

Everett City Council Agenda

6:30 PM July 6, 2016

City Council Chambers

Roll Call

ACTION ITEMS:

Pledge of Allegiance

Approval of Minutes: June 29, 2016

Mayor's Comments

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) Everett Transit 2nd Quarter 2016 Briefing.

Documents: [Transit 2nd Quarter.pdf](#)

(2) Authorize the Mayor to sign Amendment No. 1 to Professional Services Agreement with Murray, Smith & Associates, Inc. to provide design and construction support services for the Legion Golf Course Storm water Detention Project in an amount not to exceed \$395,766.00.

Documents: [Murray Smith.pdf](#)

PROPOSED ACTION ITEMS:

(3) CB 1606-27- 2nd Reading – Adopt the Proposed Ordinance adopting and modifying changes to the Everett City Charter as recommended by the Charter Review Committee, adding new changes, and directing the submittal of these changes to the Snohomish County Auditor for placement on the ballot for November 8, 2016, for consideration by the voters of the City of Everett. (3rd and final reading and public hearing on 7-13-16)

Documents: [CB 1606-27.pdf](#)

CONSENT ITEMS:

(4) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of \$1,416,742.66 for the period of June 18, 2016 through June 24, 2016.

Documents: [res-93.pdf](#)

(5) Authorize the closure of Hewitt Avenue, Marine View Drive to Bond Street, on July 9, 2016, 9:30 a.m. to 6:00 p.m., for a Car Show sponsored by Ole Soul Southern Creole.

Documents: [Ole Soul-1.pdf](#)

(6) Authorize Call for Bids for the construction of the Water Main Replacement "Q" Broadway Project.

Documents: [Replacement Q.pdf](#)

(7) Authorize the purchase of a Peterbilt truck chassis from Washington State Contract 01513 in the amount of \$156,592.97 including Washington State sales tax.

Documents: [Peterbilt.pdf](#)

(8) Authorize the Mayor to sign Agreements with WDH Black Rock, LLC and Wave Business Solutions, LLC for Burstable Internet Connection for Cloud Services in the amount of \$11,000.00.

Documents: [WDH Black Rock.pdf](#)

(9) Authorize the Mayor to sign the Application for Use of Snohomish County Public Utility District Facilities in the amount of \$1000.00.

Documents: [Public Utility-1.pdf](#)

(10) Award contract for the Police Headquarters Masonry Cleaning and Repair Project to Alpine Waterproofing, in the amount of \$404,000.00 plus Washington State sales tax.

Documents: [Alpine.pdf](#)

(11) Authorize the Mayor to sign a Professional Services Agreement with Dykeman, Inc. for the design of the Main Library Window Replacement Project in the amount of \$27,000.00.

Documents: [Library Window.pdf](#)

(12) Authorize the Mayor to sign a Professional Services Agreement with Michael E. Purdy Associates, LLC for General Contractor as Construction Manager Consulting Services for the Service Center Redevelopment Project in the amount of \$83,719.00.

Documents: [Purdy.pdf](#)

(13) Award Bid for the Puget Sound Outfall No. 6 Reroute Project to McClure and Sons, Inc., in the amount of \$820,344.00.

Documents: [McClure-3.pdf](#)

(14) Authorize the Mayor to sign a Professional Services Agreement with Associated Earth Sciences, Inc. to provide geotechnical engineering design services for Water Main Replacement "R" Project in the amount of \$12,335.88.

Documents: [Earth Sciences.pdf](#)

Executive Session

Adjourn

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Everett Transit 2nd Quarter
2016 Briefing

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

COUNCIL BILL #
Originating Department Trans. Services
Contact Person Tom Hingson
Phone Number 425-257-8939
FOR AGENDA OF July 6, 2016

Initialed by:
Department Head
CAA ds
Council President

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u> Transportation Services
Amount Budgeted	-0-		
Expenditure Required	-0-	Account Number(s):	
Budget Remaining	-0-		
Additional Required	-0-		

DETAILED SUMMARY STATEMENT:

A quarterly briefing is provided to City Council regarding Everett Transit programs, services and major planning and facility initiatives. Staff will brief Council on significant activities since the 1st quarter briefing.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Amendment No.1 to
Professional Services
Agreement with Murray, Smith
& Associates, Inc. for Design
and Construction Support
Services of Legion Golf Course
Stormwater Detention Project

_____ Briefing
_____ Proposed Action
_____ Consent
_____ Action **X**
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Public Hearing
_____ Budget Advisory

COUNCIL BILL # _____
Originating Department Public Works
Contact Person David Voigt
Phone Number 425-257-8983
FOR AGENDA OF June 29, 2016

Initialed by:
Department Head _____
CAA do
Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Legion Memorial Golf Course	Professional Services Agreement for Predesign, August 5, 2015	Amendment 1, Exhibits C-1 and D-1	Public Works

Amount Budgeted	\$400,000	
Expenditure Required	\$395,766	Account Number(s): UP 3620-2
Budget Remaining	\$4,234	
Additional Required	\$0	

DETAILED SUMMARY STATEMENT:

The Northwest Stormwater Separation Project preliminary design study was completed and identified a series of needed improvements. Improvements consist of a new separate stormwater collection network with stormwater detention ponds on Legion Memorial Golf Course. These improvements will effectively eliminate street flooding and sewer backups in the project area.

Amendment No. 1 is for final design services and construction support for the initial phase of stormwater detention facilities on the golf course. The scope includes design services of a golf course architect. The separate storm water collection network and street restoration (phase 1) in the vicinity of Wetmore between 9th Street and 5th Street will be designed by city staff. This project also includes coordination with Everett Community College to implement a solution to the flooding problems at Rainier Hall.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 1 to Professional Services Agreement with Murray, Smith & Associates, Inc. to provide design and construction support services for the Legion Golf Course Stormwater Detention Project in an amount not to exceed \$395,766.

**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF EVERETT
AND
MURRAY, SMITH & ASSOCIATES, INC.**

Legion Golf Course Stormwater Detention Project, UP3620

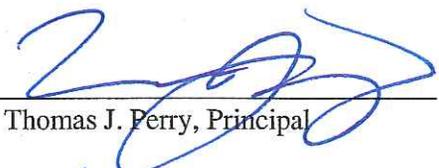
The City and Murray, Smith & Associates, Inc. agree to amend and modify their professional services agreement dated August 25, 2015 (the "Agreement") as follows:

1. The effective date of this Amendment is (month) _____, (day) _____, (year) _____.
2. Part 1 (Paragraph 1 of Exhibit A): The work included in Exhibit C-1 of this amendment is added to the Scope of Work described in Exhibit C of the Agreement.
3. Part 3 (Paragraph 3 of Exhibit A) is revised to read as follows:
Date of Contract Completion: December 31, 2018.
4. Part 4 (Paragraph 4D of Exhibit A) is revised to read as follows:
Maximum Total Compensation Amount: \$798,867.
5. Part 4 (Paragraph 4B of Exhibit A) is modified to read as follows:
The Contractor shall be paid such amounts and in such manner as described in Exhibit D of the Agreement and Exhibit D-1 of this amendment.
6. Part 4 (Paragraph 4C of Exhibit A) References to Exhibit D in this paragraph shall be replaced with "Exhibit D and Exhibit D-1 of Amendment No. 1".
7. Part 6 (Paragraph 5B and 25A of Exhibit A) is modified to read as follows:
City Notice Address: City of Everett, Attn: Erik Emerson, P.E., 3200 Cedar Street,
Everett WA 98201
8. Part 7 (Paragraph 5B Exhibit A) is modified to read as follows:
City Billing Address: City of Everett, Attn: Erik Emerson, P.E., 3200 Cedar Street,
Everett WA 98201
9. All terms, conditions and provisions of the Agreement remain in full force and effect except as expressly modified by this Amendment.
10. Exhibits associated with this Amendment No. 1 are attached herewith.

**CITY OF EVERETT
WASHINGTON**

MURRAY, SMITH & ASSOCIATES, INC.

By: _____
Ray Stephanson, Mayor

By: 
Thomas J. Ferry, Principal

Date

6/14/2016

Date

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Amendment No.1 to	_____	Briefing	COUNCIL BILL #	_____
Professional Services	_____	Proposed Action	Originating Department	Public Works
Agreement with Murray, Smith	_____	Consent	Contact Person	David Voigt
& Associates, Inc. for Design	X	Action	Phone Number	425-257-8983
and Construction Support	_____	First Reading	FOR AGENDA OF	June 29, 2016
Services of Legion Golf Course	_____	Second Reading		
Stormwater Detention Project	_____	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>
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DETAILED SUMMARY STATEMENT:

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Amendment No. 1 is for final design services and construction support for the initial phase of stormwater detention facilities on the golf course. The scope includes design services of a golf course architect. The separate storm water collection network and street restoration (phase 1) in the vicinity of Wetmore between 9th Street and 5th Street will be designed by city staff. This project also includes coordination with Everett Community College to implement a solution to the flooding problems at Rainier Hall. Construction cost of the detention facilities and golf course restoration is approximately \$1.2 million.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 1 to Professional Services Agreement with Murray, Smith & Associates, Inc. to provide design and construction support services for the Legion Golf Course Stormwater Detention Project in an amount not to exceed \$395,766.

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney

Date: _____

Date: _____

Legion Golf Course Stormwater Detention Project
City of Everett Work Order #UP3620
EXHIBIT C-1
Scope of Work
Final Design, Bidding and Construction Support

Murray, Smith & Associates, Inc. (MSA) has developed the following scope of work and fee estimate for final design, bidding and construction support services for the Legion Golf Course Stormwater Detention Project, City of Everett Project #UP3620. The scope and fee have been developed based on our discussions with City staff, the preliminary design and our project understanding and proposed approach to the work. The upstream stormwater collection network tributary to this project is divided into two phases: Phase 1 – N. Wetmore Ave Stormwater Separation Project and Phase 2 – Alverson Blvd Stormwater Separation Project. It is intended that Phase 1 will be constructed together with this project.

Background

The need for this project is based on the City's 2014 Comprehensive Sewer Plan (CSP) Update Capital Improvement Plan, in which it is recommended that the City construct a separate storm water network to effectively mitigate flooding and backup issues in the North Everett Combined Sewer System. The project area is located in the northwest area of north Everett, specifically between 10th streets and 3rd Street, Alverson Boulevard and Wetmore/Rockefeller Avenues, and due west of the Legion Memorial Golf Course and Everett Community College Campus (EvCC). This project together with the N. Wetmore and Alverson Stormwater Separation projects will address the following sewer and storm drainage issues:

- Reduce basement flooding on Alverson, Grand, Rucker, Hoyt, Colby and Wetmore Avenues between 4th and 10th St.,
- Reduce sewer backup/storm water flooding problems at Rainier hall at EvCC
- Improve "level of service" for sewer collection system in overall general area
- Separate storm water drainage and detention facilities
- Reduce wet weather flow rate in C-Basin trunk sewer
- Reduce wet weather flows to siphon headworks and CSO overflows at SRO2 and SRO3.

The City and HDR (author of the CSP) agree that sanitary sewer upsizing/replacement will not reliably eliminate the basement flooding problem and that a separate stormwater network will be more effective. In addition, the City has engaged the City Parks department manager and the operations managers of Legion Golf Course (Parks) and has discussed the concept of utilizing water features within the golf course for stormwater detention and increase the quality of play at the course.

MSA was authorized to proceed with the preliminary design phase of the work in August 2015. Through the preliminary design phase, working closing with City and Parks, a separate stormwater network in Northwest Everett was defined that will collect stormwater runoff and utilize existing and new water features within the golf course for detention. Elements of the project to move into final design, bidding and construction have been defined and include the following:

- Stormwater conveyance piping connections to the proposed N. Wetmore Separation Project at two locations, from the public right-of-way to water features within the golf course
- The expansion of one existing water feature and construction of one new water feature to be used for stormwater detention
- Hydraulic structures, piping and features to control and convey detained flow to the existing Basin C trunk sewer
- Golf course improvements to incorporate the water features into the overall layout and playability of the golf course
- Support efforts to acquire an easement from Everett Community College for the south connection to the N. Wetmore Separation project.
- Facilitate planning and design to define operation and maintenance parameters for the shared operation of the ponds by both Public Works and Parks/Golf Course staff.

Key Teaming Partner

With the utilization of water features for detention and the desire to enhance the playability of the golf course areas impacted by the project, iConGolf Studio, a golf course architecture firm, is a key teaming partner and has contributed to the development of the scope of work herein.

Task Descriptions

MSA's proposed scope of work for final design, bidding and construction support services for the Legion Golf Course Stormwater Detention Project is divided into the following tasks, which are a continuation of the tasks developed in the preliminary design phase scope of work.

Final Design, Bidding and Construction Support

Task 8	Project Management (Final Design, Bidding and Construction)
Task 9	Final Design Services
Task 10	Stakeholder Coordination
Task 11	Permitting
Task 12	Bidding Services
Task 13	Construction Support
Task 14.2	Unanticipated Labor or Expenses

Detailed descriptions of each major work task follow.

Phase 2 – Final Design, Bidding and Construction Support

Task 8 - Project Management (Final Design, Bidding and Construction)

This task is for general coordination of the project including coordination of the MSA team and with the City Project Manager including meetings, correspondence and communication, invoicing and project status reports during the Final Design, Bidding and Construction phase of the project. Anticipated elements of this task will include:

- 8.1 Correspondence and Coordination with City** – All communication will be coordinated through the City’s Project Manager. Correspondence with the City’s Project Manager via phone conversations and e-mail will include the communication of project decisions, project status, action items, work activities, and issues requiring City input.
- 8.2 Staff and Subconsultant Management** – MSA’s Project Manager will manage project staff and subconsultants to ensure all services are in conformance with the scope of work, fee estimate, and schedule. Conduct coordination meetings as needed to discuss project status.
- 8.3 Invoices and Budget Oversight** – MSA’s Project Manager will monitor project costs and manage budget and billing tasks, including preparation and submission of monthly invoices and progress reports.
- 8.4 Project Meetings** – Meet with City’s Project Manager at key project milestones and to review project elements, schedule and budget.
- 8.5 Project Schedule** - MSA’s Project Manager will prepare and regularly update an itemized project schedule using MS-Project. The schedule will include all key task activities, milestones, submittal deadlines and City review periods through completion of the scope of work. The schedule (electronic file PDF format) shall be available to the City.

Assumptions:

1. Final Design, Bidding and Construction duration of approximately 24 months.
2. Up to six (6) project meetings with the City’s Project Manager.

Deliverables:

1. Correspondence, e-mails and other documentation
2. Monthly billing statements and activity reports.
3. Updated project schedule (electronic file PDF format) as requested.
4. Meeting agendas and minutes as requested.

Task 9 – Final Design Services

This task will involve final engineering design services for the Legion Golf Course Stormwater Detention project. Anticipated elements of this task will include:

9.1 Golf Course Concept Plan – Develop conceptual plans for the golf course improvements associated with the project. iConGolf Studio will develop an understanding of the project, analyze the overall course and develop design strategies in accordance with Task 1 of their scope of work attached. Key elements of Task 1 include:

- Up to three design coordination meetings/workshops, including a kickoff meeting
- Review site conditions and existing information
- Develop alternatives and prepare up to three concept plans
- Review concept plans with team and revise preferred concept plan

9.2 Golf Course Improvements Schematic Design – The design concept developed in Subtask 9.1 will be incorporated into the overall project for review. iConGolf will perform the work in accordance with Task 2 of their scope of work which includes the following key elements:

- Prepare one final schematic level design plan of the golf course improvements
- Recommend improvements to maintain water quality
- Assist in defining drainage improvements
- Define a strategy to maintain play during construction
- Prepare preliminary construction budget
- Review schematic design with team

9.3 Prepare 60% Plans, Specifications and Estimate (PS&E) Submittal – MSA will prepare project plans, specifications and estimate to a 60% level of design completion based on improvements. Project plans, standard details and specifications will be prepared in City's format. The following provides a general overview of the proposed PS&E components that the City will receive and compile into a complete package for review by the City and MSA:

Plans – Detailed design drawings will be developed for the proposed improvements and meet City of Everett CAD standards. A preliminary list of drawings that are anticipated to be included in the final design PS&E are attached. In general, 29 plan sheets are anticipated and will include the following:

- Detention Ponds – Detention pond plans, cross-sections and details.
- Golf Course Improvements – Golf course plans, clearing and grading plans, cross-sections and details.
- Storm Drainage – Plan, profile and details for storm drainage improvements within the Golf Course.

In general, plans will be developed using a one-inch equals 20 feet horizontal scale, however different scales may be used if necessary for clarity.

Specifications - Prepare specifications consisting of bidding and contract documents, standard details, technical specifications and appendices. Specifications will be prepared in WSDOT APWA standard format for all utility and roadway work. Specifications for the specialty golf course improvements will be prepared in CSI MasterFormat in a separate section. The specifications are anticipated to include the following components that will be incorporated in a project manual by the City.

- Bid Proposals for Legion Golf Course Stormwater Detention Project
- Special Provisions and Technical Specifications for Legion Golf Course Stormwater Detention Project

Estimate – MSA will prepare an engineer’s opinion of probable construction cost estimate based upon the 60% design that includes an appropriate contingency for the level of design completion.

- 9.4 60% Review & Workshop** – The City will prepare a complete 60% PS&E package to include City’s prepared N. Wetmore Stormwater Separation design and MSA’s Stormwater Detention and Golf Course plans. MSA will review the complete 60% PS&E package and a workshop will be conducted with the City to review the complete 60% PS&E package and collaborate on work required to prepare the 90% deliverable. The 90% plans and specifications will be revised based on review comments and discussions with City. Written responses to review comments will be prepared and submitted in a timely manner.
- 9.5 Prepare 90% PS&E Submittal** - Following the 60% Review Workshop, MSA will prepare PS&E submittal to a 90% level of design completion incorporating agreed review comments. MSA will prepare an engineer’s opinion of probable construction cost estimate based upon the 90% design that includes an appropriate contingency.
- 9.6 90% & Workshop** – The City will prepare a complete 90% PS&E package to include City’s prepared N. Wetmore Stormwater Separation design and MSA’s Stormwater Detention and Golf Course plans. MSA will review the complete 90% PS&E package and a workshop will be conducted with the City to review the complete 90% PS&E package and collaborate on work required to prepare the 100% deliverable. The 100% plans and specifications will be revised based on review comments and discussions with City. Written responses to review comments will be prepared and submitted in a timely manner..
- 9.7 Prepare Final Bid PS&E (100%)** – Following the 90% Review Workshop, MSA will prepare final bid-ready plans and specifications incorporating agreed review comments.

MSA will prepare an engineer's opinion of probable construction cost estimate based upon the 100% design that includes an appropriate contingency.

- 9.8 QA/QC** – Perform in-house Quality Assurance/Quality Control (QA/QC) review of all submittals, the design plans, project manual and engineer's opinion of construction cost, prior to submitting to the City for review.
- 9.9 Utility Coordination** – Coordinate with utility companies that are affected by the project, specifically in the EvCC easement area. Coordination includes submitting final 60%, 90% and 100% plans for review and technical input by utility companies. Plans will be distributed to franchised utilities in the project vicinity. A written record will be kept for all communication with utility providers.
- 9.10 Construction Schedule and Sequencing** – Develop a construction schedule and sequencing plan for the project taking into consideration strategies for implementing improvements within the golf course and maintaining playability. This will include identifying project constraints and milestones in the specifications that will be applied to the project. The construction schedule and sequencing plan will be submitted as part of the 60%, 90% and 100% submittal packages with elements included in the specifications.

Assumptions:

1. City will compile and prepare the complete project manual and contract drawings incorporating both the N. Wetmore Stormwater Separation and the Legion Golf Course Stormwater Detention projects. MSA will submit plans and project specific specifications to the City to incorporate in the final bid-ready documents.
2. Contract drawings and specifications will comply with the City's adopted Engineering Design Standards, Standard Specifications and CAD Standards, as modified to suit the particular elements of this project.
3. City will conduct submittal reviews and provide comments within fifteen (15) working days.
4. No issues or restrictions associated with contaminated soils are anticipated in the proposed work areas.
5. Improvements to the golf course will be limited to the areas impacted by the proposed improvements or as otherwise identified in Tasks 1 or 2 of iConGolf Studio's work and modified in this Scope of Work.
6. MSA shall apply a Washington Professional Engineer's stamp with signature and date on each sheet of the drawings for the Legion Golf Course Stormwater Detention project. The City will stamp all other drawings and the Project Manual.
7. Structural design is limited to the detention pond control structures and retaining walls.

8. Electrical design is limited to providing a new power service for recirculation pumps at one of the stormwater detention ponds. No I&C design is included in this project.
9. City will take the lead in obtaining temporary construction and permanent utility easements.

Deliverables:

1. Up to three preliminary concept diagram of the golf course improvements.
2. Preliminary schematic design level plans and preliminary construction cost estimate for the golf course improvements.
3. One (1) electronic copy half-size drawing sets and one (1) electronic copy of project specific specifications (specifications to be searchable format pdf).
4. Final Bid PS&E (100%) – one (1) hard copy full size bid-ready set of the plans (stamped and signed originals), one (1) electronic copies of half size drawings (11x17) and one (1) electronic copy of project specific specifications.
5. Electronic versions will be photo / print ready.
6. Electronic copy in pdf format of engineer's opinion of probable construction cost estimates as appropriate.
7. Decision and action item log updates to track City and MSA review comments, decisions and deliverables.
8. Written record of franchised utility coordination.

Task 10 – Stakeholder Coordination

This task provides for project coordination with the local stakeholders. Anticipated elements of this task include:

- 10.1 *Coordination Meetings*** – Participate in coordination meetings with the Legion Golf Course Staff and Everett Community College (EvCC) to discuss the project needs associated with alternatives and conceptual plans. MSA's Project Manager will develop and distribute a detailed meeting agenda before the meeting, and minutes after the meeting.
- 10.2 *Stakeholder Plan Review*** – Provide submittals, as defined in the previous Task 9, to the Golf Course staff and/or EvCC as necessary for review comments. Meet with stakeholders to review plans and receive comments.
- 10.3 *Public Open House*** – Assist the City in conducting two (2) open house meetings (graphic materials, presentation, etc.), at approximately 60% design milestone and prior to construction, to notify local residents and solicit comments. It is anticipated that key team members will attend the meeting.

Assumptions:

1. The City will coordinate directly with the Legion Golf Course and EvCC including correspondence and scheduling meetings.

2. MSA will prepare for and attend up to four (4) stakeholder design development meetings during the design phase.
3. MSA will prepare for and attend up to four (4) stakeholder plan review meetings to review plans and receive comments.
4. City will take the lead in conducting public involvement activities, mailings, etc.
5. iConGolf Studio will participate in one (1) open house meeting.

Deliverables:

1. Meeting agendas and minutes.
2. Plans, figures and information to support meetings with stakeholders.
3. Submittals for stakeholder review.
4. Miscellaneous graphic materials, reference plans and technical support for public involvement activities.

Task 11 – Permitting and Easements

This task includes efforts in collaboration with the City to secure permits for the project.

11.1 City Permit Assistance – Review the City’s permit checklist, applications and attachments for project permits including right-of-way construction permit, public works permit, and grading permit. Prepare supporting graphics and provide necessary technical information to the City.

11.2 SEPA Checklist – City will take the lead in preparation of the SEPA checklist. MSA will provide the necessary technical information and graphics to support SEPA process.

11.3 Easements – MSA will provide recommendations for acquiring temporary construction and permanent utility easements necessary to complete the work. City will take the lead in obtaining all easements.

Assumptions:

1. City will take the lead in completing the applications and processing all permits. MSA will provide supporting technical information and review draft applications associated with the Legion Golf Course Stormwater Detention project.
2. No additional environmental permits such as Shorelines Development, HPA or NPDES are anticipated.
3. Proposed improvements are subject only to City of Everett land use, environmental, and construction permit conditions.
4. City will take the lead in obtaining temporary construction and permanent utility easements.

Deliverable:

1. Miscellaneous reference plans and technical support for City of Everett permits and SEPA checklist.
2. Recommendations for acquiring easements.

Task 12 - Bidding Assistance

This task provides assistance to the City during bidding and award of the project. Elements of this task will include:

- 12.1 Bidder Inquiries and Addenda** – Assist the City in responding to bidder’s questions. Prepare draft and final addenda, if necessary, to clarify or correct bid documents.
- 12.2 Bid Review** – Provide supplemental support in reviewing bids, checking references and selecting the apparent low bidder.
- 12.3 Conformed Drawings and Specifications** – Prepare conformed drawings and specifications as required for construction.

Assumptions:

1. The City will take the lead in tasks associated with printing bid documents, document distribution, bid advertisement, addenda distribution, plan holder administration, bid evaluation, bid tabulation etc.
2. The City will take the lead in receiving and answering bidders’ questions.
3. The City will provide two sets of contract documents to MSA for use during the bidding period.

Deliverables:

1. Draft addenda as required for the City to distribute to plan holders.
2. Conformed drawings and specifications if required.

Task 13 – Construction Management Support

This task represents involvement of MSA during the construction of the improvements to support the City’s on-site inspector and construction management group. MSA’s involvement during construction will be limited to support and periodic collaboration with the City, the construction contractor, permitting agencies and others, all at the direction of the City up to the extent of the budget for this task. Anticipated elements of this task will include:

- 13.1 Meetings** – Attend a pre-construction conference with City and construction contractor and invited agencies and utilities. MSA will be available to answer questions. Attend project progress meetings with City and contractor, as necessary.

13.2 Shop Drawings and Submittals – Review construction submittals, as directed by the City, for conformance with project documents. Prepare review comments and submit to City electronically. MSA will also upload reference documentation such as conformed drawings, contract, specifications and permits as necessary for construction administration.

13.3 Site Visits – Conduct periodic site visits, as necessary, to support the City’s on-site inspector and observe work in the golf course at key project milestones. Attend project walk-through for final inspection of the project and assist City with development of construction punch list. Assist City with substantial completion determination.

13.4 Clarifications and Changes – MSA will assist with issuing clarifications to the construction contractor and responding to design changes, change orders, as requested. Prepare review comments and submit to City electronically using MS SharePoint.

13.5 Utility Coordination – Coordinate with utility companies that are affected by the project, specifically within the EvCC easement area. Coordination includes submitting conformed construction plans for franchise utilities company to record. Plans will be distributed to utilities in the project vicinity. A written record will be kept for all communication with utility providers.

Assumptions:

1. City will provide full-time on-site inspection and will take the lead in administrating and managing the construction contract and communicating with the construction contractor.
2. City will be responsible for preparing record drawings.
3. MSA will attend preconstruction conference and up to six (6) project meetings as requested.
4. MSA will review up to eight (8) construction submittals as requested.
5. MSA will conduct up to four (4) site visits as requested by the City.
6. MSA will issue up to ten (10) clarifications and assist in processing up to four (4) change orders at the request of the City.

Deliverables:

1. Written clarifications and design plans, as requested.
2. Submittal reviews.

Task 14.2 – Unanticipated Labor or Expenses

This task will include additional unanticipated labor or expenses not specifically identified in the scope of work tasks defined above. Such work items will be implemented on a work order basis and will be undertaken only after written authorization from the City.



PROJECT DESCRIPTION

This scope of work (the "Agreement" covers the planning, design and construction observation of new/revised storm water ponds and new/revised golf course features at Legion Memorial Golf Course (the "Project") in Everett, Washington, located at 144 West Marine Drive, Everett, Washington, 98201 (the "Property").

Murray, Smith and Associates, Inc. (the "Consultant") has entered into an agreement (the "Prime Agreement") with the City of Everett (the "City") to provide certain design and planning services in connection with the improvement of the Property; and on behalf of the City, the Consultant desires to engage iConsult, LLC, a Colorado Corporation (the "Sub Consultant") to provide services in connection with the design of the Project and, Sub consultant desires to do same.

SCOPE OF SERVICES

Sub consultant shall provide professional services (the "Services") as hereinafter set forth, including the design and construction support services of the described Project, within the identified budget.

Task 1 - Golf Course Concept Plan(s)

Objectives

1. Develop a thorough understanding of the City's vision and goals, schedule, budget, risk factors, and test program goals, locate program elements and confirm design concepts based on the defined program.
2. Clarify the areas of design responsibility and interface coordination between Consultant and the Sub Consultant.
3. Analyze the overall golf course strategy, playability, and shot values and provide design concepts to guide future storm water and golf course remodel initiatives to enhance the overall quality of the golf course, address storm water concerns and potentially generate new revenue sources.
4. Develop preferred design strategies based on City's goals and the existing playability and character of the golf course.

Tasks

1. Attend kick-off and design coordination meeting with the City and Consultant. This meeting is likely to include a field visit to the site. Subsequently, a minimum of two design coordination meetings or workshops.
2. Examine and document existing conditions and review/develop project program and design criteria.
3. In consultation with the City and its representatives, review the program requirements with respect to the budget of the Project.
4. Review the Property to confirm site conditions such as soils, slopes, views and context surrounding the site. Field-verify survey information, including the limits of existing improvements.
5. Develop and test design alternatives for the Project:
 - o Storm water pond locations
 - o Impacted golf holes/features:
 - Golf hole routing

- Golf hole improvements
 - Golf hole strategies, playability and aesthetics
 - Driving Range/Practice areas
 - Circulation & safety
 - Other impacted golf features
6. Prepare up to three (3) concept plans or diagrams with associated preliminary budgets for the Project area based on the site visit and the City's programming and design criteria.
 7. Present concept plan(s) via conference call to City and Consultant's project team for review, comments and approvals.
 8. Revise preferred concept plan based on Consultant and City's comments.
 9. Based on the Consultant's and City's comments and instructions, select one final concept plan to establish the Project's goals and budget.
 10. Prepare a detailed project schedule/work plan.

Deliverables

1. Summary of project goals and desired outcomes, including the City's critical success factors.
2. Project schedule/work plan.
3. Up to three (3) preliminary concept diagrams and preliminary budgets for the Project in designated work area (Property).
4. Based on the City approval, a finalized illustrative concept plan of the golf course highlighting areas of improvement.

Task 2 - Schematic Design

Objectives

1. Advance the design concepts prepared in Task 1 and integrate the City approved Concept Plan with the design concepts produced by Consultant in the Pre-Design and under direction of Gary Sayre and Consultant. Identify options or alternatives, evaluate them and recommend a course of action.
2. Provide opportunity for input from Premier Golf Centers (PGC).
3. Recommended priorities and strategies for implementation of remodel work.

Tasks

1. Based on City approved Concept Plan, prepare one (1) final schematic level design plan that clearly illustrates the golf course improvements, key relationships, site circulation and the relative disposition of the storm water ponds to the golf course:
 - Golf course hole routing
 - Golf course feature revisions
 - Golf course strategy
 - Golf course circulation (cart path alignment)
 - Overall project area golf course improvements
 - Working with Consultant, prepare preliminary pond layouts based on information and design criteria (active storage volumes, etc.) provided by Consultant.
 - Schematic site grading and drainage concepts for the Project.

4. Based on above preliminary layouts and schematic design plan, show that earthwork cut/fill balance is achieved to the extent possible.
5. Prepare recommendations for surface water recirculation system to maintain pond water quality.
6. Prepare preliminary stream layouts based on information and design criteria provided by Gary Sayre and Consultant.
7. Assist Consultant with layout and routing of golf course drainage system into the pond system so as to assure effective golf course drainage functions.
8. Define a strategy to maintain golf play during construction, which may include the development of an alternate hole to be played during construction of proposed pond and stream improvements.
9. Based on schematic design plan, prepare preliminary construction budget.
10. Sub Consultant will review the schematic design plan, strategy, theme and budget with the City to determine an agreed upon plan. Upon City's approval, the overall plan concepts will be finalized in Task 3 below.

Deliverables

1. Schematic plan for the Project.
2. Safety analysis examining the interface between golf holes, cart path circulation and pond/stream improvements.
3. Preliminary pond and stream layout and grading plans. Plans shall indicate sizes, shapes and elevations of proposed golf features (drawing scales vary).
4. Estimate of earthwork cut/fill quantities and preliminary earthmoving balance.
5. Preliminary construction cost estimate for pond, stream and golf course improvements, work area restoration, landscaping etc. that would be performed by a specialty (golf course) contractor.
6. Outline of technical specifications for areas of work to be performed by specialty (golf course) contractor.
7. Final schematic design illustrative suitable for presentation.
8. One (1) public presentation illustrating the Schematic Design for the Project.
9. Phasing/construction recommendations to maintain golf operations during construction.

Task 3 - Final Design (Construction Documents and Contractor Selection)

Construction Documents Phase:

Objectives

1. Advance the preliminary design to produce final design documents to be incorporated into the Contract Documents for the NWSS project produced by Consultant and suitable for public works bidding and construction.
2. Prepare final documentation drawings that incorporate the most current information regarding construction practices.
3. Accomplish necessary review and approval of the documents and by City management and administration.
4. Gain concurrence from PGC related to the design and construction approach.

Tasks

1. Based on the preliminary design and input from the City, Consultant and PGC, prepare final design drawings and specifications to be incorporated into the final design drawings and specifications prepared by the Consultant suitable for bidding and construction of proposed improvements that would be constructed by a specialty golf course contractor.
2. Participate in one public open house meeting for the NWSS Project.
3. Prepare 60%, 90%, and final plans, specifications and cost estimates to be incorporated into the 60%, 90% and final plans, specifications and cost estimates prepared by Consultant for the project. Construction Documents includes (drawing scales vary):
 - o Master/Strategy Plan.
 - o Staking and Layout Plan.
 - o Clearing Plan.
 - o Grading/Contour Plan.
 - o Cut/fill Plan.
 - o Cart Path Plan.
 - o Preliminary Drainage Plan (per county codes the final drainage plan and infrastructure plan will be prepared by the Consultant and will be included in the final document package).
 - o Green(s) Plan.
 - o Landscaping Plan, including grassing, tree, shrub, vine and ground cover locations.
 - o Irrigation Plan (by iConGolf Studio sub)
 - o Construction Details for all golf course features designed by Sub Consultant and not a part of the Consultant's scope of work, showing typical features and elements of the Project, including greens, tees, bunkers, cart paths, walls, drainage features, etc.
4. Recommend priorities and strategies for implementation of remodel work to define construction sequencing and constraints.
5. Prepare phasing diagrams or project plan for implementing future improvements.
6. Define the minimum qualifications that would be required of specialty golf course construction contractors and determine if a bidder qualification process is necessary.
7. Provide one (1) set of corrected, stamped Construction Documents for final signature by the Park's program manager, Gary Sayre.
8. Coordinate Sub Consultant's work with other consultants retained by the City.
9. Proceed with the Bidding Phase upon approval of the Construction Documents by the Contracting Manager and cost estimates by the City, and at the written direction of the City.

Deliverables

1. Color rendering (Master Strategy Plan) showing the proposed new ponds, changes to the golf holes, landscaping, cart paths etc. To be used for public open house etc.
2. Progress plans at 60% and 90% completion for review and comment by the design team. Review plans are to be submitted as .pdf files suitable for printing as 11 x 17 (half-size).
3. Final 100% plans, 22 x 34 (drawing scales vary) original plots with professional seal signed and dated ready for bidding and construction. Sheet numbering, titles etc. shall be coordinated with Consultant so the plans are properly collated into the overall set. If the designs are produced using AutoCAD, provide files on disc.
4. Specifications printed single-sided and ready to be collated into the overall project manual. Format shall be CSI.
5. At 90% completion provide a detailed tabulation of construction quantities, definition of bid items, method of measurement and payment and itemized opinion of construction

- cost. Coordinate with Consultant on production of proposal form and bid item descriptions.
6. Develop bidder qualifications.
7. Participate in one public open house meeting for the NWSS Project.
8. One (1) digital, .pdf set of corrected, stamped Construction Documents.
9. Prepare and submit final Construction Document cost estimate.

Bidding Phase:

Objectives

1. Assist the City in the public bidding process as defined below.
2. Assist the City in reviewing bids.

Tasks

1. Assist in preparing any design-related addenda or revisions to the Bidding Documents.
2. Attend pre-bid conference and provide written addendums to the drawings if deemed necessary.
3. Assist the City in analyzing the submitted bids, and value engineering the project.

Deliverables

1. Assist the Consultant to respond to bidder questions.
2. Assist the Consultant in the preparation of addenda to clarify bid documents during the bidding phase.
3. Attend pre-bid conference and provide written addendums to the bid documents if deemed necessary

Task 4 - Construction Services

Objectives

1. The general objective for this phase of the work is to provide construction services to ensure the final quality of the golf holes and to confirm Contractor conformance to the plans, details and specifications.
2. Sub Consultant will make periodic visits to the site to become familiar with the progress and quality of construction and to determine whether the construction of the Project is proceeding in accordance with Sub Consultant's design intent, Contract Documents and Specifications. During such visits and on the basis of observations while at the site, Sub Consultant will keep the City informed of the progress of construction. Sub Consultant may recommend the City reject work if the Contractor fails to conform to the Contract Documents.

Tasks

1. Attend one (1) pre-construction meeting with the Contractor and City representative to outline all phases of construction.
2. Attend and or participate in construction meetings, with Contractor and his subcontractors as part of the site visit schedule.
3. Arrange meetings with City to review work in progress or to resolve problems promptly as they occur. Sub Consultant will have access to the project site at all times while construction is in progress.
4. Respond to requests for clarification.
5. Review and verify the contractor's Pay Estimates in a timely manner when received.
6. Advise and consult with the City and issue all of the City's instructions to the Contractor and conduct site visits as needed. It is anticipated that there will be weeks where site visits are required and others where less frequent on-site decisions are necessary, depending on the stage of construction.
7. Sub Consultant will work with the City to resolve on-site construction problems with the golf course Contractor that may arise during construction.
8. Observe Project grading during construction in order to make prompt decisions regarding shaping, feature construction and finishing. Sub Consultant will recommend all field modifications as deemed necessary to the City for value engineering and design.
9. Observe layout and installation of irrigation systems and specified coverage tests.
10. Observe the final placement of plant materials and address design changes based on field modifications in the grading to facilitate the proposed project schedule.
11. Recommend rejection of work that does not comply with construction drawings and documents, and require corrective work.
12. Prepare and submit recommend Project related field orders to the City.
13. Review and approve all shop drawings, samples and other submissions of the Contractor for conformance with the overall design concept of the project.
14. Review as-built drawings.
15. Provide progress reports indicating the progress of the project, quality of construction, specific problem areas and state of completion.
16. Conduct a substantial completion punch-list.
17. Once the Contractor gives notice of substantial completion, Sub consultant will conduct an on-site meeting with the Contractor and City to review the construction of the Project.

Deliverables

1. Attend pre-construction meeting.
2. Prepare site visit notes and project updates in correlation to site observation visits.
3. Review Pay Requests.
4. Prepare project punch-list.
5. Attend warranty walk through within one year of the date of physical completion.

ASSUMPTIONS TO SCOPE OF SERVICES

1. A verbal request by the Consultant or the City to begin each phase of the work constitutes approval of prior design. Changes to previously approved work directed and approved by the Consultant or the City, requiring redesign and/or revisions during subsequent phases will be negotiated as supplemental services.

2. Various information, documents, or services may required for performance of the work to complete the Project, which include but are not limited to (the City at Sub Consultant's request is responsible for securing these maps, documents, plans, reports, etc.):
 - o Existing conditions data of property and proposed development area sufficient for the needs of the project, including a certified land survey, aerial photography, topography mapping and a survey of above and below ground utilities.
 - o The topographic field survey must have a minimum of two-foot contour intervals that include at least the property lines, easements, utilities, structures and buildings and all golf course features (greens, tees, hazards, stream, lakes, etc.).
 - o Existing site engineering and record drawings, including but not limited to as-built and/or proposed architectural, structural, civil engineering, plumbing and electrical engineering, paving and roads.
3. Sub Consultant assumes no responsibility for the accuracy of such information or for other professional services provided by Consultant or the City. Sub Consultant is not liable for any errors or omissions therein.
4. Certain testing may be required to complete the Project, which include but are not limited to (the City is responsible for preparing and conducting such tests and all associated fees):
 - o Soil's
 - o Aggregates
 - o Compaction
 - o Irrigation Water
 - o Other materials necessary for completing the Project.
5. The City shall provide the services of additional consultants when such services are deemed necessary. These consultants may include but are not limited to irrigation, soil, civil, hydrologic, geologic or other engineers; wetland, wildlife, or botanical specialists and approval process consultants. The City is responsible for all fees and expenses associated with any consultant work.
6. Responsibilities for the preparation and coordination of Construction Documents and exhibits for all off-site improvements are not included in this Scope of Services.
7. Geotechnical borings have been completed near the pond locations on the golf course and the design effort is to incorporate geotechnical information as appropriate.
8. Consultant will provide conceptual pond layouts and sections.
9. All storm water detention and control structures within and adjacent to the ponds will be designed by Consultant and will be integrated with the Sub Consultant's designs and plans. Consultant will characterize the range and variation of water level necessary for detention functions.
10. Consultant will design all storm water piping which convey water in and out of the ponds.
11. Site visits during construction.

EXCLUSIONS TO SCOPE OF SERVICES

1. Providing financial feasibility or other similar studies.
2. Identifying legal requirements or any public or private restrictions, which may apply to the Project.
3. Reviews, preparation of presentation materials and processing of documents for public agencies and community representatives are not included in this Scope of Services.
4. Identifying legal requirements or any public or private restrictions, which may apply to the golf course.

5. All engineering, including but not limited to, cart path construction, bridge structure, pond headwalls, dams, drainage pipe, roadways, lot plats, etc.
6. Preparing and coordinating Construction Documents and exhibits for all off-site improvements are not included in this Scope of Services.
7. Obtaining any permits, approvals, licenses or consents relating to the project.
8. Obtaining or supplying funding or financing for the Project.

SCOPE OF SERVICES FEE

1. Sub Consultant fee for the Services described in this Agreement are as follows:
See Exhibit A
2. Reimbursable Expenses - In addition to the Scope of Services fee, we charge for project expenses incurred on your behalf. These typically include such items as travel, photography, telephone charges, video conferencing and reproduction (10% mark-up on expenses).
3. Additional Services - Any services that are not defined in this Agreement are compensated on an hourly basis for the time worked on your behalf. Rates are based on our current employee rate schedule.

Additional services can include but are not limited to, redesign of work already approved, major revisions to the program and/or expansion of Scope of services. We will define the changes, additions or modifications to the Scope, provide an estimate of costs and request written authorization in advance.

4. Taxes - Any taxes or fees, (local, state or federal), based on gross receipts or revenues will be added to amounts due under this Agreement.

**CITY OF EVERETT, LEGION GOLF COURSE STORMWATER DETENTION PROJECT, UP3620 - EXHIBIT D-1
PROJECT HOURS, EXPENSES AND FEE ESTIMATE**

Date: 13-Jun-16

Labor Category	Staff	Direct Salary Hourly Rates, (\$\$.CC)	HOURS FOR EACH TASK (Whole Hours Only)										Total Hours	Cost
			Task 8	Task 9	Task 10	Task 11	Task 12	Task 13	Task 14	CM Support	Unant.			
			PM (Final Design)	Final	Stakeholder	Permits	Bidding	CM Support	Unant.					
1 Principal in Charge	Lindberg	\$ 75.00	8	4									12	\$ 900
2 Project Manager / Contract Manager	Perry	\$ 75.00	52	59	40	5	4	14					174	\$ 13,050
3 Project Engineer / Assistant PM	Hardy	\$ 48.84	100	111	52	16	12	52					343	\$ 16,752
4 Storm Project Engineer	Covington	\$ 47.35	24	135	16	6	24	41					246	\$ 11,648
5 Storm Designer	Little	\$ 25.96		174	6	20	8	26					228	\$ 5,919
6 Storm Drafter / CAD	Marx	\$ 38.46		156	6	8	12	6					188	\$ 7,230
9 Hydraulic Model Modeler	Walsh	\$ 31.49		16	8	2							16	\$ 504
15 Project Admin.	Russ	\$ 16.68	22	24	8	2	2	2					60	\$ 1,001
Total Task Hours			206	679	122	57	62	141					1,267	
Subtotal Direct Salary Cost (DSC), \$			10,887	27,959	6,661	2,301	2,725	6,470					25,000	\$ 82,003
Overhead on DSC (Indirect cost) @ .%		199.50%	21,720	55,778	13,289	4,590	5,436	12,908					25,000	\$ 113,721
Total Labor Cost, \$			32,607	83,737	19,950	6,891	8,161	19,378					25,000	\$ 195,724
Expenses, \$														
1 Mileage & Travel			15	40	0	0	10	120						\$ 185
2 Reproduction & Printing			190	200	50	25	150	190						\$ 805
3 Postage & Delivery			45	20	0	0	20	20						\$ 105
4 Per Labor Hr. Model Charge		\$ 10.00	0	160	0	0	0	0						\$ 160
5 Per Labor Hr. Tech. Charge		\$ 18.00	0	2,808	108	144	216	438						\$ 3,384
Total Expenses, \$			250	3,228	168	169	396	706						\$ 4,639
TOTAL LABOR AND EXPENSES			32,857	86,965	20,108	7,060	8,557	19,816					25,000	\$ 200,363
Subcontractant Expenses, \$														
1 iConGolf Studio				89,055				39,680						\$ 132,280
2 AESI (Geotechnical)				10,000				2,000						\$ 7,060
3 CG Engineering (Structural)				12,000				2,000						\$ 13,000
4 R&W (Electrical)				111,055	0	0	5,545	50,740						\$ 15,000
TOTAL SUBCONSULTANTS			0	111,055	0	0	277	50,740						\$ 88,365
Subcontractant Admin Mark-up, %		5.00%	0	5,552	0	0	277	2,536						\$ 375,068
Subtotal Cost by Task			32,857	209,572	20,108	7,060	14,379	73,092					25,000	\$ 375,068
Fee/Profit (as % of Total DSC & Overhead)		11.00%	3,587	9,211	2,195	758	898	2,132						\$ 18,781
Next Year's Labor Escalation*		3.00%					272	645						\$ 917
TOTAL ESTIMATED COST AND FEE, \$			36,444	212,783	22,303	7,818	15,549	75,869					25,000	\$ 395,766

* Next year's labor escalation was calculated assuming 100.00% of the work would be completed next year.

Enter data in yellow & green shaded cells only. Other formula cells are locked to prevent accidental changes. There is no password protection.

Overall Project Multiplier	3.32
Fee/Profit as a % of DSC Only	32.95%

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Ordinance adopting and modifying changes to the Everett City Charter as recommended by the Charter Review Committee, adding new changes, and directing the submittal of these changes to the Snohomish County Auditor for placement on the ballot for November 8, 2016, for consideration by the voters of the City of Everett.

- Consent
- Action
- First Reading
- Second Reading
- Third Reading
- Public Hearing

COUNCIL BILL # CB160627
 Originating Department Administration
 Contact Person Bob Bolerjack
 Phone Number 425-257-8727
 FOR AGENDA OF June 29, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

Location **Preceding Action** **Attachments** **Department(s) Approval**
 Resolution No. 6926 Ordinance Administration, Legal

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

DETAILED SUMMARY STATEMENT:

On May 26, 2016, the Charter Review Committee submitted to the Mayor and City Council its proposed changes to the Everett City Charter. These changes are included in this Ordinance for consideration by City Council.

These changes and additions include:

- Changes to Section 3.2 regarding City Council meetings, eliminating the requirement that Council meet weekly and making the section consistent with state law and not redundant with state law
- Elimination of outdated language (“hereof”, “thereof”, “heretofore” and the like) and replacement with modern, equivalent language
- Addition of section regarding appointments to City boards, commissions and committees, stating that appointments should consider factors such as geography, gender, ethnicity and age in an effort to better reflect the City’s diversity

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign an Ordinance adopting and modifying changes to the Everett City Charter as recommended by the Charter Review Committee, adding new changes, and directing the submittal of these changes to the Snohomish County Auditor for placement on the ballot for November 8, 2016, for consideration by the voters of the City of Everett.

ORDINANCE NO. _____

AN ORDINANCE of the Everett City Council approving changes to the City Charter to be considered in an election by the residents of Everett and requesting that the Snohomish County Auditor place these Charter ballot measures on the November 8, 2016, General Election.

WHEREAS, the Everett City Charter was adopted at a Special Election held June 25, 1968, and amended in 1978, 1982, 1996, and 2006;

WHEREAS, the Charter Review Committee was formed to examine the Charter and recommended any changes it felt appropriate; and

WHEREAS, the Charter Review Committee met over a period of months and did examine the Charter; and

WHEREAS, the Charter Review Committee's evaluation culminated in recommended changes; and

WHEREAS, the Council has reviewed the recommended changes to the Charter and, with some modifications and additions, wishes to place these proposed changes on the November 8, 2016 ballot for consideration by the residents of Everett;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: The Snohomish County Auditor, as ex officio supervisor of all elections held in Snohomish County, is requested to place the proposed Everett City Charter changes specified below on the ballot for the November 8, 2016, General Election. This request is made in accordance with the authority invested in the City as set forth in Section 16.1 of the City Charter which reads (in part) as follows:

Amendments Proposed by the Council.

The council may at any general or special municipal election submit in the form of an ordinance any proposed amendment or amendments to this charter, to be voted upon at such election by the electors...

Section 2: The City Attorney is hereby authorized and directed to take action with respect to the proposed changes to the Everett City Charter so that the propositions which below follow each proposed change are:

- A. Consolidated by subject so as the total number of propositions on the ballot are reduced in number, if possible;
- B. Formulated in compliance with state law applicable to local measures (RCW 29A.36.071); and

The City Attorney shall transmit such reformulated and condensed propositions to the Clerk of the City of Everett. The Clerk is authorized and directed to certify to the Snohomish County Auditor the proposed Everett City Charter changes as specified below and as formulated and condensed by the City Attorney. The City Attorney and City Clerk are also each authorized to take whatever additional actions are necessary for the placement of such changes on the November 8, 2016 ballot.

Section 3: Changes to Section 3.2. Section 3.2 of the Everett City Charter, which reads as follows:

The city council shall meet regularly, at least once each week at the city hall within the corporate limits of the city at such times as may be fixed by ordinance or resolution. At least one of such regular meetings shall be held each month in the evening after 6:30 p.m. Special meetings may be called by the mayor, the president of the council, or any three members of the council by written notice delivered to each member of the council at least twelve hours before the time specified for the proposed meeting. All council meetings shall be open to the public, except that the council may hold executive sessions from which the public is excluded for purposes other than the final adoption of an ordinance, resolution, rule, regulation, or directive. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting, the date of which is not fixed by ordinance, resolution or rule, unless public notice of such meeting has been given by such notice to the local press, radio, and television, as will be reasonably calculated to inform inhabitants of the city of the meeting. Meetings of the council shall be presided over by the president, selected annually by a majority vote of the council, or in the absence of the president, by a member of the council selected by a majority of the members present at such meeting. Appointment of a council member to preside over the meeting shall not in any way abridge his right to vote on matters coming before the council at such meeting. In the absence of the clerk, or deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

is recommended to be changed to:

The City Council shall meet regularly, ~~at least once each week~~ at the City Hall within the corporate limits of the City at such times as may be fixed by ordinance or resolution. At least one of such regular meetings shall be held each month in the evening after 6:30 p.m. Special and emergency meetings may be called ~~by the mayor, the president of the council, or any three members of the council~~ by written notice delivered to each member of the council at least twelve hours before the time specified for the proposed meeting in accordance with State law. All Council meetings shall be open to the public, except that the Council may hold executive sessions from which the public is excluded in accordance with state law, including the Open Public Meetings Act (Chapter 42.30 RCW), for purposes other than the final adoption of an ordinance, resolution, rule, regulation, or directive. ~~No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting, the date of which is not fixed by ordinance, resolution or rule, unless public notice of such meeting has been given by such notice to the local press, radio, and television, as will be reasonably calculated to inform inhabitants of the city of the meeting.~~ Meetings of the Council shall be presided over by the President, selected annually by a majority vote of the Council, or in the absence of the President, by a member of the Council selected by a majority of the members present at such meeting. Appointment of a Council Member to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the Council at such meeting. In the absence of the Clerk, or Deputy Clerk or other qualified person appointed by the Clerk, the Mayor, or the Council, may perform the duties of Clerk at such meeting. A record journal of all proceedings shall be kept, ~~which shall be a public record.~~

PROPOSITION # 1

Shall Everett City Charter Section 3.2 be changed to eliminate the weekly council meeting requirement and to eliminate inconsistency and redundancy with State Law?

CHARTER CHANGE	YES..... <input type="checkbox"/>
CHARTER CHANGE	NO..... <input type="checkbox"/>

Section 4: Change to Section 15.9. Section 15.9 of the Everett City Charter which reads as follows:

The City Clerk and the codifiers of this Charter are authorized to make necessary corrections to this Charter including, but not limited to, deletion of the use of terms which are masculine or feminine so that such references shall apply to the opposite gender also, unless the context of such charter provision shall require otherwise, the correction of scrivener, clerical and typographical errors, references, Charter numbering, Section/subsection numbers and any references thereto.

is recommended to be changed to:

The City Clerk and the codifiers of this Charter are authorized to make necessary corrections to this Charter including, but not limited to, deletion of the use of terms which are masculine or feminine so that such references shall apply to the opposite gender also, unless the context of such charter provision shall require otherwise, the correction of scrivener, clerical and typographical errors, references, Charter numbering, Section/subsection numbers and any references thereto. The City Clerk and the codifiers of this Charter are also authorized to make corrections to this Charter to eliminate out-of-date language such as “hereof,” “heretofore,” “thereof” and similar terms, and replace them with equivalent, modern language.

PROPOSITION # 2

Shall Everett City Charter Section 15.9 be changed to allow the City Clerk to make corrections in the Charter to eliminate archaic terminology such as “hereof,” “heretofore,” “thereof,” and replace such terms with equivalent, modern language?

CHARTER CHANGE YES.....
CHARTER CHANGE NO.....

Section 5: New Section 15.10. Add a new section 15.10 as follows:

Appointments to City boards, commissions and committees should consider factors such as geography, gender, ethnicity and age in an effort to better reflect the City’s diversity.

PROPOSITION # 3

Shall the Everett City Charter be changed to add a new Section 15.10 that states that appointments to City boards, commissions and committees should strive to reflect the makeup of the community in demographic terms such as ethnic diversity, gender, age and geography?

CHARTER CHANGE YES.....
CHARTER CHANGE NO.....

Section 6: Under Section 16.1 of the Charter, amendments to the Charter proposed under this ordinance that are ratified by a majority of the electors become part of the Charter on the date of the Mayor’s proclamation of those ratified amendments. The Mayor’s proclamation is deemed to occur on the date of the County certification of the election.

RAY STEPHANSON, MAYOR

ATTEST:

SHARON FULLER, CITY CLERK

Passed: _____

Valid: _____

Effective: _____

Published: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Street Closure – Car Show

_____ Briefing
 _____ Proposed Action
 _____ Consent
 _____ Action
 _____ First Reading
 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____

Originating Department _____

Contact Person _____

Phone Number _____

FOR AGENDA OF _____

City Clerk _____

Anna Pankevich _____

425-257-8614 _____

July 6, 2016 _____

Initialed by:

Department Head _____

CAA _____

Council President _____

db

Location

Hewitt Avenue, Marine
View Drive to Bond
Street

Preceding Action

Attachments

Special Event
Application

Department(s) Approval

Police, Fire, Streets,
Traffic Engineering,
Transit

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

DETAILED SUMMARY STATEMENT:

Ole Soul Southern Creole is requesting the closure of Hewitt Avenue, Marine View Drive to Bond Street, on July 9, 2016, 9:30 a.m. to 6:00 p.m. for a Car Show.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure of Hewitt Avenue, Marine View Drive to Bond Street, on July 9, 2016, 9:30 a.m. to 6:00 p.m., for a Car Show sponsored by Ole Soul Southern Creole.

SPECIAL EVENT APPLICATION

Event Type: Street Closure Parade Walk/Run Other ()

Event Date: July 9th, 2014 Event Time: 9:30 to 6:00 pm

Closure Time: 10:00 am to 5:00 pm

Event Description: Car show (at City Rodz) outside O/E Soul Creek, 1105 Hewitt Ave.

Location of Event: 1105 Hewitt

Sponsoring Organization: O/E Soul Southern Creek

Address: 1105 Hewitt Ave City & State: Everett WA 98201

Contact Person: Sybil Trabue Phone No: 425-320-9626

We **require** that you inform the neighborhood and businesses of the street closure **prior** to obtaining approval.

What method will be used to inform the impacted parties of the street closure? _____

If applicable, answer the following:
 Approx. # of participants: 75-100 Persons Animals 25-50 Vehicles
 _____ Type of Animals

Assembly area (streets) _____

Portion of street to be used: _____ Full width _____ Half _____ Other

*Attach a **map** showing route of parade or run/walk.

Official Use

	<u>Admin.</u>	<u>Traffic</u>	<u>Police</u>	<u>Fire</u>	<u>Transit</u>	<u>Streets</u>
Approved:	_____	<input checked="" type="checkbox"/>				
Rejected:	_____	_____	_____	_____	_____	_____

Special Conditions: _____

Comments: _____

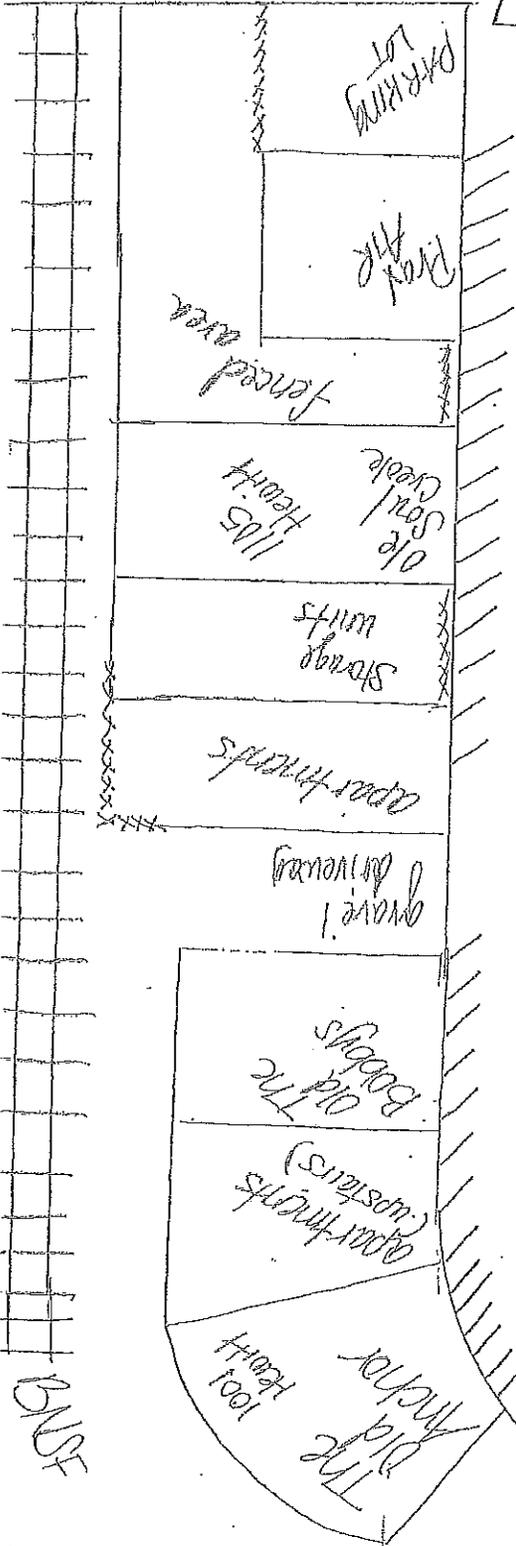
Council agenda date: 07/06/16 City Council approval: 1/1

Permit _____ TR # _____

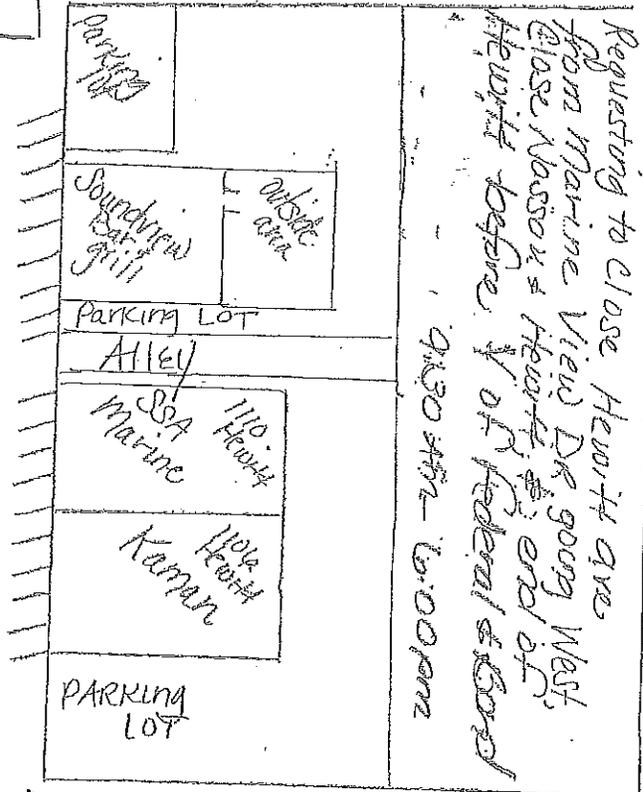
marine view drive

marine view drive

ROAD CLOSED

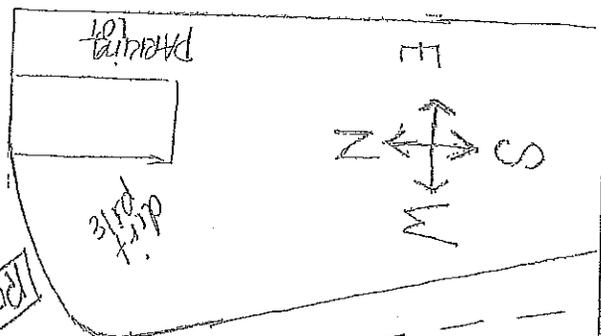


Healt Ave



Nassau ST

ROAD CLOSED

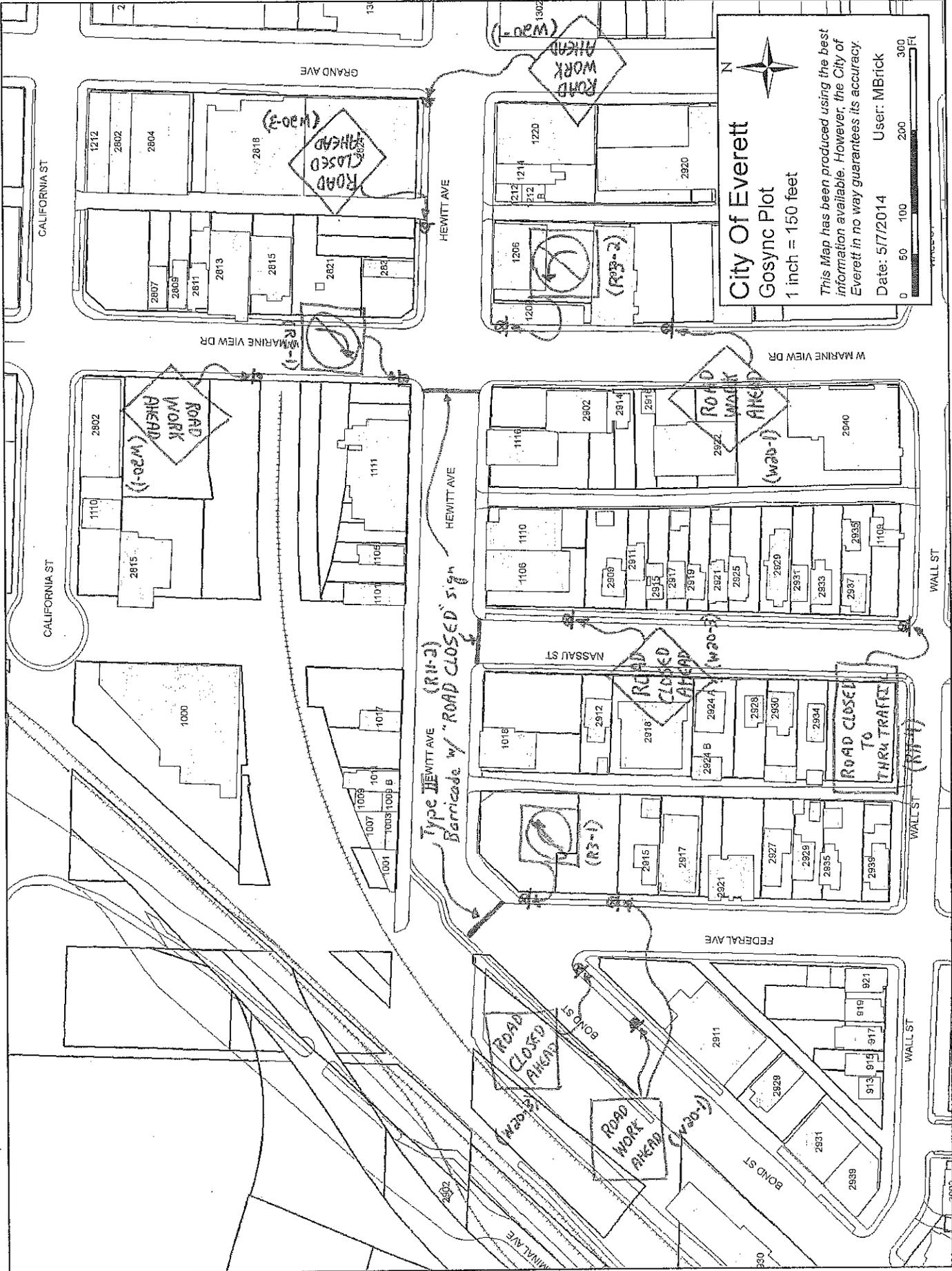


Federal ave

Bond St

ROAD CLOSED

Sylvia Traboue - 425.320.9026
owner Ole Soul



City of Everett
Gosync Plot
 1 inch = 150 feet

This Map has been produced using the best information available. However, the City of Everett in no way guarantees its accuracy.

Date: 5/7/2014 User: MBrick

0 50 100 200 300 FT

Type HEWITT AVE (R1-2)
 Barricade w/ "ROAD CLOSED" sign

ROAD CLOSED
 TO THRU TRAFFIC

ROAD CLOSED
 AHEAD (W20-3)

ROAD WORK
 AHEAD (W20-1)

ROAD WORK
 AHEAD (W20-1)

ROAD WORK
 AHEAD (W20-1)

ROAD CLOSED
 AHEAD (W20-1)

ROAD WORK
 AHEAD (W20-1)

CALIFORNIA ST

CALIFORNIA ST

GRAND AVE

HEWITT AVE

HEWITT AVE

W MARINE VIEW DR

NASSAU ST

FEDERAL AVE

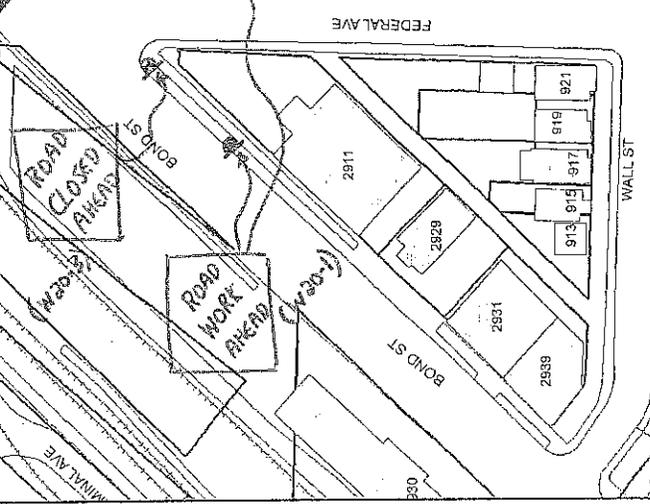
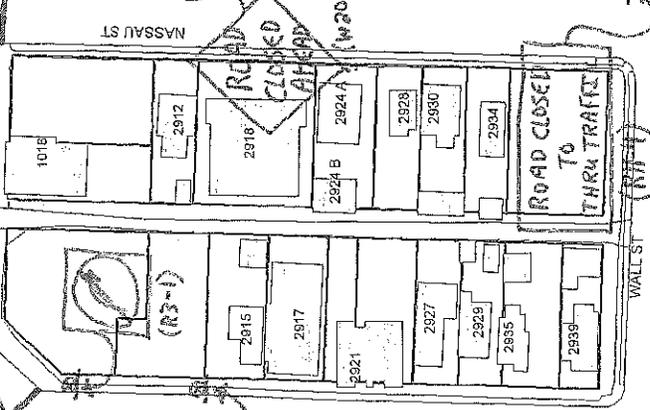
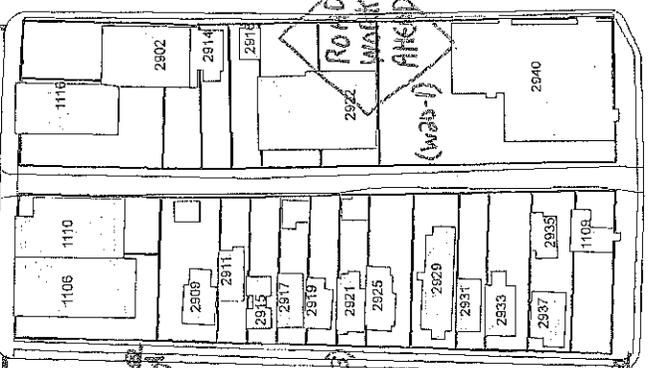
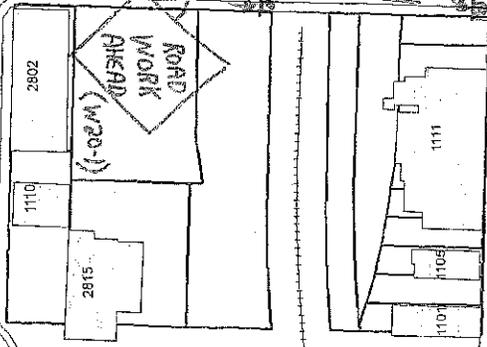
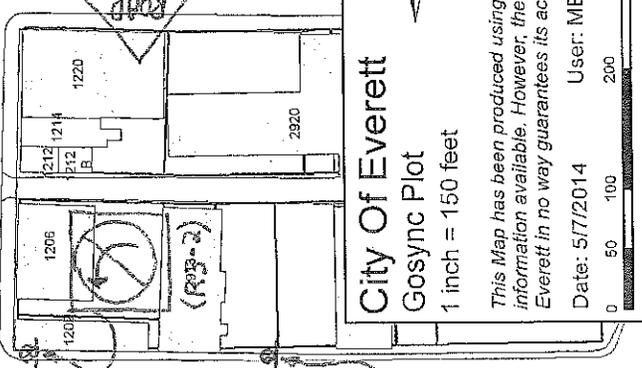
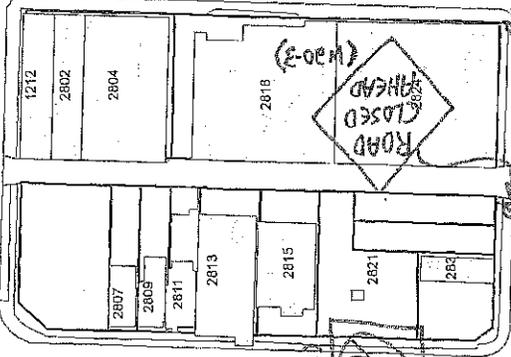
BOND ST

BOND ST

WALL ST

WALL ST

WALL ST



Sign Inventory for Rat City Rodz Car Show Traffic Control

Quant	MUTCD #	Description
2	R3-1	Symbolic NO RIGHT TURN
1	R3-2	Symbolic NO LEFT TURN
3	R11-2	"ROAD CLOSED"
1	R11-4	"ROAD CLOSED TO THRU TRAFFIC"
5	W20-1	"ROAD WORK AHEAD"
3	W20-3	"ROAD CLOSED AHEAD"

Barricade Inventory for Rat City Rodz Car Show Traffic Control

Quant	Description
3	Type III Barricade

OK to have "ROAD CLOSED" signs attached to Type III Barricade or on separate sign stand.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Call for Bids for the construction of Water Main Replacement "Q" - Broadway Project

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

COUNCIL BILL # _____
 Originating Department Public Works/Utilities
 Contact Person Richard Hefti
 Phone Number 425-257-7215
 FOR AGENDA OF July 6, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Broadway between 35 th Street & Pacific Avenue	Geotech Professional Services Agreement July 1, 2015	Location Map	Public Works

Amount Budgeted	\$1,660,000	Fund 336
Expenditure Required	\$2,000	Account Number(s): UP 3612
Budget Remaining	\$1,619,258	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Water Main Replacement "Q" - Broadway (UP3612) Project will replace approximately 1,900 feet of existing 12-inch diameter cast iron pipe along the west side of Broadway, between 35th Street and Pacific Avenue. The 12-inch cast iron pipe in Broadway has broken several times in the past and resulted in significant damage claims from flooding private property.

The budget remaining amount is arrived at by deducting the contracts for geotechnical (\$7,865), surveying (\$30,877), and this \$2,000 request from the amount budgeted.

The project is ready to advertise for construction bids. There are no supplemental bidder requirements associated with this project.

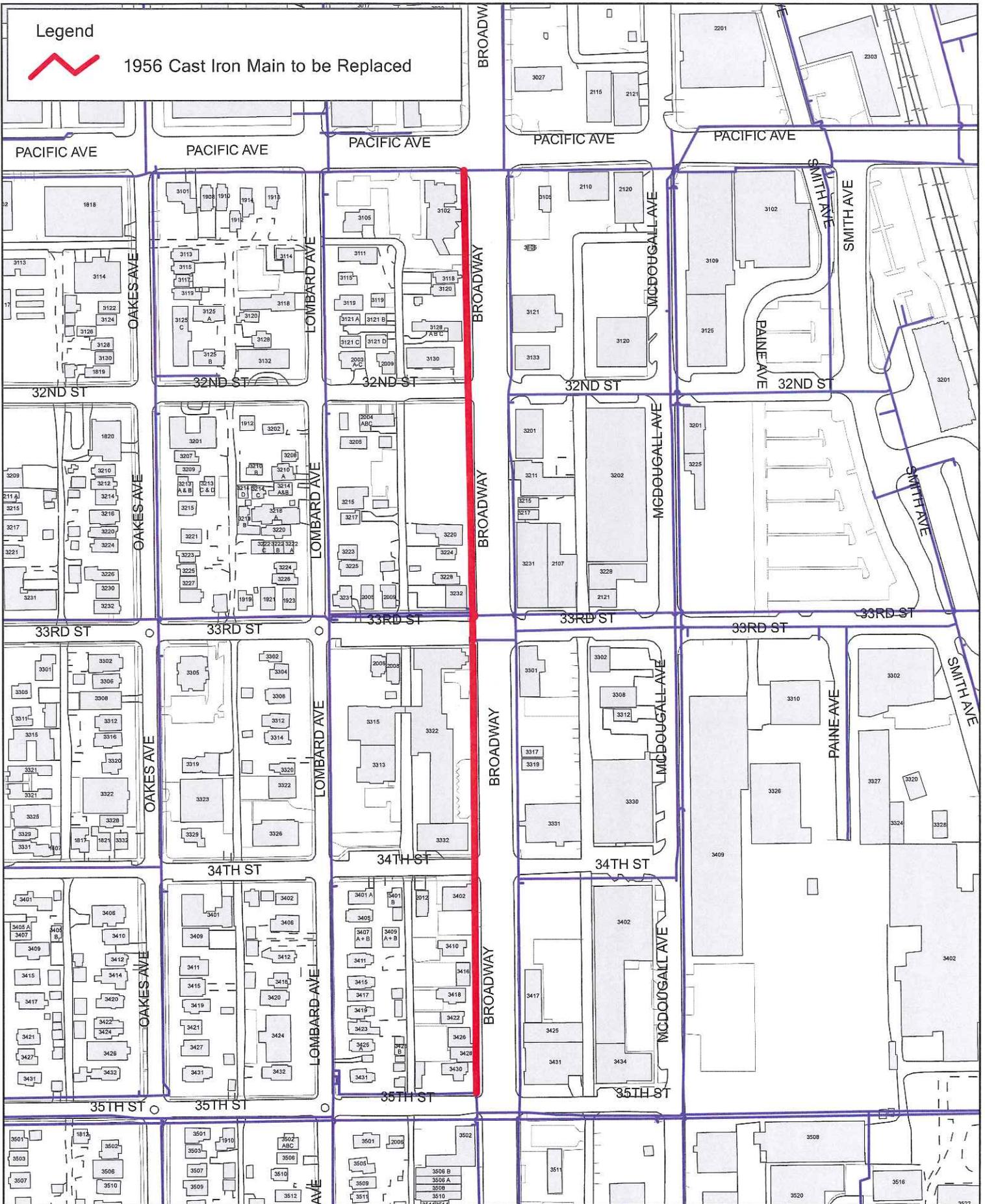
RECOMMENDATION (Exact action requested of Council):

Authorize the Call for Bids for the construction of the Water Main Replacement "Q" - Broadway Project.

Legend



1956 Cast Iron Main to be Replaced



Water "Q" Broadway Project Location



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Purchase of Peterbilt Truck
Chassis

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

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Finance/Purchasing

Clark Langstraat

425-257-8901

July 6, 2016

Initialed by:

Department Head

CAA

Council President

db

Location

Preceding Action

Attachments

Department(s) Approval

Motor Vehicle Division,
Public Works, Budget

Amount Budgeted	\$156,592.97	
Expenditure Required	\$156,592.97	Account Number(s): PW
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Motor Vehicle Division needs to purchase a Peterbilt four axle chassis for the installation of a separately purchased Vactor body. This chassis is available from competitively bid Washington State Contract 01513. The City has an interlocal cooperative purchasing agreement with the State that allows us to make purchases from their competitively awarded contracts in lieu of soliciting bids on our own.

This chassis and body will replace a 2003 trailer mounted vacuum unit.

RECOMMENDATION (Exact action requested of Council):

Authorize the purchase of a Peterbilt truck chassis from Washington State Contract 01513 in the amount of \$156,592.97 including Washington State sales tax.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Burstable Internet Connection _____ Briefing
 For Cloud Services – _____ Proposed Action
 Agreements with WDH Black _____ Consent
 Rock, LLC and Wave _____ Action
 Business Solutions, LLC _____ x
 _____ First Reading
 _____ Second
 _____ Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____
 Originating Department Information Tech.
 Contact Person Kevin Walser
 Phone Number 425-257-8663
 FOR AGENDA OF July 6, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
		Master Services Contract, Amendment, Dark Fiber Order, Burstable Internet Order	Information Technology, Legal

Amount Budgeted	\$11,000	
Expenditure Required	\$11,000	Implementation costs and remaining year of service for Burstable Internet: GL 425 505-513 0000 650 Dark Fiber costs are accounted for in Telecom budget
Budget Remaining	\$0	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Information Technology is adding an additional internet connection at the South Precinct called a burstable internet connection for cloud services. The new internet connection will be used for backup and archive data that will be stored in Microsoft's Azure government cloud service, but capacity is being built into the new internet connection to support future cloud efforts.

To implement the new internet connection, the City needs to enter into a series of agreements with Wave Business Solutions, LLC and WDH Black Rock, LLC. Those agreements are:

- Amendment No. 3 to the Dark Fiber Lease Agreement with WDH Black Rock, LLC
- Master Services Agreement with Wave Business Solutions, LLC
- Order for Burstable Internet Services with Wave Business Solutions, LLC
- Dark Fiber Order with Wave Business Solutions, LLC

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign agreements with WDH Black Rock, LLC and Wave Business Solutions, LLC for Burstable Internet Connection for Cloud Services in the amount of \$11,000.

MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

This Master Services Agreement for Enterprise Services (this “MSA”) is entered into as of this 13th day of June, 2016 (the “Effective Date”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, on behalf of itself and its Affiliates (collectively, “Provider”), and the CITY OF EVERETT, a Washington municipal corporation (“Customer”). For purposes of this MSA, the term “Affiliate” shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Each of Provider and Customer may be referred to in this MSA as a “Party” and together as the “Parties.”

ARTICLE 1 – STRUCTURE OF AGREEMENT

1.1 Purpose of MSA; Documents Comprising Agreement. Provider and its Affiliates provide various facilities-based telecommunications services, including Ethernet transport, dedicated internet access, phone over fiber, dark fiber, and related services (collectively, the “Services”). This MSA is neither an agreement to purchase nor a commitment to provide Services. The purpose of this MSA is to provide the general terms, conditions and framework within which Customer and its Affiliates may from time to time purchase Services from Provider and its Affiliates, pursuant to one or more “Service Orders,” as described in Section 1.2 below. Each fully-executed Service Order shall be governed by and become part of this MSA, and this MSA together with all fully-executed Service Orders shall be collectively referred to as the “Agreement.” If one or more Service Level Agreements are attached to this MSA as Exhibits (the “SLA”), the SLA constitutes a part of this MSA.

1.2 Service Orders. The purchase of Services shall be accomplished only through the negotiation and full execution of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a “Service Site”); (iii) the initial term of the Service Order (the “Initial Service Term”); (iv) the pricing for the Service, including (a) the monthly recurring charges (“MRC”) for the Service, and (b) any non-recurring charges (“NRC”) associated with installation of the Service; (v) the estimated installation date for the Service; and (vi) any other terms or conditions specific to the particular Service Order.

1.3 Order of Precedence. In the event of a conflict between the provisions of this MSA (including the SLA) and the provisions of any Service Order, the provisions of this MSA (including the SLA) shall control unless the Service Order at issue expressly states that the parties intend for the conflicting provision of the Service Order to control.

ARTICLE 2 – TERM AND RENEWAL

2.1 Term of MSA. The initial term of this MSA (the “Initial MSA Term”) shall be for five (5) years, commencing on the Effective Date and expiring on the date that is one day prior to the fifth anniversary of the Effective Date (the “Expiration Date”). Upon expiration of the Initial MSA Term, this MSA shall begin to automatically renew for successive renewal terms of one (1) year each (each, an “MSA Renewal Term,” and, together with the Initial MSA Term, the “MSA Term”). Either Party may terminate this MSA by delivering thirty (30) days’ written notice of termination to the other Party at any time during an MSA Renewal Term. Notwithstanding the foregoing, so long as any one or more Service Orders entered into pursuant to this MSA remain in effect, this MSA shall not terminate with respect to said Service Orders but shall continue to govern same until the expiration or termination of said Service Orders.

2.2 Term of Service Orders. The term of each Service Order shall be as specified in the Service Order.

ARTICLE 3 – INSTALLATION, TESTING AND ACCEPTANCE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider’s control, Customer shall provide Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “Provider Equipment”) necessary to connect Provider’s network facilities to the Customer demarcation point(s) at the Service Site (the “Demarcation Point(s)"); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the “Customer Equipment”) from the Demarcation Point(s) to Customer’s internal network. Unless a Service Site is within Provider’s control, Customer shall be responsible for maintaining appropriate HVAC, electrical power, and security at the Service Site. Title

to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, modify, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Testing, Acceptance and Service Commencement Date. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer's option, participate in Provider's final testing of the Service. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the "**Service Commencement Date**"). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.2, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

ARTICLE 4 – PAYMENT AND BILLING

4.1 Invoicing. All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as "**Fees**." Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 Disputed Invoices. If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a "**Fee Dispute Notice**"). A Fee Dispute Notice must be submitted to Provider within ninety (90) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such ninety (90) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer's delivery of the applicable Fee Dispute Notice. If the Parties do not resolve the Fee Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

4.3 Applicable Taxes. All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider's net income or taxes for which Customer possesses a valid exemption certificate, Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 Customer Default. Each of the following shall constitute a default by Customer under this Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten (10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of this Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.2 Remedies for Customer Default. In the event of a Default by Customer under this Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iv) pursue any other remedy available to Provider under this Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

5.3 Provider Default. Each of the following shall constitute a Default by Provider under this Agreement: (i) if Provider fails to comply with any material provision of this Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 Remedies for Provider Default. In the event of a Default by Provider under this Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); (ii) terminate this MSA and all Service Orders entered into pursuant to this MSA; and/or (iii) pursue any other remedy available to Customer under this Agreement or applicable law. Early termination by customer shall be accomplished by providing termination notice to disconnects@wavebroadband.com and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 Early Termination for Customer Convenience. Customer may, at any time during the Service Term for a Service, discontinue the Services and/or terminate the corresponding Service Order upon not less than thirty (30) days' advance written notice to disconnects@wavebroadband.com and to the notice address specified in Article 13 below. Any early termination of a Service pursuant to this Section 6.1 shall be referred to as "**Termination for Customer Convenience.**" In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

6.2 Early Termination for Default. As set forth in Article 5 above, either Party may elect to terminate this MSA and/or one or more Service Orders prior to the scheduled Expiration Date in the event of an uncured Default by the other Party.

6.3 Other Early Termination by Provider. At any time during the applicable Service Term, Provider may, upon reasonable advance notice to Customer, terminate any Service(s) or Service Order(s) if any of the following occur, each in the reasonable good faith business judgment of Provider: (i) Provider does not have all rights necessary to provide the Service(s); (ii) Provider is legally or contractually prohibited from providing the Services or is advised by counsel that termination of the Service(s) and/or Service Order(s) is advisable given newly enacted or then-pending laws, regulations or ordinances, whether federal, state or local; (iii) delivery of the Service(s) becomes technically infeasible due to equipment changes and reconfigurations or other technical issues; or (iv) Provider reasonably determines that the use of the Service(s) by Customer is resulting or is likely to result in significant damage to Provider's network or property or create a significant risk of harm to Provider or its agents or employees. In the event of termination pursuant to this Section 6.3, Customer's sole and exclusive remedies will be reimbursement by Provider of any pre-paid, unused monthly service Fees attributable to the terminated Service(s) or Service Order(s).

6.4 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 6.1 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The "**Termination Charge**" shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the

termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; and (iii) a percentage of all remaining MRCs Customer was to pay Provider for the remainder of the applicable Service Term (the "Remaining Monthly Service Charges"). If a Termination Charge is incurred during the first year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be one hundred percent (100%). If a Termination Charge is incurred during the second or third year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be seventy-five percent (75%). If a Termination Charge is incurred during or after the fourth year of the Service Term, the percentage of the Remaining Monthly Service Charges due shall be fifty percent (50%). If incurred, the Termination Charge will be due and payable within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages and is not a penalty.

6.5 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

ARTICLE 7 – CONFIDENTIALITY AND THE PUBLIC RECORDS ACT

THIS ARTICLE 7 IS SUBJECT IN ITS ENTIRETY TO THE ADDENDUM (WASHINGTON STATE TRANSPARENCY LAWS) EXECUTED BY THE PARTIES AND ATTACHED HERETO AS EXHIBIT C

7.1 Definition of Confidential Information. "Confidential Information" shall mean all information, including this Agreement, regarding the telecommunications needs of Customer and the Services that Provider offers under this Agreement which is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party"), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of this Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party's disclosure of same.

7.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under this Agreement; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees or contractors that have a need to know for such purposes (with disclosure to contractors being limited to contractors that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (d) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under this Agreement; and (e) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 7 may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 7.

ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in this Agreement, Provider's total liability for any and all causes and claims arising under this Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the preceding twelve (12) month period.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole remedy for such failure shall be the remedies set forth in the SLA. No such failure shall be considered a Default by Provider under this Agreement.

8.3 No Special Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICE PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

ARTICLE 9 – INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under this Agreement; (ii) Customer's noncompliance with or Default under this Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under this Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under this Agreement; (ii) Provider's noncompliance with or Default under this Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under this Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified party shall promptly notify the indemnifying party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and

provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified party without the consent of the indemnified party. The indemnified party shall reasonably cooperate with the indemnifying party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying party, all at the cost and expense of the indemnifying party.

ARTICLE 10 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar natural disaster, terrorist acts, insurrection, riot, national emergency, war or other catastrophe, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a "Force Majeure Event"). The Party claiming relief under this Article shall notify the other Party of the occurrence or existence of the Force Majeure Event and of the cessation of such event. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate this Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

ARTICLE 11 – DISPUTE RESOLUTION

11.1 Good Faith Negotiations. Except for actions seeking a temporary restraining order or injunction, in the event any controversy, disagreement or dispute (each, a "Dispute") arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve the Dispute through negotiation. In the event of a Dispute, either Party may give the other Party written notice of the Dispute (each, a "Dispute Notice"). The parties will meet and attempt to resolve the Dispute within sixty (60) days of the date on which the Dispute Notice is delivered. All discussions occurring and documents exchanged during negotiations under this Section are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation process. If the Parties do not resolve the Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

11.2 Governing Law. This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of Washington. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of Washington in and for Snohomish County, or in the Federal District Court for the Western District of Washington, as applicable.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer this Agreement or its obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such Party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

ARTICLE 13 – NOTICES

Unless otherwise provided elsewhere in this Agreement, any notice to be given to either Party under the Agreement will be in writing and directed to the addresses set forth below. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time). Notices received after 5:00 p.m. (recipient's time) will be effective the next business day.

If to Provider:

Wave Business Solutions, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
ATTN: Paul Koss
Email: pkoss@wavebroadband.com

If to Customer:

City of Everett
2930 Wetmore Avenue
Everett, WA 98201
ATTN: Contract Administration
Email: _____

With a Copy to:

WaveDivision Holdings, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
ATTN: Jim Penney
Email: jpenney@wavebroadband.com

With a Copy to:

Either party may change its notice address by giving notice to the other party in accordance with this Article.

ARTICLE 14 – REPRESENTATIONS AND COVENANTS

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

ARTICLE 15 – MISCELLANEOUS

15.1 Entire Agreement; Interpretation. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties.

15.2 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

15.3 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under this Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.4 Attorneys' Fees. If any proceeding is brought by a Party to enforce or interpret any term or provision of the Agreement, the substantially prevailing Party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that Party's reasonable attorneys' and experts' fees and expenses.

15.5 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. This Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of this Agreement.

15.6 Exhibits. The following Exhibits, which are attached to this Agreement, are incorporated herein and by this reference made a part of this Agreement:

- EXHIBIT A - Service Level Agreement for Lit Fiber Services
- EXHIBIT B - Service Level Agreement for Dark Fiber Services
- EXHIBIT C - Addendum – Washington State Transparency Laws

15.7 Computation of Time. Except where expressly provided to the contrary, as used in this Agreement, the word “day” shall mean “calendar day,” and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in this Agreement. If the final date of any period of time set out in any provision of this Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in this Agreement, the term “business day” shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.8 Counterparts. This MSA and any Service Order entered into by the Parties pursuant to this MSA may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document.

The Parties are signing this MSA as of the Effective Date set forth in the preamble above.

CUSTOMER:

City of Everett, a Washington municipal corporation

By _____

Name: _____

Title: _____

PROVIDER:

Wave Business Solutions, LLC, a Washington limited liability company

By 

Name: Paul Koss

Title: SUP Business Solutions

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EXHIBIT A
Service Level Agreement
for
Ultra High Availability Enterprise Services

This Service Level Agreement for Ultra High Availability Enterprise Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services ("MSA") between Wave Business Solutions, LLC ("WAVE") and Customer. This SLA applies to the following types of Enterprise Services offered by WAVE: (a) Ethernet Transport Services, (b) Dedicated Internet Access Services, and (c) Phone Solutions Over Fiber Services.

1. AVAILABILITY SLA

WAVE's Network is designed to provide a target **Availability of at least 99.999%** per month. If the Availability target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Availability	Duration of Service Outage	Customer Credit as % of MRC for the applicable Circuit*
99.999% Availability	Less than 26 seconds	Target Met
	> 26 seconds up to 1 hour	5%
	> 1 hours up to 3 hours	10%
	> 3 hours up to 5 hours	15%
	> 5 hours	an additional 5% for each additional hour of Service Outage

*Customer credits for Unavailability are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in Services due to failure or malfunction of the WAVE Network or WAVE Equipment, WAVE's NOC is designed to provide a **MTTR of 4 hours or less**. If the target MTTR is not met for a particular circuit in a given calendar month, and Customer receives a Service from WAVE on the circuit at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Circuit
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

3. PACKET DELIVERY / PACKET LOSS SLA

The WAVE Network is designed to provide **no greater than 0.05% Packet Loss**. If the Packet Loss target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA. Customer credits for average monthly Packet Loss are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

Target Maximum Packet Loss	Actual Packet Loss (lower end – upper end)	Customer Credit as % of MRC for the applicable Circuit
≤ 0.05% Packet Loss	0% - 0.05%	Target Met
	> 0.05% - 0.08%	5%
	> 0.08% - 0.1%	10%
	> 0.1% - 0.7%	25%
	> 0.7% - 1.0%	50%
	> 1.0%	100%

4. LATENCY SLA

The WAVE Network is designed to provide a monthly average round trip Latency not to exceed the following:

- Round Trip Local Market Latency of 8 ms or less
- Round Trip Inter-Market Latency* of 39 ms or less

If WAVE determines the applicable Latency target was not met in a given month and also cannot remedy the problem within fifteen (15) calendar days from the date on which Customer opens a Trouble Ticket with the WAVE NOC regarding excessive Latency, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Local Market Latency Round Trip	Target Inter-Market Latency* Round Trip	Actual Latency Round Trip (lower end - upper end)	Customer Credit as % of MRC for the applicable Circuit
8 ms or less	39 ms or less	≤ Target Latency	Target Met
		> Target up to 5 ms over Target	5%
		> 5 ms up to 10 ms over Target	10%
		> 10 ms up to 15 ms over Target	25%
		> 15 ms over Target	50%

* Inter-Market Latency means up to 800 network miles between locations

5. NETWORK JITTER SLA

The WAVE Backbone Network is designed to have a monthly average one-way Network Jitter **no greater than 1 ms**. If the Network Jitter target is exceeded in a given calendar month, Customer will be entitled to a credit of 1/30th of the MRC of the affected circuit for that month for each full 1ms of Network Jitter above the applicable Network Jitter target set forth above. Any such credit must be claimed as described in this SLA.

6. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different circuit/path for the Service and circuit/path that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the circuit/path that experienced the Chronic Outage without incurring any Termination Charge.

7. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

“**Availability**” means the ability of Customer to exchange Ethernet packets with the WAVE Network via Customer’s router port. Availability is measured in minutes of uptime over the calendar month during which the Services are Available:

$$\text{\% Availability (per calendar month)} = \frac{\text{(Total Minutes in Month - Total Minutes of Unavailability in Month)}}{\text{Total Minutes in Month}}$$

For Ethernet Transport Services and Phone Over Fiber Services, Availability is calculated at the individual circuit level, between WAVE's Backbone Network and the Customer's router port. For Dedicated Internet Access Services, Availability is calculated from the Customer's router port through the WAVE Network to the handoff point for the Internet. Dedicated Internet Access Service Availability does not include the availability of the Internet itself or any particular Internet resource. Periods of Excused Outage are not included in Availability metrics.

"Chronic Outage" means a series of three (3) or more Service Outages affecting the same Service on the same circuit during a given calendar month, each of which has an actual time to restore "TTR" in excess of WAVE's targeted MTTR.

"Emergency Maintenance" means WAVE's efforts to correct conditions on the WAVE Network that are likely to cause a material disruption to or outage in services provided by WAVE and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. WAVE may undertake Emergency Maintenance at any time WAVE deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

"Excused Outage" means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE's reasonable control, such as, by way of example only, Force Majeure, acts or omissions of Customer or Customer's agents, licensees or end users, electrical outages not caused by WAVE, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for WAVE's delivery of the Services to Customer.

"Jitter" or "Network Jitter" refers to an undesirable variation in the interval at which packets are received, also described as the variability in Latency as measured in the variability over time of the packet Latency across a network. Jitter is calculated as aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Jitter metrics.

"Latency" means how much time it takes, measured in milliseconds, for a packet of data to get from one designated point on WAVE's Network to another designated point on WAVE's Network. Latency is calculated as aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Latency metrics.

"Mean Time to Restore" or "MTTR" means the average time required to restore the WAVE Network to a normally operating state in the event of an Outage. MTTR is calculated on a circuit basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific circuit. MTTR is measured from the time an Outage related Trouble Ticket is generated by the WAVE NOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

"Outage" means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by WAVE. Unavailability does not include periods of Service degradation, such as slow data transmission.

"Packet Loss" means the unintentional discarding of data packets in a network when a device (e.g., switch, router, etc.) is overloaded and cannot accept any incoming data. Packet Loss is calculated as aggregate average monthly metric measured

by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Packet Loss metrics.

"Scheduled Maintenance" means any maintenance of the portion of the WAVE Network to which Customer's router is connected that is performed during a standard maintenance window (1:00AM – 5:00AM Pacific Time). Customer will be notified via email at least seven (7) days in advance of any scheduled maintenance that is likely to affect Customer's Service.

"Trouble Ticket" means a trouble ticket generated through the WAVE NOC upon notification of a Service-related problem. Trouble Tickets may be generated by WAVE pursuant to its internal network monitoring process, or by Customer's reporting of a problem to the WAVE NOC. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE NOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by WAVE will not provide a basis for Customer credits or Chronic Outage remedies.

"WAVE Network" means all equipment, facilities and infrastructure that WAVE uses to provide Services to Customer, and includes Customer's access port. The "WAVE Network" does not include Customer owned or leased equipment (unless leased from WAVE), or any portion of Customer's local area network after the demarcation point for the Services provided by WAVE.

"WAVE Backbone Network" means WAVE's core fiber backbone that connects WAVE's POPs and regional hubs.

"WAVE's Network Operations Center" or "WAVE's NOC" means WAVE's network operations center which is staffed 24x7x365 and can be reached at: 888-317-0488.

8. CLAIMING CREDITS AND REMEDIES

8.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be in good standing with WAVE and current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE NOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to WAVE's customer service department within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) Provide the following documentation when requesting the credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE NOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to WAVE's customer service department within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;

- Date and beginning/end time of each of the claimed Outages;
- Trouble Ticket number for the Chronic Outage at issue;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

8.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, WAVE will evaluate the claim and respond to Customer within thirty (30) days. If WAVE requires additional information in order to evaluate Customer's claim, WAVE will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives WAVE's request for additional information in which to provide the requested information to WAVE. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. WAVE will promptly notify Customer of WAVE's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, WAVE will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be final.

8.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected circuit and Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) The acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) The failure of or refusal by Customer to reasonably cooperate with WAVE in diagnosing and troubleshooting problems with the Services, including the unavailability of required Customer personnel due to Customer's failure to keep WAVE provided with current and accurate contact information for such personnel; (iii) Scheduled Service alteration, maintenance or implementation; (iv) The failure or malfunction of network equipment or facilities not owned or controlled by WAVE or WAVE's Affiliates; (v) Force majeure events; (vi) WAVE's inability (due to no fault of WAVE) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (viii) WAVE's termination of the Service for cause, or as otherwise authorized by the MSA; (ix) Improper or inaccurate network specifications provided by Customer; (x) Interruptions resulting from incorrect, incomplete or inaccurate Service orders from Customer; (xi) Special configurations of the standard Service that have been mutually agreed to by Customer and WAVE, unless a separate Service Level Agreement for the special configuration has been established with the Service Order; or (xii) WAVE's inability to deliver Service by the Customer's desired due date.



EXHIBIT B
Service Level Agreement
for
Ultra High Availability
Dark Fiber Services

This Service Level Agreement for Ultra High Availability Dark Fiber Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services ("MSA") between Wave Business Solutions, LLC ("WAVE") and Customer.

1. AVAILABILITY SLA

WAVE's dark fiber paths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to a given dark fiber path in a given calendar month, Customer will be entitled to a credit in the amount set forth below, which must be claimed as described in this SLA. Customer credits for Outages of Dark Fiber Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected dark fiber path.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Dark Fiber Path*
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in the Services, WAVE's NOC is designed to provide a MTTR of **no greater than 4 hours**. If the target MTTR is not met for a particular dark fiber path in a given calendar month, and Customer receives a Service from WAVE on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Path
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

3. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the path that experienced the Chronic Outage without incurring any Termination Charge.

4. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

"Availability" means the dark fibers at issue are available to and accessible by Customer at the specified locations, are capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data

transmission. Periods of Excused Outage are not included in the Availability metric. WAVE does not monitor the use or availability of dark fiber Services, thus any Outage must be reported to the WAVE NOC by Customer.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore “TTR” in excess of WAVE’s targeted MTTR.

“Emergency Maintenance” means WAVE’s efforts to correct conditions on the WAVE Network that are likely to cause a material disruption to or outage in Services provided by WAVE and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. WAVE may undertake Emergency Maintenance at any time WAVE deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE’s reasonable control, such as, by way of example only, Force Majeure, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by WAVE, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for WAVE’s delivery of the Services to Customer.

“Mean Time to Restore” or “MTTR” means the average time required to restore the Service(s) to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the WAVE NOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by WAVE. Unavailability does not include periods of Service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the WAVE Network to which Customer’s router is connected that is performed during a standard maintenance window (1:00AM – 5:00AM Pacific Time). Customer will be notified via email at least seven (7) days in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE NOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE NOC and open a Trouble Ticket regarding the problem.

“WAVE Network” means all equipment, facilities and infrastructure that WAVE uses to provide Services to Customer, and includes Customer’s access port. The “WAVE Network” does not include Customer owned or leased equipment (unless leased from WAVE), or any portion of Customer’s local area network after the demarcation point for the Services provided by WAVE.

“WAVE’s Network Operations Center” or “WAVE’s NOC” means WAVE’s network operations center which is staffed 24x7x365 and can be reached at: 888-317-0488.

5. CLAIMING CREDITS AND REMEDIES

5.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be in good standing with WAVE and current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE NOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to WAVE's customer service department within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) Provide the following documentation when requesting the credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE NOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to WAVE's customer service department within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;
 - Date and beginning/end time of each of the claimed Outages;
 - Trouble Ticket number for the Chronic Outage at issue;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

5.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, WAVE will evaluate the claim and respond to Customer within thirty (30) days. If WAVE requires additional information in order to evaluate Customer's claim, WAVE will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives WAVE's request for additional information in which to provide the requested information to WAVE. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. WAVE will promptly notify Customer of WAVE's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, WAVE will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be final.

5.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected dark fiber path and Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) The acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) The failure of or refusal by Customer to reasonably cooperate with WAVE in diagnosing and troubleshooting problems with the Services, including the unavailability of required Customer personnel due to Customer's failure to keep WAVE provided with current and accurate contact information for such personnel; (iii) Scheduled Service alteration, maintenance or implementation; (iv) The failure or malfunction of network equipment or facilities not owned or controlled by WAVE or WAVE's Affiliates; (v) Force majeure events; (vi) WAVE's inability (due to no fault of WAVE) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (viii) WAVE's termination of the Service for cause, or as otherwise authorized by the MSA; (ix) Improper or inaccurate network specifications provided by Customer; (x) Interruptions resulting from incorrect, incomplete or inaccurate Service orders from Customer; (xi) Special configurations of the standard Service that have been mutually agreed to by Customer and WAVE, unless a separate Service Level Agreement for the special configuration has been established with the Service Order; or (xii) WAVE's inability to deliver Service by the Customer's desired due date.

EXHIBIT C

ADDENDUM

(WASHINGTON STATE TRANSPARENCY LAWS)

The City of Everett ("City") and Wave Business Solutions, LLC ("Vendor") are parties to an agreement entitled "Master Services Agreement for Enterprise Services-Governmental Customer" (the "Agreement"). The parties agree that the provisions of this addendum control all provisions of the Agreement:

- A. Scope. Regardless of anything to the contrary in the Agreement, all provisions in the Agreement that require the City to not disclose information or otherwise preserve confidentiality are strictly limited to the following:

(the "Confidential Records").

If the Parties desire anything additional be Confidential Records, then a new addendum shall be executed by the parties. The City has no non-disclosure or confidentiality obligations with respect to anything that is not a Confidential Record as defined by this addendum.

- B. Washington Public Records Act. Vendor acknowledges that the City is subject to the Washington Public Records Act, chapter 42.56 RCW and other Washington statutes related to open government (collectively, the "Act"). If the City receives a records request under the Act that requests any Confidential Records, then the City shall give reasonable written notice to Vendor. The City has no obligation to provide such notice for anything that is not Confidential Records. If Vendor desires that the Confidential Records not be disclosed, Vendor shall commence an action in Snohomish County Superior Court before the disclosure date. **Notwithstanding anything to the contrary in the Agreement, the City has no liability whatsoever to Vendor the disclosure of any record when that disclosure is consistent with the Act or with an order applying the Act entered by the Snohomish County Superior Court or a Washington appellate court.**
- C. Agreement Not Confidential. Vendor acknowledges and agrees that the Agreement, work orders, service orders and similar documents stating work to be done for the City, pricing, and agreement terms and conditions are never confidential. All of these may be posted on the City's public website without notice to Vendor.
- D. Venue. The exclusive venue for any dispute regarding the subject matter of this addendum is Snohomish County Superior Court.

CITY:

RAY STEPHANSON, MAYOR

VENDOR:



By: PAUL KOSS

Title: SUP BUSINESS SOLUTIONS

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**AMENDMENT NO. 3
TO
DARK FIBER OPTIC LEASE AGREEMENT**

This AMENDMENT NO. 3 TO DARK FIBER OPTIC LEASE AGREEMENT (this “**Third Amendment**”) is made and entered into as of this _____ day of June, 2016 (the “**Effective Date**”), by and between WDH BLACK ROCK, LLC, a Washington limited liability company (“**Provider**”), and the CITY OF EVERETT, a Washington municipal corporation (“**Customer**”).

BACKGROUND

- A.** Provider, as successor by merger to Black Rock Cable, a Nevada corporation DBA Black Rock Cable Inc., and Customer are the parties to that certain Dark Fiber Optic Lease Agreement dated August 24, 2011 (the “**2011 Contract**”), as amended by that certain Amendment No. 1 to Dark Fiber Optic Lease Agreement dated May 2, 2012 (the “**First Amendment**”), and as amended by that certain Amendment No. 2 to Dark Fiber Optic Lease Agreement dated October 7, 2015 (the “**Second Amendment**,” and, together with the 2011 Contract and the First Amendment, the “**Original Agreement**”).
- B.** Pursuant to the Original Agreement, Customer receives from Provider dark fiber optic connectivity between multiple Customer service sites, as more fully specified in the Original Agreement.
- C.** Wave Business Solutions, LLC, a Washington limited liability company (“**Wave**”), is an affiliate of Provider. Contemporaneously with the execution of this Third Amendment, Wave and Customer are executing a Master Services Agreement for Enterprise Services – Governmental Customer, an Order for Burstable Internet Services, and a Dark Fiber Order (the “**Dark Fiber Order**”).
- D.** Pursuant to the Dark Fiber Order, Customer will be receiving from Wave, for a three (3) year initial service term, five (5) of the Fiber Routes that Customer currently receives from Provider pursuant to the Original Agreement. The initial service term for the Dark Fiber Order commences on July 1, 2016.
- E.** This Third Amendment removes from the Original Agreement, effective as of July 1, 2016, the five (5) Fiber Routes that will be provided by Wave pursuant to the Dark Fiber Order, so that Customer will not be receiving and paying for the same Fiber Routes pursuant to two separate contracts at the same time.
- F.** Capitalized terms used but not defined in this Third Amendment shall have the meanings given to them in the Original Agreement.

AGREEMENT

Provider and Customer now amend the Original Agreement as set forth below:

1. DISCONNECTION OF FIVE (5) FIBER ROUTES

1.1 Disconnection of CID-2338. As of July 1, 2016, the following Fiber Route, having CID-2338, is cancelled and removed from the Original Agreement:

A Location
City of Everett
2930 Wetmore Avenue
Everett, WA 98201

Z Location
Fire Station No. 2
2201 – 16th Street
Everett, WA 98201

1.2 Disconnection of CID-2341. As of July 1, 2016, the following Fiber Route, having CID-2341, is cancelled and removed from the Original Agreement:

A Location
City of Everett
2930 Wetmore Avenue
Everett, WA 98201

Z Location
Fire Station No. 5
6800 Beverly Boulevard
Everett, WA 98203

1.3 Disconnection of CID-2343. As of July 1, 2016, the following Fiber Route, having CID-2343, is cancelled and removed from the Original Agreement:

A Location
City of Everett
2930 Wetmore Avenue
Everett, WA 98201

Z Location
Fire Station 7
11200 Silver Lake Road
Everett, WA 98208

1.4 Disconnection of CID-2344. As of the July 1, 2016, the following Fiber Route, having CID-2344, is cancelled and removed from the Original Agreement:

A Location
City of Everett
2930 Wetmore Avenue
Everett, WA 98201

Z Location
Everett City Forest Park
500 E. Mukilteo Boulevard
Everett, WA 98203

1.5 Disconnection of CID-2340. As of July 1, 2016, the following Fiber Route, having CID-2340, is cancelled and removed from the Original Agreement:

A Location
City of Everett
2930 Wetmore Avenue
Everett, WA 98201

Z Location
Fire Station No. 4
5920 Glenwood Avenue
Everett, WA 98203

2. RATIFICATION

Except as expressly amended by this Third Amendment, the Original Agreement remains in full force and effect in accordance with its terms and is hereby ratified and confirmed by the parties. As amended by this Third Amendment, the Original Agreement may be referred to as the “**Agreement.**”

3. MISCELLANEOUS

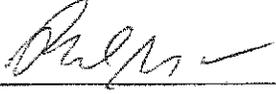
This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Any executed documents sent to the other party in portable document format (pdf) images via email will be considered the same as an original document.

[Signatures on following page.]

Provider and Customer are signing this Third Amendment as of the Effective Date set forth in the preamble above.

PROVIDER:

WDH Black Rock, LLC, a Washington limited liability company

By 

Name: PAUL KOSS

Title: SUP Business Solution

CUSTOMER:

City of Everett, a Washington municipal corporation

By _____

Name: _____

Title: _____

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DARK FIBER ORDER

This Dark Fiber Order (this "Service Order") is entered into as of the date of last signature below (the "Effective Date"), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company ("Provider"), and the CITY OF EVERETT, a Washington municipal corporation ("Customer"). This Service Order is made pursuant to and will be governed by that certain Master Services Agreement between Provider and Customer dated June 13, 2016 (the "Master Agreement"). This Service Order shall be effective as of the Effective Date, and shall remain in effect until the expiration of the Service Term (as defined in Section 6 below). All capitalized terms used but not defined in this Service Order shall have the meanings given to them Master Agreement. Because the Services being purchased pursuant to this Service Order are licenses to use dark fiber strands, as used in this Service Order the terms "Services" and "Licensed Fibers" shall be interchangeable.

NOTE: Prior to the Effective Date of this Service Order, Customer has been receiving certain dark fiber services, including the Services described in Section 1 below, from Provider's Affiliate, WDH Black Rock, LLC ("Black Rock"), pursuant to that certain Dark Fiber Optic Lease Agreement between Customer and Black Rock dated August 24, 2011, as subsequently amended by that certain Amendment No. 1 to Dark Fiber Optic Lease Agreement dated May 2, 2012, and as amended by that certain Amendment No. 2 to Dark Fiber Optic Lease Agreement dated October 7, 2015 (as amended, the "Black Rock Contract").

Section 1: Description of Fiber Routes and Charges. Provider shall deliver to Customer the dark fiber service(s) set forth in the following table (each, a "Service," and collectively, the "Services"). The Services shall connect the "End Points" set forth below (each such connection, a "Fiber Route"), using the number of dark fiber strands described below, at a loss budget not to exceed the "Maximum Loss Budget" set forth below, at the monthly recurring charges ("MRC") set forth below:

Fiber Route Identifier	Location A End Point	Location Z End Point	Description of Fiber	Maximum Loss Budget	MRC through 05/01/2017	MRC after 05/01/2017
CID-2338	City of Everett 2930 Wetmore Avenue Everett, WA 98201	Fire Station No. 2 2201 – 16 th Street Everett, WA 98201	1 strand single mode dark fiber	3.5 dB @ 1550 nm	\$470	\$570
CID-2341	City of Everett 2930 Wetmore Avenue Everett, WA 98201	Fire Station No. 5 6800 Beverly Boulevard Everett, WA 98203	1 strand single mode dark fiber	3.5 dB @ 1550 nm	\$470	\$570
CID-2343	City of Everett 2930 Wetmore Avenue Everett, WA 98201	Fire Station 7 11200 Silver Lake Road Everett, WA 98208	1 strand single mode dark fiber	4.3 dB @ 1550 nm	\$470	\$570
CID-2344	City of Everett 2930 Wetmore Avenue Everett, WA 98201	Everett City Forest Park 500 E. Mukilteo Boulevard Everett, WA 98203	1 strand single mode dark fiber	3.5 dB @ 1550 nm	\$470	\$570
CID-2340	City of Everett 2930 Wetmore Avenue Everett, WA 98201	Fire Station No. 4 5920 Glenwood Avenue Everett, WA 98203	1 strand single mode dark fiber	3.5 dB @ 1550 nm	\$470	\$570
TOTAL COST:					\$3,760	\$4,560

Because the Fiber Routes are already installed, there shall be no one-time, non-recurring installation charge associated with these Fiber Routes. Because the remaining term for all of the Fiber Routes under the Black Rock Contract expires on May 1, 2017, Customer shall continue to receive the MRC provided pursuant to the Black Rock Contract under this Service Order through May 1, 2017. Beginning on May 2, 2017, the MRC for each of the Fiber Routes will increase to Provider's current pricing of Five Hundred Seventy Dollars (\$570) per month, as set forth in the table above.

Section 2: Initial Service Term. The Initial Service Term for all of the Fiber Routes is 36 months.

Section 3: Estimated Installation Date. As of the Effective Date of this Service Order, all of the Fiber Routes are already installed pursuant to the Black Rock Contract. The Service Commencement Date for all of the Fiber Routes shall be July 1, 2016.

Section 4: Customer Information.

Account Name: City of Everett

Invoicing Address: 2930 Wetmore Avenue

Account Executive to Customer: Jeff Stoner

Everett, WA 98201

ATTN: Accounts Payable

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

Customer Site Contact:

Jeanette Callaghan-Postma

jpostma@everettwa.gov

425-257-7701 (Ph)

Customer Billing Contact:

Accounts Payable

Customer Technical Contact:

Kevin Walser

kwals@everettwa.gov

425-257-8663 (Ph)

Section 5: Service Term. Installation, testing and acceptance of the Licensed Fibers shall be in accordance with Article 3 of the MSA. The Initial Service Term for each Service, set forth in Section 2 above, shall commence on the applicable Service Commencement Date. Upon expiration of the Initial Service Term, unless either party terminates this Service Order by giving written notice to the other party not less than thirty (30) days prior to the end of the Initial Service Term, this Service Order will automatically renew on a month-to-month basis. During any month-to-month automatic renewal period, either party may terminate this Service Order by giving no less than thirty (30) days advance written notice to the other party. The period of time this Service Order is in effect is referred to as the "Service Term."

Section 6: Rates and Charges. Customer is responsible for paying to Provider the NRC and MRC set forth in Section 1 above, all in accordance with Article 4 of the MSA.

Section 7: Grant of License. Beginning on the Service Commencement Date for each Fiber Route, and continuing through the applicable Service Term, Provider grants to Customer, and Customer accepts from Provider, a license (the "License") to use the dark fibers on the Fiber Route (the "Licensed Fibers") by accessing same at the End Points specified in Section 1 above. Customer is not permitted to access the Licensed Fibers at any location other than the End Points. The License does not include any right on the part of Customer to: (i) own, control, possess, encumber, repair or maintain, or cause or permit any lien to attach to the Licensed Fibers, any Provider Equipment, or any other property of Provider; or (ii) use or access any of the other fiber optic strands that may be in the same cable bundle as the Licensed Fibers.

Section 8: Route of Licensed Fibers and Maximum Loss Budget. Provider shall at all times during the Service Term have full and complete discretion to choose the route along DARK FIBER ORDER

Wave Business Solutions, LLC / City of Everett

which the Licensed Fibers are installed between the End Points. That route will not necessarily be the most direct route between the End Points. Provider may, from time to time during the Service Term, elect to change the route along which the Licensed Fibers are installed. So long as the actual optical loss for each Fiber Route is always less than or equal to the Maximum Loss Budget specified for such Fiber Route in Section 1 above, Customer shall have no authority to approve or disapprove of any particular installation route. In the event of any route relocation, Provider shall use commercially reasonable efforts to minimize the disruption to Customer's use of the Licensed Fibers.

Section 9: Performance. Provider shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Licensed Fibers are available to Customer 24 hours per day, seven days per week, consistent with the applicable SLA. It is possible, however, that there will be interruptions of Services. Customer understands and agrees that the Licensed Fibers may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Provider's reasonable control. Temporary Service Interruptions for such reasons, as well as all Service interruptions caused by Customer, or by Force Majeure Events, will not constitute failures by Provider to perform its obligations under this Service Order. Instead, Customer's sole remedies for any such interruptions in the Services are described in the applicable SLA.

Section 10: Customer Equipment and Software. As between Provider and Customer, Customer is solely responsible for the installation, repair, maintenance and use of all Customer Equipment and all software supplied by Customer for use in connection with the Licensed Fibers, including all aspects of Customer's internal network. Provider does not manufacture Equipment or software and does not support Customer Equipment or software. Any questions concerning or

requests for maintenance or repair of third-party hardware or software should be directed to the provider of that product. If Customer Equipment or software impairs the Licensed Fibers, Customer will remain liable for payment of the applicable Fees. If, at Customer's request, Provider should attempt to resolve difficulties caused by Customer Equipment or software, such efforts may be performed at Provider's discretion and Customer will be responsible for Provider's then-current commercial rates and terms for such consulting services.

Section 11: No Sub-Licensing; Non-Compete. The Services and the License are for the sole benefit of Customer. Customer shall not grant to any third party the right to use any of the Licensed Fibers, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, indefeasible right of use, or any other form. Nor shall Customer use the Licensed Fibers for commercial purposes that are competitive with Provider's business (e.g., use the Licensed Fibers to sell Internet access services, point-

to-point data transport services, VoIP services, etc., to third parties within Provider's service area).

Section 12: Provider's Retained Rights. Provider retains the exclusive right to provide services using, or to sell or lease to other customers or end users fibers (other than the Licensed Fibers) contained in the same cable bundle as the Licensed Fibers. Provider shall not use the Licensed Fibers during the Service Term.

Section 13: Customer Security Measures. Unless the End Points are installed at Service Sites that are within Provider's control, Customer is responsible for establishing commercially reasonable security measures at the Service Sites to prevent unauthorized access to the Licensed Fibers and any Provider Equipment. Customer shall reimburse Provider for the cost of any damage to Provider Equipment or the Licensed Fibers occurring at the Service Sites due to negligent security measures on the part of Customer.

The submission of this Service Order to Customer by Provider does not constitute an offer. Instead, this Service Order will become effective only when both parties have signed it. The date this Service Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the Effective Date of this Service Order.

CUSTOMER:

CITY OF EVERETT

By _____

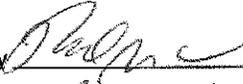
Name: _____

Title: _____

Date: _____

PROVIDER:

WAVE BUSINESS SOLUTIONS, LLC

By  _____

Name: PAUL KOSS

Title: SVP Business Solutions

Date: 6/15/2016

[The remainder of this page is intentionally left blank.]

ORDER FOR BURSTABLE INTERNET SERVICES

This Order for Burstable Internet Services (this "Service Order") is entered into as of the date of last signature below (the "Effective Date"), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company ("Provider"), and the CITY OF EVERETT, a Washington municipal corporation ("Customer"). This Service Order is made pursuant to and will be governed by that certain Master Services Agreement between Provider and Customer dated June 13, 2016 (the "MSA"). This Service Order shall be effective as of the Effective Date, and shall remain in effect until the expiration of the Service Term (as defined in Section 4 below). All capitalized terms used but not defined in this Service Order shall have the meanings given to them MSA.

Section 1: Key Business Terms.

Name of Service Site: SnoPac 911 Initial Service Term: 60 months
 Service Site Address: 1121 SE Everett Mall Way Everett, WA 98208 Estimated Install Date: 4 – 6 weeks from Effective Date

Description of Services and Recurring Monthly Service Fees:	
Burstable Internet Services 1 Gbps / 1 Gbps Dedicated Fiber Internet Access Burstable to 10 Gbps* /29 IP Address Block Included <u>Base Bandwidth:</u> 1 Gbps <u>Maximum Burstable Bandwidth:</u> 10 Gbps* <u>Burst Rate:</u> \$2.00/per Mbps*	\$2,000*
Total Recurring Monthly Service Fees:	\$2,000*

* Burstability charges are additional and shall be calculated as described in Section 10 below.

One Time Installation Charges:	
Installation of the above-described Services.	\$1,000
Total One Time Charges:	\$1,000

Section 2: Customer Information.

Account Name: City of Everett Invoicing Address: 2930 Wetmore Avenue
 Account Executive to Customer: Jeff Stoner Everett, WA 98201
 ATTN: Accounts Payable

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

<u>Customer Site Contact:</u> Jeanette Callaghan-Postma jpostma@everettwa.gov 425-257-7701 (Ph)	<u>Customer Billing Contact:</u> Accounts Payable	<u>Customer Technical Contact:</u> Kevin Walser kwalser@everettwa.gov 425-257-8663 (Ph)
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Section 3: Service. Provider shall provide the Internet Services indicated above to Customer at the Service Site identified above (the "Services").

Section 4: Service Term. Installation, testing and acceptance of the Services shall occur consistent with Article 3 of the MSA. The Initial Service Term for the Services shall commence on Service Commencement Date. Upon

expiration of the Initial Service Term, unless either party terminates this Service Order by giving written notice to the other party not less than thirty (30) days prior to the end of the Initial Service Term, this Service Order will begin to automatically renew on a month-to-month basis. During any month-to-month automatic renewal period, either party may terminate this Service Order by giving no less than thirty (30) days advance written notice to the other party. The period of time this Service Order is in effect is referred to as the "Service Term."

Section 5: Rates and Charges. Customer is responsible for paying to Provider the NRC and MRC set forth in Section 1 above, all in accordance with Article 4 of the MSA,

Section 6: Internet Service Provisions. In addition to the other provisions of this Service Order and the MSA, use of the Services is subject to the following terms and conditions:

(a) **Access and Acceptable Use.** Customer shall ensure that any person who has access to the Services through Customer's Equipment and/or Customer's internal network shall comply with the terms of this Service Order and the terms and conditions of Provider's "Acceptable Use Policy" for Internet access, which can be found at <http://www.wavebroadband.com/resources/docs/Wave-Acceptable-Use-Policy.pdf>. The Acceptable Use Policy, as it may be updated by Provider from time to time, is incorporated into this Service Order by this reference and shall govern Customer's use of the Services.

(b) **Online Purchases.** Through use of the Services, Customer, its employees, agents, contractors or other users of Customer's network (whether authorized or unauthorized) may access online products, services and/or information provided by third-parties for which there is a charge or fee. Customer is solely liable and responsible for any and all fees or charges incurred for these online products, services or information. Provider has no responsibility to resolve any Customer disputes with third-party vendors.

(c) **Acceptance of Risk; Security Measures.** Customer expressly acknowledges and agrees that the Internet is a shared network that is not secure and that is not controlled by Provider. Any content that Customer may access through the Services is provided by independent third-party content providers, over which Provider does not exercise control. Provider does not preview, exercise editorial control over, or endorse any opinions or information accessed through the Services. Customer expressly understands and agrees that it is possible data or files Customer sends or receives over the Internet will be monitored by third-parties and/or subject to unauthorized access by third-parties. Third-parties may gain access to Customer's data, including Confidential Information. Data or files transmitted over the Internet may contain computer viruses or other harmful components. Provider has no

responsibility and assumes no liability for any such acts or occurrences. Instead, Customer expressly assumes the risks inherent in connecting its internal network and its Equipment to the Internet and in accessing and using the Internet through the Services.

(d) **Electronic Addresses.** Any IP addresses or email account addresses (collectively, the "Electronic Addresses") provided by Provider pursuant to this Service Order are and will remain the property of Provider. Customer shall not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses. Due to growth, acquisitions and/or changes in technology, Provider reserves the right to change addressing schemes, including Electronic Addresses, at any time.

(e) **Domain Names.** Customer is solely responsible for obtaining, registering for and renewing any desired domain names. Customer acknowledges that Provider has no control over domain name registration.

Section 7: Performance. Provider shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to Customer 24 hours per day, seven days per week, consistent with the applicable SLA. It is possible, however, that there will be interruptions of Services. Customer understands and agrees that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Provider's reasonable control. Temporary Service interruptions for such reasons, as well as all Service interruptions caused by Customer, or by Force Majeure Events, will not constitute failures by Provider to perform its obligations under this Service Order. Instead, Customer's sole remedies for any such interruptions in the Services are described in the SLA.

Section 8: Customer Equipment and Software. As between Customer and Provider, Customer is solely responsible for the installation, repair, maintenance and use of all Customer Equipment and all software supplied by Customer for use in connection with the Services, including all aspects of Customer's internal network. Provider does not manufacture Equipment or software and does not support Customer Equipment or software. Any questions concerning third-party hardware or software should be directed to the provider of that product. If Customer Equipment or software impairs the Services, Customer will remain liable for payment of the applicable Fees. If, at Customer's request, Provider should attempt to resolve difficulties caused by Customer Equipment or software, such efforts will be performed at Provider's discretion and at Provider's then-current commercial rates and terms for such consulting services.

Section 9: Customer Security Measures. Customer is responsible for all access to and use of the Services by means of Customer's Equipment and Customer's internal network,

whether or not Customer has actual knowledge of or authorizes such access or use. Customer is responsible for the security of Customer's internal computer network, and shall implement commercially reasonable security measures to prevent unauthorized use of or access to the Services. As set forth in Section 6.3 of the MSA, the failure by Customer to implement commercially reasonable network security measures may result in immediate termination of the Services and this Service Order by Provider. Customer will be solely liable and responsible for all conduct occurring through either authorized or unauthorized use of the Services through Customer's network and/or Customer's Equipment, until Customer informs Provider of a security breach. Provider is not responsible and assumes no liability for losses, claims, damages, expenses, or costs resulting from persons accessing Customer's internal network and/or Provider's network through Customer's Equipment, and Customer shall hold Provider harmless from and indemnify Provider against any such claims, losses, or damages to the full extent arising from such access.

Section 10: Burstable Internet Service. Burstable Internet Service provides the reassurance of available bandwidth and maximum throughput capabilities while minimizing costs. Burstable Internet Service allows Customer to increase from the selected Base Bandwidth up to the specified Maximum Burstable Bandwidth on an as-needed basis when usage spikes. Charges for Burstable Internet Service will be calculated by using the industry standard 95th percentile. The 95th percentile measurement evaluates the regular and sustained use of a network connection and is measured by sampling usage at 5 minute intervals and ignoring the top 5% of usage samples taken over a month. The 95th percentile measure of peak bandwidth will then be compared to the Base Bandwidth and the incremental usage will be billed at the Burst Rate in arrears on a monthly basis. Charges for Burstable Internet Service will be measured, calculated and accrued on a monthly basis, and billed in arrears on a monthly basis.

Section 11: Future Upgrades.

(a) Option to Upgrade. Customer may, at any time and from time to time during the Initial Service Term of this Service Order, elect to upgrade the bandwidth of the Services Customer receives pursuant to this Service Order to any of the following bandwidths, at the monthly recurring costs set forth below:

New Bandwidth	New MRC
2 Gbps	\$3,000
3 Gbps	\$3,750
4 Gbps	\$4,500
5 Gbps	\$5,000
10 Gbps	\$8,000

In the event Customer elects to upgrade its Services pursuant to this Section 11(a), there shall be no installation charge associated with the upgrade. Customer may exercise its upgrade option by delivering written notice to Provider, no less than thirty (30) days prior to the date on which Customer desires the upgrade to take effect.

(b) Option to Downgrade. Should Customer exercise its option to upgrade the base bandwidth of Customer's Services pursuant to Section 11(a) above, Customer may, at any time thereafter, elect to downgrade said Services to a lower bandwidth (but no lower than the 1 Gbps bandwidth for which Customer originally contracted). In the event Customer elects to downgrade its Services pursuant to this Section 11(b), Customer shall pay a one-time service charge of Two Hundred Fifty and No/100 Dollars (\$250.00) in connection with the downgrade. Customer may exercise its option to downgrade the bandwidth of its Services by delivering written notice to Provider, no less than thirty (30) days prior to the date on which Customer desires the downgrade to take effect.

[Signatures on following page.]

The submission of this Service Order to Customer by Provider does not constitute an offer. Instead, this Service Order will become effective only when both parties have signed it. The date this Service Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the Effective Date of this Service Order.

CUSTOMER:

CITY OF EVERETT

By _____

Name: _____

Title: _____

Date: _____

PROVIDER:

WAVE BUSINESS SOLUTIONS, LLC

By  _____

Name: Paul Kaut

Title: SUP Business Solutions

Date: 6/15/2016

[The remainder of this page is intentionally left blank.]

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Authorize Mayor to Sign
Application for Use of
Snohomish County Public
Utility District Facilities

_____ Consent
7/6/16 Action
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Briefing

COUNCIL BILL # _____
Originating Department Administration
Contact Person Hil Kaman
Phone Number 425-257-8762
FOR AGENDA OF July 6, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location PUD – 2320 California Street
Preceding Action
Attachments Application
Department(s) Approval Administration, Legal

Amount Budgeted	\$1,000.00	
Expenditure Required	\$1,000.00	004-550-0000-494
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

As part of the City’s Safe Streets Initiative, the City is putting together a safe streets forum on July 19, 2016. This action item is to approve the agreement for City use of the Snohomish County Public Utility District’s Auditorium for that event.

RECOMMENDATION:

Authorize the Mayor to Sign the Application for Use of Snohomish County Public Utility District Facilities in the amount of \$1000.



APPLICATION FOR USE OF PUD FACILITIES

REV. 4/16

1. APPLICANT INFORMATION

Application Date: June 24, 2016

Name of Applicant: Elizabeth Smith

Organization Name: City of Everett

Government Agency? (Please select one) Yes No

Please select one: For-Profit Group Not-for-Profit Group (Please provide 501c)

Mailing Address: 2930 Wetmore Ave City/State/Zip: Everett WA 98201

Daytime Phone: (425) 257-7111 Evening Phone: () _____

FAX: () _____ Email: esmith@everettwa.gov

2. FACILITY REQUESTED

- Training Center Auditorium/Theater
- Green Room
- Kitchenette/Commons
- Commission Meeting Room

- Training Center Room - 1st Floor
- Training Center Room 2A
- Training Center Room 2C

3. SERVICES/EQUIPMENT REQUESTED

- Easel
- Overhead Projector
- TV/VCR-DVD players
- Microphone (regular)
- Microphone (wireless)

ROOM SET-UP* (COMMISSION ROOM ONLY)

- Theatre Style (65 max.)
- U-shape (25 max.)
- Classroom (32 max.)

*(24 hrs. ADVANCED NOTICE FOR ROOM STYLE CHANGE)

- + Audio/visual equipment needed for your meetings must be rented from the PUD (any exceptions must be approved by the PUD Training Center Coordinator).
- + For fees regarding the use of this equipment, please see rental rate sheet.
- + More comprehensive audio/visual aides (such as technical lighting, advanced sound reinforcement and video or computer projection) may be subject to the use of a technician and additional fees.
- + Equipment must be requested 24 hours in advance to ensure availability.
- + Technician Costs: \$35/hour, 4-hour minimum – required for all events.
- + THE USE OF A TECHNICIAN REQUIRES 4 WEEKS ADVANCED NOTICE.

4. DATE(S) AND TIME(S) REQUESTED

Single Use on July 19, 2016

Regular Use: Weekly on _____ of each week

Monthly on _____ of each month

Start Time: _____ End Time: _____

5. EVENT INFORMATION

Name/Type of Event: City of Everett Safe Streets Public Forum Expected Attendance: 300

FOR PUD USE ONLY

Date entered into database: _____ Database Number: _____

Elizabeth Smith

I, _____, (hereafter referred to as "User"), agree that the information on this request is true and complete to the best of my knowledge. I further agree to abide by the following conditions as well as Snohomish County PUD's (hereafter referred to as the "PUD") Directive on public use.

1. Any necessary deposits will be paid at least two weeks prior to the first day of the event.
2. Users will be billed before the event for technical fees and will be paid within 30 days of billing.
3. User shall provide written notification of cancellation at least two weeks in advance of rental date or be assessed the minimum fee required for the room reserved.
4. The User assumes all responsibility for protection of PUD property and equipment and will be held responsible for any loss or damage as determined by the PUD. Utilization of PUD equipment to access or download files from the Internet is strictly prohibited except to the extent authorized in writing by the PUD, and penalties may be charged for any such activity that is not so authorized.

(AUDITORIUM USE)

5. Unless otherwise agreed to by the PUD, the user will provide proof of insurance as follows:

Limits of General Liability: \$1,000,000 Combined Single Limits and a certificate of insurance naming

Public Utility District #1 of Snohomish County as Certificate Holder and Additional Named Insured will be provided to the PUD at least three weeks before facility use begins.

If self-insured, the organization will provide proof of insurance coverage acceptable to the PUD for the purpose of the rental.

6. The person/organization indicated on the reverse will be responsible for payment of all charges.
7. All usage shall conform with requirements set forth in the Uniform Fire Code. The User shall restrict attendance to the facility's assigned occupant load. Section 4.108 of the U.F.C. states that any candle or open flame used in assembly requires a permit from the Everett Fire Department, Office of the Fire Marshall. For permit information, please call the Everett Fire Department at 425-259-8726. A copy of any permit issued must be on file with the PUD **two weeks prior** to the event. Violations of the Fire Codes shall be deemed a misdemeanor and shall be punishable by a fine of not more than \$1,000 or not more than ninety days in jail. **User will notify the PUD whenever there is an intent to use an open flame.**
8. The user will be held responsible for control of all individuals present during the time of the facility use. **No alcohol is allowed on PUD property. Lighted tobacco products are permitted in outdoor areas specifically designated as smoking areas. No food or beverages are permitted in the Auditorium except in stage areas as required by meeting/performance.**
9. Compliance will be made with all federal, state, and local laws prohibiting discrimination with regard to race, color, marital status, sex, religion, age, national origin, sexual orientation, or sensory, mental, or physical disability.
11. User agrees to notify the PUD technician, custodian or Security Officer of any accidents immediately.

SIGNATURES

The User agrees to indemnify, defend, and save harmless the PUD, its officers, agents and employees from and against any and all claims, losses, damages and expenses, including attorneys' fees, arising out of or in connection with the use of PUD facilities to the extent that such claim, loss, damage, or expense is attributable to any negligent act or omission of the User, anyone directly or indirectly employed by the User, or any of the User's group members, invitees, or other Users present at such facilities in connection with the User's activities. The User also has read and agreed to the Public Use of Facilities Directive Number 43 (included in the application packet).

User

Date

Snohomish County PUD Confirmation

Date

Return this form with both sides completed to:

Phone number: 425-783-8204

FAX number: 425-267-6143

Snohomish County PUD

Julie Johnson M/S A1

Training Center Receptionist

PO Box 1107

Everett, WA 98206-1107



PUBLIC USE OF TRAINING CENTER USER EXPECTATIONS AND RESPONSIBILITIES

Please help us provide safe, quality and low-cost facilities to our users by respecting the following guidelines:

1. **THE PUBLIC USER SHALL:** 1) Review emergency response information and share the egress routes with meeting participants at the beginning of the meeting, including identifying the common external meeting place, should an evacuation be necessary (note - floor plan with egress routes included in this packet). 2) Vacate the building immediately should the fire alarm activate. If you are the responsible party in your meeting, insist that all participants vacate in the event of an audible alarm. 3) Follow the direction of PUD security officers. 4) Account for the people who were in your meeting, if possible, in the event of an evacuation. 5) Never reenter the building until the security officer or other PUD management gives the "all clear."
2. **NO PROPPING OF EXIT DOORS:** Customers who prop exit doors open will lose their meeting privileges.
3. **CHILDREN:** Children visiting the Training Center facility must be accompanied by their parents or guardians. Children should not be allowed outside the meeting room without their parent or guardian.
4. **MISUSE OF FURNISHINGS:** Please do not move or misuse furnishings. Requests for set-ups should be made on the Application for Use document and turned in prior to room usage. We will set-up the room as you requested.
5. **ROOM SET-UPS:** The only room available for change of set-up is the Commission Meeting Room. Please do not change other room set-ups.
6. **MISUSE OF EQUIPMENT:** Misuse or damage to PUD equipment causes the cost of facilities use to be higher for all our customers. Please handle equipment appropriately. Your requests for equipment should be made 24 hours in advance of the scheduled meeting. Custodians should not be asked to locate or set-up equipment.
7. **EQUIPMENT REQUIRED:** Please request and reserve your equipment at least 24 hours in advance of your scheduled meeting. Custodians should not be asked to set-up equipment in the Training Center. All equipment must be paid for prior to use - Information Desk or Security Officer will arrange for payment.
8. **MAXIMUM OCCUPANCY:** Please observe the posted occupancy limit in PUD meeting rooms in all meetings.
9. **FIRE CODE COMPLIANCE:** The Uniform Fire Code governs usage of all PUD facilities. Section 4.108 of the Code requires that any candle or open flame used in assembly requires a permit from the Everett Fire Department, office of the Fire Marshall. For permit information, please call 425-259-8726. A copy of any permit issued must be on file with the PUD two weeks prior to the event. The user is required to notify the PUD whenever there is intent to use an open flame. Violations of the Fire Code are considered a misdemeanor and may result in a fine of not more than \$1,000 or not more than ninety days in jail.
10. **HOURLY RESERVATIONS:** Rooms are reserved for a three-hour minimum period (except the Auditorium is a four-hour minimum). Custodial work schedules are planned around your reservations. When you do not adhere to your reservation schedule, custodial work can not be completed on time. Please begin and end your meetings promptly at the reserved times. Additional fees are assessed for meetings held over their scheduled time.
11. **FOOD & DRINK:** Food and drink are allowed in all PUD rooms except the Auditorium. Please do not take food and drink into the Auditorium and exercise care in handling food and drink in areas where they are permitted.
12. **ALCOHOL / TOBACCO:** No alcohol is allowed on PUD property. Lighted tobacco products are permitted in outdoor areas specifically designated as smoking areas.
13. **LOST ARTICLES:** The PUD is not responsible for lost or stolen items. Any items found by custodians will be turned over to the Information Desk and may be claimed by identifying the item in person or calling 425-783-8204.

I have read and understand these guidelines. Failure to comply with these guidelines may result in termination of use of PUD facilities.

Print Name: Elizabeth Smith

Signature:

Date:

June 24, 2016

Organization: City of Everett

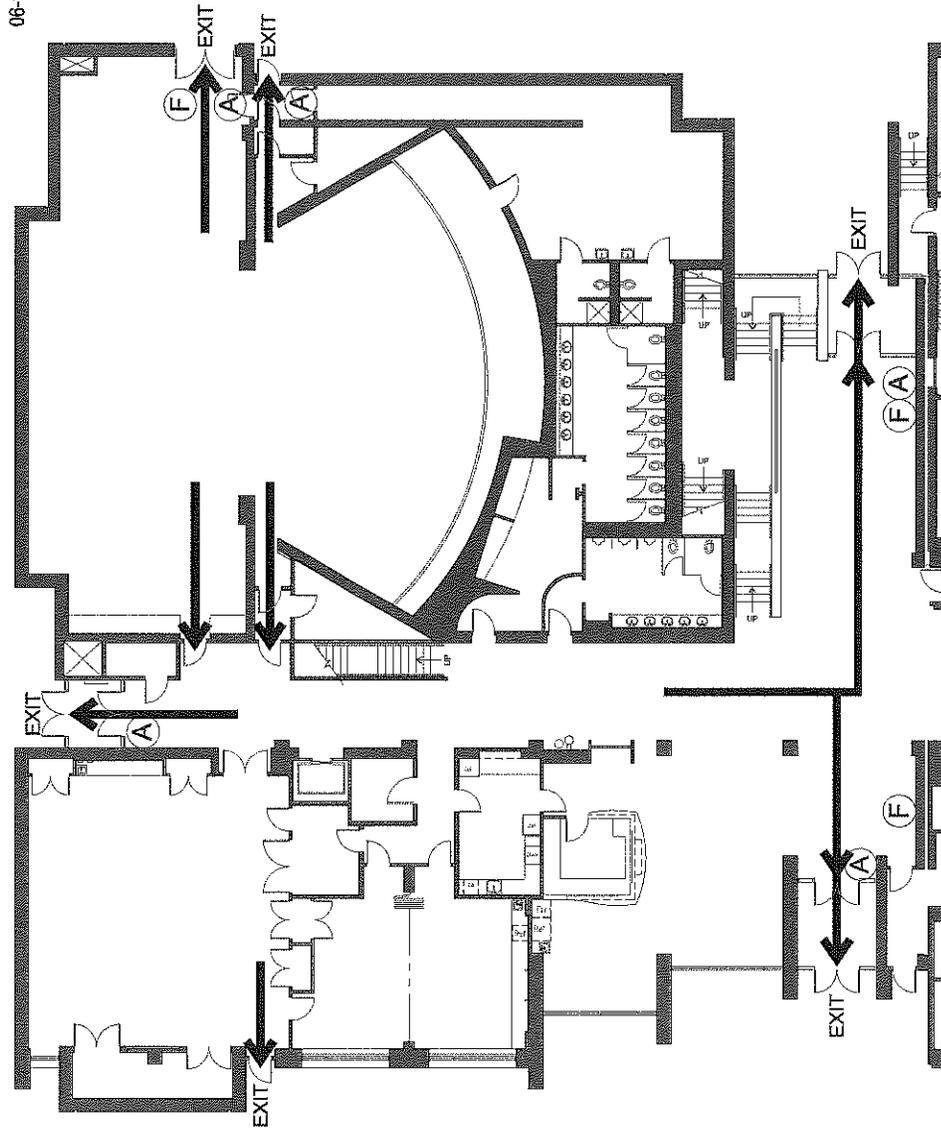
Phone:

425-257-7111

Emergency Egress Map - First Floor Training Center

SafetyMap-TC

06-11-07



NORTH

**ELECTRIC BUILDING
TRAINING CENTER
FIRST FLOOR**

2320 California Street

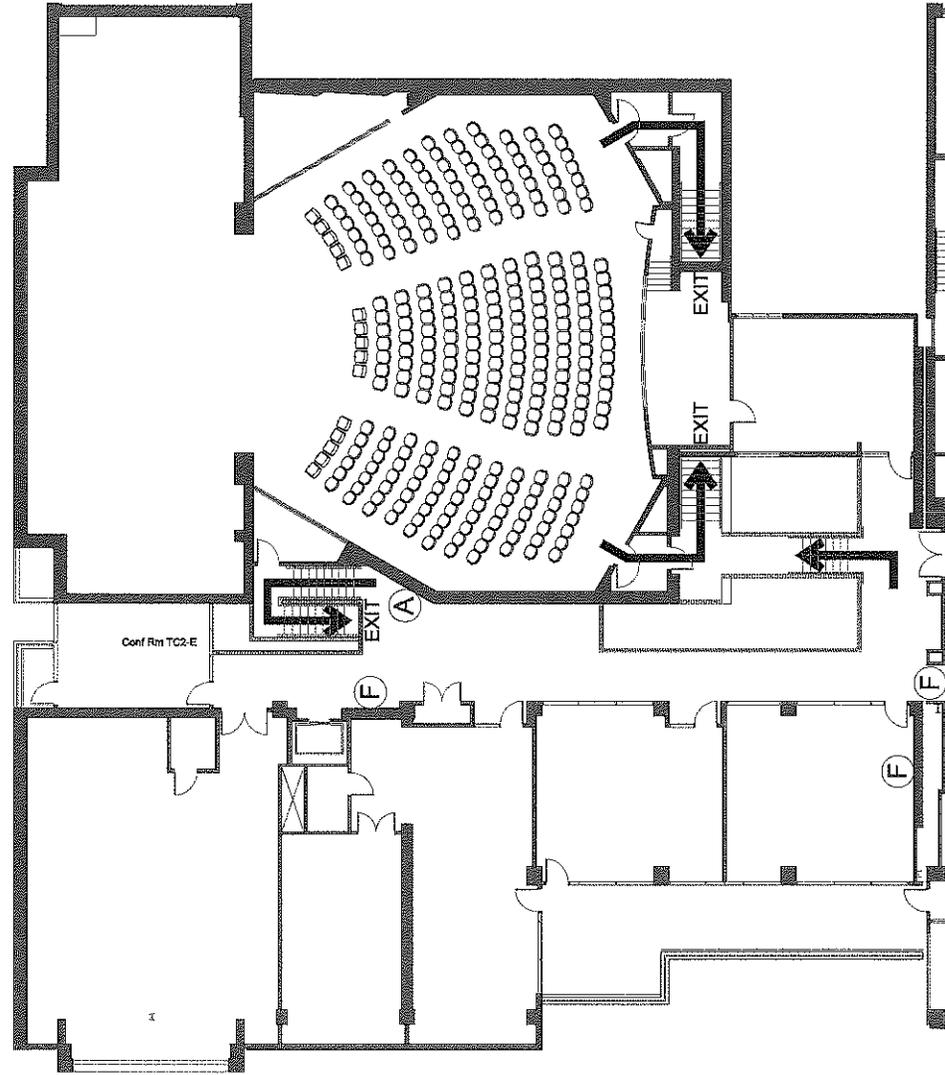
LEGEND

- (A) PULL ALARM STATION
- (E) EMERGENCY DISASTER CABINET
- (F) FIRE EXTINGUISHER
- (+) FIRST AID KIT
- (B) MSDS & BBP BOOKS
- (S) SAFETY BULLETIN BOARD
- EMERGENCY EXIT ROUTE

Emergency Egress Map - Second Floor Training Center

Safety/Map-TC

06-11-07



NORTH

ELECTRIC BUILDING
TRAINING CENTER
SECOND FLOOR
2320 California Street

LEGEND

- (A) PULL ALARM STATION
- (E) EMERGENCY DISASTER CABINET
- (F) FIRE EXTINGUISHER
- (S) FIRST AID KIT
- (B) MSDS & BBP BOOKS
- (S) SAFETY BULLETIN BOARD
- EMERGENCY EXIT ROUTE



FACILITY COST SHEET

425-783-8204

ALL FACILITY RENTALS (EXCEPT THE AUDITORIUM AND GREEN ROOM) ARE BASED ON 3-HOUR BLOCKS OF TIME UNLESS OTHERWISE NOTED:

ROOM:	CAPACITY:	NON-PROFIT FEE:	PROFIT FEE:
Auditorium (4 hr. minimum)	300	\$175 \$44 for ea. addtl. hr.	\$275 \$70 for ea. addtl. hr.
Commission Meeting Room	60	\$30	\$100
Training Center Room 1st Floor	12	\$15	\$35
TC- 2A	14	\$15	\$35
TC- 2C	20	\$15	\$35
Green Room (4 hr. minimum)		\$25	\$40
Commons Area (deli eating area)		\$20	\$40

- ☞ Auditorium requires a \$1,000,000 liability insurance rider naming *Snohomish County PUD* as additional insured and certificate holder. Must be received 3 weeks prior to your event.
- ☞ Auditorium and Training Center Room 1st Floor are available for external use 7 days a week (weekdays: 8:00 AM to 10:00 PM; weekends: 8:00 AM to 11:00 PM).
- ☞ All other rooms are available after business hours for external groups Monday through Friday – (5:30 PM to 11:00 PM) and on weekends (8:00 AM to 11:00 PM).
- ☞ Payment for room reservations and equipment reserved must be received 2 weeks prior to reserved event date.
- ☞ Non-profit organizations must provide a copy of their 501c declaring their non-profit status with the Internal Revenue Service.
- ☞ Security officer will be on duty during all events.
- ☞ At no time shall exit doors ever be propped open.

Other PUD auditoriums listed below have a capacity of 50. Please call numbers listed for specific rental fees, which are different from the Everett Headquarters facility.

Monroe PUD local office:	360-794-3901
South County PUD local office:	425-670-3201
Snohomish PUD local office:	360-563-2201
Stanwood PUD local office:	360-629-5701



GUIDELINES

Weekend Usage of the Training & Technology Center (TTC)

- Saturday and Sunday hours are from 8 AM to 11 PM.
- The PUD security officer will arrive at 8 AM to open the building. Do not expect to enter the building before 8 AM.
- Special productions and event hours in the Everett Headquarters Auditorium are negotiable and may require additional fees.
- There must be a four-week advanced notice for productions and events whose time will run outside of business hours.
- There is no guarantee that the PUD can accommodate events outside of regular TTC business hours. This depends on availability of PUD staff and security officer.
- Once the request is made for use of the Everett Headquarters Auditorium outside of regular business hours, the PUD will inform the customer in three (3) business days if it can accommodate the customer's request.
- All weekday and weekend Auditorium events require the use of a technician at an additional fee (see application form for details).
- **Remember: payment for use of the TTC is due 2 weeks prior to your event!**

Thank you!



AUDIO/VISUAL EQUIPMENT RENTAL RATES

Contact Person: Elizabeth Smith

Group Name: City of Everett

Today's Date: June 24, 2016

Date(s) equipment is needed: _____

EQUIPMENT	RATE (MINIMUM HRS.)	QUANTITY	Cost
TV/VCR/DVD	\$12 (3 hours)	<u>1</u>	\$ <u>12.00</u>
Microphone (Auditorium)	\$6 (4 hours)	<u>3</u>	\$ <u>18.00</u>
Wireless microphone	\$24 (4 hours)	<u>3</u>	\$ <u>72.00</u>
Multimedia Projection (Comm. Room)	\$50 (3 hours)	_____	\$ _____
Multimedia Projection (Auditorium)	\$50 (4 hours)	_____	\$ _____
Multimedia Projection (Sm. TC rms.)	\$25 (3 hours)	_____	\$ _____
Laser pointer	\$3 (3 hours)	_____	\$ _____
Wireless Internet	\$1 (8 hours)	_____	\$ _____
Total:			_____

I, Elizabeth Smith, (renter) agree to be responsible for replacement or repair of equipment to like condition previous to use in the event of any damage by misuse or abuse to such equipment during rental period.

FOR PUD STAFF:

- Make sure of availability of LCD projector on AV list
- Record all equipment in description field and AV list
- Microphones only for auditorium

FOR TECHNICIAN:

- If equipment other than what's checked on list is used, please write the information down so we can invoice customer for additional equipment charges.

TRAINING & TECHNOLOGY CENTER MEDIA REQUEST FORM

Date(s) of your event: Year _____ Month _____ Day(s) _____

Name of Applicant: _____

Daytime Phone: _____ Email Address: _____

EQUIPMENT (please check all equipment items you will need):

Easel: Number of easels* _____ Laser Pointer

Wireless Internet

*PUD does not supply easel pads or markers for outside groups

MULTIMEDIA (please check all that apply):

Computer Projection

Will you be using a: laptop desktop PDA

Operating system: Windows Mac Other _____

Resolution of your monitor: _____

Will you need more than one setup? No Yes, I need _____ setups

Sound with computer presentation

Video Projection

Format: VHS DVD Other _____

SOUND ACCESSORIES (These apply to Training Center Auditorium only. Please check all that apply):

Lecturn (podium) microphone (built into lecturn)

Regular microphone on microphone stands: Quantity _____ (maximum 4)

Regular microphone on table stands: Quantity _____ (maximum 14)

Wireless microphones

Wireless handheld microphones: Quantity _____ (maximum 3)

Wireless lapel microphones: Quantity _____ (maximum 2)

CD player through Auditorium sound system

COMMENTS OR SPECIAL INSTRUCTIONS

Please refer technical questions to the Training & Technology Center Coordinator at 425-783-8458 (email questions to jrschuler@snopud.com).

Commons / Kitchenette Area User Policy

- ✓ Groups should be aware of the condition of the kitchenette before they start to use it. The kitchenette area should be left in the same condition as found.
- ✓ Kitchenette is located in the southwest corner of Commons area and consists of a countertop with small refrigerator underneath and a sink on top.
- ✓ **RENTAL DOES NOT INCLUDE** using any of the PUDELI equipment or supplies. Cabinets should never be opened because all supplies belong to the PUDELI and are not to be used.
- ✓ **RULE OF THUMB: IF YOU DID NOT BRING IT IN WITH YOU, THEN YOU SHOULD NOT BE USING IT.**
- ✓ **PUDELI AREA** located in **COMMONS** area is **NOT INCLUDED** in rental and is **OFF-LIMITS**.

**Infraction of these rules will be immediately reported to
the PUD Training Center Coordinator**

PUD TRAINING CENTER CUSTOMER REMINDERS

IMPORTANT! Please go over the checklist below. The PUD reserves the right to cancel your event if these user expectations have not been followed.

Customer Check List:

- Did you read the Application contract carefully before signing?
- Did you read the User Expectations carefully before signing?
- Have you allowed for set-up time and clean-up time in your rental period?
- Please remember to end your meeting on time!
- Building doors open promptly at business hour times, so do not expect to get in early. This is especially a problem on Saturday and Sundays when member of your meeting or event show up early.
- Do you understand that conference rooms cannot have table configurations changed, except in the Commission room?
- Do you understand that if extra custodial is required to clean-up after your meeting, you will be invoice extra after your event?
- Do not exceed the occupancy rate of the meeting room you rented; this includes the theatre/auditorium.
- The PUD encourages all participants that will be attending meetings or events here to review the parking area map on page 13. We also have this on our website (go to www.snopud.com/facilities where you will see a parking area map on the right-hand side). Parking can be difficult at certain times due to events at the Everett Event Center.

Theatre users: it is important to read and review the below

AUDITORIUM/THEATER USER EXPECTATIONS in addition to the section above.

Your event may incur additional costs or difficulties if you do not read this list completely and carefully.

Forward this on to those involved with your production or event.

Auditorium/Theatre User Expectations:

You will need 2 volunteers: one for sound cues and one for lighting cues. This is for light and sound cues only. The PUD Technician is still required. Running the light and sound cues is fairly simplistic, knowing the show is the key. If your show is very simple – meaning very few lights music and microphone cues – you may be able to run both light and sound cues with one volunteer; this will be your decision.

The PUD Technician programs the lighting board, programs the sound board, sets up the cues, does your basic lighting design. *If you have a real complex lighting show, then you might want to hire a lighting designer, with whom the PUD Technician will work.* The PUD Technician sets up the sound, gets all the levels correct, sets up microphones, sets up the fly and rigging system, monitors the systems and makes sure everyone is operating safely, etc. The PUD Technician will provide assistance and training on how to use the appropriate equipment.

The PUD Technician will then be present in case of technical problems safety and policy issues. The PUD Technician cannot be tied to the lighting/sound cues. The PUD Technician needs to be free to troubleshoot problems and go wherever these may arise (e.g., backstage, the lighting board or the sound equipment) and be free to address technical and safety issues.

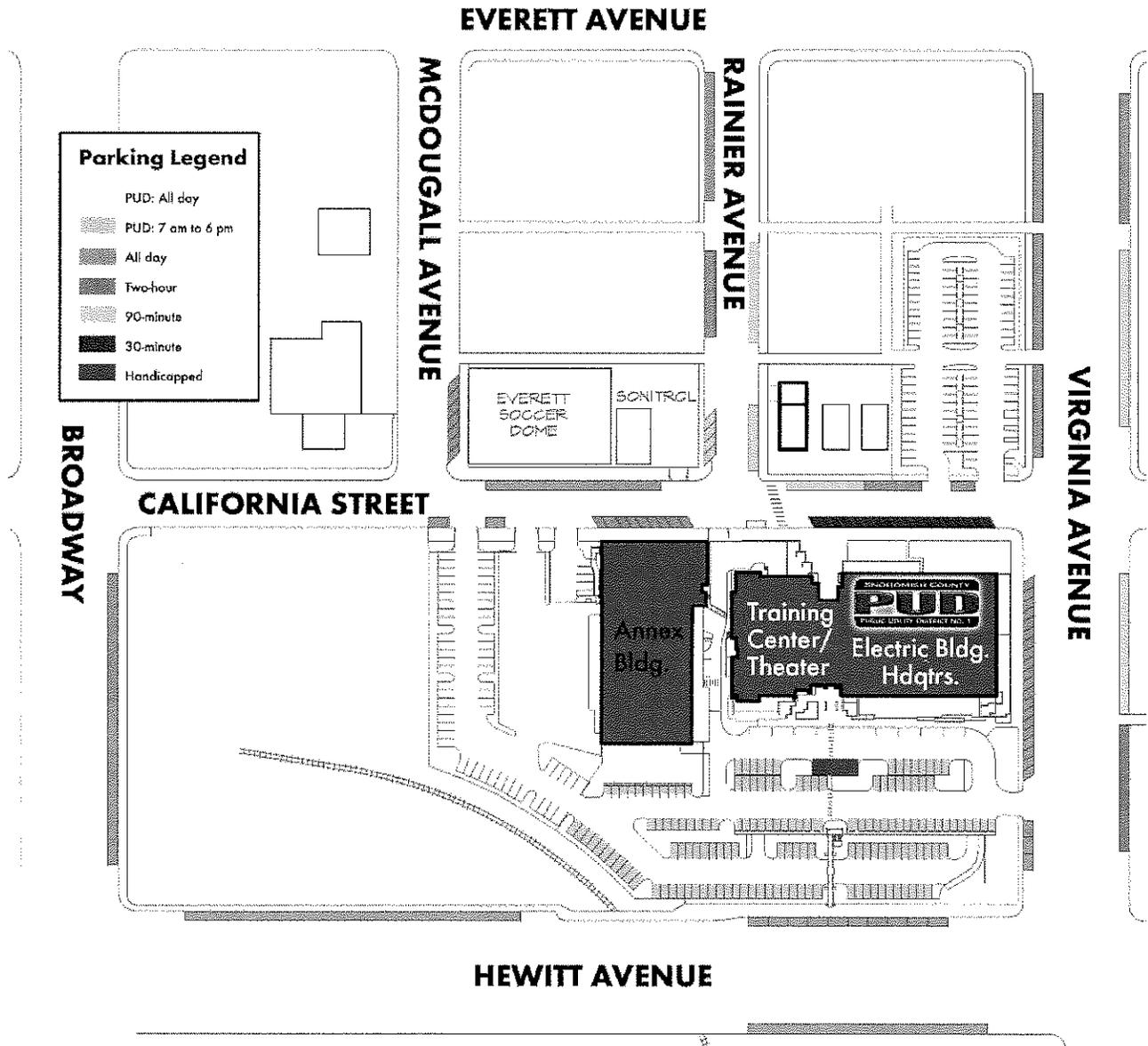
(Auditorium/Theater User Expectations continued on next page)

The PUD Technician will be in constant communication through a wireless intercom headset system. The PUD needs to be able to substitute PUD Technicians if one becomes ill or has a scheduling conflict. **Therefore, it is the customer's responsibility to have a volunteer(s) who knows the cues and the show.** The PUD also advises customers to have a third volunteer to cross-train with the light and sound cues in case one of the customer's volunteers cannot make a show due to illness, etc. It's good to have a backup plan with large productions!

The PUD Technician must have complete knowledge of what's happening during your event. For example: special effects, pyro, sound, lighting and/or multimedia computer presentation. If you have sets, the PUD Technician must know how you are constructing them. **All of these items in advanced of your load-in. Changes may be required to meet PUD policy. This is a requirement.**

- Only PUD Technicians can give permission for use of all other equipment including: pipe battens, electrics, and fly system.
- PUD will provide the PUD Technician's email address. It will be the **Customer's** responsibility to contact the technician prior to the event.
- The Customer provides volunteers for running sound and light cues. The PUD Technician will provide assistance on how to use the appropriate equipment.
- If you use your own equipment, the PUD Technician will not be responsible for supporting that equipment.
- There are strict regulations governing the use of pyro-, flash-, smoke- and fire-effects on stage. Please contact the PUD Training Center Coordinator well in advance if your production involves these kinds of effects. All uses of such effects are subject to the permission of the PUD Training Center Coordinator and the City of Everett Fire Department.
- There is a standard lighting plot that needs special permission from the PUD Training Center Coordinator if it is to be altered. Most productions should not need to alter the standard lighting plot. There are many extra instruments for specials.
- Weekday events in the auditorium/theatre that require a PUD Technician typically can start no earlier than 5:30PM Monday through Friday.
- Please allow set-up time and take-down time for your event within your rental period. The PUD Security Officer will enforce.
- Auditorium events that expect large groups may require extra security officers, at your expense. We need to be informed if you expect a large group or any activity that may require additional security.
- Night PUD Lead Maintenance & Custodial Mechanic has final authority on facility repair and modification issues after 4:00PM, Monday through Friday.
- Only PUD Technicians are allowed on the catwalks, genie lift and ladders.
- A PUD Technician must be present for the control room to be accessible to users. Only PUD Technicians are allowed in AV/media storage. The PUD Training Center Coordinator must approve exceptions.
- The PUD Technician has final authority on all theater technical and safety issues.
- The PUD security officer will enforce *Public Use of PUD Facilities* policy and *User Expectation* policy on evenings and weekends. The PUD Training Center Coordinator will enforce during regular PUD business hours.
- All scenery brought into the Snohomish County PUD theater/auditorium must be flame-proofed and comply with the City of Everett and Washington State fire and safety regulations. Certificates to prove compliance must be shown to the PUD Training Center Coordinator by the visiting companies.
- Changing of the theatre main lighting plot – general whitewash – is strictly prohibited.** Very limited use of the side lighting bars.
- Props and equipment must be kept out of the table lane (behind the white stripe), so that PUD staff can move tables in and out during business hours. **NOTE:** Accommodations can be made to move the tables out during performances. This will be worked out between the user, the PUD Training Center Coordinator, PUD Technician and evening PUD Maintenance Foreman.
- Please respect this facility. Leave it in the condition it was in when you arrived. Participate in your events safely. This is a resource for our community, so let's take good care of it!

Electric Building Parking Map





DIRECTIVE NUMBER 43
PUBLIC USE OF PUD FACILITIES
Date: 02/21/12

POLICY:

As a community service, selected PUD facilities may be available to the public if they are not in use for the conduct of PUD business. The PUD will endeavor to achieve the broadest possible use of its facilities by the public, as long as there is no conflict with or disruption of the ordinary conduct of PUD business. Use of the PUD facilities is solely within the discretion of PUD management.

FACILITIES AVAILABLE FOR PUBLIC USE:

The following PUD facilities will be available for use by the public in accordance with the terms and conditions of this policy:

Local Office Facilities

- + South County Office Auditorium
- + Monroe Office Auditorium
- + Snohomish Office Auditorium
- + Stanwood Office Auditorium

Training Center Facility

- + Training Center Board Room
- + Training Center Training Rooms (5)
- + Training Center Auditorium
- + Training Center Commons and Green Room Facilities
- + Computer Training Room
- + Videoconferencing Room (Training Center Rm 1st Floor except as needed by Commission schedule)

CONDITIONS OF USE:

The PUD shall have first priority for use of its facilities; all other use shall be prioritized on a first-come, first-served basis. The Clerk of the Board and the Training Center Coordinator shall have authority to cancel and reschedule previously reserved rooms, if necessary. Appeals concerning involuntary schedule revisions or disagreements can be made to the Senior Manager, Facilities and, if necessary, to the Assistant General Manager of Water, Generation, and Corporate Services, for final determination.

All use of facilities shall be in accordance with all applicable laws, rules, and regulations of local, state and federal government. The PUD will provide access to its facilities on a nondiscriminatory basis. The PUD may prohibit the use of its facilities by individuals or groups which, in the opinion of the PUD, present a conflict of interest with the PUD's public and/or nondiscriminatory purpose.

Access to PUD facilities during regular business hours by external groups can be limited to certain conference rooms, if necessary, to assure adequate meeting space is available for the PUD's business.

All users shall be at least 18 years of age or under adult supervision.

Alcoholic beverages are not allowed in PUD facilities or on PUD property. Smoking is permitted only in designated outdoor smoking areas.

Use of facilities by the public shall not imply endorsement by the PUD of users, sponsoring organizations, or related activities.

PUD DIRECTIVE #43 (cont'd.)

ANIMALS PROHIBITED

No animals/pets are allowed on PUD property except for:

- 1) "Service animals" such as guide dogs, signal dogs, or other animals individually trained to provide assistance to an individual with a disability or
- 2) Animals approved in advance by the PUD for use in theater productions. Such approval shall be on a case-by-case basis and at the sole discretion of the PUD.

FACILITY RENTAL FEES

Users will be assessed standard rental fees in accordance with a schedule of fees established by the PUD's General Manager or his/her designee. A single rental period shall not exceed a 24-hour period. The PUD reserves the right to modify fees at its discretion, when alternative fees would directly benefit the PUD.

Fees shall be assessed and periodically revised, as necessary, to provide recovery of the PUD's costs to operate the Training Center. Rates for commercial users shall be based on the market for comparable facilities in the region. These fees are subject to change, without notice, depending on operating costs and current market rates.

Deposits (refundable) for reservation of PUD facilities and certain equipment may be required at the sole discretion of the PUD, and will be applied toward the total rental fee. If the user charges a fee to its participants on site for a product or service, the PUD reserves the right to negotiate a percentage of that fee in addition to regular room fees for use of PUD facilities.

Customers are expected to reserve enough time to end their event within the time reserved. In estimating the time required for an event, pre-setup, socializing, and post-clean up time should be included. Customers who run over their reserved time will be assessed a fee. The fee will include the charge for the room for one hour for overage up to one hour over their reserved time, including security, and custodial fees, if applicable. If the customer is still in the room for over one hour beyond their scheduled time, the charge would change to a double time rate for the room, security and custodial fees.

HOURS OF OPERATION

The PUD's Training Center is available for public use between the hours of 8 AM to 11 PM, Monday through Friday; 10 AM to 11 PM Saturday and Sunday; and closed on holidays.

Room selection limited to TC-2E, Auditorium and Computer Training Facilities during PUD business hours 8 AM to 5 PM, Monday through Friday. Others are available after 5 PM.

Business hours for special productions in the Auditorium are negotiable.

Use of the PUD's videoconferencing system outside of the Training Center's regular business hours will be reviewed on a case-by-case basis.

Managers of local offices will coordinate hours of availability for PUD local offices.

RESERVATIONS

Users may reserve facilities for up to a maximum of three days per week for three consecutive weeks; provided, however, the PUD may, in its discretion, authorize use of facilities for longer periods of time on a case-by-case basis. Reservations may be made up to three months in advance of the scheduled use date(s) for meeting rooms, six months for computer training rooms and six months for the Training Center Auditorium; reservations more than six months in advance may be allowed at the PUD's discretion, provided that a non-refundable deposit may be required. The non-refundable deposit shall be applied to the user's fee for facility usage or damages to the PUD, should the user cancel the scheduled event.

PUD DIRECTIVE #43 (cont'd.)

- ▶ The PUD will make reservations with a short-term notice if staff can make the necessary accommodations.
- ▶ Training Center Auditorium requires a 30-business day advanced notice, if an insurance liability waiver is not on file.
- ▶ Reservations for videoconferencing require a two-business day advanced notice.
- ▶ Local office managers will handle reservations for public use of local office auditoriums.

AVAILABLE SERVICES

Services included in the Standard Rental Fee. The following user support services will be available at the PUD's Training Center at 2320 California St., Everett, Washington, as part of the standard rental fees:

- ▶ Pre- and post-event custodial services.
- ▶ Basic visual aids, including, whiteboards and easels. Easel paper not included.

At all other PUD public use facilities, the user shall consult with the facility Local Office Manager for detail on available services:

Services Provided for an Additional Fee. User support services which will be available at the PUD's Training Center at 2320 California St., Everett, Washington, and for which an additional fee will be charged if such services are requested by the user or are required by the PUD for the particular use of the facility, shall include, but not be limited to:

- ▶ Pre- and post-event custodial services- which are, in the opinion of the PUD, above and beyond standard custodial services provided as part of the standard rental fee.
- ▶ Security services.
- ▶ Full production audio/visual services. Fees for such services will be assessed in accordance with a schedule of fees established by the PUD's General Manager or his/her designee. Fees will be charged by the PUD for comprehensive audio/visual aids, including: technical lighting, sound system equipment, DVD players, projectors, microphones, computers and computer peripherals. The Training Center Auditorium technical lighting and sound system equipment will be coordinated by the PUD's Training Center Coordinator.
- ▶ Equipment access will be coordinated by the PUD's Training Center Coordinator.
- ▶ The PUD has available to the public a group videoconferencing system.

At all other PUD public use facilities, the user shall consult with the facility Local Office Manager for detail on available services.

SCHEDULING

Local Office Facilities: Reservation and arrangements for related support services for local office facilities may be made by contacting the appropriate PUD local office.

Training Center Facilities: Reservations and arrangements for related support services for the PUD's Training Center facilities may be made by contacting the Training Center Receptionist within the Water, Generation & Corporate Services Division.

APPLICATION FOR USE

Prior to the use of PUD facilities, users shall:

- ▶ Complete an Application for Use of PUD Facilities and Equipment
- ▶ Provide evidence of insurance as required by the PUD
- ▶ Obtain PUD approval for user-provided security personnel as required by the PUD; and
- ▶ Make payment of deposits as may be required by the PUD.

INSURANCE

If required by the PUD, facility users shall secure and maintain, at their own cost, liability insurance coverage. Such insurance shall be in the form of a public liability insurance policy, naming the PUD as an additional insured and providing combined single limit coverage for bodily injury and property damage in an amount specified by the PUD. The policy shall include a provision requiring the insurance company to give at least 30 calendar days prior written notice to the PUD of any cancellation or

PUD DIRECTIVE #43 (cont'd.)

alteration of the policy. Evidence of such insurance, if required, shall be delivered to the PUD not less than fifteen (15) business days prior to the commencement of facility use.

FACILITY SECURITY

PUD personnel will be responsible for providing access into and out of facilities to be used by the public and for ensuring that all users have vacated the facilities upon completion of scheduled use unless such responsibility is delegated by the PUD to the facility user. In such event, the user shall access and secure the facility to be used in accordance with established PUD procedures, and will cooperate with the PUD to obtain the proper training in such procedures.

If required by the PUD, facility users shall provide, at their own cost, security personnel approved by the PUD who shall be present throughout the duration of use of the applicable facility. Users are required to review and understand the PUD's User Expectations and Responsibilities guidelines and to cooperate fully with PUD personnel in its implementation.

CANCELLATION / REFUNDS

Cancellations: The PUD shall have the right to cancel scheduled use of PUD facilities at any time for any reason, including, but not limited to, the following:

- ▶ Failure of user to comply with the terms or conditions of this policy;
- ▶ Use application contains false or misleading information or breach of its terms or conditions by the user;
- ▶ Inadequate payment of rental fees;
- ▶ Willful or negligent damage, vandalism, or mistreatment of the facilities/equipment or failure to comply with the PUD's *User Expectations and Responsibilities* guidelines, a copy of which is attached;
- ▶ Weather or other unforeseeable conditions cause facility closure;
- ▶ Accidental scheduling conflict; or
- ▶ Any other reason which, in the reasonable opinion of the PUD, justifies cancellation.

User shall provide written notification of cancellation at least two weeks in advance for rooms other than the Training Center Auditorium or Computer Training rooms or be assessed the minimum fee required for the period reserved.

User shall provide written notification of cancellation at least three months in advance for the Training Center Auditorium or the Computer Training rooms or be assessed the deposit or the fee required for the period reserved.

- ▶ The PUD shall not be responsible and shall have no liability whatsoever for any damages to users resulting from cancellation of scheduled events.

Refunds: The PUD will provide refunds of deposits and rental fees paid to the PUD in the event of cancellation of facility use under the following conditions:

- ▶ Weather or other unforeseeable conditions cause facility closure;
- ▶ Accidental scheduling conflict.

Refunds Videoconferencing equipment:

- ▶ In the event of a failed or defective videoconference, the PUD's liability shall not exceed the amounts due to PUD for the services associated with the failed or defective videoconference.
- ▶ The PUD will not be responsible for travel or other costs incurred by the customer prior to and following its group videoconference in the event of equipment failure.

Users shall forfeit deposits and/or fees paid to the PUD for damages, costs, and expenses incurred by the PUD as a result of, or in connection with, the use of application for use of its facilities.

PUD DIRECTIVE #43 (cont'd.)

ADMINISTRATION

The General Manager is authorized to establish procedures including the setting of rental and support services fees to implement this policy.

INQUIRIES

Direct inquiries about this Directive to the Facilities Department.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Award contract for the Police	_____	Briefing
Headquarters Masonry	_____	Proposed Action
Cleaning and Repair Project to	_____	Consent
Alpine Waterproofing in the	X	Action
amount of \$404,000 plus	_____	First Reading
Washington State sales tax	_____	Second Reading
	_____	Third Reading
	_____	Public Hearing

COUNCIL BILL #	_____
Originating Department	Facilities
Contact Person	Scott Pattison
Phone Number	425-257-8846
FOR AGENDA OF	July 6, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
3002 Wetmore Avenue	Bid Call May 11, 2016		Police, Facilities, Legal

Amount Budgeted	\$515,000	
Expenditure Required	\$515,000	Account Number(s): 342-5-20-0000-650
Budget Remaining	-0-	Fund 342, Program 020
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

City Council was briefed on May 11, 2016 and authorized a Call for Bids for the Police Headquarters Masonry Cleaning and Repair Project. The plans and specifications were made available to bidders on May 13, 2016. On June 21, 2016 the city received responses from two qualified bidders. Alpine Waterproofing was found to be the lowest and most responsive bidder.

RECOMMENDATION (Exact action requested of Council):

Award contract for the Police Headquarters Masonry Cleaning and Repair Project to Alpine Waterproofing, in the amount of \$404,000 plus Washington State sales tax.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services _____ Briefing
 Agreement with Dykeman, Inc. _____ Proposed Action
 for the design of the Main _____ Consent
 Library Window Replacement _____ Action
 Project in the amount of _____ First Reading
 \$27,000 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____
 Originating Department Facilities
 Contact Person Chris Lark
 Phone Number 425-257-8897
 FOR AGENDA OF July 6, 2016

Initialed by:
 Department Head _____
 CAA dlb
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
2702 Hoyt Avenue	Funding Ordinance	Professional Services Agreement	Facilities, Library

Amount Budgeted	\$325,000	
Expenditure Required	\$27,000	Account Number(s):
Budget Remaining	\$298,000	CIP-1 Fund 342 – Program 019
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The existing wood windows at the Main Library need to be replaced. The Library Department and Facilities Department have chosen Dykeman, Inc. to provide design and architectural services from the Municipal Research and Services Center Roster due to their past experience with the building.

The total cost for the design and architectural services is \$27,000.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign a Professional Services Agreement with Dykeman, Inc. for the design of the Main Library Window Replacement Project in the amount of \$27,000.

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on this _____ day of _____, _____, 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 Dykeman, whose address is 1716 West Marine View Drive, Everett, WA 98201, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to architectural services for the Main Library Window Replacement 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 July 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 twenty seven thousand Dollars (\$27,000.00).

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.: Chris Lark - Facilities Dept.
3101 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 ¶8, 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.: Chris Lark - Facilities Dept.
3101 Cedar Street
Everett, WA 98201

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

Kelli Smith
1716 West Marine View Drive
Everett, WA 98201

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.

<i>Corporation</i>	_____ [Service Provider's Complete Legal Name] By: _____ Typed/Printed Name: _____ Its: _____ Date: _____
<i>Partnership (general)</i>	_____ [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
<i>Partnership (limited)</i>	_____ [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
<i>Sole Proprietorship</i>	_____ Typed/Printed Name: _____ _____ Sole Proprietor: Date: _____
<i>Limited Liability Company</i>	_____ [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

EXHIBIT A SCOPE OF WORK

BASIC ARCHITECTURAL SERVICES

The purpose of this contract is to provide architectural services for the Main Library Window Replacement project located at 2702 Hoyt Avenue, Everett, WA.

SCOPE OF WORK:

The original 1934 Art Deco style portion of the facility is experiencing some interior water damage and occupant discomfort that may be due, in part, to failing single pane windows. The existing building was originally constructed in 1934 and is of masonry wall construction with concrete floor and roof structure. The existing wood windows are original to the building.

Evaluate the existing windows to determine which ones to replace with new window and flashing, and which ones to refurbish. New windows are to be double pane wood windows with exterior aluminum cladding that maintain the character of the existing building as closely as possible. Exterior and interior millwork trim and casings are to be salvaged or recreated.

This project will follow either a public bid process or a small works process, depending on cost, and is expected to be ready to bid in late January 2017. Construction is scheduled to begin in April 2017. The anticipated completion date is July 2017. The current construction budget for this project is \$325,000.00.

A detailed scope of services is as follow:

EVALUATION AND SCHEMATIC DESIGN SERVICES - Part I

1. Identify/confirm building department requirements. Identify approval process, timeframe and requirements.
2. Field verify as-built conditions and existing drawings for the purpose of preparing Revit backgrounds and scope of work.
3. Set-up Revit project database.
4. Coordinate project requirements relating to schedule and program objectives with the Owner.
5. Review all investigative materials with the Owner and clarify project requirements before proceeding.
6. Two (2) meetings with the Owner to review schematic design drawings.
7. Determine a Basis-of-Design window manufacturer for developing construction documents.

DESIGN DEVELOPMENT SERVICES - Part II

1. Based on approved Schematic Design, prepare Design Development Drawings to define and describe the project's size and character in terms of its architectural components.
2. Review all design information with the Owner, clarify project requirements and document approvals, before proceeding.
3. Two (2) meetings with the Owner to review the design development drawings.

CONSTRUCTION DOCUMENTS SERVICES - Part III

1. Based on approved Design Development Drawings, prepare detailed drawings documenting the specific requirements for construction.
2. Prepare Project Manual. Dykeman will prepare the technical specification sections and the City of Everett will provide Division 00 and 01 sections.
3. Assist the Owner in obtaining the necessary building permits.

BIDDING SERVICES - Part IV

1. Assist the Owner in answering questions during bidding.

CONSTRUCTION ADMINISTRATION SERVICES - Part V

1. Assist the Owner in reviewing Shop Drawings, Product Data and Samples, for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
2. Attend Three (3) project site visits, including preparation and distribution of field reports.
3. Prepare substantial completion observations (punchlist).

ADDITIONAL SERVICES (If requested by Owner)

1. Preparing materials for and attending public presentations, meetings or hearings unless specifically defined in the Basic Services part of the Proposal.
2. Revising drawings previously approved by Owner, Tenants or Governmental Authorities.
3. Preparing documents for Change Directives, Change Order Proposals, or Change Orders and Drawings for changes not under the control of the Architect or Architect's consultants.
4. Value Engineering participation and implementation.
5. Code Analysis or Life Cycle Cost Analysis if required by the Owner or Governmental Approvals.
6. Post construction Services after Substantial Completion of the project and "follow up" services related to the construction and operation of the building systems after the final completion.
7. Preparation of detailed "As Built" record drawings.
8. Professional Construction Cost Estimating.

CONSULTANT SERVICES NOT INCLUDED

1. No consultant services are included in this contract.

**EXHIBIT B
COMPENSATION**

LUMP SUM

The City shall pay Service Provider twenty two thousand dollars (\$22,000.00) upon completion of the work, subject to the maximum stated in ¶4(D) of this Agreement.

A breakdown of the compensation is as follows:

LUMP SUM COMPENSATION

Evaluation and Schematic Design Services	\$5,000.00
Design Development Services	\$6,500.00
Construction Documents Services	\$7,750.00
Bidding Services	\$500.00
Construction Administration Services	\$2,250.00
SUBTOTAL	\$22,000.00

DESIGN CONTINGENCY FEE (IF REQUIRED)

Additional Services that may be needed based upon any issues that surface during the design and construction of the project as approved only in writing and signed by an authorized City representative.

TOTAL CONTINGENCY FEE	\$4,000.00
TOTAL FEE	\$26,000.00

EXHIBIT C
REIMBURSABLE EXPENSES

Reimbursement shall be made for reproduction of drawings and specifications, postage and handling, models and renderings when authorized, plus mounting and special preparations and travel expense (mileage). Compensation for reimbursable expenses shall be Actual Cost plus 15%.

The estimated Reimbursable Expense is \$1,000.00.

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: _____

Signature: _____

Printed Name: _____

Title: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services _____ Briefing
 Agreement with Michael E. _____ Proposed Action
 Purdy Associates, LLC for _____ Consent
 General Contractor as _____ Action
 Construction Manager _____ First Reading
 Consulting Services for the _____ Second Reading
 Service Center Redevelopment _____ Third Reading
 Project in the amount of _____ Public Hearing
 \$83,719

COUNCIL BILL # _____
 Originating Department Public Works
 Contact Person Dave Davis
 Phone Number 425-257-8913
 FOR AGENDA OF July 6, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
3200 Cedar Street		Professional Services Agreement	Public Works

Amount Budgeted	\$83,719	
Expenditure Required	\$83,719	Account Number(s):
Budget Remaining	\$83,719	Public Works – Fund 401
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Due to the scope and complexity of the Service Center Redevelopment Project the City will seek a General Contractor as Construction Manager (GC/CM) project delivery method for the construction. The City is required to attain approval from the State’s Capital Projects Advisory Review Board Project Review Committee.

In order to attain approval the City requires the consulting services of Michael E. Purdy Associates, LLC. Following the GC/CM approval process Purdy Associates will also provide consulting services for the GC/CM selection process and support the construction administration.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign a Professional Services Agreement with Michael E. Purdy Associates, LLC for General Contractor as Construction Manager Consulting Services for the Service Center Redevelopment Project in the amount of \$83,719.

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on this _____ day of _____, _____, 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 Michael E. Purdy Associates, LLC, whose address is PO Box 46181, Seattle, WA 98146, hereinafter referred to as the “Service Provider.”

WHEREAS, the City desires to engage the Service Provider to consulting services 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 eighty three thousand seven hundred nineteen Dollars (\$83,719.00).

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.: Chris Lark - Facilities Dept
3101 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 ¶8, 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.: Chris Lark - Facilities Dept
3101 Cedar Street
Everett, WA 98201

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

Mike Purdy
PO Box 46181
Seattle, WA 98146

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.

Corporation	_____ [Service Provider's Complete Legal Name] By: _____ Typed/Printed Name: _____ Its: _____ Date: _____
Partnership (general)	_____ [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Partnership (limited)	_____ [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Sole Proprietorship	_____ Typed/Printed Name: _____ _____ Sole Proprietor: Date: _____
Limited Liability Company	_____ [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

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: _____

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT A SCOPE OF WORK

PROJECT PROGRAM

The purpose of this contract is to provide consulting services to help the City with managing the procurement, contracting and contract administration for the City of Everett's Public Works Building Replacement Project.

TASK 1: GC/CM TRAINING

Provide all day training on GC/CM contracting in the State of Washington for City of Everett staff, the Architect and other key members of the project team. Includes preparation and travel time from Seattle.

TASK 2: PROJECT REVIEW COMMITTEE APPROVAL

Meet with the City to develop the strategy for applying to the Project Review Committee to use GC/CM, including the structure of the project team. Collect key information from the City, edit sections of the application drafted by the City and help finalize the application to the PRC for the City's review. Assist the City in developing responses to the PRC questions before the PRC interview. Assist the City in developing a powerpoint presentation to the PRC. Coach the City during a dry run of the PRC presentation. Attend and participate in the PRC interview. Includes travel time from Seattle.

TASK 3: DOCUMENT PREPARATION AND EDITING

Assist in the development, drafting, editing and review of various procurement and contracting documents, including but not limited to the following:

1. Advertisement for GC/CM services.
2. Request for proposals for GC/CM services.
3. Request for final proposals for GC/CM services.
4. Final proposal form for GC/CM prices.
5. Preconstruction services contract.
6. GC/CM construction contract.
7. General conditions.
8. Division 01 specifications (to be provided by City or Architect).
9. Summary matrix of cost allocation.
10. Other documents related to the procurement and contracting for GC/CM services.

As part of the development of the documents:

1. Provide advice, support and leadership in the development and execution of GC/CM selection processes including the development of evaluation criteria.
2. Work with the City to identify policy issues requiring decisions for project and communicate with key individuals either in writing or in person.
3. Provide strategic advice and recommendations regarding procurement and contracting approaches, best practices, risk management and compliance with laws and regulations related GC/CM contracting. Assist in implementing solutions.
4. Assist in the decision making process for determining what GC/CM services should be covered by specified general conditions, percent fee, negotiated support services, risk contingency and preconstruction services.

Includes travel time from Seattle for necessary meeting.

TASK 4: EVALUATION COMMITTEE ORIENTATION MEETING

Provide guidance and direction on the GC/CM selection process including advice and training for selection committee members on GC/CM, selection process and schedule, evaluation criteria, reviewing proposals, final proposals and conducting the interview process. Prepare confidentiality statement for evaluation committee members to sign. Includes travel time from Seattle.

TASK 5: PRE-PROPOSAL MEETING AND ADDENDA

Attend GC/CM pre-proposal meeting and advise City on appropriate protocols. Assist in review and preparation of addenda. Includes travel time from Seattle.

TASK 6: REVIEW PROPOSALS SUBMITTED

Review proposals received from contractors, attend and help facilitate as necessary the consensus meeting of the evaluation committee and serve as a non-voting advisory member of the selection committee. Prepare spreadsheets for collecting scores by criteria, by evaluator, by proposer. Includes travel time from Seattle.

TASK 7: INTERVIEWS OF SHORTLISTED CONTRACTORS

Help draft interview questions, develop strategy, attend interviews, attend and help facilitate as necessary the consensus meeting of the evaluation committee after the interviews, serve as a non-voting advisory member of the selection committee. Includes travel time from Seattle.

TASK 8: PRE-PRICING PROPOSAL MEETING

Attend and facilitate meeting of finalist contractors to submit prices. This meeting is designed to obtain feedback, concerns and suggestions from contractors on the clarity and risk allocation of the Request for Final Proposals documents (contract, General Conditions, Division 01, etc). Assist in preparation of any necessary addenda to the Request for Final Proposals. Includes travel time from Seattle.

TASK 9: FINAL PROPOSALS

Provide advice on appropriate protocols for receipt and scoring of proposals/bids. Be present at submission time. Help in managing the process. Provide spreadsheet for calculating points for pricing element of selection process. Provide City with script for bid receipt of GC/CM prices. Includes travel time from Seattle.

TASK 10: PRECONSTRUCTION NEGOTIATION

Provide strategic advice, support and analysis of data related to Preconstruction negotiations with the contractor. Meet with the contractor and City as part of negotiations. Includes travel time from Seattle.

TASK 11: MACC NEGOTIATION

Provide strategic advice, support and analysis of data related to MACC negotiations with the contractor, including review of proposed Negotiated Support Services costs. Meet with the contractor and City as part of negotiations. Includes travel time from Seattle.

TASK 12: CONTRACT ADMINISTRATION

Provide on-call consulting advice on issues related to GC/CM contract administration during the term of the preconstruction services and GC/CM construction contracts, which may include but are not limited to the following:

1. Pre-bid eligibility for subcontractors.
2. Bidder responsibility criteria.
3. Early subcontract bidding including potential early selection of Electrical and/or Mechanical subcontractors.
4. Review of proposed subcontract bid packages prepared by GC/CM.
5. Bonding issues.
6. Prevailing wage issues.
7. Review of Schedule of Values for consistency with contract and GC/CM cost categories.
8. Discussion and review of change orders.
9. Advice regarding appropriateness of using specific GC/CM cost categories for various expenses.

**EXHIBIT B
COMPENSATION**

ALTERNATE – A (HOURLY RATE UP TO A MAXIMUM AMOUNT)

The City shall pay the Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in ¶4(D) of this Agreement.

NAME	RESPONSIBILITY	RATE
Mike Purdy	Principal	\$225.00 per hour

ESTIMATED HOURS/COST PER TASK

Task 1: GC/CM Training	12 Hours	\$225.00/HR	\$2,700.00
Task 2: Project Review Committee Approval	50 Hours	\$225.00/HR	\$11,250.00
Task 3: Document Preparation and Editing	80 Hours	\$225.00/HR	\$18,000.00
Task 4: Evaluation committee Orientation Mtg	4 Hours	\$225.00/HR	\$900.00
Task 5: Pre-Proposal Meeting and Addenda	12 Hours	\$225.00/HR	\$2,700.00
Task 6: Review Proposals Submitted	24 Hours	\$225.00/HR	\$5,400.00
Task 7: Interviews of Shortlisted Contractors	24 Hours	\$225.00/HR	\$5,400.00
Task 8: Pre-Pricing Proposal Meeting	12 Hours	\$225.00/HR	\$2,700.00
Task 9: Final Proposals	10 Hours	\$225.00/HR	\$2,250.00
Task 10: Preconstruction Negotiation	16 Hours	\$225.00/HR	\$3,600.00
Task 11: MACC Negotiation	20 Hours	\$225.00/HR	\$4,500.00
Task 12: Contract Administration	50 Hours	\$225.00/HR	\$11,250.00
SUBTOTAL			\$70,650.00

NOTES:

- While this proposal includes estimated hours per task, Mike Purdy will only bill for actual hours spent on the project, at his standard fully loaded rate of \$225.00 per hour (exclusive of actual travel costs) and will work as efficiently as possible. Mike will round up or down to 15 minute increments.
- Mike Purdy's monthly invoices will include detailed information on what work he performed on a daily basis and the number of hours on each day. Invoice detail will be by work performed but not categorized by task number.
- The contract will be managed at a total contract amount basis and not by amounts per task. This will enable flexibility on tasks that take more time versus those that take less time.
- Estimates of hours are based on and dependent on a number of factors including the following:
 - History of work on previous projects has shaped this proposal of estimated hours.
 - How quickly the City makes decisions.
 - How many changes are necessary to documents or processes based on City input.
 - What contractors propose, what questions they ask and what contractor is eventually selected.

GC/CM CONTINGENCY FEE (IF REQUIRED)

Additional service that may be needed based upon any issues that surface during the GC/CM process as approved only in writing and signed by an authorized City representative.

TOTAL GC/CM CONTINENCY FEE	\$10,000.00
TOTAL ESTIMATED FEE	\$80,650.00

EXHIBIT C
REIMBURSABLE EXPENSES

TRAVEL AND REIMBURSABLE EXPENSES:

For meetings occurring when Mike Purdy is in Seattle, round trip mileage from Seattle (9400 5th Ave SW) to City of Everett (3200 Cedar Str.) for approximately 7 meetings. 71.2 miles round trip times IRS mileage reimbursement rate of .54 cents per mile = \$38.44 per trip, 7 trips = **\$269.08**

For meetings occurring when Mike Purdy is living in Juneau, Alaska: Round trip airfare from Juneau to Seattle for approximately 7 meetings at \$400.00 per trip. Service Provider anticipates being in Seattle for most of the fall of 2016. = **\$2,800.00**

TOTAL ESTIMATED REIMBURSABLE EXPENSES: \$3,069.00

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Award the bid for Puget Sound
Outfall No. 6 Reroute to
McClure and Sons, Inc.

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

COUNCIL BILL # _____
 Originating Department Public Works
 Contact Person Amie Roshak, PE
 Phone Number 425-257-7249
 FOR AGENDA OF July 6, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Port of Everett property, west of Bond Street	Call for Bids, May 18, 2016	Location Map, Bid Summary	Public Works, Legal

Amount Budgeted	\$1,100,000	
Expenditure Required	\$820,344	Account Number(s): UP 3583
Budget Remaining	\$20,560	
Additional Required	\$0	

DETAILED SUMMARY STATEMENT:

The Puget Sound Outfall No. 6 (PSO6) Reroute project will reroute the existing combined sewer outfall, which was found to have concrete blocking three-quarters of the pipeline. The project is needed to restore capacity to the outfall pipe.

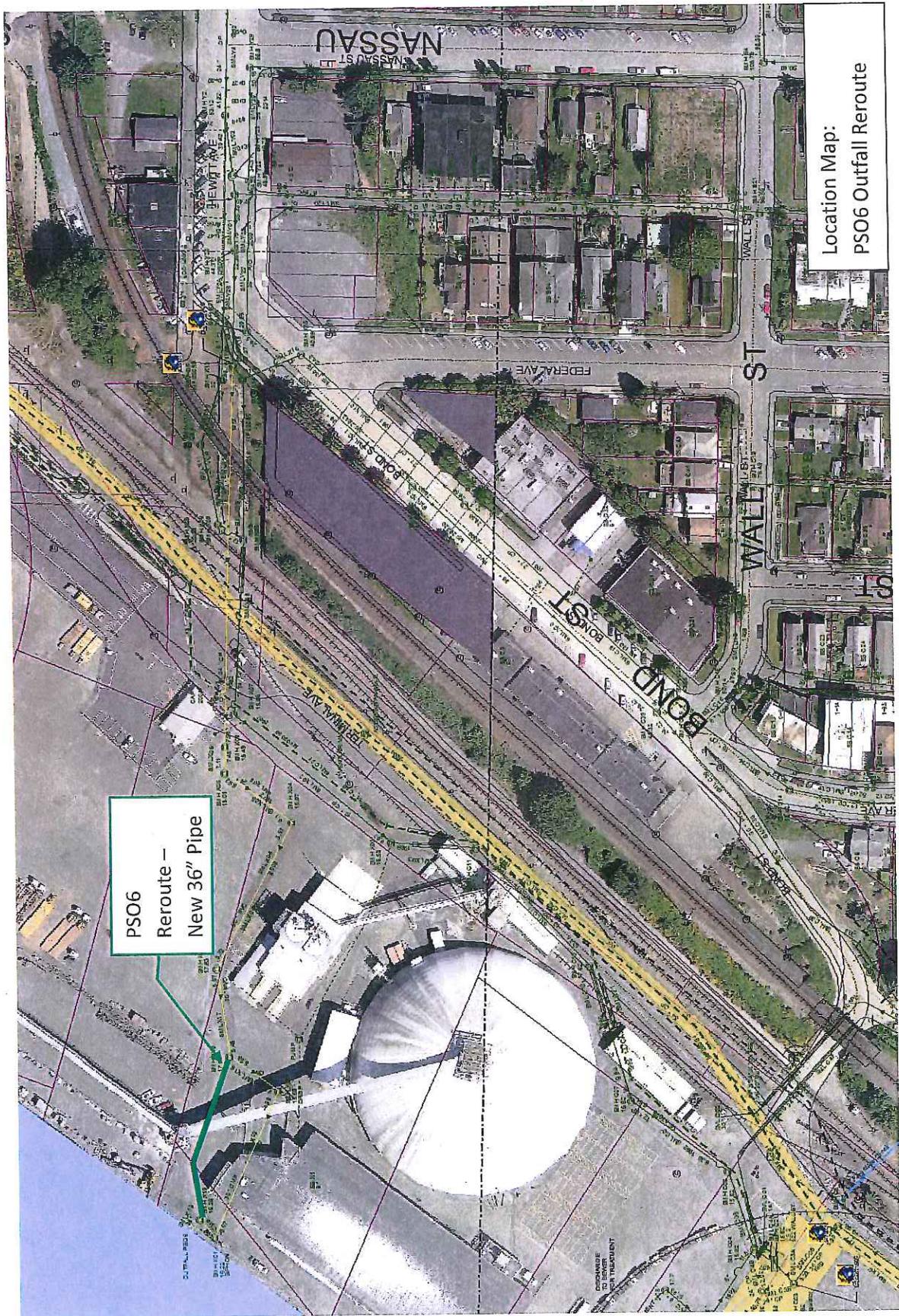
Construction bids for the PSO6 Reroute Project were received from two contractors on June 14, 2016. The lowest responsive and responsible bid is \$820,344 from McClure and Sons, Inc. The engineer's estimate was \$583,160. Construction is anticipated to begin in August 2016 and be completed by November 2016.

The difference between the low bid and engineers estimate is the result of this being a relatively small project that has complex components. Several unit costs were significantly higher due to a small number of each being installed, which also resulted in high mobilization costs.

The Port of Everett is the landowner and has agreed to equally split the cost of the consultant design fee and construction.

RECOMMENDATION (Exact action requested of Council):

Award the bid for the Puget Sound Outfall No. 6 Reroute Project to McClure and Sons, Inc., in the amount of \$820,344.



PSO6
Reroute –
New 36" Pipe

Location Map:
PSO6 Outfall Reroute

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services	_____	Briefing	COUNCIL BILL #	_____
Agreement with Associated	_____	Proposed Action	Originating Department	Public
Earth Sciences, Inc. to provide	_____	Consent	Contact Person	Works/Utilities
geotechnical engineering	_____	Action	Phone Number	Richard Hefti
design services for Water Main	X	First Reading	FOR AGENDA OF	425-257-7215
Replacement "R" Project	_____	Second Reading		July 6, 2016
	_____	Third Reading		
	_____	Public Hearing		
	_____	Budget Advisory	Initialed by:	
			Department Head	_____
			CAA	<i>dh</i>
			Council President	_____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
State Street between 19 th Street and 26 th Street and Highland Avenue between 20 th Street and 25 th Street		Two signed Professional Service Agreements, Location Map	Public Works, Legal

Amount Budgeted	\$1,700,000	Fund 336
Expenditure Required	\$12,335.88	Account Number(s): UP 3646
Budget Remaining	\$1,687,664.12	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Water Main Replacement "R" will replace approximately 5,400 feet of existing 3-inch and 6-inch diameter cast iron pipe in State Street between 19th Street and 26th Street, and Highland Avenue between 20th Street and 25th Street. The replacement pipe will be 8-inch diameter ductile iron pipe. The existing mains will be abandoned in place. The existing cast iron pipes, installed in the mid 1950's, have a significant break history since 1993, 14 breaks for the State Street segment and 9 breaks for the Highland Avenue segment.

City staff will be designing this project in-house this year but will need geotechnical information in order to prepare contract plans and specifications for bidding in the spring of 2017.

The geotechnical consulting engineer selection was the result of requesting proposals from three firms off the statewide consultant roster having done work with the City in the past.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign a Professional Services Agreement with Associated Earth Sciences, Inc. to provide geotechnical engineering design services for Water Main Replacement "R" Project in the amount of \$12,335.88.

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on this ____ day of _____, 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 **ASSOCIATED EARTH SCIENCES, INC**, whose address is 911 5th AVENUE, SUITE 100, KIRKLAND, WA 98033, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to **GEOTECHNICAL ENGINEERING SERVICES** 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 **SEPTEMBER 30, 2016**.

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 TWELVE THOUSAND THREE HUNDRED THIRTY-FIVE AND 88/100 Dollars (\$12,335.88).

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.: RICHARD HEFTI, PE
3200 CEDAR ST
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 ¶8, 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.: RICHARD HEFTI, PE
3200 CEDAR ST
Everett, WA 98201

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

AESI
911 5TH AVE, SUITE 100
KIRKLAND, WA 98033

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.

Corporation	<u>ASSOCIATED EARTH SCIENCES INC</u> [Service Provider's Complete Legal Name] By: <u>[Signature]</u> Typed/Printed Name: <u>MATTHEW A. MULLER</u> Its: <u>PRINCIPAL</u> Date: <u>6-13-16</u>
Partnership (general)	_____ [Service Provider's Complete Legal Name] a Washington general partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Partnership (limited)	_____ [Service Provider's Complete Legal Name] a Washington limited partnership By: _____ Typed/Printed Name: _____ General Partner Date: _____
Sole Proprietorship	_____ Typed/Printed Name: _____ Sole Proprietor: Date: _____
Limited Liability Company	_____ [Service Provider's Complete Legal Name] a Washington limited liability company By: _____ Typed/Printed Name: _____ Managing Member Date: _____

EXHIBIT A
SCOPE OF WORK

SEE ATTACHED PROPOSAL FOR GEOTECHNICAL ENGINEERING SERVICES - EXHIBIT A-1

**EXHIBIT B
COMPENSATION**

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

The City shall pay the Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in ¶4(D) of this Agreement.

Name	Responsibility	Rate
SEE ATTACHED		
AESI PROPOSAL		
EXHIBIT A-1		

ALTERNATE B [LUMP SUM]

The City shall pay Service Provider _____ dollars (\$) upon the completion of the Work, subject to the maximum stated in ¶4(D) of this Agreement.

ALTERNATE C [PROGRESS PAYMENTS]

The City shall pay the Service Provider the following amounts upon the completion of the following tasks, subject to the maximum stated in ¶4(D) of this Agreement:

Task	Amount Paid upon Completion of Task

ALTERNATE D [BASE REGISTRATION]

The City shall pay the Service Provider such amounts and in such manner as follows:
 Fee for service shall be _____ percent _____ % of the base registration fees collected by the City.
 Additional fees and/or surcharges levied by the City will be retained 100% by the City.
 Payments shall be made as stated in Exhibit A – Scope of Work. The base registration fee is listed in Exhibit A – Scope of Work. Compensation shall not exceed _____ dollars (\$ _____).

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Parking	NA	NA
Meals	NA	NA
SEE ATTACHED AESI PROPOSAL - EXHIBIT A-1	SEE ATTACHED AESI PROPOSAL	SEE ATTACHED AESI PROPOSAL

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: ASSOCIATED EARTH SCIENCES INC

Signature: 

Printed Name: Matthew A. Moore Title: PRINCIPAL



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Niehl Insurance Agency 375 118th Ave Se #103 Bellevue WA 98005	CONTACT NAME:		
	PHONE (A/C, No, Ext):	(425) 644-1600	FAX (A/C, No): (425) 644-2152
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Associated Earth Sciences Inc 911 5Th Ave Suite 100 Kirkland WA 98033	INSURER A : The Hartford Casualty Insurance Co		
	INSURER B : Sentinel Insurance Co. Ltd.		
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			52SBAVV7637	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:						
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			52UECJR8403	12/31/2015	12/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			52SBAVV7637	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	DED RETENTION \$						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	52SBAVV7637 WA STOP GAP	12/31/2015	12/31/2016	PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: WATER MAIN REPLACEMENT - PROJECT #160309EEA
CITY OF EVERETT IS INCLUDED AS ADDITIONAL INSURED PER POLICY.

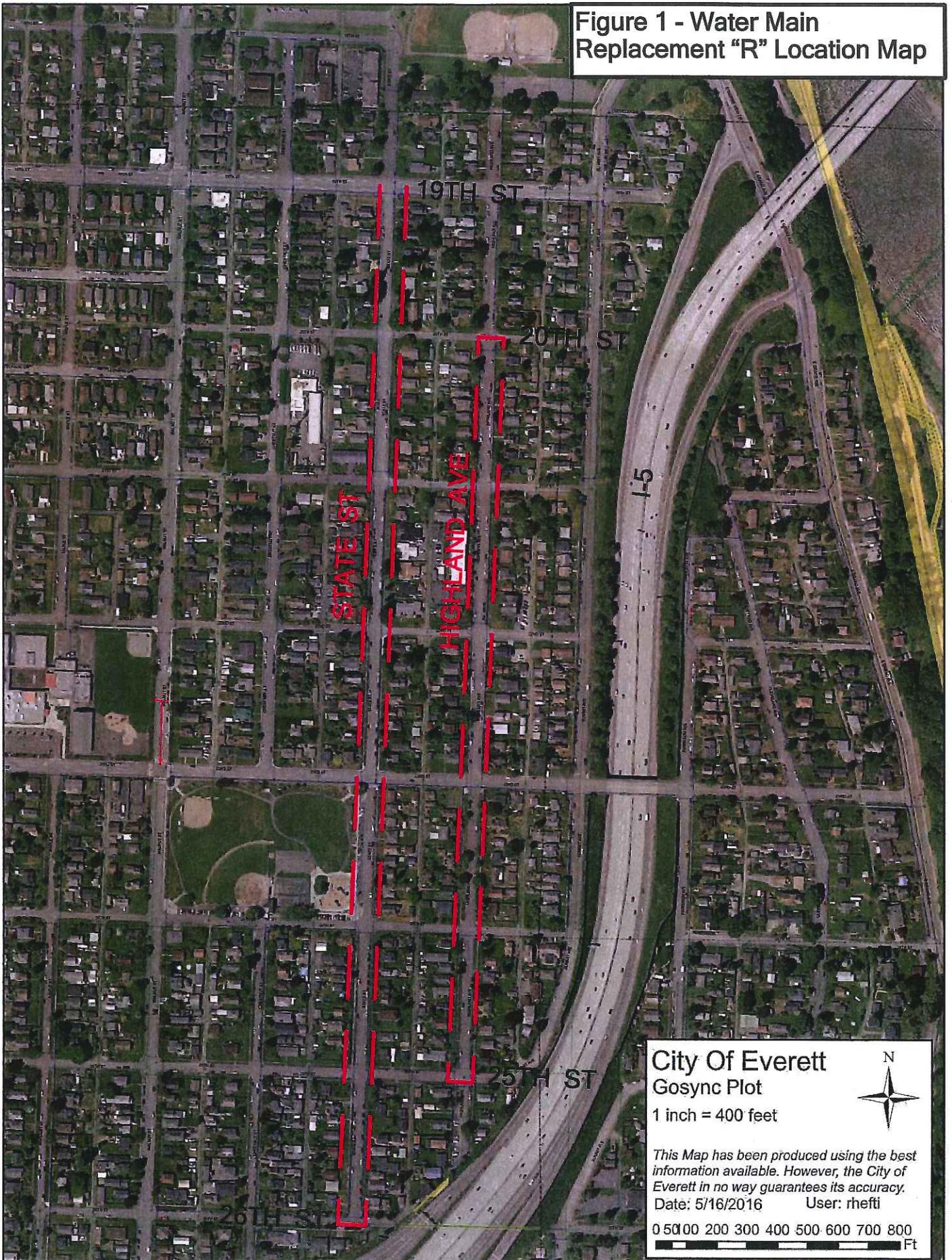
CERTIFICATE HOLDER

CANCELLATION

AI 114043

CITY OF EVERETT 3200 CEDAR ST EVERETT WA 98201-	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

Figure 1 - Water Main Replacement "R" Location Map



City Of Everett
Gosync Plot
1 inch = 400 feet



This Map has been produced using the best information available. However, the City of Everett in no way guarantees its accuracy.
Date: 5/16/2016 User: rhefti

0 50 100 200 300 400 500 600 700 800
Ft