A development agreement shall be used to ensure the structure proposed by the applicant will in fact be built and shall appear substantially as depicted in the attached Exhibits. Guidance for the implementation of the Development Agreement will come from graphic depictions of the proposed project as shown in Exhibits “D” and “E.”
2. The Development Agreement attached here is portable to other property owners in the rezone area. They may either enter into a copy Agreement with the City or they may develop or redevelop using R-4 zoning, whichever option best suits their need.
3. Historic overlay standards will be used by staff in review of permit submittals. In addition the following conditions shall apply:
  - a. The building may be set back 1.5 feet from the front (west) property line.
  - b. The east edge of the building along the alley may be set back 0 feet.
  - c. Minor deviations from the drawing (Exhibit “D”) are allowed so long as they preserve the overall theme, colors and details shown in the Exhibits, subject to approval by the Planning Director.
  - d. No step back at the north and south ends of the building are necessary at a building height of 35 feet or higher.
  - e. Step backs along the front and rear sides of the building (east and west sides) may have minor modifications, subject to review and approval of the Planning Director.
  - f. The significant tree near the center of the project is encouraged to be kept and have minor trimming, as necessary by the owner.
4. Exhibits “A,” “B-1,” “B-2,” “C,” “D,” “E,” and “F” are hereby made part of this approval and incorporated herein by reference.
5. Other properties within the rezone area shall develop to the Historic Overlay Standards through administration of Review Process II.

**Is hereby repealed.**

**Section 3.** Section 3 of Ordinance No. 2847-05, which reads as follows:

**Development Agreement.**

That the rezone action as described herein shall be implemented through the execution of the Development Agreement attached hereto as Exhibit “F”, and incorporated herein by reference. The Mayor is hereby authorized to sign the Development Agreement.

**Is hereby repealed.**

**Section 4.** Section 4 of Ordinance No. 2847-05, which reads as follows:

That the rezone authorized herein shall become effective at such time as the Development Agreement attached hereto as Exhibit "F" is fully executed and the Ordinance amending the land use map for the subject property from Multi-Family – High Density (1.7) to Multi Family – Core Residential (1.8) becomes effective.

**Is hereby repealed.**

**Section 5.** The Mayor is hereby authorized to execute an agreement with RAL to terminate the amended development agreement.

**Section 6.** The City shall record a legal instrument with the Snohomish County Auditor's Office acknowledging the termination of the development agreement and releasing the property owner of any obligations required under the previous development agreement recorded on property owned by RAL within the area legally described in Section 1 of this ordinance.

**Section 7: Severability.** Should any section, subsection, sentence, clause, phrase or word of this Ordinance be held to be invalid or unconstitutional by a court of competent jurisdiction, or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 8: Conflict.** In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 9: Corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**Section 10: General duty.**

It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance. It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the city or any of its officers or employees. Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city related in any manner to the enforcement of this ordinance by its officers, employees or agents.

**Section 11: Savings.**

The enactment of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or before the City or in any way modify any obligation, right or liability, civil or criminal, which may exist by virtue of any of the ordinances herein amended.

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**RAY STEPHANSON, Mayor**

**ATTEST:**

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**City Clerk**

**Passed:**

**Valid:**

**Published:**

**Effective Date:**

Planning Commission  
Meeting Minute Excerpts  
Zlab Development Agreement  
January 5, 2016



**Item 2: Public Hearing: Consider termination of the Development Agreement between the City and Rockefeller Avenue LLC (Joe Zlab) for property located on the east side of the 2600 block of Rockefeller Avenue.**

Allan Giffen, Planning Director, presented a vicinity map of the subject site. In 2005, a comprehensive plan amendment and rezone was approved which changed the zoning from R-4 to R-5 subject to a development agreement with a specific building plan. In 2006, an amended development agreement was approved. That development wasn't constructed. In 2008, the City adopted the Core Area Residential Design and Development Standards for the neighborhoods surrounding the downtown area.

Mr. Giffen stated that the applicant acquired more property after the development agreement was amended. The applicant is proposing to construct a different building than what was approved under the development agreement. The request is to terminate the development agreement and use the core area residential design and development standards that apply to the area.

Mr. Giffen presented a map of the area where the core area residential design standards apply. The development standards include a maximum building height of 65 feet, and address building setbacks, pedestrian and vehicular access, parking location, open space, building design, landscaping, screening, and fencing. Staff determined that the core area residential design and development standards were better than what was in the development agreement.

Commission Discussion

Commissioner Beck asked Mr. Giffen if the amended development agreement superseded the original agreement. Mr. Giffen responded that he would review with the City's Legal Department.

Commissioner Jordison asked what the FAR standard was for the core area. Mr. Giffen responded that there wasn't a Floor Area Ratio (FAR) standard that applied to the core residential area and that building bulk was governed by building height and setbacks, permitted density, and parking.

Commissioner Zelinski asked Mr. Giffen if any buildings had been constructed since the core area residential design and development standards were adopted. Mr. Giffen wasn't aware of any.

Commissioner Adams referred to Section 2.6 of the amended agreement which addressed Commissioner Beck's question on superseding the agreement which appeared to terminate the original agreement.

Citizen Comments

None

**Motion:** Commissioner Adams made a motion to close the public hearing. Commissioner Tisdell seconded the motion.

**Vote:** Commissioner Zelinski, yes; Commissioner Beck, yes; Commissioner Tisdell, yes; Commissioner Jordison, yes, Commissioner Adams, yes; and Chair Holland, yes.

**Motion Carried.**

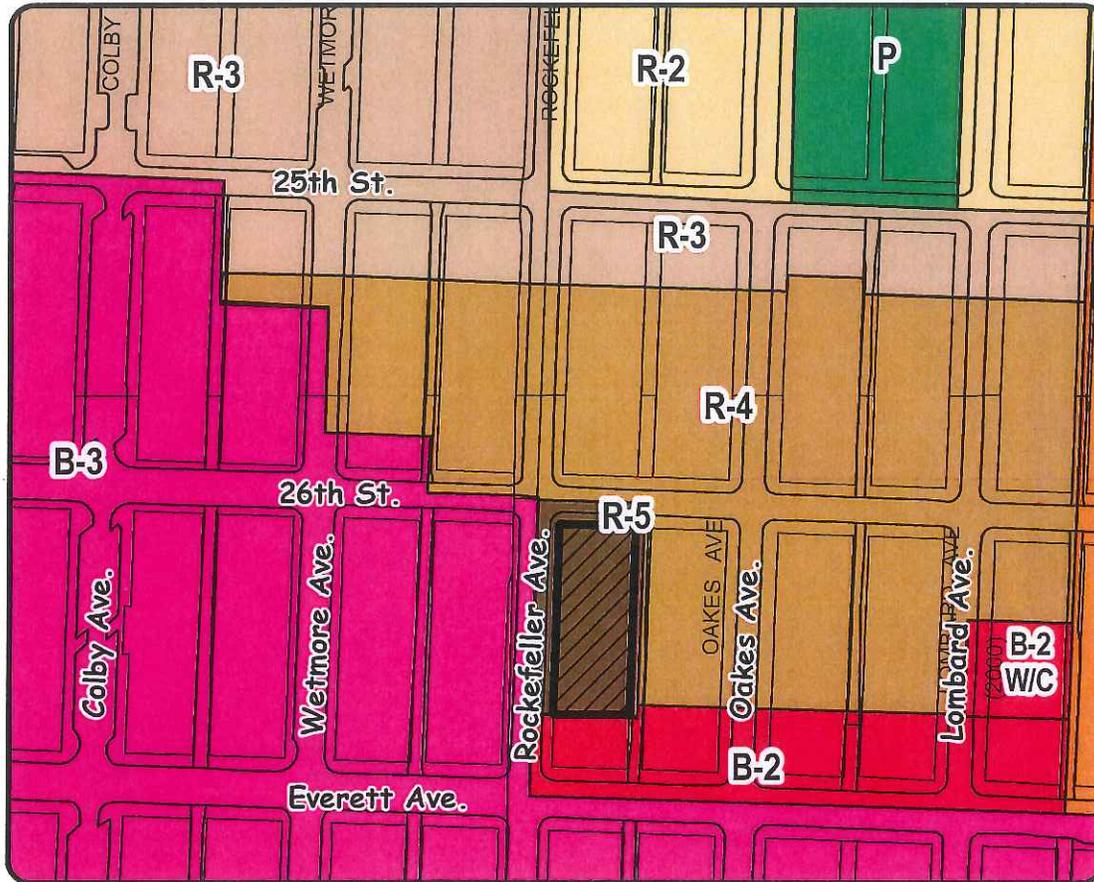
Chair Holland asked if there was anything in the development agreement that wouldn't be addressed under the core area residential design and development standards. Mr. Giffen responded no.

**Motion:** Commissioner Jordison made a motion to approve the resolution recommending that the City Council authorize the Mayor to execute an agreement terminating the amended development agreement between the City of Everett and Rockefeller Avenue LLC. Commissioner Beck seconded the motion.

**Vote:** Commissioner Zelinski, yes; Commissioner Beck, yes; Commissioner Tisdell, yes; Commissioner Jordison, yes, Commissioner Adams, yes; and Chair Holland, yes.

**Motion Carried.**

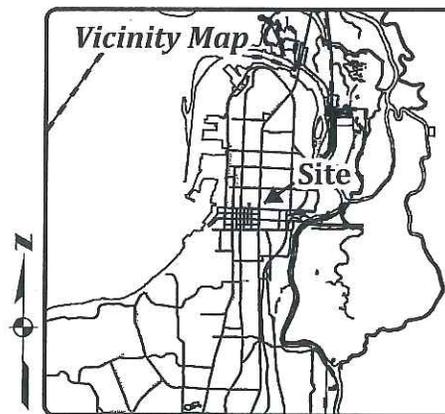
## Proposal: Terminate Development Agreement Between the City of Everett and Rockefeller Ave LLC



**Current Zoning = R-5 Core Residential**

### Zoning Legend:

- B-2 Community Business
- B-3 Central Business District
- PARK
- R-2; Single Family, Med. Density
- R-3; Multi-Family, Med. Density
- R-4 Multi-Family, High Density
- R-5 Core Residential



Scale: 1 inch = 300 feet  
Dec. 15, 2015

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

An Ordinance creating a special improvement project entitled "Forest Park Swim Center Improvements Project", Fund 354, Program 048, to accumulate all costs for the improvement project.

2/3/16 Briefing  
 \_\_\_\_\_ Proposed Action  
 \_\_\_\_\_ Consent  
 \_\_\_\_\_ Action  
2/3/16 First Reading  
2/10/16 Second Reading  
2/17/16 Third Reading  
 \_\_\_\_\_ Public Hearing  
 \_\_\_\_\_ Budget Advisory

COUNCIL BILL # CB16001-04  
 Originating Department Parks  
 Contact Person Paul Kaftanski  
 Phone Number 425-257-8335  
 FOR AGENDA OF February 3, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA db  
 Council President [Signature]

**Location**                      **Preceding Action**                      **Attachments**                      **Department(s) Approval**  
 802 E. Mukilteo Blvd                      None                      Proposed Ordinance                      Administration, Parks

Amount Budgeted	\$200,000	CIP 1: Fund 162
Expenditure Required	\$200,000	Account Number(s): Fund 354, Program 048
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The Forest Park Swim Center was opened for public use in April 1976. It continues to function as the only municipal swimming facility in Everett. As part of the center's periodic repair and renovation requirements the center will be closed for a planned improvement project from February 29 through April 10, 2016. The project includes draining, cleaning, sealing and painting the entire pool tank, maintenance of the spa liner, sauna, and pool steps, installation of replacement lockers in the changing rooms and acquiring a new boiler to be placed in a humidity-controlled enclosure adjacent to the existing equipment room.

**RECOMMENDATION (Exact action requested of Council):**

Adopt an Ordinance creating a special improvement project entitled "Forest Park Swim Center Improvements Project", Fund 354, Program 048, to accumulate all costs for the improvement project.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** creating a special improvement project entitled “Forest Park Swim Center Improvements Project, Fund 354, Program 048, to accumulate all costs for the improvement project.

**WHEREAS**, the City of Everett is committed to a planned parks capital improvement program as a part of the City of Everett Parks & Recreation Comprehensive Plan; and

**WHEREAS**, the Forest Park Swim Center is a capital facility of significance that periodically requires maintenance, upgrading and modernization of major components to extend its useful life; and

**WHEREAS**, the City of Everett is requesting funding approval for the utilization of Capital Improvement Program 1 (CIP 1) to construct improvements at the Forest Park Swim Center;

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**Section 1:**

A special improvement project is hereby established as Fund 354, Program 048, and shall be entitled “Forest Park Swim Center Improvements Project” to accumulate all costs for the improvement project.

**Section 2:**

Authorization is hereby given to accumulate costs and distribute payments from Fund 354, Program 048, for the improvement project.

**Section 3:**

Authorization is hereby granted to the Parks and Recreation Director, under direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the action authorized in this ordinance.

**Section 4:**

The sum of \$200,000 is hereby appropriated to Fund 354, Program 048, “Forest Park Swim Center Improvements Project” as follows:

A. Estimated Project Costs	
Construction	<u>\$200,000</u>
<b>Total Estimated Costs</b>	<b><u>\$200,000</u></b>
 B. Source of Funds	
Fund 162 -- CIP 1	<u>\$200,000</u>
<b>Total Estimated Funds</b>	<b><u>\$200,000</u></b>

This appropriation shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned without the necessity of reappropriation.

**Section 5:**

The City Treasurer of the City of Everett is hereby authorized to negotiate a reasonable rate of interest and obtain temporary financing to satisfy interim construction costs. Temporary financing shall be redeemed as soon as reimbursement is received.

**Section 6:** Severability

If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being unconstitutional or invalid.

\_\_\_\_\_  
Ray Stephanson, Mayor

ATTEST:

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

Passed:

Valid:

Published:

Effective Date:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Waste 2 Resources  
Coordinated Prevention Grant  
Agreement with the  
Department of Ecology

\_\_\_\_\_ Briefing  
\_\_\_\_\_ Proposed Action  
\_\_\_\_\_ Consent  
\_\_\_\_\_ Action  
\_\_\_\_\_ First Reading  
\_\_\_\_\_ Second Reading  
\_\_\_\_\_ Third Reading  
\_\_\_\_\_ Public Hearing  
\_\_\_\_\_ Budget Advisory

COUNCIL BILL # \_\_\_\_\_  
Originating Department Public Works  
Contact Person Marla Carter  
Phone Number 425-257-8875  
FOR AGENDA OF February 17,2016

Initialed by:  
Department Head \_\_\_\_\_  
CAA db  
Council President [Signature]

**Location**                      **Preceding Action**                      **Attachments**                      **Department(s) Approval**  
Grant Agreement                      Public Works

Amount Budgeted	\$148,958	
Expenditure Required	148,958	Account Number(s): SW2591
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

This Department of Ecology Coordinated Prevention Grant is a two year matching grant, effective July 1, 2015 through June 30, 2017. With this funding the City will continue to provide waste reduction and recycling information to multi-family properties, businesses, schools and city residents with the goal of increasing recycling efforts and preventing contamination in the recycling and organics waste streams. This work will be performed by City staff.

The total grant agreement amount is \$148,958.00. Ecology will provide \$111,718.50 and the City will provide \$37,239.50.

**RECOMMENDATION (Exact action requested of Council):**

Authorize the Mayor to sign the Waste 2 Resources Coordinated Prevention Grant Agreement with the Department of Ecology to implement waste reduction and recycling programs, in the amount of \$148,958.



## Agreement W2RCPG-1517-EverPW-00022

### WASTE 2 RESOURCES COORDINATED PREVENTION GRANT PROGRAM AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

City of Everett Public Works Department

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and City of Everett Public Works Department, hereinafter referred to as the "RECIPIENT" to carry out with the provided funds activities described herein.

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#### GENERAL INFORMATION

Project Title:	2015-17 CPG City of Everett WR&R
Total Cost:	\$148,958.00
Total Eligible Cost:	\$148,958.00
Ecology Share:	\$111,718.50
Recipient Share:	\$37,239.50
The Effective Date of this Agreement is:	07/10/2015
The Expiration Date of this Agreement is no later than	06/30/2017
Project Type:	Implementation

#### Project Short Description:

The RECIPIENT (City of Everett Public Works Department) will use its \$148,958.00 CPG monies to provide information and on-site assistance to 100 multi-family properties, expecting 25 to run new WR&R programs; to administer a recycling container check-out program for public events; to purchase containers to expand the sidewalk container sponsorship program for more recycling in public spaces; and to work with local collection companies to revise and upgrade recycling instructions including the addition of materials in multiple languages, with all activities resulting in an additional 1000 tons of recycled material diverted from the landfill by the end of the 2015-2017 grant cycle.

#### Project Long Description:

N/A

#### Overall Goal:

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination

Agreement No: W2RCPG-1517-EverPW-00022  
Project Title: 2015-17 CPG City of Everett WR&R  
Recipient Name: City of Everett Public Works Department

through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

Agreement No: W2RCPG-1517-EverPW-00022  
Project Title: 2015-17 CPG City of Everett WR&R  
Recipient Name: City of Everett Public Works Department

**RECIPIENT INFORMATION**

Organization Name: City of Everett Public Works Department

Federal Tax ID: 91-6001248  
DUNS Number: 608909156

Mailing Address: 3200 Cedar St  
Everett, WA, 98201

Physical Address: 3200 Cedar St  
Everett, Washington, 98201

Organization Email: everettpw@everettwa.gov

**Contacts**

<b>Project Manager</b>	MARLA CARTER PROGRAM MANAGER  3200 CEDAR STREET EVERETT, Washington, 98201 Email: mcarter@everettwa.gov Phone: (425) 257-8875
<b>Billing Contact</b>	Suzanne Soule Financial Analyst  3200 Cedar St Everett, Washington, 98201 Email: ssoule@everettwa.gov Phone: (425) 257-8971
<b>Authorized Signatory</b>	Richard Tarry Engineering Services Manager  3200 Cedar St. Everett, Washington, 98201 Email: rtarry@everettwa.gov Phone: (425) 257-8922

Agreement No: W2RCPG-1517-EverPW-00022  
Project Title: 2015-17 CPG City of Everett WR&R  
Recipient Name: City of Everett Public Works Department

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Waste 2 Resources  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Waste 2 Resources  
300 Desmond Drive  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Vicki Colgan  3190 160th Ave SE Bellevue, Washington, 98008-5452 Email: vcol461@ecy.wa.gov Phone: (425) 649-7224
<b>Financial Manager</b>	Vicki Colgan  3190 160th Ave SE Bellevue, Washington, 98008-5452 Email: vcol461@ecy.wa.gov Phone: (425) 649-7224



Agreement No: W2RCPG-1517-EverPW-00022  
Project Title: 2015-17 CPG City of Everett WR&R  
Recipient Name: City of Everett Public Works Department

Ray Stephanson

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Mayor

Date

Sharon Fuller

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City Clerk

Date

Jim Iles

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City Attorney

Date

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$148,958.00**

Task Title: Waste Reduction & Recycling Education, Outreach and Promotion

### Task Description:

Recycling and waste reduction in the multi-family sector, in public spaces and at public events can be improved through promotion, assistance and expansion of existing programs. Oversight of local collection practices by the RECIPIENT is needed to ensure effective communications and services are provided, and that collected materials are handled properly. Most of these programs build on activities administered in the last grant cycle with varying degrees of success., with lessons learned aiding progress this grant cycle.

Much work has been done identifying potential multi-family properties and businesses. Efforts are underway to support, and identify new sponsors for the sidewalk container program and to work more closely with local service providers. The recycle container checkout program implemented last grant cycle can be expanded.

For the 2015-2017 Coordinated Prevention Grant (CPG) cycle, the RECIPIENT plans to:

- 1) restore its multi-family outreach program by contacting 100 multi-family properties, offering on-site assistance, prevention, reuse and recycling program design/support and tenant education, expecting 25 to implement WRR practices,
- 2) increase public access to recycling through expansion of the sidewalk container and ClearStream container checkout programs,
- 3) work with local collection providers to encourage the standardization of curbside services, ensure recycling instructions are provided to consumers annually, and verify that collected materials are handled properly,
- 4) produce and/ or support the production of upgraded informational and educational materials, including multi-lingual pieces where appropriate.
- 5) maintain its WA State Recycling Association membership (\$350 yearly) and annual conference and Trade Show attendance.
- 6) provide salary and benefits for three (3) staff working approximately 1500 hours combined, and use volunteers where practical to assist with public space recycling and for ongoing support at multi-family properties.

The RECIPIENT will credit this grant for any revenue received from the collection of fees or commodity sales on items the grant is directly supporting. In addition, the Coordinated Prevention Grant Program does not pay for costs covered by an existing product stewardship program (such as E-cycle Washington, LightRecycle Washington, or Call2Recycle). Contact your Ecology grant project manager or consult the following website if you are unsure about a cost's grant-eligibility: <http://www.ecy.wa.gov/programs/swfa/ProductStewardshipFAQ.html>.

The costs of membership in civic, business, and technical/ professional organizations are allowed to the extent they are covered in the overhead rate. If the RECIPIENT does not charge overhead to this task, it may directly bill for membership(s) pre-approved by ECOLOGY.

The RECIPIENT will note a return to the requirement for Ecology review before printing promotional or other materials to be paid for by monies granted under this Agreement. The full text of this requirement can be found in Proviso #18 under the General Terms and Conditions that follow below.

### Task Goal Statement:

This task seeks to increase waste reduction and recycling within multi-family properties and in public spaces and at events for the public, as well as work with local providers to ensure effective communications and collection services.

**Task Expected Outcome:**

The RECIPIENT plans to track contact with 100 multi-family property owners to elicit 25 participants that organize new WR&R programs onsite. A target diversion of 1000 tons of recycled material for this grant cycle will also involve tracking the number of new sidewalk containers, the number of users of the ClearStream checkout program, and, where possible, the actual tonnage of recyclables collected by service providers, as will contact numbers and a brief summary of outcomes of service provider efficiencies improvement efforts. Numbers and types of outreach materials will also be reported when staff time for marketing/ outreach/ educational activities are to be paid as part of this grant.

**Recipient Task Coordinator:** Marla Carter

**Waste Reduction & Recycling Education, Outreach and Promotion**

**Deliverables**

Number	Description	Due Date
1.1	Q1: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. File progress report and payment request.	
1.2	Q2: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. File progress report and payment request.	
1.3	Q3: Multi-family outreach. Expand sidewalk container program. Support the check-out container program. Work with local service providers. File progress report and payment request.	
1.4	Q4: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. Progress report and payment request.	
1.5	Q5: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. File progress report and payment request.	
1.6	Q6: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. File progress report and payment request.	
1.7	Q7: Multi-family outreach. Expand sidewalk container program. Support the check-out container program. Work with local service providers. File progress report and payment request.	
1.8	Q8: Multi-family outreach. Support sidewalk and check-out container programs. Work with local service providers. File final report and close out grant.	

Agreement No: W2RCPG-1517-EverPW-00022  
 Project Title: 2015-17 CPG City of Everett WR&R  
 Recipient Name: City of Everett Public Works Department

**BUDGET**

**Funding Distribution EG160565**

Funding Title: State Building Construction Account  
 Funding Type: Grant Funding Expiration Date: 06/30/2017  
 Funding Effective Date: 07/10/2015  
 Funding Source:

Title: State Building Construction Account (SBCA)  
 Type: State  
 CFDA:  
 Assistance Agreement:  
 Description:

Recipient Match %: 25  
 InKind Interlocal Allowed: Yes  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

State Building Construction Account	Task Total
Waste Reduction & Recycling Education, Outreach and Promot	\$ 148,958.00

**Total: \$ 148,958.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
State Building Construction Account	25.00 %	\$ 37,239.50	\$ 111,718.50	\$ 148,958.00
<b>Total</b>		<b>\$ 37,239.50</b>	<b>\$ 111,718.50</b>	<b>\$ 148,958.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

Indirect costs can be charged at a rate of up to 25% of salaries and benefits.

**GENERAL FEDERAL CONDITIONS**

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

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

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department for assistance in obtaining a copy of those regulations..
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

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

**GENERAL TERMS AND CONDITIONS**

**1. ADMINISTRATIVE REQUIREMENTS**

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition". <https://fortress.wa.gov/ecy/publications/SummaryPages/1401002.html>
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

**2. AMENDMENTS AND MODIFICATIONS**

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

**3. ARCHAEOLOGICAL AND CULTURAL RESOURCES**

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

approval by ECOLOGY.

RECIPIENT shall:

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

#### 4. ASSIGNMENT

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

#### 5. COMMUNICATION

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

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible may require approval by ECOLOGY prior to purchase.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@des.wa.gov](mailto:payeehelpdesk@des.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT should submit final requests for compensation within thirty (30) days after the expiration date of this Agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

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

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

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

#### 8. CONFLICT OF INTEREST

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

#### 9. CONTRACTING FOR GOODS AND SERVICES

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

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

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

#### 10. DISPUTES

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

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

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

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

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

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

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

#### 11. ENVIRONMENTAL STANDARDS

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

#### 12. GOVERNING LAW

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

#### 13. INDEMNIFICATION

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

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

#### 14. INDEPENDENT STATUS

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

#### 15. KICKBACKS

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

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

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and

women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

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

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

#### 17. ORDER OF PRECEDENCE

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

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1

through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT shall submit the Closeout Report within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 20. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

a. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

b. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

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

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

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

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

## 22. RECOVERY OF FUNDS

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

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

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

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

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

## 23. SEVERABILITY

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

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

## 25. SUSPENSION

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

## 26. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web page: Green Purchasing, <http://www.ecy.wa.gov/programs/swfa/epp>.

## 27. TERMINATION

### a) For Cause

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

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

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

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

### b) For Convenience

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

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

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

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon

availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

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

d) In Event of Termination

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

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

28. THIRD PARTY BENEFICIARY

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

29. WAIVER

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

GENERAL TERMS AND CONDITIONS LAST UPDATED 12/25/2015

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Professional Services  
 Agreement with CG  
 Engineering Inc. for the sewer  
 structure access retrofit project

- \_\_\_\_\_ Briefing
- \_\_\_\_\_ Proposed Action
- \_\_\_\_\_ Consent
- \_\_\_\_\_ Action
- \_\_\_\_\_ First Reading
- \_\_\_\_\_ Second Reading
- \_\_\_\_\_ Third Reading
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Budget Advisory

COUNCIL BILL # \_\_\_\_\_  
 Originating Department Public Works  
 Contact Person Grant Moen  
 Phone Number 425-257-8947  
 FOR AGENDA OF February 17, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President \_\_\_\_\_

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Various locations in Everett		Agreement	Public Works

Amount Budgeted	\$39,945.00	
Expenditure Required	\$39,945.00	Account Number(s): 401-5-710-109-923
Budget Remaining	\$39,945.00	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

This contract allows CG Engineering to provide structural engineering services to the City of Everett Public Works Department. The project will provide additional access ways to an underground sewer vault and three sewer lift station wet wells. This additional access will allow for improved inspection and maintenance procedures and increased safety during maintenance operations.

**RECOMMENDATION (Exact action requested of Council):**

Authorize the Mayor to sign the Professional Services Agreement with CG Engineering Inc. for the sewer structure access retrofit project for an amount not to exceed \$39,945.

**CITY OF EVERETT  
PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** made and entered into on this            day of February, 2016, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and CG Engineering Inc., whose address is 250 4th Ave South, Suite 200 Edmonds, WA, hereinafter referred to as the "Service Provider."

**WHEREAS**, the City desires to engage the Service Provider to provide structural engineering services, design drawings, and specifications to provide access ways into existing sewer facilities for the City of Everett; and

**WHEREAS**, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

**NOW, THEREFORE**, the parties herein do mutually agree as follows:

1.     **Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2.     **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.

3.     **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by December 31, 2017.

4. **Compensation.**

A. The City shall pay the Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Service Provider shall be paid such amounts and in such manner as described in Exhibit B.

C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses either listed in Exhibit C or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. If Exhibit C is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City. An expense shall not be reimbursed if: (1) the expense is not identified in Exhibit C; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in Exhibit C; or (3) the expense was not approved in writing by an authorized City representative prior to the Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for the Service Provider.

D. Total compensation, including all services and expenses, shall not exceed a maximum of Thirty Nine Thousand Nine Hundred forty five Dollars (\$39,945).

E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Method of Payment.**

A. To obtain payment, the Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.

B. All requests for payment should be sent to:

City of Everett  
Attn.: Grant Moen  
3200 Cedar Street  
Everett, WA 98201

6. **Submission of Reports and Other Documents.** The Service Provider shall submit all reports and other documents as and when specified in Exhibit A. Said information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.

7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, the Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this Section 7 waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due the Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of the Service Provider to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

10. **Indemnification.** Except as otherwise provided in this Section 10, the Service Provider hereby agrees to defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by

Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. The Service Provider is obligated to defend and indemnify the City pursuant to this Section 10 whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The Service Provider's duty to defend and indemnify pursuant to this Section 10 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Service Provider. The Service Provider's obligations under this Section 10 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's obligations under this Section 10 shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section 10: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as the Service Provider pursuant to this Section 10.

#### 11. Insurance.

A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Service Provider covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate,

including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claims made basis. If both parties agree that the Work does not warrant Service Provider providing Professional Errors and Omissions Insurance, this Section 11.A.4 may be stricken and initialed by both parties.

B. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Service Provider to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Service Provider performing any Work, Service Provider shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Service Provider's obligations to fulfill the requirements.

E. If the policy listed in Section 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy. (This Section 11.E shall not apply if Section 11.A.4. above is stricken.)

F. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of

Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

G. In case of the breach of any provision of this Section 11, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of the Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

## 12. Independent Contractor.

A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section 12. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.

B. In addition to the other requirements of this Section 12, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:

(1) Service Provider is free from control or direction over the performance of the service; and

(2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and

(3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and

(5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) By the effective date of this Agreement, Service Provider is maintaining a

separate set of records that reflect all items of income and expenses of the services performed.

C. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City. The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work

D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Service Provider and as to all duties, activities and requirements by the Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

**13. Employment.** The Service Provider warrants that he had not employed or retained any company or person, other than a bona fide employee working solely for the Service Provider, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**14. Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, the Service Provider shall make available to the City for the City's examination all of the Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, the Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

**15. City of Everett Business License.** Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

16. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

17. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

18. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section 18.

19. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

20. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Waiver.** Any waiver by the Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

22. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶18, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

24. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

25. **Notices.**

A. Notices to the City of Everett shall be sent to the following address:

City of Everett  
Attn.: Grant Moen  
3200 Cedar Street  
Everett, WA 98201

B. Notices to the Service Provider shall be sent to the following address:

CG Engineering Attn.: Greg Guillen  
250 4th Avenue South, Suite 200  
Edmonds, WA 98020

26. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

27. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

**IN WITNESS WHEREOF**, the City and Service Provider have executed this Agreement as of the date first above written.

**CITY OF EVERETT,  
WASHINGTON**

\_\_\_\_\_  
Ray Stephanson, Mayor

\_\_\_\_\_  
Date

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Fuller, City Clerk

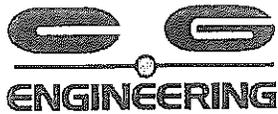
\_\_\_\_\_  
James D. Iles, City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SERVICE PROVIDER:** Please fill in the spaces and sign in the box appropriate for your business entity.

<b>Corporation</b>	_____ [Service Provider's Complete Legal Name]  By: _____ Typed/Printed Name: _____ Its: _____ Date: _____
<b>Partnership (general)</b>	_____ [Service Provider's Complete Legal Name] a Washington general partnership  By: _____ Typed/Printed Name: _____ General Partner Date: _____
<b>Partnership (limited)</b>	_____ [Service Provider's Complete Legal Name] a Washington limited partnership  By: _____ Typed/Printed Name: _____ General Partner Date: _____
<b>Sole Proprietorship</b>	_____ Typed/Printed Name:  _____ Sole Proprietor: Date: _____
<b>Limited Liability Company</b>	<b>CG ENGINEERING, PLLC</b> _____ [Service Provider's Complete Legal Name] a Washington limited liability company  By: <i>Greg Guillen</i> Typed/Printed Name: <b>GREG GUILLEN</b> Managing Member Date: <b>1/25/10</b>



civil & structural  
engineering & planning

January 13, 2016

## Exhibit A

### ***RE: Scope of Work for City of Everett Sewer Structure Access Retrofit Project – 47<sup>th</sup> CSO Vault***

Based on the documentation provided by the City of Everett, CG Engineering has put together this scope of work for this project. The following outline provides the specific tasks that we anticipate along with our project assumptions. We have also provided optional additional scope items that may be considered.

#### **SCOPE OF WORK RECOMMENDATIONS:**

**Task 1 – Project Management:** Under this task, CG Engineering will manage all aspects of the structural project scope, schedule and budget. Project management services include:

- 1.1 Correspondence and coordination with City project manager and staff
- 1.2 CG Engineering staff management
- 1.3 Conduct kick-off meeting, prepare draft and final agendas, and meeting minutes

#### **Assumptions**

- City to take lead on public involvement and coordination
- Permitting will be completed by City staff
- Traffic control plan if required will be provided by the city.
- We have assumed that one bid package will be completed for all of the locations.

#### **Deliverables**

- Progress updates and coordination with city staff
- Meeting agendas and minutes, draft and final

#### **Task 2 – Data Collection and Field Investigations**

CG Engineering shall evaluate existing conditions and collect data at each proposed access location. Subtasks include:

- 2.1 Obtain and review available existing records for each below grade detention vault and lift station retrofit location. Work with the city to provide a site observation schedule at each location.
- 2.2 Conduct site visit with City staff to verify and supplement information at each proposed access.
- 2.3 Organize data collected for each access location to be used in design.

250 4th Avenue South, Suite 200  
Edmonds, WA 98020  
ph. 425.778.8500 | f. 425.778.5536  
www.cgengineering.com

### Assumptions

- City will provide us with available drawings and information pertinent to each site.
- City will coordinate site visit access at each location as necessary.
- We have assumed that access inside the structures will not be necessary.
- Additional survey information if needed would be provided by others.
- Should observations be recommended inside the detention vault we have assumed the city will be responsible for entering the vault and gathering field information through the use of photos and measurements.

### Deliverables

Copies of CG Engineering's annotated electronic files will provided to city staff as requested.

### Task 3 – Schematic Design and Alternatives Development

CG Engineering shall evaluate data collected in the above task, engage City staff and develop recommendations for retrofitting the sewer structure at each proposed location. Subtasks include:

- 3.1 Concrete Detention Vault: Develop a typical access retrofit solution for cutting a new opening in a pre-cast concrete hollow core pre-stressed plank.
- 3.2 Sewer Lift Stations: Develop typical access retrofit solutions for sewer lift stations 02, 03, and 08.
- 3.3 Conduct a Schematic Design Review with City Staff on Access Solutions and hatches desired.
- 3.4 Meet with the JOC Contractor to discuss final design.

### Assumptions

- New columns are acceptable inside the detention vault. The columns will be associated with the wall that will be built inside the vault as part of the new control structure.
- New columns are not acceptable in the lift stations. New steel beams that span between existing walls will likely be required.

### Deliverables

- Schematic Design Documents to include sketches of conceptual solutions.
- Design Review agenda and minutes, draft and final.

#### **Task 4 – Final Design**

This task will produce final plans and specifications for each access way at each location. Each site location will consist of a dedicated structural engineering drawing and many of the details produced will be reused from similar conditions that have been developed. We will edit the city's technical specifications related to our structural drawings. We will submit a package for 90% review and comment. After all of the city's comments are addressed, finalize construction plans and specifications.

- 4.1 90% Plans and Contract Documents - The Schematic design package will be revised and further developed to incorporate comments from the City's review of the Schematic design. Develop design plans to 90% design level. Work items are similar in the scope of work spreadsheet but level of effort represents final design drawings.
- 4.2 Develop technical specifications to 90% design level and submit for City's review and comment.
- 4.3 Attend a 90% review meeting to go over City's review comments and finish final construction plans and specifications to 100% level.
- 4.4 Review Job Order Contracting contractor comments and make revisions as required.
- 4.5 Submit 100% construction documents to the JOC contractor for pricing.

#### **Assumptions**

- We have assumed that the 90% documents will be submitted for permit approval.

#### **Deliverables**

- Construction Documents including:
  - General Structural Notes
  - Design Table
  - Legend and Abbreviations
  - One or two structural engineering sheets per location
  - Specific details for providing access ways into existing structures.

#### **Task 5 – Construction Support**

This task represents consultation by CG Engineering during construction. Support will be limited to incidental support and periodic collaboration with the City, the construction contractor, permitting agencies and others, all at the direction of the City.

- 5.1 Meetings - Attend a pre-construction conference between City and construction contractor and invited agencies and utilities. CG Engineering will be available to answer questions.
- 5.2 Submittals - Review construction submittals, as directed by the City, for conformance with project documents.
- 5.3 Clarifications and Changes - Assist with issuing clarifications to the construction contractor and producing design changes if necessary. Response to requests for information from the contractor will be provided.

**Task 5 – Construction Support (Continued)**

5.4 Site Visits – CG Engineering will conduct site visits as requested by the City or as warranted by the progression of work. For the purpose of developing this scope of work, CG Engineering anticipates up to 2 site visits and observation reports total.

**Assumptions**

- The City will take the lead in administering and managing the construction contract and communicating with the construction contractor.
- City will provide direction to CG Engineering with respect to involvement in project meetings, submittal reviews, issuing clarifications, etc.
- CG Engineering can provide record drawings as requested by the City as an optional scope item.

**Deliverables**

Responses to submittals, clarifications, changes as requested by the City.

**Estimate of Personnel Hours**

CG Engineering estimated the personnel hours needed to perform the tasks described in the scope of work as outlined above. The estimate shown below should be considered as a companion to the scope of work; both reflect the same assumptions and our understanding of the project.

Exhibit B Level of Effort City of Everett Sewer Structure Retrofit Project							
Description	Principal Engineer	Project Manager	Staff Engineer	Drafting / Clerical	Total Hours	Total Cost	
Hourly Rate	\$190	\$155	\$110	\$80			
<b>Task 1 Project Management</b>							
Task 1.1 Correspondence & Coordination	3	8			11	\$	1,810.00
Task 1.2 Staff Management & Progress	3	8			11	\$	1,810.00
Task 1.3 Project Kickoff Meeting	3	3			6	\$	1,035.00
<b>Task 2 Data Collection &amp; Field Investigation</b>							
Task 2.1 Review Records & Schedule Field Visits	2	8			10	\$	1,620.00
Task 2.2 Site Visit to Each Location (4 Structures @ 2.0 Hours)	8	8			16	\$	2,760.00
Task 2.3 Organize Data for Each system.			4		4	\$	440.00
<b>Task 3 Schematic Design Development</b>							
Task 3.1 Underground Detention Vault Typical Access in Hollow Core Plank	1	2	4	2	9	\$	1,100.00
Task 3.2 Sewer Lift Stations Typical Access in CIP Concrete Lid	1	2	4	2	9	\$	1,100.00
Task 3.3 Schematic Design Review with City Preparation & Agenda for Review meeting		3			3	\$	465.00
Meeting Minutes from Design Review		2		2	4	\$	470.00
Task 3.4 Meeting with Contractor	4	4			8	\$	1,380.00
<b>Task 4 Final Design Development</b>							
Task 4.1 Underground Detention Vault Typical Access in Hollow Core Plank	2	4	16	8	30	\$	3,400.00
Sewer Lift Stations Typical Access in CIP Concrete Lid	2	4	24	24	54	\$	5,560.00
Task 4.2 Technical Specifications for 90% Review	2	8			10	\$	1,620.00
Task 4.3 90% Design Review with City Meeting Minutes from Design Review	3	3	1	1	6	\$	1,035.00
Task 4.4 Construction Ready Documents with Revisions Incorporate Contractor Revisions	2	8	16	8	34	\$	4,020.00
Task 4.5 Submit Final 100% CD's to Contractor	2	4	4	6	16	\$	1,920.00
Sub-Total Design Phase	36	78	68	47	229	\$	32,590.00
<b>Task 5 Construction Support</b>							
Task 5.1 Pre-Construction Meeting		3			3	\$	465.00
Task 5.2 Submittal Review (4 Submittals @ 2.0 Hours)	2	4	8		14	\$	1,880.00
Task 5.3 Requests for Information/Clarification (12 RFI's @ 2.0 Hours)	3	6	12		21	\$	2,820.00
Task 5.4 Site Visits (2 Miscellaneous Site Visits)		6	6		12	\$	1,590.00
Sub-Total Construction Phase (20% of Design)	5	19	26	0	50	\$	6,755.00
<b>Reimbursibles</b>							
Travel						\$	400.00
Incidental Plotting and Printing (assumes City will print bid sets)						\$	200.00
<b>Total Reimbursibles</b>						\$	<b>600.00</b>
<b>Grand Total All Costs</b>						\$	<b>39,945.00</b>



**STATE RETIREMENT SYSTEMS FORM**  
**ATTACHMENT TO PROFESSIONAL SERVICES AGREEMENT**  
**ALL SERVICE PROVIDERS MUST COMPLETE AND SIGN THIS FORM**

1. Does Service Provider have twenty-five (25) or more employees?  Yes  No  
IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.  
IF NO: ANSWER QUESTIONS 2 AND 3.

2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)?  Yes  No

3. Answer the appropriate question below for Service Provider's business organization:

Sole Proprietor. Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), Law Enforcement Officers and Fire Fighters plan (LEOFF)?  Yes  No

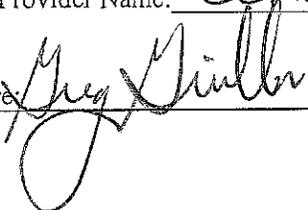
Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)?  Yes  No

Limited Liability Company. If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)?  Yes  No

Corporation. If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS), or Law Enforcement Officers and Fire Fighters plan (LEOFF)?  Yes  No

**IF THERE IS A "YES" ANSWER TO ANY PART OF QUESTIONS 2 OR 3, AN ADDITIONAL QUESTIONNAIRE (AVAILABLE FROM HR OR LEGAL) MUST BE FILLED OUT AND SUBMITTED WITH THE CONTRACT.**

Service Provider Name: CG ENGINEERING PLLC

Signature: 

Printed Name: GREG GUILLEL Title: PRINCIPAL



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## RLIPack<sup>®</sup> FOR PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
  - a. In the performance of your ongoing operations;
  - b. In connection with premises owned by or rented to you; or
  - c. In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
  - b. This insurance does not apply to the rendering of or failure to render any "professional services".
  - c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

  - a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
  - b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.
4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **RLIPack<sup>®</sup> BUSINESS AUTO ENHANCEMENT**

### **SCHEDULE OF COVERAGES ADDRESSED BY THIS ENDORSEMENT**

- A. Broad Form Named Insured**
- B. Employees As Insureds**
- C. Blanket Additional Insured**
- D. Blanket Waiver Of Subrogation**
- E. Employee Hired Autos**
- F. Fellow Employee Coverage**
- G. Auto Loan Lease Gap Coverage**
- H. Glass Repair – Waiver Of Deductible**
- I. Personal Effects Coverage**
- J. Hired Auto Physical Damage Coverage**
- K. Hired Auto Physical Damage – Loss Of Use**
- L. Hired Car – Worldwide Coverage**
- M. Temporary Transportation Expenses**
- N. Amended Bodily Injury Definition – Mental Anguish**
- O. Airbag Coverage**
- P. Amended Insured Contract Definition – Railroad Easement**
- Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound**
- R. Notice Of And Knowledge Of Occurrence**
- S. Unintentional Errors Or Omissions**
- T. Towing Coverage**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**A. Broad Form Named Insured**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

**B. Employees As Insureds**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**C. Blanket Additional Insured**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

**D. Blanket Waiver Of Subrogation**

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS**, **A. Loss Conditions**, **5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**E. Employee Hired Autos**

1. The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance Condition** in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**F. Fellow Employee Coverage**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE**, **Exclusion B.5.** does not apply if you have workers compensation insurance in-force covering all of your employees.

**G. Auto Loan Lease Gap Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE**, **C. Limit Of Insurance**, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the **PHYSICAL DAMAGE COVERAGE** section of the policy; and
2. Any:
  - a. Overdue lease/loan payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

**H. Glass Repair – Waiver Of Deductible**

**SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**I. Personal Effects Coverage**

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

**c. Personal Effects Coverage**

In the event of a total theft loss of your covered "auto" we will pay up to \$400 for "loss" to wearing apparel and other personal effects which are:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto";

No deductible applies to Personal Effects Coverage.

**J. Hired Auto Physical Damage Coverage**

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

**d. Hired Auto Physical Damage Coverage**

If hired "autos" are covered "autos" for Liability Coverage and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:

- (a) \$60,000
- (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in the event of a total "loss".

(3) We may deduct for betterment for parts normally subject to repair and replacement during the useful life of the "auto". In this event, deductions shall be limited to the lesser of:

(a) An amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of the part; or

(b) The amount which the resale value of the "auto" is increased from the repair or replacement.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned auto will apply.

(5) This Coverage Extension will not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

**K. Hired Auto Physical Damage – Loss Of Use**

The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions:**

e. We will pay sums which you legally must pay to the lessor of a covered "auto" which you have leased without a driver for thirty (30) days or less for the lessor's loss of use of the covered "auto", provided:

(1) This insurance provides comprehensive, specified causes of loss or collision covered on the covered "auto";

(2) The loss of use results from the covered "auto" being damaged in an "accident" while you are leasing it.

We will pay up to a maximum limit of \$1,500 for this covered extension.

**L. Hired Car – Worldwide Coverage**

The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions:**

**f. Hired Car – Worldwide Coverage**

- (1) We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" which occurs outside of the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada resulting from the maintenance, or use of any covered "auto" of the private passenger type you lease, hire, rent or borrow without a driver for thirty (30) days or less.
- (2) With respect to any claim made or "suit" instituted outside the United States of America, the territories and possessions of the United States of America, Puerto Rico, and Canada:
  - (a) You shall undertake the investigation, settlement and defense of such claims and "suits" and keep us advised of all proceedings and actions.
  - (b) You will not make any settlement without our consent.
  - (c) We will reimburse you:
    - (i) For the amount of damages because of liability imposed upon you by law on account of "bodily injury" or "property damage" to which this insurance applies, and
    - (ii) For all reasonable expenses incurred with our consent in connection with the investigation, settlement or defense of such claims or "suits". Reimbursement for expenses will be part of the Limit of Insurance for liability coverage shown in the Business Auto Coverage Declarations, and not in addition to such limits.
- (3) The limit of Insurance for Liability Coverage shown in the Business Auto Coverage Declarations is the most we will reimburse you for the sum of all damages imposed on you, as set forth in paragraph 2.c. above, and all expenses incurred by you arising out of any single "accident" or "loss".
- (4) You must maintain the greater of the following primary auto liability insurance limits:
  - (a) Compulsory admitted insurance with limits required to be in force to satisfy the legal requirements of the jurisdiction where the accident occurs; or

(b) Insurance limits required by law and issued by a government entity or by an insurer licensed or permitted by law to do business in the jurisdiction where the "accident" occurs; or

(c) Auto liability insurance limits of at least \$300,000 combined single limit or \$100,000 per person/\$300,000 per accident Bodily Injury, \$100,000 Property Damage.

If you fail to comply with the above, this insurance is not invalidated. However, in the event of a "loss", we will pay only to the extent that we would have been liable had you so complied.

(5) The insurance provided by this coverage extension is excess over any other collectible insurance available to you whether on a primary, excess contingent or any other basis.

**M. Temporary Transportation Expenses**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions, subparagraph a. Transportation Expenses is deleted and replaced by the following:**

**a. Transportation Expenses**

- (1) We will pay up to a maximum of \$1,500 for temporary transportation expense incurred by you because of Physical Damage to a coverage "auto".
- (2) We will pay only for those covered "autos" for which you carry Comprehensive, Collision or Specified Case of Loss Coverage.
- (3) We will pay only for those expenses incurred by you during the period of time that begins twenty-four (24) hours after the covered "loss" and ends at the time when the covered "auto" can be reasonable repaired or replaced.
- (4) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

**N. Amended Bodily Injury Definition – Mental Anguish**

The following is added to **SECTION V – DEFINITIONS, Definition C.:**

"Bodily injury" also includes mental anguish, but only when the mental anguish arises from other bodily injury, sickness or disease.

**O. Airbag Coverage**

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions 3.a.:**

However, this exclusion will not apply to accidental discharge of an airbag due to mechanical or electrical breakdown.

**P. Amended Insured Contract Definition – Railroad Easement**

**SECTION V – DEFINITIONS** paragraph H. "Insured contact" is modified as follows:

- 1. Paragraph H.3. is replaced by the following:
  - 3. Any easement or license agreement.
- 2. Paragraph H.6.a. is deleted.

**Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound**

**SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions**, exception paragraph a. to exclusion 4.c. and 4.d. is deleted and replaced with the following:

- a. Equipment and accessories used with such equipment, except for tapes, records, discs or other electronic media device, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or is removable from the housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be safely operated by use of the power from the "autos" electrical system, in or upon the covered "autos"; or

**R. Notice Of An Knowledge Of Occurrence**

**SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim Suit Or Loss**, subparagraph a. is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss" including:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured person and witnesses.

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (1) You, if you are an individual;
- (2) A partner if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

**S. Unintentional Errors Or Omissions**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions; 2. Concealment Misrepresentation Or Fraud** is amended by adding the following:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

**T. Towing Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing**, is deleted and replaced by the following:

- 2. We will pay up to \$750 for towing and labor costs incurred each time a covered "auto" is disabled due to a covered cause of loss. However:
  - a. All labor must be performed at the place of disablement; and
  - b. If the covered auto is a private passenger type no deductible applies; and
  - c. If the covered auto is not of the private passenger type our obligation to pay will be reduced by a \$250 deductible per disablement.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**