

Everett City Council Agenda

6:30 P.M. August 3, 2016

City Council Chambers

Roll Call

Pledge of Allegiance

Approval of Minutes: July 27, 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) Authorize the Call for Bids for Phase 1 and 2 of the Grand Avenue Park Bridge construction.

Documents:

[Grand Ave Park.pdf](#)

PROPOSED ACTION ITEMS:

(2) CB 1607-31-2nd Reading –Adopt the Proposed Ordinance annexing property located East of the existing city limits, South of 12th St. N.E. and West of Union Slough, known as the Smith Island Municipal Annexation. (3rd and final reading and public hearing on 8-10-16)

Documents:

[CB 1607-31.pdf](#)

(3) CB 1607-32- 2nd Reading –Adopt the Proposed Ordinance establishing zoning for the Smith Island Municipal Annexation Area, amending Exhibit A to Ordinance No. 1671-89 (as amended). (3rd and final reading and public hearing on 8-10-16)

Documents:

[CB 1607-32.pdf](#)

(4) CB 1607-33- 2nd Reading –Adopt the Proposed Ordinance adopting the Snohomish County Shoreline Management Program Resource and Aquatic Designations and Program Policies and Regulations as Interim Designations for the Smith Island Municipal Annexation Area, amending Ordinance No. 's 2600-02, 2021-

94 and 1671-89 (as amended). (3rd and final reading and public hearing on 8-10-16)

Documents:

[CB 1607-33.pdf](#)

(5) CB 1607-34– 2nd Reading–Adopt the Proposed Ordinance relating to Noise, amending Ordinance 534-78 as amended (Chapter 20.08 EMC) and repealing sections under Section 16. (3rd and final reading on 8-10-16)

Documents:

[CB 1607-34.pdf](#)

CONSENT ITEMS:

(6) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of \$1,955,031.31 for the period of July 16, 2016 through July 22, 2016.

Documents:

[res-96.pdf](#)

(7) Authorize the closure of a portion of 10th Street, between Rucker Avenue and Grand Avenue on August 13, 2016, 4 p.m. to 11 p.m., for a block party, sponsored by a local neighborhood.

Documents:

[Rucker Neighborhood.pdf](#)

(8) Authorize the closure of a portion of California Street, between Baker Avenue and Virginia Avenue on August 13, 2016, 9:30 a.m. to 4 p.m., for a church picnic, sponsored by Second Baptist Church.

Documents:

[Second Baptist.pdf](#)

(9) Authorize the closure of various streets (map attached) on October 8, 2016, 6 a.m. to 12 p.m. for a 10K sponsored by Everett SausageFest (Immaculate Conception and Our Lady of Perpetual Help School Booster Club.)

Documents:

[Sausagefest.pdf](#)

ACTION ITEMS:

(10) CB 1607-30- 3rd and final Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled "South Branch Library Expansion Project," Fund 342, Program 023 in estimated amount of \$600,000.00.

Documents:

[CB 1607-30.pdf](#)

(11) Authorize the Mayor to sign Amendment No. 1 to the Management Agreement with Diking Improvement District No. 5.

(12) Authorize the Mayor to sign the Professional Services Agreement with Otak, Inc. for the Diking Improvement District No. 5 Dike Repair Design in the amount of \$240,000 to be reimbursed by the District.

Documents:

[Otak-2.pdf](#)

(13) Authorize the Mayor to sign the Williams Investments I LLC Property Access Agreement to conduct Environmental Site Assessments under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant Project at 2514-2526 Wetmore Avenue.

Documents:

[Williams Investments.pdf](#)

(14) Authorize the Mayor to sign the Rick Lapinski Property Access Agreement to conduct Environmental Site Assessments under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant Project at 3132 Rucker Avenue.

Documents:

[Lapinski.pdf](#)

(15) Authorize the Mayor to sign the Snohomish County Fire District #4 Fire Training Facility Use Agreement allowing the use of the Snohomish County Fire District #4 Fire Training Facility for training and services until December 31, 2020.

Documents:

[Fire Training Facility.pdf](#)

Executive Session

Adjourn

Everett City Council agendas can be found, in their entirety, on the City of Everett Web Page at www.everettwa.gov/citycouncil.

Everett City Council meetings are recorded for rebroadcast on the [Everett Channel](#), Comcast Channel 21 and Frontier Channel 29, at 12:00 p.m. on Monday and Tuesday; 2 p.m. and 7:00 p.m. Thursday; 7 p.m. Friday and Sunday; 10:00 a.m., Saturday.

The City of Everett does not discriminate on the basis of disability in the admission or access to, or treatment in, its programs or activities. Requests for assistance or accommodations can be arranged by contacting the Everett City Council Office at 425 257-8703.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

AN ORDINANCE Annexing
Property Located East of the
Existing City Limits, South of
12th St NE and West of Union
Slough, Known as the Smith
Island Municipal Annexation

_____	Briefing
_____	Consent
<u>8/10/16</u>	Action
<u>7/27/16</u>	First Reading
<u>8/3/16</u>	Second Reading
<u>8/10/16</u>	Third Reading
<u>8/10/16</u>	Public Hearing

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

CB1607-31
Planning
Allan Giffen
425-257-8725
July 27, 2016

Initialed by:
Department Head
CAA
Council President

db

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Smith Island, west of Union Slough, south of 12 th Street	City Council Resolution 6882 for Intent to Annex on July 29, 2015	Ordinance, Staff Report	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

Proposed is a municipal annexation of City owned property located east of the existing City limits, south of 12th St NE and west of Union Slough, known as the Smith Island Municipal Annexation. The City of Everett requested the expansion of its Urban Growth Boundary to include all City-owned property on Smith Island. This request was approved by Snohomish County. The annexation is for municipal purposes as a result of evolving needs of the Waste Water Treatment Facility and its related activities.

A City Council briefing was held on July 22, 2015.

RECOMMENDATION (Exact action requested of Council):

Adopt An Ordinance Annexing Property Located East of the Existing City Limits, South of 12th St NE and West of Union Slough, Known as the Smith Island Municipal Annexation.

ORDINANCE NO. _____

AN ORDINANCE Annexing Property Located East of the Existing City Limits, South of 12th St NE and West of Union Slough, Known as the Smith Island Municipal Annexation

WHEREAS, pursuant to RCW 35.13.180, the City of Everett is annexing certain city-owned property for municipal purposes; and

WHEREAS, the Snohomish County Council adopted Ordinance 14-131 effective July 2, 2015 that adopted map amendments that extended the Urban Growth Boundary to include the area of this proposed annexation within the Municipal Urban Growth Area of the City of Everett; and

WHEREAS, the property is owned by the City of Everett, and is contiguous to the existing city limits of the City of Everett; and

WHEREAS, the property will be used for municipal purposes; and

WHEREAS, the annexation of City owned property contiguous to the City for municipal purposes is exempt from review by the Snohomish County Boundary Review Board; and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, the City Council finds that the proposed annexation is in the best interests of the citizens of Everett;

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

Section 1. The property identified in Exhibit "A" and as legally described below is hereby annexed to the City of Everett:

SMITH ISLAND ANNEXATION: LEGAL DESCRIPTION

IT IS THE INTENT OF THIS LEGAL DESCRIPTION TO FOLLOW THE EXISTING CORPORATE CITY LIMITS OF EVERETT. REFERENCES HEREIN ARE MEANT TO CONVEY THAT ALTHOUGH PRESENT RIGHTS OF WAY BOUNDARIES MAY BE DIFFERENT, THE RIGHTS OF WAY BOUNDARIES AT THE TIME OF THE ORIGINAL INCORPORATION AND SUBSEQUENTLY ADOPTED ORDINANCES ARE INTENDED TO BE FOLLOWED SO THAT NO GAP OR OVERLAP EXISTS BETWEEN THIS ANNEXATION AND THE EXISTING CITY LIMITS OF EVERETT.

All that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the MID-CHANNEL of UNION SLOUGH.

Situate in County of Snohomish, State of Washington.

Being an area of approximately 27.35 Acres.

Section 2: Notice to Snohomish County. The City Clerk of the City of Everett is hereby directed upon passage of this ordinance of annexation to deliver and to file with the Snohomish County Council, the Snohomish County Auditor, and the State of Washington, a certified copy of this ordinance of annexation.

Section 3: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 6: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever

upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Fuller, CITY CLERK

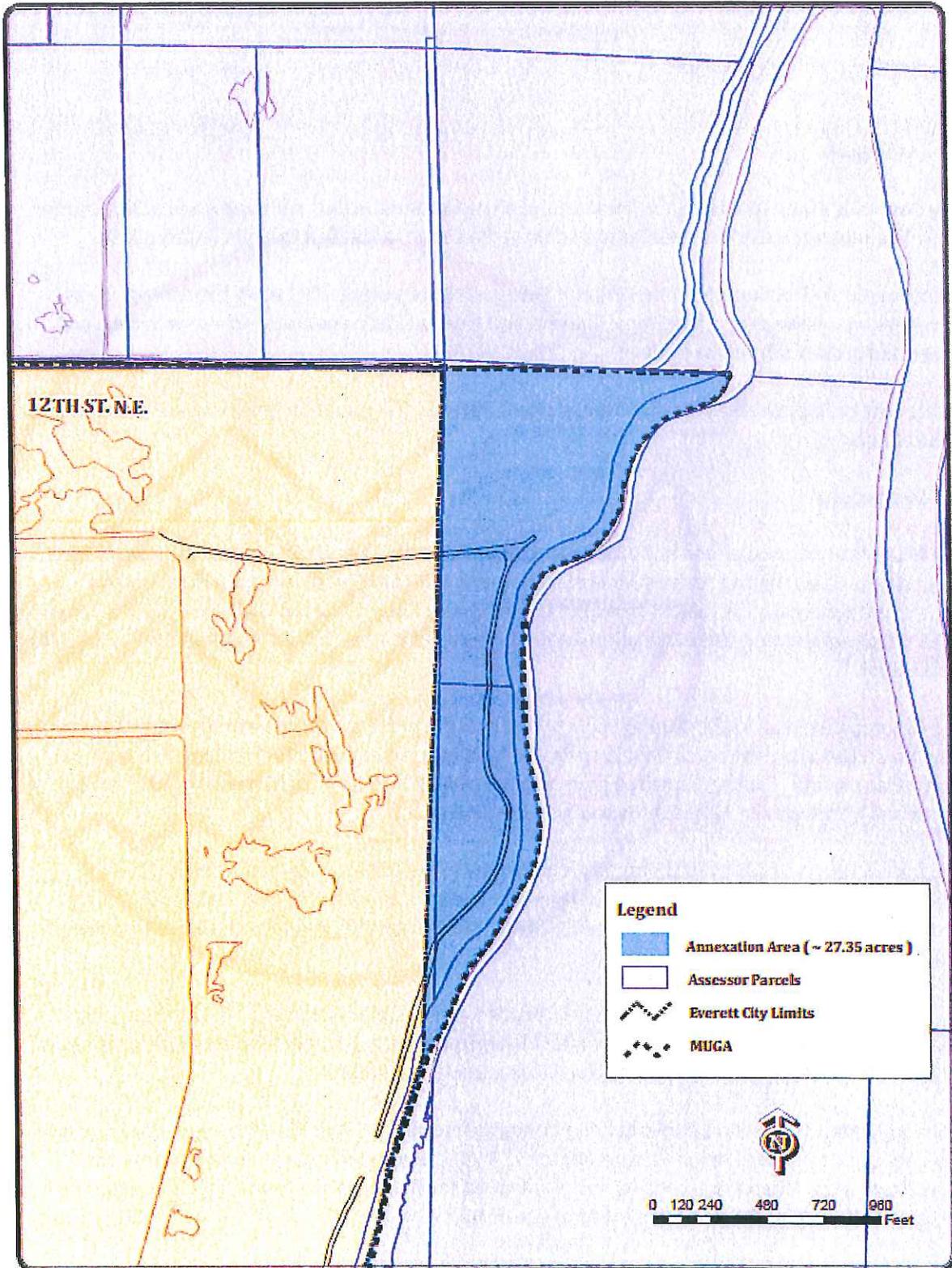
Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation



City Council

Staff Report

Smith Island Municipal Annexation, Zoning and Shoreline Management Program Designations Public Hearing on August 10, 2016

A. Summary

City Council is asked to finalize the Smith Island Municipal Annexation, set zoning and adopt interim Shoreline Management Program Designations on the subject area (See Exhibits A through D).

Following Council action, the State Office of Financial Management will certify the annexation as complete and made part of the City of Everett, and affected State agencies, service providers and interested individuals will be notified.

The zoning ordinance and Shoreline Management Program Designations ordinance are presented under separate cover.

B. Background

A SEPA review was completed and a Determination of Nonsignificance was issued February 17, 2012 that addressed a Comprehensive Plan designation of 2.8: Public/Quasi-Public Facilities and A-1 Agriculture zoning for the subject area (See Exhibit E). City Council passed Ordinance 3288-12 August 1, 2012 which set the land use designation on the subject property as 2.8: Public/Quasi-Public Facilities (See Exhibit F).

The City submitted an application to Snohomish County in order to incorporate the subject area within the City's UGA, and Snohomish County reviewed the City's request as a docket item with their 2015 Comp Plan update. County Council passed Ordinance 14-131 June 10, 2015 amending the City's UGA boundary to include the subject property (See Exhibit G).

The annexation is of City owned property, contiguous to the existing City boundary and is for a municipal purpose, and therefore does not require review or approval by the Snohomish County Boundary Review Board (BRB) per RCW 36.93.090. We did however consult with BRB staff prior to proceeding with the annexation process.

On July 29, 2015 the City issued a Notice of Adoption of Snohomish County's Final Environmental Impact Statement for Snohomish County's Shoreline Management Program update to meet the City's State Environmental Policy Act requirements for the proposal (See Exhibit H).

Planning Commission held a public hearing on zoning and interim Shoreline Management Program designations of the annexation area on August 4, 2015, recommending that zoning be set at A-1: Agriculture Rural Flood Fringe District and to adopt interim Snohomish County Shoreline Management Program Resource and Aquatic designations (See Exhibit I).

C. Exhibits

1. Exhibit A: Map of Smith Island Annexation Area
2. Exhibit B: Draft Ordinance for Annexation
3. Exhibit C: Draft Ordinance for Zoning
4. Exhibit D: Draft Ordinance for Interim Shoreline Management designations
5. Exhibit E: SEPA #11-047 DNS
6. Exhibit F: City Council Ordinance No. 3288-12
7. Exhibit G: Snohomish County Council Ordinance No. 14-131
8. Exhibit H: Notice of Adoption of Snohomish County's FSEIS for their Shoreline Management Plan
9. Exhibit I: Planning Commission Resolution 15-06

Exhibit A
Map of Smith Island Annexation Area

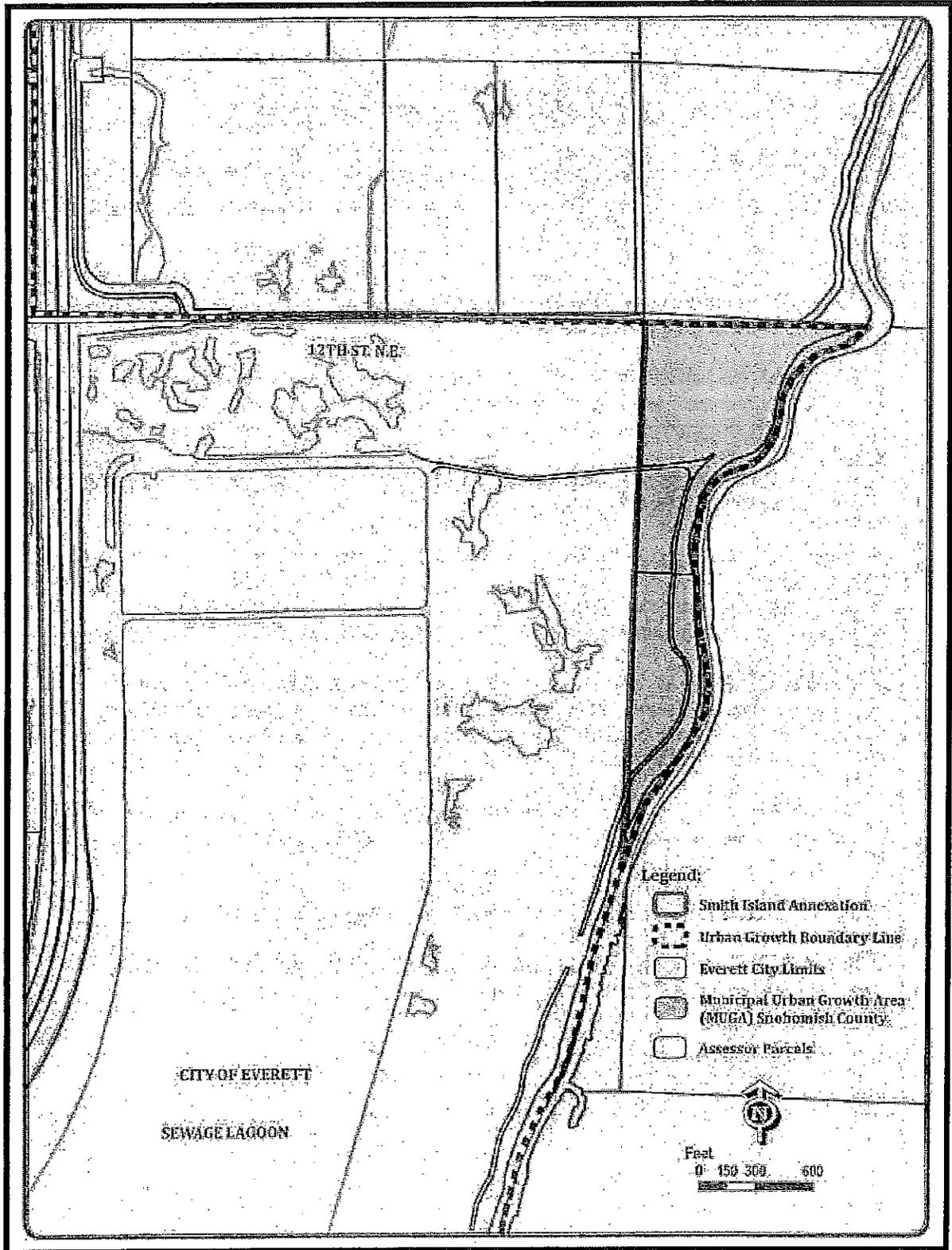


Exhibit B
Draft Ordinance for Annexation

ORDINANCE NO. _____

AN ORDINANCE Annexing Property Located East of the Existing City Limits, South of 12th St NE and West of Union Slough, Known as the Smith Island Municipal Annexation

WHEREAS, pursuant to RCW 35.13.180, the City of Everett is annexing certain city-owned property for municipal purposes, and

WHEREAS, the Snohomish County Council adopted Ordinance 14-131 effective July 2, 2015 that adopted map amendments that extended the Urban Growth Boundary to include the area of this proposed annexation within the Municipal Urban Growth Area of the City of Everett, and

WHEREAS, the property is owned by the City of Everett, and is contiguous to the existing city limits of the City of Everett, and

WHEREAS, the property will be used for municipal purposes, and

WHEREAS, the annexation of City owned property contiguous to the City for municipal purposes is exempt from review by the Snohomish County Boundary Review Board, and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, the City Council finds that the proposed annexation is in the best interests of the citizens of Everett;

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

Section 1. The property identified in Exhibit "A" and as legally described below is hereby annexed to the City of Everett:

SMITH ISLAND ANNEXATION: LEGAL DESCRIPTION

IT IS THE INTENT OF THIS LEGAL DESCRIPTION TO FOLLOW THE EXISTING CORPORATE CITY LIMITS OF EVERETT. REFERENCES HEREIN ARE MEANT TO CONVEY THAT ALTHOUGH PRESENT RIGHTS OF WAY BOUNDARIES MAY BE DIFFERENT, THE RIGHTS OF WAY BOUNDARIES AT THE TIME OF THE ORIGINAL INCORPORATION AND SUBSEQUENTLY ADOPTED ORDINANCES ARE INTENDED TO BE FOLLOWED SO THAT NO GAP OR OVERLAP EXISTS BETWEEN THIS ANNEXATION AND THE EXISTING CITY LIMITS OF EVERETT.

All that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the MID-CHANNEL of UNION SLOUGH.

Situate in County of Snohomish, State of Washington.

Being an area of approximately 27.35 Acres

Section 2: Notice to Snohomish County. The City Clerk of the City of Everett is hereby directed upon passage of this ordinance of annexation to deliver and to file with the Snohomish County Council, the Snohomish County Auditor, and the State of Washington, a certified copy of this ordinance of annexation.

Section 3: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 6: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever

upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Marks, CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation

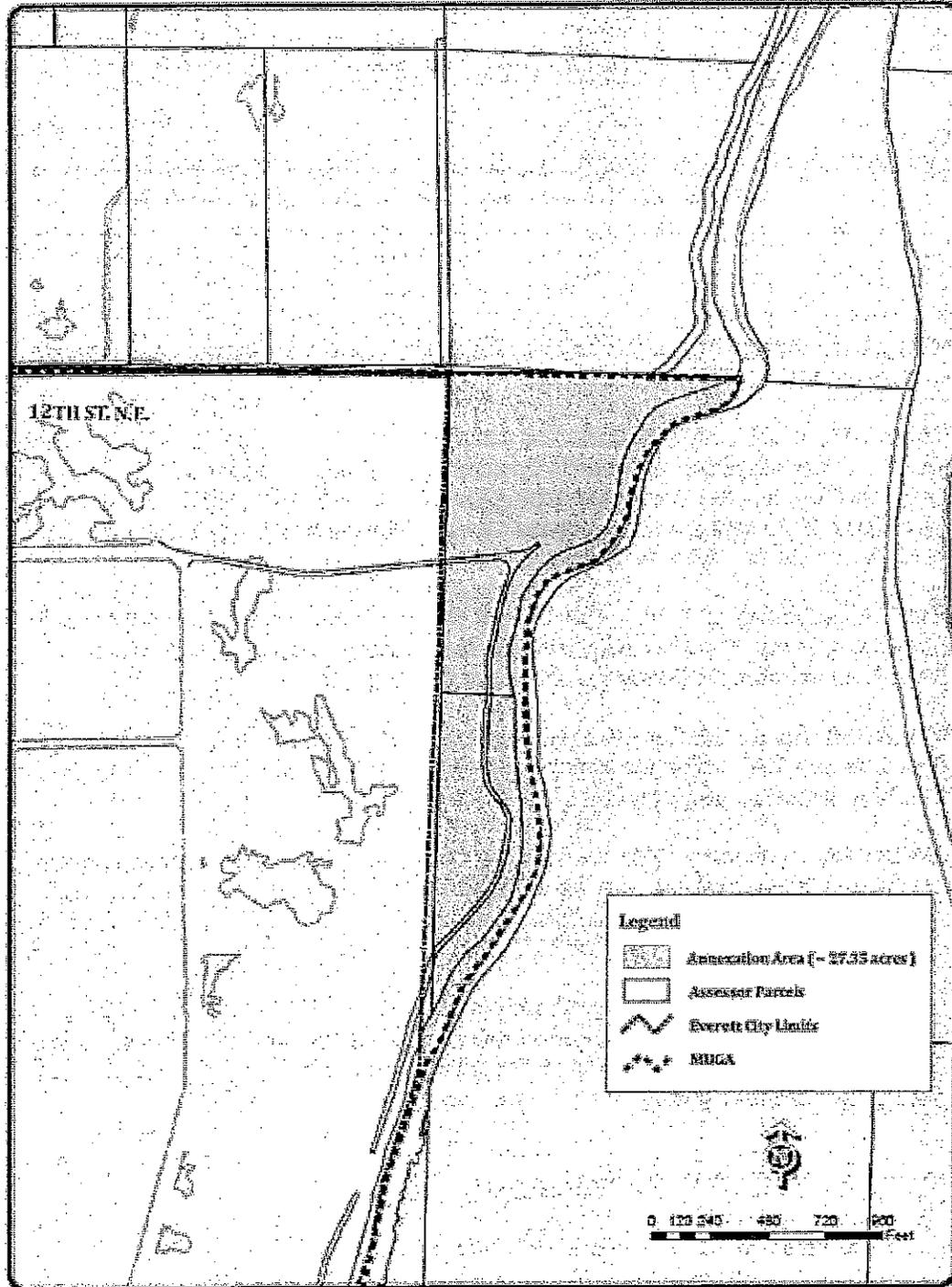


Exhibit C
Draft Ordinance for Zoning

ORDINANCE NO. _____

**AN ORDINANCE Establishing Zoning for the Smith Island Municipal Annexation Area ,
amending Exhibit A to Ordinance No. 1671-89 (as amended)**

WHEREAS, the City of Everett is provided authority to annex contiguous unincorporated territory pursuant to RCW 35.13.180; and

WHEREAS, in 2012 a SEPA review was completed and a Determination of Nonsignificance No. 11-047 was issued that addressed a Comprehensive Plan designation of 2.8: Public/Quasi-Public Facilities and A-1 Agriculture zoning for the proposed Smith Island Annexation Area, an approximate 27.35 acre area owned by the City and located along Union Slough and adjoining other City-owned properties to the east; and

WHEREAS, on August 1, 2012, City Council passed Ordinance 3288-12 adopting the 2.8: Public/Quasi-Public Facilities designation for the subject property consistent with the designations for other City-owned properties to the west; and

WHEREAS, Snohomish County Council reviewed the City's request for expansion of the Urban Growth Area (UGA) and passed Ordinance 14-131 on June 10, 2015 amending the City's UGA to include the subject property; and

WHEREAS, on August 4, 2015, the Planning Commission held a public hearing regarding establishment of the enabling zone for the subject area upon annexation to the City and recommended that the Smith Island Municipal Annexation be zoned A-1 RFFD (Agriculture Rural Flood Fringe District) (Exhibit "A"); and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, THE CITY COUNCIL FINDS:

1. The proposed zoning is consistent with the Everett Comprehensive Plan.

2. The proposed zoning bears a substantial relation to public health, safety or welfare.
3. The proposed zoning promotes the best long-term interests of the Everett community.
4. The area proposed to be zoned A-1 RFFD will be developed for environmental mitigation/restoration consistent with and supporting the uses on adjacent properties and the proposed zoning will not adversely impact adjacent uses.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Zoning. That the Zoning Map of that portion of the City of Everett shown on the map in Exhibit A and legally described below is hereby established as A-1 RFFD (Agriculture Rural Flood Fringe District), amending Exhibit A to Ordinance No. 1671-89(as amended):

SMITH ISLAND MUNICIPAL ANNEXATION AREA: LEGAL DESCRIPTION

IT IS THE INTENT OF THIS LEGAL DESCRIPTION TO FOLLOW THE EXISTING CORPORATE CITY LIMITS OF EVERETT. REFERENCES HEREIN ARE MEANT TO CONVEY THAT ALTHOUGH PRESENT RIGHTS OF WAY BOUNDARIES MAY BE DIFFERENT, THE RIGHTS OF WAY BOUNDARIES AT THE TIME OF THE ORIGINAL INCORPORATION AND SUBSEQUENTLY ADOPTED ORDINANCES ARE INTENDED TO BE FOLLOWED SO THAT NO GAP OR OVERLAP EXISTS BETWEEN THIS ANNEXATION AND THE EXISTING CITY LIMITS OF EVERETT.

All that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the MID-CHANNEL of UNION SLOUGH.

Situate in County of Snohomish, State of Washington.

Being an area of approximately 27.35 Acres

Section 2: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 4: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 5: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Marks, CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation Area Zoning

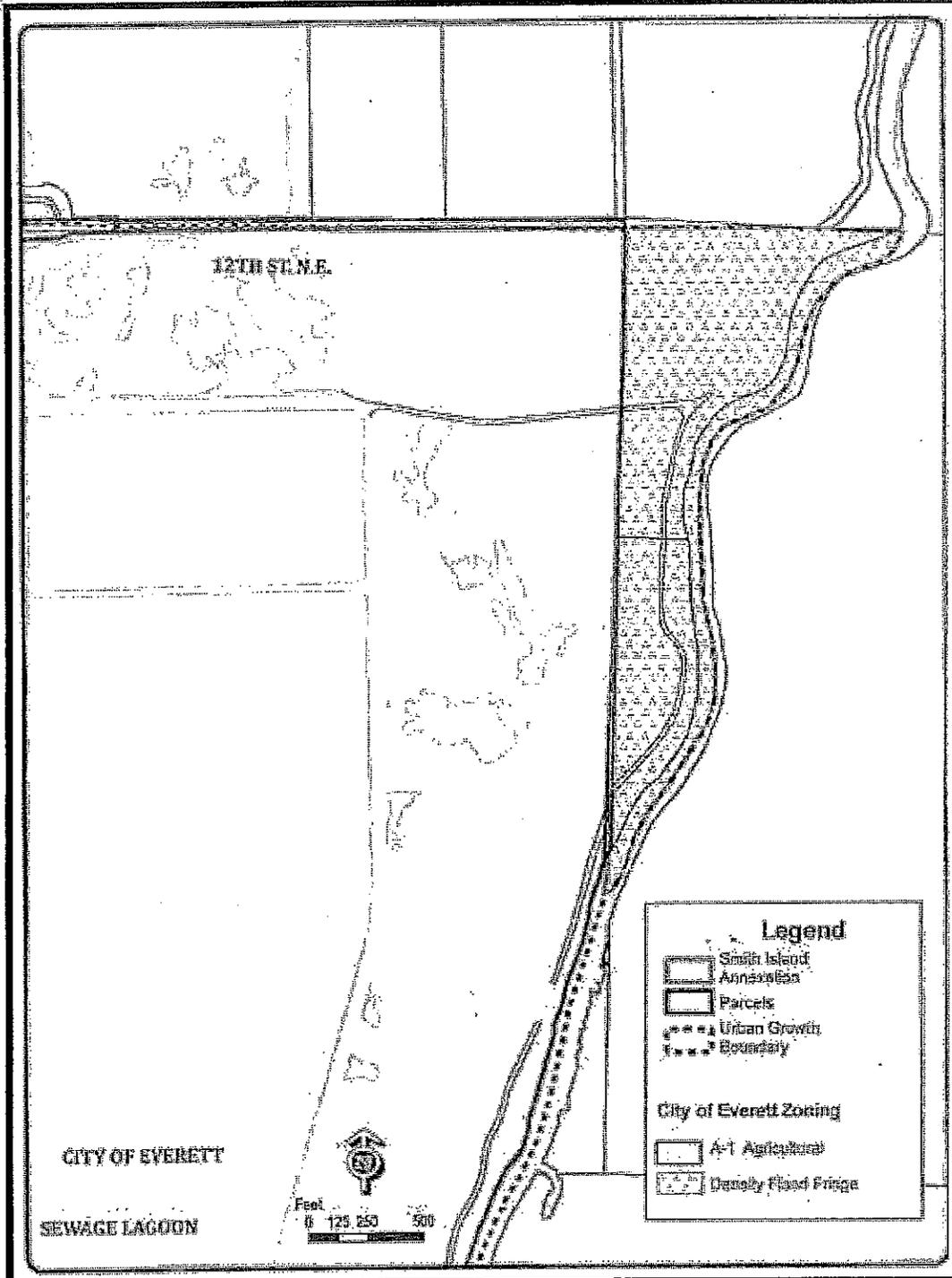


Exhibit D
Draft Ordinance for Interim Shoreline Management designations

ORDINANCE NO. _____

AN ORDINANCE Adopting the Snohomish County Shoreline Management Program Resource and Aquatic Designations and Program Policies and Regulations as Interim Designations for the Smith Island Municipal Annexation Area, amending Ordinance No.'s 2600-02, 2021-94 and 1671-89 (as amended)

WHEREAS, the City of Everett is provided authority to annex contiguous unincorporated territory pursuant to RCW 35.13.180; and

WHEREAS, Snohomish County Council reviewed the City's request for expansion of the Urban Growth Area (UGA) for properties on Smith Island and passed Ordinance 14-131 on June 10, 2015 amending the City's UGA to include the subject property; and

WHEREAS, WAC 173-26-160 requires local governments to amend their shoreline master programs to address newly annexed areas within one year of annexation, but until the master program is amended any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the master program in effect for the area prior to annexation; and

WHEREAS, on July 29, 2015 the City's Responsible Official issued a Notice of Adoption of Snohomish County's Final Environmental Impact Statement for Snohomish County's Shoreline Management Program update to meet the City's State Environmental Policy Act requirements for the proposal; and

WHEREAS, on August 4, 2015, the Planning Commission held a public hearing regarding establishing shoreline designations for the subject area upon annexation to the City and recommended that City Council adopt Resource and Aquatic designations as interim designations for the Smith Island Municipal Annexation Area; and

WHEREAS, the goals and policies of Shoreline Management / Master Programs are also part of the Comprehensive Plan and the regulations in Shoreline Management / Master programs are also part of the City's zoning regulations; and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City

Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, THE CITY COUNCIL FINDS:

1. The purpose for the proposed interim amendments to the Shoreline Master Program, Comprehensive Plan and Zoning are to address a newly annexed area of City-owned land on Smith Island adjacent to larger restoration / mitigation areas, providing for the subject area's management needs and allowing the provision of public safety services to the property.
2. The proposed interim designations, goals, policies and regulations are the same as that in Snohomish County's existing Shoreline Management Program and will be used for permitting purposes until such time as the City updates the Shoreline Master Program.
3. The proposed interim designations, goals, policies, and regulations are generally consistent with the City's Comprehensive Plan.
4. The amendments will not create pressure to change the designations of other properties in the vicinity.
5. The proposal bears a substantial relation to public health, safety or welfare.
6. The proposal promotes the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Shoreline Master Program. The Snohomish County Shoreline Management Program is hereby adopted to apply to the Smith Island Municipal Annexation area, amending Ordinances 2600-02 (Shoreline Master Program), as amended, Ordinance 2021-94 (Comprehensive Plan), as amended, and Ordinance 1671-89 (Title 19 EMC), as amended until such time as the City updates the Shoreline Master Program.

Section 2: Shoreline Master Program Designations. The Shoreline Master Program designation for that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the ordinary high water mark of Union Slough and shown on Exhibit "A" attached hereto and incorporated herein by reference is Resource Environment, and the Shoreline Master Program designation for that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying east of the ordinary high water mark of Union Slough to the mid-channel of Union Slough and shown on Exhibit "A" attached hereto and incorporated herein by reference is Aquatic Environment, until such time as the City updates the Shoreline Master Program.

Section 3: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or

regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 6: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Marks, CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation Area Shoreline Master Program Designations

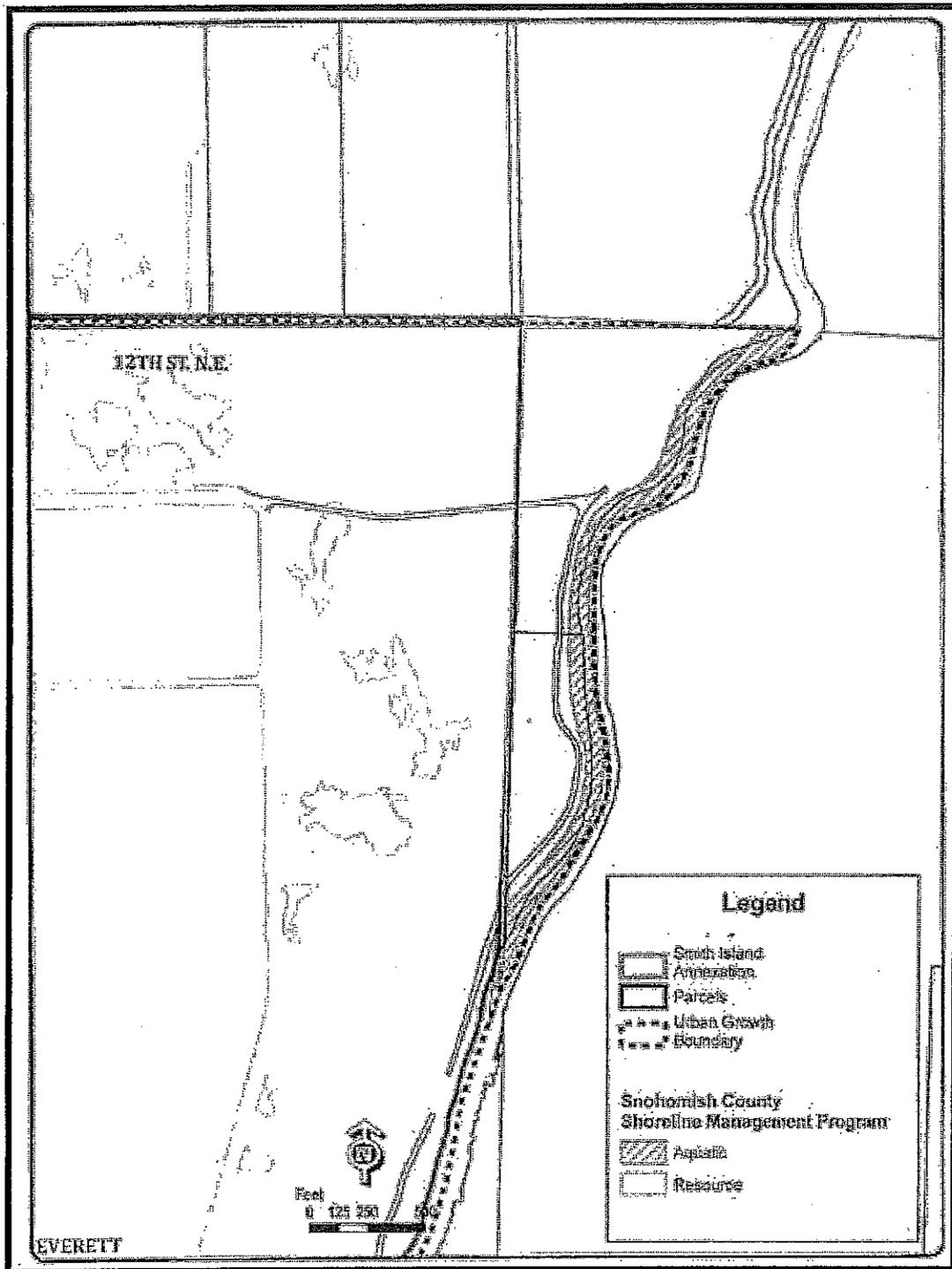
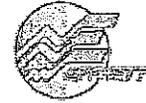


Exhibit E
SEPA #11-047 DNS

CITY OF EVERETT
DETERMINATION OF NON-SIGNIFICANCE (SEPA11-047)
And PLANNING COMMISSION PUBLIC HEARING NOTICE
Expansion of Urban Growth Area
Non-project action - Comprehensive Plan Map Amendment



Description of Proposal: Expand the boundary of the City's Urban Growth Area to account for a 20-acre Environmental mitigation area owned and managed by the City of Everett. This action would change the boundary depicted in the City's Comprehensive Plan map and would help clear the way for eventual County approval of the City's request to revise the UGA boundary, and eventual annexation, some time after 2015. Additional information is available at: <http://www.everettwa.org/default.aspx?ID=2018>.

Planning Commission Public Hearing:

Date & Time: March 6, 2012 at 6:30 p.m.
Location: 2930 Wetmore Avenue, 3rd floor Hearing Room

Applicant: Sponsored by Planning Commission

Representative: See contact person below

Location: South of 12th St NE, west of Union Slough

General Plan: Existing: Riverway Commercial Farm Land (Snohomish County)
Proposed: 2.8 (Public/Quasi Public Facilities)

Zoning: Existing: Ag 10 (Snohomish County)
Proposed: A-1 (Agriculture)

Lead Agency: City of Everett Planning Department

Contact Person: Dave Koenig or Bob Larsen Phone: (425) 257-8731

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An Environmental Impact Statement is not required under RCW 43.21C.030(2)(c). This determination assumes compliance with State law and City ordinances related to general environmental protection including but not limited to right-of-way improvement requirements, drainage, outdoor lighting, noise and vibration, etc. This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under 197-11-340(2). The lead agency will not act on this proposal for 14 days from the date below (shown as February 17, 2012). Comments must be submitted by March 2, 2012.

Responsible Official: Allan Giffen
Title: Planning and Community Development Director
Address: 2930 Wetmore Avenue, Suite 8A, Everett, WA 98201
Date: February 17, 2012


(RWL)

Signature: _____

NOTE: A DNS may be withdrawn in the event of significant changes in the proposal, disclosure of new significant information, misrepresentation by the applicant, or failure to comply with the conditions upon which this Determination of Non-Significance is predicated.

There is no appeal period on this administrative determination.

Exhibit F
City Council Ordinance No. 3288-12



ORDINANCE NO. 3288-12

**An Ordinance Amending The Comprehensive Plan
Map Expanding The City's Urban
Growth Boundary on Smith Island, Amending
Ordinance No. 2021-94, As Amended
Smith Island UGA Expansion**

WHEREAS, the City of Everett adopted a Comprehensive Plan in August, 1994, in conformance with the Washington State Growth Management Act; and

WHEREAS, the City of Everett completed its 10 year update to the Comprehensive Plan with City Council adoption on July 20, 2005; and

WHEREAS, the Growth Management Act, codified as Chapter 36.70A, allows for comprehensive plans to be amended on an annual basis; and

WHEREAS, the City of Everett initiated its 2011 – 2012 annual Comprehensive Plan amendment process in July of 2011, which included consideration of Land Use Map amendments and rezone applications initiated by property owners and the Everett Planning Commission; and

WHEREAS, the City of Everett owns a 20 acre property on Smith Island, part of a larger mitigation / restoration area east of the Waste Water Treatment Facility, that is currently in Snohomish County and under the jurisdiction of Snohomish County for land use permits, and

WHEREAS, a larger associated restoration / mitigation area extending west and south of the subject property is currently inside the Everett City limits, and therefore under permitting control of the City, and

WHEREAS, the Everett Planning Commission made this recommendation in order to eventually bring the property as shown in Exhibit A into the City, and under City Jurisdiction, which will provide for more streamlined permitting and other benefits, and

WHEREAS, the Planning Commission held a public hearing on the matter on March 6, 2012, at which time it heard from the public, and staff, and considered the various aspects of the proposal before recommending approval; and

WHEREAS, THE CITY COUNCIL FINDS:

1. The purpose for the requested Comprehensive Plan land use map amendment is to expand the City of Everett's Urban Growth Area, which would allow the City to join the subject property to the larger restoration / mitigation areas associated with it which are currently in the City, and thereby place the subject expansion area under permitting control of Everett. This action would provide for the subject area's management needs and allow for provision of public safety services to the property.
2. The action undertaken here: Approving placement of the subject Urban Growth Area on the Comprehensive Plan map, demonstrates intent on the part of the City to bring this area into the City, but it is also recognized additional steps will be required before the area is legally made part of the City.
3. To achieve the proposed map amendment, the subject area needs to be indicated on the Comprehensive Plan map surrounded by Everett's proposed City limits boundary, and shown as 2.8 (Public / Quasi Public Facilities - Proposed) within the indicated expansion area.
4. Planning Commission held a public meeting to learn of and discuss the proposed change on November 11, 2011 and held a public hearing on this proposal on March 6, 2012.
5. On March 6, 2012, Planning Commission passed Resolution 12-12, recommending adoption of this action by City Council.
6. The public health safety and welfare would be provided for by the proposal under existing development regulations of the City.
7. The proposed amendment to the land use map and rezone promotes the best long term interest of the Everett Community.
8. Any conclusions below that may be construed as a finding is included here as such by this reference.

WHEREAS, CITY COUNCIL CONCLUDES:

1. Any finding above that may be construed as a conclusion is included here as such by this reference.
2. The requested action is supported by, or consistent with, the Comprehensive Plan based on Policy 2.16.8, "develop logical service areas." This action is specifically intended to include the subject area in the City's planning area in part, because it falls with natural boundaries; those being 12th street to the north, and Union Slough to the east, where currently the eastern boundary is a quarter section line on the City map. (findings 1 and 2)
3. Circumstances related to the subject property and the area in which it is located have changed because of new work the City is doing with the Pollution Control Facility's eastern dike. (findings 1 and 2)

4. There are no erroneous assumptions or new information regarding this action known at the time this action was taken. (findings 2, 3 and 4)
5. The change promotes and ensures a continued desired land use pattern because the expansion area will be used for environmental mitigation. (findings 1 and 2)
6. The proposed land use designation should not be applied to other properties in the vicinity without first meeting the policies of the Comprehensive Plan on their own merit, considered separately from this action. Therefore approval of this application does not constitute a granting of special privilege. (findings 1, 3 and 4)
7. This action would have only positive environmental impacts on other properties in the vicinity. (findings 1 and 2)
8. The change of the land use designation will not pressure other properties in the vicinity to do the same. (findings 1, 3 and 4)
9. To achieve the proposed change, the City needs to add the subject property within Everett's Municipal Urban Growth Area (MUGA) and designate it 2.8 (Public / Quasi-Public Facilities). (finding 2)
10. The public health, safety and welfare would be provided for by passage of this Ordinance. (findings 1, 2, 3, 5 and 6)
11. This proposed Comprehensive Plan amendment and rezone promotes the best long term interest of the Everett Community. (findings 1, 2, 3, 4, 5 and 7)

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Amendment of the Land Use Map of the Comprehensive Plan

Amend the Comprehensive Plan land use map in the subject area to expand the Urban Growth Area and to change the land use designation from Snohomish County Riverway Commercial Farm Land to 2.8 (Public / Quasi Public Facilities - Proposed), amending Ordinance No. 2021-94, as amended. See attached Exhibit A.

Section 2: Incorporation.

Exhibit A, is hereby made part of this approval and incorporated herein by reference.

Section 3. Validity.

Should any section, subsection, paragraph, sentence, clause or phrase set forth in this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. Purpose.

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance.

It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees.

Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

Section 5. Pending actions.

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending before the City or in any court.

Section 6. Corrections.

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


Ray Stephanson, Mayor

ATTEST:


City Clerk

Passed: 8-1-12
Valid: 8-6-12
Published: 8-8-12
Effective Date: 8-21-12

Exhibit A

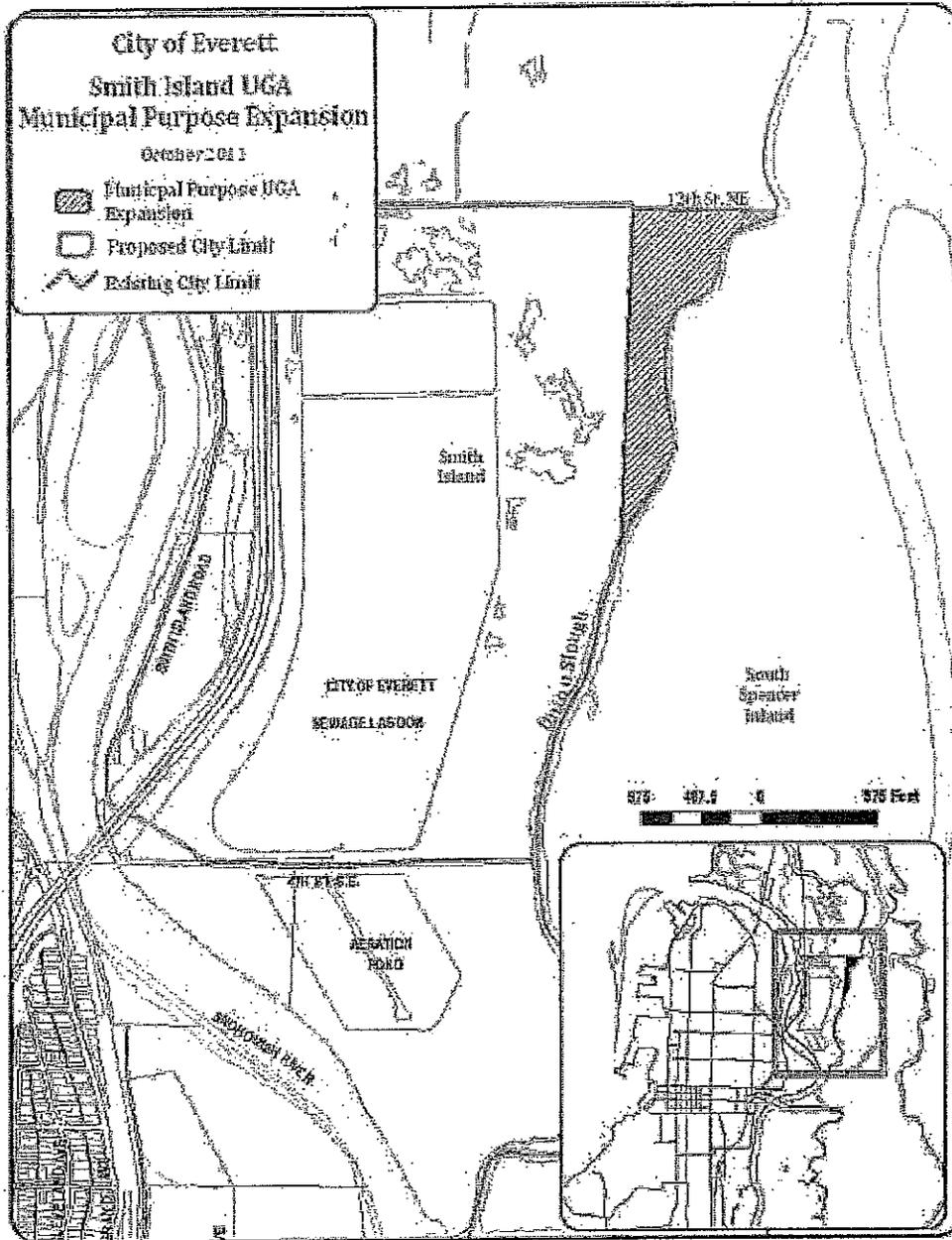


Exhibit G
Snohomish County Council Ordinance No. 14-131

1 Adopted: June 10, 2015
2 Effective: July 2, 2015

3
4
5 SNOHOMISH COUNTY COUNCIL
6 SNOHOMISH COUNTY, WASHINGTON

7
8 ORDINANCE NO. 14-131
9

10 RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING FUTURE LAND USE
11 MAP AMENDMENTS TO THE SNOHOMISH COUNTY GROWTH MANAGEMENT
12 ACT COMPREHENSIVE PLAN, AMENDING THE ZONING MAP TO IMPLEMENT
13 CHANGES TO THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
14 URBAN GROWTH AREA (EVR1 - CITY OF EVERETT)
15

16 WHEREAS, RCW 36.70A.130 and .470 direct counties planning under the
17 Growth Management Act (GMA) to adopt procedures for interested persons to propose
18 amendments and revisions to the Growth Management Act Comprehensive Plan
19 (GMACP) or development regulations; and
20

21 WHEREAS, the Snohomish County Council (county council) adopted chapter
22 30.74 of the Snohomish County Code (SCC), "Growth Management Act Public
23 Participation Program Docketing," to comply with the requirements of RCW 36.70A.130
24 and .470; and
25

26 WHEREAS, the Department of Planning and Development Services (PDS)
27 compiled a list of non-county initiated amendments and revisions received by the
28 October 31, 2012, deadline for Docket XVII proposals and evaluated these proposed
29 amendments, including the EVR1 - City of Everett docket proposal, for consistency with
30 the initial docket review criteria in SCC 30.74.030(1) and 30.74.040; and
31

32 WHEREAS, PDS briefed the Snohomish County Agricultural Advisory Board on
33 the EVR1 - City of Everett docket proposal on April 9, 2013; and
34

35 WHEREAS, on May 29, 2013, and June 26, 2013, the county council held public
36 hearings to receive public testimony on proposed non-county initiated amendments to
37 the GMACP for consideration on Final Docket XVII, including the EVR1 - City of Everett
38 proposal; and
39

40 WHEREAS, on July 17, 2013, the county council approved, by Amended Motion
41 No. 13-138, a list of proposed non-county initiated comprehensive plan amendments for
42 consideration and final action on Final Docket XVII, including the EVR1 - City of Everett

ORDINANCE NO. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
FUTURE LAND USE MAP AMENDMENTS TO THE SNOHOMISH
COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
AMENDING THE ZONING MAP TO IMPLEMENT CHANGES TO
THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 - CITY OF EVERETT) - 1

1 proposal, and authorized the county executive, through PDS, to process Final Docket
2 XVII consistent with chapters 30.73 and 30.74 SCC; and

3
4 WHEREAS, the Snohomish County Planning Commission ("planning
5 commission") was provided information on Final Docket XVII, including the EVR1 – City
6 of Everett proposal, in study sessions and briefings held on May 13, 2014, and
7 September 9, 2014; and

8
9 WHEREAS, pursuant to chapter 30.74 SCC, PDS completed final review and
10 evaluation of Final Docket XVII, including the EVR1 – City of Everett proposal, and
11 forwarded recommendations to the planning commission; and

12
13 WHEREAS, the planning commission held a public hearing and received public
14 testimony on Final Docket XVII, including the EVR1 – City of Everett proposal, on
15 October 7, 2014; and

16
17 WHEREAS, on October 14, 2014, the planning commission completed
18 deliberations on Final Docket XVII, including the EVR1- City of Everett proposal, and
19 recommended adoption of the EVR1 – City of Everett proposal as enumerated in its
20 recommendation letter of December 4, 2014; and

21
22 WHEREAS, on May 13, 2015 and continued to June 10, 2016, the Snohomish
23 County Council held a public hearing, after proper notice, to hear public testimony on
24 this ordinance and consider the entire record, including the planning commission's
25 recommendation, on Final Docket XVII and the EVR1 – City of Everett proposal.

26
27 NOW, THEREFORE, BE IT ORDAINED:

28
29 Section 1. The county council makes the following findings:

- 30
31 A. The county council adopts and incorporates the foregoing recitals as findings as if
32 set forth fully herein.
33
34 B. The EVR1 – City of Everett proposal would revise the Southwest Urban Growth Area
35 (UGA) to add 21 acres of land that will remain designated on the Future Land Use
36 Map (FLUM) of the General Policy Plan (GPP) as Riverway Commercial Farmland
37 (RCF) and will remain zoned Agriculture-10 Acre (A-10). The proposal would not
38 result in a net increase in residential or employment land capacity.
39
40 C. The EVR1 – City of Everett proposal site is vacant and located on Smith Island, west
41 of Union Slough and east of Everett's sewage treatment facility. The proposal site is
42 owned by the City of Everett, and is being used for wetland enhancement and
43 restoration to mitigate impacts from future expansion of Everett's sewage treatment

ORDINANCE NO. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
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COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
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THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 – CITY OF EVERETT) - 2

1 facility. The dike along the eastern boundary of the site, adjacent to Union Slough,
2 previously was breached by the city to allow intertidal wetland restoration on the
3 south portion of the site. Including this municipal property in the UGA would allow
4 Everett to have all of its municipally-owned land in this area within the City of
5 Everett's boundaries, following annexation. Bringing the proposal site into the UGA
6 for eventual annexation also would streamline permitting associated with future
7 habitat restoration projects and enable Everett to efficiently provide public services
8 to its property.

9
10 D. The EVR1 – City of Everett proposal is consistent with the GMA, including
11 RCW 36.70A.060(4), which provides: "Forest land and agricultural land located
12 within urban growth areas shall not be designated by a county or city as forest land
13 or agricultural land of long-term commercial significance under RCW 36.70A.170
14 unless the city or county has enacted a program authorizing transfer or purchase of
15 development rights." Both the City of Everett and Snohomish County have enacted
16 transfer of development rights (TDR) programs. The county's TDR regulations are
17 contained in chapter 30.35A SCC.

18
19 E. The EVR1 – City of Everett proposal is subject to GMA requirements for UGAs
20 under RCW 36.70A.110(8) as the proposal site is located within the 100-year
21 floodplain of the Snohomish River, which has a mean annual flow that is greater
22 than 1,000 cubic feet per second. However, the proposal is exempt from the
23 prohibition of UGA expansions into a 100-year floodplain under
24 RCW 36.70A.110(8)(b)(iii)(C) because: 1) the proposal site is owned by the City of
25 Everett; 2) the city plans under the GMA; 3) the use of the proposal site will be
26 limited to wetland enhancement and restoration; and 4) the use of the proposal site
27 will not decrease flood storage, increase stormwater runoff, discharge pollutants to
28 fresh or salt waters during normal operations or floods, or increase hazards to
29 people and property.

30
31 F. The EVR1 – City of Everett proposal is consistent with and advances the Puget
32 Sound Regional Council (PSRC) Multicounty Planning Policies (MPP), in particular
33 DP- 29, which provides that the County protect and enhance significant open
34 spaces, natural resources, and critical areas. The proposal provides for continued
35 protection and future enhancement of the open space, floodplain, and critical areas
36 through the public ownership and continued RCF designation and A-10 zoning of the
37 site.

38
39 G. The EVR1 – City of Everett proposal is consistent with and advances the
40 Countywide Planning Policies (CPP), in particular DP-1(f), which provides that the
41 County shall maintain UGAs that do not include designated agricultural or forest land
42 unless the city or county has enacted a program authorizing transfer or purchase of
43 development rights. Both the city and county have adopted TDR programs.

ORDINANCE NO. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
FUTURE LAND USE MAP AMENDMENTS TO THE SNOHOMISH
COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
AMENDING THE ZONING MAP TO IMPLEMENT CHANGES TO
THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 – CITY OF EVERETT) -3

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H. The EVR1 – City of Everett proposal is consistent with and advances the GPP, in particular LU Policy 1.A.7, which provides that designated forest and agricultural lands shall not be included within a UGA unless the designated lands are maintained as natural resource lands and a TDR/PDR program has been enacted by the city or the county. The proposal site will continue to be designated RCF, a natural resource plan designation, and both the city and the county have adopted TDR programs.

I. Procedural requirements.

1. This proposal is a Type 3 legislative action pursuant to SCC 30.73.010.
2. State Environmental Policy Act (SEPA) requirements with respect to this non-project action have been satisfied through the completion of a Draft EIS issued on September 8, 2014, and a Final EIS issued on June 3, 2015.
3. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt this ordinance was transmitted to the Washington State Department of Commerce for distribution to state agencies on December 17, 2014.
4. The public participation process used in the adoption of this ordinance has complied with all applicable requirements of the GMA and the SCC.
5. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in December of 2006 entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property" to help local governments avoid the unconstitutional taking of private property. The process outlined in the State Attorney General's 2006 advisory memorandum was used by Snohomish County in objectively evaluating the amendments proposed by this ordinance.

J. The ordinance is consistent with the record.

1. No inconsistencies between the proposed amendments and the GMACP elements or development regulations have been identified.
2. The proposal complies with all requirements of the GMA, including: the requirement in RCW 36.70A.070 that a plan be an internally consistent document; the requirements in RCW 36.70A.130(1)(d) that any amendment to a comprehensive plan shall conform to the GMA and that any amendment to development regulations shall implement the comprehensive plan; the requirement in RCW 36.70A.130(2) that a county consider comprehensive plan amendments no more frequently than once per year; and the

ORDINANCE NO. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
FUTURE LAND USE MAP AMENDMENTS TO THE SNOHOMISH
COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
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THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 – CITY OF EVERETT) - 4

1 requirements in RCW 36.70A.130(1)(d) and .210(1) and (7) that the
2 comprehensive plan be consistent with the CPP and MPP.

3
4 Section 2. The county council makes the following conclusions:

- 5
6 A. The proposed amendments are consistent with the MPP and the CPP.
7
8 B. The proposal EVR1 – City of Everett meets the final docket criteria in
9 SCC 30.74.060.
10
11 C. The proposed amendments are consistent with the goals, objectives and policies of
12 the GPP.
13
14 D. The amendments are consistent with and comply with the procedural and
15 substantive requirements of the GMA.
16
17 E. The county has complied with all SEPA requirements with respect to this non-project
18 action.
19
20 F. The amendments do not result in an unconstitutional taking of private property for a
21 public purpose and they do not violate substantive due process guarantees.
22
23 G. The county complied with state and local public participation requirements under the
24 GMA and chapter 30.73 SCC.
25

26 Section 3. The county council bases its findings and conclusions on the entire record of
27 the county council, including all testimony and exhibits. Any finding which should be
28 deemed a conclusion, and any conclusion which should be deemed a finding, is hereby
29 adopted as such.
30

31 Section 4. The Future Land Use Map of the GPP, last amended by Amended
32 Ordinance No. 14-069 on October 8, 2014, is amended as indicated in Exhibit A to this
33 ordinance, which is attached hereto and incorporated by reference into this ordinance.
34

35 Section 5. The area-wide zoning map, last amended by Amended Ordinance No. 14-
36 068 on October 8, 2014, is amended as indicated in Exhibit B to this ordinance, which is
37 attached hereto and incorporated by reference into this ordinance.
38

39 Section 6. The county council directs the Code Reviser to update SCC 30.10.060
40 pursuant to SCC 1.02.020(3).
41

42 Section 7. Severability and Savings. If any section, sentence, clause or phrase of this
43 ordinance shall be held to be invalid by the Growth Management Hearings Board

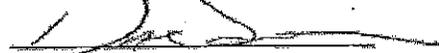
ORDINANCE NO. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
FUTURE LAND USE MAP AMENDMENTS TO THE SNOHOMISH
COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
AMENDING THE ZONING MAP TO IMPLEMENT CHANGES TO
THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 – CITY OF EVERETT) - 6

1 ("Board"), or unconstitutional by a court of competent jurisdiction, such invalidity or
2 unconstitutionality shall not affect the validity or constitutionality of any other section,
3 sentence, clause or phrase of this ordinance. Provided, however, that if any section,
4 sentence, clause or phrase of this ordinance is held to be invalid by the Board, then the
5 section, sentence, clause or phrase in effect prior to the effective date of this ordinance
6 shall be in full force and effect for that individual section, sentence, clause or phrase as
7 if this ordinance had never been adopted.

8
9 PASSED this 10th day of JUNE, 2015.

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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Council Chair

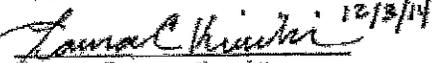
ATTEST:


APPROVED
 EMERGENCY
 VETOED

DATE: 6/30, 2015


County Executive

ATTEST:


Approved as to form only:
 12/3/14
Deputy Prosecuting Attorney

D-4

ORDINANCE No. 14-131
RELATING TO THE GROWTH MANAGEMENT ACT, ADOPTING
FUTURE LAND USE MAP AMENDMENTS TO THE SNOHOMISH
COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN,
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THE FUTURE LAND USE MAP, AND REVISING THE SOUTHWEST
URBAN GROWTH AREA (EVR1 - CITY OF EVERETT) - 6

Exhibit A
Ordinance No. 14-131
EVR1 – City of Everett
Map 1
GPP Future Land Use Map Amendment

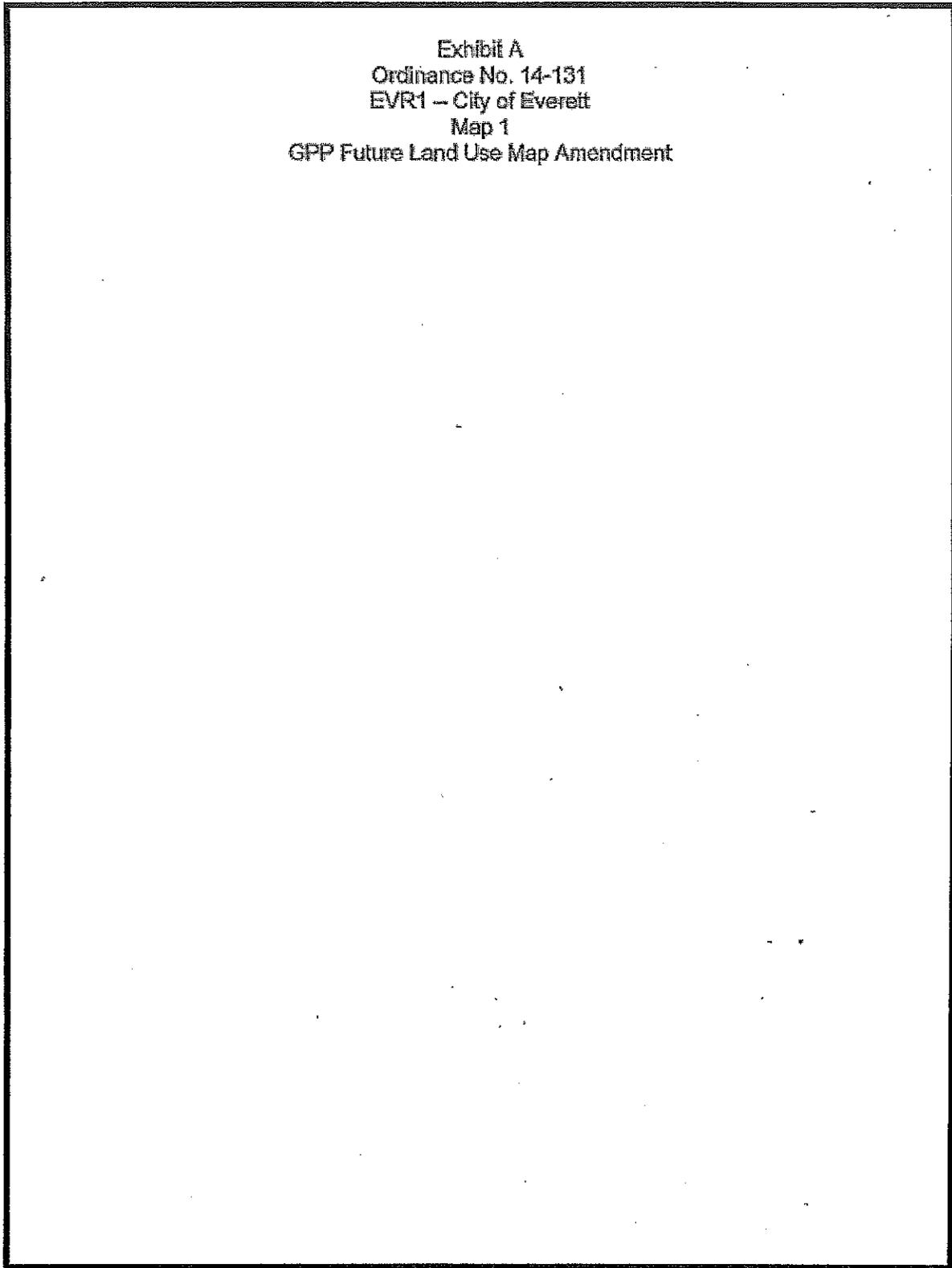


Exhibit B
Ordinance No. 14-131
EVR1 – City of Everett
Zoning Map Amendment

Exhibit H

Notice of Adoption of Snohomish County's FSEIS for their Shoreline Management Plan



ADOPTION OF EXISTING ENVIRONMENTAL DOCUMENT

Smith Island Municipal Annexation

ANNX #15-001

Description of Proposal: The City of Everett is proposing to annex unincorporated Snohomish County territory on Smith Island. The property is within the City's Urban Growth Area, is owned by the City, and is of a municipal purpose. The City's Comprehensive Plan designation of 2.8: Public/Quasi Public Facilities is currently applied to the area. Zoning of the site is proposed to be A-1: Agriculture Rural Flood Fringe District. The City proposes to adopt Snohomish County's Shoreline Management Program and interim Snohomish County Shoreline Management Program Resource and Aquatic designations for the subject area, until the City updates the Shoreline Master Program to include this area.

Proponent: City of Everett Planning and Community Development Department

Location of Proposal: Portion of Smith Island, west of Union Slough, south of 12th St NE.

Title of Document Being Adopted: Final Supplemental Environmental Impact Statement for Snohomish County Shoreline Management Program Update.

Agency that Prepared Document Being Adopted: Snohomish County Planning and Development Services.

Date Adopted Document was Prepared: The FSEIS was issued on August 25, 2010.

Description of Document Being Adopted: Snohomish County revised their Shoreline Management Program (SMP) as required by state law, RCW 90.58. The purpose of the document was to analyze the potential environmental impacts of the county's proposed updates to their SMP considering three proposed alternatives that evaluated maintaining the existing County SMP, modifying the County SMP to comply with new state SMP Guidelines, and modifying County SMP to be in compliance with new state SMP Guidelines with a reduced jurisdictional boundary.

If the Document Being Adopted has been Challenged (WAC 197-11-630), Please Describe: The document being adopted was not challenged.

Document is Available to Read at: The City of Everett Planning Department, 2930 Wetmore Avenue, Suite 8-A, Everett, WA, from 8:00 a.m. to 12 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday.

We have identified and adopted this document as being appropriate for this proposal after independent review. The document meets our environmental review needs for the current proposal and will accompany the proposal to the decision makers.

Name of Agency Adopting Document: City of Everett Planning and Community Development Department.

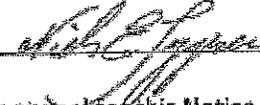
Contact Person: Niels Tygesen, phone: 425.257.8731

Responsible Official: Allan Giffen

Title: Director, Planning and Community Development Department

Address: 2930 Wetmore Avenue, Suite 8-A, Everett, WA 98201

Date: July 29, 2015

Signature:  FOR A.G.

There is no appeal for this Notice of Adoption.

Exhibit I
Planning Commission Resolution 15-06

CITY OF EVERETT
PLANNING COMMISSION
RESOLUTION NO. 15-06



Smith Island Municipal Annexation

A Resolution recommending that City Council set zoning of A-1: Agriculture Rural Flood Fringe District, and adopt interim Snohomish County Shoreline Management Program Resource and Aquatic designations for the Smith Island Municipal Annexation area.

WHEREAS, the Everett City Council passed a resolution on July 29, 2015, calling for annexation of the subject area; and

WHEREAS, the Land Use designation of the adjacent City owned property of 27.35 total acres (includes shoreline area) is 2.8: Public/Quasi Public Facilities with equivalent zoning of A-1: Agriculture Rural Flood Fringe District; and

WHEREAS, the subject property's Land Use designation is 2.8: Public/Quasi Public Facilities adopted in Ordinance 3288-12; and

WHEREAS, the equivalent zoning, according to the Land Use Element of the Comprehensive Plan, lists Existing Zoning as the implementing zone for the 2.8: Public/Quasi Public Facilities designation; and

WHEREAS, the equivalent zoning of A-1: Agriculture Rural Flood Fringe District for the subject property is the most appropriate designation to keep consistency with the zoning of adjacent property; and

WHEREAS, the subject property is designated as Resource and Aquatic by Snohomish County's Shoreline Management Program; and

WHEREAS, the City will be required to update its Shoreline Master Program by June 30, 2019; and

WHEREAS, the interim adoption of Snohomish County's Shoreline Management Program and equivalent designations for the subject property are the most appropriate designations until the City updates the Shoreline Master Program to include this property; and

WHEREAS, the City's responsible official issued a Determination of Non-significance SEPA No.11-047 for the proposed zoning and a Notice of Adoption of Snohomish County's FSEIS for their Shoreline Management Plan was issued for the proposed interim shoreline designations; and

WHEREAS, the Planning Commission held a Public Hearing on the proposed zoning and interim Shoreline Management Program Designations on August 4, 2015; and

WHEREAS, the Planning Commission finds;

- I. The Everett Comprehensive Plan designation of 2.8: Public/Quasi Public Facilities has already been adopted and put in place for the annexation area.

2. The A-1: Agriculture Rural Flood Fringe District implementing zone is consistent with existing land use policies of the Everett Comprehensive Plan.
3. The recommended A-1: Agriculture Rural Flood Fringe District is consistent with the Comprehensive Plan map designation of 2.8: Public/Quasi Public Facilities and is the best fit for the anticipated future uses in the area.
4. The interim Snohomish County Shoreline Management Program Resource and Aquatic designations are consistent with existing land use policies of the Everett Comprehensive Plan.
5. The recommended interim Snohomish County Shoreline Management Program Resource and Aquatic designations are consistent with the Comprehensive Plan map designation of 2.8: Public/Quasi Public Facilities and are the best fit for the anticipated future uses in the area.
6. The proposed zoning and Shoreline Management Program designations bear a substantial relation to public health, safety or welfare and promote the best long-term interests of the Everett community.

NOW THEREFORE, THE PLANNING COMMISSION RECOMMENDS:

1. That City Council adopts A-1: Agriculture Rural Flood Fringe District as the zoning for the annexation area, (Exhibit A).
2. That City Council adopts Snohomish County Shoreline Management Program and designations of Resource and Aquatic as interim Shoreline Master Program designations for the annexation area, (Exhibit B).



 Planning Commission Chair

8/3/15

 Date



 Planning Commission Secretary

For: Commissioner Beck, Commissioner Tisdell, Commissioner Adams, and Chair Stewart

Against: None

Absent: Commissioner Zelinski, Commissioner Jordison, Commissioner Sand, and Commissioner Holland

Abstain: None

Exhibit A
Zoning Designation

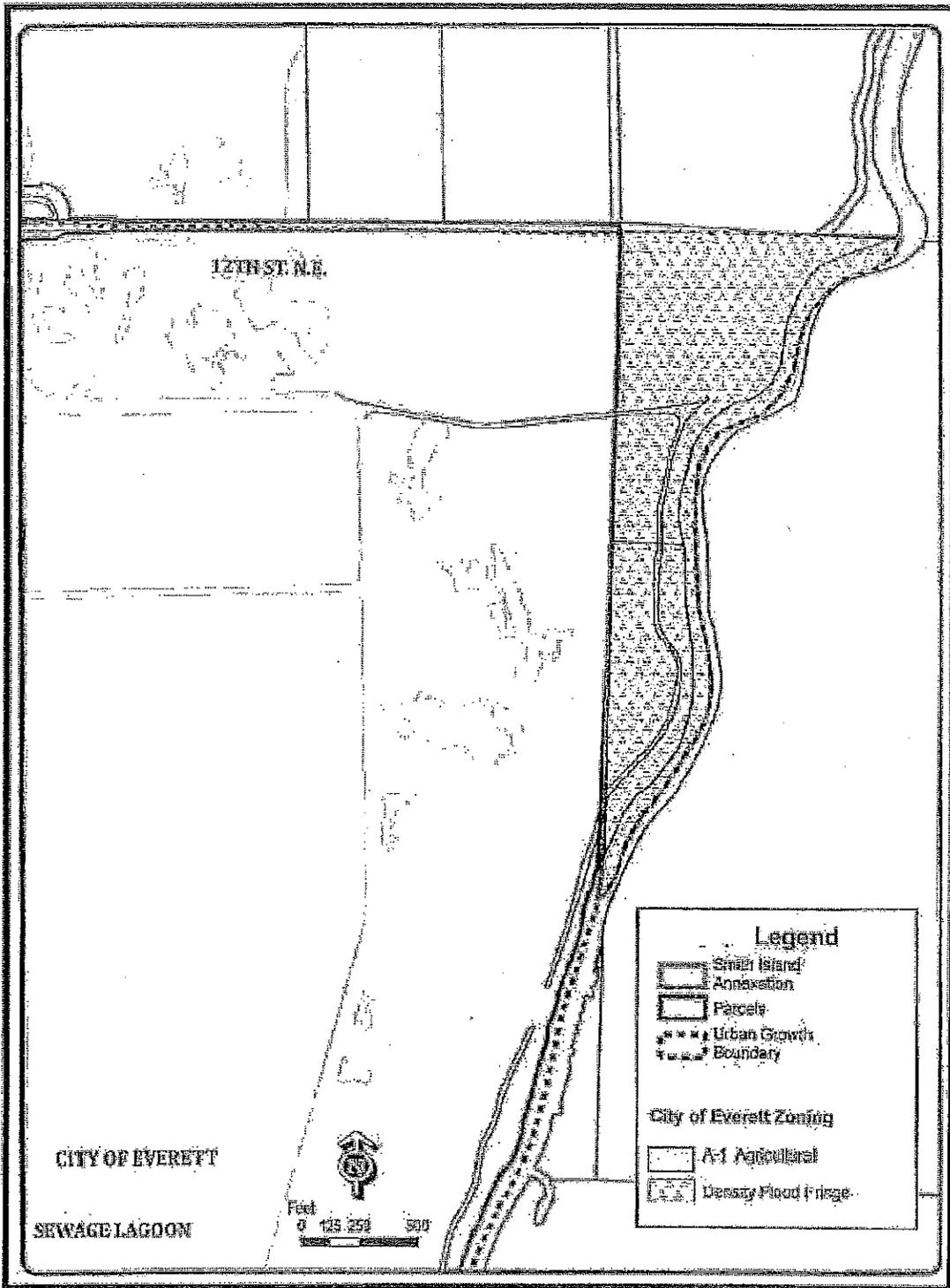
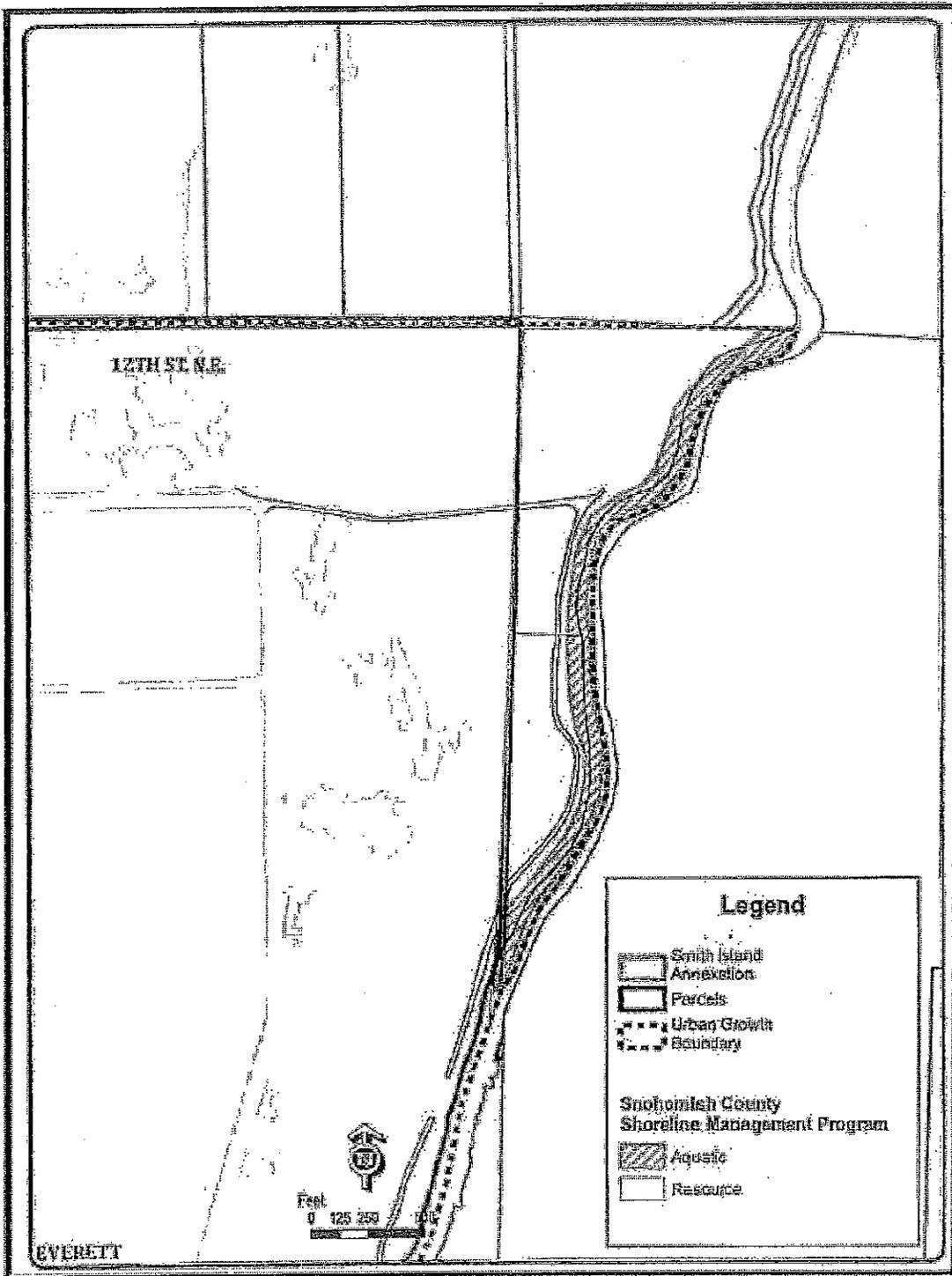


Exhibit B
Shoreline Master Program Designations



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

AN ORDINANCE
 Establishing Zoning for the
 Smith Island Municipal
 Annexation Area, amending
 Exhibit A to Ordinance No.
 1671-89 (as amended)

_____	Briefing
_____	Consent
<u>8/10/16</u>	Action
<u>7/27/16</u>	First Reading
<u>8/3/16</u>	Second Reading
<u>8/10/16</u>	Third Reading
<u>8/10/16</u>	Public Hearing

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

CB1607-32
Planning
Allan Giffen
425-257-8725
July 27, 2016

Initialed by:
 Department Head
 CAA
 Council President

db

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Smith Island, west of Union Slough, south of 12 th Street	Planning Commission Hearing and Recommendation on 8/4/2015	Ordinance	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

The current Comprehensive Land Use designation for the Smith Island Municipal Annexation area is 2.8 (Public/Quasi-Public Facilities).

Planning Commission has recommended the implementing zone be set at A-1 RFFD (Agriculture Rural Flood Fringe District) consistent with the City's adjoining Water Pollution Control Facility property.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Establishing Zoning for the Smith Island Municipal Annexation Area, amending Exhibit A to Ordinance No. 1671-89 (as amended).

ORDINANCE NO. _____

**AN ORDINANCE Establishing Zoning for the Smith Island Municipal Annexation Area,
amending Exhibit A to Ordinance No. 1671-89 (as amended)**

WHEREAS, the City of Everett is provided authority to annex contiguous unincorporated territory pursuant to RCW 35.13.180; and

WHEREAS, in 2012 a SEPA review was completed and a Determination of Nonsignificance No. 11-047 was issued that addressed a Comprehensive Plan designation of 2.8: Public/Quasi-Public Facilities and A-1 Agriculture zoning for the proposed Smith Island Annexation Area, an approximate 27.35 acre area owned by the City and located along Union Slough and adjoining other City-owned properties to the east; and

WHEREAS, on August 1, 2012, City Council passed Ordinance 3288-12 adopting the 2.8: Public/Quasi-Public Facilities designation for the subject property consistent with the designations for other City-owned properties to the west; and

WHEREAS, Snohomish County Council reviewed the City's request for expansion of the Urban Growth Area (UGA) and passed Ordinance 14-131 on June 10, 2015 amending the City's UGA to include the subject property; and

WHEREAS, on August 4, 2015, the Planning Commission held a public hearing regarding establishment of the enabling zone for the subject area upon annexation to the City and recommended that the Smith Island Municipal Annexation be zoned A-1 RFFD (Agriculture Rural Flood Fringe District) (Exhibit "A"); and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, THE CITY COUNCIL FINDS:

1. The proposed zoning is consistent with the Everett Comprehensive Plan.

2. The proposed zoning bears a substantial relation to public health, safety or welfare.
3. The proposed zoning promotes the best long-term interests of the Everett community.
4. The area proposed to be zoned A-1 RFFD will be developed for environmental mitigation/restoration consistent with and supporting the uses on adjacent properties and the proposed zoning will not adversely impact adjacent uses.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Zoning. That the Zoning Map of that portion of the City of Everett shown on the map in Exhibit A and legally described below is hereby established as A-1 RFFD (Agriculture Rural Flood Fringe District), amending Exhibit A to Ordinance No. 1671-89(as amended):

SMITH ISLAND MUNICIPAL ANNEXATION AREA: LEGAL DESCRIPTION

IT IS THE INTENT OF THIS LEGAL DESCRIPTION TO FOLLOW THE EXISTING CORPORATE CITY LIMITS OF EVERETT. REFERENCES HEREIN ARE MEANT TO CONVEY THAT ALTHOUGH PRESENT RIGHTS OF WAY BOUNDARIES MAY BE DIFFERENT, THE RIGHTS OF WAY BOUNDARIES AT THE TIME OF THE ORIGINAL INCORPORATION AND SUBSEQUENTLY ADOPTED ORDINANCES ARE INTENDED TO BE FOLLOWED SO THAT NO GAP OR OVERLAP EXISTS BETWEEN THIS ANNEXATION AND THE EXISTING CITY LIMITS OF EVERETT.

All that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the MID-CHANNEL of UNION SLOUGH.

Situate in County of Snohomish, State of Washington.

Being an area of approximately 27.35 Acres.

Section 2: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 4: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of

scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section5: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Fuller, CITY CLERK

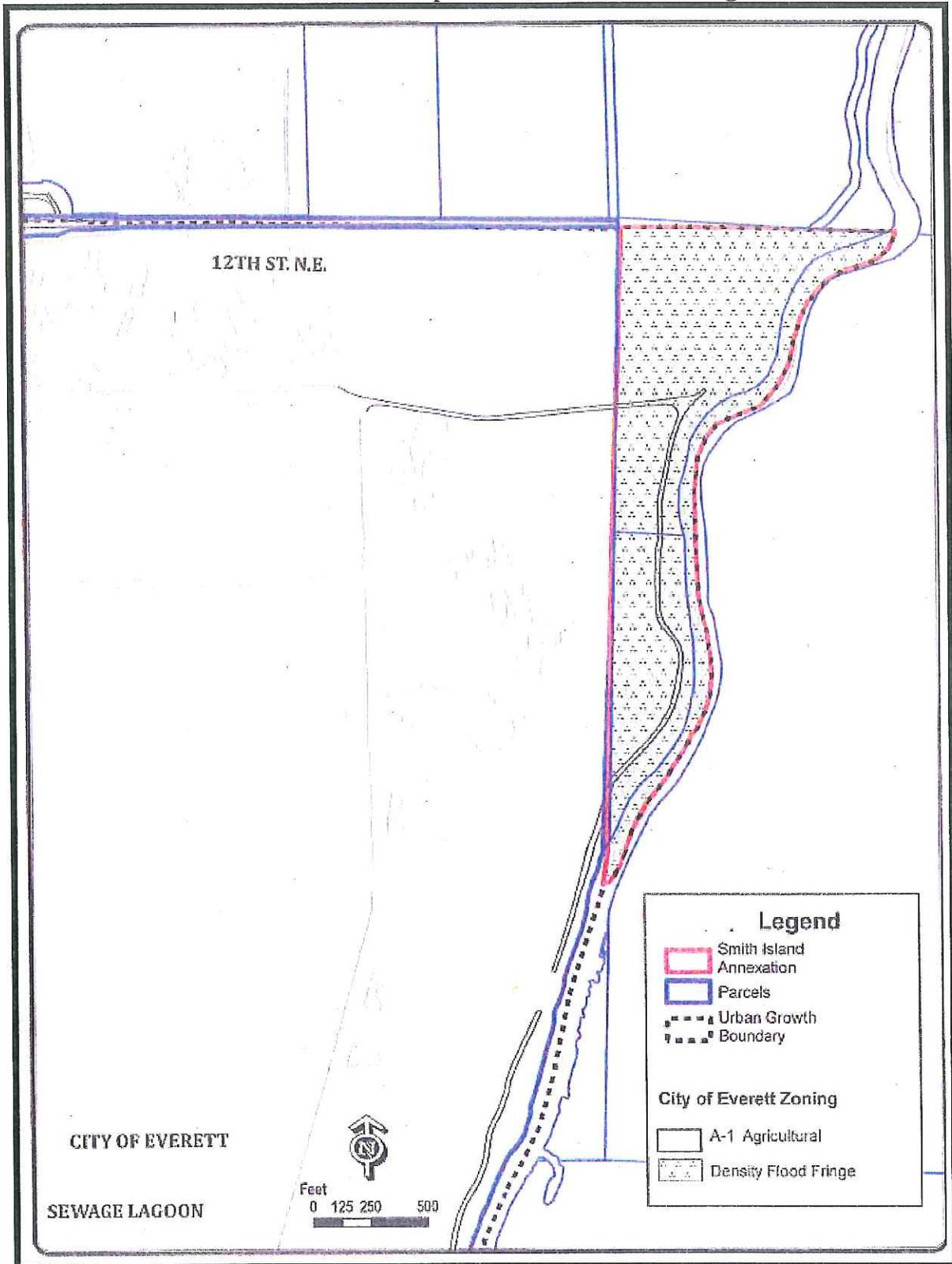
Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation Area Zoning



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

AN ORDINANCE Adopting the
Snohomish County Shoreline
Management Program Resource
and Aquatic Designations and
Program Policies and
Regulations as Interim
Designations for the Smith
Island Municipal Annexation
Area, amending Ordinance No.'s
2600-02, 2021-94 and 1671-89
(as amended)

_____ Briefing
_____ Consent
8/10/16 Action
7/27/16 First Reading
8/3/16 Second Reading
8/10/16 Third Reading
8/10/16 Public Hearing

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

CB 1607-33
Planning
Allan Giffen
425-257-8725
July 27, 2016

Initialed by:
Department Head
CAA
Council President

db

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Smith Island, west of Union Slough, south of 12 th Street	Planning Commission Hearing and Recommendation on 8/4/2015	Ordinance	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

The Planning Commission has recommended adopting Snohomish County Shoreline Management Program Resource and Aquatic designations as interim designations for the Smith Island Municipal Annexation area. The proposal also includes adoption and application of the Snohomish County's Shoreline Management Program Policies and Regulations to this area until such time as the City can update the City's Shoreline Master Program.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Adopting the Snohomish County Shoreline Management Program Resource and Aquatic Designations and Program Policies and Regulations as Interim Designations for the Smith Island Municipal Annexation Area, amending Ordinance No.'s 2600-02, 2021-94 and 1671-89 (as amended).

ORDINANCE NO. _____

AN ORDINANCE Adopting the Snohomish County Shoreline Management Program Resource and Aquatic Designations and Program Policies and Regulations as Interim Designations for the Smith Island Municipal Annexation Area, amending Ordinance No.'s 2600-02, 2021-94 and 1671-89 (as amended)

WHEREAS, the City of Everett is provided authority to annex contiguous unincorporated territory pursuant to RCW 35.13.180; and

WHEREAS, Snohomish County Council reviewed the City's request for expansion of the Urban Growth Area (UGA) for properties on Smith Island and passed Ordinance 14-131 on June 10, 2015 amending the City's UGA to include the subject property; and

WHEREAS, WAC 173-26-160 requires local governments to amend their shoreline master programs to address newly annexed areas within one year of annexation, but until the master program is amended any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the master program in effect for the area prior to annexation; and

WHEREAS, on July 29, 2015 the City's Responsible Official issued a Notice of Adoption of Snohomish County's Final Environmental Impact Statement for Snohomish County's Shoreline Management Program update to meet the City's State Environmental Policy Act requirements for the proposal; and

WHEREAS, on August 4, 2015, the Planning Commission held a public hearing regarding establishing shoreline designations for the subject area upon annexation to the City and recommended that City Council adopt Resource and Aquatic designations as interim designations for the Smith Island Municipal Annexation Area; and

WHEREAS, the goals and policies of Shoreline Management / Master Programs are also part of the Comprehensive Plan and the regulations in Shoreline Management / Master programs are also part of the City's zoning regulations; and

WHEREAS, on July 29, 2015 City Council passed Resolution 6882 stating the Council's intent to annex to Everett unincorporated Snohomish County Territory on Smith Island and City

Council did conduct a public hearing on September 9, 2015, for the proposed annexation, for which proper notice of hearing was provided; and

WHEREAS, THE CITY COUNCIL FINDS:

1. The purpose for the proposed interim amendments to the Shoreline Master Program, Comprehensive Plan and Zoning are to address a newly annexed area of City-owned land on Smith Island adjacent to larger restoration / mitigation areas, providing for the subject area's management needs and allowing the provision of public safety services to the property.
2. The proposed interim designations, goals, policies and regulations are the same as that in Snohomish County's existing Shoreline Management Program and will be used for permitting purposes until such time as the City updates the Shoreline Master Program.
3. The proposed interim designations, goals, policies, and regulations are generally consistent with the City's Comprehensive Plan.
4. The amendments will not create pressure to change the designations of other properties in the vicinity.
5. The proposal bears a substantial relation to public health, safety or welfare.
6. The proposal promotes the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Shoreline Master Program. The Snohomish County Shoreline Management Program is hereby adopted to apply to the Smith Island Municipal Annexation area, amending Ordinances 2600-02 (Shoreline Master Program), as amended, Ordinance 2021-94 (Comprehensive Plan), as amended, and Ordinance 1671-89 (Title 19 EMC), as amended until such time as the City updates the Shoreline Master Program.

Section 2: Shoreline Master Program Designations. The Shoreline Master Program designation for that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying west of the ordinary high water mark of Union Slough and shown on Exhibit "A" attached hereto and incorporated herein by reference is Resource Environment, and the Shoreline Master Program designation for that portion of the West Half of the NW Quarter of Section 15, Township 29 North, Range 5 East, W.M. lying east of the ordinary high water mark of Union Slough to the mid-channel of Union Slough and shown on Exhibit "A" attached hereto and incorporated herein by reference is Aquatic Environment, until such time as the City updates the Shoreline Master Program.

Section 3: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or

regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 6: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, MAYOR

ATTEST:

Sharon Fuller, CITY CLERK

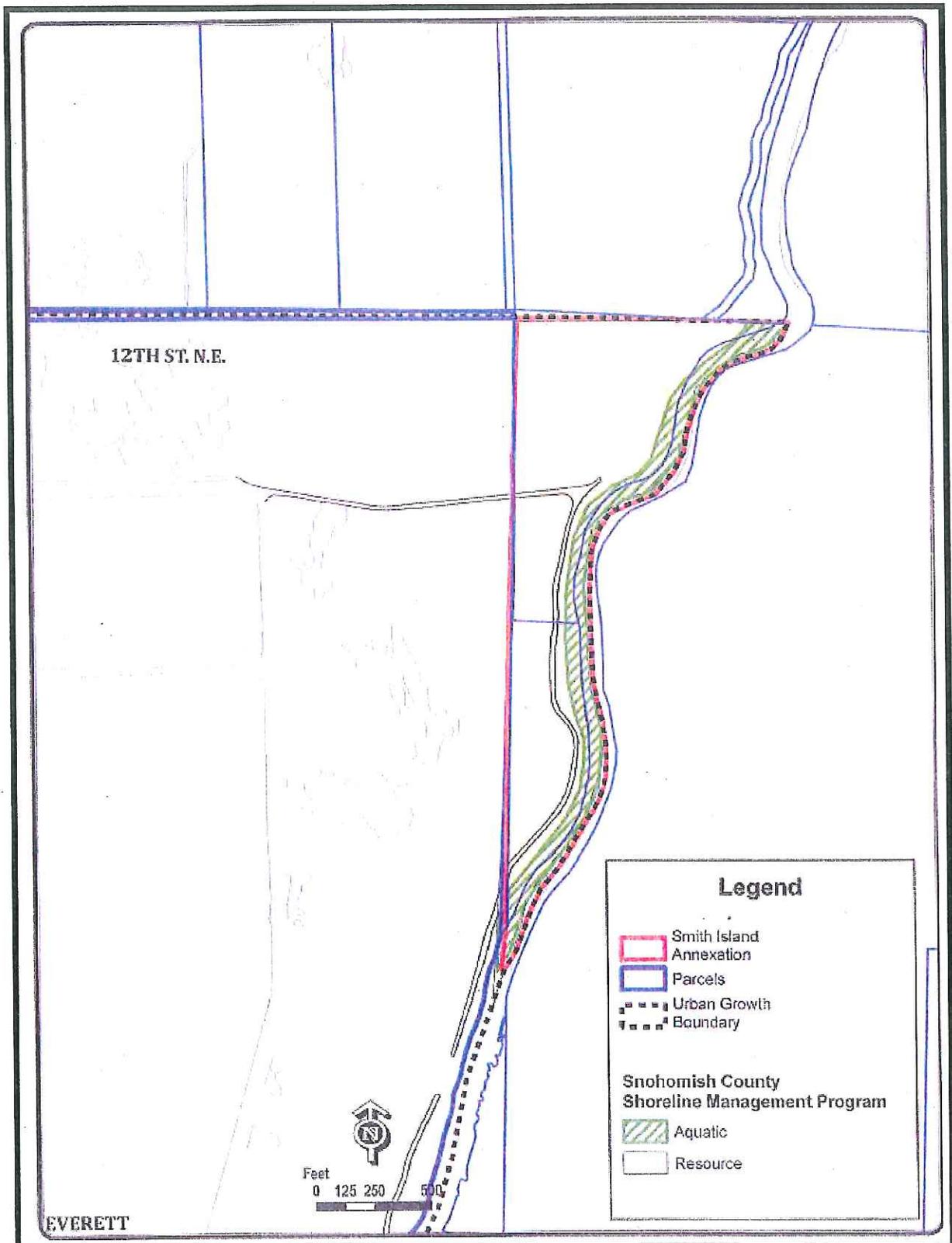
Passed: _____

Valid: _____

Published: _____

Effective Date: _____

Exhibit A
Smith Island Municipal Annexation Area Shoreline Master Program Designations



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16

<u>07/27/16</u>	Briefing
	Proposed
	Action
	Consent
<u>08/10/16</u>	Action
<u>07/27/16</u>	First Reading
<u>08/03/16</u>	Second Reading
<u>08/10/16</u>	Third Reading
	Public Hearing

COUNCIL BILL #
 Originating Department
 Contact Person
 Phone Number
 FOR AGENDA OF

CB1607-34
 Human Resources
 Megan Munro
 425-257-8775
 July 27, 2016
 August 3, 2016
 August 10, 2016

Initialed by:
 Department Head
 CAA
 Council President

do
lm

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Ordinance	<u>Department(s) Approval</u> Legal, Police, Public Works, Code Enforcement, Planning, Human Resources
-----------------	-------------------------	---------------------------------	---

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

DETAILED SUMMARY STATEMENT:

The purpose of this proposed ordinance is to amend chapter 20.08 EMC (Everett Municipal Code chapter relating to noise) with a comprehensive update to repeal outdated regulations and meet changes in state law, in the American National Standards Institute specifications, and in the Noise Control Districts in the City. It also clarifies noise control enforcement and variance procedures, including the authority of the noise control administrator, code enforcement, and police officers.

The current draft of this proposed ordinance has been approved by the Department of Ecology to ensure that it meets state law requirements. All changes to the proposed ordinance will need to be reviewed and approved by the Department of Ecology prior to enactment (approximately 60 days).

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16.

ORDINANCE No. _____

**AN ORDINANCE Relating to Noise, Amending Ordinance 534-78 as Amended
(Chapter 20.08 EMC) and Repealing Sections Under Section 16.**

Whereas, the City of Everett enacted a Noise Control Ordinance, Ordinance No. 534-78, on July 19, 1978 which established comprehensive noise control regulations in order to promote the use, value and enjoyment of property and environment by the citizens of Everett and the health, safety and welfare of the general public; and

Whereas, the City Council finds that a comprehensive update to the Noise Control Ordinance including repealing of outdated regulations is appropriate to reflect the present needs of the community, changes in the American National Standards Institute specifications, changes in state law, and updates to the Noise Control Districts; and

Whereas, updates to noise variance requirements and procedures will clarify the variance process and better serve variance applicants and the City; and

Whereas, updates clarifying the role of the noise control administrator, code enforcement, and the authority of police officers regarding noise control enforcement will benefit the general public by promoting such enforcement; and

Whereas, these proposed amendments promote the health, safety and welfare of the general public; and

Whereas, therefore, City Council finds it appropriate to update the Noise Control Ordinance as provided herein;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 of Ordinance No. 534-78 (EMC 20.08.010), which reads as follows:

Declaration of policy and Finding of Special Conditions.

- a. **DECLARATION OF POLICY.** It is hereby declared to be the policy of the City of Everett to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the City Council to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.

- b. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the Safety Director of Everett. On the basis of these studies the City Council hereby finds that special conditions exist within the City of Everett which make necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Be and the same is hereby amended to read as follows:

Declaration of policy—Findings of special conditions.

- A. DECLARATION OF POLICY. It is hereby declared to be the policy of the cCity of Everett to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the cCity cCouncil to control the level of noise and to promote and preserve the public health, safety, and welfare while affording protection to free speech activity as required by applicable constitutional law. It is the express intent of the cCity cCouncil to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; ~~and~~ the quality of the environment; and which enables all residents of the city to peacefully coexist in a manner which is mutually respectful of the interests and rights of others.
- B. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the Safety Director of Everett city. On the basis of these studiethis experience and knowledge of conditions within the city, the cCity cCouncil finds that special conditions exist within the cCity of Everett which makes necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Section 2. Section 2 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1556-89 (EMC 20.08.020), which reads as follows:

Definitions.

All technical terminology used in this chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971. For purposes of this chapter, the words and phrases used herein shall have the meaning indicated below:

- A. "Administrator" means the noise control administrator as established in Section 20.08.130.
- B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

C. "District" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-2, R-3(A), R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, B-2(A), B-2, B-2(B), B-3, C-1 and C-2.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M and M-1, and all other nonresidential, nonbusiness and noncommercially zoned districts.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.

F. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

G. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

- H. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)
- I. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.
- J. "Noise" means the intensity, duration and character of sounds from any and all sources.
- K. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16A.030.
- L. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.
- M. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.
- N. "Public nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of damage may be unequal.
- O. "Receiving property" means real property within which sound originating from sources outside the property is received.
- P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971.
- Q. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.
- R. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.
- S. "Weekend" means Saturday and Sunday or any legal holiday.

Be and the same is hereby amended to read as follows:

Definitions.

All technical terminology used in this ~~ordinance chapter~~ not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, ~~Section 1.1-1960 and~~ Section 1.4-~~1971~~2014 ~~as it currently exists or is later amended~~. For purposes of this ~~chapter ordinance~~, the words and phrases used herein shall have the meaning indicated below:

- A. "Administrator" means the noise control administrator as established in Section 20.08.130, or designee.
- B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.
- C. "District" means the land use zones to which the provisions of this ~~chapter ordinance~~ are applied. For the purposes of this ~~chapter ordinance~~ the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, <u>R-1A</u> , R-2, <u>R-2A</u> , <u>R-3(A)</u> , <u>R-3L</u> , R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, <u>B-2(A)</u> , B-2, <u>B-2(B)</u> , B-3, <u>BMU</u> , <u>E1</u> , <u>E-1MUO</u> , C-1, <u>C-1R</u> , and C-2 and C-2ES .
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M , and M-1 , <u>M-S</u> , <u>W-C</u> and all other nonresidential, nonbusiness and noncommercially zoned districts.

For any land use zone not listed in subsection C of this section, the Administrator may determine that the zone is substantially similar to a zone listed in subsection C and may classify it similarly for purposes of this ordinance.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

~~E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.~~

~~F.E.~~ _____ "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

~~G.F.~~ _____ "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

~~H.G.~~ _____ "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)

~~I.H.~~ _____ "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.

~~J.I.~~ "Noise" means the intensity, duration and character of sounds from any and all sources.

~~K.J.~~ _____ "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16A.030.

~~L.K.~~ _____ "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

~~L.~~ _____ "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.

- M. “Public Highway” means the entire width between the boundary lines of every way publicly maintained by the department of highways or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right.
- N. “Public nuisance noise” means any sound which ~~unreasonably either~~ annoys, injures, interferes with or endangers the comfort, repose, health or safety of ~~three or more persons residing within separate residences in the same community or neighborhood, an entire community or neighborhood~~ although the extent of the damage may be unequal.
- O. “Receiving property” means real property within which sound originating from sources outside the property boundary is received.
- P. “Sound level” means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-~~1971~~2014.
- P.Q. “Sound Level Measurement Procedures” means standardized procedures for the measurement of sound levels of sources regulated by this ordinance and performed in accordance with the Washington State Department of Ecology rules WAC 173-58.
- R. “Sound level meter” means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-~~1971~~2014.
- S. “Temporary Construction Site” means any location where site clearing, construction of plat improvements, or construction or remodeling of a structure, facility, improvement or other feature attached to the land occurs. This includes roadway, bikeway, trail, sidewalk or other similar construction, repair or improvement.
- Q.T. “WAC” means the Washington Administrative Code as currently enacted or hereafter amended.
- R.U. “Watercraft” means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.
- S.V. “Weekend” means Saturday and Sunday or any legal holiday observed by the State of Washington.

Section 3. Section 3(a) of Ordinance No. 534-78 (EMC 20.08.030), which reads as follows:

Environmental Sound Levels. UNLAWFUL SOUNDS. It is unlawful for any person to cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below.

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. UNLAWFUL SOUNDS. Environmental sound—Unlawful sounds designated.~~

It is unlawful for any person to cause or permit noise to intrude into the real property of another person which noise exceeds the maximum permissible noise sound pressure levels set forth below in this ordinance.

Section 4. Section 3(b) of Ordinance No. 534-78 (EMC 20.08.040), which reads as follows:

Environmental Sound Levels. MAXIMUM PERMISSIBLE NOISE LEVELS. For sound sources located within the City of Everett the maximum permissible noise levels are as follows:

District Sound Source	District of Receiving Property Within the City of Everett		
	I	II	III
I	55 dB(A)	57 dB(A)	60 dB(A)
II	57 dB(A)	60 dB(A)	65 dB(A)
III	60 dB(A)	65 dB(A)	70 dB(A)

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MAXIMUM PERMISSIBLE NOISE LEVELS.
Environmental sound—Maximum permissible levels.~~

For sound sources located within the City of Everett the maximum permissible noise levels are as follows:

District Sound Source	District of Receiving Property Within the City of Everett		
	I	II	III
I	55 dB(A)	57 dB(A)	60 dB(A)
II	57 dB(A)	60 dB(A)	65 dB(A)
III	60 dB(A)	65 dB(A)	70 dB(A)

Where a receiving property lies within more than one district, the most restrictive maximum permissible noise level shall apply to the receiving property.

Section 5. Section 3(c) of Ordinance No. 534-78 (EMC 20.08.050), which reads as follows:

Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS. The maximum permissible noise levels established by this section shall be modified, reduced or increased as follows:

1. Between the hours of 10:00 p.m. and 7:00 a.m. during weekdays, and between the hours of 10:00 p.m. and 9:00 a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by 10 dB(A) where the receiving property lies within District I of the City of Everett.
2. At any hour of the day or night, for any source of sound which is of short duration, the levels established by this chapter are increased by: 5 dB(A) for a total of 15 minutes in any one-hour period; or 10 dB(A) for a total of 5 minutes in any one-hour period; or 15 dB(A) for a total of 1.5 minutes in any one-hour period.
3. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS. Environmental sound—Modifications to maximum permissible noise levels.~~

The maximum permissible ~~noise-sound~~ levels established by this ~~section-ordinance~~ shall be modified, reduced or increased as follows:

A. Between the hours of ~~10:00~~ten p.m. and ~~7:00~~seven a.m. during weekdays, and between the hours of ~~10:00~~ten p.m. and ~~9:00~~nine a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by ~~10~~ten dB(A) where the receiving property lies within District I of the City of Everett.

B. At any hour of the day or night, for any source of sound which is of short duration, the levels established by this ~~chapter-ordinance~~ are increased by:

1. 5-Five dB(A) for a total of ~~15~~fifteen minutes in any one-hour period;
or
2. 10-Ten dB(A) for a total of ~~5~~five minutes in any one-hour period; or
B. 3. 15-Fifteen dB(A) for a total of 1.5 minutes in any one-hour period.

~~C. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.~~

Section 6. Section 4(a) of Ordinance No. 534-78 (EMC 20.08.060), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS. It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures established by the State Commission on equipment in WAC 204-56.

VEHICLE CATEGORY 35 MPH or Less Over 35 MPH

VEHICLE CATEGORY	35 MPH or Less	Over 35 MPH
Motor vehicles over 10,000 pounds GVWR or GCWR	86 dB(A)	90 dB(A)
Motorcycles	80 dB(A)	84 dB(A)
All other motor vehicles	76 dB(A)	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS. Motor vehicle noise—Maximum permissible levels.~~

It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures ~~established by the State Commission on equipment in WAC 204-56 set forth in chapter 173-62 WAC~~ "Motor Vehicle Noise Performance Standards" including:-

<u>VEHICLE CATEGORY</u> <u>Vehicle Category Type</u>	<u>35 45 MPH or Less</u>	<u>Over 35 45 MPH</u>
Motor vehicles over 10,000 pounds GVWR or <u>GCWR</u>	86 dB(A)	90 dB(A)
Motorcycles	<u>80-78</u> dB(A)	<u>84 82</u> dB(A)
All other motor vehicles	<u>76 72</u> dB(A)	<u>80 78</u> dB(A)

Section 7. Section 4(b) of Ordinance No. 534-78 (EMC 20.08.070), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES. It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures established by the State Commission on equipment in WAC 204-56.

Vehicle Category

Motorcycles manufactured after 1975	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after 1975	86 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1978	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1982	80 dB(A)
All other motor vehicles	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES. Motor vehicle noise—Maximum levels for new vehicles.~~

It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures ~~established by the State Commission on equipment in WAC 204-56~~ set forth in Chapter 173-62 WAC.

~~**Vehicle Category**~~

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16

07/27/16 Briefing
 Proposed Action
 Consent
08/10/16 Action
07/27/16 First Reading
08/03/16 Second Reading
08/10/16 Third Reading
 Public Hearing

COUNCIL BILL #
 Originating Department
 Contact Person
 Phone Number
 FOR AGENDA OF

CB1607-34
Human Resources
Megan Munro
425-257-8775
July 27, 2016
August 3, 2016
August 10, 2016

Initialed by:
 Department Head
 CAA
 Council President



<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Ordinance	<u>Department(s) Approval</u> Legal, Police, Public Works, Code Enforcement, Planning, Human Resources
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Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The purpose of this proposed ordinance is to amend chapter 20.08 EMC (Everett Municipal Code chapter relating to noise) with a comprehensive update to repeal outdated regulations and meet changes in state law, in the American National Standards Institute specifications, and in the Noise Control Districts in the City. It also clarifies noise control enforcement and variance procedures, including the authority of the noise control administrator, code enforcement, and police officers.

The current draft of this proposed ordinance has been approved by the Department of Ecology to ensure that it meets state law requirements. All changes to the proposed ordinance will need to be reviewed and approved by the Department of Ecology prior to enactment (approximately 60 days).

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16.

ORDINANCE No. _____

AN ORDINANCE Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16.

Whereas, the City of Everett enacted a Noise Control Ordinance, Ordinance No. 534-78, on July 19, 1978 which established comprehensive noise control regulations in order to promote the use, value and enjoyment of property and environment by the citizens of Everett and the health, safety and welfare of the general public; and

Whereas, the City Council finds that a comprehensive update to the Noise Control Ordinance including repealing of outdated regulations is appropriate to reflect the present needs of the community, changes in the American National Standards Institute specifications, changes in state law, and updates to the Noise Control Districts; and

Whereas, updates to noise variance requirements and procedures will clarify the variance process and better serve variance applicants and the City; and

Whereas, updates clarifying the role of the noise control administrator, code enforcement, and the authority of police officers regarding noise control enforcement will benefit the general public by promoting such enforcement; and

Whereas, these proposed amendments promote the health, safety and welfare of the general public; and

Whereas, therefore, City Council finds it appropriate to update the Noise Control Ordinance as provided herein;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 of Ordinance No. 534-78 (EMC 20.08.010), which reads as follows:

Declaration of policy and Finding of Special Conditions.

- a. **DECLARATION OF POLICY.** It is hereby declared to be the policy of the City of Everett to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the City Council to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.

- b. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the Safety Director of Everett. On the basis of these studies the City Council hereby finds that special conditions exist within the City of Everett which make necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Be and the same is hereby amended to read as follows:

Declaration of policy—Findings of special conditions.

- A. DECLARATION OF POLICY. It is hereby declared to be the policy of the cCity of Everett to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the cCity cCouncil to control the level of noise and to promote and preserve the public health, safety, and welfare while affording protection to free speech activity as required by applicable constitutional law. It is the express intent of the cCity cCouncil to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; ~~and~~ the quality of the environment; and which enables all residents of the city to peacefully coexist in a manner which is mutually respectful of the interests and rights of others.
- B. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the ~~Safety Director of Everett city~~. On the basis of these studies this experience and knowledge of conditions within the city, the cCity cCouncil finds that special conditions exist within the cCity of Everett which makes necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Section 2. Section 2 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1556-89 (EMC 20.08.020), which reads as follows:

Definitions.

All technical terminology used in this chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971. For purposes of this chapter, the words and phrases used herein shall have the meaning indicated below:

- A. "Administrator" means the noise control administrator as established in Section 20.08.130.
- B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

- C. "District" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-2, R-3(A), R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, B-2(A), B-2, B-2(B), B-3, C-1 and C-2.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M and M-1, and all other nonresidential, nonbusiness and noncommercially zoned districts.

- D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.
- E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.
- F. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.
- G. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

- H. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)
- I. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.
- J. "Noise" means the intensity, duration and character of sounds from any and all sources.
- K. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16A.030.
- L. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.
- M. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.
- N. "Public nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of damage may be unequal.
- O. "Receiving property" means real property within which sound originating from sources outside the property is received.
- P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971.
- Q. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.
- R. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.
- S. "Weekend" means Saturday and Sunday or any legal holiday.

Be and the same is hereby amended to read as follows:

Definitions.

All technical terminology used in this ordinance chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971/2014 as it currently exists or is later amended. For purposes of this chapter ordinance, the words and phrases used herein shall have the meaning indicated below:

- A. "Administrator" means the noise control administrator as established in Section 20.08.130, or designee.
- B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.
- C. "District" means the land use zones to which the provisions of this chapter ordinance are applied. For the purposes of this chapter ordinance the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, <u>R-1A</u> , R-2, <u>R-2A</u> , R-3(A), <u>R-3L</u> , R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, <u>B-2(A)</u> , B-2, <u>B-2(B)</u> , B-3, <u>BMU, E1, E-1MUO, C-1, C-1R, and C-2 and C-2ES.</u>
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M, <u>and M-1, M-S, W-C</u> and all other nonresidential, nonbusiness and noncommercially zoned districts.

For any land use zone not listed in subsection C of this section, the Administrator may determine that the zone is substantially similar to a zone listed in subsection C and may classify it similarly for purposes of this ordinance.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

~~E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.~~

~~F.E.~~ _____ "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

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- P.Q. “Sound Level Measurement Procedures” means standardized procedures for the measurement of sound levels of sources regulated by this ordinance and performed in accordance with the Washington State Department of Ecology rules WAC 173-58.
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- S. “Temporary Construction Site” means any location where site clearing, construction of plat improvements, or construction or remodeling of a structure, facility, improvement or other feature attached to the land occurs. This includes roadway, bikeway, trail, sidewalk or other similar construction, repair or improvement.
- Q.T. “WAC” means the Washington Administrative Code as currently enacted or hereafter amended.
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Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. UNLAWFUL SOUNDS. Environmental sound—Unlawful sounds designated.~~

It is unlawful for any person to cause or permit noise to intrude into the real property of another person which noise exceeds the maximum permissible noise sound pressure levels set forth below in this ordinance.

Section 4. Section 3(b) of Ordinance No. 534-78 (EMC 20.08.040), which reads as follows:

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II	57 dB(A)	60 dB(A)	65 dB(A)
III	60 dB(A)	65 dB(A)	70 dB(A)

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MAXIMUM PERMISSIBLE NOISE LEVELS.
Environmental sound—Maximum permissible levels.~~

For sound sources located within the City of Everett the maximum permissible noise levels are as follows:

District Sound Source	District of Receiving Property Within the City of Everett		
	I	II	III
I	55 dB(A)	57 dB(A)	60 dB(A)
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III	60 dB(A)	65 dB(A)	70 dB(A)

Where a receiving property lies within more than one district, the most restrictive maximum permissible noise level shall apply to the receiving property.

Section 5. Section 3(c) of Ordinance No. 534-78 (EMC 20.08.050), which reads as follows:

Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS. The maximum permissible noise levels established by this section shall be modified, reduced or increased as follows:

1. Between the hours of 10:00 p.m. and 7:00 a.m. during weekdays, and between the hours of 10:00 p.m. and 9:00 a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by 10 dB(A) where the receiving property lies within District I of the City of Everett.
2. At any hour of the day or night, for any source of sound which is of short duration, the levels established by this chapter are increased by: 5 dB(A) for a total of 15 minutes in any one-hour period; or 10 dB(A) for a total of 5 minutes in any one-hour period; or 15 dB(A) for a total of 1.5 minutes in any one-hour period.
3. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS. Environmental sound—Modifications to maximum permissible noise levels.~~

The maximum permissible ~~noise sound~~ levels established by this ~~section ordinance~~ shall be modified, reduced or increased as follows:

A. Between the hours of ~~10:00~~ten p.m. and ~~7:00~~seven a.m. during weekdays, and between the hours of ~~10:00~~ten p.m. and ~~9:00~~nine a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by ~~10~~ten dB(A) where the receiving property lies within District I of the City of Everett.

~~B.~~ At any hour of the day or night, for any source of sound which is of short duration, the levels established by this ~~chapter ordinance~~ are increased by:

1. ~~5~~Five dB(A) for a total of ~~15~~fifteen minutes in any one-hour period;
- or
2. ~~10~~Ten dB(A) for a total of ~~5~~five minutes in any one-hour period; or
- ~~B.~~ 3. ~~15~~Fifteen dB(A) for a total of 1.5 minutes in any one-hour period.

~~C. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.~~

Section 6. Section 4(a) of Ordinance No. 534-78 (EMC 20.08.060), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS. It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures established by the State Commission on equipment in WAC 204-56.

VEHICLE CATEGORY	35 MPH or Less	Over 35 MPH
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VEHICLE CATEGORY	35 MPH or Less	Over 35 MPH
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All other motor vehicles	76 dB(A)	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS. Motor vehicle noise—Maximum permissible levels.~~

It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures ~~established by the State Commission on equipment in WAC 204-56 set forth in chapter 173-62 WAC~~ “Motor Vehicle Noise Performance Standards” including:-

VEHICLE CATEGORY <u>Vehicle</u> <u>Category Type</u>	35 <u>45</u> MPH or Less	Over 35 <u>45</u> MPH
Motor vehicles over 10,000 pounds GVWR or <u>GCWR</u>	86 dB(A)	90 dB(A)
Motorcycles	80-78 <u>80</u> dB(A)	84 <u>82</u> dB(A)
All other motor vehicles	76 <u>72</u> dB(A)	80 <u>78</u> dB(A)

Section 7. Section 4(b) of Ordinance No. 534-78 (EMC 20.08.070), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES. It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures established by the State Commission on equipment in WAC 204-56.

Vehicle Category

Motorcycles manufactured after 1975	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after 1975	86 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1978	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1982	80 dB(A)
All other motor vehicles	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES. Motor vehicle noise—Maximum levels for new vehicles.~~

It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures ~~established by the State Commission on equipment in WAC 204-56~~ set forth in Chapter 173-62 WAC.

~~Vehicle Category~~

Vehicle Category

Motorcycles manufactured after 1975—	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after 1975—	86 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1978—	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1982—	80 dB(A)
All other motor vehicles—	80 dB(A)

<u>Vehicle Category</u>	<u>Date of Manufacture</u>	<u>Maximum Sound</u>
<u>Any motor vehicle over 10,000 pounds GVWR excluding buses</u>	<u>Before January 1, 1978</u>	<u>86 dBA</u>
<u>Any motor vehicle over 10,000 pounds GVWR excluding buses</u>	<u>After January 1, 1978</u>	<u>83 dBA</u>
<u>Any motor vehicle over 10,000 pounds GVWR excluding buses</u>	<u>After January 1, 1982</u>	<u>80 dBA</u>
<u>All buses over 10,000 pounds GVWR</u>	<u>After January 1, 1980</u>	<u>85 dBA</u>
<u>All buses over 10,000 pounds GVWR</u>	<u>After January 1, 1983</u>	<u>83 dBA</u>
<u>All buses over 10,000 pounds GVWR</u>	<u>After January 1, 1986</u>	<u>80 dBA</u>
<u>Any motor vehicle 10,000 pounds GVWR or less</u>	<u>After January 1, 1976</u>	<u>80 dBA</u>
<u>Motorcycles</u>	<u>After January 1, 1976</u>	<u>83 dBA</u>
<u>Motorcycles</u>	<u>After January 1, 1986</u>	<u>80 dBA</u>

Section 8. Section 4(c) of Ordinance No. 534-78 (EMC 20.08.080), which reads as follows:

Motor Vehicle Noise Levels. SPECIFIC PROHIBITIONS.

1. MUFFLERS. Every motor vehicle operated upon the public highways shall at all times be equipped with a muffler in good working order and constant operation.
2. TIRE NOISE. It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, provided that noise resulting from emergency braking to avoid imminent danger shall be exempt from this section.
3. ALTERATION OF MOTOR VEHICLES. It is unlawful for any person to change or modify any part of a motor vehicle or install any device thereon in any manner that permits sound to be emitted by the motor vehicle in excess of the limits prescribed in Section 4(a) and (b) of this chapter.

Be and the same is hereby amended to read as follows:

Motor Vehicle Noise Levels. ~~SPECIFIC PROHIBITIONS~~ Specific Prohibitions.

- A. ~~MUFFLERS~~ Mufflers and Exhaust Systems. Every motor vehicle operated upon the public highways shall at all times be equipped with an exhaust system and a muffler in good working order and constant operation to prevent excessive or unusual noise.
- B. ~~TIRE NOISE~~ Tire Noise. It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound noise from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, provided except that noise resulting from emergency braking to avoid imminent danger shall be exempt from this section.
- C. ~~ALTERATION OF MOTOR VEHICLES~~ Alteration of Motor Vehicles. It is unlawful for any person to change or modify any part of a motor vehicle or install any device thereon in any manner that permits sound to be emitted by the motor vehicle in excess of the limits prescribed in Section 4(a) and (b) Sections 20.08.060 and 20.08.070 of this chapter.
- D. Violation of this section is a misdemeanor.

Section 9. Section 5 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1971-93, as amended by Section 11 of Ordinance 2394-99 (EMC 20.08.090), which reads as follows:

Public nuisance and disturbance noises.

- A. Public Nuisance Noises. Pursuant to Section 20.08.200 of this chapter, the administrator may determine that a sound constitutes a public nuisance noise as defined herein. It is unlawful for any person to cause or allow to be emitted a noise which has been determined a public nuisance noise.
- B. Public Disturbance Noises. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance. No sound source specifically exempted from a maximum permissible sound level by this chapter shall be a public nuisance noise or public disturbance noise insofar as the particular source is exempted. The following sources of sound shall be public disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050:
1. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
 2. The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within District I so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;
 3. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;
 4. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;
 5. The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium, which unreasonably interferes with the peace, comfort and repose of owners or

possessors of real property, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings;

6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator;
7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator; and
8. The foregoing provisions shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.

Be and the same is hereby amended to read as follows:

Public nuisance and disturbance noises.

- A. Public Nuisance Noises. Pursuant to Section 20.08.200 of this chapter, the administrator may determine that a sound constitutes a public nuisance noise as defined herein. It is unlawful for any person to cause or allow to be emitted a noise which has been determined a public nuisance noise.
- B. Public Disturbance Noises Originating from Real or Personal Property. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance. No sound source specifically exempted from a maximum permissible sound level by this chapter shall be a public nuisance noise or public disturbance noise insofar as the particular source is exempted. The following sources of sound shall be public disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050: Unless specifically exempted, public disturbance noises emanating from real or personal property possessed or controlled by the person causing or permitting the public disturbance noise are prohibited at all times. These include but are not limited to the following sounds if the sound is plainly audible across a real property line or 50 feet from the source, whichever is less.
 1. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law; The frequent, repetitive and/or continuous sounding of any horn, siren or alarm attached to a motor vehicle, except when used as a warning of danger or as specifically permitted or required by law.

- ~~2. The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within District I so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property; The frequent, repetitive and/or continuous sounds in connection with the starting, operation, repair and/or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine.~~
- ~~3. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;~~
- ~~4. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;~~
- ~~5.3. _____ The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium, which unreasonably interferes with the peace, comfort and repose of owners or possessors of real property, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings; The creation of frequent, repetitive and/or continuous sounds which emanate from real property possessed or controlled by the person causing or permitting the sound, such as sounds from audio equipment, television, video equipment, musical instruments, band sessions and/or social gatherings.~~
- ~~6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator;~~
- ~~7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator; and~~
- ~~8. The foregoing provisions shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.~~
4. Violation of this section is a misdemeanor.

C. Public Disturbance Noises Originating from Public Property. Unless specifically exempted, public disturbance noises originating from a person or personal property while on public property or a public right-of-way are prohibited at all times. In addition to public disturbance noises defined in subsection B herein, the following are public disturbance noises:

1. A person or performer creating a sound, whether amplified or unamplified, between the hours of ten p.m. and seven a.m. so as to be plainly audible across a real property boundary which is not the source of sound;
2. A person or performer creating a sound, whether amplified or unamplified, between the hours of seven a.m. and ten p.m. so as to be plainly audible 100 feet or more from the source of the sound;
3. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;
4. Sound from the frequent, repetitive and/or continuous operating or playing of motor vehicle audio equipment, whether portable or stationary or mounted on or within a motor vehicle.
5. Violation of this section is a misdemeanor.

D. It is unlawful to intentionally fail to cease a public disturbance noise when directed to do so by a law enforcement officer. The content of the sound will not be considered in determining any violation of this section. Violation of this section is a misdemeanor.

Section 10. Section 6(a-b) of Ordinance No. 534-78, as amended by Sections 1-3 of Ordinance No. 564-78, as amended by Section 2 of Ordinance No. 1556-89, as amended by Section 2 of Ordinance 1971-93 (EMC 20.08.100), which reads as follows:

Noises exempt—At all times—Partially exempt noises.

- A. The following noises are exempt from the provisions of this chapter at all times: provided, that nothing in these exemptions is intended to preclude the administrator from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, Chapter 34.04 RCW:

1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;
 2. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety release intent of the device;
 3. Noise created by fire alarms;
 4. Noise created by emergency equipment, including, but not limited to, emergency standby or backup equipment, and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community; and including, but not limited to, any emergency work necessary to replace or repair essential utility services;
 5. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;
 6. Noise originating from officially sanctioned parades, sporting events and other public events;
 7. Noise created by warning devices not operated continuously for more than thirty minutes per incident;
 8. Noise created by motor vehicles when regulated by Sections 20.08.060 through 20.08.080;
 9. Noise caused by natural phenomena;
 10. Noise created by motor vehicles, licensed or unlicensed, when operated off public highways except when such sounds are received in District I of the city;
 11. Noise originating from existing natural gas transmission facilities until such time as the state sets regulations governing said facilities.
- B. The following sources of noise are exempt or partially exempt from the provisions of this chapter:
1. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;
 2. Noise created by watercraft and float planes;
 3. Noise emanating from temporary construction sites except between the hours of ten p.m. and seven a.m.; provided, however, noise emanating

from temporary construction sites is exempt or partially exempt from the provisions of this chapter except between the hours of ten p.m. and seven a.m. on weekdays and six p.m. and eight a.m. on Saturdays, Sundays and state recognized holidays if the receiving property is located within District I of the city;

4. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city;
 5. Noise created by aircraft-engine testing and maintenance not related to flight operations, except between the hours of ten p.m. and seven a.m.;
 6. Noise originating from motor vehicle racing events at existing authorized facilities.
- C. It is the intention of the city council to consider amendments to this chapter controlling the sources exempted in subsection B of this section after the State Department of Ecology promulgates specific regulations relating to these sources in the future.

Be and the same is hereby amended to read as follows:

Noises exempt—At all times—~~Partially exempt noises.~~

- A. ~~The following noises are exempt from the provisions of this chapter at all times: provided, that nothing in these exemptions is intended to preclude the administrator from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, Chapter 34.04 RCW: The following noises are exempt at all times from this chapter.~~
1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;
 2. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;
 3. Noises created on property of federal military facilities;
 - 1.4. Noise created by watercraft and float planes in operation;
 - 2.5. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety release intent of the device;

~~3.6.~~ Noise created by fire alarms being used for its intended purpose;

~~4.7.~~ Noise created by emergency equipment, including, but not limited to, emergency standby or backup equipment, and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community; and including, but not limited to, any emergency work necessary to replace or repair essential utility services;

~~5.8.~~ Noise created by auxiliary equipment on motor vehicles used for highway maintenance;

~~6.9.~~ Noise originating from officially sanctioned parades, sporting events and other public events;

~~7.~~ Noise created by warning devices not operated continuously for more than thirty minutes per incident;

~~8-10.~~ Noise created by motor vehicles when regulated by Sections 20.08.060 through 20.08.080;

~~9-11.~~ Noise caused by natural phenomena;

~~10-12.~~ Noise created by motor vehicles, licensed or unlicensed, when operated off public highways except when such sounds are received in District I of the city; Noise originating from motor vehicle racing events at existing authorized facilities;

~~13.~~ Noise originating from existing natural gas transmission facilities until such time as the state sets regulations governing said facilities. Noise created by existing stationary equipment used in the conveyance of water by a utility and noise created by existing electrical substations.

~~11-14.~~ Noises in compliance with a lawfully issued conditional use permit or SEPA determination.

~~B.~~ The following sources of noise are exempt or partially exempt from the provisions of this chapter:

~~1.~~ Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;

~~2.~~ Noise created by watercraft and float planes;

~~3.~~ Noise emanating from temporary construction sites except between the hours of ten p.m. and seven a.m.; provided, however, noise emanating

~~from temporary construction sites is exempt or partially exempt from the provisions of this chapter except between the hours of ten p.m. and seven a.m. on weekdays and six p.m. and eight a.m. on Saturdays, Sundays and state recognized holidays if the receiving property is located within District I of the city;~~

~~4. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city;~~

~~5. Noise created by aircraft engine testing and maintenance not related to flight operations, except between the hours of ten p.m. and seven a.m.;~~

~~6. Noise originating from motor vehicle racing events at existing authorized facilities.~~

~~C. It is the intention of the city council to consider amendments to this chapter controlling the sources exempted in subsection B of this section after the State Department of Ecology promulgates specific regulations relating to these sources in the future.~~

Section 11. Section 6(c) of Ordinance No. 534-78 (EMC 20.08.110), which reads as follows:

NOISES EXEMPT DURING DAYTIME HOURS. The following noises shall be exempt from the provisions of this chapter between the hours of 7:00 a.m. and 10:00 p.m. on weekdays and 9:00 a.m. and 10:00 p.m. on weekends:

1. Noise created by powered equipment used in temporary or periodic maintenance or repair of residential property, including but not limited to grounds and appurtenances, such as lawn mowers, powered hand tools, and composters;
2. Noise created by the discharge of firearms on authorized shooting ranges;
3. Noise created by the installation or repair of essential utility services;
4. Noise created by blasting;
5. Noise created by bells, chimes or carillons not operating for more than five minutes in any one hour;
6. Noise originating from forest harvesting and silvicultural activity.

Be and the same is hereby amended to read as follows:

~~**NOISES EXEMPT DURING DAYTIME HOURS**~~Noises Exempt During Daytime Hours.
The following noises shall be exempt from the provisions of this chapter between the

hours of ~~7:00~~seven a.m. and ~~10:00~~ten p.m. on weekdays and ~~9:00~~nine a.m. and ~~10:00~~ten p.m. on weekends and holidays:

A. Noise created by powered equipment used in temporary or periodic maintenance or repair of residential property, ~~including but not limited to grounds and appurtenances, such as lawn mowers, powered hand tools, and composters;~~

~~A.B.~~ Noise created by aircraft-engine testing and maintenance not related to flight operations.

~~B.C.~~ _____ Noise created by the discharge of firearms on authorized shooting ranges;

~~C.D.~~ _____ Noise created by the installation or repair of essential utility services;

~~D.E.~~ _____ Noise created by blasting;

~~E.F.~~ _____ Noise created by bells, chimes or carillons not operating for more than five minutes in any one hour;

G. Noise originating from forest harvesting and silvicultural activity.

H. Noise originating from temporary construction sites, excepting that noise from a temporary construction site that is received in a District 1 property is exempt between seven a.m. and ten p.m. on weekdays and between eight a.m. and six p.m. on weekends and holidays.

F.I. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city.

Section 12. Section 7 of Ordinance No. 534-78 (EMC 20.08.130), which reads as follows:

Administrator.

A. ESTABLISHMENT. The position of Administrator is hereby established. The Administrator is authorized and directed to administer and enforce the provisions of this ordinance.

B. QUALIFICATIONS OF ADMINISTRATOR. The Administrator shall be a person having a working knowledge of acoustics and competent in the field of noise control. The Administrator shall have completed instructional guidance provided by the State Department of Ecology or other recognized institution to operate

Type I and Type II sound level meters, and make all computations and calculations necessary to enforce this ordinance.

C. DUTIES OF ADMINISTRATOR. The duties of the Administrator shall include but are not limited to:

1. Obtaining assistance from other appropriate City departments and officials.
2. Training police officers and staff.
3. Purchasing measuring instruments and training inspectors in their calibration and use.
4. To establish a noise control field procedures manual providing techniques and procedures for measuring or reducing noise and to provide for clarification, interpretation and implementation of this ordinance.
5. Investigating citizens' noise complaints.
6. Issuing orders for the reduction or elimination of noise in accordance with Section 11 of this ordinance.
7. Granting or denying variances according to procedures specified in Section 9.
8. Assisting citizens and City departments in evaluating and reducing the noise impact of their activities.
9. Assisting City planning officials in evaluating the noise component in planning and zoning actions.
10. Develop a generalized sound exposure map of the City; a long term plan for achieving quiet in the City, and with the approval of the City Council, integrating this plan into the planning process of the City;
11. Instituting a public education program on noise;
12. Reviewing at least every three years the provisions of this ordinance and recommending revisions consistent with technology to reduce noise.

Be and the same is hereby amended to read as follows:

Administrator established—Qualifications, powers and duties.

- A. ~~ESTABLISHMENT. Establishment.~~ The position of ~~a~~Administrator is hereby established. The ~~a~~Administrator ~~or her designee~~ is authorized ~~and directed~~ to administer and enforce the provisions of this ordinance.
- B. ~~QUALIFICATIONS OF ADMINISTRATOR. Qualifications of Administrator.~~ ~~The Administrator shall be a person having a working knowledge of acoustics and competent in the field of noise control.~~ The ~~a~~Administrator shall ~~have completed instructional guidance~~ be qualified to perform and interpret sound level measurements consistent with guidance provided by the State Department of Ecology or other recognized institution to operate Type I and Type II sound level meters, and make all computations and calculations necessary to enforce this ordinance.
- C. ~~DUTIES OF ADMINISTRATOR. Authority of Administrator.~~ The ~~duties~~ authority of the ~~a~~Administrator shall include but ~~are~~ is not limited to:
1. Promulgate rules and regulations consistent with the terms of this ordinance and reasonably necessary to implement the provisions of this ordinance;
 - 1.2. _____ Obtaining assistance from other appropriate ~~c~~City departments and officials to effectively administer this noise ordinance;
 - 2.3. _____ Training police officers and staff in noise ordinance enforcement;
 - 3.4. _____ Purchasing and maintaining sound measuring instruments equipment and training inspectors city staff in their calibration and use;
 - ~~4. To establish a noise control field procedures manual providing techniques and procedures for measuring or reducing noise and to provide for clarification, interpretation and implementation of this ordinance.~~
 5. Investigating citizens' noise complaints;
 - ~~6. Issuing orders for the reduction or elimination of noise in accordance with Section 11 of this ordinance.~~
 - 7.6. _____ Granting or denying variances according to procedures specified in Section 9. set forth in this ordinance;
 - 8.7. _____ Assisting ~~citizens and~~ ~~C~~city departments in evaluating and reducing the noise impact of their activities;
 - ~~9. Assisting City planning officials in evaluating the noise component in planning and zoning actions.~~

~~10.8. _____ Develop a generalized sound exposure map of the City; a long term plan for achieving quiet in the City, and with the approval of the City Council, integrating this plan into the planning process of the City;~~

~~11. Instituting a public education program on noise; Providing public education and information regarding noise, this noise ordinance and City of Everett noise control districts;~~

~~12. Reviewing at least every three years the provisions of this ordinance and recommending revisions consistent with technology to reduce noise.~~

Section 13. Section 8 of Ordinance No. 534-78 (EMC 20.08.140), which reads as follows:

Measurement of Sound.

- a. If the measurements of sound are made with a sound level meter, it shall be an instrument in good operating condition meeting the requirements for a Type I or Type II instrument, as delineated in American National Standards Institute Specifications (ANSI) Section 1.4-1971. If the measurements are made with other instruments, or assemblages of instruments, the procedure must be carried out in such a manner that the overall accuracy shall be at least that called for in Section 1.4-1971 ANSI for Type II instruments.
- b. When the location, distance, or technique for measurement of sound is impractical or would yield misleading or inaccurate results, measurements shall be taken at other locations or distances utilizing appropriate correction factors, as specified in the rules promulgated by the Administrator.
- c. Where a receiving property is partly within one district and partly within another, the maximum permissible noise level at a point within the property boundary shall be that permitted into a receiving property wholly within the district in which the sound is measured.

Be and the same is hereby amended to read as follows:

Measurement of ~~s~~Sound.

- A. If the measurements of sound are made with a sound level meter, it shall be an instrument in good operating condition meeting the requirements for a Type I or Type II instrument, as delineated in American National Standards Institute Specifications (ANSI) Section 1.4-~~1971~~2014. ~~If the measurements are made with other instruments, or assemblages of instruments, the procedure must be carried out in such a manner that the overall accuracy shall be at least that called for in Section 1.4-1971 ANSI for Type II instruments.~~

- B. ~~When the location, distance, or technique for measurement of sound is impractical or would yield misleading or inaccurate results, measurements shall be taken at other locations or distances utilizing appropriate correction factors, as specified in the rules promulgated by the Administrator. Sound measurements shall be taken using the guidance of WAC 173-58 "Sound level measurement procedures" and using any additional methods recognized as best practice by the noise industry.~~
- C. ~~Where a receiving property is partly within one district and partly within another, the maximum permissible noise level at a point within the property boundary shall be that permitted into a receiving property wholly within the district in which the sound is measured. Any sound measurements performed by a third party may be considered by the noise administrator, provided they are in accordance with this section and performed by an individual trained to operate Type I and Type II sound level meters.~~

Section 14. Section 9 of Ordinance No. 534-78 (EMC 20.08.150), which reads as follows:

Variances.

- a. VARIANCE PROCEDURE.
1. Any person who owns or is in possession of any property or use, or any process or equipment, may make a request for a variance to the administrator as established in Section 7 for relief from any provision of this ordinance governing the quality, nature, duration or extent of discharge of noise. The application shall be accompanied by such information and data as the Administrator may require.
 2. The City Council shall promulgate, and the Administrator shall enforce the rules and regulations governing the application for and granting of such variances, including hearings and notice.
- b. A variance or its renewal shall not be the right of the applicant or holder thereof, but shall be at the reasonable discretion of the Administrator.
- c. No variance shall be granted pursuant to this section until the Administrator has considered the relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public.
- d. An implementation schedule for achieving compliance with this ordinance shall be incorporated into any variance granted.
- e. Variances granted pursuant to this ordinance may be renewed on terms and conditions and for periods which would be appropriate on the initial granting of a

variance. No renewal shall be granted except on application made at least sixty days prior to the expiration of the variance.

- f. Any person aggrieved by the denial, grant or terms and conditions on the grant of an application or renewal of a variance by the Administrator may appeal such decision under procedures set forth in Sections 10 of this ordinance.

Be and the same is hereby amended to read as follows:

Variances.

~~a. VARIANCE PROCEDURE.~~

- ~~1. Any person who owns or is in possession of any property or use, or any process or equipment, may make a request for a variance to the administrator as established in Section 7 for relief from any provision of this ordinance governing the quality, nature, duration or extent of discharge of noise. The application shall be accompanied by such information and data as the Administrator may require.~~
 - ~~2. The City Council shall promulgate, and the Administrator shall enforce the rules and regulations governing the application for and granting of such variances, including hearings and notice.~~
- ~~b. A variance or its renewal shall not be the right of the applicant or holder thereof, but shall be at the reasonable discretion of the Administrator.~~
 - ~~c. No variance shall be granted pursuant to this section until the Administrator has considered the relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public.~~
 - ~~d. An implementation schedule for achieving compliance with this ordinance shall be incorporated into any variance granted.~~
 - ~~e. Variances granted pursuant to this ordinance may be renewed on terms and conditions and for periods which would be appropriate on the initial granting of a variance. No renewal shall be granted except on application made at least sixty days prior to the expiration of the variance.~~
 - ~~f. Any person aggrieved by the denial, grant or terms and conditions on the grant of an application or renewal of a variance by the Administrator may appeal such decision under procedures set forth in Sections 10 of this ordinance.~~

A. A person may request a variance from compliance with this ordinance by making an application with the administrator at least thirty (30) days before the time period for the variance is to take effect. The application shall be in writing and shall be accompanied by a fee in the amount of One Hundred

Dollars (\$100). The variance may not be used for private activities (weddings, parties, etc.). The applicant shall explain the:

1. Nature of the noise.
2. Source of the noise.
3. Duration for which the noise will be created.
4. Time period for which the variance will be necessary.
5. Reason why the noise violation cannot be avoided, and
6. Mitigating conditions the applicant will implement to minimize the noise level violations.
7. The applicant shall list all property owners who adjoin the subject property per County Assessor records, except that (1) the administrator may waive this property owner list requirement if the administrator determines that the granting of the variance would have no significant effect on adjoining property owners, and (2) the administrator may increase the required property owner list to include all property owners within five hundred feet (500') of the subject property per County Assessor records if the administrator determines that the granting of the variance would have a significant impact on such property owners.

B. The administrator, after informing the affected City departments, and after considering the relative interests of the applicant, of the other owners or possessors of property likely to be affected by the noise, and of the general public, may grant a variance if the administrator determines that the noise level violations:

1. Cannot be avoided,
2. Will exist for a specific period of time,
3. Will not endanger public health, safety or welfare, and
4. Have been mitigated to the greatest extent reasonably possible.

C. Variances granted pursuant to this ordinance shall be in writing and must include the time period the variance will be in effect and the location of the variance.

D. The administrator may deny a variance application if:

1. The administrator determines that the applicant does not meet the criteria listed in subsection B of this section; or
2. The variance was obtained with false or misleading information.

E. The administrator may revoke a variance if:

1. At any time during the variance the administrator determines that the variance holder no longer meets the criteria listed in subsection B of this section;

2. The variance holder causes or permits noise that fails to comply with the variance or other provisions of this ordinance not affected by the variance and the issuance of a violation citation or stop work order has been or would be ineffective to secure compliance; or
 3. The variance was obtained with false or misleading information.
- F. The variance holder must post the variance in a viewable area at the location of the variance or keep it on their person during the effective period of the variance.
- G. If the administrator grants a variance, notice shall be mailed by first class mail to those property owners appearing on the list provided by the applicant per the application requirement herein. The applicant shall be responsible for paying all mailing costs, which shall be in addition to the variance application fee.
- H. Any variance granted by the administrator shall be restricted in duration and an implementation schedule for achieving compliance with this ordinance shall be incorporated therein. No variance shall exceed thirty (30) days. Variances may be renewed, but no renewal shall be granted unless application is made at least sixty (60) days prior to expiration of the issued variance and the applicant complies with all other requirements of this section.
- I. Any person aggrieved by a variance decision may file an appeal in writing with the land use hearing examiner within ten (10) days of issuance of the administrator's decision. The appeal shall be a proceeding pursuant to Title 15, Review Process IIIA. The appellant must prove by clear and convincing evidence that the administrator abused his or her discretion in a decision made pursuant to this section. Any appeal of a variance decision by the administrator may be affirmed, reversed, or modified by the hearing examiner. The decision of the hearing examiner shall be final. The applicable provisions of Title 15 shall govern procedure and process of any appeal of an administrator's decision, except that public notice requirements established in EMC 15.24.110 do not apply to this appeal process. Further, where a provision of Title 15 conflicts with a provision of this section, this section controls.

Section 15. Section 12 of Ordinance No. 534-78, as amended by Section 3 of Ordinance No. 690-80 (EMC 20.08.220), which reads as follows:

Violation—Penalty.

- A. Punishment for Violations and Crimes. Every offense defined by this chapter or conduct made unlawful thereby shall also constitute an offense under the Everett criminal code, and any person convicted of such an offense shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the jail not to exceed six months, or both imprisonment and fine.
- B. Evidence in Criminal Proceedings. In any criminal prosecution under Section 4(c) of Ordinance No. 534-78 (codified as Everett Municipal Code Sections 20.08.090) and 20.08.080(A) and 20.08.080(B) or Section 5 of Ordinance No. 534-78 (codified as Everett Municipal Code 20.08.090), evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.
- C. Penalty for Failure to Comply with Final Orders. In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with a final order issued by the administrator or board of adjustment (hearing officer if appropriate), shall be subject to a cumulative civil penalty in an amount not to exceed one hundred dollars per day from the date set for compliance until such order is complied with. The civil penalty shall be collected by such action brought in the name of the city.

Be and the same is hereby amended to read as follows:

Enforcement--Violation—Penalty.

- ~~A. Punishment for Violations and Crimes. Every offense defined by this chapter or conduct made unlawful thereby shall also constitute an offense under the Everett criminal code, and any person convicted of such an offense shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the jail not to exceed six months, or both imprisonment and fine.~~
- ~~B. Evidence in Criminal Proceedings. In any criminal prosecution under Section 4(c) of Ordinance No. 534-78 (codified as Everett Municipal Code Sections 20.08.090) and 20.08.080(A) and 20.08.080(B) or Section 5 of Ordinance No. 534-78 (codified as Everett Municipal Code 20.08.090), evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.~~
- ~~C. Penalty for Failure to Comply with Final Orders. In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with a final order issued by the administrator or board of adjustment (hearing officer if appropriate), shall be subject to a cumulative civil penalty in an amount not to exceed one hundred dollars per day from the date set for compliance until such order is complied with. The civil penalty shall be collected by such action brought in the name of the city.~~

- A. It shall be unlawful to violate or be in conflict with this ordinance. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this ordinance occurs, shall constitute a separate violation.
- B. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of chapter 1.20 EMC. In the event an appeal of an order issued pursuant to chapter 1.20 EMC is not subject to RCW 36.70C (the Land Use Petition Act), appeal shall be by writ of certiorari.
- C. A violation of Section 8 or of Section 9(B), 9(C), or 9(D) of this ordinance is a criminal misdemeanor punishable in accordance with EMC 10.04.080.
- D. Evidence in Criminal Proceedings. In any criminal prosecution under Section 8 or Section 9(B), 9(C), or 9(D) of this ordinance, evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

Section 16. Repealer

Sections 6(d) (EMC 20.08.120), 10(a) (EMC 20.08.160), 10(b) (EMC 20.08.170), 10 (c-d) (EMC 20.08.180), 10(e) (EMC 20.08.190), and 11 (EMC 20.08.200) of Ordinance No. 534-78, all as amended, are hereby repealed, including all ordinances in conflict herewith.

Section 17. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 18. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose

any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 19. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 20. Corrections

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

Ray Stephanson, Mayor

ATTEST:

City Clerk

Passed:

Valid:

Published:

Effective Date:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Street Closure – Block Party

- _____ 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

August 3, 2016

Initialed by:

Department Head

CAA

Council President

db
sm

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
10th Street, between Rucker Avenue and Grand Avenue		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

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

DETAILED SUMMARY STATEMENT:

A local neighborhood is requesting the closure of a portion of a 10th Street, between Rucker Avenue and Grand Avenue on August 13, 2016, 4 p.m. to 11 p.m., for a block party.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure of a portion of 10th Street, between Rucker Avenue and Grand Avenue on August 13, 2016, 4 p.m. to 11 p.m., for a block party, sponsored by a local neighborhood.

SPECIAL EVENT APPLICATION

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

Event Date: 08-13-16 Event Time: 6:00 pm

Closure Time: 11pm

Event Description: Block Party

Location of Event: 1305 10th Street East 98201

Sponsoring Organization: _____

Address: _____ City & State _____

Contact Person: Debbie Finch Phone No. 425-346-9490

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? in person

If applicable, answer the following:

Approx. # of participants: 40 Persons Animals 10 Vehicles
Type of Animals

Assembly area (streets) 10th Street (between Rocker + Grand)

Portion of street to be used: Full width Half Other

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

Official Use

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

Special Conditions: _____

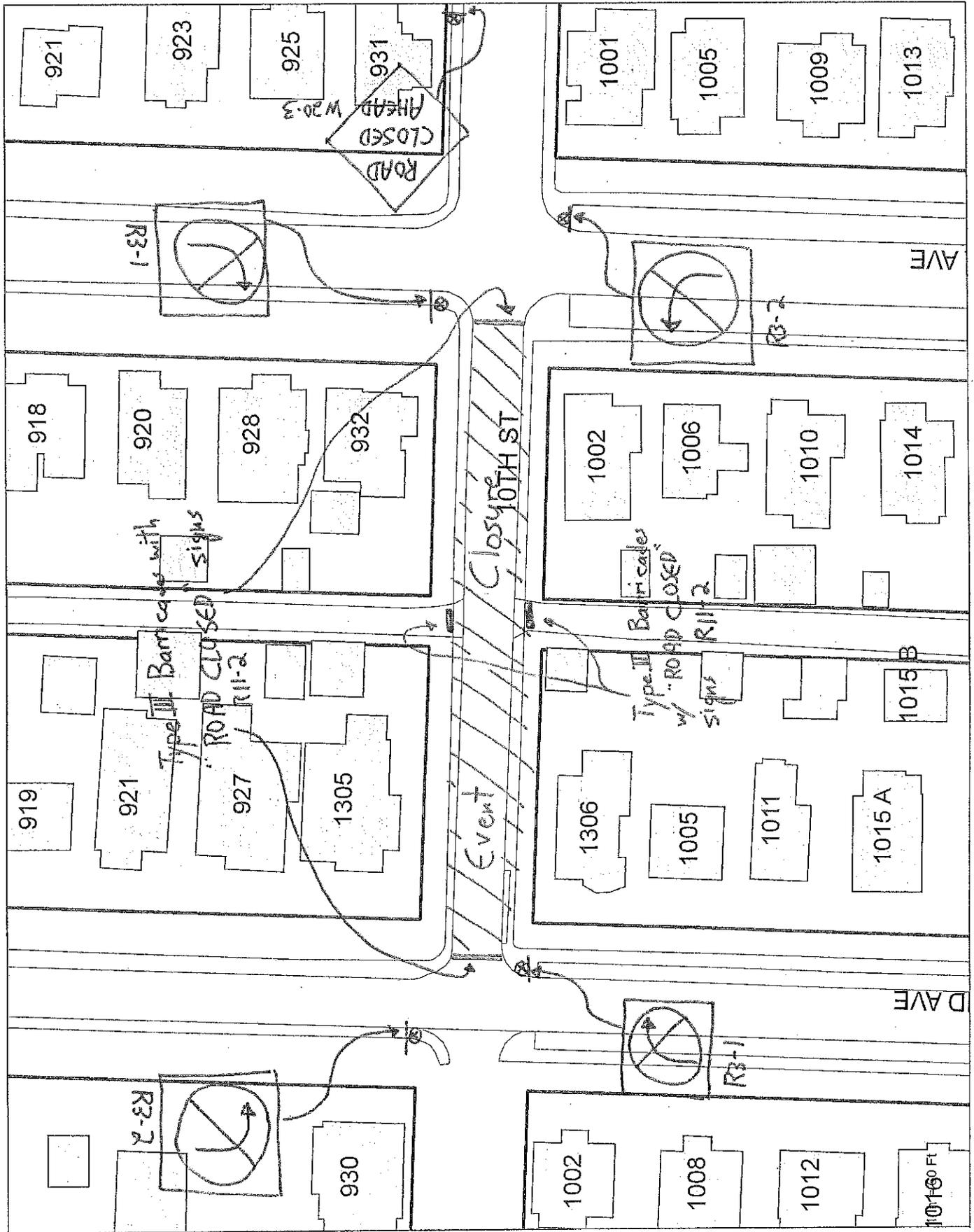
Comments: _____

Council agenda date: 8/3/14

City Council approval: 1 1

Permit _____

TR # _____



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Street Closure – Church Picnic

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

COUNCIL BILL # _____
 Originating Department City Clerk
 Contact Person Anna Pankevich
 Phone Number 425 257-8614
 FOR AGENDA OF August 3, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President Am

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
California Street, between Baker Avenue and Virginia Avenue		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

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

DETAILED SUMMARY STATEMENT:

Second Baptist Church is requesting the closure of a portion of California Street, between Baker Avenue and Virginia Avenue on August 13, 2016, 9:30 a.m. to 4 p.m., for a church picnic.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure a portion of California Street, between Baker Avenue and Virginia Avenue on August 13, 2016, 9:30 a.m. to 4 p.m., for a church picnic, sponsored by Second Baptist Church.

RECEIVED

SPECIAL EVENT APPLICATION

JUL 14 2016

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

Event Date: August 13, 2016 Event Time: 10:00 AM - 3:00 PM

CITY OF EVERETT
City Clerk

Closure Time: 9:30 AM

Event Description: Church Picnic on Church Property

Location of Event: 2801 Virginia Ave & 2404 California

Sponsoring Organization: Second Baptist Church

Address: 2801 Virginia Ave City & State Everett, WA 98201

Contact Person: Patrick LeScene Phone No. 425 238-1730

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? Door to Door

If applicable, answer the following:

Approx. # of participants: 200 Persons 0 Animals 0 Vehicles
N/A Type of Animals

Assembly area (streets) Lot between 2801 Virginia & 2404 California

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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rejected:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Special Conditions: _____

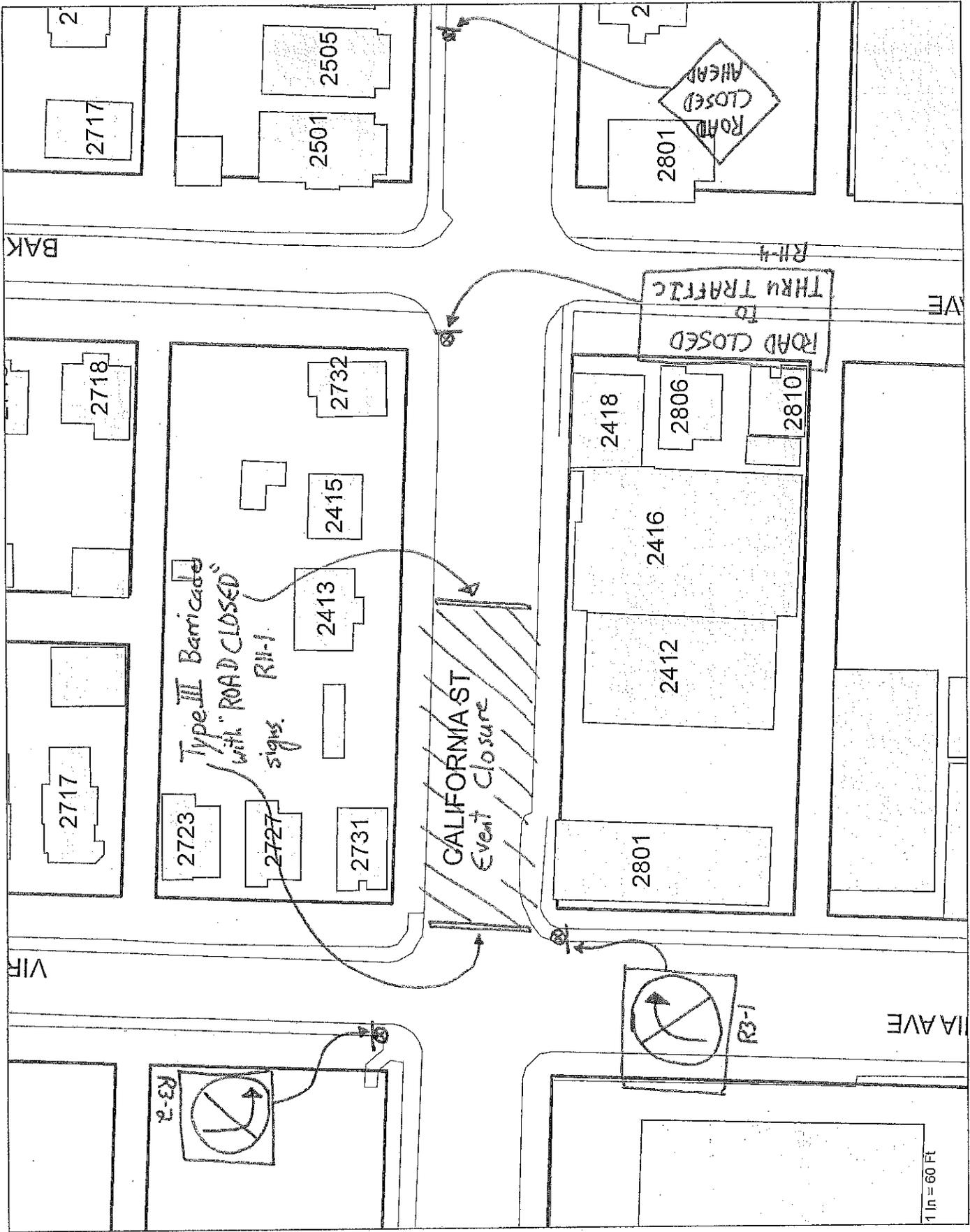
Comments: _____

Council agenda date: / /

City Council approval: / /

Permit

TR #



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Street Closure – Everett
Sausagefest - 10K run

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

COUNCIL BILL # _____
 Originating Department City Clerk
 Contact Person Anna Pankevich
 Phone Number 425 257-8614
 FOR AGENDA OF August 3, 2016

Initialed by:
 Department Head _____
 CAA _____
 Council President 

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Various Streets (map attached)		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

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

DETAILED SUMMARY STATEMENT:

Everett Sausagefest (Immaculate Conception and Our Lady of Perpetual Help School Booster Club) is requesting the closure of various streets (map attached) on October 8, 2016, 6 a.m. to 12 p.m., for a 10K run.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure of various streets (map attached) on October 8, 2016, 6 a.m. to 12 p.m., for a 10K run, sponsored by Everett Sausagefest (Immaculate Conception and Our Lady of Perpetual Help School Booster Club).

SPECIAL EVENT APPLICATION

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

Event Date: Oct 8 Event Time: 7am - 11am

Closure Time: 11am

Event Description: EVERETT SAUSAGEFEST (ICOLPH BOOSTERS) ARE SCHEDULING A 10K RUN.

Location of Event: 2619 CEDAR ST EVERETT WA 98201

Sponsoring Organization: IC/OLPH BOOSTERS CLUB

Address: 2619 CEDAR ST City & State EVERETT WA

Contact Person: ERIC WILKINS Phone No. 425 387 3680

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? EMAIL

If applicable, answer the following:

Approx. # of participants: 500 Persons Animals Vehicles
 _____ Type of Animals

Assembly area (streets) IMMACULATE CONCEPTION ELEMENTARY / EVERETT COMMUNITY COLLEGE

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 type="checkbox"/>	<input checked="" type="checkbox"/>				
Rejected:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Special Conditions: _____

Comments: _____

Council agenda date: / /

City Council approval: / /

Permit _____

TR # _____

Indemnification, Hold Harmless, and Certification

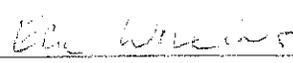
As a material inducement and consideration for the City granting this approval, the Applicant, on behalf of the sponsoring organization, hereby agrees to defend, indemnify and hold harmless the City from and against any and all Claims for personal injury, death, property damage or destruction, arising from, relating to, or resulting from the Event that is the subject of this approval.

“City” shall mean the City of Everett, its officers, employees and agents.

“Claims” shall mean any actions, demands, suits, obligation or liability for payment of damages, fees, and costs, including, but not limited to, attorney’s fees, expert witness fees, court costs and other legal expenses.

Provided, however, this agreement to defend, indemnify and hold harmless the City shall not apply to Claims arising out of bodily injury or death or property damage or destruction caused by the sole negligence or willful misconduct of the City.

As Applicant, I certify that 1) the information provided on this application is true and correct; and 2) I am duly authorized by the sponsoring organization to make this application and enter into this agreement, on behalf of the sponsoring organization, to defend, indemnify and hold harmless the City.

 _____ Signature	6-12-16 _____ Date
 _____ Printed Name	
 _____ Organization Representing	425-357-3180 _____ Phone No.

List businesses/residences impacted by this event. You must also obtain an approval signature from each business/resident indicating they concur with the closure.

Business/Residence	Signature of approval
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance creating a special construction fund entitled "South Branch Library Expansion Project," Fund 342, Program 023, to accumulate design costs of the project.

_____ Consent
 _____ Action
7/13 First Reading
7/20 Second Reading
7/27 Third Reading
 _____ Public Hearing

COUNCIL BILL # CB1607-30
 Originating Department Facilities
 Contact Person Chris Lark
 Phone Number 425-257-8897
 FOR AGENDA OF July 13, 2016

Initialed by:
 Department Head _____
 CAA db
 Council President _____

Location **Preceding Action** **Attachments** **Department(s) Approval**
 9512 Evergreen Way _____ Ordinance Facilities, Library

Amount Budgeted	-0-	
Expenditure Required	\$600,000	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 023
Additional Required	\$600,000	

DETAILED SUMMARY STATEMENT:

The proposed Ordinance will fund the design costs for the South Branch Library Expansion Project. The cost for professional services for the project is currently estimated at \$600,000. Facilities will determine an estimated total project cost at the completion of design development and amend the Ordinance.

The source of funds will be CIP4.

RECOMMENDATION:

Adopt an Ordinance creating the special construction fund entitled "South Branch Library Expansion Project," Fund 342, Program 023 in the estimated amount of \$600,000.

ORDINANCE NO. _____

AN ORDINANCE creating a special construction fund entitled "South Branch Library Expansion Project", Fund 342, Program 023, authorizing the design of the expansion to the South Branch Library.

WHEREAS, the City Council has recognized the need to expand the South Branch Library located at 9512 Evergreen Way.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: A special construction fund is hereby established as Fund 342, Program 023 entitled "South Branch Library Expansion Project" to accumulate the design costs required for the expansion to the South Branch Library.

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

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

Section 4: The sum of \$600,000.00 is hereby appropriated to Fund 342, Program 023 "South Branch Library Expansion Project".

A. Use of Funds	
Design	\$ 600,000
Construction	0
Project Costs	0
Total	<u>\$ 600,000</u>

B. Source of Funds	
CIP 4	\$600,000

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

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

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

CITY OF EVERETT

Ray Stephanson, Mayor

Attest:

Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services	_____	Briefing	COUNCIL BILL #	_____
Agreement with Otak, Inc. for	_____	Proposed Action	Originating Department	Public Works
the Diking Improvement	_____	Consent	Contact Person	Halley Kimball
District No. 5 Dike Repair	_____	Action	Phone Number	(425)257-8946
Design	_____	First Reading	FOR AGENDA OF	August 3, 2016
	_____	Second Reading		
	_____	Third Reading		
	_____	Public Hearing		
	_____	Budget Advisory	Initialed by:	
			Department Head	_____
			CAA	<i>db</i>
			Council President	<i>jm</i>

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Smith Island –from I-5 to SR 529		Map, Professional Services Agreement	Public Works, Legal

Amount Budgeted	\$	Accounted for within Utilities Sewage Treatment Budget
Expenditure Required	\$240,000	Costs to be reimbursed by District
Budget Remaining	--	
Additional Required	--	

DETAILED SUMMARY STATEMENT:

Smith Island is protected from flooding by dikes. These dikes protect multiple businesses and the Everett Water Pollution Control Facility. The Corps of Engineers routinely inspects the dikes. The Corps provides flood fighting services to dikes that meet their standards. The 2015 Corps inspection found that the dike between I-5 and SR 529 was unacceptable and requires repairs to be kept in the Corps' program. The portion needing repairs is about half inside the city limits and about half within the service boundary of Diking Improvement District No. 5 (DD5). The District considers the whole section to be vital to protect the area and its constituents, and has authorized the repairs needed.

The DD5 Commissioners have requested that the City of Everett act as their agent and provide project management services for the project, and have approved the District to reimburse the City for costs relating to this project.

Through the City selection process, Otak, Inc. was selected as the design consultant. This Professional Services Agreement for Phase 1 of the project provides the surveying, geotechnical, permitting support, and pre-design services necessary to select the final design for this dike segment.

RECOMMENDATION:

Authorize the Mayor to sign the Professional Services Agreement with Otak, Inc. for the Diking Improvement District No. 5 Dike Repair Design in the amount of \$240,000, to be reimbursed by the District.

DD5 Dike Repair Project Extent

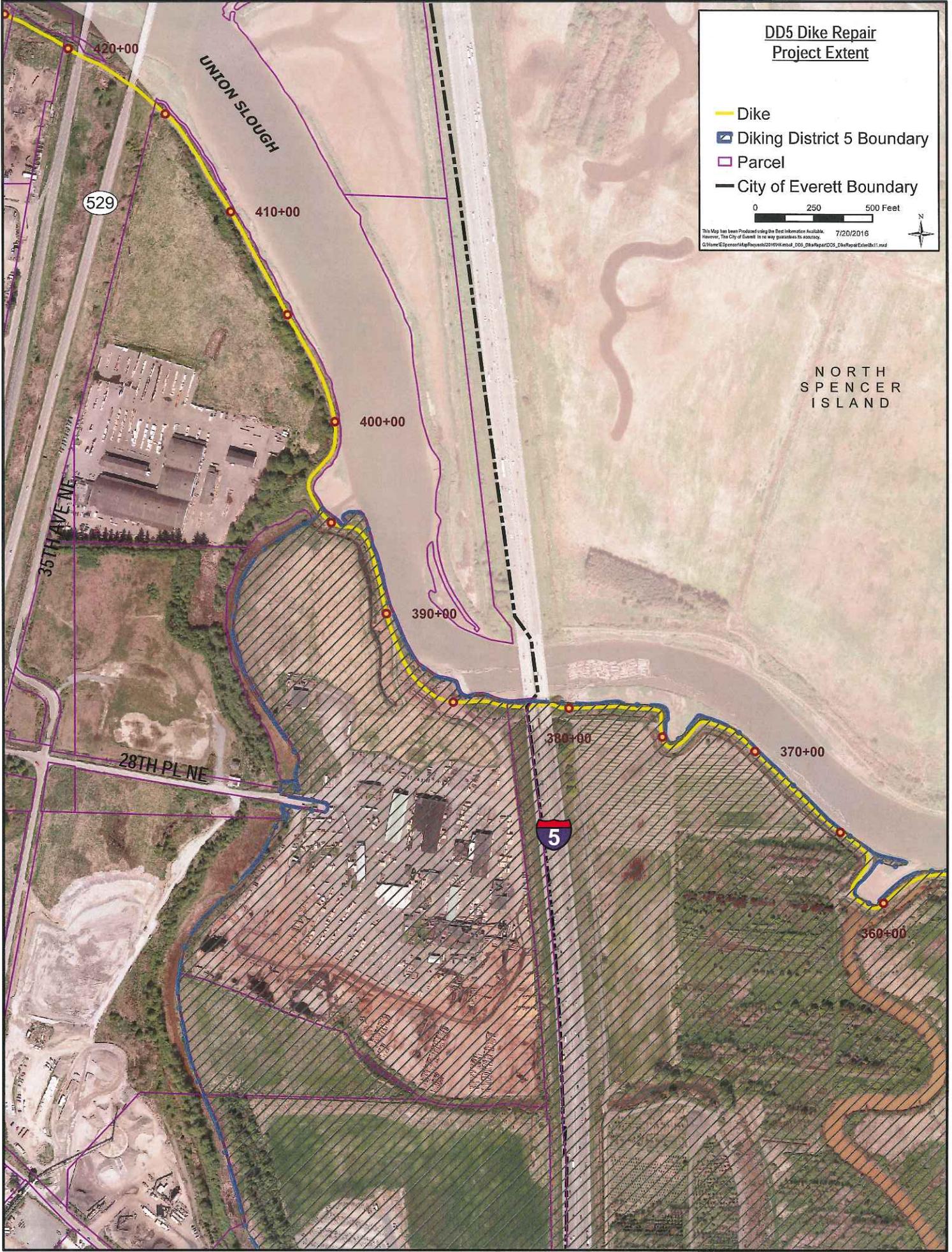
-  Dike
-  Diking District 5 Boundary
-  Parcel
-  City of Everett Boundary



This Map has been Produced using the Best Information Available.
However, The City of Everett in no way guarantees its accuracy.
G:\Home\GIS\project\MapDocs\021616\mxd_005_DikeRepair\005_DikeRepairExtent1.mxd 7/20/2016



NORTH
SPENCER
ISLAND



Letter of Transmittal

Transmitted By...

- Mail
- Courier
- Will Call
- Hand Deliver

Date: July 25, 2016

Project No.: 32431A

Project: Diking District 5 / Dike Repairs and Improvements

To: Halley Kimball

Address: City of Everett
3200 Cedar Street
Everett, WA 98201



Hanmi Global Partner
11241 willows road ne
suite 200
redmond, wa 98052
phone (425) 822-4446
fax (425) 827-9577

We Are Sending You...

- Drawings
- Specifications
- Copy of Letter
- Change Order
- Prints
- Plans
- Samples
- Agreement

Transmitted...

- For Approval
- As Requested
- For Your Use
- For Comment

Copies Page No. Description

Copies	Page No.	Description
2	ea	<i>PSA between City of Everett and Otak, Inc. for the Diking District 5 / Dike Repairs and Improvements</i>

Items Are...

- Attached
- Under Separate Cover via

Remarks

From Greg Laird, Principal
cc Project File

**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 Otak, Inc, whose address is 11241 Willows Road, NE, Suite 200, Redmond, Washington 98052, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to perform engineering consulting services for dike repairs on Smith Island 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, 2018.

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 two-hundred twenty seven thousand one-hundred fifty-two Dollars (\$227,152).

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.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

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

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

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

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

10. **Indemnification.** Except as otherwise provided in this Section 10, the Service Provider hereby agrees to defend and indemnify the City from any and all Claims arising out of, in

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

11. Insurance.

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

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

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

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

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

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

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

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

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

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

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

Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

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

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

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

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

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

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶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.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

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

Otak, Inc. c/o Greg Laird, P.E.
11241 Willows Road, NE, Suite 200
Redmond, Washington
98052

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.

<p>Corporation</p> <p><u>Otak, Inc.</u> [Service Provider's Complete Legal Name]</p> <p>By: <u>[Signature]</u> Typed/Printed Name: <u>Gregory S. Hard</u> Its: <u>Principal</u> Date: <u>7-25-16</u></p>
<p>Partnership (general)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington general partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Partnership (limited)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Sole Proprietorship</p> <p>_____ Typed/Printed Name: _____</p> <p>_____ Sole Proprietor: Date: _____</p>
<p>Limited Liability Company</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited liability company</p> <p>By: _____ Typed/Printed Name: _____ Managing Member Date: _____</p>

EXHIBIT A
SCOPE OF WORK

Attached separately

Diking District 5
Dike Repairs and Improvements Project
Phase 1 - Evaluation of Alternatives
Otak Project No. 32758
Proposal for Professional Services
July 2016

Background Information

This project is located northeast of the City of Everett (the City), within the Snohomish River Estuary on the northern side of Smith Island. Smith Island is located between the Snohomish River to the west and Union Slough to the east. There is a system of dikes around Smith Island that protect the island from much of the flooding that can occur due to high tides and river discharges. Much of the dike system on Smith Island is currently within Diking District 5 (DD5). Portions of the dike system along Union Slough within the district, and portions within the city but outside the district boundary are in need of repair in accordance with the Army Corps of Engineers' 2015 inspection, due to erosion and scour along the slope of the dike facing the slough. These portions of the dike system outside of the district boundaries also provide protection to the District, thus the District considers them vital to protect the district and will make the repairs.

The dike repairs can potentially span approximately 5,200 feet from the tie in of the Snohomish County set back dike to State Route 529. Along this span DD5 noted that there are three common types of erosion that have caused significant damage to the dike - erosion of the last foot to two feet of the dike toe above the Ordinary High Water Mark (OHWM), erosion of the dike toe to a vertical where re-establishing the toe would require extending below the OHWM, and slumping of the riverward top of the dike where erosion below the OHWM has destabilized the dike toe.

While this project will be repairing the riverward toe and slope of the dike, DD5 is considering establishing the dike crown at an elevation of 15 feet and widening the dike where necessary to remain drivable (15 feet wide). The project will provide for scour protection along the riverward slope. Part of the consulting effort will be to determine the permitting and approvals for the implementation of these repairs and if there are different permit requirements for any element. Therefore, this initial work scope will evaluate the engineering and permitting requirements for the repairs, and if the permitting requirements for the repairs appear similar to what may be necessary for the dike improvements, we will add the analysis of the improvements as a future supplement. This work is expected to be completed in two phases. The first phase will include survey and mapping, geotechnical investigation and analyses, environmental studies, and engineering analyses to provide DD5 with a comparison of alternatives for the repairs, and improvements (if requested by

Exhibit A

Continued

DD5 through separate contract supplement). The second phase would include the design and permitting of the selected alternative.

This scope of work will assist DD5, through a contract with the City of Everett, to evaluate alternatives for repairing the dike. This scope includes surveying, preliminary geotechnical investigations, environmental studies, and civil engineering. The following sections describe the tasks required to complete this project.

Project Approach

Otak with its subconsultant, Cornforth (the Otak team), will complete field investigations, environmental studies, and engineering analyses to support the design of the dike repairs and dike improvements. The following tasks are included in this Scope of Services for Phase 1 of the DD5 Dike Repairs and Improvements Project.

- Task 1 – Project Management and Coordination
- Task 2 – Topographic Survey and Basemap Preparation
- Task 3 – Geotechnical Investigation and Design Recommendations
- Task 4 – Environmental Studies and Permitting Requirements
- Task 5 – Design Development and Analysis

The Scope of Services will begin in the summer of 2016 and be completed approximately Spring 2017. A schedule of services will be provided by Otak and agreed to by the DD5 at the outset of the project. This Scope of Services will be completed through a contract with the City of Everett – acting on behalf of DD5.

Task 1—Project Management and Coordination

1.1 Monthly Project Status Report and Invoices

Brief project status reports will be submitted to the City that summarize tasks accomplished during the month, tasks projected for the next month, information or actions necessary to maintain project schedule, any potential issues or observations that could impact the project, and a schedule and budget status. The status reports may be conveyed during phone conversations or accompany the monthly invoices. We will submit monthly invoices including the percent of work completed, hours billed, and percent of budget remaining for each task in the format supplied by the City to facilitate reporting to DD5.

Deliverables

- Monthly written status reports

Exhibit A

Continued

- Monthly invoices

1.2 Project Coordination

The Otak team will attend four project meetings with DD5 to discuss findings and progress of the project. The first meeting will be a kick-off meeting and include field reconnaissance of the dike to identify all known erosion problems. The second meeting will occur upon completion of the geotechnical investigation. The third meeting will discuss the environmental studies, and the fourth meeting will discuss the presentation of alternatives.

Assumptions

- The kickoff meeting and field reconnaissance will be attended by four Otak team members.
- The City will lead the Otak team on the field reconnaissance to identify all current and previous erosion problems.
- The three other coordination meetings will be at the City's office and attended by three Otak team members.

Task 2—Topographic Survey and Base Map Preparation

Prior to the kickoff meeting and field reconnaissance (Task 1.2) the City will provide a preliminary base map including, as available:

- Surface contours based on 2009 (or most recent) LiDAR surface
- Bathymetry of Union Slough
- Surveyed wetlands and ditches throughout the property
- Surveyed tide gates and culvert inverts
- Surveyed utilities. (Will need to verify that all the utilities were located)
- Surveyed well locations
- Surveyed cross sections on the existing dike taken by City and County staff
- Centerline and easement of the Puget Sound Energy (PSE) pipeline
- Undercut locations and extent on existing dike
- Utility and easement records from the City in the vicinity of the project

2.1 Supplemental Topographic Survey and Base Map Preparation

To assist in the Geotechnical Investigation and Analysis (Task 3) and Design Development and Analysis (Task 5), existing site topography, utilities, and critical areas (wetlands and OHWM) need to be clearly identified and shown on the project base map. The extent of field survey required for the preparation of the base map may be adjusted after review of the preliminary base map and the review of survey-grade GPS cross-sections obtained by Snohomish County. For the purposes of this scope of services, we propose to obtain cross sections of the existing dike extending from water's edge landward to approximately 25 feet beyond the edge of the ditches along the toe of the dike.

Exhibit A

Continued

This survey will utilize GPS real-time kinematic (RTK) equipment and/or conventional total station instruments.

Any features noted during the Site Reconnaissance (Task 3.2) will be surveyed and included in the project base map. Field boundaries of OHWM on the waterward side of the dike will be surveyed with survey-grade equipment. The field boundaries of wetlands will be located with resource-grade GPS equipment. These boundaries will be incorporated into the project base map after these boundaries are flagged (Task 4).

This field survey data, in addition to the City's GIS data and LIDAR will be utilized by the Otak team to create a base map sufficient for evaluating alternatives for repairs and improvements. The map will show planimetric features, wetland boundaries, ordinary high water, surveyed cross section points along the top of the dike, and site topography of the identified distressed areas noted during the site reconnaissance (Task 3.2).

The base map will include right-of-way margins, parcel lines, (taken from the County's assessor's maps and other record data) and easements within the project area.

Deliverables

- Site survey base map stamped by Professional Land Surveyor, registered in the State of Washington.
- The base map will show 2-foot contour intervals with elevations referenced to the North American Vertical Datum 1988 (NAVD88).
- The map will be referenced to the Washington State Plane Coordinate System.
- AutoCAD/CIV3D base map drawing (*.dwg) file of project survey with topographic (digital terrain model – DTM) surface of surveyed area.

Assumptions

- Preliminary base map CAD files to be provided by the City.
- The County's bathymetric survey of Union Slough will be provided by the City.
- Access and rights-of-entry will be provided by the City.
- As-builts, utility records, easements records, survey control and existing CAD design files for the project area will be provided by the City.
- Estimates of survey and mapping are based on no more than 20 areas identified as distress area requiring survey and mapping of these features.

Task 3—Geotechnical Investigation and Design Recommendations

Exhibit A

Continued

The USACE's Levee Safety Program requires that the levee must achieve a "minimally acceptable" or "acceptable" rating on the FDR Inspection Report to remain eligible for USACE's PL84-99 program. The Otak team will compile existing geotechnical exploration data, and perform additional field geotechnical explorations to characterize subsurface conditions in support of preliminary design for levee modifications to meet the PL84-99 objective. Design recommendations will be provided with the intent of addressing levee deficiencies and achieving an acceptable rating from the USACE, and with the understanding that geotechnical information is needed for dike design purposes, but not a requirement of eligibility for the PL84-99 program. The geotechnical dike evaluation and analysis will be performed in general accordance with the following U.S. Army Corps of Engineers (USACE) publications:

- EM 500-1-1 "Civil Emergency Management Program" PL84-99 requirements
- EM 1110-2-1913 "Design and Construction of Levees"
- EM 1110-2-1902 "Slope Stability"
- ER 1110-2-1806 "Earthquake Design and Evaluation for Civil Works Projects"
- ETL 1110-2-569 "Design Guidance for Levee Underseepage"
- EC 1110-2-6067 "Engineering and Design: USACE Process for the National Flood Insurance Program (NFIP) Levee System Evaluation"
- ETL 1110-2-6-571 "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures"

3.1 Report, Mapping and Data Review

The Otak team will review historic and current aerial photographs provided by the City. Snohomish County has performed a number of borings, test pits and well installations in the project vicinity associated with their Smith Island Restoration Project. Cornforth will review the final geotechnical report completed for the Smith Island Restoration Project and will review construction records (if any) to establish the historical dike footprint.

Assumptions

- The City will provide existing reports, surveys, aerial photographs, data, engineering studies, and construction records for the dike and other construction activities near the site.

3.2 Site Reconnaissance

In addition to the field reconnaissance performed during the kickoff meeting (Task 1.2), the Otak team will tour the site by foot and by boat (performed at low tide). The site tour will explore and map distressed areas (slope failures, scour, settlement, and seepage) with GPS. The site tour will evaluate construction access routes, staging, and stockpile areas. The tour will check utility crossings (previously identified on the preliminary base map) and note additional utilities that should be included on the project base map (Task 2.1).

Exhibit A

Continued

3.3 Phase 1 Subsurface Investigation

The Otak team will perform supplemental field explorations along the dike alignment. Six (6) boreholes will be drilled along the dike at 1,000-foot intervals. The boreholes will be drilled through the centerline of the dike using a track-mounted drill rig. Five (5) of these borings will use a mud-rotary drilling technique, and the remaining boring will be performed using hollow-stem auger operated by the rig used for the mud rotary drilling. Soil samples will be collected at 2.5-foot intervals to a depth below ground surface (bgs) of 15 feet, then at 5-foot intervals to the bottom of the boring. Borehole depths will be to 50 feet bgs in 5 of the locations and to 80 feet bgs in the remaining location. Samples will be obtained with Standard Penetration Tests (SPTs), and with an occasional Shelby tube for undisturbed samples. All boreholes will be backfilled with cement-bentonite grout. The boring locations will be identified and marked during drilling for field survey by the Otak team.

In the hollow-stem auger hole, a falling-head permeability test will be performed in the embankment and foundation soils.

The soil samples collected from the borings will be brought to Cornforth's laboratory for geologic interpretation and testing. A geologist will review each sample and prepare a log for each boring.

3.4 Phase 1 Laboratory Testing

The City will contract with an independent laboratory to complete the testing of samples obtained by Cornforth collected during the subsurface investigations. Cornforth will coordinate with the soils laboratory to perform basic geotechnical index tests on samples, including:

- Water content tests for most samples (up to 80 tests)
- Minimum 1 grain-size and 1 fines content (% passing #200 sieve) for each boring, plus other selected samples of interest (up to 6 tests)
- 2 Atterberg Limits for each boring (12 tests)
- 1 Organic Content of a sample selected from each boring (6 tests)

Assumptions

- The City will provide a boat for the site reconnaissance.
- The City will obtain all permission and access to drill the borings.
- The Otak team will call the Underground Utilities Location Center (UULC) and private utility locator to locate underground utilities prior to drilling the borings. The fee is assumed to be \$1,000 for a private utility locator.
- The City will coordinate and obtain drilling permits (including the shoreline exemption for exploratory drilling) and will notify the Otak team about permit conditions.
- The City will contract with an independent soils laboratory to complete the geotechnical testing.

Exhibit A

Continued

- Soil cuttings and drilling mud will be handled by the City.
- Soils are assumed to be non-contaminated. Any soil cuttings suspected to be contaminated, based on field observations, will be placed into 55 gallon drums and disposed of by the City.
- The borings will be completed during workday hours over a period of ten business days. Drilling equipment will remain on site for the duration of exploration activities.
- No site restoration of vegetation will be required for minimal disturbance necessary to conduct work.

3.5 Geotechnical Analyses

The Otak team will evaluate geotechnical conditions along the dike alignment based on the existing and new subsurface data. Based on the review of the existing erosion and scour problems, the existing problems will be categorized into reaches of similar characteristics (except 4 for scoping purposes). For each reach, a geologic cross-section will be prepared to illustrate the existing conditions and up to two potential repair concepts. The Otak team will develop concepts for raising the dike. For each of these improvement (dike raising) concepts, the Otak team will complete the following engineering evaluations.

- Slope stability
- Seepage
- Settlement
- Scour
- Freeboard
- Interior Drainage

The Otak team will confirm that all options will meet the U.S. Army Corps of Engineers (USACE) PL 84-99 eligibility requirements.

Deliverables

- The Otak team will prepare a draft geotechnical report presenting the results of the field explorations, laboratory testing, geotechnical analyses and design recommendations. The geotechnical report will include, as applicable, the following:
 - Summarize site investigation program, subsurface conditions and lab testing
 - Summarize conceptual options and engineering evaluations
 - Site plan showing locations of new borings
 - Summary boring logs
 - Laboratory test results
 - Geotechnical analysis results

Assumptions

Exhibit A

Continued

- A Draft Geotechnical Report will be provided in electronic format (Word) only and submitted to the City for review. The revised (and final) report will be submitted as an appendix to the Phase 1 Design Alternatives Technical Memo (Task 5).

Task 4 – Environmental Studies to Support Regulatory Compliance

During Phase 1 of the project, the Otak team will conduct data collection and field work necessary to establish baseline environmental conditions in the project area. Environmental data collected will be used to prepare Phase 1 environmental reports and documentation to inform proposed project alternatives analyses, and will be used to support the City on the permit applications and/or demonstrate regulatory compliance required for Phase 2 of the project.

The anticipated permits and required compliance applicable to this project include:

- U.S. Army Corps of Engineers (Army Corps) Section 404 permit
- U.S. Army Corps Section 10 permit
- Endangered Species Act compliance
- Magnuson-Stevens Act compliance
- National Historic Preservation Act (Section 106) compliance
- State Environmental Policy Act (SEPA) compliance
- Historic and Archaeological Resources (Exec. Order 05-05) compliance
- Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA)
- Washington Dept. of Ecology Section 401 water quality certification
- Coastal Zone Management consistency
- Shoreline development compliance
- Flood Hazard Regulations
- Critical Areas Ordinances/Regulations compliance (City of Everett and Snohomish County)

Task 4.1 Conduct Data Collection and Fieldwork

Wetland delineations will be conducted to meet the requirements of the City of Everett and Snohomish County Critical Areas ordinances and regulations, and federal and state agencies, including the Army Corps and Washington State Department of Ecology (Ecology). Otak staff will conduct the wetland delineation in the field using the three-parameter approach detailed in the USACE Wetland Delineation manual (USACE 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Western Mountain, Valleys, and Coast Region (USACE 2010).

Wetlands present within the project area of potential impact will be flagged during the delineation and subsequently surveyed to incorporate in the project base map.

A field investigation of the Snohomish River and any nearby streams/ditches will be conducted to assess existing conditions within the project area, and upstream and downstream sufficiently to establish baseline conditions. Information on areas/habitat of primary association and other relevant

Exhibit A

Continued

fish and wildlife habitat conservation areas will be collected. Ordinary high water marks (OHWM) will be determined per both Ecology and the Army Corps methodologies along Union Slough and associated ditches in the project area of potential impact. The OHWM will be flagged and surveyed to incorporate in the project base map.

Data sheets and photographs documenting the wetland and stream field work will be compiled and included in the Critical Area Study report. Wetlands will be rated according to the 2014 Ecology *Washington State Wetland Rating System for Western Washington* methodology and the City and County's rating requirements. Streams will be rated per Washington Department of Natural Resources criteria. Buffer widths for wetlands and streams will be established per City and County Critical Areas Ordinances.

Assumptions:

- Wetland delineations and stream/ditch characterizations will be conducted from the surface water line of the Snohomish River (including wetland areas along the waterward side of the dike), and extending laterally for 50 feet from the landward toe of the dike in the project area of potential impact. Any critical areas beyond 50 feet will be estimated and noted in the report.
- The City will notify private property owners of scheduled field work and gain right-of-entry as necessary.
- Wetland flags will be located with a resource-grade GPS unit with sub-meter accuracy, and OHWM flags along Union Slough will be located with survey-grade equipment.
- Geotechnical data/information on geologically hazardous areas will be collected under Task 3.1.
- Data on groundwater and/or critical aquifer recharge areas will be collected under Task 3.1.

Task 4.2 Prepare Environmental Baseline Documentation

A Critical Areas Study (CAS) will be prepared for wetlands, streams, and other fish and wildlife habitat conservation areas. The CAS will include all information required for compliance with both the City of Everett Critical Areas Ordinances and Snohomish County Critical Areas Regulations, including: Wetland Determination Data Forms, Wetland Rating Forms (and figures), photographs, and supporting figures. The CAS will incorporate any relevant background information and previous studies completed for the project area as provided by the City.

Assumptions:

- City will provide copies of previously completed environmental documentation for the project area, if available.
- City will provide comments on the Draft CAS during one round of review prior to Otak completing the Final CAS.

Deliverables:

- Draft and Final Critical Areas Study

Task 5 – Design Development and Alternatives Evaluation

The Otak team will prepare site plans and details of up to 3 alternatives for repairing the erosion and scour problems. For each alternative, materials will be identified and quantified, and estimates of the construction costs will be provided. The recommendations for managing interior drainage will be described. The environmental impacts will be described, and the potential permitting implications (on schedule and mitigation requirements) will be estimated. Constructability issues will be evaluated. The utilities potentially impacted by the project will be listed, the potential impacts described, and the concerns/constraints of each utility presented. The design development will be presented in a report with drawings showing the areal extent of the various alternatives, details of each alternative, and a description of the basis of the cost opinions. Recommendations for Phase 2 final design, including geotechnical analyses will be included. The final Phase 1 geotechnical report will be provided as an appendix.

Deliverables

- The Otak team will prepare a Phase 1 Design Alternatives Technical Memo.

Assumptions

- The DRAFT Design Alternatives Technical Memo will be submitted to DD5 prior to the fourth coordination meeting (Task 1.2), and the FINAL Design Alternatives Technical Memo will be submitted within two weeks of receiving DD5 comments on the draft memo.
- The City will provide information on previous Army Corps authorizations and maintenance activities along this portion of the dike to identify the historical dike footprint. Identification of the historical dike footprint will support the analyses of agency permitting requirements.

**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		

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		
Meals		
<i>See Attached</i>		
<i>Exhibit C</i>		

DD5 - Dike Repair and Improvements Project Phase 1

Fee Estimate

Otak, Inc., Project 32758

Exhibit C

Estimate of Direct Costs

Description	Task 1	Task 2	Task 3	Task 4	Task 5
Outside Reproduction			\$100.00	\$100.00	
Postage and Courier					
Mileage and Parking	\$160.00	\$600.00	\$80.00	\$160.00	
Equipment Rental				\$400.00	
Miscellaneous	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
	\$210.00	\$650.00	\$230.00	\$710.00	\$50.00
					\$1,850.00

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:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/22/2016

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 JD Fulwiler & Co. Insurance, Inc. 5727 SW Macadam Ave PO Box 69508 Portland OR 97239	CONTACT NAME: Peggy MacMillan PHONE (A/C, No, Ext): (503) 293-8325 E-MAIL ADDRESS: pmacmillan@jdfulwiler.com	FAX (A/C, No): (503) 293-5418
	INSURER(S) AFFORDING COVERAGE	
INSURED Otak Inc. 808 SW 3rd Ave Ste 300 Portland OR 97204	INSURER A: Travelers Indemnity Co of CT NAIC # 25682	
	INSURER B: Travelers Indemnity Co of Am 25666	
	INSURER C: Saif Corporation 36196	
	INSURER D: Beazley Insurance Company Inc	
	INSURER E: Allianz Global Risk US Insurance	

COVERAGES **CERTIFICATE NUMBER:** 15/16 Gen USE **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			6801497P251	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input checked="" type="checkbox"/> WA Stop Gap Liability						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
							Employee Benefits \$ 1,000,000
A	AUTOMOBILE LIABILITY			BA1502P892	12/9/2015	12/9/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							Towing \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		CUP5C8570811247	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 10,000,000
	<input type="checkbox"/> DED	<input checked="" type="checkbox"/> RETENTION \$ 10,000					
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			**OREGON**			<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	487431 OTAK INC	4/1/2016	4/1/2017	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			967262 OTAK Architects Inc	4/1/2016	4/1/2017	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	A&E Prof'l w/Pollution			V10267150701	12/9/2015	12/9/2016	Limit per claim/Agg/Ded \$2m/\$4m/\$200K
E	Inland Marine			MXI93070328	12/9/2015	12/9/2016	Misc Unscheduled Items/Ded \$100,00/\$5k

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: DD5 Dike Repair Otak Project #32758; naming the City of Everett, its officers, employees and agents are included as additional insureds on the general liability and auto liability with regard to operations of the named insured subject to policy terms, conditions and exclusions per attached forms CGD381 & CAT4370808; It is further agreed that coverage is primary and non-contributory; Cancellation provisions apply per attached form IL316;

CERTIFICATE HOLDER HKimball@everettwa.gov City of Everett Public Works 3200 Cedar St Everett, WA 98201	CANCELLATION 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 P MacMillan/TMAYDA <i>Peggy MacMillan</i>
--	---

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Additional Named Insureds

Other Named Insureds

HLB Otak Inc., an Oregon Corporation

OTAK Architects Inc, a Washington Corporation

Otak Architects Inc., an Oregon Corporation

Otak Engineering, Inc., an Oregon Corporation

Otak International (Caymen Islands)

Otak Nevada, LLC, an Oregon Limited Liability Co

Otak, Inc. 401K Employee Savings Plan

Otak, Inc., a Colorado Corporation

Otak, Inc., an Washington Corporation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as additional insured on the Coverage Form in

a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

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

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

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

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

COMMON POLICY CONDITIONS WASHINGTON

All Coverage Parts included in this policy are subject to the following conditions.

The conditions in this endorsement replace any similar conditions in the policy that are less favorable to the insured.

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy or any Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 45 days before the effective date of cancellation if we cancel for any other reason,

except as provided in paragraphs 3. and 4. below.

3. We may cancel the Commercial Property Coverage Part, if made a part of this policy, by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation at least 5 days before the effective date of cancellation for any structure where 2 or more of the following conditions exist:
 - a. Without reasonable explanation, the structure is unoccupied for more than 60 consecutive days, or at least 65% of the rental units are unoccupied for more than 120 consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;
 - b. Without reasonable explanation, progress toward completion of permanent repairs to the structure has not occurred within 60 days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

- c. Because of its physical condition, the structure is in danger of collapse;
- d. Because of its physical condition, a vacation or demolition order has been issued for the structure, or it has been declared unsafe in accordance with applicable law;
- e. Fixed and salvageable items have been removed from the structure, indicating an intent to vacate the structure;
- f. Without reasonable explanation, heat, water, sewer, and electricity are not furnished for the structure for 60 consecutive days; or
- g. The structure is not maintained in substantial compliance with fire, safety and building codes.

4. If:

- a. You are an individual
- b. A covered "auto" you own is of the "private passenger type"; and
- c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operation hazards,

we may cancel the Commercial Auto Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for cancellation, to the last mailing address known to us:

- a. At least 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. At least 10 days before the effective date of cancellation for any other reason if the policy is in effect less than 30 days; or
- c. At least 20 days before the effective date of cancellation for other than nonpayment if the policy is in effect 30 days or more; or
- d. At least 20 days before the effective date of cancellation if the policy is in effect for 60 days or more or is a renewal or continuation policy, and the reason for can-

cancellation is that your driver's license or that of any driver who customarily uses a covered "auto" has been suspended or revoked during the policy period.

5. We will also mail or deliver to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of cancellation prior to the effective date of cancellation. If cancellation is for reasons other than those contained in paragraph A.3. above, this notice will be the same as that mailed or delivered to the first Named Insured. If cancellation is for a reason contained in paragraph A.3. above, we will mail or deliver this notice at least 20 days prior to the effective date of cancellation.
6. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. If a Coverage Part is cancelled, that date will become the end of the policy period as respects that Coverage Part only.
7. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be at least 90% of the pro rata refund unless the following applies:
 - a. If:
 - (1) You are an individual;
 - (2) A covered auto you own is of the "private passenger type";
 - (3) The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards; and
 - (4) The first Named Insured cancels, the refund will be not less than 90% of the unearned portion not exceeding \$100, plus 95% of any unearned portion over \$100 but not exceeding \$500 and not less than 97% of any unearned portion in excess of \$500.

The cancellation will be effective even if we have not made or offered a refund.
8. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. INSPECTION AND SURVEYS

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. PREMIUMS

1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and

3. Standard Property forms including, but not limited to, the following:

- a. Building and Personal Property Coverage Form;
- b. Business Income Coverage Form;
- c. Commercial Property Conditions;
- d. Condominium Association Coverage Form;
- e. Condominium Commercial Unit-Owners Coverage Form;
- f. Causes of Loss Basic Form;
- g. Causes of Loss Special Form; and
- h. Causes of Loss Earthquake Form.

Endorsements referencing the Commercial Property Coverage Part or the Standard

Property Forms referenced above apply to the Businessowners Property Coverage Special Form in the same manner as they apply to the forms they reference.

Endorsements referencing the Commercial General Liability Coverage Part apply to the Commercial General Liability Coverage Form (included in the Businessowners Coverage Part) in the same manner as they apply to the form they reference.

I. INSURANCE UNDER TWO OR MORE COVERAGE PARTS

If two or more of this policy's Coverage Parts apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

This policy consists of the Common Policy Declarations and the Coverage Parts and endorsements listed in that declarations form.

In return for payment of the premium, we agree with the Named Insured to provide the insurance afforded by a Coverage Part forming part of this policy. That insurance will be provided by the company indicated as insuring company in the Common Policy Declarations by the abbreviation of its name opposite that Coverage Part.

The companies listed below (each a stock company) have executed this policy, but it is valid only if countersigned on the Common Policy Declarations by our authorized representative.

The Travelers Indemnity Company (IND)

The Phoenix Insurance Company (PHX)

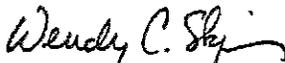
The Charter Oak Fire Insurance Company (COF)

Travelers Property Casualty Company of America (TIL)

The Travelers Indemnity Company of Connecticut (TCT)

The Travelers Indemnity Company of America (TIA)

Travelers Casualty Insurance Company of America (ACJ)


Secretary


President

**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 Otak, Inc, whose address is 11241 Willows Road, NE, Suite 200, Redmond, Washington 98052, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage the Service Provider to perform engineering consulting services for dike repairs on Smith Island 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, 2018.

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 two-hundred twenty seven thousand one-hundred fifty-two Dollars (\$227,152).

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.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

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

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

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

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

10. **Indemnification.** Except as otherwise provided in this Section 10, the Service Provider hereby agrees to defend and indemnify the City from any and all Claims arising out of, in

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

11. Insurance.

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

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

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

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

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

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

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

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

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

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

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

Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

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

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

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

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

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

(6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶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.: Halley Kimball
Everett Public Works Department, 3200 Cedar Street
Everett, WA 98201

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

Otak, Inc. c/o Greg Laird, P.E.
11241 Willows Road, NE, Suite 200
Redmond, Washington
98052

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

Diking District 5
Dike Repairs and Improvements Project
Phase 1 - Evaluation of Alternatives
Otak Project No. 32758
Proposal for Professional Services
July 2016

Background Information

This project is located northeast of the City of Everett (the City), within the Snohomish River Estuary on the northern side of Smith Island. Smith Island is located between the Snohomish River to the west and Union Slough to the east. There is a system of dikes around Smith Island that protect the island from much of the flooding that can occur due to high tides and river discharges. Much of the dike system on Smith Island is currently within Diking District 5 (DD5). Portions of the dike system along Union Slough within the district, and portions within the city but outside the district boundary are in need of repair in accordance with the Army Corps of Engineers' 2015 inspection, due to erosion and scour along the slope of the dike facing the slough. These portions of the dike system outside of the district boundaries also provide protection to the District, thus the District considers them vital to protect the district and will make the repairs.

The dike repairs can potentially span approximately 5,200 feet from the tie in of the Snohomish County set back dike to State Route 529. Along this span DD5 noted that there are three common types of erosion that have caused significant damage to the dike - erosion of the last foot to two feet of the dike toe above the Ordinary High Water Mark (OHWM), erosion of the dike toe to a vertical where re-establishing the toe would require extending below the OHWM, and slumping of the riverward top of the dike where erosion below the OHWM has destabilized the dike toe.

While this project will be repairing the riverward toe and slope of the dike, DD5 is considering establishing the dike crown at an elevation of 15 feet and widening the dike where necessary to remain drivable (15 feet wide). The project will provide for scour protection along the riverward slope. Part of the consulting effort will be to determine the permitting and approvals for the implementation of these repairs and if there are different permit requirements for any element. Therefore, this initial work scope will evaluate the engineering and permitting requirements for the repairs, and if the permitting requirements for the repairs appear similar to what may be necessary for the dike improvements, we will add the analysis of the improvements as a future supplement. This work is expected to be completed in two phases. The first phase will include survey and mapping, geotechnical investigation and analyses, environmental studies, and engineering analyses to provide DD5 with a comparison of alternatives for the repairs, and improvements (if requested by

Exhibit A

Continued

DD5 through separate contract supplement). The second phase would include the design and permitting of the selected alternative.

This scope of work will assist DD5, through a contract with the City of Everett, to evaluate alternatives for repairing the dike. This scope includes surveying, preliminary geotechnical investigations, environmental studies, and civil engineering. The following sections describe the tasks required to complete this project.

Project Approach

Otak with its subconsultant, Cornforth (the Otak team), will complete field investigations, environmental studies, and engineering analyses to support the design of the dike repairs and dike improvements. The following tasks are included in this Scope of Services for Phase 1 of the DD5 Dike Repairs and Improvements Project.

- Task 1 – Project Management and Coordination
- Task 2 – Topographic Survey and Basemap Preparation
- Task 3 – Geotechnical Investigation and Design Recommendations
- Task 4 – Environmental Studies and Permitting Requirements
- Task 5 – Design Development and Analysis

The Scope of Services will begin in the summer of 2016 and be completed approximately Spring 2017. A schedule of services will be provided by Otak and agreed to by the DD5 at the outset of the project. This Scope of Services will be completed through a contract with the City of Everett – acting on behalf of DD5.

Task 1—Project Management and Coordination

1.1 Monthly Project Status Report and Invoices

Brief project status reports will be submitted to the City that summarize tasks accomplished during the month, tasks projected for the next month, information or actions necessary to maintain project schedule, any potential issues or observations that could impact the project, and a schedule and budget status. The status reports may be conveyed during phone conversations or accompany the monthly invoices. We will submit monthly invoices including the percent of work completed, hours billed, and percent of budget remaining for each task in the format supplied by the City to facilitate reporting to DD5.

Deliverables

- Monthly written status reports

Exhibit A

Continued

- Monthly invoices

1.2 Project Coordination

The Otak team will attend four project meetings with DD5 to discuss findings and progress of the project. The first meeting will be a kick-off meeting and include field reconnaissance of the dike to identify all known erosion problems. The second meeting will occur upon completion of the geotechnical investigation. The third meeting will discuss the environmental studies, and the fourth meeting will discuss the presentation of alternatives.

Assumptions

- The kickoff meeting and field reconnaissance will be attended by four Otak team members.
- The City will lead the Otak team on the field reconnaissance to identify all current and previous erosion problems.
- The three other coordination meetings will be at the City's office and attended by three Otak team members.

Task 2—Topographic Survey and Base Map Preparation

Prior to the kickoff meeting and field reconnaissance (Task 1.2) the City will provide a preliminary base map including, as available:

- Surface contours based on 2009 (or most recent) LiDAR surface
- Bathymetry of Union Slough
- Surveyed wetlands and ditches throughout the property
- Surveyed tide gates and culvert inverts
- Surveyed utilities. (Will need to verify that all the utilities were located)
- Surveyed well locations
- Surveyed cross sections on the existing dike taken by City and County staff
- Centerline and easement of the Puget Sound Energy (PSE) pipeline
- Undercut locations and extent on existing dike
- Utility and easement records from the City in the vicinity of the project

2.1 Supplemental Topographic Survey and Base Map Preparation

To assist in the Geotechnical Investigation and Analysis (Task 3) and Design Development and Analysis (Task 5), existing site topography, utilities, and critical areas (wetlands and OHWM) need to be clearly identified and shown on the project base map. The extent of field survey required for the preparation of the base map may be adjusted after review of the preliminary base map and the review of survey-grade GPS cross-sections obtained by Snohomish County. For the purposes of this scope of services, we propose to obtain cross sections of the existing dike extending from water's edge landward to approximately 25 feet beyond the edge of the ditches along the toe of the dike.

Exhibit A

Continued

This survey will utilize GPS real-time kinematic (RTK) equipment and/or conventional total station instruments.

Any features noted during the Site Reconnaissance (Task 3.2) will be surveyed and included in the project base map. Field boundaries of OHWM on the waterward side of the dike will be surveyed with survey-grade equipment. The field boundaries of wetlands will be located with resource-grade GPS equipment. These boundaries will be incorporated into the project base map after these boundaries are flagged (Task 4).

This field survey data, in addition to the City's GIS data and LIDAR will be utilized by the Otak team to create a base map sufficient for evaluating alternatives for repairs and improvements. The map will show planimetric features, wetland boundaries, ordinary high water, surveyed cross section points along the top of the dike, and site topography of the identified distressed areas noted during the site reconnaissance (Task 3.2).

The base map will include right-of-way margins, parcel lines, (taken from the County's assessor's maps and other record data) and easements within the project area.

Deliverables

- Site survey base map stamped by Professional Land Surveyor, registered in the State of Washington.
- The base map will show 2-foot contour intervals with elevations referenced to the North American Vertical Datum 1988 (NAVD88).
- The map will be referenced to the Washington State Plane Coordinate System.
- AutoCAD/CIV3D base map drawing (*.dwg) file of project survey with topographic (digital terrain model – DTM) surface of surveyed area.

Assumptions

- Preliminary base map CAD files to be provided by the City.
- The County's bathymetric survey of Union Slough will be provided by the City.
- Access and rights-of-entry will be provided by the City.
- As-builts, utility records, easements records, survey control and existing CAD design files for the project area will be provided by the City.
- Estimates of survey and mapping are based on no more than 20 areas identified as distress area requiring survey and mapping of these features.

Task 3—Geotechnical Investigation and Design Recommendations

Exhibit A

Continued

The USACE's Levee Safety Program requires that the levee must achieve a "minimally acceptable" or "acceptable" rating on the FDR Inspection Report to remain eligible for USACE's PL84-99 program. The Otak team will compile existing geotechnical exploration data, and perform additional field geotechnical explorations to characterize subsurface conditions in support of preliminary design for levee modifications to meet the PL84-99 objective. Design recommendations will be provided with the intent of addressing levee deficiencies and achieving an acceptable rating from the USACE, and with the understanding that geotechnical information is needed for dike design purposes, but not a requirement of eligibility for the PL84-99 program. The geotechnical dike evaluation and analysis will be performed in general accordance with the following U.S. Army Corps of Engineers (USACE) publications:

- EM 500-1-1 "Civil Emergency Management Program" PL84-99 requirements
- EM 1110-2-1913 "Design and Construction of Levees"
- EM 1110-2-1902 "Slope Stability"
- ER 1110-2-1806 "Earthquake Design and Evaluation for Civil Works Projects"
- ETL 1110-2-569 "Design Guidance for Levee Underseepage"
- EC 1110-2-6067 "Engineering and Design: USACE Process for the National Flood Insurance Program (NFIP) Levee System Evaluation"
- ETL 1110-2-6-571 "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures"

3.1 Report, Mapping and Data Review

The Otak team will review historic and current aerial photographs provided by the City. Snohomish County has performed a number of borings, test pits and well installations in the project vicinity associated with their Smith Island Restoration Project. Cornforth will review the final geotechnical report completed for the Smith Island Restoration Project and will review construction records (if any) to establish the historical dike footprint.

Assumptions

- The City will provide existing reports, surveys, aerial photographs, data, engineering studies, and construction records for the dike and other construction activities near the site.

3.2 Site Reconnaissance

In addition to the field reconnaissance performed during the kickoff meeting (Task 1.2), the Otak team will tour the site by foot and by boat (performed at low tide). The site tour will explore and map distressed areas (slope failures, scour, settlement, and seepage) with GPS. The site tour will evaluate construction access routes, staging, and stockpile areas. The tour will check utility crossings (previously identified on the preliminary base map) and note additional utilities that should be included on the project base map (Task 2.1).

3.3 Phase 1 Subsurface Investigation

The Otak team will perform supplemental field explorations along the dike alignment. Six (6) boreholes will be drilled along the dike at 1,000-foot intervals. The boreholes will be drilled through the centerline of the dike using a track-mounted drill rig. Five (5) of these borings will use a mud-rotary drilling technique, and the remaining boring will be performed using hollow-stem auger operated by the rig used for the mud rotary drilling. Soil samples will be collected at 2.5-foot intervals to a depth below ground surface (bgs) of 15 feet, then at 5-foot intervals to the bottom of the boring. Borehole depths will be to 50 feet bgs in 5 of the locations and to 80 feet bgs in the remaining location. Samples will be obtained with Standard Penetration Tests (SPTs), and with an occasional Shelby tube for undisturbed samples. All boreholes will be backfilled with cement-bentonite grout. The boring locations will be identified and marked during drilling for field survey by the Otak team.

In the hollow-stem auger hole, a falling-head permeability test will be performed in the embankment and foundation soils.

The soil samples collected from the borings will be brought to Cornforth's laboratory for geologic interpretation and testing. A geologist will review each sample and prepare a log for each boring.

3.4 Phase 1 Laboratory Testing

The City will contract with an independent laboratory to complete the testing of samples obtained by Cornforth collected during the subsurface investigations. Cornforth will coordinate with the soils laboratory to perform basic geotechnical index tests on samples, including:

- Water content tests for most samples (up to 80 tests)
- Minimum 1 grain-size and 1 fines content (% passing #200 sieve) for each boring, plus other selected samples of interest (up to 6 tests)
- 2 Atterberg Limits for each boring (12 tests)
- 1 Organic Content of a sample selected from each boring (6 tests)

Assumptions

- The City will provide a boat for the site reconnaissance.
- The City will obtain all permission and access to drill the borings.
- The Otak team will call the Underground Utilities Location Center (UULC) and private utility locator to locate underground utilities prior to drilling the borings. The fee is assumed to be \$1,000 for a private utility locator.
- The City will coordinate and obtain drilling permits (including the shoreline exemption for exploratory drilling) and will notify the Otak team about permit conditions.
- The City will contract with an independent soils laboratory to complete the geotechnical testing.

Exhibit A

Continued

- Soil cuttings and drilling mud will be handled by the City.
- Soils are assumed to be non-contaminated. Any soil cuttings suspected to be contaminated, based on field observations, will be placed into 55 gallon drums and disposed of by the City.
- The borings will be completed during workday hours over a period of ten business days. Drilling equipment will remain on site for the duration of exploration activities.
- No site restoration of vegetation will be required for minimal disturbance necessary to conduct work.

3.5 Geotechnical Analyses

The Otak team will evaluate geotechnical conditions along the dike alignment based on the existing and new subsurface data. Based on the review of the existing erosion and scour problems, the existing problems will be categorized into reaches of similar characteristics (expect 4 for scoping purposes). For each reach, a geologic cross-section will be prepared to illustrate the existing conditions and up to two potential repair concepts. The Otak team will develop concepts for raising the dike. For each of these improvement (dike raising) concepts, the Otak team will complete the following engineering evaluations.

- Slope stability
- Seepage
- Settlement
- Scour
- Freeboard
- Interior Drainage

The Otak team will confirm that all options will meet the U.S. Army Corps of Engineers (USACE) PL 84-99 eligibility requirements.

Deliverables

- The Otak team will prepare a draft geotechnical report presenting the results of the field explorations, laboratory testing, geotechnical analyses and design recommendations. The geotechnical report will include, as applicable, the following:
 - Summarize site investigation program, subsurface conditions and lab testing
 - Summarize conceptual options and engineering evaluations
 - Site plan showing locations of new borings
 - Summary boring logs
 - Laboratory test results
 - Geotechnical analysis results

Assumptions

Exhibit A

Continued

- A Draft Geotechnical Report will be provided in electronic format (Word) only and submitted to the City for review. The revised (and final) report will be submitted as an appendix to the Phase 1 Design Alternatives Technical Memo (Task 5).

Task 4 – Environmental Studies to Support Regulatory Compliance

During Phase 1 of the project, the Otak team will conduct data collection and field work necessary to establish baseline environmental conditions in the project area. Environmental data collected will be used to prepare Phase 1 environmental reports and documentation to inform proposed project alternatives analyses, and will be used to support the City on the permit applications and/or demonstrate regulatory compliance required for Phase 2 of the project.

The anticipated permits and required compliance applicable to this project include:

- U.S. Army Corps of Engineers (Army Corps) Section 404 permit
- U.S. Army Corps Section 10 permit
- Endangered Species Act compliance
- Magnuson-Stevens Act compliance
- National Historic Preservation Act (Section 106) compliance
- State Environmental Policy Act (SEPA) compliance
- Historic and Archaeological Resources (Exec. Order 05-05) compliance
- Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA)
- Washington Dept. of Ecology Section 401 water quality certification
- Coastal Zone Management consistency
- Shoreline development compliance
- Flood Hazard Regulations
- Critical Areas Ordinances/Regulations compliance (City of Everett and Snohomish County)

Task 4.1 Conduct Data Collection and Fieldwork

Wetland delineations will be conducted to meet the requirements of the City of Everett and Snohomish County Critical Areas ordinances and regulations, and federal and state agencies, including the Army Corps and Washington State Department of Ecology (Ecology). Otak staff will conduct the wetland delineation in the field using the three-parameter approach detailed in the USACE Wetland Delineation manual (USACE 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Western Mountain, Valleys, and Coast Region (USACE 2010). Wetlands present within the project area of potential impact will be flagged during the delineation and subsequently surveyed to incorporate in the project base map.

A field investigation of the Snohomish River and any nearby streams/ditches will be conducted to assess existing conditions within the project area, and upstream and downstream sufficiently to establish baseline conditions. Information on areas/habitat of primary association and other relevant

Exhibit A

Continued

fish and wildlife habitat conservation areas will be collected. Ordinary high water marks (OHWM) will be determined per both Ecology and the Army Corps methodologies along Union Slough and associated ditches in the project area of potential impact. The OHWM will be flagged and surveyed to incorporate in the project base map.

Data sheets and photographs documenting the wetland and stream field work will be compiled and included in the Critical Area Study report. Wetlands will be rated according to the 2014 Ecology *Washington State Wetland Rating System for Western Washington* methodology and the City and County's rating requirements. Streams will be rated per Washington Department of Natural Resources criteria. Buffer widths for wetlands and streams will be established per City and County Critical Areas Ordinances.

Assumptions:

- Wetland delineations and stream/ditch characterizations will be conducted from the surface water line of the Snohomish River (including wetland areas along the waterward side of the dike), and extending laterally for 50 feet from the landward toe of the dike in the project area of potential impact. Any critical areas beyond 50 feet will be estimated and noted in the report.
- The City will notify private property owners of scheduled field work and gain right-of-entry as necessary.
- Wetland flags will be located with a resource-grade GPS unit with sub-meter accuracy, and OHWM flags along Union Slough will be located with survey-grade equipment.
- Geotechnical data/information on geologically hazardous areas will be collected under Task 3.1.
- Data on groundwater and/or critical aquifer recharge areas will be collected under Task 3.1.

Task 4.2 Prepare Environmental Baseline Documentation

A Critical Areas Study (CAS) will be prepared for wetlands, streams, and other fish and wildlife habitat conservation areas. The CAS will include all information required for compliance with both the City of Everett Critical Areas Ordinances and Snohomish County Critical Areas Regulations, including: Wetland Determination Data Forms, Wetland Rating Forms (and figures), photographs, and supporting figures. The CAS will incorporate any relevant background information and previous studies completed for the project area as provided by the City.

Assumptions:

- City will provide copies of previously completed environmental documentation for the project area, if available.
- City will provide comments on the Draft CAS during one round of review prior to Otak completing the Final CAS.

Deliverables:

- Draft and Final Critical Areas Study

Task 5 – Design Development and Alternatives Evaluation

The Otak team will prepare site plans and details of up to 3 alternatives for repairing the erosion and scour problems. For each alternative, materials will be identified and quantified, and estimates of the construction costs will be provided. The recommendations for managing interior drainage will be described. The environmental impacts will be described, and the potential permitting implications (on schedule and mitigation requirements) will be estimated. Constructability issues will be evaluated. The utilities potentially impact by the project will be listed, the potential impacts described, and the concerns/constraints of each utility presented. The design development will be presented in a report with drawings showing the areal extent of the various alternatives, details of each alternative, and a description of the basis of the cost opinions. Recommendations for Phase 2 final design, including geotechnical analyses will be included. The final Phase 1 geotechnical report will be provided as an appendix.

Deliverables

- The Otak team will prepare a Phase 1 Design Alternatives Technical Memo.

Assumptions

- The DRAFT Design Alternatives Technical Memo will be submitted to DD5 prior to the fourth coordination meeting (Task 1.2), and the FINAL Design Alternatives Technical Memo will be submitted within two weeks of receiving DD5 comments on the draft memo.
- The City will provide information on previous Army Corps authorizations and maintenance activities along this portion of the dike to identify the historical dike footprint. Identification of the historical dike footprint will support the analyses of agency permitting requirements.

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

<p>Corporation</p> <p><u>Otak, Inc.</u> [Service Provider's Complete Legal Name]</p> <p>By: <u>[Signature]</u> Typed/Printed Name: <u>Gregory S. Haurd</u> Its: <u>Principal</u> Date: <u>7-25-16</u></p>
<p>Partnership (general)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington general partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Partnership (limited)</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited partnership</p> <p>By: _____ Typed/Printed Name: _____ General Partner Date: _____</p>
<p>Sole Proprietorship</p> <p>_____ Typed/Printed Name:</p> <p>_____ Sole Proprietor: Date: _____</p>
<p>Limited Liability Company</p> <p>_____ [Service Provider's Complete Legal Name] a Washington limited liability company</p> <p>By: _____ Typed/Printed Name: _____ Managing Member Date: _____</p>

EXHIBIT A
SCOPE OF WORK

Attached separately

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		

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		
Meals		
See Attached Exhibit C		

Task Description	Senior Associate Engineer	Senior Associate Geologist	Associate Engineer	Project Engineer	Senior Drafter	Secretary	Total Labor Hours	CCI Labor Cost	Estimated Direct Expenses	Subcontractors	Task Total
Task 1 Project Management and Coordination											
1.1 Monthly Project Status Report and Invoices	18		20	2		6	20	\$ 3,232.20	\$ 523.50	\$ -	\$ 3,755.70
1.2 Project Coordination			20				46	\$ 8,069.48	\$ -	\$ -	\$ 8,069.48
Task 2 Topographic Survey and Base Map Preparation											
2.1 Supplemental Topographic Survey and Base Map Preparation			2		4		6	\$ 644.90	\$ -	\$ -	\$ 644.90
Task 3 Geotechnical Investigation and Design Recommendations											
3.1 Report, Mapping and Data Review	1		8	8			17	\$ 2,586.66	\$ -	\$ -	\$ 2,586.66
3.2 Site Reconnaissance			20				20	\$ 3,232.20	\$ 523.50	\$ -	\$ 3,755.70
3.3 Phase 1 Subsurface Investigation			6	90			96	\$ 12,896.46	\$ 1,573.20	\$ 21,400.00	\$ 36,869.66
3.4 Phase 1 Laboratory Testing			3	31			34	\$ 4,592.95	\$ -	\$ -	\$ 4,592.95
3.5 Geotechnical Analyses	26	12	120	106	38	16	318	\$ 46,258.00	\$ -	\$ -	\$ 46,258.00
Task 6 Design Development and Alternatives Evaluation											
Direct Labor (hrs):	45	4	32	26		2	64	\$ 9,625.64	\$ -	\$ -	\$ 9,625.64
Rate per hour (\$):	\$ 233.62	\$ 219.06	\$ 161.61	\$ 132.52	\$ 80.42	\$ 66.18	621				
Labor Cost by Discipline:	\$ 10,512.90	\$ 3,504.96	\$ 37,331.91	\$ 34,852.76	\$ 3,377.64	\$ 1,588.32	\$ 91,168.49	\$ 91,168.49	\$ 2,620.20	\$ 21,400.00	\$ 115,188.69

DD5 - Dike Repair and Improvements Project Phase 1

Fee Estimate

Otak, Inc., Project 32758

Exhibit C

Estimate of Direct Costs

Description	Task 1	Task 2	Task 3	Task 4	Task 5
Outside Reproduction			\$100.00	\$100.00	
Postage and Courier					
Mileage and Parking	\$160.00	\$600.00	\$80.00	\$160.00	
Equipment Rental				\$400.00	
Miscellaneous	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
	<u>\$210.00</u>	<u>\$650.00</u>	<u>\$230.00</u>	<u>\$710.00</u>	<u>\$50.00</u>

\$1,850.00

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:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/22/2016

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 JD Fulwiler & Co. Insurance, Inc. 5727 SW Macadam Ave PO Box 69508 Portland OR 97239	CONTACT NAME: Peggy MacMillan PHONE (A/C No. Ext): (503) 293-8325 E-MAIL ADDRESS: pmacmillan@jdfulwiler.com	FAX (A/C. No): (503) 293-5418
	INSURER(S) AFFORDING COVERAGE	
INSURED Otak Inc. 808 SW 3rd Ave Ste 300 Portland OR 97204	INSURER A: Travelers Indemnity Co of CT	NAIC # 25682
	INSURER B: Travelers Indemnity Co of Am	25666
	INSURER C: Saif Corporation	36196
	INSURER D: Beazley Insurance Company Inc	
	INSURER E: Allianz Global Risk US Insurance	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 15/16 Gen USE **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 SUBR INSD 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 <input checked="" type="checkbox"/> WA Stop Gap Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		6801497P251	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BA1502P892	12/9/2015	12/9/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Towing \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CUP5C8570811247	12/9/2015	12/9/2016	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	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 N/A	**OREGON** 487431 OTAK INC 967262 OTAK Architects Inc	4/1/2016 4/1/2016	4/1/2017 4/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input 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
D	A&E Prof'l w/Pollution		V10267150701	12/9/2015	12/9/2016	Limit per claim/Agg/Ded \$2m/\$4m/\$200K
E	Inland Marine		MXI93070328	12/9/2015	12/9/2016	Misc Unscheduled Items/Ded \$100,00/\$5k

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: DD5 Dike Repair Otak Project #32758; naming the City of Everett, its officers, employees and agents are included as additional insureds on the general liability and auto liability with regard to operations of the named insured subject to policy terms, conditions and exclusions per attached forms CGD381 & CAT4370808; It is further agreed that coverage is primary and non-contributory; Cancellation provisions apply per attached form IL316;

CERTIFICATE HOLDER HKimball@everettwa.gov City of Everett Public Works 3200 Cedar St Everett, WA 98201	CANCELLATION 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 P MacMillan/TMAYDA <i>Peggy MacMillan</i>
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Additional Named Insureds

Other Named Insureds

HLB Otak Inc., an Oregon Corporation

OTAK Architects Inc, a Washington Corporation

Otak Architects Inc., an Oregon Corporation

Otak Engineering, Inc., an Oregon Corporation

Otak International (Caymen Islands)

Otak Nevada, LLC, an Oregon Limited Liability Co

Otak, Inc. 401K Employee Savings Plan

Otak, Inc., a Colorado Corporation

Otak, Inc., an Washington Corporation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as additional insured on the Coverage Form in

a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

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

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

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

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

COMMON POLICY CONDITIONS WASHINGTON

All Coverage Parts included in this policy are subject to the following conditions.

The conditions in this endorsement replace any similar conditions in the policy that are less favorable to the insured.

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy or any Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least:

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. 45 days before the effective date of cancellation if we cancel for any other reason,

except as provided in paragraphs 3. and 4. below.

3. We may cancel the Commercial Property Coverage Part, if made a part of this policy, by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation at least 5 days before the effective date of cancellation for any structure where 2 or more of the following conditions exist:

- a. Without reasonable explanation, the structure is unoccupied for more than 60 consecutive days, or at least 65% of the rental units are unoccupied for more than 120 consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;
- b. Without reasonable explanation, progress toward completion of permanent repairs to the structure has not occurred within 60 days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

- c. Because of its physical condition, the structure is in danger of collapse;
- d. Because of its physical condition, a vacation or demolition order has been issued for the structure, or it has been declared unsafe in accordance with applicable law;
- e. Fixed and salvageable items have been removed from the structure, indicating an intent to vacate the structure;
- f. Without reasonable explanation, heat, water, sewer, and electricity are not furnished for the structure for 60 consecutive days; or
- g. The structure is not maintained in substantial compliance with fire, safety and building codes.

4. If:

- a. You are an individual
- b. A covered "auto" you own is of the "private passenger type"; and
- c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operation hazards,

we may cancel the Commercial Auto Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for cancellation, to the last mailing address known to us:

- a. At least 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. At least 10 days before the effective date of cancellation for any other reason if the policy is in effect less than 30 days; or
- c. At least 20 days before the effective date of cancellation for other than nonpayment if the policy is in effect 30 days or more; or
- d. At least 20 days before the effective date of cancellation if the policy is in effect for 60 days or more or is a renewal or continuation policy, and the reason for can-

cellation is that your driver's license or that of any driver who customarily uses a covered "auto" has been suspended or revoked during the policy period.

5. We will also mail or deliver to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of cancellation prior to the effective date of cancellation. If cancellation is for reasons other than those contained in paragraph A.3. above, this notice will be the same as that mailed or delivered to the first Named Insured. If cancellation is for a reason contained in paragraph A.3. above, we will mail or deliver this notice at least 20 days prior to the effective date of cancellation.
6. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. If a Coverage Part is cancelled, that date will become the end of the policy period as respects that Coverage Part only.
7. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be at least 90% of the pro rata refund unless the following applies:
 - a. If:
 - (1) You are an individual;
 - (2) A covered auto you own is of the "private passenger type";
 - (3) The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards; and
 - (4) The first Named Insured cancels, the refund will be not less than 90% of the unearned portion not exceeding \$100, plus 95% of any unearned portion over \$100 but not exceeding \$500 and not less than 97% of any unearned portion in excess of \$500.

The cancellation will be effective even if we have not made or offered a refund.
8. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. INSPECTION AND SURVEYS

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. PREMIUMS

1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and

3. Standard Property forms including, but not limited to, the following:

- a. Building and Personal Property Coverage Form;
- b. Business Income Coverage Form;
- c. Commercial Property Conditions;
- d. Condominium Association Coverage Form;
- e. Condominium Commercial Unit-Owners Coverage Form;
- f. Causes of Loss Basic Form;
- g. Causes of Loss Special Form; and
- h. Causes of Loss Earthquake Form.

Endorsements referencing the Commercial Property Coverage Part or the Standard

Property Forms referenced above apply to the Businessowners Property Coverage Special Form in the same manner as they apply to the forms they reference.

Endorsements referencing the Commercial General Liability Coverage Part apply to the Commercial General Liability Coverage Form (included in the Businessowners Coverage Part) in the same manner as they apply to the form they reference.

I. INSURANCE UNDER TWO OR MORE COVERAGE PARTS

If two or more of this policy's Coverage Parts apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

This policy consists of the Common Policy Declarations and the Coverage Parts and endorsements listed in that declarations form.

In return for payment of the premium, we agree with the Named Insured to provide the insurance afforded by a Coverage Part forming part of this policy. That insurance will be provided by the company indicated as insuring company in the Common Policy Declarations by the abbreviation of its name opposite that Coverage Part.

The companies listed below (each a stock company) have executed this policy, but it is valid only if countersigned on the Common Policy Declarations by our authorized representative.

The Travelers Indemnity Company (IND)

The Phoenix Insurance Company (PHX)

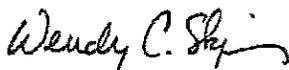
The Charter Oak Fire Insurance Company (COF)

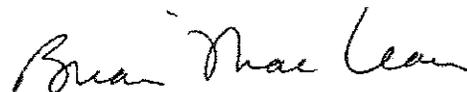
Travelers Property Casualty Company of America (TIL)

The Travelers Indemnity Company of Connecticut (TCT)

The Travelers Indemnity Company of America (TIA)

Travelers Casualty Insurance Company of America (ACJ)


Secretary


President



ADDITIONAL LOCATIONS
OFFICE PAC

POLICY NO.: 680-1497P251-TCT-09
ISSUE DATE: 12-07-09

THIS SCHEDULE OF LOCATIONS AND BUILDINGS APPLIES
TO THE COMMON DECLARATIONS FOR THE PERIOD

12-09-09 to 12-09-10

PREMISES LOCATION NUMBER	BUILDING NUMBER	OCCUPANCY	ADDRESS
01	01	ENGINEERS	17355 BOONES FERRY ROAD LAKE OSWEGO OR 97035
02	01	ENGINEERS	10320 NE POINTS DRIVE, #400 KIRKLAND WA 98033
03	01	ENGINEERS	17990 SW MCEWAN AVENUE PORTLAND OR 97224
04	01	ENGINEERS	700 WASHINGTON STREET, #401 VANCOUVER WA 98660
05	01	ENGINEERS	36 N 4TH STREET CARBONDALE CO 81623
06	01	ENGINEERS	51 W 3RD STREET TEMPE AZ 85281
07	01	ENGINEERS	333 SW UPPER TERRACE DRIVE BEND OR 97702
08	01	ENGINEERS	6 SOUTH 2ND STREET YAKIMA WA 98901
09	01	ENGINEERS	4253A HIGHWAY 101 NORTH GEARHART OR 97138
10	01	ENGINEERS	1715 B NORTH PACIFIC AVENUE LONG BEACH WA 98631
11	01	ENGINEERS	17437 BOONES ROAD, #200 LAKE OSWEGO OR 97035
12	01	ENGINEERS	1218 THIRD AVENUE, #300 SEATTLE WA 98101
13	01	ENGINEERS	10445 NEAH-KAH-NNIE CREEK ROAD MANZANITA OR 97130



EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Williams Investments I
 LLC Property Access
 Agreement to conduct
 Environmental Site
 Assessments under the
 Environmental Protection
 Agency Brownfield
 Community-Wide
 Assessment Grant Project

_____ Briefing
 _____ Consent
 8/03/2016 Action
 _____ First Reading
 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____
 Originating Dept. Planning
 Contact Person Paul Popelka
 Phone Number 425-257-7155
 FOR AGENDA OF August 3, 2016

Initialed by:
 Department
 Head
 CAA
 Council
 President

 db

 AM

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
SE corner at Hewitt Avenue and Bond Street		Property Access Agreement	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

The City is conducting Environmental Site Assessments funded under the Environmental Protection Agency (EPA) Brownfield Community-Wide Assessment Grant. Brownfield site inventories and prioritization of sites was completed in 2015, and several properties have been approved by the EPA for Environmental Site Assessments. Phase I assessments are complete or underway for four properties; Phase II assessments will be done for three properties.

This Property Access Agreement will allow Stantec, the City's lead consultant for the grant work, access to the Williams property at 2514-2526 Wetmore Avenue for a Phase II assessment.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Williams Investments I LLC Property Access Agreement to conduct Environmental Site Assessments under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant Project at 2514-2526 Wetmore Avenue.

**CITY OF EVERETT
PROPERTY ACCESS AGREEMENT
WILLIAMS INVESTMENTS 1 LLC**

THIS AGREEMENT made and entered into on this _____ day of July, 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 **WILLIAMS INVESTMENTS 1 LLC**, whose address is 1020 W Casino Road, Everett, WA 98204, hereinafter referred to as the “Property Owner”.

BACKGROUND

Stantec Consulting Services Inc. (“Stantec”) has been retained by the City to conduct Phase I & II Environmental Site Assessments (ESAs) on priority sites throughout the City as part of its U.S. EPA Brownfield Community-Wide Assessment Grant project. To complete a Phase I ESA, Stantec personnel will require access to the property for the purpose of visually inspecting existing conditions and identifying recognized environmental conditions (RECs), if present, as defined by ASTM E1527-13. Upon completion of the Phase I ESA, a Phase I ESA Report will be provided to the Property Owner. The Phase I ESA Report will identify RECs (if present), and provide recommendations for supplemental assessment activities (if necessary), such as a Phase II ESA. If supplemental assessment activities are warranted and requested by the Property Owner, the City may require additional access to the property so that its consultant Stantec can complete sampling of soil, groundwater, soil vapor, air and/or hazardous building materials to verify the presence, nature and extent of environmental impacts at the site. Prior to conducting Phase II ESA activities, the City will cause Stantec to prepare a site-specific Sampling & Analysis Plan (SAP) for review by the City, the Property Owner and the U.S. EPA. Upon completion of the Phase II ESA, the Property Owner will be provided a copy of the Phase II ESA Report.

REQUEST

The Property Owner hereby grants the City, its subconsultants and subcontractors, including Stantec, permission to enter upon the site located at 2514, 2518, 2520, 2524, & 2526 Wetmore Avenue, Everett, Washington and identified by Snohomish County Parcel Numbers 00517156202502, 00517156202501, 00562456202400, 00562456202200, 00562456202100, and 00562456201900 (collectively referred to as the “site” or “property”) to engage in Phase I and/or II ESA and/or other environmental assessment activities at the site, hereinafter referred to as the “Work”.

PURPOSE

The City and the Property Owner are entering into this Agreement so that the City’s subconsultant, Stantec, may enter the property to perform the Work. Without waiver of any protections pursuant to the laws of the State of Washington, the City agrees to require Stantec to act in accordance with all applicable statutes and regulations in conducting the Work. Property Owner acknowledges and agrees that neither the City nor Stantec have given the Property Owner any guarantee or representation the Work will have any particular result regarding the existence, non-existence, or extent of hazardous materials or any other condition that may be located on or near the property.

CITY COMMITMENTS

In return for the Property Owner granting the City and its subconsultant Stantec access to the property to perform the Work, the City agrees to the following:

- a. The City will cause Stantec to give the Property Owner reasonable notice before commencing any on-site activities.
- b. The City will require that Stantec, to the greatest extent possible, performs the Work in a way that minimizes interference with any ongoing operations. The City will require that, if Stantec determines that any on-site activity may interfere with the site operations, Stantec will first notify, and consult with, the Property Owner before commencing the activity.
- c. The Property Owner will have the opportunity to be present for any on-site activity.
- d. The City agrees to require Stantec, as practicable, to return the property to the general condition that existed before the commencement of on-site activities.
- e. The City by this Agreement does not guarantee that Stantec will complete the Work. The City reserves the right to terminate or otherwise limit Stantec's Work in the City's sole discretion. In the event that the Work is terminated in whole or in part prior to completion, the City will provide the Property Owner with the data and information regarding the Work that the City received from Stantec prior to the termination.

INDEMNIFICATION

The City agrees to indemnify the Property Owner from liability, claims, damages and actions to the extent that they result from the negligent use or occupancy of the Property by the City and its subconsultants and subcontractors, subject to the following exceptions: 1) the City and its subconsultants and subcontractors shall have no obligation to indemnify the Property Owner, its heirs, successors or assigns, or any of them, for any claims or damages for which the City and/or its subconsultants and subcontractors would have no liability under the laws of the State of Washington; and 2) The agreement of the City to indemnify, as set forth in this paragraph, shall not apply to any claims, actions or damages (a) that may arise out of, be occasioned by or result from any condition (including without limitation hazardous materials) existing on, or which did exist on, the property at the time of the execution of this Agreement, or at any time prior to the execution of this Agreement, or (b) that were caused by the Property Owner or any of its predecessors or any of their tenants, licensees, employees, heirs, successors, or assigns.

GENERAL CONDITIONS

This Agreement represents the entire agreement between the parties concerning site access for the City and its subconsultants and subcontractors, and supersedes all prior access negotiations, representations, or agreements, either written or oral between the parties unless otherwise expressly stated.

This Agreement may only be terminated by the mutual written agreement of the Parties. Further, any modification to this Agreement shall be in writing.

This Agreement applies to and is binding upon the City and its subconsultants and subcontractors, and the Property Owner.

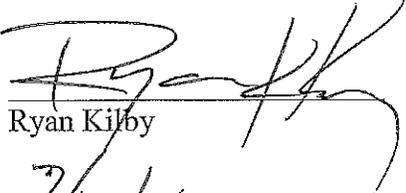
TERM

This Agreement shall take effect as of the date both parties have signed and dated it. Unless terminated sooner by mutual written agreement of the parties, this Agreement shall expire upon completion of the Work.

IN WITNESS THEREOF, the parties thereto have executed this Agreement on the day and year first written above.

WILLIAMS INVESTMENTS 1 LLC

CITY OF EVERETT,
WASHINGTON



Ryan Kilby
3/15/16

Date

Ray Stephanson, Mayor

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Rick Lapinski Property
Access Agreement to
conduct Environmental
Site Assessments under
the Environmental
Protection Agency
Brownfield Community-
Wide Assessment Grant
Project.

_____ Briefing
_____ Consent
8/03/2016 Action
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Public Hearing

COUNCIL BILL # _____
Originating Dept. Planning
Contact Person Paul Popelka
Phone Number 425-257-7155
FOR AGENDA OF August 3, 2016

Initialed by:
Department
Head _____
CAA db
Council _____
President sm

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
3132 Rucker Avenue		Property Access Agreement	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

The City is conducting Environmental Site Assessments funded under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant. Brownfield site inventories and prioritization of sites was completed in 2015, and several properties have been approved by the EPA for Environmental Site Assessments. Phase I assessments are complete or underway for four properties; Phase II assessments will be done for three properties.

This Property Access Agreement will allow Stantec, the City's lead consultant for the grant work, access to the Rick Lapinski property at 3132 Rucker Avenue for a Phase II assessment.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Rick Lapinski Property Access Agreement to conduct Environmental Site Assessments under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant Project at 3132 Rucker Avenue.

**CITY OF EVERETT
PROPERTY ACCESS AGREEMENT
RICK LAPINSKI**

THIS AGREEMENT made and entered into on this 8 day of July, 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 **RICK LAPINSKI**, whose address is PO Box 1978, Everett, WA 98206, hereinafter referred to as the "Property Owner".

BACKGROUND

Stantec Consulting Services Inc. ("Stantec") has been retained by the City to conduct Phase I and II Environmental Site Assessments (ESAs) on priority sites throughout the City as part of its U.S. EPA Brownfield Community-Wide Assessment Grant project. To complete a Phase I ESA, Stantec personnel will require access to the property for the purpose of visually inspecting existing conditions and identifying recognized environmental conditions (RECs), if present, as defined by ASTM E1527-13. Upon completion of the Phase I ESA, a Phase I ESA Report will be provided to the Property Owner. The Phase I ESA Report will identify RECs (if present), and provide recommendations for supplemental assessment activities (if necessary), such as a Phase II ESA. If supplemental assessment activities are warranted and requested by the Property Owner, the City may require additional access to the property so that its consultant Stantec can complete sampling of soil, groundwater, soil vapor, air and/or hazardous building materials to verify the presence, nature and extent of environmental impacts at the site. Prior to conducting Phase II ESA activities, the City will cause Stantec to prepare a site-specific Sampling & Analysis Plan (SAP) for review by the City, the Property Owner and the U.S. EPA. Upon completion of the Phase II ESA, the Property Owner will be provided a copy of the Phase II ESA Report.

REQUEST

The Property Owner hereby grants the City, its subconsultants and subcontractors, including Stantec, permission to enter upon the site located at 3132 Rucker Avenue, Everett, Washington and identified by Snohomish County Parcel Numbers 00437573401700 & 00437573401900 (referred to as the "site" or "property") to engage in Phase I and/or II ESA and/or other environmental assessment activities at the site, hereinafter referred to as the "Work".

PURPOSE

The City and the Property Owner are entering into this Agreement so that the City's subconsultant, Stantec, may enter the property to perform the Work. Without waiver of any protections pursuant to the laws of the State of Washington, the City agrees to require Stantec to act in accordance with all applicable statutes and regulations in conducting the Work. Property Owner acknowledges and agrees that neither the City nor Stantec have given the Property Owner any guarantee or representation the Work will have any particular result regarding the existence, non-existence, or extent of hazardous materials or any other condition that may be located on or near the property.

CITY COMMITMENTS

In return for the Property Owner granting the City and its subconsultant Stantec access to the property to perform the Work, the City agrees to the following:

- a. The City will cause Stantec to give the Property Owner reasonable notice before commencing any on-site activities.
- b. The City will require that Stantec, to the greatest extent possible, performs the Work in a way that minimizes interference with any ongoing operations. The City will require that, if Stantec determines that any on-site activity may interfere with the site operations, Stantec will first notify, and consult with, the Property Owner before commencing the activity.
- c. The Property Owner will have the opportunity to be present for any on-site activity.
- d. The City agrees to require Stantec, as practicable, to return the property to the general condition that existed before the commencement of on-site activities.
- e. The City by this Agreement does not guarantee that Stantec will complete the Work. The City reserves the right to terminate or otherwise limit Stantec's Work in the City's sole discretion. In the event that the Work is terminated in whole or in part prior to completion, the City will provide the Property Owner with the data and information regarding the Work that the City received from Stantec prior to the termination.

INDEMNIFICATION

The City agrees to indemnify the Property Owner from liability, claims, damages and actions to the extent that they result from the negligent use or occupancy of the Property by the City and its subconsultants and subcontractors, subject to the following exceptions: 1) the City and its subconsultants and subcontractors shall have no obligation to indemnify the Property Owner, its heirs, successors or assigns, or any of them, for any claims or damages for which the City and/or its subconsultants and subcontractors would have no liability under the laws of the State of Washington; and 2) The agreement of the City to indemnify, as set forth in this paragraph, shall not apply to any claims, actions or damages (a) that may arise out of, be occasioned by or result from any condition (including without limitation hazardous materials) existing on, or which did exist on, the property at the time of the execution of this Agreement, or at any time prior to the execution of this Agreement, or (b) that were caused by the Property Owner or any of its predecessors or any of their tenants, licensees, employees, heirs, successors, or assigns.

GENERAL CONDITIONS

This Agreement represents the entire agreement between the parties concerning site access for the City and its subconsultants and subcontractors, and supersedes all prior access negotiations, representations, or agreements, either written or oral between the parties unless otherwise expressly stated.

This Agreement may only be terminated by the mutual written agreement of the Parties. Further, any modification to this Agreement shall be in writing.

This Agreement applies to and is binding upon the City and its subconsultants and subcontractors, and the Property Owner.

TERM

This Agreement shall take effect as of the date both parties have signed and dated it. Unless terminated sooner by mutual written agreement of the parties, this Agreement shall expire upon completion of the Work.

IN WITNESS THEREOF, the parties thereto have executed this Agreement on the day and year first written above.

RICK LAPINSKI

CITY OF EVERETT,
WASHINGTON


Rick Lapinski

Ray Stephanson, Mayor

7-8-16

Date

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Snohomish County Fire
District #4 Fire Training
Facility Use Agreement

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

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

FIRE

Murray Gordon

425 257 8101

8/3/16

Initialed by:

Department Head

CAA

Council President

MG
dg
SM

Location

6425 S. Machias Road,
Snohomish Washington

Preceding Action

Attachments

General Terms and Conditions
Exhibit A – Fee Schedule
Exhibit B – District’s Rules
and Policies
Exhibit C – Type of Training
& Mitigation Chart.

Department(s) Approval

Fire, Legal

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

DETAILED SUMMARY STATEMENT:

It is the purpose of this Agreement to allow the Everett Fire Department the use of the Snohomish County Fire District #4 facilities for training and services. This Agreement shall be in effect until December 31, 2020 from the date of execution.

This agreement provides for the right of the City to terminate this Agreement, in whole or in part upon thirty (30) calendar day’s written notification.

RECOMMENDATION (Exact action requested of Council): Authorize the Mayor to sign the Snohomish County Fire District #4 Fire Training Facility Use Agreement allowing the use of the Snohomish County Fire District #4 Fire Training Facility for training and services until December 31, 2020.



1525 Avenue D
P.O. Box 820
Snohomish, WA 98291-0820

*Snohomish County
Fire District #4*

FIRE TRAINING FACILITY USE AGREEMENT

THIS FIRE TRAINING FACILITY USE AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20____, between Snohomish County Fire District No. 4 (the "District") and _____ ("User").

I. RECITALS

WHEREAS, the District is the owner of a fire training facility (the "Facility") at 6425 S. Machias Road, Snohomish Washington; and

WHEREAS, User desires to utilize the Facility for training purposes for its personnel.

II. TERMS AND CONDITIONS

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

- 1. Training.** User will be permitted to use the Facility on a non-exclusive basis for training purposes.
- 2. Scheduling.** Facility usage will be scheduled on a first come, first served basis. User recognizes that the Facility will be used by the District and by other users for training purposes and that the District has first priority for all available training times. The User shall request use by submitting a "Training Request" form with all applicable information (as noted below), with as much advance notice as possible, minimum three (3) weeks, to ensure that the Facility is available for its desired training (these forms will be available on the District web site or by contacting our officer during regular business hours). The District shall make every effort to make the Facility available to User as requested but will not guarantee requested dates. Confirmation of a request will be by electronic or written notice to User within five (5) business days of receipt of request.
- 3. Facility Fee.** User will pay the District a fee for use of the Facility according to a fee schedule policy (the "Fee Schedule") set by the District. The current Fee Schedule is attached hereto and incorporated herein as Exhibit "A." The District will invoice User on at least a monthly basis. Invoices are due within forty-five (45) days of receipt, and overdue amounts will accrue interest at the rate of twelve percent (12%) per annum. User may be liable for a cancellation fee according to the Fee Schedule. The District reserves the right to change the Fee Schedule at any time without advance notice to User.
- 4. Term of Agreement.** The term of this Agreement shall commence upon execution by the parties and shall continue until December 31, 2020 unless expressly terminated by either party. Either party may terminate this Agreement by providing notice in writing to the other at least thirty (30) days prior to the effective termination date.

5. **Rules of Facility Use.** User agrees to comply with the District's rules and policies regarding the use of the Facility. The current version of these rules and policies as adopted by the District are attached hereto and incorporated herein as Exhibit "B." The District reserves the right to change these rules and policies at any time without advance notice to User to ensure the orderly and safe utilization of the Facility by all users. **The User agency agrees to enforce compliance of the facility rules for all attending agency personnel by all reasonable means available to the User agency.**
6. **Facility Neat and Clean.** User agrees to keep the Facility in a neat and clean condition as reasonably can be expected during its use of the Facility. At the end of each Training Session or use, User agrees to return the Facility to the District in as good a condition as received. User further agrees that it will clean the Facility after each Training Session or use to a condition reasonably acceptable to the District. If User fails to comply with this paragraph, the District shall be entitled to bill User for any costs incurred to clean or repair the Facility after User's Training Sessions or use.
7. **Instructors.** User shall arrange for and pay instructors, when needed, directly for User's Training Sessions or use of the Facility.
8. **Safety Officers.** A Safety Officer will be designated for all training activities. For all training involving more than one (1) operational crew and/or multiple apparatus, an individual shall be assigned to function as Safety Officer for the entire site and duration of the activity, with all rights and responsibilities as assigned by applicable NFPA Standards and department policy. The Safety Officer(s) shall hold current certification meeting NFPA, Standard 1521. All personnel assigned as accessory Safety Officers to support a training activity shall also hold current certification meeting NFPA Standard 1521. The District shall maintain a list of qualified personnel who may be utilized by Users, and User will be required to provide applicable documentation to the District for personnel who they wish to use as Safety Officer.
9. **Prop Manager.** User shall be required to provide a "Prop Manager" to manage and oversee the operation and use of the Live Fire Training Prop, Training Tower and associated equipment, pressurized fire hydrant system and associated equipment, or any other accessory prop requiring special knowledge of the operation. The District will train these personnel and provide User with a list of those capable of fulfilling the position, and/or User may make arrangements to have a trained District representative available during their training. For the use of the Live Fire Prop, this person shall have no other duties than to manage the prop.
10. **Liability.** User has inspected the Facility and finds it acceptable for its intended uses. User is not relying upon any representations or warranties concerning the Facility except those that may be set forth herein. User accepts sole responsibility for all accidents, damages, bodily injury or damage to personal property occurring during User's use of the Facility. To the extent applicable by law, and pursuant to the terms of any other agreement between the parties:
 - 10.1 **No District Liability for User's Property Damage:** User waives any and all claims, suits and causes of action against the District, its employees, commissioners, volunteers, officers or agents for any property loss or damage done to User's property, whether real, personal or mixed, occasioned by User's activities on the Facility. Provided, however this waiver shall not apply to claims or damages arising from the negligence, or willful misconduct of the District, its employees, commissioners, volunteers, officers or agents. It shall be the User's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the District, the User, third party, or act of nature.

shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

15. **Amendment.** No modification, termination or amendment of this Agreement may be made except by written agreement signed by both parties hereto.
16. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.
17. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
18. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.
19. **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties hereto agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the purposes of this Agreement.
20. **No Presumption.** User has had the opportunity to have this Agreement reviewed by legal counsel and no presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
21. **Governing Law.** This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action venue shall lie in Snohomish County, Washington.
22. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

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

SNOHOMISH COUNTY FIRE
DISTRICT NO. 4

USER

Name

Name

Title

Title

EXHIBIT "A"
FEE SCHEDULE

Fire Training Facility Fees

Fees will be based on an hourly rate as follows:

No Rental fees will be charged for the following:

- Low impact training of less than 12 people and less than four (4) hours
- Mutual aid training
- This exception to the fees does not cover use of the tower, burn building or any drill that will use consumable materials.

Applicable charges for use and consumables:

- Tower \$50 per/hr
- Grounds only \$20 per/hr
- Burn Building – 100 per/hr (minimum \$400)
- The Whole Facility – \$150 per/hr (minimum \$400)
- Replacement cost of smoke fluid, wood or other consumables
- Utility Fee for City of Everett or Snohomish Water (as applicable for hydrant use off site)
- Eldon Harvey Auditorium Classroom - \$45 per 4 hr min / \$11.25 each add'l 1 hr period

Mutual aid Training:

There shall be an equal sharing of the cost of consumables

Shared cost training:

Where an outside user wishes to co-host a training activity with Fire District 4, the District will negotiate a shared rental fee based on number of District participants and estimated cost of use for the facilities to be involved.

Trades:

Where an outside user wishes to trade rental fees for roster spots in the class for Fire District 4 personnel, the District will facilitate such a trade, so long as the roster spots value is equal to or greater than the rental fees.

EXHIBIT "B"
DISTRICT'S RULES AND POLICIES

Purpose:

To provide a guideline that establishes rules of operation for the Fire District #4 Training Facility and unattached perimeter props to ensure safe and effective training operations for all approved users.

Guideline:

A) Authorization:

- 1) All internal training sessions at the Training Tower must be pre-approved by the On-duty Battalion Chief.
- 2) All external training requests shall be in written format (email is acceptable) and shall be received by the Administrative Secretary for the District no less than three (3) weeks prior to the requested date of use.
 - a. The request shall include the type of training; i.e. hose evolutions, search and rescue, firefighter survival, ground ladders.
 - b. A description of the tower props that will be included in the training; i.e. ventilation props, outside stairwell, residential portion, standpipe and interior stairwell, forcible entry props.
 - c. The amount of time and or number of days the site will be utilized.
 - d. Any additional training equipment that is being requested, i.e. cones, manikins, ground ladders, hose, appliances, etc.
 - e. Anticipated consumable usage. This will typically be for smoke machine fluid, ventilation prop or forcible entry materials and Class A live fire burning materials.
 - f. Accurate post drill consumable usage shall be reported to the On Duty Chief Officer via a Consumable Report upon completion of the drill session(s).
 - g. All requests shall be forwarded to the District Safety Officer to ensure that all applicable safety laws and regulations are complied with.
 - h. The District will notify requesting party of approval or denial within five business days of receipt of request.
- 3) Use of the Training site is not guaranteed until approved and posted on the District Facility Use Calendar.

B) General Rules:

- 1) The training ground is a professional work environment and all activities will be conducted in a safe and professional manner. Water-fights, horseplay, running, and any other unsafe conduct will not be allowed.
- 2) Tobacco, Alcohol, and or Drug use (IN ANY FORM) are not allowed on the training site. **NO EXCEPTIONS**
- 3) Any non-compliance with the department policies and procedures may result in the termination of the drill scenario and may lead to disciplinary action.
- 4) All appropriate personal protective equipment shall be worn.
- 5) All personnel rules of conduct apply on the training grounds.
- 6) All non- Fire District 4 personnel must sign a liability wavier form prior to their participation on the drill ground.

C) Drill Ground and Facility Rules:

- 1) Apparatus speeds for driving drill will be kept to the maximum needed to adequately perform drills.

- 2) NO building, prop or site appliance or equipment shall be used unless an individual recognized and trained as a Prop Manager is on site during the drill.
- 3) Drills will not be conducted during freezing conditions.
- 4) A Safety Officer will be assigned for all Multiple Company Drills (MCO). For single crew/apparatus training the Company Officer shall be recognized as the Safety Officer.
- 5) Safety and Company Officers will monitor temperature conditions for drills held during inclement temperatures, hot or cold, and will appropriately monitor personnel for their physical reaction during those drills.
- 6) All accidents and/or injuries, damage to the facility, apparatus or equipment, or broken or malfunctioning equipment, shall be immediately reported to the ON-Duty Battalion Chief for District 4.
- 7) Post Drill cleanup shall be appropriate to the drill ground used, and closure of the facility will comply with Shutdown Procedures as posted for the site.
- 8) Instructors/User shall complete a Training Plan, to include at the minimum an ICS Form 201, 202 and 203 for all MED to HIGH Risk and MED to HIGH Impact Training. This will be submitted with the Training Request and may be negotiated with the District pertaining to details of the planned event.
- 9) Fire Hydrant use on site is allowed under the tenants of this policy. Fire Hydrants outside the site shall not be used for training purposes without the approval of the On-Duty Battalion Chief, and may incur expense on behalf of the User as a consumable resource.

The on-duty Battalion Chief shall be contacted at Station 43, (360) 568 2141, for all issues at any time.