

YOU MAY CALL IN TO LISTEN TO THE COUNCIL MEETINGS AT

1.425.616.3920, Conference ID: 724 887 726#

WE ENCOURAGE YOU TO PROVIDE YOUR COMMENTS IN WRITING BEFORE THE MEETING AT
COUNCIL@EVERETTWA.GOV.

YOU MAY CALL IN **AT 12:00 P.M. PRIOR TO THE MEETING** TO PROVIDE PUBLIC COMMENT AT
THE COUNCIL MEETINGS

AT 1.425.616.3920, Conference ID: 870 447 398#

EVERETT CITY COUNCIL PRELIMINARY AGENDA

12:30 P.M., WEDNESDAY, JULY 8, 2020

Roll Call

Approval of Minutes: July 1, 2020

Mayor's Comments:

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Public Comment

CONSENT ITEMS:

(1) Adopt Resolution authorizing claims against the City of Everett in the amount of \$2,092,355.53 for the period of June 20, 2020 through June 26, 2020.

Documents:

[res-28.pdf](#)

(2) Adopt Resolution authorizing payroll claims against the City of Everett in the amount of \$4,079,112.48 for the period ending June 20, 2020.

Documents:

[payroll-15.pdf](#)

(3) Adopt Resolution authorizing electronic transfer claims against the City of Everett in the amount of \$6,923,416.07 for the period of April 1, 2020 through April 30, 2020.

Documents:

[elec-3.pdf](#)

(4) CB 2006-39 – 3rd and final Reading – Adopt the Proposed Ordinance amending Ordinance No. 3661-19 entitled, “Everett Fire Administration Building Tenant Improvements Project”, Fund 342, Program 027, to accumulate the design and construction costs for the Project in the amount of \$1,600,000.00.

Documents:

[CB2006-39.pdf](#)

(5) Award the construction contract for the Everett Fire Administration Building Tenant Improvements Project to Kirtley-Cole Associates, LLC. in the amount of \$1,079,334.00.

Documents:

[Kirtley Cole.pdf](#)

(6) Adopt Resolution superseding Resolution No. 7493 and setting August 5, 2020, at 6:30 p.m. as the date and time to hear and determine the petition for the proposed vacation of the north-south alley together with the southern east-west alley in the 2900 Block lying between Pine Street and Maple Street. (Public hearing on 8-5-20).

Documents:

[Pine Street-1.pdf](#)

(7) Award and authorize the Mayor to sign contracts resulting from Request for Proposal #2019-103 for concession services to Dog Day Afternoon, Fun Times Ice Cream, and Lil Puddle for two years with three (3) one-year extension options.

Documents:

[Dog Day.pdf](#)

(8) Authorize the Mayor to accept \$11,700 in grant funding from Snohomish County Historic Preservation Commission to digitize historic panoramic photos.

Documents:

[Historic Preservation.pdf](#)

(9) Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with CHS Engineers and David Evans and Associates, Inc. to design a new sewer lift station near Edgewater Park and a new forcemain pipe along Shore Avenue.

Documents:

[David Evans.pdf](#)

(10) Authorize the Mayor to sign the Professional Services Agreement with Brown & Caldwell for Owner Advisor services related to procurement of a Progressive Design-Build contractor for Reservoir 3 structural repairs.

Documents:

[Brown and Caldwell-1.pdf](#)

(11) Authorize the Mayor to sign the Professional Services Agreement with Roots Forestry Consulting, LLC for Forestry and Watershed Management services.

Documents:

[Roots Forestry.pdf](#)

ACTION ITEMS:

(12) Authorize the Mayor to sign the Biosolids Tolling Agreement.

Documents:

[Biosolids Tolling.pdf](#)

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.)

(13) CB 2006- 40 1st Reading - Adopt an Ordinance establishing Juneteenth as a recognized city holiday. (3rd and final reading on 7-22-20).

Documents:

[CB 2006-40.pdf](#)

Executive Session

Adjourn

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

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

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



RESOLUTION NO. _____

Be it Resolved by the City Council of the City of Everett:

Whereas the claims payable by check against the City of Everett for the period June 20, 2020 through June 26, 2020, having been audited and approved by the proper officers, have been paid and the disbursements made by the same, against the proper funds in payment thereof, as follows:

<u>Fund</u>	<u>Department</u>	<u>Amount</u>	<u>Fund</u>	<u>Department</u>	<u>Amount</u>
001	City Council	3,689.53	101	Parks & Recreation	1,413.64
002	General Government	4,034.49	110	Library	3,987.56
003	Legal	18,369.75	119	Public Works-Street Improvmer	4,954.50
004	Administration	3,951.00	120	Public Works-Streets	28,396.06
005	Municipal Court	4.20	126	MV-Equipment Replacement Re	95,224.04
007	Human Resources	48.90	145	Real Property Acquisition	20,271.78
009	Misc Financial Funds	226,157.74	146	Property Management	8,386.05
010	Finance	65.88	153	Emergency Medical Services	23,257.68
021	Planning & Community Develop	148.50	197	CHIP Loan Program	247.05
024	Public Works-Engineering	3,995.85	198	Community Dev Block Grants	151,423.94
026	Animal Shelter	823.29	303	PW Improvement Projects	187,677.16
031	Police	10,371.96	336	Water & Sewer Sys Improv Proj	361,477.83
032	Fire	936.32	401	Public Works-Utilities	436,071.81
038	Facilities/Maintenance	1,699.41	425	Public Works-Transit	166,857.00
	TOTAL GENERAL FUND	\$ 274,296.82	430	Everpark Garage	13,666.01
			440	Golf	20,557.02
			501	MVD-Transportation Services	19,180.43
			503	Self-Insurance	178,835.50
			505	Computer Reserve	35,074.04
			507	Telecommunications	3,982.05
			661	Claims	57,117.56
			TOTAL CLAIMS	\$ 2,092,355.53	

Councilperson introducing Resolution

Passed and approved this _____ day of _____, 2020

Council President



RESOLUTION NO. _____

Be it resolved by the City Council of the City of Everett:

That the payroll of the employees of the City of Everett as of June 20, 2020, and checks issued June 26, 2020, having been audited, be and the same is hereby approved and the proper officers are hereby authorized and directed to charge checks on the Payroll Fund in payment thereof:

Fund	Department	Gross Payroll	Employer Contributions
001	Legislative	11,732.96	6,142.83
003	Legal	115,020.57	25,674.02
004	Administration	46,862.96	13,922.00
005	Municipal Court	71,056.16	21,133.28
007	Personnel	45,274.98	16,613.86
010	Finance	73,872.11	28,767.41
015	Information Technology	70,992.77	28,514.26
018	Communications and Marketing	5,553.86	2,788.47
021	Planning & Community Dev	106,455.95	26,338.45
024	Public Works	138,792.65	56,472.16
026	Animal Shelter	36,961.08	16,414.78
031	Police	971,017.85	284,028.74
032	Fire	599,231.24	151,568.20
038	Facilities/Maintenance	63,267.10	29,622.79
101	Parks & Recreation	128,906.61	45,996.88
110	Library	53,038.54	19,745.57
112	Community Theatre	8,100.00	3,109.42
120	Street	47,505.08	25,942.80
153	Emergency Medical Services	269,525.75	60,982.33
197	CHIP	8,714.94	3,395.70
198	Community Dev Block	7,320.72	2,644.41
401	Utilities	706,034.73	292,714.05
425	Transit	395,158.92	152,664.31
440	Golf	23,167.50	9,071.38
501	Equip Rental	65,258.97	28,070.81
507	Telecommunications	10,288.48	4,509.87
		<u>\$4,079,112.48</u>	<u>\$1,356,848.78</u>

Councilperson Introducing Resolution

Passed and approved this _____ day of _____, 2020.

Council President



RESOLUTION NO. _____

Be it Resolved by the City Council of the City of Everett:

That the claims made by electronic transfer against the City of Everett for the month April 1 through April 30, 2020, having been audited, be and the same are hereby approved, and the proper officers are hereby authorized and directed to charge claims made by electronic transfer against the proper funds in payment thereof, as follows:

<u>Fund</u>	<u>Department</u>	<u>Amount</u>
002	General Fund	337,256.51
101	Park	46,700.83
110	Library	3,597.65
112	Community Theater	711.23
119	Public Works - Street Imp	72.31
120	Streets	8,096.41
126	Moter Vehicle/Equip Repl	350.72
138	Hotel/Motel	406.24
145	ESCROQ	374.17
146	Parking Lot Reserve	5,542.13
148	Municipal Art Fund	221.22
149	Senior Center Reserve	48.57
151	Animal Reserve	14,289.78
152	Library Reserve	15.29
153	EMS	53,132.71
155	Gen Gov Spec Proj	932.19
156	Criminal Justice	23,817.79
197	CHIP	240.38
303	Public Works Improvement Proj	93.33
342	City Facilities Construction	213.52
401	Utilities	330,531.16
402	Solid Waste Utility	5,352.60
425	Transit	38,544.45
430	Everpark Garage	5,661.97
440	Golf	62,631.48
501	Transportation Services	90,185.58
503	Self-Insurance Fund	294,152.00
505	Computer Reserve Fund	11,075.86
507	Telecom	38,332.63
508	Health Benefits Reserve	1,253,916.13
637	Police Pension	54,209.53
638	Fire Pension	98,972.70
661	Payroll Withholding	4,143,737.00

TOTAL CLAIMS
BY ELECTRONIC TRANSFER **6,923,416.07**

Councilmember Introducing Resolution

Passed and approved this _____ day of _____, 2020

Council President



An Ordinance amending Ordinance No. 3661-19 entitled "Everett Fire Administration Building Tenant Improvements Project", Fund 342, Program 027, to accumulate the design and construction costs for the project in the amount of \$1,600,000.00.

Project title:

City Council Agenda Item Cover Sheet

Council Bill #

CB2006 39

Agenda dates requested:

June 24, 2020

July 1, 2020

July 8, 2020

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

..... Yes No

Budget amendment:

..... Yes No

PowerPoint presentation:

..... Yes No

Attachments:

Ordinance Amendment

Department(s) involved:

Facilities

Contact person:

Ruben Sanchez

Phone number:

425-257-6293

Email:

rsanchez@everettwa.gov

Initialed by:

PK

.....
Department head

Administration

[Signature]
.....
Council President

Consideration: Ordinance Amending Ordinance No. 3661-19

Project: Everett Fire Administration Building Tenant Improvements Project

Partner/Supplier: To be determined

Location: 2801 Oakes Avenue

Preceding action: Funding Ordinance February 20, 2019

Fund: Fund 342, Program, 027 (CIP-1)

Fiscal summary statement:

The funding source for this project is CIP-1.

Bids for the Everett Fire Administration Building Tenant Improvements Project were opened on June 2, 2020. Based on the lowest responsive bid the total project estimate is as follows:

Design and Construction Administration	\$ 100,000
Construction	\$1,200,000
<u>Other Project Cost</u>	<u>\$ 300,000</u>
Total	\$1,600,000

The construction estimate includes sales tax and a 10% change order contingency. The other project cost estimate includes items such as permit fees, utility costs, furniture and moving. The \$1,600,00 is an all-inclusive total project estimate.

Project summary statement:

Ordinance No. 3661-19 was established on February 20, 2019 to fund the design for the Everett Fire Administration Building Tenant Improvements Project in the amount \$110,000.

As indicated to City Council when the original funding ordinance was established, the purpose of this project is to renovate the Fire Administration building. This will allow Fire Department Administrative staff to move into the building, vacating space currently occupied by Fire staff on the seventh floor of the Everett Municipal Building. (The vacated space will be part of the office area to be re-designed to accommodate the future tenancy of select Public Works staff.)

The Everett Fire Administration Building Tenant Improvements includes office space renovation on 1st and 2nd floors; a 1st floor ADA restroom; new electrical, mechanical, phone and data systems; 1st and 2nd floor selected windows' replacement, and garage door replacement.

Prior to construction, 8 Fire Department staff will move from the Fire Administration Building to the Everett Municipal Building. Physical distancing will be achieved by placing relocated staff into private offices. When the tenant improvements are completed approximately 20 staff will move from the Everett Municipal Building to the Fire Administration Building. Physical distancing in the Fire Administration Building will be achieved by placing staff in private offices. (This is the original design concept.)

The bid award will follow the third reading of the funding Ordinance.

Recommendation (exact action requested of Council):

Adopt an Ordinance amending Ordinance No. 3661-19 entitled "Everett Fire Administration Building Tenant Improvements Project", Fund 342, Program 027, to accumulate the design and construction costs for the project in the amount of \$1,600,000.00.



ORDINANCE NO. _____

An Ordinance amending Ordinance No. 3661-19 entitled “Everett Fire Administration Building Tenant Improvements Projects”, Fund 342, Program 027, to accumulate the design and construction costs for the project in the amount of \$1,600,000.00.

WHEREAS,

- A. The City Council has recognized the need for tenant improvements for the Everett Administration Building located at 2801 Oakes Avenue.
- B. Ordinance No. 3661-19 was established as Fund 342, Program 027 entitled “Everett Fire Administration Building Tenant Improvements Project” to accumulate design costs for the project.
- C. Additional funding is required to complete the project.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 3 of Ordinance No. 3482-16 which reads as follows:

The sum of \$110,000.00 is hereby appropriated to Fund 342, Program 027, “Everett Fire Administration Building Tenant Improvements Project”.

A.	Use of Funds	
	<u>Design and Construction Administration</u>	\$ 110,000.00
	Total	\$ 110,000.00
B.	Source of Funds	
	CIP 1	\$ 110,000.00

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

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

The sum of \$1,600,000.00 is hereby appropriated to Fund 342, Program 027 “Everett Fire Administration

Building Tenant Improvements Project.

A.	Use of Funds	
	Design and Construction Administration	\$ 100,000.00
	Construction	\$ 1,200,000.00
	Other Project Cost	\$ 300,000.00
	Total	\$ 1,600,000.00

B.	Source of Funds	
	CIP 1	\$ 1,600,000.00

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

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

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Cassie Franklin, Mayor

ATTEST:

Sharon Fuller, City Clerk

PASSED: _____

2020 ORDINANCE: Everett Fire Administration Tenant Improvements Project



VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____



Project title: Construction Contract for the Everett Fire Administration Building Tenant Improvements Project to Kirtley-Cole Associates, LLC. in the amount of \$1,079,334.00

Council Bill #**Agenda dates requested:**

Briefing
 Proposed action
 Consent
 Action July 8, 2020
 Ordinance
 Public hearing
 Yes No

Budget amendment:
 Yes No

PowerPoint presentation:
 Yes No

Attachments:
 Bid Summary

Department(s) involved:
 Fire Department
 Parks & Facilities
 Administration

Contact person:
 Ruben Sanchez

Phone number:
 425-257-6293

Email:
 clark@everettwa.gov

Initialed by:

Department head

Administration

Council President

Project: Fire Administration Building Tenant Improvements

Partner/Supplier: Kirtley-Cole Associates, LLC.

Location: 2801 Oakes Avenue

Preceding action: Call for Bids – December 31, 2019
 Funding Ordinance Amendment No.1 – July 8, 2020

Fund: Fund 342, Program 027

Fiscal summary statement:

Bids were opened on June 2, 2020 with 12 bids received. Kirtley-Cole Associates, LLC., submitted the lowest responsive, responsible bid in the amount of \$983,000.00 plus Washington State Sales Tax \$96,334.00 for a total construction amount of \$1,079,334.00.

The engineer's estimate for construction was \$1,250,000.00.

This project is listed in the 2020 City Budget and is included in the CIP-1 financial model.

Project summary statement:

The purpose of the project is to provide adequate working spaces, classroom, and conference room for the relocation of Fire Department personnel and administrative operations from the Everett Municipal Building 7th floor location to the City Fire Administration Building located at 2801 Oakes Avenue

The Everett Fire Administration Building Tenant Improvements includes office space renovation on 1st and 2nd floors, 1st floor ADA restroom, new electrical, mechanical, phone and data systems, 1st and 2nd floor selected window replacements, and garage door replacements.

Construction is anticipated to start in August and take approximately six months to complete.

Recommendation (exact action requested of Council):

Award the construction contract for the Everett Fire Administration Building Tenant Improvements Project to Kirtley-Cole Associates, LLC. in the amount of \$1,079,334.00.



EVERETT

WASHINGTON

EVERETT FIRE ADMINISTRATION BUILDING TENANT IMPROVEMENTS

#18-1080

BID SUMMARY

BID OPENING DATE: 6/2/2020

ENGINEER'S ESTIMATE: \$1,250,000

<u>BIDDER</u>	<u>LOCATION</u>	<u>TOTAL</u>
Kirtley-Cole Associates, LLC	Everett, WA	\$ 983,000.00
BFC Construction, Inc	Federal Way, WA	\$1,017,566.00
Reynolds General Contracting, Inc	Bellevue, WA	\$1,065,500.00
Valdez Construction, Inc	Oak Harbor, WA	\$1,239,600.00
Clark Construction, LLC	Bainbridge Island, WA	\$1,242,000.00
Deacons Construction, LLC	Redman, WA	\$1,265,859.00
James Company	Monroe, WA	\$1,284,618.00
Faber Construction Corp	Lynden, WA	\$1,337,000.00
Optimus Construction & Development, Inc	Seattle, WA	\$1,365,000.00
Forma Construction Company	Olympia, WA	\$1,370,599.74
Bayley Construction, LP	Mercer Island, WA	\$1,393,500.00
Woodridge Construction, LLC	Monroe, WA	\$1,845,041.00



RESOLUTION superseding Resolution No. 7493 and setting August 5, 2020, at 6:30 p.m. as the date and time to hear and determine the petition for the proposed vacation of the north-south alley together with the southern east-west alley in the 2900 Block lying between Pine Street and Maple Street.

Project title:

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Agenda dates requested:

07/08/2020 Resolution
08/05/2020 Public Hearing

Briefing

Proposed action

Consent X

Action

Ordinance

Public hearing

X Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

1. Resolution
2. Petition
3. Map Exhibit

Department(s) involved:

Real Property

Contact person:

Paul McKee

Phone number:

425-257-8938

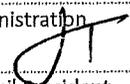
Email:

pmckee@everettwa.gov

Initialed by:

Department head

Administration


Council President

Consideration: Resolution to set alley vacation hearing

Project: Alley Right-of-Way Vacation

Partner/Supplier : Kaiser Permanente, Petitioner

Location: 2900 block lying between Pine Street and Maple Street.

Preceding action: March 11, 2020 - City Council adopted Resolution No. 7493

Fund: None

Fiscal summary statement:

None

Project summary statement:

A petition has been received from Kaiser Permanente requesting to vacate the north-south alley together with the southern east-west alley located in the 2900 Block lying between Pine Street and Maple Street. Note that the northern east-west alley located in this block is not subject to this vacation petition and will remain open for use.

The petitioner owns more than two-thirds of the property abutting the alley right-of-way proposed to be vacated, thus fulfilling the statutory requirements of RCW 35.79.010 that the petition must be signed by "the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated."

The requested vacation is being sought to combine the parcels located on each side of the vacated alleys into a larger, single consolidated site for future development purposes.

On March 11, 2020, the City Council adopted Resolution No. 7493, which resolved that a public hearing be set for April 8, 2020, at 6:30 p.m., in the City Council Chambers at 3002 Wetmore Avenue, to consider the proposed vacation.

The April 8, 2020 public hearing was not held due to the novel coronavirus pandemic.

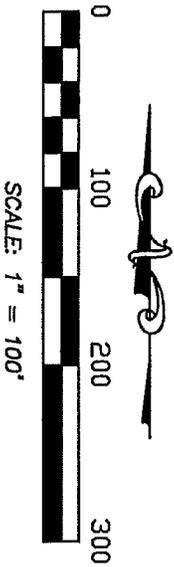
The purpose of this resolution is to reschedule the public hearing to **August 5, 2020, at 6:30 p.m.**

Recommendation (exact action requested of Council):

Adopt Resolution superseding Resolution No. 7493 and setting August 5, 2020, at 6:30 p.m. as the date and time to hear and determine the petition for the proposed vacation of the north-south alley together with the southern east-west alley in the 2900 Block lying between Pine Street and Maple Street.

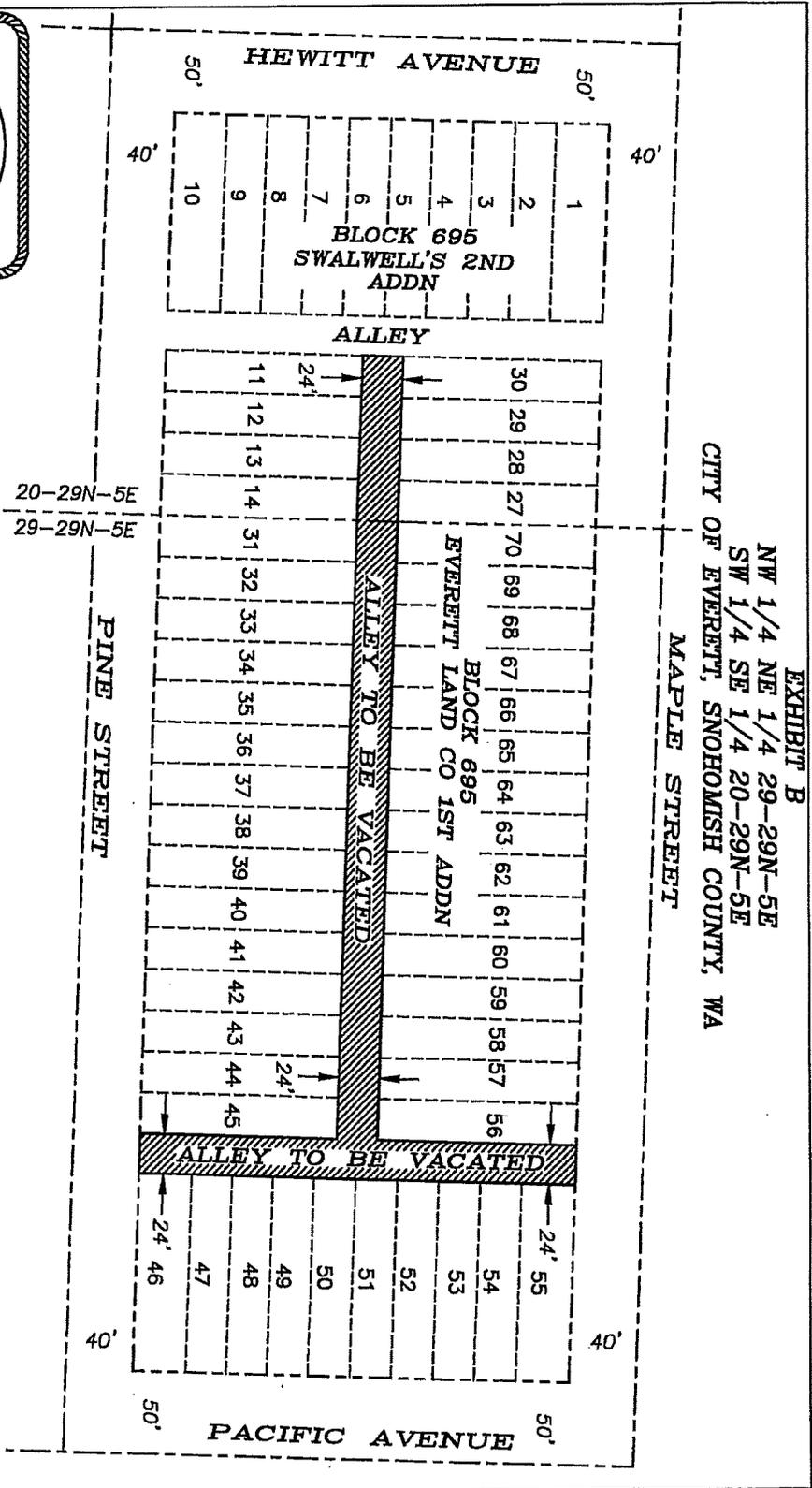


JOB NO. 81900053



Kpff

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Suite 100
Lacey, WA 98503
360.292.7230
www.kpff.com





**TO THE MEMBERS OF THE CITY COUNCIL
OF THE CITY OF EVERETT, WASHINGTON**

Council members: The undersigned respectfully petition and show:

I.

That they are the owners of more than two-thirds of the private properly abutting upon that portion of the right-of-way hereinafter described.

II.

That Your Petitioners Desire to Have Vacated The Following Described Property:

The alley lying within Block 695 Everett Land Company's First Addition to Everett, according to the plat thereof recorded in Volume 3 of Plats, Page 20, records of Snohomish County, Washington;

Together With;

The alley lying westerly of lots 27 through 30, inclusive; and lying easterly of lots 11 through 14, inclusive, all in Block 695 Swalwell's Second Addition to Everett, according to the plat thereof recorded in Volume 3 of Plats, Page 11, records of Snohomish County, Washington.

Situate in the Northwest Quarter of the Northeast Quarter of Section 29, Township 29 North, Range 5 East, W.M.; and The Southwest Quarter of the Southeast Quarter of Section 20, Township 29 North, Range 5 East, W.M., City of Everett, Snohomish County, Washington.

Containing 17,718 Square Feet, 0.41 Acres.

III.

That portion of the said right-if-way hereby petitioned to be vacated will not interfere with public or private utilities. Any existing utilities will be relocated at petitioner's expense, or an easement shall be provided in the ordinance.

WHEREFORE your petitioners pray that you will pass a resolution fixing a time not more than sixty (60) days and not less than twenty (20) days after the date of the passage of such resolution for the hearing upon this petition, and that after a full hearing upon said petition you will pass an ordinance vacating that portion of the right-of-way herein described and that the ordinance vacating said portion of the street shall provide that the strip so vacated shall vest to the abutting property owners in accordance with the laws of the State of Washington.

Respectfully submitted,



Signature Terry J Wood

VP Real Estate - NFS
393 E. Walnut Street, 4th Floor
Pasadena, CA 91188

1/21/2020

Date

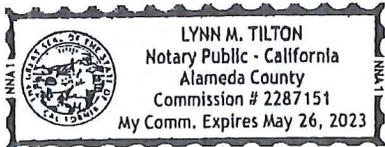
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of ALAMEDA }
On Jan 21 2020 before me, LYNN M. TILTON, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer
personally appeared TERRY J. WOOD
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynn M. Tilton
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____
 Partner – Limited General Partner – Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian of Conservator Trustee Guardian of Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____



RESOLUTION NO. _____

A RESOLUTION superseding Resolution No. 7493 and setting a new public hearing date for the proposed vacation of the north-south alley together with the southern east-west alley located in the 2900 Block lying between Pine Street and Maple Street

WHEREAS,

- A. The owners of more than two-thirds of the property abutting the following street or alley have signed a petition for its vacation:

The north-south alley together with the southern east-west alley located in the 2900 Block lying between Pine Street and Maple Street.

This alley or street is legally described as:

The alley lying within Block 695 Everett Land Company's First Addition to Everett, according to the plat thereof recorded in Volume 3 of Plats, Page 20, records of Snohomish County, Washington; Together With; The alley lying westerly of lots 27 through 30, inclusive; and lying easterly of lots 11 through 14, inclusive, all in Block 695 Swalwell's Second Addition to Everett, according to the plat thereof recorded in Volume 3 of Plats, Page 11, records of Snohomish County, Washington.

Situate in the Northwest Quarter of the Northeast Quarter of Section 29, Township 29 North, Range 5 East, W.M.; and The Southwest Quarter of the Southeast Quarter of Section 20, Township 29 North, Range 5 East, W.M., City of Everett, Snohomish County, Washington.

Containing 17,718 Square Feet, 0.41 Acres, more or less.

- B. The petition has been filed with the City Clerk. RCW 35.79.010 provides that the City Council shall, by resolution, fix a time for public hearing on the petition.
- C. On March 11, 2020, the City Council adopted Resolution No. 7493, which resolved that a public hearing be set for April 8, 2020, at 6:30 p.m., in the City Council Chambers at 3002 Wetmore Avenue, to consider the proposed vacation.

- D. The April 8, 2020 public hearing was not held due to the novel coronavirus pandemic.
- E. The purpose of this resolution is to reschedule the public hearing to **August 5, 2020, at 6:30 p.m.**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EVERETT that:

1. This resolution supersedes Resolution No. 7493 in its entirety; and
2. A public hearing be set for **August 5, 2020, at 6:30 p.m.** to hear and determine the petition for proposed vacation of the street or alley described above.

Councilperson Introducing Resolution

PASSED AND APPROVED this ____ day of _____, 2020.

Council President



Project title: Award and Authorize the Mayor to sign contracts resulting from Request for Proposal #2019-103 for Concession Services to Dog Day Afternoon, Fun Times Ice Cream, and Lil Puddle

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Project: Request for Proposal 2019-103 Concession Services

Partner/Supplier : Multiple

Location: Multiple Parks

Preceding action: Authorized Released of Request for Proposal January 22, 2020

Fund: Department fund example: 004/Admin

Agenda dates requested:

July 8, 2020

Briefing

Proposed action

Consent X

Action

Ordinance

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Contracts

Department(s) involved:

Purchasing & Parks & Community Development

Contact person:

Theresa Bauccio-Teschlog

Phone number:

(425) 257-8901

Email:

tbauccio@everettwa.gov

Initialed by:

Department head

Administration

Council President

Fiscal summary statement:

This is a revenue contract award. Dog Days Afternoon will pay the City 10% of the gross revenue made from concessions at Phil Johnson Ballfields for the first year and 11% of gross revenue for year two. Fun Times Ice Cream will pay the city a flat fee depending on the month and site location. Lil Puddle will pay the City 10% percent of gross revenue for the Kasch Park concession Stand and 10% percent for the Kasch Park Pavilion Soccer field area for both years.

Project summary statement

It is a best practice to periodically issue a request for proposal to help ensure that the best interests of the City and public continue to be served. That best practice was the basis for this RFP.

Staff issued Request for Proposal #2019-103 on February 4, 2020, for the operation of concession services at several locations across the City. Part 1 of the RFP was for food and beverage services at the permanent existing café space at Everett Station. Part 2 of the RFP was for concession services at several park locations.

The City did not receive any responses to Part 1, food and beverage services at Everett Station. However, several responses were received for the Park locations. Staff evaluated the responses based on a per site award.

Site	Award	Concession Type
Phil Johnson Ballfields	Dog Day Afternoon	Hot dogs, vegi-dogs, pretzels, Nachos and a variety of drinks.
Forest Park by Cedar Hall	Fun Times Ice Cream	Variety of ice cream and fruit
Silver Lake by the Lake	Fun Times Ice Cream	Variety of ice cream and fruit
Kasch Park Concession Area	Lil Puddle	Barbeque, flautas, salads, fruit parfait, and a variety of drinks
Kasch Park Soccer fields Pavilion Area	Lil Puddle	Barbeque, flautas, salads, fruit parfait, and a variety of drinks

Recommendation (exact action requested of Council):

Award and Authorize the Mayor to sign contracts resulting from Request for Proposal #2019-103 for Concession Services to Dog Day Afternoon, Fun Times Ice Cream, and Lil Puddle for two years with three (3) one-year extension options.

LICENSE TO USE CITY PROPERTY

Grantor: City of Everett (hereinafter referred to “City”)

Grantee: DOG DAY AFTERNOON

Property: Those certain premises commonly known as Phil Johnson Ballfields, (hereinafter called “Premises” or the “property”), being situated at the following location in Everett, Washington legally described as:

Phil Johnson Ballfields
Building #107
400 W. Sievers-Ducey Blvd
Everett, WA 98204

Situated in the County of Snohomish, State of Washington.

1. **AUTHORIZED USE.** DOG DAY AFTERNOON shall use the Premises for conducting concession operations open to the public.
2. **TERM.** This License shall be effective on the date that the city gives notice to proceed. The City intends to provide Notice to Proceed at the start of Phase Four of the Governor’s Stay Home Stay Healthy Order, which could be as early as August 1, 2020 and shall expire on July 31, 2022. Additionally, the parties may choose to extend the term of this Agreement by three (3) – one-year extension terms. If the parties so agree, each extension term will be formalized in an amendment to this Agreement.
3. **FEE.** DOG DAY AFTERNOON shall pay the City a monthly fee of 10% of the gross proceeds. Payments shall be made on or before the 15th of each month in which payment is due. A late fee penalty of \$50 (fifty dollars) will be assessed for payments received after the 5th of each month. The license is subject to a leasehold tax. Leasehold tax is included in the fee.
4. **AUTHORIZED USE.** DOG DAY AFTERNOON may only use the property for the purpose of conducting concession operations.

5. **INDEMNIFICATION.** To the extent of its fault, DOG DAY AFTERNOON hereby agrees to defend, indemnify and hold the City harmless from any and all Claims for injury to people or damage to property arising out of or related to this License. "City" means the City, its officers, employees and agents. "Claims" means any loss, injury, demand, settlement and lawsuit, and further includes any and all reasonable litigation costs such as attorney's fees, expert fees and costs, and court costs. "Injury to people" includes, but is not limited to, bodily injury and death. "Damage to property" includes, but is not limited to damage or injury to the property, any City facilities and any property owned by third parties. This defense and indemnification obligation shall survive any termination, revocation or expiration of this Agreement.

6. **HAZARDOUS MATERIALS.** DOG DAY AFTERNOON hereby agrees not to store any materials on the property that are classified as hazardous or dangerous under the Washington Model Toxic Control Act. Breach of this provision shall be considered an "injury" to property as prohibited herein.

7. **TERMINATION.** The City may terminate this License upon 10 (ten) calendar days written notice to Grantee. This right is in addition to any other rights at law or in equity. DOG DAY AFTERNOON may terminate this License upon 90 calendar days written notice to the City.

8. **NOTICE.** Notices sent pursuant to this License shall be sent to the parties at the following addresses:

CITY OF EVERETT

Attn.: Cory Rettenmier

Everett Parks and Community Services Department

802 E. Mukilteo Blvd

Everett, Washington 98203

DOG DAY AFTERNOON

Attn: Bruce Barstow

1242 State Ave Suite I-270

Marysville, WA 98270

9. **NO ASSIGNMENT.** This License is personal to DOG DAY AFTERNOON and may not be transferred, assigned, conveyed, pledged, encumbered or hypothecated.

10. **COMPLIANCE WITH LAW.** DOG DAY AFTERNOON agrees to comply with all applicable City, County, State and Federal regulations and laws and acquire all permits required by law or regulation.

11. **INSURANCE.** DOG DAY AFTERNOON shall maintain commercial general liability insurance coverage during the term of this License with \$2,000,000 combined single limits, which insurance shall be primary and non-contributing. DOG DAY AFTERNOON shall ensure the City is endorsed as an additional insured on the policy. DOG DAY AFTERNOON shall provide the City evidence of coverage and endorsement. Insurance coverage and limits of liability as specified herein are minimum coverage and limit liability requirements only. They shall not be construed to limit the liability of DOG DAY AFTERNOON or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insure, where additional insured status is required, for the full available limits of liability maintained by DOG DAY AFTERNOON, whether those limits are primary, excess, contingent or otherwise.

12. **NON-INTERFERENCE WITH CITY USE.** DOG DAY AFTERNOON use of the Property shall not interfere in any way with any City use of the property.

13. **RELOCATION.** DOG DAY AFTERNOON specifically agrees to relocate or removed, whichever the City requires, all or any part of its materials located on the Property due to maintenance, repair, or construction of City's property or a City improvement. DOG DAY AFTERNOON shall commence the relocation or removal within ten (10) calendar days of notice by the City that DOG DAY AFTERNOON must relocate or removed materials. If DOG DAY AFTERNOON fails to commence the relocation or removal as required or, having commenced it, fails to proceed with reasonable dispatch, the City shall, in addition to its remedy for damages, be entitled to specific enforcement of DOG DAY AFTERNOON's obligation hereunder and shall also have the right and authority to remove, at DOG DAY AFTERNOON's expense, such portion of the materials as DOG DAY AFTERNOON has failed to relocate or removed without incurring any liability whatsoever.

14. **REPAIR OF PROPERTY.** DOG DAY AFTERNOON shall use care to avoid damaging or destroying property by reason of their operations pursuant to this License. Any damage caused by DOG DAY AFTERNOON to City or other property shall be promptly repaired or replaced by DOG DAY AFTERNOON to the satisfaction of the City, or in lieu of such repair or replacement, DOG DAY AFTERNOON shall pay, to the City or owner of other property, money in an amount sufficient to compensate for the loss sustained by reason of damage to or destruction of City's or other party's property or improvements.
15. **RISK OF LOSS TO DOG DAY AFTERNOON's PROPERTY.** DOG DAY AFTERNOON bears all risk of any and all damage and loss to its property being utilized and/or stored on the property.
16. **PRIOR NOTICE OF INSTALLATION.** Prior to any installation of materials or changes to the Property, DOG DAY AFTERNOON will supply the City with a drawing and any necessary specifications relating to the use of the City's Property. DOG DAY AFTERNOON must obtain City approval of the proposed work prior to initiating any such work. The City's review, comments and approval shall not create any liability by the City for any action or inaction by it relating to such review.
17. **NO WARRANTY.** City does not warrant its title and ownership of the Property.
18. **RESERVATION OF RIGHTS.** The City reserves all rights not expressly restricted by this License.
19. **NO THIRD PARTY RIGHTS.** This License does not create any rights in any third party.
20. **APPLICABLE LAW AND VENUE.** The laws of the State of Washington shall apply to this License. Venue for any lawsuit arising out of or related to this License shall be in Snohomish County Superior Court, Washington.

CITY OF EVERETT

By _____
Cassie Franklin, Mayor

Dated: _____

ATTEST:

By _____
Sharon Fuller, City Clerk

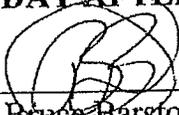
Dated: _____

APPROVED AS TO FORM:

By _____
Jim Iles, City Attorney

Dated: _____

DOG DAY AFTERNOON



Bruce Barstow, Owner

Date: June 6, 2020

LICENSE TO USE CITY PROPERTY

Grantor: City of Everett (hereinafter referred to “City”)

Grantee: LIL PUDDLE

Property: Those certain premises commonly known as Phil Johnson Ballfields, (hereinafter called “Premises” or the “property”), being situated at the following location in Everett, Washington legally described as:

Kasch Park - Concession Stand
8811 Airport Road
Everett, WA 98204

Kasch Park - Soccer Fields Pavilion Area
8811 Airport Road
Everett, WA 98204

Situated in the County of Snohomish, State of Washington.

1. **AUTHORIZED USE.** LIL PUDDLE shall use the Premises for conducting concession operations open to the public.
2. **TERM.** This License shall be effective on the date that the city gives notice to proceed. The City intends to provide Notice to Proceed at the start of Phase Four of the Governor’s Stay Home Stay Healthy Order, which could be as early as August 1, 2020 and shall expire on July 31, 2022. Additionally, the parties may choose to extend the term of this Agreement by three (3) – one-year extension terms. If the parties so agree, each extension term will be formalized in an amendment to this Agreement.
3. **FEE.** LIL PUDDLE shall pay the City a monthly fee of 10% of the gross proceeds. Payments shall be made on or before the 15th of each month in which payment is due. A late fee penalty of \$50 (fifty dollars) will be assessed for payments received after the 5th of each month. The license is subject to a leasehold tax. Leasehold tax is included in the fee.
4. **AUTHORIZED USE.** LIL PUDDLE may only use the property for the purpose of conducting concession operations.

5. **INDEMNIFICATION.** To the extent of its fault, LIL PUDDLE hereby agrees to defend, indemnify and hold the City harmless from any and all Claims for injury to people or damage to property arising out of or related to this License. "City" means the City, its officers, employees and agents. "Claims" means any loss, injury, demand, settlement and lawsuit, and further includes any and all reasonable litigation costs such as attorney's fees, expert fees and costs, and court costs. "Injury to people" includes, but is not limited to, bodily injury and death. "Damage to property" includes, but is not limited to damage or injury to the property, any City facilities and any property owned by third parties. This defense and indemnification obligation shall survive any termination, revocation or expiration of this Agreement.

6. **HAZARDOUS MATERIALS.** LIL PUDDLE hereby agrees not to store any materials on the property that are classified as hazardous or dangerous under the Washington Model Toxic Control Act. Breach of this provision shall be considered an "injury" to property as prohibited herein.

7. **TERMINATION.** The City may terminate this License upon 10 (ten) calendar days written notice to Grantee. This right is in addition to any other rights at law or in equity. LIL PUDDLE may terminate this License upon 90 calendar days written notice to the City.

8. **NOTICE.** Notices sent pursuant to this License shall be sent to the parties at the following addresses:

CITY OF EVERETT

Attn.: Cory Rettenmier

Everett Parks and Community Services Department

802 E. Mukilteo Blvd

Everett, Washington 98203

LIL PUDDLE

Attn: Michael EDDING

16605 6th Avenue West

H-102

Lynnwood, WA 98037

9. **NO ASSIGNMENT.** This License is personal to LIL PUDDLE and may not be transferred, assigned, conveyed, pledged, encumbered or hypothecated.

10. **COMPLIANCE WITH LAW.** LIL PUDDLE agrees to comply with all applicable City, County, State and Federal regulations and laws and acquire all permits required by law or regulation.

11. **INSURANCE.** LIL PUDDLE shall maintain commercial general liability insurance coverage during the term of this License with \$2,000,000 combined single limits, which insurance shall be primary and non-contributing. LIL PUDDLE shall ensure the City is endorsed as an additional insured on the policy. LIL PUDDLE shall provide the City evidence of coverage and endorsement. Insurance coverage and limits of liability as specified herein are minimum coverage and limit liability requirements only. They shall not be construed to limit the liability of LIL PUDDLE or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insure, where additional insured status is required, for the full available limits of liability maintained by LIL PUDDLE, whether those limits are primary, excess, contingent or otherwise.

12. **NON-INTERFERENCE WITH CITY USE.** LIL PUDDLE use of the Property shall not interfere in any way with any City use of the property.

13. **RELOCATION.** LIL PUDDLE specifically agrees to relocate or removed, whichever the City requires, all or any part of its materials located on the Property due to maintenance, repair, or construction of City's property or a City improvement. LIL PUDDLE shall commence the relocation or removal within ten (10) calendar days of notice by the City that LIL PUDDLE must relocate or removed materials. If LIL PUDDLE fails to commence the relocation or removal as required or, having commenced it, fails to proceed with reasonable dispatch, the City shall, in addition to its remedy for damages, be entitled to specific enforcement of LIL PUDDLE's obligation hereunder and shall also have the right and authority to remove, at LIL PUDDLE's expense, such portion of the materials as LIL PUDDLE has failed to relocate or removed without incurring any liability whatsoever.

14. **REPAIR OF PROPERTY.** LIL PUDDLE shall use care to avoid damaging or destroying property by reason of their operations pursuant to this License. Any

damage caused by LIL PUDDLE to City or other property shall be promptly repaired or replaced by LIL PUDDLE to the satisfaction of the City, or in lieu of such repair or replacement, LIL PUDDLE shall pay, to the City or owner of other property, money in an amount sufficient to compensate for the loss sustained by reason of damage to or destruction of City's or other party's property or improvements.

15. **RISK OF LOSS TO DOG DAY AFTERNOON's PROPERTY.** LIL PUDDLE bears all risk of any and all damage and loss to its property being utilized and/or stored on the property.

16. **PRIOR NOTICE OF INSTALLATION.** Prior to any installation of materials or changes to the Property, LIL PUDDLE will supply the City with a drawing and any necessary specifications relating to the use of the City's Property. LIL PUDDLE must obtain City approval of the proposed work prior to initiating any such work. The City's review, comments and approval shall not create any liability by the City for any action or inaction by it relating to such review.

17. **NO WARRANTY.** City does not warrant its title and ownership of the Property.

18. **RESERVATION OF RIGHTS.** The City reserves all rights not expressly restricted by this License.

19. **NO THIRD PARTY RIGHTS.** This License does not create any rights in any third party.

20. **APPLICABLE LAW AND VENUE.** The laws of the State of Washington shall apply to this License. Venue for any lawsuit arising out of or related to this License shall be in Snohomish County Superior Court, Washington.

CITY OF EVERETT

By _____
Cassie Franklin, Mayor

Dated: _____

ATTEST:

By _____
Sharon Fuller, City Clerk

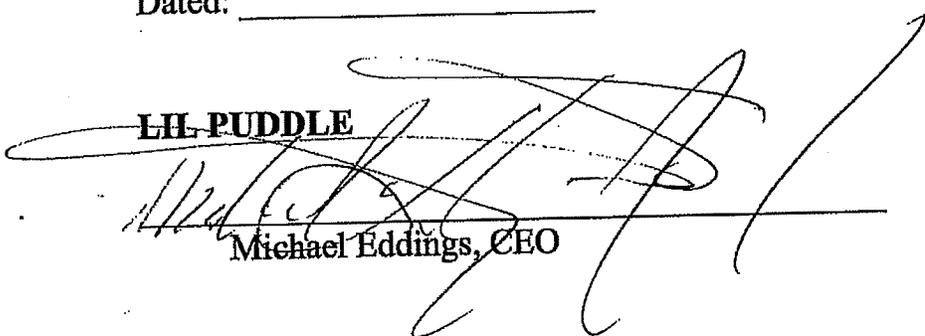
Dated: _____

APPROVED AS TO FORM:

By _____
Jim Iles, City Attorney

Dated: _____

LIL PUDDLE



Michael Eddings, CEO

Date: 5-28-20

LICENSE TO USE CITY PROPERTY

Grantor: City of Everett (hereinafter referred to "City")

Grantee: FUN TIMES ICE CREAM

Property: Those certain premises commonly known as Forest Park by Cedar Hall and Silverlake by the Lake, (hereinafter called "Premises" or the "property"), being situated at the following locations in Everett, Washington legally described as:

Forest Park by Cedar Hall
802 East Mukilteo Boulevard
Everett, Washington 98203

Silver Lake by the lake
11405 West Silver Lake Road
Everett, Washington 98208

Situated in the County of Snohomish, State of Washington.

- AUTHORIZED USE.** FUN TIMES ICE CREAM shall use the Premises for conducting concession operations open to the public.
- TERM.** This License shall be effective on the date that the city gives notice to proceed. The City intends to provide Notice to Proceed at the start of Phase Four of the Governor's Stay Home Stay Healthy Order, which could be as early as August 1, 2020 and shall expire on July 31, 2022. Additionally, the parties may choose to extend the term of this Agreement by three (3) – one-year extension terms. If the parties so agree, each extension term will be formalized in an amendment to this Agreement.
- FEE.** FUN TIMES ICE CREAM shall pay the City a monthly flat fee as follows:

Month	Forest Park by Cedar Hall	Silver Lake by the Lake
August	\$350	\$350
September	\$80	\$80
October	\$20	\$20

November	\$0	\$0
December	\$0	\$0
January	\$0	\$0
February	\$0	\$0
March	\$20	\$20
April	\$40	\$40
May	\$80	\$40
June	\$150	\$100
July	\$350	\$350

Payments shall be made on or before the 15th of each month in which payment is due. A late fee penalty of \$50 (fifty dollars) will be assessed for payments received after the 5th of each month. The license is subject to a leasehold tax. Leasehold tax is included in the fee.

4. **AUTHORIZED USE.** FUN TIMES ICE CREAM may only use the property for the purpose of conducting concession operations.

5. **INDEMNIFICATION.** To the extent of its fault, FUN TIMES ICE CREAM hereby agrees to defend, indemnify and hold the City harmless from any and all Claims for injury to people or damage to property arising out of or related to this License. "City" means the City, its officers, employees and agents. "Claims" means any loss, injury, demand, settlement and lawsuit, and further includes any and all reasonable litigation costs such as attorney's fees, expert fees and costs, and court costs. "Injury to people" includes, but is not limited to, bodily injury and death. "Damage to property" includes, but is not limited to damage or injury to the property, any City facilities and any property owned by third parties. This defense and indemnification obligation shall survive any termination, revocation or expiration of this Agreement.

6. **HAZARDOUS MATERIALS.** FUN TIMES ICE CREAM hereby agrees not to store any materials on the property that are classified as hazardous or dangerous under the Washington Model Toxic Control Act. Breach of this provision shall be considered an "injury" to property as prohibited herein.

7. **TERMINATION.** The City may terminate this License upon 10 (ten) calendar days written notice to Grantee. This right is in addition to any other rights at law or in equity. FUN TIMES ICE CREAM may terminate this License upon 90 calendar days written notice to the City.

8. **NOTICE.** Notices sent pursuant to this License shall be sent to the parties at the following addresses:

CITY OF EVERETT

Attn.: Cory Rettenmier
Everett Parks and Community Services Department
802 E. Mukilteo Blvd
Everett, Washington 98203

FUN TIME ICE CREAM

Attn: Roxana Boroujerdi
8515 Valhalla Drive
Everett, Washington 98208

9. **NO ASSIGNMENT.** This License is personal to FUN TIMES ICE CREAM and may not be transferred, assigned, conveyed, pledged, encumbered or hypothecated.

10. **COMPLIANCE WITH LAW.** FUN TIMES ICE CREAM agrees to comply with all applicable City, County, State and Federal regulations and laws and acquire all permits required by law or regulation.

11. **INSURANCE.** FUN TIMES ICE CREAM shall maintain commercial general liability insurance coverage during the term of this License with \$2,000,000 combined single limits, which insurance shall be primary and non-contributing. FUN TIMES ICE CREAM shall ensure the City is endorsed as an additional insured on the policy. FUN TIMES ICE CREAM shall provide the City evidence of coverage and endorsement. Insurance coverage and limits of liability as specified herein are minimum coverage and limit liability requirements only. They shall not be construed to limit the liability of FUN TIMES ICE CREAM or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by FUN TIMES ICE CREAM, whether those limits are primary, excess, contingent or otherwise.

12. **NON-INTERFERENCE WITH CITY USE.** FUN TIMES ICE CREAM use of the Property shall not interfere in any way with any City use of the property.

13. **RELOCATION.** FUN TIMES ICE CREAM specifically agrees to relocate or removed, whichever the City requires, all or any part of its materials located on the Property due to maintenance, repair, or construction of City's property or a City improvement. FUN TIMES ICE CREAM shall commence the relocation or removal within ten (10) calendar days of notice by the City that FUN TIMES ICE CREAM must relocate or removed materials. If FUN TIMES ICE CREAM fails to commence the relocation or removal as required or, having commenced it, fails to proceed with reasonable dispatch, the City shall, in addition to its remedy for damages, be entitled to specific enforcement of FUN TIME ICE CREAM's obligation hereunder and shall also have the right and authority to remove, at FUN TIME ICE CREAM's expense, such portion of the materials as FUN TIME ICE CREAM has failed to relocate or removed without incurring any liability whatsoever.

14. **REPAIR OF PROPERTY.** FUN TIME ICE CREAM shall use care to avoid damaging or destroying property by reason of their operations pursuant to this License. Any damage caused by FUN TIME ICE CREAM to City or other property shall be promptly repaired or replaced by FUN TIME ICE CREAM to the satisfaction of the City, or in lieu of such repair or replacement, FUN TIME ICE CREAM shall pay, to the City or owner of other property, money in an amount sufficient to compensate for the loss sustained by reason of damage to or destruction of City's or other party's property or improvements.

15. **RISK OF LOSS TO DOG DAY AFTERNOON's PROPERTY.** FUN TIME ICE CREAM bears all risk of any and all damage and loss to its property being utilized and/or stored on the property.

16. **PRIOR NOTICE OF INSTALLATION.** Prior to any installation of materials or changes to the Property, FUN TIME ICE CREAM will supply the City with a drawing and any necessary specifications relating to the use of the City's Property. FUN TIME ICE CREAM must obtain City approval of the proposed work prior to initiating any such work. The City's review, comments and approval shall not create any liability by the City for any action or inaction by it relating to such review.

17. **NO WARRANTY.** City does not warrant its title and ownership of the Property.

18. **RESERVATION OF RIGHTS.** The City reserves all rights not expressly restricted by this License.

19. **NO THIRD PARTY RIGHTS.** This License does not create any rights in any third party.

20. **APPLICABLE LAW AND VENUE.** The laws of the State of Washington shall apply to this License. Venue for any lawsuit arising out of or related to this License shall be in Snohomish County Superior Court, Washington.

CITY OF EVERETT

By _____
Cassie Franklin, Mayor

Dated: _____

ATTEST:

By _____
Sharon Fuller, City Clerk

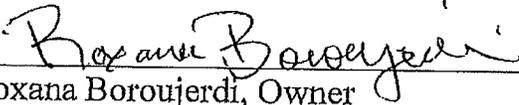
Dated: _____

APPROVED AS TO FORM:

By _____
Jim Iles, City Attorney

Dated: _____

FUN TIMES ICE CREAM



Roxana Boroujerdi, Owner

Date: 6/8/20



City Council Agenda Item Cover Sheet

Project title: Snohomish County Historic Preservation Grant Award

Council Bill # *interoffice use*

Agenda dates requested:

7/8/2020

Briefing

Proposed action

Consent X

Action

Ordinance

Public hearing

Yes x No

Budget amendment:

x Yes No

PowerPoint presentation:

Yes x No

Attachments:

None

Department(s) involved:

Library

Contact person:

Abigail Cooley

Phone number:

425-257-8022

Email:

acooley@everettwa.gov

Initialed by:

AWC

Department head

Administration

ST
Council President

Project: Snohomish County Historic Preservations Grant Award

Partner/Supplier : Snohomish County Historic Preservation Commission

Location: Snohomish County

Preceding action:

Fund: 110/Library

Fiscal summary statement:

\$11,700 in reimbursable grant funding from the Snohomish County Parks, Recreation & Tourism, Cultural Resources Division – Historic Preservation Commission to be used to digitize panoramic photos. There is no match.

Project summary statement:

The Snohomish County Historic Preservation Commission is awarding \$11,700 to the Everett Public Library to digitize 126 panoramic negatives from the Juleen Studios collection. Taken between 1910-1942, they represent some of the best early landscape and cityscape views of Everett and Snohomish County known to exist. The end result of this project will allow the public the ability to view these images while preserving the negatives.

Recommendation (exact action requested of Council):

Authorize the Mayor to accept \$11,700 in grant funding from Snohomish County Historic Preservation Commission to digitize historic panoramic photos.



Project title: Amendment No. 1 to Professional Services Agreement with CHS Engineers and David Evans and Associates, Inc. to design a new sewer lift station near Edgewater Park and a new forcemain pipe along Shore Avenue

City Council Agenda Item Cover Sheet

Council Bill #
July 8, 2020

Agenda dates requested:

Briefing
Proposed action
Consent X
Action
Ordinance
Public hearing
 Yes X No

Budget amendment:
 Yes X No

PowerPoint presentation:
 Yes X No

Attachments:
Amendment No. 1 to Professional Services Agreement

Department(s) involved:
Public Works

Contact person:
Dave Voigt

Phone number:
425-257-8983

Email:
dvoigt@everettwa.gov

Initialed by:

Department head

Administration


Council President

Project: Sewer Lift Station 15 and Forcemain

Partner/Supplier : CHS Engineers & David Evans and Associates, Inc.

Location: Mukilteo Blvd at Shore Ave (adjacent to Edgewater Park and Bridge)

Preceding action: Professional Services Agreement, April 29, 2020

Fund: 401

Fiscal summary statement: There are no cost, funding or budget aspects associated with this Council action. Original PSA funded through Fund 401, the Water/Sewer Utility fund.

Project summary statement:

This Council action is to assign the CHS Agreement (Old Service Provider) to David Evans and Associates, Inc. (New Service Provider). This is the result of the acquisition of CHS Engineers by David Evans & Associates.

The active project with CHS Engineers is to design a new sewer lift station near Edgewater Park and a new forcemain pipe along Shore Avenue. This project must precede the Edgewater Bridge replacement project.

Recommendation (exact action requested of Council): Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with CHS Engineers and David Evans and Associates, Inc. to design a new sewer lift station near Edgewater Park and a new forcemain pipe along Shore Avenue

**AMENDMENT NO. 1
TO
PROFESSIONAL SERVICES AGREEMENT**

This Amendment No. 1 is dated for reference purposes June 26, 2020. It is by and between the City of Everett ("City"), CHS Engineers, LLC ("Old Service Provider") and David Evans and Associates, Inc. ("DEA") ("New Service Provider").

RECITALS

A. The City and Old Service Provider are parties to a Professional Services Agreement dated as of May 4, 2020 (the "Agreement").

B. The City, Old Service Provider and New Service Provider desire to amend the Agreement so that the Agreement is assigned to and assumed by New Service Provider.

AGREEMENT

The City, Old Service Provider, and New Service Provider agree as follows:

1. Effective Date. This Amendment is deemed effective as of June 26, 2020 (the "Effective Date"), regardless of the dates on which this Amendment is signed by the parties.
2. Assignment. As of the Effective Date, Old Service Provider assigns to New Service Provider all of Old Service Provider's right, title and interest in the Agreement. New Service Provider accepts this assignment.
3. Assumption. As of the Effective Date, New Service Provider undertakes and agrees to assume, perform, and discharge, all of Old Service Provider's liabilities, debts, and obligations under the Agreement in all respects as if New Service Provider were a signatory of the Agreement.
4. Consent. As of the Effective Date, the City consents to the assignment and assumption contained in this Amendment.
5. Governing Law. This Amendment is governed by Washington law. The sole forum for all litigation arising from or relating to this Assignment Agreement is Snohomish County Superior Court.
6. Signature. At the sole discretion of the City, the City may consent to the signatures of Old and New Service Provider on this Amendment being by email, fax, pdf or other electronic means, in which case each such Service Provider signature will be deemed an original signature for all purposes. The City will be deemed to have given such consent effective upon execution of this Amendment by the Mayor of the City.
7. Agreement Remains. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment. 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 the date of the Agreement stated in Recital A.

**CITY OF EVERETT
WASHINGTON**

CHS ENGINEERS, LLC

By: _____
Cassie Franklin, Mayor

Signature: Rodney Langer
Typed/Printed Name: Rodney Langer
Title: President / Member

Date

June 19, 2020
Date

ATTEST:

DAVID EVANS AND ASSOCIATES, INC.

Sharon Fuller, City Clerk
Date: _____

Signature: Craig Sherman
Typed/Printed Name: CRAIG SHERMAN
Title: VICE PRESIDENT

6/19/2020
Date





Project title: Professional Services Agreement with Brown & Caldwell for Owner Advisor services related to procurement of a Progressive Design-Build contractor for Reservoir 3 structural repairs.

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Agenda dates requested:

July 8, 2020

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

PSA

Department(s) involved:

Public Works

Contact person:

John Nottingham

Phone number:

425.257.8844

Email:

jnottingham@everettwa.gov

Initialed by:

Department head

Administration

Council President

Consideration: Professional Services Agreement

Project: Reservoir 3 Cover Repairs

Partner/Supplier: Brown & Caldwell, Inc.

Location: Reservoir #3, 6107 Berkshire Rd.

Preceding action: Structural Design PSA w/ CG Engineering (approved 11/27/19)

Fund: 401

Fiscal summary statement:

The cost of this Professional Services Agreement will be \$99,668 and the source of funds will be Fund 401, the Water/Sewer Utility Fund.

Project summary statement:

Reservoir 3 is a critical component of the City's water distribution system. The 20-million-gallon reservoir serves as a primary distribution hub that distributes water to Alderwood Water District, the City's Evergreen Pump Station, and many local customers in the south side of Everett

A detailed structural inspection of the reservoir was performed in 2019. The inspection highlighted multiple structural repairs and recommended the City proceed with the repairs within the short term. A design of the repairs began in late 2019.

As the design of the repairs progressed, it became clear from the extent of the needed repairs and the logistics of limiting reservoir downtime during construction that it would be best to complete this project under an alternative delivery method. Thus, the design will be completed, and the project will be constructed under the Progressive Design Build delivery method. The Progressive Design Build best protects the interests of the City by limiting risk and increasing opportunity for collaboration and cooperation with the contractor team.

This PSA is for consulting services to assist the City in developing a standard form contract for Progressive Design Build (PDB) Delivery, securing state approval to use PDB delivery for the project, and developing the RFQ and RFP documents for the procurement of a PDB contractor.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Professional Services Agreement with Brown & Caldwell for Owner Advisor services related to procurement of a Progressive Design-Build contractor for Reservoir 3 structural repairs.

CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT



THIS AGREEMENT made and entered into on this _____ day of _____, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the “City,” and **BROWN & CALDWELL**, whose address is 701 PIKE STREET, SUITE 1200, SEATTLE, WA 98101-2310, hereinafter referred to as the “Service Provider.”

WHEREAS, the City desires to engage the Service Provider to PROVIDE DESIGN-BUILD CONSULTING SERVICES FOR PROJECTS AT RESERVOIR 3 for the City of Everett; and

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

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

1. **Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as “Work”. Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Service Provider’s proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider’s design shall be reasonably accurate, adequate and suitable for its intended purpose, all in accordance with prevailing professional and industry standards in the Puget Sound region.
2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Any reuse by the City of these reports, drawings, plans, specifications and intangible property for purposes other than in connection with the Work is at the sole risk of the City. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by DECEMBER 31, 2021.

4. **Compensation.**

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

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

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

D. Total compensation, including all services and expenses, shall not exceed a maximum of NINETY-NINE THOUSAND SIX HUNDRED SIXTY-EIGHT Dollars (\$99,668).

E. If Service Provider fails or refuses to correct its work when so directed by the City and when such work is, in the reasonable determination of the City, not in accordance with this Agreement, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Method of Payment.**

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

B. All requests for payment should be sent to:

City of Everett
Attn.: RANDY LOVELESS, P.E.
3200 CEDAR STREET
Everett, WA 98201

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

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

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

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

10. **Indemnification.** To the extent of the Service Provider's fault, breach of this Agreement, willful misconduct, or violation of law, the Service Provider hereby agrees, except as otherwise provided in this Section 10, to defend and indemnify the City from any and all Claims arising out

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

11. **Insurance.**

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

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

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

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

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

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

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

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

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

F. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

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

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

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

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

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

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

C. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City.

The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work

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

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

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

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

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

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

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

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

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

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

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

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

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

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

25. **Notices.**

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

City of Everett
Attn.: RANDY LOVELESS, P.E.
3200 CEDAR STREET
Everett, WA 98201

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

TADD GIESBRECHT, P.E.
701 PIKE STREET, SUITE 1200
SEATTLE, WA 98101-2310

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

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

28. **Signature.** At the sole discretion of the City, the City may consent to the Service Provider's signature on this Agreement or amendment thereof being by email, fax, photocopy, pdf or other electronic means, in which case such Service Provider signature will be deemed an original signature for all purposes. The City will be deemed to have given such consent effective upon execution of this Agreement or amendment thereof by the Mayor of the City.

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

**CITY OF EVERETT,
WASHINGTON**

Cassie Franklin, Mayor

Date

ATTEST:

Sharon Fuller, City Clerk

Date



EXHIBIT A: SCOPE OF WORK

CITY OF EVERETT RESERVOIR 3 COVER REPAIRS Progressive Design-Build Consulting Services

INTRODUCTION

The City of Everett (City) owns and operates a water distribution system that serves more than 615,000 customers. Reservoir 3 is a 20-million-gallon water reservoir that was originally constructed as an open-air reservoir in 1923 and subsequently covered with a concrete roof structure in 1987. The concrete structure covering the reservoir, which serves as the primary hub for much of the water distribution network, is in need of repair. A detailed structural inspection and preliminary design for the repairs has been completed, and the City is working toward beginning construction of repairs inside the reservoir in September 2021.

Due to the complex nature of the repair project, the City has elected to use a Progressive Design-Build (PDB) delivery method (possibly design-build with cost plus fixed fee and guaranteed maximum price) to complete the work given the uncertainty of the extent of necessary repairs.

This scope of work describes Brown and Caldwell's (Consultant) consulting services as an Owner Advisor for the procurement phase of the project. The Consultant will support the City's efforts to obtain Capital Projects Advisory Review Board (CPARB) approval, develop a contract for Progressive Design Build delivery, and to procure a Design-Build firm.

SCOPE SUMMARY

- Support for obtaining CPARB Project Review Committee (PRC) approval
- PDB RFQ preparation
- Assist / advise the City on short-listing PDB firms
- PDB RFP preparation, including preparation of performance and technical requirements
- Assist / advise the City on selection of a preferred PDB contractor
- Assist the City in contract negotiations

GENERAL ASSUMPTIONS

Overall assumptions for the scope of work include:

- **CPARB – PRC Application:** The City will provide background information required to complete the CPARB – PRC Project application form, including City project and staff experience, financial/funding information, technical information, and history of audits findings. The City will take the lead on preparing the application, with input and review from the Consultant. The Consultant will prepare graphics needed to communicate the scope the proposed project to CPARB and will provide information relevant to their firm's experience and qualifications.
- **Legal:** The City has not used the PDB process and therefore needs to develop a contract appropriate to the delivery method. The City will develop the PDB contract, using the City's standard Design-Build contract as a starting point, and provide legal review. The Consultant

will provide sample contract language and will provide input on the contract documents as the City develops them. Legal review and any special legal counsel, if needed, will be retained by the City's legal department and are not included in this agreement.

- **Drawings / Inspection Reports:** The City will furnish record drawings, pre-design drawings, and a structural inspection report. No effort is included to prepare or verify information contained within these drawings and reports. It is also assumed the City will provide pertinent operational data and any additional pertinent information about Reservoir 3 and that no additional condition assessment or structural inspection will be required.
- **Schedule:** The scope of work and estimate for Consultant services assumes the following approximate schedule:

○ Contract between City and Consultant Finalized	Mid July, 2020
○ Application to CPARB PRC	8/20/20
○ CPARB Review Board	9/24/20
○ Announce RFQ	Mid October, 2020
○ Shortlist Teams	Early November 2020
○ PDB Team Selection	Early January 2021
○ Start Construction	Summer/Fall 2021*

*work that involves having the reservoir offline must be done before May 1 and after September 15.

- **Reproduction:** The scope assumes the City will make all copies required for issuing the RFQ and RFP.
- **Special Inspections:** The scope assumes the City will contract directly for special inspection services.

Because the type of services required under this contract are likely to evolve over the course of the Project, this Scope of Work includes an additional allowance task (Task 7) to provide additional services requested by the City.

TASK DESCRIPTIONS

Task 1 Project Management, FEE = \$10,918

Objective. To manage and coordinate the Consultant's work with work conducted by the City, provide monthly progress reporting, and alert the City to issues that have the potential to adversely affect Project budget and schedule, and provide quality reviews of Consultant work products.

Scope: Project Management services include:

1. Develop an overall schedule for development of the Project (through closeout of the selected PDB contractor's work) that reflects the selected procurement strategy for the Project. A draft of the schedule will be developed for discussion during the procurement strategy workshop following CPARB – PRC approval.
2. Prepare monthly Project status reports with submittal of progress payment invoices. Progress reports will identify budget status, progress status, activities of the previous month, upcoming activities, and areas of risk with the potential to adversely affect Project budget and / or schedule.

3. As needed, procure and coordinate the activities of subconsultants providing specialized services. Any subconsultant work identified will be funded from Task 7 - Additional Services during Procurement, Design and Construction Phases.
4. Conduct QA reviews of Consultant deliverables.

Deliverables:

- Project Development Schedule
- Monthly progress reports (assume 6) and invoices

Task 2 CPARB Approval Process, FEE = \$10,122

Objective: To support the City in securing approval from the CPARB Project Review Committee (PRC).

Scope:

This scope is based on the City taking the lead to secure PRC approval, and preparing the draft and final CPARB applications. The budget for this scope is set at a \$10,000 allowance to engage in support activities requested by the City such as:

1. **Application:** Attendance at meetings in Everett with the City to discuss information gaps and the overall approach taken in the City's preliminary application. Review the City's final application prior to the City submitting the document to the PRC. Provide supplemental project graphics that are needed to sufficiently communicate the nature of the project to the PRC.
2. **PRC Presentation:** Assist the City by preparing presentation materials and participate in the PRC project review meeting.

Deliverables (as requested by the City):

- Review draft and final PRC applications
- Project graphics to be used in application and presentation
- Review and assist with City's development of PRC presentation materials

Task 3 Procurement Strategy Workshop / Follow-up with Legal Department, FEE = \$10,620

Objective: To establish an overall approach to the procurement process and to the structuring of the progressive DB work.

Scope:

The Consultant will participate in a 2-hour workshop with City staff to establish the overall approach and framework for the procurement and for structuring the work to be completed by the Design-Builder. During the workshop, the City and Consultant will prepare materials to support the procurement process including schedule; RCW 39.10 PDB procurement compliance checklist; and draft term sheet describing contract terms such as payment, warranties and guarantees, liquidated damages and incentives. The scope assumes the City will provide meeting space for the workshop.

Following the workshop, the Consultant will prepare a summary of decisions to guide development of the RFQ and RFP.

Under this task, the Consultant will also provide technical input to the City's legal staff regarding PDB procurement and PDB contract issues.

Deliverables:

- Workshop presentation / support materials including agenda, procurement schedule, draft risk allocation matrix, and draft term sheet
- Attendance at one, 2-hour workshop in the Everett area by up to 3 Consultant staff
- Workshop decision summary

Task 4 PDB RFQ and Shortlisting, FEE = \$20,214

Objective: To develop an RFQ designed to maximize interest in the Project by qualified PDB teams and to assist the City determining a short-list of firms

Scope:

Consistent with RCW 39.10 and the outcomes of the procurement strategy workshop, the Consultant will prepare an RFQ that establishes SOQ submittal requirements, minimum required qualifications, and criteria for evaluating and ranking SOQs. Prior to developing the draft RFQ, it is assumed that the City will contact potential PDB proposers to determine interest and issues of concern to Proposers. The Consultant will then prepare a draft RFQ and term sheet (revised as needed following the procurement strategy workshop) for City review, revise the draft in response to City comments, and provide a final RFQ to the City. The scope assumes the City will advertise and issue the RFQ, and will coordinate these activities through the City's procurement department as needed.

The Consultant will review and provide input to the City on SOQs with specific focus on: 1) any respondents who appear to have failed to meet minimum submittal or qualifications requirements; 2) demonstrated qualifications addressing the RFQ criteria; and 3) commercial or technical concerns raised by respondents. Consultant comments on each SOQ will be provided in matrix form to the City. The scope assumes up to 5 SOQs will be submitted and reviewed by the Consultant. The scope further assumes that the Consultant will attend up to one meeting in Everett to support the City's SOQ review team, and that the City will take the lead in contacting / interviewing respondents' references.

Deliverables:

- Draft and final PDB RFQs
- Matrix summarizing Consultant's review on up to 5 SOQs
- One meeting in Everett (to review draft RFQ comments and during review of SOQs)

Task 5 PDB RFP and Contractor Selection, FEE = \$32,749

Objective: To develop an RFP that describes submittal requirements, RFP criteria, Project technical and performance requirements, and the City's proposed terms for the Progressive Design-Build contract; and to assist the City in selecting a PDB firm for the Project.

Scope:

The Consultant will prepare an RFP that describes submittal requirements, RFP evaluation criteria, Project technical and performance requirements, and key contract / commercial terms for the Project. It's assumed that this will be a streamlined RFP focused on cost and other select requirements. Furthermore, it's assumed that the City will provide scope of work requirements to incorporate into the RFP.

It is assumed that technical and performance requirements will address structural modifications and repairs, selective demolition; site work; coatings; protection of existing facilities; coordination requirements; design and permitting including adherence to Department of Health regulations; testing; and schedule including integration with the City's overall water supply / treatment constraints.

Commercial requirements will include items such as acceptance and closeout; liquidated damages; incentives (if any); and warranties / guarantees.

It is assumed that 2 drafts and one final RFP will be prepared and that the Consultant will attend up to two meetings in Everett to discuss comments on the RFP drafts. In addition, it is assumed that the City will develop a set of contract documents for Progressive Design-Build with technical input from the Consultant. Legal counsel is outside the scope of this agreement. It is also assumed that the City will administer the advertisement and bid period process. The scope includes attendance at one pre-bid meeting by the Consultant and support in preparing one addendum responding to proposer questions. To the extent that technical support is required (such as geotechnical support or input from materials specialty firms); this work will be considered additional services (Task 7).

The Consultant will review and provide input to the City on Proposals with specific focus on: 1) any proposers who appear to have failed to meet proposal submittal requirements; 2) demonstrated ability to meet the RFP criteria; and 3) commercial or technical concerns raised by respondents. Consultant comments on each proposal will be provided in matrix form to the City. The scope assumes up to 3 proposals will be submitted and reviewed by the Consultant. The scope further assumes that the Consultant will attend up to two meetings in Everett to support the City's proposal review team, and that the City will take the lead in interviewing proposers.

Deliverables:

- Preliminary draft, draft and final Progressive Design-Build RFP
- Up to one RFP addendum
- Up to 3 proposal review matrices
- Five meetings in Everett (one pre-bid meeting, two during RFP preparation; two during proposal reviews / interviews)

Task 6 Additional Services, FEE = \$15,045

Task 4 is a \$15,045 budget reserve to provide additional support as requested by the City. Consultant will utilize the budget contained in Task 7 only upon written direction from the City.

**EXHIBIT B
COMPENSATION**

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

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

Name	Responsibility	Rate
SEE EXHIBIT B-1		

ALTERNATE B [LUMP SUM]

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

ALTERNATE C [PROGRESS PAYMENTS]

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

Task	Amount Paid upon Completion of Task

ALTERNATE D [BASE REGISTRATION]

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

EXHIBIT B-1

Phase	Phase Description	Farrell, Kathleen A	Giesbrecht, Tadd C	Tangora, Patricia A	Dickerson, Jessica L	Pare, Wendy M	Wilson, Joanna B	Mantz, Robert E	Weber, Patrick C	Total Labor Hours	Total Labor Effort	Total Expense Effort (Company Vehicles)	Total Effort
100	PROCUREMENT TOTAL	\$88.84	\$295.00	\$295.00	\$138.58	\$116.04	\$78.10	\$246.09	\$211.41				
110	Project Management	18	30	0	0	0	6	0	0	54	10,918	0	10,918
120	CPARB Approval Process	0	17	17	0	0	0	0	0	34	10,030	92	10,122
130	Procure Strategy Workshop	0	18	18	0	0	0	0	0	36	10,620	0	10,620
140	DB RFQ and Shortlisting	4	10	12	40	4	0	4	30	104	20,180	35	20,214
150	DB RFP and Contractor Se	8	12	16	60	8	0	24	40	168	32,577	173	32,749
	PROCUREMENT TOTAL	30	87	63	100	12	6	28	70	396	84,324	299	84,623
100	ALLOWANCE TASKS												
160	DB Contract Negotiations	0	0	0	0	0	0	0	0	0	0	0	0
170	Additional Services	0	25	26	0	0	0	0	0	51	15,045	0	15,045
	ALLOWANCE TOTAL	0	25	26	0	0	0	0	0	51	15,045	0	15,045

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Parking	SEE EXHIBIT B-1	
Meals		

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

1. Does Service Provider have twenty-five (25) or more employees? Yes No

IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.

IF NO: ANSWER QUESTIONS 2 AND 3.

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

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

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

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

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

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

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

Service Provider Name: Brown and Caldwell, Inc.

Signature: Stephen B. Anderson Printed Name: Stephen Anderson Title: Sr. VP



Project title: Professional Services Agreement with Roots Forestry Consulting, LLC for Forestry and Watershed Management services.

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Project: Forestry and Watershed Management for Lake Chaplain Tract

Partner/Supplier: Roots Forestry Consulting, LLC

Location: Lake Chaplain Tract

Preceding action:

Fund: 401

Agenda dates requested:

July 8, 2020

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Professional Services Agreement

Department(s) involved:

Public Works

Legal

Contact person:

Julie Sklare

Phone number:

425-257-7208

Email:

jsklare@everettwa.gov

Fiscal summary statement:

This three-year professional services agreement is funded from Fund 401, the Water/Sewer Utility fund. It is budgeted for \$617,985. There is an option for a two-year extension of the contract.

Project summary statement:

Contract forestry services are needed in the Lake Chaplain Tract to provide management of the \$46 Million timber resource in accordance with agreements with the United States Fish and Wildlife Service and Washington State Department of Natural Resources. This includes performing a forestry inventory of the 2290 acres of harvestable timber to ensure forest health and maximize timber revenue, such as the expected \$5 million revenue from timber sales over the next 3 to 4 years. Responsibilities also include ensuring adherence to City specific needs for water quality protection during forest management activities.

Certain watershed management responsibilities are also included to support City staff in the control and protection of the drinking water source as required by the Washington State Department of Health.

Roots Forestry was originally selected from a solicitation process based on recommendations from the retiring contract forester at that time. The forester recommended three individuals/firms with the qualifications, expertise and skills to meet the City's unique needs for forest land management in a drinking water watershed. After a review of qualifications and interviews, Roots Forestry Consulting LLC was selected.

Roots Forestry Consulting LLC is currently under contract providing professional forestry management services for the City. They have demonstrated a high level of performance and customer service; learning the requirements of operating in a drinking water watershed and the complex regulatory environment of the Lake Chaplain Tract. Roots Forestry also has the expertise and agency relationships to take on support of additional watershed management responsibilities.

This is a three-year contract with the maximum amount not to exceed \$617,985. The agreement includes an option to extend the contract for an additional two years.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Professional Services Agreement with Roots Forestry Consulting, LLC for Forestry and Watershed Management services.

Initialed by:

Department head

Administration

Council President

**CITY OF EVERETT
PROFESSIONAL SERVICES AGREEMENT**



THIS AGREEMENT made and entered into on this _____ day of _____, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the “City,” and Roots Forestry Consulting LLC, whose address is 16102 4th Ave NW, Arlington, WA 98223, hereinafter referred to as the “Service Provider.”

WHEREAS, the City desires to engage the Service Provider to provide forest management and watershed support services for the City of Everett; and

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

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

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

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

3. **Time of Beginning and Completion of Performance / City Option.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by July 31, 2023. The City has an option to add two years to this Agreement and thereby extend the completion date of this Agreement until July 31, 2025. The City may exercise this option by delivery of written notice to Service Provider no later than July 31, 2023 or such other delivery date that the City and Service Provider may agree upon in writing.

4. **Compensation.**

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

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

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

D. Total compensation, including all services and expenses, shall not exceed a maximum of Six Hundred and Seventeen Thousand Nine Hundred Eighty Five Dollars (\$617,985) for the initial term of three years. If the City exercises its option to add two years to this Agreement and thereby extends the completion date until July 31, 2025, then \$411,990 is added to the total maximum compensation to cover the two additional years, so that the new total maximum compensation under this Agreement for the entire five years will be \$1,029,975.

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

5. **Method of Payment.**

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

B. All requests for payment should be sent to:

City of Everett
Attn.: Anna Thelen
3200 Cedar Street
Everett, WA 98201

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

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

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

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

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

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

11. Insurance.

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

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

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

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

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

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

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

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

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

F. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

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

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

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

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

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

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

C. Any and all employees of the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the

City. The Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Service Provider's employees, while so engaged on any of the Work

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

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

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

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

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

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

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

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

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

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

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

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

23. **Modification of Agreement.** This Agreement may be modified as provided in ¶8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Service Provider.

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

25. **Notices.**

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

City of Everett
Attn.: Anna thelen
3200 Cedar Street
Everett, WA 98201

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

Travis Miranda
16102 4th Ave NW
Arlington, WA 98223

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

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

28. **Signature.** At the sole discretion of the City, the City may consent to the Service Provider's signature on this Agreement or amendment thereof being by email, fax, photocopy, pdf or other electronic means, in which case such Service Provider signature will be deemed an original signature for all purposes. The City will be deemed to have given such consent effective upon execution of this Agreement or amendment thereof by the Mayor of the City.

29. **Former Agreement.** The parties are parties to the Professional Services Agreement dated March 26, 2018 (the "Old Agreement"). The Old Agreement terminates on date of execution of this Agreement.

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

**CITY OF EVERETT,
WASHINGTON**

Cassie Franklin, Mayor

Date

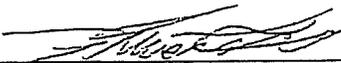
ATTEST:

Sharon Fuller, City Clerk

Date

STANDARD
AGREEMENT
APPROVED AS TO
FORM
DAVID C. HALL
CITY ATTORNEY

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

Corporation	<p>_____</p> <p>[Service Provider's Complete Legal Name]</p> <p>By: _____</p> <p>Typed/Printed Name: _____</p> <p>Its: _____</p> <p>Date: _____</p>
Partnership (general)	<p>_____</p> <p>[Service Provider's Complete Legal Name] a Washington general partnership</p> <p>By: _____</p> <p>Typed/Printed Name: _____</p> <p>General Partner</p> <p>Date: _____</p>
Partnership (limited)	<p>_____</p> <p>[Service Provider's Complete Legal Name] a Washington limited partnership</p> <p>By: _____</p> <p>Typed/Printed Name: _____</p> <p>General Partner</p> <p>Date: _____</p>
Sole Proprietorship	<p>_____</p> <p>Typed/Printed Name: _____</p> <p>_____</p> <p>Sole Proprietor:</p> <p>Date: _____</p>
Limited Liability Company	<p><u>Roots Forestry Consulting, LLC</u></p> <p>[Service Provider's Complete Legal Name] a Washington limited liability company</p> <p>By: </p> <p>Typed/Printed Name: <u>Travis J. Miranda</u></p> <p>Managing Member</p> <p>Date: <u>6-25-10</u></p>

See Attached

EXHIBIT A

Scope of Work

Task 1 – Federal, State and County Legislative and Regulatory Actions

Description

Track proposed Federal, State and County legislation and regulatory actions related to the City's forestry and watershed management responsibilities.

Services to Be Performed

As directed, participate in the review of proposed Federal and State legislative and regulatory efforts related to the City forestry and watershed management responsibilities. Prepare comments and attend hearings and other meetings with City staff, trade organizations, and other agencies and officials when applicable.

Monitor and inform City staff on changes to regulations regarding recreational immunity, mining, HPA permitting, and access. Assist City staff in developing responses to regulatory changes.

Task 2 - Federal and State Regulation Compliance

Description

Provide compliance measures for Federal and State regulations related to the City's forestry management activities.

Services to Be Performed

Prepare and submit permits, such as Hydraulic Project Approval or Forestry Practices Applications, for State and Federal regulations that pertain to the City's forest management activities. Ensure compliance with those approved permits.

Task 3 - Lake Chaplain Tract Safe Harbor Agreement (SHA) and Cooperative Habitat Enhancement Agreement (CHEA)

Description

Complete, track and comply with all SHA and CHEA requirements. Seek consultation with agencies as needed for correct implementation of the SHA and CHEA agreements.

Services to Be Performed

Consult with Federal Services and Washington Department of Natural Resources on SHA/CHEA implementation of field activities.

Conduct annual meeting and updates as needed.

Prepare reports to other parties as required by the SHA/CHEA. Attend meetings with the other parties and City staff to review the reports and address any other questions or concerns.

Document any clarifications for future referencing.

Task 4 - Forestry Field Work

Description

Prepare City timber sales bidding documents and contracts and other forest management activities and reports needed by the Lake Chaplain Tract Safe Harbor and Cooperative Habitat Enhancement Agreements (SHA/CHEA).

Services to Be Performed

Conduct field work to complete the layout of timber sales as required under the SHA/CHEA. Field work activities include timber sale layout, road location and layout, harvest boundary determination, property line location and demarcation, stream identification and enhanced protection buffering, wetland delineation and enhanced protection buffering, identification of potentially unstable slopes, leave tree marking, snag and coarse woody debris selection, baseline habitat block location, special set-aside area location, special management area location, preparation of contracts for bid including mapping and construction specifications.

Update the City's 2290-acre Forest Inventory. Inventory was last done in 1987. A Forest Inventory is called for in the SHA for forestry planning purposes. It is a forestry best management practice that ensures forest health and maximizes timber revenue. The inventory includes installing count/measure plots on a frequency of 1 plot/acre on all harvestable forest lands within the Lake Chaplain Tract.

Develop a 10-year harvest plan in 2020. Develop a 50-year harvest plan by the end of this Professional Services Agreement.

Obtain permits required to conduct forest management activities will be acquired prior to the sale of timber. These permits may include Forest Practices Applications, Hydraulics Project Approvals, Shoreline Management Permits, and possible easements and Road-use permits over private and/or public lands.

Upon completion of any final harvest timber sale, a contract will be prepared for the reforestation of the harvest area. Tree purchase will be arranged for, and the areas will be replanted according to SHA/CHEA standards. Harvest areas will be monitored, and additional stand management activities will be recommended as appropriate. Stand

management activities may include replanting, slashing and thinning. Contracts will be prepared and executed for required stand management activities

Task 5 – Forest Management Contract Compliance

Description

Administer Timber Sale and other forest management contracts, such as tree planting, that are required to implement the City's forest management plan.

Services to Be Performed

Conduct field inspections of ongoing forest management contracts on City property to ensure compliance with all applicable State and Federal laws, contracts, and permit conditions. Corrective actions to contractors will be implemented as needed with both Roots Forestry and City staff involvement. In addition to field inspections, harvest progress audits will be made to ensure appropriate payments to the City. Required insurances and bonds will be reviewed and passed on to City Legal for approval.

Task 6 - Interagency Coordination

Description

Review and respond to proposed and ongoing forest management activities with the potential to affect Lake Chaplain Tract, water supply lands, and transmission line rights-of-way.

Services to Be Performed

Review and respond to forest practices activities on or near the Lake Chaplain Tract and water supply lands, as well as transmission line rights-of-way. Work with regulatory agencies, stakeholders and affected Tribes to ensure protection of City facilities and City drinking water quality.

Meet with the Washington State Department of Natural resources (DNR) annually to review their proposed management activities on or adjacent to Chaplain Tract and water supply lands. Activities to be reviewed shall be forest management activities such as timber sales, road construction, maintenance and abandonment, pesticide application and reforestation activities.

Task 7 - Fire Prevention and Control

Description

This task covers the tracking of State fire prevention regulations to ensure both City and any City contractors maintain compliance with state law while operating on Lake Chaplain Tract. Monitor and assist in fire prevention and control activities on and around Chaplain Tract and water supply lands.

Services to Be Performed

During fire season, monitor daily the state fire precaution level to ensure the City and its forest contractors maintain compliance with the state fire prevention laws.

Assist DNR with fire detection and location on Lake Chaplain Tract and water supply lands as needed.

Work as the City's representative with the DNR during fire control activities on watershed lands to ensure protection of the water supply and other resources.

Task 8 - Noxious Weed Coordination

Description

This task covers the implementation of the City's Noxious Weed Management Plan for Lake Chaplain Tract

Services to Be Performed

Implement the City's Noxious Weed Management Plan for Lake Chaplain Tract with City staff including monitoring, mapping, and marking noxious weed occurrences. Provide training to field staff with regard to noxious weed identification, treatment methods, and management measures.

Incorporate weed management measures into ground-disturbing construction and maintenance activities through active participation in planning, design, and implementation. Maintain and update operating procedures for weed management.

Prepare an annual summary of weed management activities, including monitoring of treated sites and detection of new infestations or species.

Review Snohomish County Noxious Weed List each spring and update the list of target noxious weed species to be managed. Review and update the noxious weed plan and GIS database on a 3-year basis.

Task 9 – Forest Road Management

Description

This task covers management of forest roads for City owned lands in the vicinity of Lake Chaplain.

Services to Be Performed

Manage the Lake Chaplain Tract Culvert Maintenance program. Conduct annual inspection of all culverts, maintain culvert tracking list, and prioritize annual culvert maintenance and replacement schedule.

Monitor forest roads for maintenance requirements. Participate in project design and implementation of maintenance and repairs on forest roads. Monitor forest roads for maintenance requirements. Acquire necessary permits for forest road projects when appropriate.

Task 10 – Project Management and Office Administration

Description

This task covers project management and coordination with City staff.

Services to Be Performed

Attendance of weekly water treatment plant (WTP) staff meetings as directed or needed, to keep City staff up to date on forest management activities that may impact plant operations.

Attendance of weekly forestry meetings with contract administrator, scheduled.

Attendance of all meetings and discussions in the office and field with Hill Crew, Patrol, Water Treatment Plant Manager, operators, and other City staff.

Task 11 – Watershed Management

Description

This task is a supporting role to City staff for all security and recreation issues on Lake Chaplain Tract and water supply lands.

Services to Be Performed

Assist City staff in recreation access decisions.

Participate in public meetings with recreation focused groups and committees. Review and prepare comments on proposed recreation activities that could affect watershed lands. This would include activities such as the Jackson Project, State Natural Resources Conservation Area (NRCA) planning and development, existing State recreation site maintenance and development, and other public recreation activities on or adjacent to watershed lands.

Develop and implement a comprehensive Watershed Management Plan for Lake Chaplain Tract in collaboration with City staff. This will include security (patrol, gates, fencing, cameras), public access, roads, drainage, water quality specifications for forest management activities, wildfire prevention and response.

Develop a Watershed Agreement with Washington DNR in conjunction with City staff and Snohomish County PUD as needed. DNR is the City's largest neighbor. Both parties have committed to the development of this agreement which will document land management and communication processes between us.

Assist City staff in negotiating a land exchange with DNR. The purpose of this land exchange is to acquire the remaining ownership block of the Lake Chaplain watershed. This will give the City full control over the drinking water watershed.

Monitor and prepare comments on proposed land use actions that have the potential to impact Lake Chaplain Tract and water supply lands. This would include any actions in or adjacent to City watershed lands by the USFS or the PUD.

As requested by City staff, obtain non-forest management related permits, such as Hydraulic Project Approval for Chaplain Creek maintenance.

Assist City staff with development of security measures. Implement security measures (fences, gates, cameras) as directed by City management. Review and respond to security-related issues in conjunction with City staff.

Task 12 – Management Reserve

Due to the potential variability of effort for the tasks listed above, and the potential need for work associated with unforeseen circumstances, 10% of the total hours for this contract are allocated as management reserve. The City's Operations Superintendent or the contract manager may elect to allocate the hours in the management reserve task to either the aforementioned tasks as needed or to tasks otherwise related to the Scope of Services. Tasks are to be defined and authorized in writing by the City's Operations Superintendent or the contract manager.

EXHIBIT B
COMPENSATION

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

Name	Responsibility	Rate	Estimated Annual Hours	Extension
Roots Forestry	Professional Forestry and Watershed Management	\$77.50	2548	\$205,995.00
Annual Contract Cost				\$205,995.00

Maximum 3-Year Contract Cost

\$617,985.00

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Parking	N/A	N/A
Meals	N/A	N/A
Total		\$0.00

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

1. Does Service Provider have twenty-five (25) or more employees? Yes No

IF YES: SKIP QUESTION 2, SKIP QUESTION 3, AND SIGN BELOW.

IF NO: ANSWER QUESTIONS 2 AND 3.

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

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

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

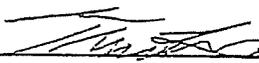
Partnership. If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), Teachers' Retirement System (TRS) or Law Enforcement Officers and Fire Fighters plan (LEOFF)?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

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

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

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

Service Provider Name: Roots Forestry Consulting, LLC

Signature: 

Printed Name: Travis Miranda Title: Owner



Project title: Biosolids Tolling Agreement, Authorization to Sign

City Council Agenda Item Cover Sheet

Council Bill #

Agenda dates requested:

7/8/20

Briefing

Proposed action

Consent XXX

Action

Ordinance

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Agreement

Department(s) involved:

Public Works & Legal

Contact person:

Jim Miller

Phone number:

425-257-8880

Email:

jmillier@everettwa.gov

Initialed by:

Department head

Administration


Council President

Project: Biosolids Tolling Agreement

Partner/Supplier : Everett's three wholesale sewer customers

Location: Marshland area just south of the Snohomish River

Preceding action: None

Fund: 401-Biosolids Management

Fiscal summary statement:

Agreement would result in the City Utility Fund receiving \$148,967.24 within 30-days of full execution.

Project summary statement:

In 2019, the City's sewer utility purchased land from City's general fund for \$1.24 million in the Marshland area. This was for the purpose of application of biosolids generated by the City's sewer utility. This is anticipated to generate cost savings for the utility over time.

The City's three wholesale sewage customers are Alderwood Water and Wastewater District , Mukilteo Water and Wastewater District and Silver Lake Water and Sewer District.

The City and the Districts have a dispute regarding the Districts' reimbursement obligations to the City utility for the Marshland purchase under their wholesale sewage disposal contracts. The City claims the reimbursement obligation of all three Districts combined is \$297,934. The Districts claim it is less than that.

The tolling agreement attached: (1) provides two years for negotiation on the reimbursement issue and for biosolids disposal cost data to accumulate, (2) requires the Districts to pay under protest half of the disputed amount within 30 days after signature, and (3) sets up an arbitration process if the parties cannot reach resolution within two years.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the attached Biosolids Tolling Agreement.

CITY

BIOSOLIDS TOLLING AGREEMENT

RECITALS

WHEREAS, the City of Everett, a municipal corporation of the State of Washington (the "City"), and the Districts; Silver Lake Water and Sewer District (SLWSD), Alderwood Water and Wastewater District (AWWD), and Mukilteo Water and Wastewater District (MWWD), all municipal corporations of the State of Washington, (collectively, the "Districts") have entered into the following agreements regarding sewage disposal (collectively, the "Contracts");

<u>District</u>	<u>Date of Agreement</u>
Alderwood Water and Wastewater District	December 30, 1981
Mukilteo Water and Wastewater District	May 4, 1983
Silver Lake Water and Sewer District	March 31, 2015

WHEREAS, the City and the Districts have a dispute regarding the Districts' reimbursement obligations to the City regarding the purchase of certain agricultural property for biosolids disposal (the "Agricultural Property"); and

WHEREAS, the Districts' position is they are not contractually responsible for the costs associated with the purchase of Agricultural Property for biosolid disposal since, according to the Districts, contractually and historically, reimbursement to the City for biosolid disposal has been paid as a maintenance and operations charge pursuant to the respective agreements; and

WHEREAS, the City's position includes, but is not limited to, that the purchase of the Agricultural Property is a capital expense subject to cost sharing pursuant to the Contracts; and

WHEREAS, the City and Districts agree to execute a Biosolids Tolling Agreement in which the Districts will pay half of their respective shared cost under protest, during which over a two year period the City will gather data on City biosolids disposal costs and the parties will continue to negotiate.

NOW, THEREFORE, the City and the Districts (each, a "Party" and, collectively, the "Parties") enter into this agreement ("Tolling Agreement"), and, intending to be bound thereby, make the following promises, which are acknowledged by the Parties as mutual and adequate consideration:

AGREEMENT

1. Incorporation of Recitals. The Recitals are incorporated by reference into this Tolling Agreement.
2. Effective and Expiration Dates. The effective date ("Effective Date") of this Tolling Agreement shall be 12:00 a.m. (Pacific Time) on July 1, 2020, regardless of the date this Tolling Agreement is signed by the Parties. This Tolling Agreement shall expire at 11:59 p.m. (Pacific Time) on June 30, 2022 ("Expiration Date"); provided, however, that any party may terminate the Tolling Agreement prior to the Expiration Date upon sixty (60) days' advance written notice. The 60-day notice period shall begin on the date the Party sent the written notice as provided by Section 7, below. In the case of a termination by written notice, the "Expiration Date" shall be the expiration date of the 60-day notice period.
3. Continue to Negotiate. During the two-year period, the parties will continue to negotiate. The City will document City costs when utilizing the Agricultural Property for the disposal of biosolids. The City will also gather City historical biosolids disposal cost data. The City will share this data with the Districts as it becomes available so as to inform the negotiations.
4. Tolling of Statutes of Limitation. To the extent permitted by Washington law, the Parties hereby agree that in any litigation between or among them relating to or arising out of the property reimbursement dispute described in the Recitals above, no Party, in asserting any affirmative defense based on any limitations period, including, without limitation, statutes of repose and limitation, laches, or bar to action for failure to timely make demand or to timely file (collectively, "Statutes of Limitation"), shall in its computation of time for such defense include any time which elapses between and including the Effective Date and the Expiration Date (the "Tolling Period"). Notwithstanding the foregoing, each Party hereby expressly reserves its right to assert a defense (a) based upon the expiration of any of the Statutes of Limitation prior to the Effective Date or (b) which is otherwise available to such Party and not based upon the expiration of any of the Statutes of Limitation prior to the Effective Date.
5. Payment Under Protest. No later than 30 days after full execution of this Tolling Agreement, the Districts will pay under protest a total amount equal to \$148,967.24, which is one half of the amount under dispute. The individual payments shall be: AWWD = 22,927.57; MWWD = \$24,786.56; SLWSD = \$101,253.11.
6. Effect on Prejudgment Interest. If any Party obtains a judgment against the other with respect to the Contract, the prevailing Party shall exclude the Tolling Period in the computation of any prejudgment interest. The provisions of this paragraph 5 shall survive the Expiration Date.
7. No Admission of Fault. No Party admits any breach, fault, or liability of any kind, and no Party waives or concedes any claim or defense, relating to or arising out of the Contracts or otherwise related to the dispute described above.

8. Fees and Costs. The rights of any prevailing Party to recover attorneys' fees and costs incurred in enforcing the Contract pursuant to the terms thereof, if any, is unmodified by this Tolling Agreement.

9. Notice. Formal notice under and official communications between the Parties regarding this Tolling Agreement shall be sent by first class mail as follows:

To the City:
Mayor
City of Everett
2930 Wetmore Avenue
Everett WA 98201

To AWWD:
General Manager
Alderwood Water and Wastewater District
3626 156th St. SW
Lynnwood, WA 98087

To SLWSD:
General Manager
Silver Lake Water and Sewer District
15205 41st Ave SE
Bothell, WA 98012

To MWWD:
General Manager
Mukilteo Water and Wastewater District
7824 Mukilteo Speedway
Mukilteo, WA 98275

10. Justifiable Reliance. The City acknowledges and agrees that the District is justifiably and reasonably relying upon the terms and conditions set forth in this Tolling Agreement, that the Statutes of Limitation are subject to being tolled, and that this Tolling Agreement is enforceable in accordance with its terms.

11. Arbitration

A. Arbitration Notice. If the dispute described above is not resolved by June 30, 2022 and any Party desires arbitration, the Party shall provide notice to the other Parties no earlier than July 1, 2022 and no later than September 30, 2022. Any notice delivered outside of such notice period is ineffective.

B. Arbitration Panel. The arbitration will be conducted by a three-member panel. The City shall each select one panel member, and the Districts will select one panel member. Those two panel members will select the third panel member. Each side shall pay the costs of its chosen arbitrator, with all other arbitration costs split evenly between the City and the Districts. The arbitration panel's authority is limited to determining the Districts' reimbursement obligation, if any, to the City under the Contracts for the City's purchase of the Agricultural Property. For example, the arbitration panel may decide to require that the Districts pay the City the entire unpaid reimbursement amount claimed by the City, or the panel could decide to require the City to repay to the Districts the Districts' one-half payment made under protest. The arbitration panel will determine the relevance, and weight to be given to, any biosolids disposal cost data or financial analysis relating to the Agricultural Property that may be offered by a party at the hearing.

C. Arbitration Decision. The arbitration panel shall promptly issue a decision. The arbitration decision is binding on the Parties.

12. Authority. Each Party represents that this Tolling Agreement has been duly and validly authorized, executed and delivered by such Party and no other action is requisite to the valid and binding execution, delivery and performance of this Tolling Agreement by such Party.

13. Counterparts. This Tolling Agreement may be executed in counterparts and delivered via facsimile or other means of electronic image transmission, all of which counterparts, together, shall constitute one and the same instrument, be deemed an original for all purposes and be binding on the Parties as if all signatures were affixed to a single document.

IN WITNESS WHEREOF, the Parties have caused this Tolling Agreement to be executed by their proper Officers on the dates listed below.

CITY OF EVERETT

Dated: _____

Cassie Franklin, Mayor

ATTEST

City Clerk

APPROVED AS TO FORM

City Attorney

SILVER LAKE WATER AND SEWER
DISTRICT

Dated: _____

By: _____

Position: _____

ATTEST

ALDERWOOD WATER AND
WASTEWATER DISTRICT

Dated: _____

By: _____

Position: _____

ATTEST

MUKILTEO WATER AND WASTEWATER
DISTRICT

Dated: _____

By: _____

Position: _____

ATTEST



Project title: An Ordinance establishing Juneteenth as a recognized holiday by the City of Everett.

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

CB2006-40

Agenda dates requested:

July 8, 2020

Briefing

Proposed action

Consent

Action

Ordinance X

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Proposed Ordinance

Department(s) involved:

HR, Administration

Contact person:

Kandy Bartlett

Phone number:

425.257.8706

Email:

kbartlett@everettwa.gov

Initialed by:

Department head

Administration

Council President

Consideration: Ordinance

Project: Ordinance establishing Juneteenth (June 19) as a City of Everett holiday

Partner/Supplier : N/A

Location: N/A

Preceding action: N/A

Fund: Various

Fiscal summary statement:

The proposed recognition of Juneteenth as a city holiday will result in an estimated labor expense as noted in the below table:

	General Government	Non-General Government
Parks	\$725	
Animal Shelter	\$175	
Public Works (Utilities)		\$4,000
Motor Vehicles Dept		\$2,950
Total	\$900	\$6,950

As noted above the increase to the annual general fund labor expense budget is projected to be \$900. Discussions are in progress with the Police, Fire and Transit unions to recognize this holiday at a no net labor cost to the city.

City of Everett offices will be closed to formalize a day of remembrance, recognition and celebration and to increase awareness of the past, present and future struggles for equality.

Project summary statement:

June 19th has special meaning to African Americans. It is called JUNETEENTH, combines the words June and Nineteenth and has been celebrated by the African American community for over 150 years. Juneteenth is the oldest celebration of the end of slavery in the United States and is a day to celebrate freedom. It commemorates freedom and celebrates the successes gained through education and greater opportunity. Juneteenth is a reminder that the precious promises of freedom, equality and opportunity are at the core of the American Dream. The Juneteenth designated holiday will provide official recognition of this momentous day by the City of Everett and encourage businesses and residents to become aware of the significance of this day in history.

The proposed Ordinance implements Juneteenth as an annual holiday for regular-status City of Everett employees starting in 2021.

Recommendation (exact action requested of Council): Adopt an Ordinance establishing Juneteenth as a recognized city holiday.



ORDINANCE NO. _____

An ORDINANCE establishing Juneteenth as a City Holiday, amending Section 1(C) of Ordinance 1594-89 as amended by Section 1 of Ordinance 2879-05

WHEREAS,

- A. June 19th is Juneteenth, which marks the date in 1865 when Union soldiers arrived in Texas to read and enforce the Emancipation Proclamation to the last Confederate State to receive the announcement of the end of slavery in the South, which was a step toward abolishment of slavery in the United States which occurred after ratification of the Thirteenth Amendment to the Constitution in December 19, 1865.
- B. Juneteenth is the oldest celebration of the end of slavery in the United States and is a day to celebrate African American freedom, culture, and achievement, encourage continuous self-development and respect for all cultures, and reflect on the history of slavery and the lives lost in the fight for equal rights.
- C. Formally recognizing Juneteenth as a day of remembrance will provide official recognition of this momentous day by the City of Everett, and increase awareness of the past, present and future struggle for equality.
- D. June 19th has special meaning to African Americans. It is called JUNETEENTH, combines the words June and Nineteenth and has been celebrated by the African American community for over 150 years.
- E. Juneteenth celebrates freedom and the successes gained through education and greater opportunity.
- F. Juneteenth is a reminder that the precious promises of freedom, equality and opportunity are at the core of the American Dream.
- G. The Juneteenth designated holiday will provide official recognition of this momentous day by the city of Everett and encourages businesses and residents to become aware of the significance of this day in history.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. The Council hereby directs the adoption of Juneteenth as a paid annual holiday for

regular-status City of Everett employees.

Section 2. Section 1(C) of Ordinance 1594-89 as previously amended by Section 1 of Ordinance 2879-05 (codified at EMC 2.74.030) is further amended as follows, with underlined text added:

The following days are hereby designated paid holidays for those appointive officers in pay status on the day before and the day after the holiday:

New Year's Day

Martin Luther King, Jr. Day

President's Day

Memorial Day

Juneteenth

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Day after Thanksgiving Day

Christmas Day

Two floating holidays.

Section 3. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 4. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as

may be declared invalid.

Section 5. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

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

Cassie Franklin, Mayor

ATTEST:

Sharon Fuller, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____