

Everett City Council Agenda

6:30 PM August 31, 2016

City Council Chambers

Roll Call

Pledge of Allegiance

Approval of Minutes: August 24, 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) Budget Update No. 3

(2) Adopt a Resolution establishing a Policy Relating to Compliance with the Public Records Act.

Documents:

[Public Records.pdf](#)

(3) Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with the DLR Group for the design of the Services Center Redevelopment Project in the amount of \$2,003,747.00.

Documents:

[Service Center Redevelopment.pdf](#)

CONSENT ITEMS:

(4) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of \$2,412,449.30 for the period of August 13, 2016 through August 19, 2016.

Documents:

[res-101.pdf](#)

(5) Authorize Call for Request for Qualifications for 2017-2019 Utility Consultant Roster.

Documents:

[Consultant Roster.pdf](#)

ACTION ITEMS:

(6) Authorize the Mayor to sign documents with the Washington State Parks and Recreation Commission regarding the \$5,000.00 funding increase for the Federal Fund Year 2016 Marine Patrol Federal Financial Assistance Grant Program.

Documents:

[Marine Patrol.pdf](#)

(7) Authorize the Mayor to sign a Master Services Agreement with Safetec Compliance Systems, Inc. for management of City of Everett Safety Data Sheets in the amount of \$5,250.00.

Documents:

[Safetec.pdf](#)

Executive Session

Adjourn

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RESOLUTION NO. _____

A Resolution Establishing a Policy Relating to Compliance with the Public Records Act

Whereas, the Public Records Act requires the City to adopt and enforce reasonable rules and regulations to provide full public access to public records; and

Whereas, this Resolution provides policy and procedures for responding to and fulfilling requests for disclosure of public records in accordance with the Act; and

Whereas, this policy also includes information to assist the public in accessing public records; and

Whereas, this policy serves as an extension of the rules and regulations established in EMC Chapter 2.92;

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES THE FOLLOWING:

Section 1:

1.0 General

The City is required by Chapter 42.56 RCW (the Public Records Act) to adopt and enforce reasonable rules and regulations to provide full public access to public records. This policy and procedure complies with the requirements of the Public Records Act by providing for consistent and predictable practices for responding to and fulfilling requests for public records in a manner consistent with the Act.

The policy portion of this document clarifies the City's goals and intent with respect to providing access to public records. The procedure portion of the document describes the process for requesting and fulfilling public records requests in keeping with legal requirements.

This policy includes statutory requirements and best practices. Nothing in this policy is intended to create legal obligations or rights beyond those obligations and rights created by statute or other binding laws.

Section 2:

2.0 Definitions

For the purpose of this policy, the following definitions apply:

2.1 “All records relating to,” “all records regarding,” or “all records pertaining to” means those records that directly and fairly address the topics that are reasonably identifiable by the Records Liaison fulfilling the request. These phrases are inherently ambiguous and requestors are encouraged to avoid using such terms when possible to avoid unnecessary delays.

2.2 “City of Everett” means the City of Everett, Washington. The City of Everett is a general purpose governmental entity that provides the full range of municipal services allowed by statute or charter. These services include police, fire, emergency medical, street maintenance, planning and zoning, libraries, parks and recreation, and general administrative services. In addition to its general government services, the City operates five enterprises: water and sewer utility, solid waste (recycling) utility, two golf courses, a transit system, and a parking garage.

2.3 “Court records request” means any request for Everett Municipal Court records. Everett Municipal Court records are exempt from the Public Records Act and are subject to release directly through the Everett Municipal Court under General Rule 31.1.

2.4 “Exempt record” means records or portions of records that are exempt from public disclosure. Exemptions include those identified in the Public Records Act or in other statutes incorporated by RCW 42.56.070. Exemption from disclosure of a portion of a record does not automatically exempt the remainder of the record from disclosure. Exempt portions of records may be subject to redaction.

2.5 “Public record” means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. Electronic data, including e-mail, that meet this definition shall be considered a public record. Records created or received by employees using non-city devices only meet the definition of public record if the employee was acting within the scope of employment when the record was created or received.

2.6 “Public records request” means a request made to the City of Everett pursuant to the Public Records Act for disclosure of public records. Requests for public records made pursuant to other statutory rights of access to public records shall not be considered “public records requests” but may be otherwise handled under this policy.

2.7 “Public Records Liaison” and “Records Liaison” means the person or persons designated by a department director or designee to accept, track by log, and arrange for fulfillment of requests for disclosure of public records within a City department.

2.8 “Public Records Officer” means the City Clerk or designee.

2.9 “Record holder” means the department or particular staff person in custody of a primary record.

2.10 “Requestor” means the individual making the request for disclosure of public records by submitting an official public records request.

Section 3:

3.0 Policy

3.1 General

Public records maintained by the City of Everett are and remain the property of the City. It is the policy of the City of Everett to provide access to public records in accordance with the requirements of Chapter 42.56 RCW. Procedures governing access to public records shall ensure access to public records without discrimination to persons requesting access to records and shall provide appropriate safeguards for information exempted from or prohibited from disclosure by statute.

In order to fully assist the public in requesting public records, the City shall encourage the use of available electronic resources whenever possible for accessing, requesting, and fulfilling requests for public information, including use of email and provision of information on the City’s website.

3.2 Public Records Officer

The City Clerk shall serve as the Public Records Officer of the City of Everett. The City Clerk may appoint a designee to fulfill the responsibilities of the Public Records Officer.

The Public Records Officer shall oversee compliance with the Public Records Act throughout the City by serving as a point of contact for City staff and members of the public seeking access to public records; however, not every request must be addressed to the Public Records Officer, nor is it intended that every request be reviewed by the Public Records Officer prior to fulfillment. In the interest of providing effective access to public records, the Public Records Officer may refer parties requesting public records to an appropriate department Records Liaison as appropriate.

The Public Records Officer shall maintain a list of department Records Liaisons who are designated to accept and fulfill requests for disclosure of public records on a regular basis, and shall provide advice and instruction to Records Liaisons and other staff members regarding fulfillment of such requests.

The Public Records Officer shall distribute updates on laws, legal precedents, and policy changes affecting fulfillment of records requests, as appropriate, and shall approve all forms for requesting and responding to requests of public records.

3.3 Public Records Liaisons

There shall be a network of Records Liaisons with representatives in every department of the City to assist the public in obtaining access to public records. Each department director shall designate at least one Records Liaison and one backup Records Liaison. Each department will inform the Public Records Officer of all Records Liaisons and designated backups.

Under the oversight of the Public Records Officer, Records Liaisons may accept requests for public records in the possession of their respective departments and may respond to requestors in accordance with the requirements of state statutes and this policy and procedure.

In consultation with the Public Records Officer, Record Liaisons may communicate directly with requestors, forward requests to other City employees as necessary, compile requested records, arrange for the supervised public inspection and copying of requested records, maintain files and logs of official requests fulfilled by them, and provide periodic statistical reporting of disclosure activity to the Public Records Officer.

3.4 Police Records Unit

The coordination, tracking, and fulfillment of requests for police records are the responsibility of the Police Department. The Public Records Officer will serve as an advisor to the Police Records Liaisons, but will not provide oversight of the fulfillment process.

3.5 Public Records Requests

Requests for public records should be made in writing. The City shall provide an official form for submission of public records requests. Forms for the purpose of requesting public records shall be approved by the Public Records Officer for general use by City staff. These forms shall not be edited for distribution without the approval of the Public Records Officer. As needed, the Public Records Officer may approve alternate request forms that are specialized for request of records with unique statutory considerations, such as law-enforcement records.

Acceptance of requests by means other than on official forms approved by the Public Records Officer shall be in accordance with the procedures outlined in this policy and procedure.

3.6 City Response

Staff shall respond promptly to requests for public records in accordance with the requirements of RCW 42.56.520 and this policy and procedure. **The deadline for initial response to the records request is five (5) business days after receipt of the request.** Business days do not include weekends or City holidays.

Initial and final responses from staff to official requests for public records shall be made in writing and may be by fax, letter, notation on a request form, or e-mail. Staff may ask for clarification of a request in order to properly identify the records being requested. Clarification of requests may be obtained in writing or verbally.

All requests for public records shall be afforded the same treatment and consideration, without distinction among persons, and without regard to the intent of the request.

To reduce proliferation of paper copies and in the interest of efficiently and expeditiously responding to requests for disclosure of public records, the Public Records Officer and Records Liaisons are encouraged to use electronic means to respond to, fulfill, and track records requests.

This policy shall not obligate staff to create electronic or other records, or to convert electronic records into a format or medium in which the records are not already maintained. When asked by a requestor to convert an electronic record into a different format, staff is encouraged to do so when reasonable and technologically feasible, provided such conversion is not unduly burdensome and does not interfere with other essential City functions. Requestors may request paper copies of electronic records subject to applicable copying charges adopted by the City.

Responses to requests of public records, including responses by electronic mail, become public records in their own right, subject to the provisions of the Public Records Act and the retention requirements of the Office of the Secretary of State, and shall be maintained accordingly.

3.7 Exemption

The Public Records Act and other statutes exempt from or prohibit disclosure of certain public records. It is the policy of the City of Everett to provide prompt and helpful access to all public records in the City's custody that State statutes do not exempt or prohibit from disclosure. Requested records may only be withheld or redacted consistent with statutory requirements, which shall be documented for the requestor in accordance with the requirements of RCW 42.56.210.

Some public records that are otherwise subject to disclosure may contain specific content that is exempt from disclosure. The presence of exempt information does not necessarily exempt an entire record from disclosure. Exempt portions of an otherwise disclosable record shall be redacted prior to inspection or copying and such redactions shall be documented. The requestor shall be notified of the redaction in accordance with the requirements of RCW 42.56.210.

The following are summaries of common exemptions relied upon by the City. Note, the City reserves the right to assert any exemptions permitted by law when the City determines non-disclosure serves the public interest and is not limited to the exemptions listed below:

- 3.7.1 Records that are protected by trade secrets law (RCW 19.108);
- 3.7.2 Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by the City within five years of the request for disclosure when disclosure would produce private gain and public loss (RCW 42.56.270 (1));
- 3.7.3 Personal information in files maintained for council members and City employees to the extent that disclosure would violate their right to privacy, including but not limited to addresses, phone numbers, Social Security numbers, driver license numbers, voluntary deductions, marriage status, information about dependents, and any garnishment deductions (RCW 42.56.230(3) & .250(3));

- 3.7.4 Preliminary drafts, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the City in connection with any City action (RCW 42.56.280);
- 3.7.5 All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant (RCW 42.56.250(1));
- 3.7.6 Records in investigative files, including police and code-enforcement investigations, to the extent that nondisclosure is essential for effective law enforcement or for the protection of any person's right to privacy (RCW 42.56.240(1));
- 3.7.7 Identifying information for victims or witnesses of crimes under certain circumstances (RCW 42.56.240(2) & (5));
- 3.7.8 Records created in anticipation of litigation (RCW 42.56.290); or
- 3.7.9 Records reflecting communications between attorneys and City employees where legal advice is sought or received (RCW 5.60.060(2)).

3.8 Broad Requests and Installments

When a request that appears to be broad in nature is received, staff shall request clarification from the requestor to ensure that the appropriate records are identified. Clarification shall focus on information needed to identify responsive records. Any information provided about the purpose of the request shall not be used as a basis for denying the request.

When appropriate, as part of the clarification process, staff may work with the requestor to find ways to narrow the request. When a requestor agrees to narrow a request, nothing prevents the requestor from later expanding the request back to its original scope.

Large or complex requests may be fulfilled through an installment process as described in this policy and procedure. When installments are provided and are not claimed or inspected, the City may postpone compilation of later installments or treat the request as abandoned and closed. In such cases, staff shall consult with the Public Records Officer before postponing compilation of an installment.

Section 4:

4.0 Procedure

4.1 Applicability

This policy and procedure shall apply to all employees of the City of Everett, the Everett Elected Officials, and all advisory boards and commissions of the City of Everett. This policy and

procedure does not apply to responses to legal discovery requests governed by State or Federal Rules of Civil Procedure.

4.2 Public Records Officer

The Public Records Officer shall oversee the City's compliance with the Public Records Act and shall serve as primary point of contact for public records access. The Public Records Officer shall have the following responsibilities:

- Oversee compliance with disclosure laws;
- Serve as primary point of contact for the public for access to public records;
- Serve as a single point of contact to coordinate the City's response when a request involves multiple record holders, is broad in scope, or is otherwise complicated to fulfill;
- Direct the public to appropriate Records Liaisons in possession of particular records;
- Serve as a resource to staff on topics related to disclosure of public records;
- Maintain a list of department Records Liaisons;
- Consult with Records Liaisons and other staff about fulfillment of records requests;
- Approve forms for use in processing records requests;
- Disseminate legal updates and policy changes affecting records requests;
- Collect and analyze relevant information related to the City's performance of public records disclosure; and
- Maintain the City of Everett Public Records webpage.

Current names and contact information for all Records Liaisons and backups shall be provided by City departments to the Public Records Officer.

4.3 Form of Request

It is recommended that requests for public records be made in writing using the City's approved submittal form. Requests shall include, at a minimum, the following information:

- An indication that the request is being made for access to a public record pursuant to the Public Records Act;
- The requestor's name, address, and convenient means of contact such as email address, phone number, fax, etc.;
- The date of the request;
- A description of the records requested sufficient to identify the records;
- Whether the requester wants to inspect records or wants copies.

When paper copies are requested, the requestor should also indicate if they wish to be contacted by the City if copy costs will exceed twenty dollars (\$20.00).

Written requests submitted by mail, email, fax, personal delivery, or other means should include a completed request form. When a written request is received that does not include a completed request form or the information listed above, staff may ask the requestor to complete and submit a form to obtain information needed to identify records or respond effectively. In cases where a requestor refuses to submit a request form, staff shall transcribe the request for the requestor, ask the requestor to verify in writing that it correctly memorializes the request, and consult with the Public Records Officer to ensure an appropriate response.

Receipt by Staff

Records requests may be accepted by any department staff person under the general direction of the Public Records Officer. Such requests shall be receipt stamped or dated on the face of the request and forwarded to the Public Records Officer by electronic means. If the staff person does not have the immediate capability to forward the request to the Public Records Officer, the staff member shall inform and provide the supervisor or Records Liaison with the request for immediate transmittal to the Public Records Officer.

Until the Public Records Officer provides confirmation, the request is the responsibility of the department supervisor or Records Liaison.

Unnoticed Requests

It is the requestor's obligation to provide the City with fair notice that a Public Records Act request has been made. When a requestor does not use an official request form, or makes a request to an employee who is not a Records Liaison or the Public Records Officer, or includes a request as part of other documents provided to the City for reasons other than making a Public Records Act request, the requestor may not be providing fair notice to the City. To ensure fair notice is provided, requestors are encouraged to use official forms, make the request through the Clerk's office, and/or take other steps to clearly identify their request. For example, when a request is submitted with other documents not related to disclosure of public records, it shall be the responsibility of the requestor to provide reasonable notice that a public record request is included. This notice may be in the form of an entry on a cover or transmittal sheet.

Lists of Individuals

Requests for disclosure of public records that include lists of individuals require a signed certification by the requestor that such lists shall not be used for commercial purposes. A certification provision is included on the City's official records request form. The Public Records Officer may do research to confirm that the request is not for commercial purposes.

4.4 Personnel and Employment Records

All personnel and employment records must be reviewed by the Human Resources Department prior to release.

4.5 Police Records

The Public Records Officer shall transfer all requests for police records received by the City Clerk's Office or other City departments to the Police Department and document the transfer.

The Public Records Officer will also provide the requestor with information confirming the transfer and contact information. The Public Records Officer will log all transferred requests with notation and date of transfer.

Once transferred, coordination, tracking, and fulfillment of the request becomes the responsibility of the Police Department and no further oversight or action will be required of the Public Records Officer. The Police Department shall maintain files and tracking logs for all Police requests as required by this policy and procedure. Requests that encompass both Police Department records and records in other departments shall be treated as separate requests.

4.6 Municipal Court Records

Although not covered under the Public Records Act or under this policy and procedure, any records request received by Everett Municipal Court for other City department records shall be forwarded to the Public Records Officer immediately upon receipt.

4.7 Five (5) Day Response

The five-day (5) response period begins on the business day immediately following receipt of the request. Business days do not include weekends or City holidays.

The initial response to the requestor will be made within five (5) business days of receipt of a request, shall acknowledge receipt of the request, and may take one of the following forms:

- When possible, the initial response may include the requested records.
- If the record requested is available via the City website, staff may provide a direct link to the requestor to the online document. This option should not be used if the requestor has requested a hard copy of the document, unless the requestor expressly agrees to accept the link in lieu of a different format. Appropriate care shall be taken to ensure that this option is not mistaken as a refusal to provide the requested record in paper or other approved format.
- An initial response may ask for clarification or refinement of the request if needed to identify the record requested.
- An initial response may indicate that the City does not have records responsive to the request.
- If the City does not have records responsive to the request, the initial response may direct the requestor to another agency believed to have the records requested.
- If the initial response does not include copies of the requested records, the City shall provide a reasonable estimate of when the request can be fulfilled. When providing a reasonable estimate of time required to fulfill a disclosure request, the Records Liaison may take into account the time required to refine or clarify a request, locate or retrieve requested records, redact or withhold exempt records and create associated documentation, consult with appropriate staff regarding potential exemptions, and notify third parties or other agencies of requests for information of a sensitive nature consistent with the provisions of RCW 42.56.540.

- An initial response may propose fulfilling large or complicated requests on an installment basis and provide an estimated time frame for preparation of the first installment.
- An initial response may be a written denial of the request based on exemptions under Washington State Law.

Records Liaisons must respond to the Public Records Officer within two (2) business days as to whether the records can be provided within five (5) business days or provide an estimated date for fulfillment if to exceed five (5) business days.

Records liaisons shall advise department record holders of the five-day response deadline when forwarding records requests and consult with record holders when estimating the fulfillment date.

4.8 Locating Responsive Records

Staff shall make a reasonable effort to identify and locate any and all responsive records. When identifying records, the Records Liaison or Public Records Officer may ask the requestor for clarification or refinement of the request. Such clarifications may be verbal or in writing. In the case of verbal clarifications, staff involved in the conversation shall document the clarification in writing and include the information in the request file. Staff shall not conclude that a request is overly broad or does not adequately identify the records requested without attempting to obtain clarification from the requestor.

Records Liaisons and staff are not required to create new records in response to a request for public records, but shall when deemed feasible, tailor existing informational databases or indexes to provide a report responsive to a request that otherwise would not be produced in the normal course of business. The determination of the feasibility of creating such reports shall take into account the ability to redact or withhold exempt information. When the production of a tailored report requires additional resources such as customized programming or fact-specific analysis, or would otherwise interfere with other essential functions, the City is not required to produce such tailored reports but should instead consult with the requestor.

The City is only required to provide records that exist at the time a request is made – the City cannot fulfill “standing” requests or requests for records that may be created at a future date.

Fulfillment of requests shall be processed in the order that provides the timeliest response. Requests may be fulfilled in the order of receipt as long as easily fulfilled requests are not postponed behind larger or more complicated requests strictly because they were received later.

4.9 Immediate Provision or Inspection of Records “Over the Counter”

Staff may respond immediately to verbal requests for records without the need for completion of a written request, entry into a request log, or a written response by the City when all of the following conditions exist:

- The records requested are easily accessible to staff ;
- The requested records do not contain lists of individuals;

- The requestor is seeking only inspection of the record and no copies are provided by the City;
- Staff can fulfill the request without referring it to Records Liaisons or the Public Records Officer; and
- The request is not for records that are subject to withholding or redaction due to disclosure exemptions or confidentiality considerations.

When a request is received in writing and the requested records are provided to the requestor in person at the time of the request, a separate written response by staff is not required. In such cases, a notation shall be made on or attached to the request listing the records produced, the number of copies made, the fees charged, if any, the name of the staff person providing the record, and the date of fulfillment.

4.10 Internal Review Prior to Public Inspection

Questions of Exemption

Record holders and/or departments are responsible for identifying potential exempt records or records that contain potentially exempt information. When doubt arises as to whether records or portions of records subject to a request are exempt from disclosure, the Records Liaison shall consult the Public Records Officer and City Attorney, who may inspect the subject records before authorizing the disclosure. Records Liaisons or record holders will be responsible for redacting exempt information from departmental records.

Questions of Overly Broad Requests

If staff isn't able to identify with confidence, the records sought by a requestor, or when a request appears to be overly broad and unsuccessful attempts have been made to obtain clarification from the requestor, staff shall consult with the Public Records Officer who shall review the request and provide direction to staff regarding its fulfillment. Staff may also consult with the City Attorney on such requests and shall do so in the absence of the Public Records Officer.

4.11 Forms of Response

Final responses shall either include copies of the requested records or provide direction to the requestor to arrange for inspection of the records (if wanted by the requestor). When the City is not able to provide requested records within five (5) business days, the Public Records Officer shall provide a written updated estimate to the requestor at the earliest possible opportunity.

Inspection of Responsive Records

Requestors may choose to inspect requested records prior to City staff making copies and should be encouraged to do so, especially when the volume of records is large. Inspection prior to copying may serve to narrow the scope of the request and can be useful for identifying and providing the appropriate responsive records to requestors. Requestors may make arrangements with the Public Records Officer to inspect records on City premises during normal business hours at a mutually convenient time. Staff shall make every effort to accommodate reasonable requests for appointment times while ensuring the security of public records during inspection.

The Records Liaison fulfilling the request shall provide for the security of records during inspection, which shall be supervised by City staff as deemed appropriate. Requestors shall return all records inspected to the Records Liaison in the condition and order they were provided. Records shall not be altered in any way, rearranged, or removed from folders or removed from City premises during inspection. A requestor may flag selected pages for copying but shall not alter the original record.

The City reserves the right to make copies of records for inspection rather than provide the original records for inspection. The requestor will not be responsible for copy costs if the requestor only inspects records.

Electronic Copies

Records available in electronic form that do not require redaction may be provided to a requestor in their native format unless the requestor specifically asks that they be provided in paper or other form. When requested and deemed feasible, electronic records may be converted from one format to another provided such conversion is not unduly burdensome to staff.

Installments

If appropriate, records requests may be fulfilled in partial installments to provide the fullest assistance to requestors. Installments are subject to the same deadlines for claiming and inspecting records described in this section. **If an installment is not claimed, or if arrangements for inspection of an installment are not made prior to 30 calendar days from notification of availability, the City may discontinue compiling subsequent installments of the same disclosure request.** The Public Records Officer may attempt to contact the requestor prior to deeming an installment request abandoned, but is not required to make such contact when a requestor has been previously warned of this consequence.

Requestor Responsibility

Requestors shall arrange to inspect records or claim copies of requested records within 30 calendar days following notification by the City that responsive records are available for inspection or copying. The 30 calendar days begins on the business day immediately following the City's notice that the records are available and includes weekends and City holidays. The Public Records Officer may extend this time period as appropriate to ensure fullest assistance to requestors. Requestors must respond to requests for clarification within 30 calendar days of being contacted or a request will be deemed abandoned and closed.

If a requestor fails to claim or arrange for inspection of requested records after the expiration of the 30 calendar days, the request shall be deemed abandoned and closed.

Prior to closing the request, the Public Records Officer may attempt to confirm whether the requestor still wants the requested records, but is not required to do so.

Multiple Requests by Same Party

When the same requestor simultaneously submits multiple, separate requests or makes one or more additional requests when previous requests are open, staff may queue the requests in the order in which they were received. Staff is not required to work on an additional request until

the initial requests are completed and closed. Requestors are responsible for informing the Public Records Officer if they want to reprioritize the fulfillment of their requests.

4.12 Exemption from Disclosure

Withholding or Redaction of Records

Requested records may be subject to exemption from disclosure under the Public Records Act or other statutes. Exempt records shall be withheld or redacted, when necessary, consistent with statutory requirements and the withholding or redaction shall be documented for the requestor in accordance with the requirements of RCW 42.56.210 and this policy and procedure.

The presence of exempt content does not necessarily exempt an entire record from disclosure. Exempt portions of an otherwise disclosable record shall be redacted, when necessary, prior to inspection or copying.

Prior to withholding exempt records or redacting portions of records, the Records Liaison shall consult with the Public Records Officer and City Attorney. Departments may adopt standard procedures for withholding or redacting portions of commonly requested exempt records.

When requested records are redacted, the Records Liaison shall keep a copy of the redacted records for the request file. A listing only of the redacted records provided to the requestor is not sufficient in accordance with the provisions of the official Washington State records retention schedules.

Exemption Log

When records are withheld or redacted, the requestor shall be informed in writing of the reason and be provided the statutory citation supporting the exemption. An exemption log shall be prepared for the requestor listing the information withheld and the statutory basis for each redaction or record withheld. Individual occurrences of the same redaction may be listed generally in the exemption log. For example, an exemption log need not list separately every occurrence of the redaction of an individual's social security number, but may list once that the number has been redacted throughout the record.

Administrative Review of Denial

A requestor may ask for review of a decision to withhold or redact exempt records by submitting a written petition to the Public Records Officer that includes a copy of or detailed description of the City's statement of withholding. The request for review and any relevant information shall be forwarded immediately to the City Attorney, who shall consider the petition and either reverse or affirm the denial within two days of the City's receipt of the petition. The City and the requestor may mutually agree to a longer period of time for consideration of a petition for review. If the withholding or redaction is affirmed, the decision shall be considered the City's final action for the purposes of judicial review. If the decision to withhold or redact is reversed, the Public Records Officer shall make the subject records available to the requestor for inspection in accordance with the provisions of this policy and procedure.

4.13 Requests Logs and Retention

Requests Log

The Public Records Officer shall maintain a log of all requests and associated documents.

Records Liaisons shall maintain logs of public records requests received for their departments that shall include at a minimum:

- The request tracking number from the Public Records Officer;
- Name and convenient contact information for the requestor;
- Dates of receipt;
- Due date of request;
- A brief description of the requested records;
- Search efforts performed to acquire records;
- Description of any clarifications of the request; and
- A dated notation of the closure of the request.

Requests logs are a public record subject to disclosure and retention in accordance with the requirements of the official Washington State records retention schedules and this policy and procedure. On a quarterly basis, Records Liaisons shall provide tracking reports to the Public Records Officer.

Retention

Public records requests and associated logs are considered a public record subject to disclosure and retention in accordance with the requirements of the Washington State Local Government Common Records Retention Schedule.

Section 5:

5.0 Fees

Fees for the provision of responsive records totaling more than ten (10) pages will be based on cost in accordance with RCW 42.56.120. A current fee schedule is available on the City's website ([link](#)) and posted in the City Clerk's Office. The fee schedule will be maintained by the City Clerk and updated administratively as costs change.

There is no charge for inspection of records. Fees will be waived if a request is made by a State or local agency. Fees will be waived when the number of responsive records totals fewer than ten (10) pages of records or ten emails that do not contain attachments. Such costs will not be

waived, however, when it appears that the request has been tailored to take advantage of this waiver. The City reserves the right to use an outside vendor for large-scale requests and odd-sized or larger color copies, and to charge the requestor for those costs.

Copy charges may be remitted by cash, check, money order, MasterCard, or Visa payment. The City Clerk's office shall provide for collection of copy fees if a department is not able to do so. A deposit of up to ten percent of the estimated total cost may be required for large requests before records are copied. When requested records are provided on an installment basis, fees shall be collected for copies prior to provision of the next installment. Failure to pay for an installment shall place compilation of subsequent installments on hold.

If payment arrangements are not made within 30 calendar days of notice that records are available, the entire request may be deemed abandoned and closed. A reasonable attempt shall be made by the Public Records Officer to contact the requestor prior to deeming a request abandoned and closed.

Section 6:

6.0 References

Chapter 42.56 RCW

Chapter 40.14 RCW

Chapter 82.12 RCW

Chapter 44-14 WAC

Chapter 434-615 WAC

Washington State Local Government Common Records Retention Schedule

Section 7:

7.0 General duty.

It is expressly the purpose of this policy 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 policy. It is the specific intent of this policy that no provision nor any term used in this policy is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this policy 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 policy by its officers, employees or agents.

Section 8:

8.0 Corrections.

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

PASSED and APPROVED this _____ day of _____, 2016

COUNCILMEMBER INTRODUCING RESOLUTION

COUNCIL PRESIDENT

Fee Schedule for Public Records

Type of Record	Fee
Inspection	No charge
10 pages/e-mails or fewer (no attachments)	No charge
8 ½ x 11 standard pages (11 pages and more)	\$0.15 per page
11 x 17 black and white	\$0.25 per page
8 ½ by 11 color	\$0.25 per page
Uploads (in minutes)	\$0.40 per upload minute
Scanned pages	\$0.10 per page
CD or DVD	\$0.30 per CD or DVD plus scanning or uploading costs
Mailed	Cost of mailing supplies and postage plus copying charges/ media charges (see above)
Large-scale/odd-sized/large color copies	Actual cost from outside vendor
USB flash drives or other media	Actual cost of product plus scanning or uploading costs

*Fees will be waived if a request is made by a State or local agency. The City reserves the right to use an outside vendor for large-scale requests and odd-sized or larger color copies, or additional products such as USB flash drives, and to charge the requestor for those costs.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Amendment No.1 to the Professional Services Agreement with the DLR Group for the design of the Service Center Redevelopment Project

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

COUNCIL BILL # _____

Originating Department _____

Contact Person _____

Phone Number _____

FOR AGENDA OF _____

Public Works

Dave Davis

425-257-8913

August 31, 2016

Initialed by:

Department Head _____

CAA _____

Council President _____

Location

3200 Cedar Street

Preceding Action

Professional Services Agreement

Attachments

Amendment No.1

Department(s) Approval

Public Works

Amount Budgeted	\$2,243,747	
Expenditure Required	\$2,243,747	Account Number(s):
Budget Remaining	\$2,197,547	Public Works – Fund 401
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The City conducted an extensive Request for Qualifications process to select the design firm for the Service Center Redevelopment Project (Project). The process was intended to provide the City the opportunity to utilize the same design firm for the multiple phases involved in the design of this Project. The DLR Group was selected.

For the first and smallest phase of the Project, the City contracted with DLR in the amount of \$240,000 for a master plan for the Public Works and Transit departments plus cost estimates for the Project. To date, \$46,200 has been paid on Phase 1.

Phase two calls for a schematic design and design development service for five buildings to be located at Pacific Avenue and Cedar Street: office, maintenance office, maintenance shops, warehouse, and garage/covered parking. This second phase is to be added to the DLR contract by the proposed Amendment No. 1. The phase two amount in the amendment is \$2,003,747.

As planned, there will likely be one or more additional design phases. Each phase will be added to the DLR contract by subsequent amendments brought to City Council as the Project progresses.

In summary:

Original Contract (Phase One):	\$240,000
Proposed Amendment No. 1 (Phase Two):	\$2,003,747
Total	\$2,243,747

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No.1 to the Professional Services Agreement with the DLR Group for the design of the Service Center Redevelopment Project in the amount of \$2,003,747.

**AMENDMENT NO. 1
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF EVERETT
AND DLR GROUP**

This Amendment No.1 is dated for reference purposes August 31, 2016. It is by and between the City of Everett, a municipal corporation under the laws of the State of Washington (“City”) and DLR Group (“Service Provider”).

RECITALS

A. The City and Service Provider are parties to the Professional Services Agreement dated May 17, 2016 (the “Agreement”).

B. The City and the Service Provider desire to amend the Agreement for the purpose of adding design services for the Service Center Redevelopment Project.

AGREEMENT

The City and Service Provider agree as follows:

1. The Agreement is modified so that time of beginning and completion are as follows:

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 April 30, 2017.

2. The Agreement is modified so that total compensation, including all services and expenses, shall not exceed \$2,243,747.
3. The Work is modified to add the Work shown on Exhibit A to this Amendment.
4. Regardless of the date(s) on which this Amendment is signed by the parties, the parties agree that the Agreement has been continuously in effect since May 17, 2017.
5. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment.

**CITY OF EVERETT
WASHINGTON**

DLR GROUP

By: _____
Ray Stephanson, Mayor

Signature: _____
Typed/Printed Name: _____
Title: _____

Date

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk
Date: _____

James D. Iles, City Attorney
Date: _____

**EXHIBIT A
AMENDMENT NO. 1
SCOPE OF WORK**

PROFESSIONAL SERVICES SCOPE

The scope of services for Amendment No. 1 for the Service Center Redevelopment Project shall include Schematic Design services and Design Development services for five buildings (Office, Maintenance Office, Maintenance Shops, Warehouse, and Garage/Covered Parking) to be located at Pacific Avenue and Cedar Street.

SCHEMATIC DESIGN SERVICES

In the Schematic Design Phase, the A/E provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the City. Design should be conceptual in character, based upon requirements developed during the Master Plan approved by the City. Schematic design includes the following:

Project Administration

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

Disciplines Coordination

Coordination between the architectural work and the engineering work and other involved consultants for the project.

Document Checking

Review and coordination of project documents.

Consulting Permitting Authority

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations, and codes.

Data Coordination User Agency

Review and coordination of data furnished for the project by the City.

Architectural Design

Services responding to scope of work (Master Plan) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of building systems and materials, development of approximate dimensions, areas and volumes.

Structural Design

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

Mechanical Design

Services consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

Electrical Design

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage and sanitary systems, if applicable.

Specifications

Services consisting of preparation for City's approval of proposed development of architectural outline specifications, and coordination of outline specifications of other disciplines.

Materials Research

Services consisting of identification of potential of architectural materials, systems and equipment.

Scheduling

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design, and documentation.

Cost Estimating

Services consisting of development of a probable construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist the City with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations

Services consisting of appropriate presentation(s) of Schematic Design documents by the A/E to City representatives.

Completion of Performance

The Schematic Design services shall be completed by December 31, 2016

Compensation

The compensation for the Schematic Design services shall be a lump sum of \$1,147,177.00 per the attached Design Services Fee Proposal dated August 17, 2016.

DESIGN DEVELOPMENT SERVICES

In the Design Development Phase, the A/E shall provide those services necessary to prepare from the approved Schematic Design Documents, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire project for approval by the City. Consideration shall be given to availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction and operations, user safety and maintenance requirements, and energy conservation. Design Development includes the following:

Project Administration

Services consisting of design development administrative functions including consultation, meetings and correspondence, and progress design review conferences with the City.

Disciplines Coordination

Coordination of the architectural work and the work of engineering with other involved consultants for the project.

Document Checking

Review and coordination of documents prepared for the project.

Permitting Authority Consulting

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations, and codes. Assist in obtaining approval from approving agencies as required.

User Agency Data Coordination

Review and coordination of data furnished for the project by the City.

Architectural Design

Services consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size, and appearance of the project through plans, sections and elevations, typical construction details, three-dimensional sketches, materials selections, and equipment layouts.

Structural Design

Services consisting of continued development of the specific structural system(s) and Schematic Design Documents in sufficient detail to establish basic structural system and dimensions, structural design criteria, foundation design criteria, preliminary sizing of major structural components, critical coordination clearances, and outline specifications or materials lists.

Mechanical Design

Services consisting of continued development and expansion of mechanical Schematic Design Documents and development of outline specifications or materials lists to establish approximate equipment sizes and capacities, preliminary equipment layouts, required space for equipment, chases and clearances, acoustical and vibration control, visual impacts, and energy conservation measures.

Electrical Design

Services consisting of continued development and expansion of electrical Schematic Design Documents and development of outline specifications or materials lists to establish criteria for lighting, electrical and communication raceways, approximate sizes and capacities of major components, preliminary equipment layouts, required space for equipment, chases, and clearances.

Site Design

Services consisting of continued development of civil/site Schematic Design documents and development of outline specifications required for the project that are normally prepared by the architect.

Specifications

Services consisting of preparation for City's approval the development of architectural outline specification, coordination of outline specifications of other disciplines, and production of design manual including design criteria, and outline specification of materials list.

Scheduling

Services consisting of reviewing and updating previously established schedules for the project.

Cost Estimating

Services consisting of development of a probable construction cost from quantity surveys and unit costs of building elements for the project. Cost shall reflect the level of design elements presented in the Design Development documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule and budget options to stay within the MACC.

Presentations

Services consisting of appropriate presentation(s) of Design Development documents by the A/E to City representatives.

Completion of Performance

The Design Development services shall be completed by April 30, 2017.

Compensation

The compensation for the Design Development services shall be a lump sum of \$856,570.00 per the attached Design Services Fee Proposal dated August 17, 2016

Amendment No.1 - Compensation

A breakdown of Amendment No.1 compensation is as follows:

Schematic Design Services	\$1,147,177
<u>Design Development Services</u>	<u>\$ 856,570</u>
Amendment No.1 - Compensation	\$2,003,747

Everett Service Center Redevelopment
Design Services Fee Proposal

Basic Services per State of Washington Fee Guidelines July 2015 Version on a project scope of \$53,200,000 (MACC+Contingency) Schedule 'B'

	Basic Fee %	Basic Services Fee
Base A&E Fee	6.111%	\$ 3,250,875
Additional Services per State of Washington Fee Guidelines		
Renderings and Models	Included	
Interior Design	\$ 240,000	
FF&E Purchase Coordination	\$ 45,000	
Environmental Graphics	\$ 17,500	
Wayfinding	\$ 29,500	
Educational Graphics	\$ 5,250	
GCCM Coordination & Multiple Bid Packages	\$ 105,000	
Weekly On-site CA Administration (Basic Services = Bi-monthly)	\$ 151,200	
Demolition drawings and documentation of existing structures	\$ 30,000	
Energy Life Cycle Cost Analysis	\$ 53,000	
Daylighting Analysis	\$ 12,000	
LEED Energy Model & Technical Credits	\$ 95,000	
LEED Certification Documentation Process	\$ 135,000	
City-Wide IT Data Center	\$ 150,000	
Envelope Consultant	\$ 40,000	
Shops Consultant	\$ 112,940	
Cost Estimating (30%, 60%, 90% reconciliation)	\$ 100,880	
Civil Engineering Consultant (on site & off site)	\$ 354,000	
Traffic	\$ 15,300	
Landscape	\$ 23,432	
Subconsultant Markup.	10%	\$ 64,655
Subtotal Additional Services		\$ 1,779,657
Design Fee Contingency (5% held in reserve for Owner authorization)	\$ 251,527	
DLR Group Reimbursable Costs, Design Printing, Mailing.	\$ 125,763	
Note: Expenses to be included in the lump sum fee for design services		
Total Design Services		\$ 5,407,822

Total Design Services

Amendment 1
 (through April 30, 2017)

	SD	DD
	\$ 747,701	\$ 422,614
	\$ 31,200	\$ 55,200
	\$ -	\$ 11,250
	\$ 4,025	\$ 2,275
	\$ 3,835	\$ 6,785
	\$ 683	\$ 1,208
	\$ 26,250	\$ 26,250
	\$ -	\$ -
	\$ 22,500	\$ 7,500
	\$ 5,300	\$ 26,500
	\$ 3,000	\$ 7,800
	\$ 9,500	\$ 47,500
	\$ 13,500	\$ 40,500
	\$ 34,500	\$ 19,500
	\$ 4,000	\$ 16,000
	\$ 25,976	\$ 14,682
	\$ 25,220	\$ 35,308
	\$ 81,420	\$ 46,020
	\$ 1,530	\$ 9,180
	\$ 5,389	\$ 3,046
	\$ 14,871	\$ 8,405
	\$ 312,699	\$ 384,909
	\$ 57,851	\$ 32,698
	\$ 28,925.56	\$ 16,349.23
	\$ 1,147,177	\$ 856,570
	Amendment 1	\$ 2,003,747

Amendment 1

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Call for Requests for
Qualifications for 2017-2019
Utility Consultant Roster

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

COUNCIL BILL # _____
Originating Department Public Works
Contact Person Richard Hefti
Phone Number 425-257-7215
FOR AGENDA OF August 31, 2016

Initialed by:
Department Head _____
CAA do
Council President S. P. ...

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Request for Qualifications	<u>Department(s) Approval</u> Public Works
-----------------	-------------------------	---	---

Amount Budgeted	\$10,000,000	
Expenditure Required	\$2,000	Account Number(s): 401 5 600 109 923 410, 401 5 600 119 923 410 & 401 5 600 123 923 410
Budget Remaining	\$9,998,000	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Everett Public Utilities 10-year Capital Improvement Program includes budget items for Sewer, Water, and Surface Water Management Improvements.

- Sewer System Capacity & Replacements Improvements replace parts of the sewer systems with capacity problems being deteriorated and undersized as identified by Staff and in the 2014 Comprehensive Sewer Plan.
- Water Distribution System Improvements replace deteriorated and/or undersized water distribution mains within the City as identified by Staff and the 2014 Comprehensive Water Plan.
- Surface Water Management Projects and programs as identified in the Phase II NPDES Stormwater Permit and the current draft of updated Surface Water Comprehensive Plan.

Staff proposes to compile a new roster of qualified engineering design consultants to make up the 2017-2019 Utility Consultant Roster. The existing 2014-2016 Utility Consultant Roster will end December 31, 2016.

RECOMMENDATION (Exact action requested of Council):

Authorize Call for Request for Qualifications for 2017-2019 Utility Consultant Roster.

CITY OF EVERETT
PUBLIC WORKS

REQUEST FOR QUALIFICATIONS FOR UTILITY
CONSULTANT ROSTER

The City of Everett is calling for Statements of Qualifications (SOQ) for professional services for planning and design of sewer collection/conveyance systems (combined and separated), water distribution system, and surface water/storm drainage management program. The design work may include, but is not limited to, surveying and preparation of base maps, pre-design reports and route evaluations, hydrologic modeling (including CSO frequency) and hydraulic analyses, gravity and pressurized mains, combined sewer detention, regional Stormwater treatment, sewer lift stations, **trenchless pipe installation and rehabilitation**; street/alley restoration including drainage, pavement, curbs and sidewalks; evaluation and design of fish passages, and water quality treatment facilities and design of Green Stormwater Infrastructures (GSI), urban stream restoration, preparation of construction documents including plans and specifications using WSDOT or CSI specification format, cost estimating, geotechnical studies, public involvement, SEPA and permitting, and construction inspection and support.

The City of Everett capital budget (design and construction) includes 10-years of improvements of sewer system (averaging \$5 million per year), improvements of water distribution mains (up to \$2 million per year), and surface water management (up to \$3 million per year).

Please state in your cover letter the category, or categories, of projects (sewer, water, or surface water) your firm is interested and qualified to perform. Firms are not required to submit for all categories. The City does not guarantee the full budgeted amount in each category to be awarded annually.

The SOQ shall contain the following information:

1. A list and brief description of at least 5 relevant projects within the last 10 years for each category submitting on. Provide details on at least 3 of those projects including, but not limited to:
 - a. Initial and final design budget and schedule.
 - b. Construction budget (Engineers Estimate vs. final cost) and schedule (anticipated vs. final).
 - c. Permitting experience for local, state, federal and railroad permits.
 - d. Public Involvement experience.
 - e. Valid references with current contact information for each project.
2. Project staffing for each category, including:
 - a. Qualifications and availability of the proposed project manager, designer, CAD manager, and subconsultants.
 - b. The role each person identified in the projects noted in item 1 and their proposed role on the design team (Project Organization Chart).
 - c. Office location, or locations, where the key project personnel will be working out of.
3. Firm's overall approach to Project Management including budget and schedule tracking, communication and quality assurance / control.

Scoring for the above three items will be weighted 40:35:25 respectively in the evaluation process. Submittals shall be bound, 24 pages or less, including resumes and cover letter and not including tab separators. Minimum font sizes shall be 11-point. Submit six SOQ copies and one electronic copy to the City of Everett Public Works Service Center, 1st Floor, 3200 Street, Everett, Washington 98201. **The deadline for submittals is 2:00 p.m., Friday, October 7, 2016.**

The City will evaluate SOQs based on the criteria listed above and select, by December 31, 2016, a list of the highest scoring qualified firms to incorporate into the City's **Utility Consultant Roster** for future projects. Selected firms will remain on the roster until December 31, 2019. Firms will be chosen on a project by project basis. The City may choose to enter into contract negotiations with a firm selected from the **Utility Consultant Roster** or may request an RFP from multiple firms in order to make a selection for a given project. Multiple contracts may be awarded to a single consultant at the sole discretion of the City. The City does not guarantee a contract will be awarded to any firm. If you have any questions, please contact Richard Hefti (425) 257- 7215 or rhefti@everettwa.gov.



Don Hoch
Director

STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

1111 Israel Road S.W. • P.O. Box 42650 • Olympia, WA 98504-2650 • (360) 902-8500
TDD Telecommunications Device for the Deaf: 800-833-6388
www.parks.wa.gov

To: Everett Police Department, Chief Dan Templeman
From: Wade Alonzo, Washington State Parks Boating Program, Boating Law Administrator
Subject: Grant increase for instructor support
Date: Friday, July 08, 2016

In recognition of the long-term support of the Recreational Boating Safety program and the fiscal, personnel, and logistic expenditures made by your agency by providing instructors to State Parks we are increasing your grant amount.

Your agency for providing instructor(s) to the State Parks RBS program will be immediately awarded an additional \$5000.00 to your Federal Financial Assistance Grant. Your current grant amount of \$17,911.58 is increased to \$22,911.58 upon receipt of this notification. As State Parks has grown the number, and types of boating courses offered, it has required much more support and participation from your personnel and your agency.

This bonus amount may change from year to year based on multiple factors that affect the Federal Financial Assistance Grants. However, it is State Parks intention to compensate your agency for actively supporting Recreational Boating Safety in Washington State by going beyond the call of duty. Without your personnel and the support provided to them by your agency, our ability to offer basic and advanced level marine law enforcement training would be severely impacted.

Please do not hesitate to email or call Hoyle Hodges 360-902-8835 hoyle.hodges@parks.wa.gov Marine Law Enforcement Coordinator if there are any questions.

Don Hoch
Director



STATE OF WASHINGTON
WASHINGTON STATE PARKS AND RECREATION COMMISSION

1111 Israel Road S.W. • P.O. Box 42650 • Olympia, WA 98504-2650 • (360) 902-8500
TDD (Telecommunications Device for the Deaf): (360) 664-3133
www.parks.state.wa.us

February 24, 2016

Mayor Ray Stephanson
Everett Police Department
3002 Wetmore Avenue
Everett, WA 98201-4018

Re: Recreational Boating Safety Federal Financial Assistance Grant Letter of Award

Dear Mayor Stephanson:

The Washington State Parks and Recreation Commission has reviewed and accepted your application for a Recreational Boating Safety (RBS) Federal Financial Assistance Grant and is awarding \$17,911.58 to your agency. The grant is for the period April 1 to September 30, 2016.

Award Information:

Federal Award Identification: 3316FAS160153
Federal Award Date: 2/23/16
CFDA Number: 97.012

Terms of Acceptance: Acceptance of a Federal Financial Assistance award carries with it the responsibility to comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application form, as approved by State Parks. The signed grant application contains the terms and conditions to which your agency has agreed. I urge you to carefully review your application (enclosed) so you are familiar with each requirement.

Specifically You Have Agreed To:

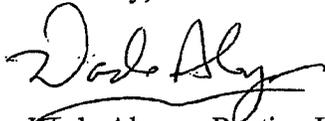
- Provide your agreed upon local funding match as submitted in your A-300 form.
- Carry out your approved prevention plan and reach the measureable prevention goals as submitted in your A-300 form.
- Execute the patrol plans / emphasis patrols / enforcement policies by doing the activity / product during the time frame / target date to achieve your purpose / outcome as submitted in your A-300 form.
- Conduct the number of vessel safety inspections as submitted in your A-300 form.
- Conduct the number and type of educational classes and activities as submitted in your A-300 form.

- Participate and attend the community events and activities as submitted in your A-300 form.
- Conduct the presentations to groups & schools as submitted in your A-300 form.
- Participate and work with media to conduct outreach to boaters and to execute your media plan as submitted in your A-300 form.
- Participate and partner with community forums as submitted in your A-300 form.
- Send State Parks any updated or improved local ordinances that reduce boating accidents.
- Provide the Instructors listed in your A-300 form if requested by State Parks.
- Ensure the “Marine Lead”, at a minimum, attends all meetings required / requested by State Parks.
- Attend advanced training (when offered) and maintain currency requirements, once they are posted and announced, to ensure compliance with NASBLA training standards (optional).
- Emphasize enforcement of:
 - Life jacket requirements;
 - Mandatory boater education (required to be carried by operators born after January 1, 1955 when operating a motor boat of 15 hp or more and not otherwise exempted);
 - Boating Under the Influence (BUI); and
 - “Rules of the Road” and other operating regulations, especially between paddle / human powered vessels and motorized vessels.
- Participate in Operation Dry Water in June 2016.
- Request reimbursement for approved expenditures only. Refer to your Federal Financial Assistance Grant Application (enclosed) for terms and conditions.

Your signature on each *Marine Law Enforcement Grant Invoice Voucher* certifies that your agency has completed the work and has retained copies of all the supporting documentation on file for audit purposes per the commitment in the *Federal Financial Assistance Grant Application – Calendar Year 2016 – April 1 to September 30, 2016*.

If you have questions regarding contract terms, expenditures, or financial invoice billing, please contact Sherri Sweeney at (360) 902-8845 / sherri.sweeney@parks.wa.gov or Kat O’Kelly at (360) 902-8843 / kat.o’kelly@parks.wa.gov.

Sincerely,



Wade Alonzo, Boating Law Administrator
Washington State Parks and Recreation Commission

Enclosures

cc: Hoyle Hodges, Marine Law Enforcement Coordinator
Sherri Sweeney
Kat O’Kelly
Contracts
Fiscal

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Master Services Agreement
with Safetec Compliance
Systems, Inc. for management
of City of Everett Safety Data
Sheets

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

COUNCIL BILL # _____
Originating Department Labor Relations
Contact Person Megan Munro
Phone Number 425-257-8775
FOR AGENDA OF August 31, 2016

Initialed by:
Department Head _____
CAA 
Council President _____

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
		Master Services Agreement Scope of Services	Labor Relations, Legal

Amount Budgeted	-0-	
Expenditure Required	\$5,250.00	031-532-0000-494 032-520-0000-480 401-5-200-111-410 501-5-900-000-410
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

State law requires Everett to maintain current copies of Safety Data Sheets (SDS) for chemicals used by employees so that they can be accessed and archived for 30 years after use.

Safetec Compliance Systems, Inc. is a software-as-a-service company that four separate City departments have been using for 10 years. This Master Services Agreement would consolidate the records, reduce unit pricing and streamline SDS management for employee health and safety. The annual cost is \$3/SDS. The current SDS collection is approximately 1600. This agreement contains an indemnification clause.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign a Master Services Agreement with Safetec Compliance Systems, Inc. for management of City of Everett Safety Data Sheets in the amount of \$5,250.00.

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "**Agreement**"), effective as of July 12, 2016, is by and between **SAFETEC COMPLIANCE SYSTEMS, INC.**, a Washington corporation, with offices located at 7700 NE Parkway Drive, Suite 125, Vancouver, Washington 98662 ("**SafeTec**") and City of Everett, a Washington corporation, with offices located at 3200 Cedar Street, Everett, WA 98201 ("**Customer**").

RECITALS:

A. SafeTec is a Software-as-a-Service (SaaS) provider that develops, hosts, implements and supports an Internet-based solution providing Material Safety Data Sheet ((M)SDS) and Safety Data Sheet (SDS) Management, and Chemical, Risk and Compliance solutions, including SDS Authoring services, project management and other expertise related to information services, data management, and business analytics (collectively, the "**Services**").

B. Customer, from time to time, desires to engage SafeTec to render certain Services and to provide certain related documents, work product, and other materials (collectively, the "**Deliverables**"), as requested in accordance with this Agreement, and SafeTec desires to accept such engagement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Services.

1.1 Delivery of Services. During the Term of this Agreement, SafeTec shall provide the Services and Deliverables to Customer pursuant to each applicable Statement of Work entered into by the parties, attached hereto substantially in the form of Exhibit A (the "**Statement of Work**"). The Services and Deliverables shall be provided in accordance with the terms and conditions of this Agreement and the applicable Statement of Work. Absent the execution of a Statement of Work, this Agreement does not in and of itself represent a commitment by either party to provide any minimum amount of fees or services.

1.2 Statement of Work. Each Statement of Work shall be in a format similar to that of Exhibit A, and at a minimum, include the following information: (a) a detailed description of the Services to be performed pursuant to the Statement of Work; (b) the date upon which the Services will commence and the term of such Statement of Work; (c) the fees to be paid to SafeTec under the Statement of Work; (d) a payment schedule for the Services; (e) any criteria for completion of the Services; and (f) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

1.3 Execution of Statement of Work. Each Statement of Work, when executed by an authorized representative of both parties, shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement. In the event of any conflict between any Statement of Work and terms and conditions of this Agreement (exclusive of such Statement of Work), the terms and conditions of this Agreement shall govern, except if and to the extent such Statement of Work expressly states that it is amending this Agreement.

2. **SafeTec's Obligations.**

2.1 **SafeTec.** During the Term of this Agreement, SafeTec shall:

2.1.1 Comply with, and ensure that all SafeTec personnel comply with, all rules, regulations and policies of Customer that are communicated to SafeTec in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Customer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures; and

2.1.2 Maintain complete and accurate accounting records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by SafeTec in providing the Services, in accordance with generally accepted accounting principles. During the Term, and for a period of one (1) year thereafter, upon Customer's written request, SafeTec shall allow Customer or Customer's representative to inspect and make copies of such records; provided, that any such inspection shall take place during regular business hours no more than once per year and Customer provides SafeTec with at least ten (10) business days advance written notice.

2.2 **SafeTec Personnel.** SafeTec is responsible for all SafeTec personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

2.3 **Time of the Essence.** SafeTec acknowledges that time is of the essence with respect to SafeTec's obligations under this Agreement and that prompt and timely performance of all such obligations is strictly required.

3. **Customer's Obligations.**

3.1 **Customer.** During the Term of this Agreement, Customer shall:

3.1.1 Cooperate with SafeTec in all matters relating to the Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

3.1.2 Provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by SafeTec, for the purposes of performing the Services;

3.1.3 Respond promptly to any SafeTec request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for SafeTec to perform Services in accordance with the requirements of this Agreement;

3.1.4 Provide such information as SafeTec may, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

3.1.5 Ensure that all Customer information, data, or materials, provided by Customer and used directly or indirectly in the provision of Services is accurate to the best of Customer's knowledge and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements, and to promptly notify SafeTec of any error therein;

3.1.6 Ensure that all Customer equipment, systems, or facilities provided by Customer and used directly or indirectly in the provision of Services is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements;

3.1.7 Obtain and maintain all necessary licenses and consents and comply with any relevant statute, law, ordinance, regulation, or other requirement or rule of law (collectively, "Law") in relation to the Services, in all cases before the date on which the Services are to start; and

3.1.8 Review and approve all Deliverables for accuracy and completeness, which approval shall not be unreasonably withheld.

3.2 **Act or Omission of Customer.** If SafeTec's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, SafeTec shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

4. **Change Orders.**

4.1 **Submission.** If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. SafeTec shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than ten (10) business days after receipt of Customer's written request), provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of this Agreement.

4.2 **Negotiate and Agree.** Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 18.8 (Amendments and Waiver).

5. **Fees and Expenses; Payment Terms.**

5.1 **Fees and Expenses.** In consideration of the provision of the Services by SafeTec and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the applicable Statement of Work. Payment to SafeTec of such fees and the reimbursement of expenses pursuant to this Section 5 shall constitute payment in full for the performance of the Services and Customer shall not be responsible for paying any other fees, costs or expenses.

5.1.1 **Time and Material Basis.** Where the Services are provided on a time and materials basis: (a) the fees payable for the Services shall be calculated in accordance with SafeTec's fee rates for SafeTec personnel set forth in the applicable Statement of Work; and (b) SafeTec shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this Section 5.1.1.

5.1.2 **Fixed Price.** Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to SafeTec in installments, as set out in the Statement of Work.

5.1.3 **Reimbursement of Expenses.** Customer agrees to reimburse SafeTec for all actual, documented and reasonable travel and out-of-pocket expenses incurred by SafeTec in connection with the performance of the Services that both parties have mutually agreed are required to perform the obligations under this Agreement.

5.2 **Fee Increase.** The parties agree that after the initial twelve (12) months of the Term for Services provided on a time and materials basis, SafeTec may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; provided, that: (a) SafeTec provides Customer written notice of such increase at least ninety (90) days prior to the effective date of such increase; (b) such increases occur no more frequently than once per contract year of the Term; and (c) the amount of such increase shall not exceed five percent (5%).

5.3 **Taxes.** SafeTec shall be solely responsible for any taxes imposed on the performance of Services or the payment for such Services, including withholding of state and federal income, sales, or ad valorem, unemployment compensation, worker's compensation, Federal Insurance Contribution Act, Federal Unemployment Tax Act, or other taxes, costs, or expenses incurred in the performance of any engagements hereunder.

5.4 **Invoice.** SafeTec shall issue invoices to Customer in accordance with the terms of this Section 5 and Customer shall pay all properly invoiced amounts due to SafeTec within thirty (30) days of the date of such invoice (the "Due Date"). All payments hereunder shall be in US dollars and made by check or wire transfer.

5.5 **Past Due Amounts.** Any payments not received by SafeTec by the Due Date will be considered past due and interest will accrue on unpaid amounts at a rate of one and one-half percent (1.5%) per month. SafeTec, in its sole discretion, may discontinue the Services or institute collection proceedings if Customer does not pay any invoice within thirty (30) days of the Due Date.

6. **Term.** This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of three (3) years and shall automatically renew thereafter for successive one (1) year terms, unless sooner terminated pursuant to Section 7 (Termination).

7. **Termination.**

7.1 **Without Cause.** Either party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party.

7.2 **With Cause.** Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party: (a) breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or (b) becomes insolvent or admits its inability to pay its debts generally as they become due; or (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; or (d) is dissolved or liquidated or takes any corporate action for such purpose; or (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3 **Effects of Termination.** Upon expiration or termination of this Agreement for any reason:

7.3.1 **Compensation for Work Done.** Customer shall compensate SafeTec for (a) any work that has been approved by Customer and may be in process prior to the date of expiration or termination of this Agreement, or (b) any work that has been completed but not yet delivered, so long as SafeTec agrees to stop all work to the extent specified in the written notice of termination.

7.3.2 **Return Documents.** Each party shall (a) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (b) permanently erase all of the other party's Confidential Information from its computer systems, and (c) certify in writing to the other party that it has complied with the requirements of this clause.

8. **Independent Contractor.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9. **Public Representations.** During the Term of this Agreement, and thereafter SafeTec shall not represent itself to be owned or controlled by Customer, to be employed by Customer, or as authorized to represent Customer or to obligate Customer with respect to any matters not expressly provided in this Agreement. SafeTec may represent to the general public or to any person that it is an independent contractor providing Services to Customer, unless specifically prohibited from doing so by Customer in writing.

10. **Intellectual Property Rights.** Except as otherwise provided in addendum attached hereto substantially in the form of **Exhibit B**, Customer acknowledges and agrees that SafeTec is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Services, including all Intellectual Property Rights therein. For purposes of this Agreement, "**Intellectual Property Rights**" shall mean the following: all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. Except as expressly stated herein, this Agreement does not grant Customer any rights to or in Intellectual Property Rights, or any other rights or licenses in respect of the Services.

11. **Confidential Information.**

11.1 **Definition.** SafeTec and Customer understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, proprietary or confidential information of the other party, including, but not limited to trade secrets and technical information, or any other information designated as "confidential" by a party ("**Confidential Information**").

11.2 **Nondisclosure.** SafeTec and Customer agree that they shall not, during the term of this Agreement and after its termination, use the other party's Confidential Information for any purpose other than as expressly authorized by this Agreement, or disclose the Confidential Information of the other Party without the prior written consent of the other Party. The receiving party will promptly return or

destroy all Confidential Information in its possession upon the request of the Disclosing Party and certify same in writing to the disclosing party.

11.3 **Exclusions.** Notwithstanding the foregoing, Confidential Information shall not include information that is: (a) already in the possession of the recipient without obligation of confidence; (b) now or later becomes publicly available without violation of this Agreement by the recipient; (c) received by the recipient from a third party which is not under a direct or indirect obligation of confidentiality to the other party; (d) independently developed by the recipient without reference nor access to the other party's Confidential Information; and (e) required by order of a court or an administrative governmental agency to be disclosed, provided that the recipient, if legally permitted, gives prompt prior notice to the other party of the impending disclosure in time for such party to appear and oppose the disclosure. Each party understands and agrees that any breach of the restrictions contained in this Section 11 will cause irreparable harm to the other party and entitle such party to injunctive relief in addition to all other legal remedies.

12. **Representations and Warranties.**

12.1 **Both Parties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2 **SafeTec.** SafeTec represents and warrants to Customer that: (a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; (b) it is in compliance with, and shall perform the Services in compliance with, all applicable Laws; and (c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work. During the warranty period specified for a Deliverable in each Statement of Work, SafeTec will, at no additional charge to Customer, perform Services and provide Deliverables as shall be necessary to correct any errors or defects in said Deliverables and to maintain said Deliverable in good working order in accordance with this Agreement. Unless otherwise stated in the applicable Statement of Work, the warranty period for each Deliverable shall be one-hundred eighty (180) consecutive calendar days from the date of Customer's acceptance of said Deliverable.

12.3 **Customer.** Customer represents and warrants to SafeTec that: (a) it shall ensure that all Customer information, data, or materials provided by Customer and used directly or indirectly in the provision of Services is accurate to the best of Customer's knowledge and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements, and that it will promptly notify SafeTec of any error therein; and (b) it shall devote adequate resources to meet its obligations under this Agreement.

12.4 **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND SAFETEC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

13. Indemnification.

13.1 SafeTec.

13.1.1 SafeTec shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns (each, a "**Customer Indemnitee**") from and against all Losses arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of SafeTec or SafeTec personnel; and (b) SafeTec's material breach of any representation, warranty or obligation of SafeTec set forth in this Agreement.

13.1.2 SafeTec shall defend, indemnify and hold harmless the Customer Indemnitees from and against all Losses awarded against a Customer Indemnitee in a final judgment based on a claim that any of the Services or Deliverables or Customer's receipt or use thereof infringes any Intellectual Property Right of a third party arising under the Laws of the United States; provided, however, that SafeTec shall have no obligations under this Section 13.1.2 with respect to claims to the extent arising out of: (a) any Customer Materials or any instruction, information, designs, specifications or other materials provided by Customer in writing to SafeTec; (b) use of the Deliverables in combination with any materials or equipment not supplied to Customer or specified by SafeTec in writing, if the infringement would have been avoided by the use of the Deliverables not so combined; or (c) any modifications or changes made to the Deliverables by or on behalf of any party other than SafeTec or SafeTec personnel.

13.1.3 In the event that the Services or Deliverables provided by SafeTec, or any portion thereof is held to constitute an infringement or violation of any third party's intellectual property or other proprietary rights, or in the reasonable opinion of SafeTec might constitute an infringement or violation of any third party's intellectual property rights, then SafeTec shall have the immediate right to, at its sole expense and at Customer's option: (a) modify the Deliverable without impairing in any material respect the functionality or performance, so that it is non-infringing or non-violative; (b) procure for Customer the right to continue to use the infringing or violative Deliverable; (c) replace said Deliverable with an equally suitable, non-infringing product; or (d) if none of the foregoing alternatives are available to SafeTec, Customer shall receive a repayment of all sums paid to SafeTec under the relevant Statement of Work for the infringing or violative Deliverable and Customer shall have no obligation to make any additional payments to SafeTec for such Deliverable, and SafeTec shall accept return of the Deliverable at its sole expense, once Customer has arranged for the continuation of the functions performed thereby. This Section 13.1.3 states SafeTec's entire responsibilities and Customer's entire remedies for any infringement of third party intellectual property by SafeTec's Services or Deliverables

13.2 **Customer.** Customer shall defend, indemnify and hold harmless SafeTec and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded against SafeTec in a final judgment arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the negligent or willful acts or omissions of Customer; and (b) Customer's material breach of any representation, warranty or obligation of Customer set forth in this Agreement.

14. Limitation of Liability.

14.1 IN NO EVENT SHALL SAFETEC BE LIABLE FOR LOSS OF USE OR OF DATA; LOSS OF PROFIT; DOWN TIME; OR INTERRUPTION OF BUSINESS; PROVIDED, HOWEVER, THAT IF ANY DATA PROPERLY PROVIDED BY CUSTOMER IN ACCORDANCE WITH THIS AGREEMENT IS LOST OR NOT AVAILABLE DUE TO THE GROSS NEGLIGENCE OF SAFETEC, SAFETEC SHALL BE LIABLE FOR THE ACTUAL DIRECT DAMAGES RESULTING FROM SUCH DATA LOSS OR UNAVAILABILITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, HOWEVER CAUSED, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SAME, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SAFETEC IS NOT LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED IN ANY WAY TO: (a) THE ACCURACY OR COMPLETENESS OF CUSTOMER INFORMATION; (b) THE ACCURACY OR COMPLETENESS OF THE DELIVERABLES OR INFORMATION DERIVED FROM THE DELIVERABLES; (c) USE OF PRODUCTS OR SERVICES; OR (d) MODIFICATIONS TO PRODUCTS OR SERVICES; WHETHER SUCH DAMAGES ARE SUFFERED BY CUSTOMER OR ANY THIRD PARTY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS SET FORTH IN THIS AGREEMENT.

14.2 EXCEPT AS PROVIDED IN SECTION 14.3, EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY APPLICABLE STATEMENT OF WORK WILL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER, FOR THE SERVICE THAT IS THE SUBJECT OF THE ACTION, FOR THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE BREACH FOR WHICH THE DAMAGES ARE CLAIMED. CUSTOMER ACKNOWLEDGES THAT SAFETEC PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION 14.2 WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

14.3 The exclusions and limitations in Sections 14.1 and 14.2 shall not apply to: (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 10 (Intellectual Property Rights; Ownership); (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under Section 11 (Confidential Information); (c) a party's indemnification obligations under Section 13 (Indemnification); (d) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts; (e) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions; and (f) a party's obligation to pay attorneys' fees and court costs in accordance with Section 18.12.

15. Insurance.

15.1 **Types of Insurance.** SafeTec agrees to maintain Errors and Omission Liability Insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate to cover the acts and omissions of its employees and agents for Services rendered pursuant to this Agreement. SafeTec will maintain Commercial General Liability Insurance with limits no less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. SafeTec shall also maintain Automotive Liability Insurance with not less than One Million Dollars (\$1,000,000) per occurrence, and will maintain Workmen's Compensation Insurance for all SafeTec employees that complies with the applicable laws wherever the Services are performed and wherever SafeTec's contracts of employment are entered into.

15.2 **Evidence.** SafeTec agrees to furnish Customer with a current and valid Certificate of Insurance relating to the extent of liability coverage and SafeTec agrees to keep and to maintain said insurance coverage in full force and effect during the Term of this Agreement. Insurance carriers for Errors

and Omission Liability and Commercial General Liability Insurance will have a minimum rating of "A" by AM Best or its equivalent. SafeTec shall be responsible for maintaining insurance covering its personal property used by it in its work. Any modification or alteration of such coverage or program, which shall have a material effect on this Section 15, shall be promptly communicated to Customer.

15.3 **Minimums.** All insurance requirements set forth in this Section 15 are minimum required levels of insurance and are not intended as limits on SafeTec's liability to Customer for violations of any duties, responsibilities, or obligations of SafeTec as set forth in this Agreement and any attachments thereto.

16. **Non-Exclusivity: Non-Compete.** SafeTec retains the right to perform the same or similar type of services for any and all third parties during the Term of this Agreement.

17. **Force Majeure.**

17.1 **No Liability.** Neither party shall not be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent; shortage of adequate power or telecommunications or transportation facilities; or any other event which is beyond the reasonable control of the party (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17.2 **Termination.** This Agreement shall not be regarded as terminated or frustrated as a result of such failure of performance that does not exceed two (2) months, and the parties shall proceed under this Agreement when the causes of such non-performance have ceased or have been eliminated.

18. **Miscellaneous.**

18.1 **Further Assurances.** Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

18.2 **Publicity.** SafeTec and Customer agree that SafeTec may publicize the fact that Customer is a user of the Services in a mutually agreed upon initial press release. Thereafter, SafeTec will use Customer name only in a list of other SafeTec customers. Additional publicity, if any, will require Customer's prior written consent.

18.3 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or

registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below or at such other address for a party as shall be specified in a notice given in accordance with this Section 18.3.

If to SafeTec: SafeTec Compliance Systems, Inc.
7700 NE Parkway Drive, Suite 125
Vancouver, WA 98662
Attention: Betty Hicks
Facsimile: 267-295-2012
Email: bhicks@hsi.com

With a copy to: Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, Oregon 97209
Attn: Ernest G. Bootsma
Facsimile: (503) 226-0079
Email: egb@aterwynne.com

If to Customer: City of Everett
3200 Cedar Street
Everett, WA 98201
Attention: Megan Munro
Facsimile:
Email: MMunro@everettwa.gov

18.4 **Entire Agreement.** This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

18.5 **Binding Effect; Assignment.** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party; provided, that, upon prior written notice to the other party, either party may assign the Agreement to a division, subsidiary or other affiliate of such party. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.6 **Successors and Assigns.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

18.7 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

18.8 **Amendments and Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.9 **Severability**. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.10 **Governing Law and Venue**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Washington. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Washington in each case located in the County of Clark, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

18.11 **Equitable Relief**. Each party acknowledges that a breach by a party of Section 10 (Intellectual Property Rights; Ownership) or Section 11 (Confidential Information) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

18.12 **Attorneys' Fees**. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

18.13 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SAFETEC COMPLIANCE SYSTEMS, INC.

By: Betty J. Hicks

Name: Betty J. Hicks

Title: Vice President, Operations & Authoring

[CITY OF EVERETT]

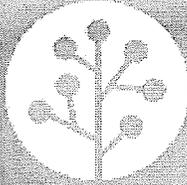
By: _____

Name: _____

Title: _____

EXHIBIT A
STATEMENT OF WORK

[Please see attached.]



Proposed Services

(M)SDS Management



Prepared for: Megan Munro
City of Everett
mmunro@everettwa.gov

Prepared by: Kirsten Moss
SafeTec Compliance Systems
kirstenm@safetec.net



SafeTec gives Environmental, Health & Safety professionals the support, technology and know-how to make informed decisions about the chemicals in their organization. We unlock the data within safety data sheets and use automation to deliver the structured information you need to manage thousands of chemicals safely and sustainably.

About the Organization

SafeTec is a privately-held corporation headquartered in Vancouver, Washington. Since 1998, SafeTec has partnered with Environmental, Health, and Safety professionals to help take on the heavy lifting in (M)SDS management. The SafeTec Community includes more than 300 customers across a myriad of industries and sizes.

About the SafeTec System

SafeTec offers comprehensive, automated (M)SDS and chemical inventory management solutions via a Software as a Service (SaaS) platform.

- We help you improve understanding of the hazardous materials in your workplace
- We reduce the complexity and costs of chemical management by customizing our system as needed so EHS professionals across industries have more time to focus on their top priorities.
- We help advance collective chemical knowledge for the benefit of the environment as well as industry by employing the latest technology, support tools, and field services in every engagement.

In the ever-shifting landscape of chemical compliance and management, you can rely on SafeTec to provide the support and solutions that advance chemical intelligence for your operation and for the world at large.

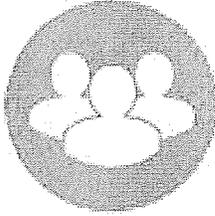
Customer Care Commitment

SafeTec employs people who are passionate about what they do. From handling customer service requests to pioneering tools tailored to meet the unique challenges of our customers, we offer more than software, we deliver peace-of-mind for you and your employees.

The SafeTec System

The adaptable SafeTec System™ goes beyond (M)SDS documentation to help you fully understand, analyze, and report on the chemicals used in your organization.

The City of Everett SafeTec System will include:



Unlimited User Access: Unlimited employee and administrative users

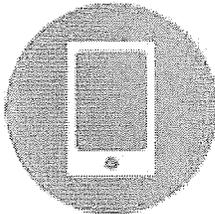


Multi-Browser Support:

Internet Explorer: versions 7, 8, 9, 10, 11

Google Chrome: latest version

Mozilla Firefox: latest version

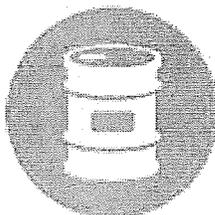


SafeTec Mobile: SafeTec websites automatically resize to work on any smartphone, tablet or computer, providing a third method of backup to your (M)SDS data



Regulatory Reporting:

1. Automated Tier II calculation and reporting
2. Tier II Export toolset, for locations that use E-Plan and Tier2Submit
3. Form-R/TRI calculation reporting, based on usage data capture



Labeling Engine: Secondary container labeling for NFPA & GHS



Technical Support: 24/7/365 technical support for emergencies via toll free number. Live attended hours for non-emergency customer service available 8am-4pm PST

Statement of Work

Service & Support Provided

SafeTec will provide the following services for City of Everett:

1. Continued access to electronic (M)SDS database to house City of Everett's (M)SDS library.
2. Extraction of information from each City of Everett (M)SDS to SafeTec's structured database; data indexing detail within Data Indexing section below.
3. Setup and hosting of two websites through which the (M)SDS Management System is accessed; this includes a City of Everett admin site, and a user-friendly Right-to-Know site.
4. Maintenance and secure backup of the (M)SDS database.
5. Scanning, information indexing, and upload of submitted, new, and revised (M)SDS documents throughout the term of the agreement.
6. Quarterly delivery of corporate (M)SDSs data back-up, delivered via CD/DVD or digital download. This software is a complete, stand-alone OSHA compliant (M)SDS tool that can be run on an independent PC or accessed over a network.
7. Train-the-Trainer training: two (2) two-hour, structured, pre-recorded web-based conference sessions, providing training for City of Everett's Safetec System. Each session accommodates up to 25 participating PCs. *Note: multiple users can participate from one PC.*
8. Incremental updates to the SafeTec System software
9. Storage and access to archived (M)SDSs for the life of the agreement
10. Detection and removal of duplicate (M)SDSs in the system, performed automatically by SafeTec Operations team
11. Implementation of SafeTec Monitor service, helping keep all active (M)SDSs current with the most up-to-date copy available from the manufacturer/supplier. This process is applied over a 3 year period of time

Data Indexing Described

Standard Fields	Chemical Ingredients	Secondary Container Labeling
Product Name	Name	NFPA
Manufacturer	CAS #	HMIS
Revision Date	Weight Percentages	GHS

On-going Submission of (M)SDSs

City of Everett may submit (M)SDSs (in hard copy or electronic format) to SafeTec on an as needed basis for processing. SafeTec will process submitted (M)SDSs and ensure that each document is available for search and viewing on the City of Everett website as soon as reasonably possible.

Technical Support

Technical support is included with the annual subscription fee. This support includes installation and troubleshooting. In addition, one hour of web site customization is included within the first ninety (90) days after the Effective Date of this SOW. Additional customization after such ninety (90) day period will be billed at the rate of \$180.00 per hour.

Publicity

Both parties agree that SafeTec may publicize City of Everett in a list of SafeTec customers. Any further publicity will require City of Everett's written approval.

Project Fees

Service Item	Cost
(M)SDS Management Cost (1500 Products @ \$3.50/product)	\$5,250.00
Fee is based on a price of \$3.50 per (M)SDS document per year.	
Year 1 Project Total	\$5,250.00

Payment Terms

Good Faith Estimate

The above pricing for SafeTec's software and services are estimates. These estimates are based on information, specifications, and/or requirements provided to SafeTec by City of Everett and may be affected by an increase in the number of actual (M)SDSs acquired and days of inventory needed (where

applicable). Any change in scope will be documented and submitted to City of Everett for approval.

User Licensing

The SafeTec System allows for unlimited employee and administrative users.

Users are defined as an employee or authorized contractor of the City of Everett.

Payments/Fees

City of Everett's annual subscription fee will be based on active, unique (M)SDSs. SafeTec will bill future annual fees at \$3.50 per unique (M)SDS. Any adjustment in the annual subscription fee for an increase/decrease in the number of active, unique (M)SDSs will be made at the beginning of each new contract year.

Invoices will be sent via email and/or mail to the facility point of contact or designated individual. All invoices are due and payable within thirty (30) days of receipt. Any invoice not paid within thirty (30) days of receipt will incur a 1.5% per month late fee. A suspension of service may result if payments are not received within ninety (90) days of receipt of invoice.

EXHIBIT B
AUTHORING ADDENDUM

[Please see attached.]

ADDENDUM

(WASHINGTON STATE TRANSPARENCY LAWS)

The City of Everett ("City") and ("Vendor") are parties to an agreement entitled " " (the "Agreement"). The parties agree that the provisions of this addendum control all provisions of the Agreement:

A. Scope. Regardless of anything to the contrary in the Agreement, all provisions in the Agreement that require the City to not disclose information or otherwise preserve confidentiality are strictly limited to the following: designs, drawings, computer source code and/or object code

(the "Confidential Records").

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

B. Washington Public Records Act. Vendor acknowledges that the City is subject to the Washington Public Records Act, chapter 42.56 RCW and other Washington statutes related to open government (collectively, the "Act"). If the City receives a records request under the Act that requests any Confidential Records, then the City shall give reasonable written notice to Vendor. The City has no obligation to provide such notice for anything that is not Confidential Records. If Vendor desires that the Confidential Records not be disclosed, Vendor shall commence an action in Snohomish County Superior Court before the disclosure date. **Notwithstanding anything to the contrary in the Agreement, the City has no liability whatsoever to Vendor the disclosure of any record containing Confidential Records when that disclosure is pursuant to an order applying the Act entered by the Snohomish County Superior Court or a Washington appellate court.**

C. Venue. The exclusive venue for any dispute regarding the subject matter of this addendum are the federal and state courts located in Snohomish County.

CITY:

RAY STEPHANSON, MAYOR

VENDOR:

Safe Tec. Compliance Systems
By: [Signature]
Title: vice President Operations & Admin

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY