Everett City Council Agenda
6:30 p.m. February 3, 2016
City Council Chambers

Roll Call

Approval of Minutes: January 27, 2016

Pledge of Allegiance

Mayor's Comments

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

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

(1) CB 1601-03 – 1st Reading – Adopt the Proposed Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26th Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05 (3rd and final reading and public hearing on 2-17-16.).

Documents: CB 1601-03.pdf

(2) CB 1601-04– 1st Reading – Adopt the Proposed Ordinance creating a Special Improvement Project entitled "Forest Park Swim Center Improvements Project", Fund 354, Program 048, to accumulate all costs for the improvement project. (3rd and final reading on 2-17-16.)

Documents: CB 1601-04.pdf

CONSENT ITEMS:

(3) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $1,901,268.40 for the period of January 16, 2016 through

Documents: res-72.pdf

(4) Adopt Resolution No. ____ authorizing payroll claims against the City of Everett in the amount of $3,696,334.90 for the period ending January 9, 2016.

Documents: payroll-51.pdf

PUBLIC HEARING:

(5) CB 1601-02-1st, 2nd 3rd and final Reading – Adopt the Proposed Ordinance establishing a moratorium on the establishment of additional retail marijuana stores and marijuana cooperatives, and declaring an emergency to exist.

Documents: CB1601-02.pdf

ACTION ITEMS:

(6) CB 1601-01 –3rd and final Reading – Adopt the Proposed Ordinance creating a Special Improvement Project entitled, "South Everett Forest Preserve Recreation Improvements", Fund 354, Program 047, to accumulate all costs for the Improvement Project.

Documents: CB 1601-01.pdf

(7) Authorize the Mayor to sign the Snohomish County Public Utility District No. 1 Work Authorization Field Lighting Replacement at Kasch Park.

Documents: Utility District.pdf

(8) Authorize the Mayor to sign a Local Agency Standard Consultant Agreement for On-Call Surveying Services with each of the prequalified firms for on-call surveying services for City projects.

Documents: Surveying Services.pdf

(9) Authorize Mayor to sign Amendment No. 1 to the Professional Services Agreement with HDR Engineering, Inc. to provide engineering and construction management services for the Water Pollution Control Facility Diversion Structure Zero Project in an amount not to exceed $821,038.00.

Documents: HDR-4.pdf

(10) Authorize the Mayor to sign the First Amendment to Lease Agreement with Everett School District No. 2 for space at 2911 California Avenue use by Everett Transit Facilities.

Documents: School District.pdf

(11) Authorize the Mayor to sign the Lease Agreement with Senator Patty Murray for lease of space in the Wall Street Building.

Documents: Murray-3.pdf

(12) Approve the 2016 Cultural Arts Commission Capital and Programming Grant Awards as designated, in an amount not to exceed $40,000.00.

Documents: Cultural Commission.pdf

Executive Session

Adjourn

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

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

2/3/16	Briefing	COUNCIL BILL #	CB1601-03
	Proposed Action	Originating Department	Planning
	Consent	Contact Person	Allan Giffen
	Action	Phone Number	(425) 257-8725
2/3/16	First Reading	FOR AGENDA OF	February 3, 2016
2/10/16	Second Reading		February 10, 2016
2/17/16	Third Reading		February 17, 2016
2/17/16	Public Hearing		

Initialed by:
Department Head
CAA db
Council President

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

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

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

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

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

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance terminating the Amended Development Agreement with Rockefeller Avenue LLC for property on the east side of Rockefeller Avenue between 26th Street and Everett Avenue, amending Section 1-5 of Ordinance No. 2847-05.

Ordinance No. _____

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

WHEREAS, the City Council finds the following:

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

And;

WHEREAS, the City Council concludes:

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

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

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAINS:

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

Approval.

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

Is hereby amended to read as follows:

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

Legal Description:

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

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

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

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

Is hereby repealed.

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

Development Agreement.

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

Is hereby repealed.

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

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

Is hereby repealed.

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

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

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

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

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

Section 10: General duty.
It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance. It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the city or any of its officers or employees. Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city related in any manner to the enforcement of this ordinance by its officers, employees or agents.

Section 11: Savings.

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

_____

RAY STEPHANSON, Mayor

ATTEST:

_____

City Clerk

Passed:

Valid:

Published:

Effective Date:

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

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

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

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

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

Commission Discussion

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

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

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

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

Citizen Comments
None

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

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

Motion Carried.

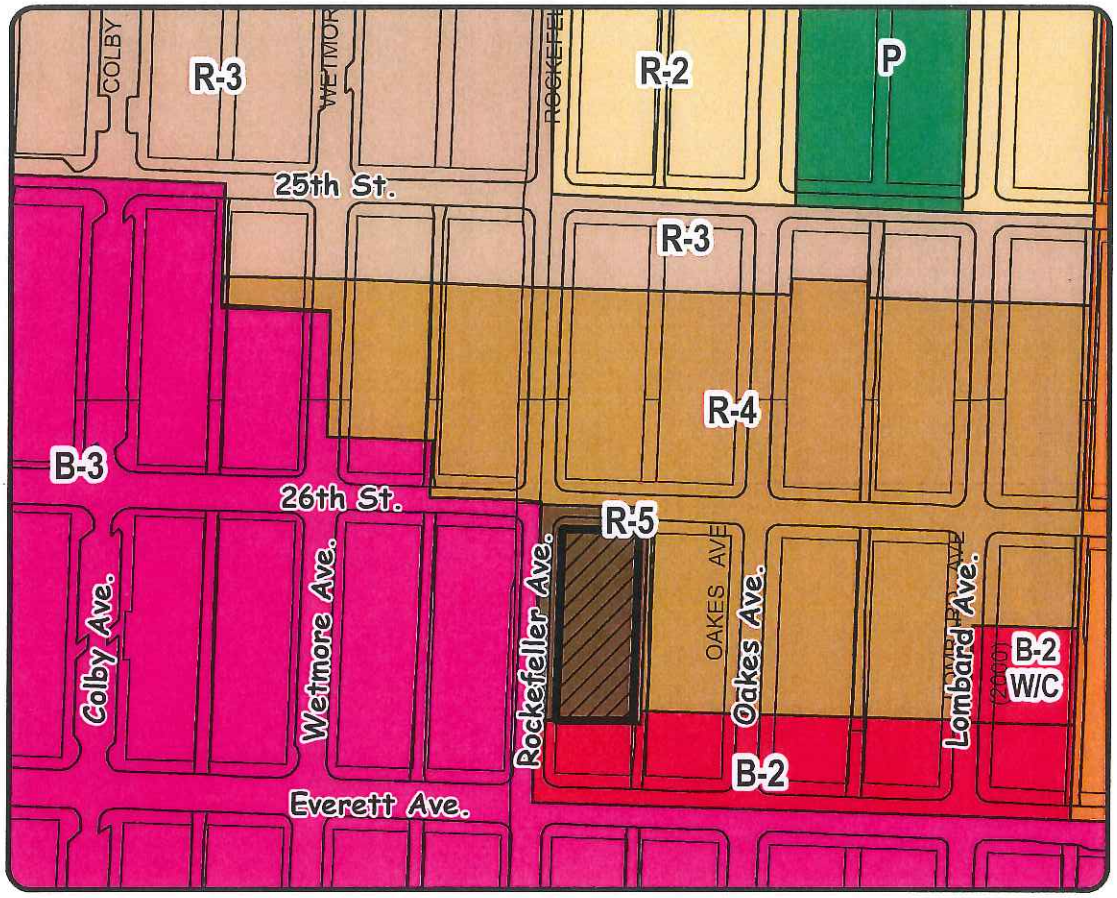
Chair Holland asked if there was anything in the development agreement that wouldn't be addressed under the core area residential design and development standards. Mr. Giffen responded no.

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

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

Motion Carried.

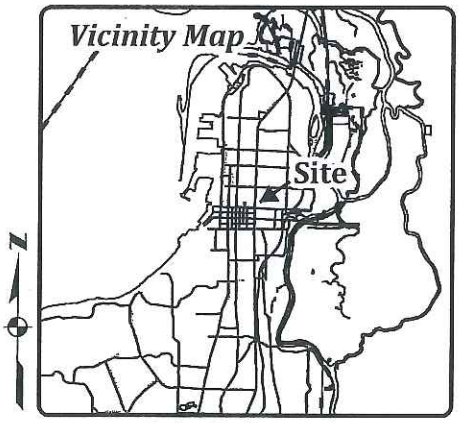
Proposal: Terminate Development Agreement Between the City of Everett and Rockefeller Ave LLC



Current Zoning = R-5 Core Residential

Zoning Legend:

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



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

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

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

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

COUNCIL BILL #	CB1601-04
Originating Department	Parks
Contact Person	Paul Kaftanski
Phone Number	425-257-8335
FOR AGENDA OF	February 3, 2016

Initialed by:
Department Head
CAA — db
Council President

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

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

DETAILED SUMMARY STATEMENT:

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

RECOMMENDATION (Exact action requested of Council):

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

ORDINANCE NO. _____

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

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

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

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

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

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

Section 2:

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

Section 3:

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

Section 4:

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

A. Estimated Project Costs

Construction	$200,000
Total Estimated Costs	**$200,000**

B. Source of Funds

Fund 162 – CIP 1	$200,000
Total Estimated Funds	**$200,000**

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

Section 5:

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

Section 6: Severability

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

_____
Ray Stephanson, Mayor

ATTEST:

_____
City Clerk

Passed:

Valid:

Published:

Effective Date:

RESOLUTION NO._____

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

That the claims against the City of Everett for the period January 16, 2016 through January 22, 2016 having been audited and approved, have been paid and the disbursements have been made against the proper funds in payment thereof, as follows:

Fund	Department	Amount
002	General Government	90,464.74
003	Legal	1,620.00
004	Administration	3,333.00
009	Misc Financial Funds	12,640.35
015	Information Technology	103.68
024	Public Works-Engineering	2,119.91
026	Animal Shelter	224.68
027	Senior Center	795.99
031	Police	29,510.96
032	Fire	7,761.30
038	Facilities/Maintenance	863.22
	TOTAL GENERAL FUND	**149,437.83**

Fund	Department	Amount
101	Parks & Recreation	2,991.04
110	Library	6,260.52
112	Community Theater	5,000.00
114	Conference Center	2,906.52
119	Public Works-Street Imrovement	333.02
120	Public Works-Streets	3,211.54
126	MV-Equipment Replacement Reser	34,454.56
145	Real Property Acquisition	2,768.36
146	Property Management	1,421.40
149	Senior Center Reserve	332.82
153	Emergency Medical Services	8,957.95
156	Criminal Justice	80.00
197	CHIP Loan Program	410.90
198	Community Dev Block Grants	887.79
303	PW Improvement Projects	401.70
336	Water & Sewer Sys Improv Project	771,814.34
354	Parks Capital Construction	121,910.45
401	Public Works-Utilities	163,301.29
402	Solid Waste Utility	327.60
425	Public Works-Transit	391,772.26
430	Everpark Garage	221.17
440	Golf	17,923.75
501	MVD-Transportation Services	46,258.64
503	Self-Insurance	71,234.71
505	Computer Reserve	501.36
507	Telecommunications	1,146.60
508	Health Benefits Reserve	1,462.45
637	Police Pension	40,890.62
638	Fire Pension	52,647.21
	TOTAL CLAIMS	**1,901,268.40**

Passed and approved this _____day of _____ , 2016.

_____
Councilperson Introducing Resolution

_____
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 January 09, 2016, and checks issued January 15, 2016, 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	10,446.44	$6,692.89
003	Legal	$58,530.26	21,084.74
004	Administration	41,325.35	12,793.54
005	Municipal Court	50,680.22	20,402.99
007	Personnel	43,894.09	15,578.00
010	Finance	61,166.41	20,825.69
015	Information Technology	52,345.84	19,821.17
021	Planning & Community Dev	46,340.97	16,017.73
022	Neighborhoods & Community Svcs	8,498.39	2,880.37
024	Public Works	133,627.99	51,326.24
026	Animal Shelter	31,963.90	12,429.55
027	Senior Center	11,439.96	4,582.82
031	Police	912,476.34	242,764.02
032	Fire	559,102.75	160,909.81
038	Facilities/Maintenance	69,842.10	30,179.61
101	Parks & Recreation	154,680.40	62,292.56
110	Library	114,827.22	40,132.13
112	Community Theatre	5,651.78	2,503.17
120	Street	61,015.05	26,558.34
153	Emergency Medical Services	182,234.37	46,437.33
197	CHIP	8,878.45	3,739.45
198	Community Dev Block	9,817.68	3,410.67
401	Utilities	618,740.72	247,617.33
425	Transit	361,753.81	152,783.53
440	Golf	22,129.58	8,755.54
501	Equip Rental	54,933.74	24,408.62
507	Telecommunications	9,991.09	3,978.74
		$3,696,334.90	$1,260,906.58

_____
Councilman Introducing Resolution

Passed and approved this _____ day of _____ , 2016.

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance establishing a moratorium on the establishment of additional retail marijuana stores and marijuana cooperatives, and declaring an emergency to exist

	Briefing
	Proposed Action
	Consent
	Action
02/03/16	First Reading
02/03/16	Second Reading
02/03/16	Third Reading
02/03/16	Public Hearing

COUNCIL BILL #	CB1601-02
Originating Department	Planning
Contact Person	Allan Giffen
Phone Number	(425) 257-8725
FOR AGENDA OF	February 3, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
City-wide	Ordinance No. 3443-15	Proposed Ordinance	Planning, Legal

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

DETAILED SUMMARY STATEMENT:

In the 2015 legislative session, the State Legislature adopted legislation to combine the medical marijuana and recreational marijuana laws as they relate to retail establishments. As a result of this change, the State Liquor and Cannabis Board is proposing new regulations for retail marijuana stores and marijuana cooperatives, including the number of retail establishments that will be allowed in each city or county. Under the previous recreational marijuana rules, the State authorized up to five retail marijuana stores in Everett. Four stores are currently operating, and a fifth is in the permit process.

The City wants to take a measured approach before allowing any additional retail stores, and proposes a moratorium in order to study the potential effects of merging the medical cannabis and recreational marijuana systems as it relates to new retail stores including marijuana cooperatives in Everett. The moratorium is proposed for one year. The moratorium can be repealed sooner if the City adopts new regulations, or determines that no changes to existing regulations are necessary.

RECOMMENDATION (Exact action requested of Council) Adopt an Ordinance establishing a moratorium on the establishment of additional retail marijuana stores and marijuana cooperatives, and declaring an emergency to exist.

ORDINANCE NO. ___

An Ordinance establishing a moratorium on the establishment of additional retail marijuana stores and marijuana cooperatives, and declaring an emergency to exist

Whereas, the City Council finds the following:

1. State Initiative 502 ("I-502"), approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing and retail sale of recreational marijuana.

2. In July 2015, the City adopted land use regulations based on available information at the time in order to provide policy and regulatory guidance and facilitate the review of recreational marijuana license applications within City limits.

3. The State Legislature enacted the Cannabis Patient Protection Act in 2015, establishing regulations for the formerly unregulated medical marijuana system and aligning it with the existing recreational system.

4. In response to changes in state law adopted in the last legislative session, the State Liquor and Cannabis Board has been working through its rulemaking process to establish the administrative procedures and standards for integration of medical marijuana into the existing recreational marijuana marketplace, and, as part of that process, the State is looking to expand the existing cap on retail marijuana stores in Everett at an earlier date than the City anticipated, promulgate other potential rule changes, and establish a new class of use, the marijuana cooperative.

5. The City's existing regulations were adopted in response to I-502 and associated State rules regarding the recreational marijuana marketplace, and were not necessarily designed to address the subsequent changes made by the State regarding medical marijuana, including a potential significant increase in the number of stores allowed at an earlier date than anticipated, and the potential incorporation of new uses.

6. The State is, at this present time, processing applications for retail marijuana uses potentially in excess of the number previously approved, and there are concerns regarding the potential issuance of additional applications under the City's existing regulations.

7. In order to preserve the City's regulatory authority and the validity of its legislative process, it is necessary to put a temporary moratorium on the establishment of new marijuana retail uses and the establishment of marijuana cooperatives until a reevaluation process has been completed.

8. The proposed moratorium ordinance includes a work plan, as provided by RCW 36.70A.390, which allows for a one-year time frame for completion of the evaluation of the need for amendments to the existing recreational marijuana regulations.

9. On February 3, 2016, the City Council held a public hearing and considered this Ordinance. This Ordinance must take effect immediately to prevent the establishment of vested rights that could be incompatible with the plans, policies and regulations ultimately adopted. .

Whereas, the City Council concludes that:

1. The City does have the authority to establish interim regulations in the form of a moratorium; and

2. A moratorium with respect to the establishment of additional marijuana retail uses and marijuana cooperatives will allow the City to review the potential impacts of changes proposed by the Washington State Liquor and Cannabis Board related to integrating the Cannabis Patient Protection Act of 2015 with the recreational marijuana regulations enacted pursuant to Initiative 502.

3. The City must adopt a moratorium prohibiting additional retail marijuana businesses including marijuana cooperatives to: (a) to provide the City an opportunity to study the issues concerning the appropriate zoning or regulation of such businesses and prepare appropriate revisions to the City's regulations; and (b) to avoid these businesses establishing vested rights contrary to and inconsistent with any revision the City may make to its regulatory scheme as a result of the City's study of this matter;

4. RCW 36.70A.390 allows a local government to establish a moratorium to conduct planning studies to determine appropriate land use policies and regulations for areas under its jurisdiction.

5. RCW 36.70A.390 and the City of Everett Charter, Article III, authorize the City Council to enact a moratorium to preserve the integrity of the planning process. As such, an emergency exists and the moratorium must go into effect immediately.

6. The City seeks to establish a moratorium for twelve months to preclude the establishment of vested rights that could be incompatible with the plans, policies, and regulations that the City may adopt as a result of the planning process.

7. The City Council held a public hearing on the Ordinance on February 3, 2016.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: FINDINGS OF FACT. The "WHEREAS' provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2: MORATORIUM ESTABLISHED. There is hereby declared a moratorium with respect to the establishment of recreational marijuana retail, production and processing uses and marijuana cooperatives. During the one year term of the moratorium, which begins on the effective date of this Ordinance, no application for a business license, or land use or building permit or approval will be accepted, processed or approved by the City. This includes, without limitation, all applications for permits or approvals that may be required by law before any property may be improved, developed, modified, or used, including any application for permit or approval required under EMC Title 15 or other City development regulations for any City land use permit, project permit or other permit. No new development rights shall vest during the term of the moratorium. This moratorium shall not affect existing legally established recreational marijuana retail stores, or any recreational marijuana retail store for which land use approval has been granted by the City as of the date of enactment of this ordinance. The term of the moratorium may be extended in accordance with RCW 36.70.A.390.

Section 3. EFFECTIVE IMMEDIATELY. It is necessary to pass this Ordinance as an emergency to prevent the establishment of vested rights that could be incompatible with the plans, policies, and regulations ultimately adopted by the City as a result of this Ordinance. This Ordinance, as a public emergency ordinance, is necessary for the protection of the public health, safety and welfare, and shall take effect immediately upon its becoming valid by Mayor's signature in accordance with City of Everett Charter Section 3.4.

Section 4. WORK PLAN. The City shall develop a detailed work plan that shall include, at a minimum, the following:

a. Evaluation of the changes proposed by the Washington State Liquor and Cannabis Board including the potential for additional marijuana stores and marijuana cooperatives being located in Everett;
b. Evaluation of any crime-related data pertaining to existing recreational marijuana stores in Everett and other jurisdictions in Washington;
c. Evaluation of data and information related to societal impacts concerning retail marijuana stores;
d. Analysis of the number of additional retail stores and marijuana cooperatives that could be located in the City under the existing recreational marijuana land use regulations;
e. Analysis of the number and location of existing and proposed marijuana retail stores in neighboring jurisdictions;
f. Evaluation of the need for additional land use or other regulations related to retail marijuana stores and marijuana cooperatives.

Section 5. TERM. This moratorium will end one-year after the effective date of this Ordinance unless earlier repealed or renewed according to law.

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

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

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

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

Section 10. ENFORCEMENT. Violations of this Ordinance are punishable under Everett Municipal Code, Chapters 1.16 and 1.20 and as otherwise provided by law and in Everett Municipal Code 1.20.020, and are subject to injunctive and other forms of relief which the City may seek.

RAY STEPHANSON, MAYOR

_____

ATTEST: _____

CITY CLERK

Passed_____

Valid:_____

Published:_____

Effective Date: February 3, 2016

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating a special improvement project entitled "South Everett Forest Preserve Recreational Improvements", Fund 354, Program 047, to accumulate all costs for the improvement project.

1/20/16	Briefing
	Proposed Action
	Consent
	Action
1/20/16	First Reading
1/27/16	Second Reading
2/3/16	Third Reading
	Public Hearing
	Budget Advisory

COUNCIL BILL #	CB1601-01
Originating Department	Parks
Contact Person	Paul Kaftanski
Phone Number	425-257-8335
FOR AGENDA OF	January 20, 2016

Initialed by:
Department Head
CAA dlb
Council President

Location	Preceding Action	Attachments	Department(s) Approval
East of 1019 109th Dr SE and West of Interurban Trail	Council Adoption of Master Plan Resolution on September 16, 2016	Ordinance	Administration, Parks

Amount Budgeted	$200,000	Fund 354, Program 047
Expenditure Required	$200,000	Account Number(s): Fund 354, Program 047
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Since City Council adoption of the South Everett Forest Preserve Master Plan on September 16, 2015, design and construction documents for the master plan's recreational improvements on the southernmost 3.5 acres of the 15 acre parcel have been completed. The improvements include approximately 1,600 linear feet of walking trails, including a section designed and built for accessibility in accordance with the Americans with Disabilities Act (ADA); a small picnicking area; and interpretive signage.

The project will be constructed through the City's Job Order Contracting process. The project is projected to be complete and open for public enjoyment in June, 2016.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance creating a special improvement project entitled "South Everett Forest Preserve Recreational Improvements", Fund 354, Program 047, to accumulate all costs for the improvement project.

ORDINANCE NO. _____

AN ORDINANCE creating a special improvement project entitled "South Everett Forest Preserve Recreational Improvements Project", Fund 354, Program 047, to accumulate all costs for the improvement project.

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

WHEREAS, the National Park Service formally approved the development of the south Everett Forest Preserve for passive recreational use to serve as mitigation for the conversion of recreational assets from Thornton A. Sullivan Park to a fire station.

WHEREAS, the City of Everett is requesting funding approval for the utilization of Capital Improvement Program 3 (CIP 3) to construct recreational improvements at the South Everett Forest Preserve;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

A special improvement project is hereby established as Fund 354, Program 047, and shall be entitled "South Everett Forest Preserve Recreational Improvements Project" to accumulate all costs for the improvement project.

Section 2:

Authorization is hereby given to accumulate costs and distribute payments from Fund 354, Program 047, for the improvement project.

Section 3:

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

Section 4:

The sum of $200,000 is hereby appropriated to Fund 354, Program 047, "South Everett Forest Preserve Recreational Improvements Project" as follows:

A. Estimated Project Costs	
Construction	$200,000
Total Estimated Costs	**$200,000**
B. Source of Funds	
Fund 154 – CIP 3	$200,000
Total Estimated Funds	**$200,000**

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

Section 5:

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

Section 6: Severability

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

_____
Ray Stephanson, Mayor

ATTEST:

_____
City Clerk

Passed:
Valid:
Published:
Effective Date

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Snohomish County Public Utility District No. 1 Work Authorization for Field Lighting Replacement at Kasch Park

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

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

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
8811 Airport Road	None	Work Authorization	Legal, Parks

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

DETAILED SUMMARY STATEMENT:

Kasch Park multi-purpose fields #2 and #3 will be renovated between May and September of this year. As part of the project, field lighting will also be upgraded. The current Metal Halide lighting system will be replaced by a Light Emitting Diode (LED) lighting system.

The Snohomish County Public Utility DistrictNo. 1 (PUD) offers an incentive payment (i.e. rebate) through its Commercial and Industrial Energy Efficiency Programs to customers for energy efficiency projects that reduce the consumption of electrical energy. Conversion of field lighting at Kasch Park is estimated to save approximately 122,000 kilowatt hours per year. The PUD rebate is $0.45 per kilowatt hour which translates into a $55,540.00 rebate to the City for construction of this project.

The field lighting replacement work is part of the overall project's construction documents. Staff anticipates that a contract and funding ordinance will be presented to City Council in early March, 2016 for consideration. At that time, the budgetary and expenditure requirements will be established. The Work Authorization Agreement with the PUD is needed at this time to meet the PUD's program requirements and therefore, is presented to City Council in advance of a proposed construction contract and funding ordinance.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Snohomish County Public Utility District No. 1 Work Authorization for Field Lighting Replacement at Kasch Park.

WORK AUTHORIZATION

for Energy Efficiency Projects in Commercial & Industrial Facilities

Project #	File #
P4855A	2960
PUD Engineer	
Rob Marks	

Note: To be valid, this form must be signed and returned before: **March 1, 2016**
The work identified must be completed and pass PUD inspection on or before: **September 15, 2016**
The Agreement expires on: **October 15, 2016**

Facility Name	Facility Address
Kasch Memorial Park	8811 Airport Road, Everett, WA 98204
Customer/Company Name	**Mailing Address**
City of Everett Parks and Recreation	802 E Mukilteo Blvd, Everett, WA 98203

EEM No.	Description of Energy Efficiency Measure	Estimated Annual Electrical Energy Savings (kWh/yr)	Measure Cost	Cost Type	PUD Rebate/ Incentive Amount
1	Sports complex Lighting Retrofit Project. Replace all high mast and field security lighting with New LEDfixtures. Please see attached PUD Lighting Worksheets for details. *Existing Lighting System Load:* 177.23 kW *Proposed Lighting System Load:* 80.80 kW *Anticipated Lighting Load Reduction:* 96.43 kW	122,267 kWh	$619,710.00	Total	$55,540.00
	Total:	122,267 kWh	$619,710.00		$55,540.00

Measurement & Verification (M&V)

Verify equipment installed matches workbook in type and quantity.

Customer Agreement & Approval

The Participant (Customer) hereby applies for incentive payment from Snohomish PUD (PUD) under its Commercial and Industrial Energy Efficiency Programs. The Customer certifies that project documentation used in developing this authorization accurately reflects existing/proposed conditions and project scope. The Customer understands that the incentive payment for projects in existing facilities will not exceed 70% of the pre-authorized project cost or 100% of pre-authorized fixture cost for self-install projects. The Customer also understands that any change in the scope of a project previously authorized must be approved by the PUD to ensure eligibility.

The Customer assumes full responsibility for equipment selection and installation, project management and payment of contractors and/or suppliers. Customer understands that projected energy and cost savings are estimates.

The Customer assumes full responsibility the equipment is installed in accordance with all applicable federal, state and local laws, building codes and permitting requirements. All equipment removed, including lamps and ballasts, must be permanently taken out of service and disposed of in accordance with applicable federal, state and local laws (Information about hazardous waste disposal can be found at: www.epa.gov/epawaste/hazard/index.htm).

The Customer shall be responsible for payment of any federal, state or local taxes and any tax liability associated with Customer's receipt of PUD's incentive payment. The PUD will not be responsible for any income tax that may be imposed on the Customer as a result of the receipt of incentive payments.

The PUD may, during reasonable hours, inspect the energy efficiency project at the site identified on this authorization before, during and/or after the installation equipment or conservation measures for the sole purpose of verifying compliance with the performance obligations required by the PUD's Programs. The limited scope and purpose of any PUD Inspection is not intended to discover or report any defects, code violations or hazards of any kind. For that reason, the Customer should carefully inspect the performance of any equipment supplier and any contractor and/or request inspection by appropriate governmental agencies.

The Customer agrees to indemnify and hold harmless PUD and each and all of its agents or employees from and against any and all losses, liabilities, damages, costs, expenses (including attorney's fees and expenses), claims, or judgments arising out of or in connection with Customer's participation in this program.

Incentive payment will be made after inspection by PUD establishes that the project satisfies the PUD's requirements. PUD reserves the right to change and/or terminate the program at any time.

Authorized Signature _____ Date _____

Print Name _____ Title _____

APPROVED
By Sinh at 10:43 am, Jan 07, 2016

PUD Approval

Version 1.2 - Effective May 22nd, 2015

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Award RFQ 2014-050 For Surveying Services

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Public Works
	Consent	Contact Person	Ryan Sass, P.E.
x	Action	Phone Number	(425) 257-8942
	First Reading	FOR AGENDA OF	August 6, 2014
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
City wide Various Departments	4/23/14 Council authorized Surveying Services RFQ	Sample Local Agency Standard Consultant Agreement	Public Works, Admin

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

DETAILED SUMMARY STATEMENT:

The Public Works Department needs to establish a current Surveying Roster in accordance with RCW 39. The RFQ was advertised in the Herald and posted on the City's web site. 14 responses were received and evaluated. Staff is recommending award to each of the responding firms: Bush, Roed & Hitchings, Inc.; David Evans & Associates; DOWL HKM; Duane Hartman & Associates; Group Four, Inc.; Harmsen & Associates; KPG; Metron & Associates; OTAK; Pacific Surveying & Engineering; Perteet; Reid Middleton; Stantec and Triad Associates. The list will be used by all City departments needing on-call surveying services for 2014 and 2015.

Funding for each survey task is the responsibility of the tasking Department and is part of each project requiring surveying services.

RECOMMENDATION (Exact action requested of Council):

Award RFP 2014 for Surveying Services and Authorize the Mayor to execute the Local Agency Standard Consultant Agreement with listed firms.

Local Agency Standard Consultant Agreement

☒ Architectural/Engineering Agreement
☐ Personal Services Agreement

Agreement Number
OCSS14

Federal Aid Number

Agreement Type (Choose one)

☐ **Lump Sum**
Lump Sum Amount $ _____

☐ **Cost Plus Fixed Fee**
Overhead Progress Payment Rate _____ %
Overhead Cost Method
☐ Actual Cost
☐ Actual Cost Not To Exceed _____ %
☐ Fixed Overhead Rate _____ %
Fixed Fee $ _____

☒ **Specific Rates Of Pay**
☒ Negotiated Hourly Rate
☐ Provisional Hourly Rate

☐ **Cost Per Unit of Work**

Consultant/Address/Telephone

Project Title And Work Description
On-Call Surveying Services

DBE Participation
☐ Yes ☒ No _____ %

Federal ID Number or Social Security Number

Do you require a 1099 for IRS?
☐ Yes ☒ No

Completion Date
December 31, 2015

Total Amount Authorized $ 230,000.00

Management Reserve Fund $ 20,000.00

Maximum Amount Payable $ 250,000.00

Index of Exhibits (Check all that apply):

☒ Exhibit A-1 Scope of Work
☒ Exhibit A-2 Task Order Agreement
☐ Exhibit B-1 DBE Utilization Certification
☒ Exhibit C Electronic Exchange of Data
☐ Exhibit D-1 Payment - Lump Sum
☐ Exhibit D-2 Payment - Cost Plus
☒ Exhibit D-3 Payment - Hourly Rate
☐ Exhibit D-4 Payment - Provisional
☐ Exhibit E-1 Fee - Lump/Fixed/Unit
☒ Exhibit E-2 Fee - Specific Rates
☐ Exhibit F Overhead Cost
☒ Exhibit G Subcontracted Work
☐ Exhibit G-1 Subconsultant Fee
☐ Exhibit G-2 Fee-Sub Specific Rates
☐ Exhibit G-3 Sub Overhead Cost
☒ Exhibit H Title VI Assurances
☒ Exhibit I Payment Upon Termination of Agreement
☐ Exhibit J Alleged Consultant Design Error Procedures
☒ Exhibit K Consultant Claim Procedures
☐ Exhibit L Liability Insurance Increase
☒ Exhibit M-1a Consultant Certification
☒ Exhibit M-1b Agency Official Certification
☒ Exhibit M-2 Certification - Primary
☒ Exhibit M-3 Lobbying Certification
☐ Exhibit M-4 Pricing Data Certification
☐ App. 31.910 Supplemental Signature Page

THIS AGREEMENT, made and entered into this _____ day of _____, 2014, between the Local Agency of City of Everett, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II Scope of Work

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

III General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

VI Sub-Contracting

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Local Programs Project Development Engineer in consultation with the AGENCY.

VII Employment

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY 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.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII Nondiscrimination

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987
(Public Law 100-259)

American with Disabilities Act of 1990
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

XII Venue, Applicable Law, and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

A. Worker's compensation and employer's liability insurance as required by the STATE.
B. Commercial general liability written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000) per occurrences and two million dollars ($2,000,000) in the aggregate for each policy period.
C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar ($1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million ($1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XVI Federal and State Review

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVII Certification of the Consultant and the Agency

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M -2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over $100,000 and Exhibit "M-4" is required only in AGREEMENTS over $500,000.

XVIII Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By _____ By _____

Consultant _____ Agency City of Everett

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No. 1 to the Professional Services Agreement with HDR Engineering, Inc. to Provide Engineering and Construction Management Services for the Water Pollution Control Facility Diversion Structure Zero – Modifications Project

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Souheil Nasr
Phone Number	(425) 257-7210
FOR AGENDA OF	January 27, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Water Pollution Control Facilities (on Smith Island	Professional Services Agreement, September 2, 2015	Amendment No. 1	Public Works

Amount Budgeted	$7,800,000	
Expenditure Required	$821,038	Account Number(s): UP-3625
Budget Remaining	$6,802,330	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

This is the second phase of a two phase project for engineering design and construction services for the Water Pollution Control Facility on Smith Island. Phase 1 (pre-design) was authorized by Council on September 2, 2015. This Phase 2 (design and construction assistance) carries forward the preferred alternative from Phase 1 through construction. This project is listed in the Combined Sewer Overflow Agreed Order to be on line by December 31, 2017.

Previously authorized expenditures for the project include $176,632 for pre-design services. Total expenditures requested to date, including this request for final design and construction assistance, are $997,670.

RECOMMENDATION (Exact action requested of Council):
Authorize Mayor to sign Amendment No. 1 to the Professional Services Agreement with HDR Engineering, Inc. to Provide Engineering and Construction Management Services for the WPCF Diversion Structure Zero project in an amount not to exceed $821,038.

AMENDMENT NO. 1

TO

AGREEMENT FOR ENGINEERING SERVICES

WPCF DIVERSION STRUCTURE ZERO MODIFICATIONS PROJECT

WHEREAS:

HDR Engineering, Inc. (HDR) entered into an Agreement on September 2, 2015 to perform engineering design and construction services for the WPCF Diversion Structure Zero Modifications Project for the City of Everett ("City");

The City desires to amend this Agreement by adding to the scope of services in order to perform the final engineering design and construction services and HDR is willing to amend the agreement.

NOW, THEREFORE, HDR and the City do hereby agree:

The Agreement and the terms and conditions therein shall remain unchanged other than those conditions and exhibits listed below;

Section 4: Modify Paragraph D, which describes the maximum total compensation, by increasing the total maximum compensation by $821,038. Delete the existing sentence and replacing with the following sentence:

"Total compensation, including all services and expenses, shall not exceed a maximum of nine hundred ninety seven thousand six hundred seventy dollars ($997,670)."

Amend the previous Exhibit A; Scope of Services, and Exhibit B; Project Hours, Expenses and Fee Estimate, by adding the following items:

Exhibit A1; Scope of Services, and
Exhibit B1; Project hours, Expenses and Fee Estimate

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year written below:

City of Everett, Washington

By: _____
Ray Stephanson, Mayor

Date: _____

Attest: _____
Sharon Marks, City Clerk

Date: _____

HDR Engineering, Inc.

By: Karen M Doherty
Karen Doherty, Vice President

Date: 1/11/16

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney

Date: _____

EXHIBIT A1

City of Everett

Water Pollution Control Facility (WPCF)

Diversion Structure Zero
Final Design

Scope of Services

January 8, 2016

500 108th Avenue NE
Suite 1200
Bellevue, WA 98004-5549
(425) 450-6200

500 108th Avenue NE
Suite 1200
Bellevue, WA 98004-5549
(425) 450-6200

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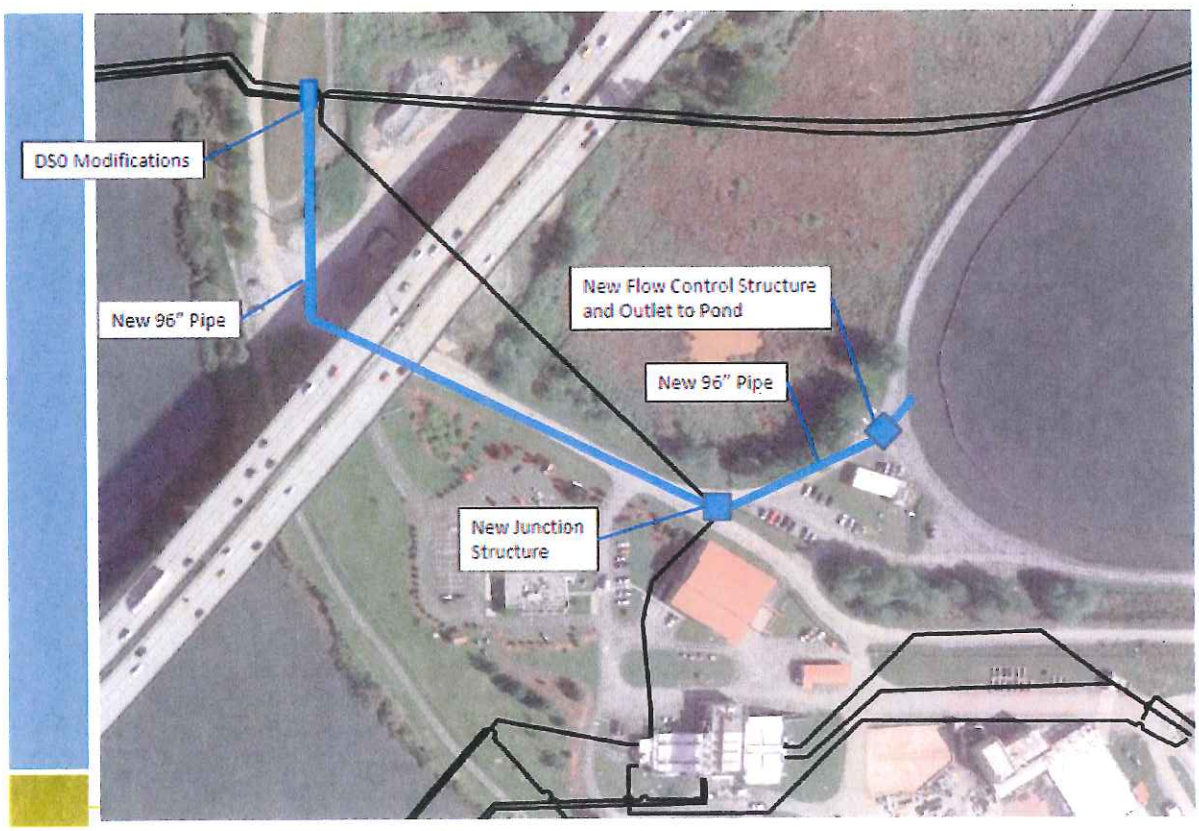
EXHIBIT A

SCOPE OF SERVICES

Background

The City of Everett, Washington (City) has selected HDR to provide engineering analysis, design, and permitting assistance for modifying Diversion Structure Zero (DS0) at the Water Pollution Control Facility (WPCF).

HDR completed the Predesign Report for the DS0 Improvements in December 2015. This report identified approximately 1,200 feet of new 96-inch diameter gravity combined sewer main from the existing Diversion Structure to the Oxidation Pond. This improvement also includes three new structures: DS0 Modifications, Junction Structure, and Flow Control Structure. An outlet connection to the Oxidation Pond is also included.



Scope of Services

Task 100 – Project Management

Objectives

Monitor, control, and adjust scope, schedule, and budget as well as provide monthly status reporting, accounting, and invoicing.

HDR Services

1. Create the Project Management Plan (Project Guide) outlining the project scope, team organization, schedule, and communications information.
2. Coordinate and manage the project team.
3. Subcontract with and manage project subconsultants.
4. Prepare monthly status reports describing the following:
   a) Services completed during the month
   b) Services planned for the next month
   c) Needs for additional information
   d) Scope/schedule/budget issues
   e) Schedule update and financial status summary
   f) Provide an estimated cash flow (billing) forecast
5. Prepare monthly invoices formatted in accordance with contract terms.
6. Project Manager will attend monthly project management meetings with the client Project Manager to review project scope, schedule, and budget issues.

Client Responsibilities

1. Attend project management meetings.
2. Timely processing and payment of invoices.
3. Review and process contract change requests and amendments, if needed.

Assumptions

1. The design phase of this project duration will be 8 months.
2. One project management meeting will be held via phone per month (total of 8) with 1 hour of project manager time will be required for each meeting preparation, attendance, follow-up, and notes.
3. Invoices will be HDR standard invoice format.
4. Expense backup will be provided with monthly invoices.

Deliverables

1. Scope of services, schedule (Gantt chart in MS Project), and budget (e-mailed PDF file).
2. Project Management Plan (Project Guide) (e-mailed PDF file).
3. Subconsultant subcontracts (PDF file).
4. Monthly reports and invoices (one copy with invoice, e-mailed PDF file)
5. Monthly project schedule and budget updates (included in monthly project report, emailed PDF file).
6. Project management meeting agenda and notes (e-mailed PDF files).

Task 200 – Surveying

Objectives

This project will provide surveying and base mapping services for an area at the City of Everett's Water Pollution Control Facility in the vicinity of DS0 and the path of a proposed pipe from this structure to the oxidation pond. We will utilize previously established horizontal and vertical control adjacent to the site for this work. The vertical datum will be NAVD 88 and based on existing benchmarks.

HDR Services

1. Manage subconsultant
2. Provide information to subconsultant as requested.
3. Conduct site visit and photographically document existing site conditions.
4. Review survey.

Surveyor Services

1. Perteet, Inc. will provide surveying services.
2. Project management.
   a) Develop work plan, scheduling and crew coordination.
   b) Prepare monthly invoices listing tasks accomplished, percentages of work complete, and remaining work.
3. Recover project control and set additional control as needed to perform work.
4. Topographic survey at a level of detail needed for a one foot contour interval basemap: existing ground, roads, bridge columns, buildings, landscape features, utilities both above and below ground, and other significant natural and manmade features.
5. Topographic survey of a small part of the southwesterly corner of the oxidation pond, recirculation channel, and concrete wall dividing them. Include notches in the concrete wall. See Attachment A.
6. Topographic survey of the top of existing 54" pipe in the vicinity of the right angle structure, to be done at the time of potholing.
7. Develop an AutoCAD base map and digital terrain model at an agreed upon horizontal scale, using current City of Everett drafting and layering standards

Client Responsibilities

1. Provide surveyor access to the project area and structures within the existing conveyance system.
2. Provide a boat and operator for work within the oxidation pond and recirculation channel. Perteet will coordinate with personnel at the WPCF for this task. A one week notice will be required for this work.

Assumptions

1. Elevations will be referenced to the NAVD88 vertical datum using elevations of benchmarks in the vicinity of the WPCF. Horizontal coordinates will be referenced to the NAD83(1991) Washington North Zone State Plane coordinate system
2. Perteet will not enter any confined structures in order to determine invert elevations. Measurements will be undertaken from the surface, to the extent such measurements can be made
3. Applied Professional Services, Inc. will be used for marking underground utilities within the project limits, to the extent that they can be located by their equipment; some non-conductible underground lines cannot be located and thus cannot be surveyed. Subsurface Utility Engineering evaluation will be Quality B Level defined as the application of appropriate surface geophysical methods to determine the existence and horizontal position of the utilities within the project limits. This activity is called "designating". The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
4. Applied Professional Services, Inc. will be used to pothole in approximately six places on the top of the existing 54" pipe. Four of the potholes will be in the immediate vicinity of the 54" pipe right angle structure, located next to the gate to the Industrial Pretreatment area of the WPCF. Two other pothole locations will be determined at a later date, depending on the needs of HDR. Any additional potholes beyond these extents may be considered an Additional Service.
5. One additional day of fieldwork and associated drafting time is included in this Scope for other survey needs that may arise during the course of design by HDR
6. The boundary of the survey is indicated in the figure in Attachment A. The approximate area to be surveyed is 3 acres.

Deliverables

1. AutoCAD version 2014 basemap drawing.
2. Digital Terrain Model file

Task 300 – Geotechnical Investigations and Design Report

Objective

Conduct geotechnical investigations and provide design recommendations for the design of DS0, pipelines and structures.

HDR Services

1. Manage subconsultant
2. Provide information to subconsultant as requested.
3. Review geotechnical design report and assist the structural design team in applying the recommendations of the report during final design.

Geotechnical Engineer Services

1. HWA GeoSciences, Inc. will provide geotechnical services.
2. Drill 4 borings along the proposed alignment to characterize the geotechnical conditions along the project alignment.
3. Conduct analysis to develop recommendations for the design of the pipeline and structures.
4. Provide recommended minimum distance to bridge piers for trench section.
5. Prepare a geotechnical design report summarizing the conditions encountered and the final design recommendations including dewatering recommendations and buoyancy control.

Client Responsibilities

1. Provide the geotechnical engineer access to the site to conduct boring and evaluate the site conditions.
2. Client to approve geotechnical bore locations.

Assumptions

1. 3 borings will be to a depth of 40 feet and one boring to a depth of 80 feet.
2. Geotechnical engineer will provide recommended bore locations with input on the alignment and structure locations provided by HDR.
3. Geotechnical borings.

Deliverables

1. Draft and final geotechnical report in electronic (PDF) format.
2. Five paper copies of the final report.

Task 400 – Permit Acquisition and Environmental Services

Objectives

City staff indicated the City would prepare the permit applications for DS0 with support from HDR. Based on the selected alignment in the Predesign Phase, it was determined that wetlands would not be impacted. Consequently, no wetland delineation will be prepared.

HDR Services

1. Provide assistance on an as needed basis. HDR will not perform these services unless authorized in writing by the Client.

Client Responsibilities

1. Responsible for all permitting acquisition and environmental services necessary to construct the project.
2. Notify HDR of any design modifications required to acquire the necessary permits to construct the project. Design modifications may be considered Additional Services.

3. Provide written authorization of scope, anticipated deliverables, and schedule for any permitting acquisition and/or environmental services requested to be performed by HDR

Assumptions

1. An allowance has been established for these services as requested. HDR will not perform these services unless authorized in writing by the Client.

Deliverables

1. Deliverables will be defined upon written authorization by the Client.

Task 500 – Final Design Services

Objective

Provide final design of the Diversion Structure 0 improvements including engineering drawings, opinion of probable cost, and specifications.

HDR Services

1. Perform a hydraulic system analysis to evaluate flow management scenarios. This analysis will include the following.
   a) Evaluate and recommend pipe materials and size to be included in the design and specifications.
   b) Evaluate the discharge of flows from Diversion Structure 0 into the recirculation channel and determine the impact on the recirculation wall and the pond hydraulics.
   c) Evaluate the hydraulics of the proposed design using excel spreadsheet calculations and coordinate with operations staff proposed standard operating procedures for base and wet weather flow conditions.
2. Develop project criteria and constraints to limit the impact of the pipeline and structure construction on the plant operations.
3. Prepare a Final Design Report summarizing final design features and criteria.
4. Develop 50% review, 90% review, and Final Construction Drawings, opinion of probable cost, and specifications which will include the following design elements.
   a) Provide engineering design for approximately 1,200 feet of 96-inch gravity sanitary sewer main as identified in the Diversion Structure 0 Predesign Report.
   b) Provide structural design for the Diversion Structure 0 Modifications, Junction Structure, Flow Control Structure and the Discharge Headwall at the Outlet Pond.
   c) Provide electrical design for motor actuated gates.
   d) Provide instrumentation and control design for system monitoring and control.
   e) Assess construction risk and develop contractor qualification requirements at 50% design phase. Validate construction risk assessment and adjust qualification requirements at 90% design phase.
   f) Evaluate the City and State requirements for establishing qualified and responsible contractors and determine if pre-qualification of bidders should be considered in accordance section 1-02.1 of the WSDOT Standard Specifications.

5. Coordination efforts with City staff or others
   a) Coordinate with treatment plant and City engineering staff to develop a final pipeline alignment to minimize impact on treatment plant operations.
   b) Attend 4 design review meetings with City engineering staff prior to the 50% review submittal.
6. Conduct constructability review workshop
   a) Identify site constraints and construction sequencing
   b) Develop traffic control and detour plan during construction.
   c) Identify construction limits to avoid impacting sensitive site features including the bridge piers, wetlands, existing structures, and public access to adjacent parks.

Client Responsibilities

1. Client will review and provide comments at the 50% submittal review meeting.
2. Client will review and provide comments at the 90% submittal review meeting.
3. Provide information on the plant SCADA system and the requested method of integrating the new system features into the existing system.

Assumptions

1. Develop specifications using City standard WSDOT/APWA based specification format. Technical specifications for items not adequately addressed by these specifications will be developed in Construction Specification Institute (CSI) format and attached by appendix to the contract specifications.
2. HDR to provide 50% plans, opinion of probable cost (AACEi Class 1), and specifications.
3. HDR to provide 50% design plans. The 50% design plans will include plan and profile drawings of the pipeline, pipeline design details, plan and sections of each of the structures and preliminary structural details.
4. HDR to provide 90% plans, opinion of probable cost (AACEi Class 1), and specifications.
5. HDR to provide construction plans and specifications to be issued for bid which will be signed and sealed by a professional engineer registered in the state of Washington.
6. Anticipated Design Drawings include:
   - Cover Sheet with Vicinity Map and Project Approvals
   - Drawing Index and Sheet Layout Map
   - Legend and Abbreviations
   - Survey Control Plan
   - Hydraulic Profile and Design Criteria
   - Temporary Erosion and Sedimentation Control Plan
   - 4 Plan and Profile Drawings, 1 inch = 20 feet horizontal scale
   - 2 Civil design detail sheets
   - 30 Structural design drawings including structural notes, standard details, plans and sections of structures, and structure specific details.
   - Electrical site plan
   - 3 Electrical design detail drawings

- Up to 4 additional design drawings.

7. Total anticipated design drawings: Up to 50.
8. Constructability review workshop will be 4 hours. A representative from WSDOT will participate in a constructability review meeting.

Deliverables

1. Final design report
2. 50% design review submittal in PDF format. City to print as needed.
3. 90% design review submittal in PDF format. City to print as needed.
4. 100% final design drawings and contract specifications. (15 half size plan sets, 2 full size plan sets, 2 sets of specifications, and PDFs)

Task 600 – Bidding Assistance

Objective

Assist the City when the project is issued for bid.

HDR Services

1. Assist City with early contractor outreach prior to bid opening and pre-qualification requirements.
2. Assist City with the preparation of the bid package.
3. Attend a pre-bid conference.
4. Respond to bidder questions as requested by Client
5. Prepare addendums to address issues identified during the bidding process. Reissue design drawings if necessary.
6. Evaluate bids for accuracy and contractors qualifications and provide a letter of recommendation of award of contract.
7. Incorporate addendum items into a conformed set construction drawings and specifications to be issued to the contractor for contract execution and for construction purposes.

Client Responsibilities

1. City will be the primary contact for the contractors during the bidding process.
2. City will conduct bid hosting and advertising.
3. City will submit bidder questions to HDR.
4. City will send out responses to contractors.

Assumptions

1. The bidding period will be four weeks.
2. Three addendums have been assumed for budgetary purposes.

Deliverables

1. Up to three (3) Addendums (PDF).
2. Bid Tabulation (PDF)
3. Letter of Recommendation of Award (PDF)
4. Conformed Construction Drawings and Specifications (5 half size sets, 2 full size sets, and PDF)
5. 4 sets of Contract Documents for contract execution with contractor.

Task 700 – Assistance During Construction

Objective

Provide assistance during construction.

HDR Services

1. Attend preconstruction meeting.
2. Review project submittals.
3. Provide necessary interpretations and clarifications of contract documents and respond to requests for information (RFIs).
4. Attend up to 20 construction meetings.
5. Visit the project during construction to observe the work for conformity with the design documents and design intent.

Client Responsibilities

1. Manage the construction project including inspections, reviewing pay applications, etc.

Assumptions

1. Construction is anticipated to last 9 months.
2. 25 submittals will be reviewed including resubmittals (6 hours each).
3. 20 RFIs will be addressed (4 hours per each).
4. 5 change orders will be addressed (8 hours each).
5. 20 field visits during construction coinciding with scheduled construction meetings (6 hours each including travel time).

Deliverables

1. Provide electronic responses by email to submittal reviews and RFIs.
2. Field notes of observations during site visits.

Task 800 – Additional Services

Objective

1. Provide additional as-yet-defined services as requested by the City.

HDR Services

1. It is difficult to accurately anticipate all the issues that may arise during the development of the project. This task establishes a contingency fund for unidentified and unanticipated work.
2. This task is specifically designed to allow payment to HDR under this contract for changes in the scope of work which the City determines to be necessary. The funds included in this task cannot be utilized without written approval from the City.

Client Responsibilities

1. When identified, authorize additional services in via email and/or in writing.

Assumptions

1. Approximately ten percent of the budget is established for additional services.

Deliverables

1. To be determined.

Schedule

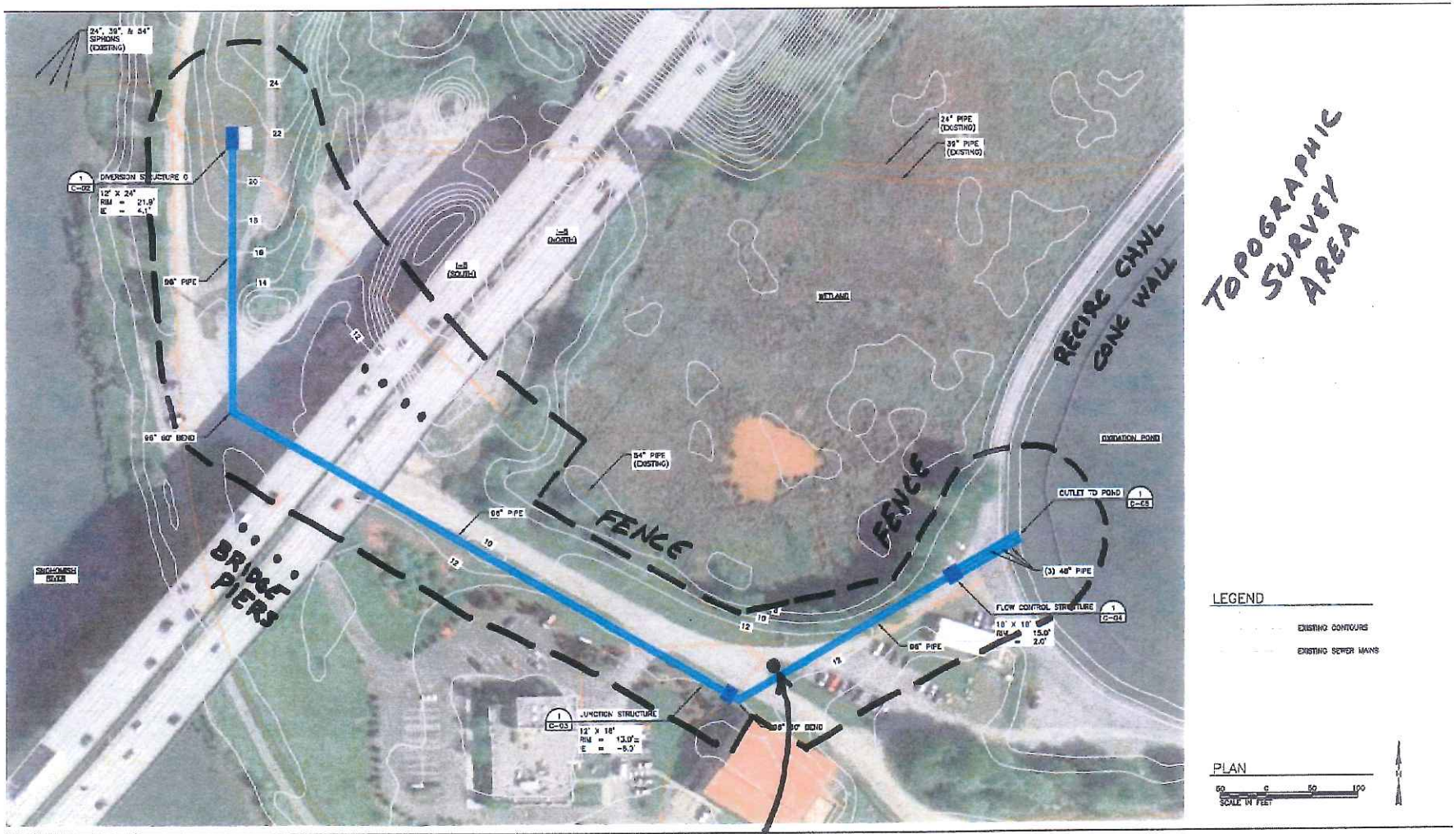
1. Project Notice to Proceed	February 1, 2016
2. Design Report	March 18, 2016
3. 50% Design Submittal	April 29, 2016
4. 50% Design Review Meeting	May 13, 2016
5. 90% Design Submittal	July 22, 2016
6. 90% Design Review Meeting	August 3, 2016
7. 100% Design Submittal	September 9, 2016

Fee

1. See the attached.

Attachment A

Survey Boundary



City of Everett Public Works Department
Everett Diversion Structure

Site Plan

DATE November 2015

FIGURE G-02

CITY OF EVERETT - EXHIBIT B1

DIVERSION STRUCTURE ZERO - FINAL DESIGN (PROJECT HOURS, EXPENSES AND FEE ESTIMATE)

Date: 11-Jan-16

	Labor Category	Direct Salary Hourly Rates, ($/LCC)	HOURS FOR EACH TASK (Whole Hours Only) Task 1 Project Mgmt	Task 2 Surveying	Task 3 Geotch	Task 4 Permit	Task 5 Final Design	Task 6 Bidding Assist	Task 7 Construct Assist	Task 8 Additional Services	Total Hours	Cost
1	Project Principal - Hadler, Edith	$ 101.21	8				0				8	$ 810
2	Project Manager - Bergstrom, Eric	$ 89.59	150	2	2	2	40	4	16		216	$ 19,351
3	Water/Wastewater Engineer - Habermeyer, E	$ 41.87		24	8	8	590	120	290		790	$ 29,725
4	Staff Engineer - Mende, Beth	$ 32.01					80				80	$ 2,561
5	Water/Wastewater Engineer - Applegate, D	$ 68.76		12	16		240	40	60		368	$ 25,304
6	Sr. Structural Eng - Hijazi, Mark	$ 71.65			24		360	12	16		412	$ 29,520
7	Structural Eng - Prindle, Doug	$ 43.06			8		590	34			632	$ 27,214
8	Sr. Permitting - Lindner, Bonnie	$ 61.81				16					16	$ 989
9	Enviro Scientist - Danielski, Lisa	$ 42.11				40					40	$ 1,685
10	Senior CAD - Carpenter, John	$ 41.58					360	50			410	$ 17,048
11	CAD - Jones, Hilton	$ 25.30					420				420	$ 10,626
12	Electrical Engineer - Kimmeyer, Lance	$ 51.22					80				80	$ 4,098
13	Elect Engineer - Salmond, Bob	$ 59.43					40				40	$ 2,377
14	Bridge Engineer - Lem, Joyce	$ 71.47					40				40	$ 2,859
15	I & C - Barry, Peter	$ 40.81					120				120	$ 4,897
16	Project Assistant - Elliott, Dominic	$ 25.88	40	8			240	60	60		408	$ 10,557
17	Project Controller - Springer, Amy	$ 35.01	60	4							64	$ 2,241
18	QC Electrical - Ken McGowan	$ 71.75					8				8	$ 574
19	QC Constructability - Hald, Tom	$ 115.39					64				64	$ 7,385
20	QC Enviro - Witter, Mike	$ 67.19				2					2	$ 134
21	QC - Spencer, Jerry	$ 75.96					32				32	$ 3,463
22	QC - McPherson	$ 80.62					32				32	$ 2,580
23	QC - Plattsmier, John	$ 112.85					20				20	$ 2,257
	Total Task Hours		258	50	58	68	3066	320	402	0	4,222	
	Subtotal Direct Salary Cost (DSC), $		17,424	2,364	3,676	3,822	147,966	14,133	18,786	0		$ 307,662
	Overhead on DSC (Indirect cost) @, %	185.00%	32,234	4,373	6,804	6,146	273,719	26,146	34,752	0		$ 384,174
	Total Labor Cost, $		49,658	6,737	10,482	9,468	421,675	40,279	53,537	0		$ 691,838
	Expenses, $		Task 1 Mgmt	Task 2 Surveying	Task 3 Geotch	Task 4 Permit	Task 5 Design	Task 6 Assist	Task 7 Assist	Task 8 Services		Expenses
1	E1 Miscellaneous											$ -
2	E2 Travel (Mileage)								1,000			$ 1,000
3	E3 Outside Travel (air, hotel, car, per diem)											$ -
4	E5 Internal Copying											$ -
5	Expense Admin (Outside $ only at 5%)			0								$ -
6	Expense											$ -
7	Additional Service Allowance									50,000		$ 50,000
8	Per Labor Hr. Tech. Charge	$ 3.70	955	185	215	252	11,344	1,164	1,487	0		$ 15,622
	Total Expenses, $		955	185	215	252	11,344	1,164	2,487	50,000		$ 66,622
	TOTAL LABOR AND EXPENSES		50,613	6,922	10,697	9,720	433,019	41,463	55,024	50,000		$ 758,459
	Subconsultant Expenses, $		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8		Sub Expenses
							90	0				
1	Perlesi			23,000								$23,000
2	HWA				46,900							$46,900
3	Subconsultant											$0
4	Subconsultant											$0
	TOTAL SUBCONSULTANTS		0	23,000	46,900	0	0	0	0	0		$69,900
	Subconsultant Admin Mark-up, %	5.00%	0	1,150	2,345	0	0	0	0	0		$3,495
	Subtotal Cost by Task		50,613	31,072	59,942	9,720	433,019	41,463	55,024	50,000		$ 781,859
	Fee/Profit (as % of Total DSC & Overhead)	10.00%	4,965	674	1,048	947	42,168	4,028	5,354	0		$ 59,185
	TOTAL ESTIMATED COST AND FEE, $		Task 1 Mgmt	Task 2 Surveying	Task 3 Geotch	Task 4 Permit	Task 5 Design	Task 6 Assist	Task 7 Assist	Task 8 Services		Total
			55,578	31,746	60,990	10,667	475,187	45,491	61,378	50,000		$ 821,038

Overall Project Multiplier	3.14
Fee/Profit as a % of DSC Only	28.50%

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

First Amendment to Lease agreement with Everett School District No.2 for space at 2911 California Ave for use by Everett Transit Facilities

_____	Briefing
_____	Proposed Action
_____	Consent
2/3/2016	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
	Budget Advisory

COUNCIL BILL #	
Originating Department	Facilities/Real Property
Contact Person	Mike Palacios
Phone Number	(425) 257-8938
FOR AGENDA OF	February 3, 2016

Initialed by:

Department Head _____

CAA _____

Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
2911 California Ave, between Pine and Maple Streets	Property Lease dated February 1, 2013	First Amendment to Lease	Transit, Facilities/Real Property

Amount Budgeted	$110,607.60/yr	
Expenditure Required	$110,607.60/yr	Account Number(s): 425-5081-010-010-450
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

In February, 2013, the City of Everett executed a three year lease agreement with the Everett School District No. 2 for approximately 58,812 square feet of paved parking area space, 2,800 square feet of office space and 5,250 square feet of warehouse space located at 2911 California Ave for the City's Everett Transit operations.

Attached is an amendment that would exercise Option 1 of the lease agreement extending the lease for three years commencing February 1, 2016 and terminating on January 31, 2019. The amendment also reduces the leased paved parking area to 50,915 square feet and the office space area to 525 square feet and adjusts the lease rate to $9,217.30 per month.

RECOMMENDATION:

Authorize the Mayor to sign the First Amendment to Lease agreement with Everett School District No.2 for space at 2911 California Ave use by Everett Transit Facilities.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

First Amendment to Lease agreement with Everett School District No.2 for space at 2911 California Ave for use by Everett Transit Facilities

	Briefing
	Proposed Action
	Consent
2/3/2016	Action
	First Reading
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RECOMMENDATION:

Authorize the Mayor to sign the First Amendment to Lease agreement with Everett School District No.2 for space at 2911 California Ave use by Everett Transit Facilities.

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "Amendment") is entered by and between Everett School District No. 2, a municipal corporation, (herein called "District") and the City of Everett, a municipal corporation, (herein called "City") for purposes of amending that certain Everett School District No. 2 Property Lease, dated February 1, 2013 (the "Lease"). Pursuant to the Lease, District leases to City, and City Leases from District, the Premises, which consist of approximately 50,915 s.f. of yard space and 525 s.f. of lavatory space, as outlined on the site plan attached as Exhibit B and on the floor plan attached as Exhibit C. Exhibit B and Exhibit C of the Lease are hereby deleted in their entirety and the attached Exhibit B and Exhibit C are substituted in their place. Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease.

In consideration of the agreements in this Amendment, District and City do hereby amend the Lease as follows:

1. LEASE TERM

The Lease term shall be extended pursuant to Section 4.2 of the Lease for a period of three (3) years commencing February 1, 2016 and shall terminate at midnight January 31, 2019 (the "First Extension Period").

2. MINIMUM RENT

Minimum Rent due and payable by City during the First Extension Period shall be as follows:

February 1, 2016 to January 31, 2017	$9,217.30 per month

City shall pay Minimum Rent to District without notice or demand on or before the 1st day of each and every successive calendar month of the First Extension Period.

3. SECURITY DEPOSIT

District is currently holding no security deposit from City.

4. POTENTIAL OPTION TO EXTEND

Section 4.2 of the Lease is hereby deleted in its entirety and the following is substituted in its place:

Subject to District's consent (which may be withheld following notice from City in District's sole discretion) and execution of a letter agreement confirming such consent and any conditions thereof pursuant to that certain "Interlocal Agreement Between Everett Public Schools and the City of Everett Regarding the Cooperative Use of Facilities, Equipment, and Personnel dated September 7, 1999," City shall have one (1) option to extend the Lease term for three (3) years (an "Extension Period") upon the same terms, conditions and covenants in this Lease so far

as applicable, including Additional Rent except for Minimum Rent (which shall be determined pursuant to subsection 5.2 in the Lease), provided that City notifies District in writing of such extension not less than one hundred eighty (180) days before the expiration date of original Term or the then-current Extension Period, as the case may be. This conditional option is personal to City and may not be exercised by any successor or assign of City.

6. NO OTHER AMENDMENTS

Except as expressly set forth in this Amendment, the Lease remains in full force and effect and has not been modified or amended. Except as expressly modified by this Amendment, and as of the date of this Amendment, the District and City know of no facts or circumstances that would constitute a default under the Lease.

Dated this _____day of _____2016.

DISTRICT:
Everett School District No. 2,
a municipal corporation

By: _____
Gary Cohn, Superintendent

CITY:
City of Everett,
a municipal corporation

By: _____
Ray Stephanson, Mayor

Date: _____

ATTEST:

_____
Sharon Fuller, City-Clerk

Date: _____

APPROVED AS TO FORM

_____
Jim Iles, City Attorney

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature:_____

Printed Name:_____
NOTARY PUBLIC in and for the State of _____
residing at _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

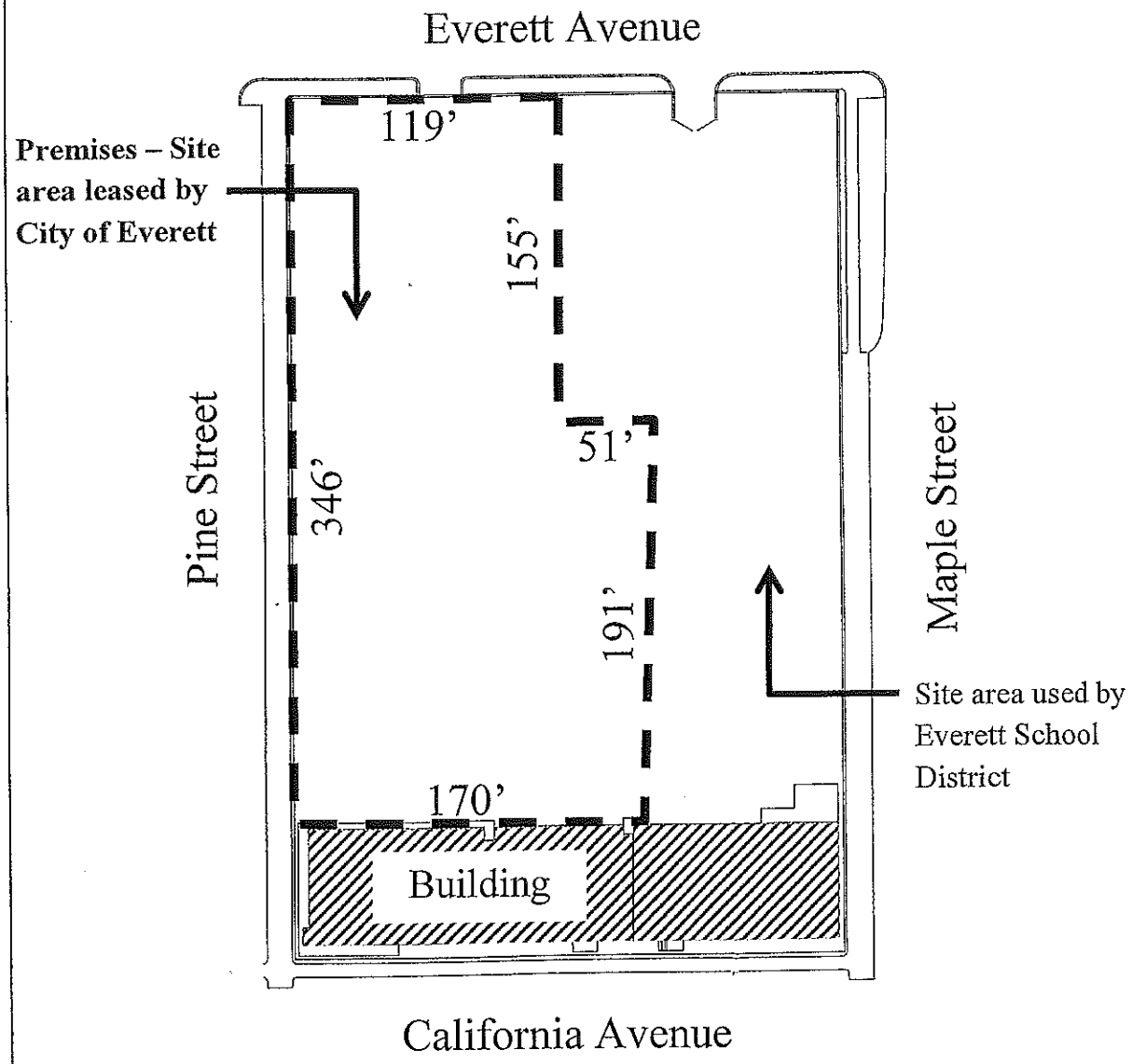
Dated: _____

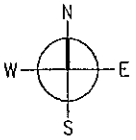
Signature:_____

Printed Name:_____
NOTARY PUBLIC in and for the State of _____
residing at _____

My appointment expires: _____

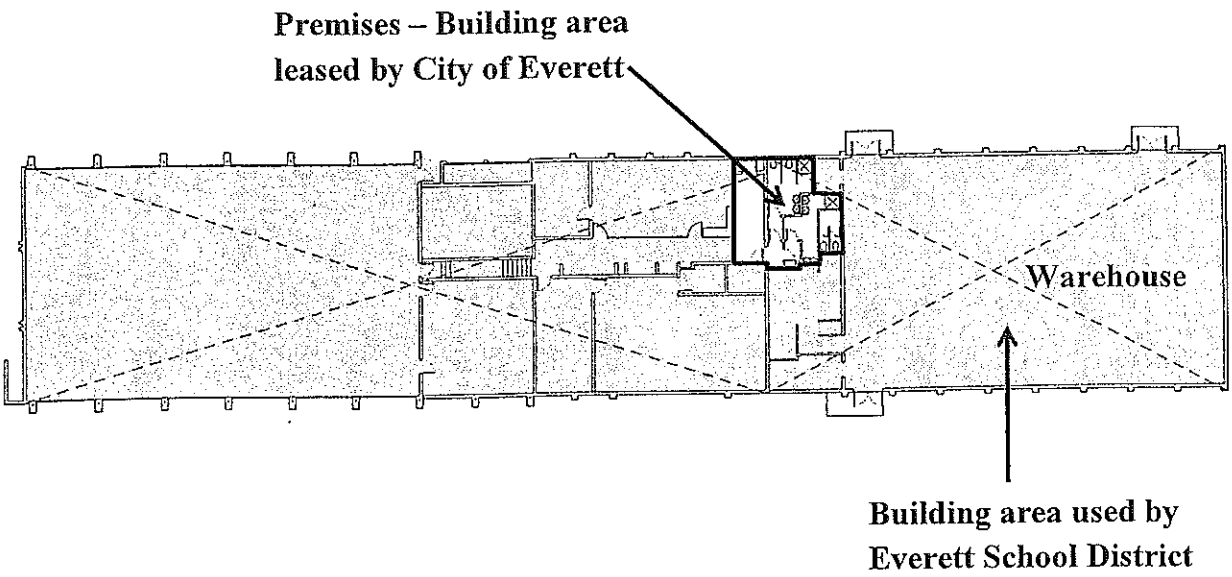
Exhibit B – Site Plan

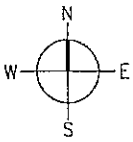




North Satellite Bus & Storage Facility
Everett School District No. 2
2911 California Avenue, Everett, WA

Exhibit C – Floor Plan





North Satellite Bus & Storage Facility
Everett School District No. 2
2911 California Avenue, Everett, WA

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Lease Agreement with Senator Patty Murray for lease of space in the Wall Street Building

____	Briefing	COUNCIL BILL #	
____	Proposed Action	Originating Department	Facilities/Real Property
____	Consent	Contact Person	Barb Hardman
X	Action	Phone Number	(425) 257-7294
____	First Reading	FOR AGENDA OF	February 3, 2016
____	Second Reading		
____	Third Reading	Initialed by:	
____	Public Hearing	Department Head	
	Budget Advisory	CAA	db
		Council President	

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
2930 Wetmore Ave Suite 9B	2/8/96 Initial Lease Agreement; 1/1/99 Renewal 11/6/13 Renewal	Lease Agreement	Facilities/Property Management

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

DETAILED SUMMARY STATEMENT:

Senator Patty Murray leases 220 square feet of office space on the ninth floor of the Wall Street Building. The current lease term expired on December 31, 2015, leaving Senator Murray as a "month to month" tenant during which time the Sargent at Arms revised the lease format for the Senator.

Senator Murray wishes to remain in the space. Other than the new format, the proposed lease terms are essentially the same as the original lease except that the attached lease is for a one year term beginning January 1, 2016, and expiring at midnight on January 2, 2017, and the proposed rent is $545.97 a month which reflects current market rate for the leased space.

RECOMMENDATION:

Authorize the Mayor to sign the Lease Agreement with Senator Patty Murray for lease of space in the Wall Street Building.

United States Senate

Home State Office Lease Agreement
Washington, DC 20510

1. **THIS LEASE AGREEMENT** ("Lease") is made by and between **CITY OF EVERETT** ("Landlord") and the **HONORABLE PATTY MURRAY**, ("Tenant") in his official capacity and in accordance with and subject to the statutory requirements set forth in 2 U.S.C. §6317, relating to Home State Office Space for United States Senators, it is hereby agreed as follows, and is dated as of the date on which this Lease has been fully executed by Landlord and Tenant.

2. **BASIC LEASE TERMS and DEFINITIONS:**

a.	**PREMISES:**	**220** usable square feet located in the Building as shown on the location plan attached as Exhibit A.
b.	**BUILDING:**	A professional office building also known as the Wall Street Building in the City of Everett.
c.	**BUILDING ADDRESS:**	2930 Wetmore Ave, Suite 903, Everett, WA 98201.
d.	**TERM:**	24 full calendar months (plus any partial month from the Commencement Date until the first day of the next full calendar month during the Term).
e.	**COMMENCEMENT DATE:**	Upon the later of January 1, 2016 and substantial completion of the Premises in accordance with the Work Letter (as hereinafter defined) or the date Tenant takes possession of the Premises, if earlier.
f.	**EXPIRATION DATE:**	January 2, 2017, which is the last day of the Senator's current term, except as otherwise provided for in this Lease.
g.	**RENT:**	Payable in level monthly installments as follows -- **MONTHS:** 24 **INSTALLMENTS:** $545.97 **ANNUAL RENT:** $6551.64 * Plus, for any partial month from the Commencement Date until the first day of the next full calendar month, a prorated monthly installment of Minimum Annual Rent for such period based on a thirty day (30) day basis and the amount of the monthly installment specified above.
h.	**NO SEPARATE CHARGES:**	No separate charges for any operating expense, cost of living increase, pro rata expense, escalation, taxes, permits, fees or any other adjustment(s) during the term of this lease.
i.	**USE OF PREMISES:**	General office use and related activities.
j.	**PARKING:**	*Tenant, Tenant's employees and guests may park in (1) one uncovered parking space at no additional charge in the Wall Street Building Parking Lot on a reserved basis.* The Landlord affirms that the current fair market value of this space is $45.00 per month. The Landlord agrees to notify the Tenant and the U.S. Senate Sergeant at Arms of any change in parking space assignment(s) and/or fair market value of the space(s).
k.	**EARLY TERMINATION:**	Lease may be terminated upon sixty (60) days written notice by Tenant or the U.S. Senate Sergeant at Arms upon resignation, expulsion, death of the Tenant. Lease may also be terminated by Tenant or the U.S. Sergeant at Arms upon sixty (60) days written notice should the Building or Premises be destroyed by fire, natural disaster or other event that renders the Premises (or the common areas providing access to the Premises) untenantable, unsafe or materially interferes with Tenant's use of the Premises for the intended purpose.

l. **HOLDOVER:** Month-to-month at the same per month rate during the term of Lease. Terminable by Landlord or Tenant with Sixty (60) days written notice.

m. **ADDITIONAL DEFINED TERMS:** See Rider 1 for definitions of capitalized terms

n. **ADDRESSES FOR NOTICE:**

LANDLORD

CITY OF EVERETT
2930 Wetmore Ave
Everett, WA 98201-4073
ATTN: Ms. Barb Hardman

FOR PAYMENT OF RENT:
CITY OF EVERETT
2930 Wetmore Ave
Everett, WA 98201-4073

TENANT

On or after commencement date:

Honorable Patty Murray
2930 Wetmore Ave, Suite 903
Everett, WA 98201

COPY TO:
Office of the Sergeant at Arms of the U.S. Senate
Room S-151
United States Capitol
Washington, DC 20510
stateofficeliaison@saa.senate.gov

SUBMISSION OF MONTHLY RENT INVOICES:
U.S. Senate Sergeant at Arms
Accounts Payable Department
Washington, DC 20510-7205

E-MAIL SUBMISSION OF MONTHLY RENT INVOICES:
stateofficeliaison@saa.senate.gov

o. **CONTENTS:** The following are attached to and made a part of this Lease:

Rider 1 – Additional Definitions

Exhibit A – Plan Showing Premises
Exhibit B – Intentionally Omitted
Exhibit C – Intentionally Omitted
Exhibit D – Cleaning Schedule
Exhibit E – Intentionally Omitted
Exhibit F - Intentionally Omitted
Exhibit G – Rent Payment Invoice

3. **PREMISES BEING LEASED:** Landlord is leasing to Tenant and Tenant is leasing from Landlord **220** usable square feet of office space located at **2930 Wetmore Ave, Everett, WA 98201-4073**. *Tenant, Tenant's employees and guests may park in (1) one parking space at no additional charge in the Wall Street Building Parking Lot on a reserved basis.* Before the commencement date, Landlord (at Landlord's expense) shall construct improvements, or "initial alterations," to the premises, at its sole expense, in "substantial conformity" with the specifications of the plan, as approved by the Tenant, to be prepared according to the "work letter" attached as **Exhibit E.** Tenant shall be allowed to access the premises twenty (20) days prior to the anticipated commencement date (pre-occupancy access) to permit the Tenant to perform any pre-occupancy work, including without limitation, the installation of telephone, transmission lines, computer cabling, furniture, fixtures (if any) or other communications equipment as required. Prior to the commencement date, the parties shall inspect the premises, have all building systems demonstrated and prepare a "punch list". The punch list shall list incomplete, minor or insubstantial details of construction, necessary mechanical adjustments and needed finishing touches. Landlord shall complete the punch list items within thirty (30) days after the commencement date, performing such work outside of "Business Hours" (as hereinafter defined). During the term of this lease, the Landlord shall correct any latent defects. Premises shall be considered in substantial completion or conformity only if the premises may be used for its intended purpose and the completion of any remaining work will not materially interfere with Tenant's enjoyment of the premises. Landlord warrants that, on the commencement date, the premises, the building and the property will comply with all applicable laws, including those relating to disability access and hazardous materials, that Building Systems serving the Premises are in good working order, and that the Building is properly zoned for the intended use of the Premises. A certificate of occupancy for the

Premises must be issued and delivered to the Tenant. **The total amount of amortized space improvements included in the rent is $0.00 per month**.

4. **TERM OF LEASE:** Tenant shall have and hold the leased premises for the period beginning (commencement date) **January 1, 2016** and ending (expiration date) **January 2, 2017**. This lease shall not exceed the term of office which the Tenant is serving on the commencement date of this Lease. Should the Tenant be re-elected to her Senate seat after the expiration of her term of office which she was serving upon the execution of this agreement, the Tenant may holdover in the leased premises until such time as a new agreement has been executed. Any month-to-month holdover may be terminated by either party by providing sixty (60) days advance written notice to the other party. This lease may be terminated by the Tenant or the U.S. Senate Sergeant at Arms in the event of the Tenant's resignation, expulsion, or death by providing sixty (60) days' advance written notice to the Landlord of intention to terminate. In the event of fire, flood, natural disaster, condemnation, contamination or any other occurrence resulting in the loss of the building or otherwise rendering the premises untenantable or unfit for the intended use, the Tenant may terminate this lease by providing sixty (60) days advance written notice to the Landlord.

5. **RENT:** The monthly rent for the entire term, including any holdover period, shall be paid in arrears, in monthly installments of **$545.97,** based on **220** usable square feet for an annual rent **$6551.64**. The annual rent shall include all applicable Federal, State and local taxes and duties and all occupancy and user permits and fees. Rent shall be due on or about the last day of each month and Landlord shall submit an original invoice in a form approved by the U.S. Senate Sergeant at Arms **(Exhibit G)**. Invoices shall be sent electronically via e-mail to stateofficeliaison@saa.senate.gov with subject line containing Tenant's name as identified in Section 1 and the city, state and zip code of the premises. If the invoice cannot be sent electronically, the original invoice may be mailed to the following address: U.S. Sergeant at Arms, Accounts Payable Department, Washington DC 20510-7205. Upon direction from the Tenant and the U.S. Sergeant at Arms, the Secretary of the Senate will pay the Landlord the sum due on a properly submitted invoice. Any payment made to the Landlord by the Secretary of the Senate for any period after this lease has expired or has otherwise been terminated shall be refunded by the Landlord without formal demand. Payments for any fractions of a month shall be prorated on a thirty (30 day basis). Any month-to-month holdover tenancy, if applicable, shall be at the same base rent as in effect at the expirations of this Agreement. Landlord agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Secretary of the Senate with the necessary banking information to facilitate such payments. Notwithstanding any other provision in this lease or any amendment, modification or addition hereto, 2 U.S.C. §6317 limits the maximum annual rate that may be paid to the Landlord for rental of the leased premises and any included fees associated with physical modifications, capital improvements, operating costs, or any other fee, rent adjustment or otherwise, shall at no time exceed the highest rate per square foot charged Federal agencies on the first day of the lease of such office by the Administrator of General Services, based upon a 100 percent building quality rating, for office space located in the place in which the Senator's office is located multiplied by the number of square feet contained in that office used by the Senator and his employees to perform their duties.

6. **TENANT RELOCATION:** Landlord agrees not to relocate Tenant for the Term of this Lease, including any extension or holdover periods, except by agreement of the Tenant to the proposed move requested by the Landlord. In the event the Tenant chooses to accept Landlord's offer to relocate to a different Premises, Landlord shall not increase the monthly rent if the offered Premises is larger or greater in value in terms of square feet, amenities, or location. Landlord shall also reimburse the Tenant for reasonable costs involved with affecting the change in Premises, including but not limited to, initial alterations (if necessary), installation of required security enhancements, moving of furniture and office equipment, new signage and an allowance for making notification to constituents, updating of web-sites/social media and the acquisition of new stationary.

7. **QUIET ENJOYMENT:** Landlord covenants that Tenant, upon performing all of its covenants, agreements and conditions of this Lease, shall have quiet and peaceful possession of the Premises as against anyone claiming by or through Landlord, subject, however, to the terms of this Lease.

8. **SECURITY DEPOSIT:** No security deposit shall be required of the Tenant for this lease or for any parking passes or other identification device. Landlord shall provide sufficient number of keys, key fobs, and/or other electronic security system passes required for entry into the premises and/or building as requested by Tenant, and as mutually agreed to by Tenant and Landlord, at no additional cost to Tenant. The Landlord shall also provide Tenant at Landlord's sole expense any replacement keys, replacement key fobs, or replacement of other electronic security system passes provided by the Landlord and/or property management company as requested by Tenant.

9. **UTILITIES AND SERVICES:** Landlord shall provide the following utilities and services for the normal use and occupancy of the premises for general office purposes at no additional cost to the Tenant: Heating, ventilation and air conditioning (HVAC); Electricity (including providing replacement/installation of lighting tubes, lamp ballasts, starters, bulbs and LED bulbs as appropriate for the premises); Water; Janitorial Services (to include all cleaning and lavatory/washroom supplies on a **daily** basis; Elevator(s); Extermination and Pest Control; Carpet Cleaning; Window Washing; Availability of Telephone, Broadband Internet services; and other as such may be arranged for and agreed upon by Landlord and Tenant.

10. **CABLE TELEVISION:** The Landlord shall provide and continue to pay for the installation of cable television and provide monthly cable service in **one (1)** location within the leased premises, including CNN, C-SPAN I, C-SPAN II, and all local channels, but excluding internet service.

11. **MAINTENANCE AND REPAIRS:** The Landlord shall maintain the Property including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Landlord under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Tenant's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. Landlord shall keep the building and leased premises in compliance with all applicable state and local building, safety and fire codes. For the purpose of so maintaining the premises, the Landlord may at reasonable times enter the premises with the approval of the authorized Government representative in charge. Upon request of the Tenant, the Landlord shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Landlord shall maintain the Premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease Commencement Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Landlord's compliance with this clause. Landlord agrees to provide for snow removal to sidewalks, and maintain access to the parking with a snow melting product and salt at a minimum. Landlord shall not be liable for any damage, either to persons or property, sustained by Tenant or and of his/her employees or guests, caused by Landlord's failure of with respect to maintenance and repairs beyond Landlord's reasonable control as described above.

12. **BUSINESS HOURS:** Normal business hours for Tenant shall be Monday through Friday, 6:00 o'clock AM to 6:00 o'clock PM, unless otherwise agreed to by Landlord and Tenant.

13. **24 x 7 ACCESS TO PREMISES:** Tenant requires access to the premises twenty-four (24) hours a day, seven (7) days a week. There shall be no additional charge to Tenant for non-business hour's usage of Premises.

14. **LANDLORD'S RIGHT TO ENTER PREMISES:** Landlord and its agents, servants and employees may enter the Premises at reasonable times, and at any time in an emergency, without charge, liability or abatement of any rent, to: make repairs, alterations, improvements and additions either required by this Lease or advisable to preserve the integrity, safety and good order of part or all of the Premise or building, provide trash removal and janitorial services required by this Lease, comply with applicable laws under Section 17, show the Premises to prospective lenders or purchasers and, during 120 days immediately before the Lease ends, to prospective tenants, accompanied by a Tenant representative, if so requested by the Tenant, and remove any alterations made by the Tenant in violation of Section 20. Notwithstanding the above, entry is conditioned upon Landlord's: Giving the Tenant at least 24 hours advance notice, except in emergency, promptly finishing any work for which Landlord entered and causing the least practicable interference to the Tenant's operations.

15. **EARLY TERMINATION:** Lease may be terminated upon sixty (60) days written notice by Tenant or the U.S. Sergeant at Arms upon resignation, expulsion, or death of the Tenant; or may be terminated by Tenant upon sixty (60) days written notice should the Building or Premises be destroyed by fire, natural disaster, condemnation or other event that renders the Premises (or the common areas providing access to the Premises) untenantable, unsafe or unusable for the intended purpose.

16. **INSURANCE AND INDEMNIFICATION:** The Landlord and Tenant acknowledge that the United States Senate, as a self-insured entity of the United States Government, is subject to the Federal Tort Claims Act, 28 U.S.C. §§

2671-80, under which recovery may be sought through the United States Senate Sergeant at Arms for any injury or loss arising under this lease due to the negligent or wrongful act or omission of Tenant or any of Tenant's employees acting within an official scope and capacity. Tenant shall not be required to provide any certificates of insurance to Landlord. Landlord further agrees that neither the Tenant nor the United States Senate, nor any of the United States Senate's officers or employees will indemnify or hold harmless the Landlord against any liability of the Landlord to any third party claim that may arise during or as a result of the Lease or Tenant's occupancy. Landlord hereby indemnifies and agrees to defend and hold harmless the Tenant and all of its officers, agents and servants harmless from claims for personal injury, death or property damage, caused by the negligence or willful misconduct of the Landlord, its agents, employees or invitees; and from all claims, demands, fines, penalties, charges and orders, judgments and enforcement actions of any kind, and all costs and expenses incurred in connection with claims arising out of Hazardous Substances, the presence on the Property of any Hazardous Substances or any spilling, leaking, pumping or other release into the environment (collectively a "discharge") of any Hazardous Substance from the Property in violation of any Environmental Laws, or any activity by Landlord or any predecessors in title to the Property regarding the handling, storage or disposition of Hazardous Substances at any time present on or under the Property.

17. **COMPLIANCE:** During the term, Landlord shall comply with all applicable laws regarding the building and the property, including without limitation Environmental Laws and with the Americans with Disabilities Act of 1990 and regulations issued pursuant thereto ("ADA"), and Landlord shall comply with and perform both the Landlord's obligations, if any, as a public accommodation pursuant to Title III of the ADA and the Tenant's obligations as a public entity pursuant to Title II of the ADA for the premises and all common areas that service the premises. Landlord certifies that the Property (including the premises) are or will be free of asbestos or non-contained asbestos on the commencement date and remain so throughout the term of the lease. If an asbestos inspection has been conducted, Landlord shall furnish a copy to the Tenant ten (10) days prior to the commencement date. Landlord shall certify that the building or premises have not been used for the storage or disposal of any toxic or hazardous substances and the Landlord has received no notice from any governmental authority concerning removal of any toxic or hazardous substances from the Property. Tenant will comply, and will cause its employees and agents to comply, with the Building Rules to the extent that the Building Rules do not interfere, conflict or unreasonably restrict the intended use of the Premises or pose a risk to personal safety.

18. **SIGNS:** The Landlord shall provide and pay for suitable building and suite signage which designates the Senator's office in accordance with Tenant's specifications. Landlord, at Tenant's request, shall include the Tenant's name in all building directories throughout the building at no cost to the Tenant. Changes to such directory shall be at no additional cost to the Tenant. Tenant shall maintain all signs installed by Tenant in good condition and in compliance with all applicable Laws and the Building Rules. Landlord agrees to permit the conspicuous posting of sign(s) in the Building and/or Leased Premises required by statute or regulation for Federal facilities, including but not limited to, notice of the provisions of 18 U.S.C. §930 (h) concerning the possession of firearms or other dangerous weapons in Federal facilities.

19. **SECURITY:**
The Landlord shall provide and pay for security in accordance with building standards, including adequate lighting in parking areas. Landlord hereby provides authorization for Tenant to continue to provide and/or install security enhancements to the leased premises at Tenant's sole cost and expense. Tenant shall not be required to return the leased premises to their original condition upon the termination of this lease.

20. **CAPITAL IMPROVEMENTS:** Capital improvements to the leased premises shall be made only upon written application to and/or written approval of the Landlord, which shall not be unreasonably withheld. Any improvement, physical modification or other alteration so requested by the Tenant or required by state or local code/law after initial occupancy shall be at Landlord's expense. All improvements shall be made in good workmanlike manner, and in accordance with all state and local building codes and in accordance with the American with Disabilities Act of 1990.

21. **TENANT COOPERATION WITH "GREEN INITIATIVES":** Tenant agrees to cooperate with Landlord to provide information reasonably required or requested by Landlord to be provided to a regulatory or other recognized entity for the purpose of obtaining accreditation of the Building or the Property for any so-called "green initiatives" such as LEED certification, which cooperation shall include providing electric consumption data or other relevant and non-sensitive data (as determined by the Tenant and Sergeant at Arms Liaison Office) in proper format for reporting to the U.S.

Green Building Council (or similar or successor authority selected by Landlord). Tenant's cooperation is conditioned upon said certification(s) not resulting in changes to the Lease or the Cleaning Schedule at **Exhibit D**.

22. **ASSIGNMENT:** Landlord shall not have the right to assign (by operation of law or otherwise) any of its rights, interests and obligations under the Lease, in whole or in part, without providing thirty (30) days prior written notice to the Tenant, and agrees that any such assignment without such notice shall be void for purposes of this Lease. Landlord shall file copies of any such notice with the Tenant and the U.S. Senate Sergeant at Arms at the notification addresses provided in Section 2 of the Lease. Tenant agrees not to assign or sublet the Premises during the course of the Lease.

23. **SALE OR TRANSFER OF LEASED PREMISES:** Landlord shall provide thirty (30) days' prior written notice to Tenant and the U.S. Senate Sergeant at Arms in the event of any sale to a third party of any part of the leased Premises, or Landlord transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Notice shall be sent to the Tenant and U.S. Senate Sergeant at Arms at the addresses in Section 2(n) of the Lease.

24. **BANKRUPTCY AND FORECLOSURE:** In the event that Landlord is placed in bankruptcy proceedings (whether voluntarily or involuntary), the leased Premises is foreclosed upon, or any similar occurrence, the Landlord agrees to promptly notify Tenant and the U.S. Senate Sergeant at Arms in writing at the addresses provided in Section 2 of this Lease.

25. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT**: Landlord warrants that it holds such title to or other interest in the premises and other property as is necessary to the Tenant's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Tenant agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Tenant agrees, however, within twenty (20) business days next following the Tenant and the U.S. Senate Sergeant at Arms receipt of a written demand, to execute such instruments as Landlord may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Landlord if such easement does not interfere with the full enjoyment of any right granted the Tenant under this lease.

    No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Tenant under this lease so long as the Tenant is not in default under this lease. Landlord will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Landlord warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the U.S. Senate Sergeant at Arms promptly upon demand.

    In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Tenant will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Landlord under this lease, so as to establish direct privity of estate and contract between Tenant and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Tenant; provided, further, that the Tenant and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

    None of the foregoing provisions may be deemed or construed to imply a waiver of the Tenant's rights as a United States Government entity.

26. **ESTOPPEL CERTIFICATE(S):** Tenant will cooperate on Landlord's request for an estoppel certificate relating to the leased premises (using a form to be provided in advance by the Landlord, which will not be unreasonably withheld.

Landlord should request an estoppel certificate thirty (30) days prior to the date needed and send a properly completed request form to the Tenant with a copy to the U.S. Senate Sergeant at Arms at the addresses provided for notice in Section 2 of the Lease. The Landlord shall provide a copy of the signed estoppel certificate to the Sergeant at Arms' State Office Liaison promptly upon receipt of the certificate from the Tenant.

27. **TENANT'S PERFORMANCE:** The Tenant enters into this lease on behalf of the United States Senate. However, neither the Senate nor its Officers assume any liability for the performance of the agreement.Payments approved by the Sergeant at Arms and disbursed by the Secretary of the Senate of amounts due the Landlord by the Tenant under the terms of this lease are made solely on behalf of the Senator (Tenant) in the Senator's official and representational capacity. The Landlord agrees to look solely to the Tenant for default of payment or otherwise, and such Senator, in his official capacity, assumes all liability for performance of this lease agreement. Landlord shall provide Tenant and the Senate Sergeant at Arms written notification of any default made by Tenant under the terms of this agreement. Prior to the Landlord taking any action against Tenant for default, Tenant shall have sixty (60) days to cure any default after receipt of written notification from Landlord; however, if such default cannot be cured within such period, Tenant shall have such reasonable period of time as needed to cure such default. Tenant shall not be subject to surcharges, charges, attorney's fees, interest, penalties or similar fees arising from Tenant's default or otherwise.

28. **CONFLICT OF INTEREST:** The Landlord certifies and warrants that the Landlord has no conflict of interest, direct or indirect, financial or otherwise, which would be applicable to the performance of the obligations covered by this agreement. If an allegation of a conflict of interest is brought to the attention of the United States Senate, the Landlord agrees to fully cooperate with any investigation of the allegation(s), and will disclose to the United States Senate any other contract(s) to which the Landlord is a party, public or private, or which the Landlord undertakes during the period of this contract (including contracts entered into during the period of this contract which include duties to be fulfilled after the termination of this contract). Landlord further certifies and warrants that this Lease is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Landlord and Tenant certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).

29. **INCORPORATION:** This lease constitutes the entire agreement between the parties and each party hereto agrees and acknowledges that there are no other agreements, understandings or obligations except as those set forth herein.

30. **MODIFICATIONS:** Any changes, additions, modifications or amendments to the lease agreement which are inconsistent with the paragraphs set forth herein shall have no force and effect to the extent of such inconsistency unless modified by mutual written agreement by the parties and approved by the U.S. Senate Sergeant at Arms. Copies of any proposed modifications shall promptly be provided to the U. S. Senate Sergeant at Arms at the notice address in Section 2 of this Lease. Any changes, additions, modifications or amendments to the Lease inconsistent with or contrary to Law or Public Policy, including but not limited to, 2 U.S.C. §6317 (Home State office space for Senators; lease of office space), 28 U.S.C. §§ 2671-80 (Federal Tort Claims Act) and 31 U.S.C. §§ 1341, 1517(a) (Antideficiency Act), shall be null and void.

31. **TERMS SEPARATE AND INDEPENDENT:** Each covenant, agreement, obligation, term, condition or other provision contained in this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided. All of the terms and conditions set forth in this Lease shall apply throughout the Term unless otherwise expressly set forth herein.

32. **TIME IS OF THE ESSENCE**: Time is of the essence with respect to each and every provision of this lease including delivery of the leased premises.

33. **ENFORCEABILITY:** If any provisions of this Lease shall be declared unenforceable in any respect, such unenforceability shall not affect any other provision of this Lease, and each such provision shall be deemed to be modified, if possible, in such a manner as to render it enforceable and to preserve to the extent possible the intent of

the parties as set forth herein. This Lease shall be construed and enforced in accordance with the laws of the state in which the Property is located.

34. **COUNTERPARTS:** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

35. **SECTION HEADINGS:** The captions and section headings in this Lease are for convenience only and do not in any way define, limit, describe or amplify the terms of this Lease.

Landlord and Tenant have executed this Lease on the respective date(s) set forth below.

LANDLORD:	**TENANT:**
Ray Stephanson Mayor	Honorable Patty Murray United States Senator
Date	Date

Rider 1 **ADDITIONAL DEFINITIONS**

"ADA" means the Americans With Disabilities Act of 1990 (42 U.S.C. § 1201 et seq.), as amended and supplemented from time to time.

"Affiliate" means (i) any entity controlling, controlled by, or under common control of, Tenant, (ii) any successor to Tenant by merger, consolidation or reorganization, and (iii) any purchaser of all or substantially all of the assets of Tenant as a going concern.

"Agents" of a party means such party's employees, agents, representatives, contractors, licensees or invitees.

"Alteration" means any addition, alteration or improvement to the Premises or Property, as the case may be, including, without limitation, the Tenant Work.

"Building Rules" means the rules and regulations attached to this Lease as Exhibit B as they may be amended by Landlord from time to time with notice of the amendments provided to the Tenant and the U.S. Senate Sergeant at Arms.

"Building Systems" means any electrical, mechanical, structural, plumbing, heating, ventilating, air conditioning, sprinkler, life safety, security or other systems serving the Building.

"Common Areas" means all areas and facilities as provided by Landlord from time to time for the use or enjoyment of all tenants in the Building or Property, including, if applicable, lobbies, hallways, restrooms, elevators, driveways, sidewalks, parking, loading and landscaped areas.

"Environmental Laws" means all present or future federal, state or local laws, ordinances, rules or regulations (including the rules and regulations of the federal Environmental Protection Agency and comparable state agency) relating to the protection of human health or the environment.

"Hazardous Materials" means pollutants, contaminants, toxic or hazardous wastes or other materials the removal of which is required or the use of which is regulated, restricted, or prohibited by any Environmental Law.

"Land" means the lot or plot of land on which the Building is situated or the portion thereof allocated by Landlord to the Building.

"Latent Defect" means a defect in the property/premises found after the Tenant takes possession, discovered through the normal use of the premises and not typically found through normal inspection/investigation techniques. The defect can be in either the materials and/or workmanship used in the property/premises.

"Laws" means all laws, ordinances, rules, orders, regulations, guidelines and other requirements of federal, state or local governmental authorities or of any private association or contained in any restrictive covenants or other declarations or agreements, now or subsequently pertaining to the Property or the use and occupation of the Property.

"Lease Year" means the period from the Commencement Date through the succeeding 12 full calendar months (including for the first Lease Year any partial month from the Commencement Date until the first day of the first full calendar month) and each successive 12-month period thereafter during the Term.

"Maintain" means to provide such maintenance, repair and, to the extent necessary and appropriate, replacement, as may be needed to keep the subject property in good condition and repair and, at Landlord's election, in compliance with any current or future accreditation of the Building for any so-called "green initiatives".

"Monthly Rent" means the monthly installment of Minimum Annual Rent payable by Tenant under this Lease.

"Mortgage" means any mortgage, deed of trust or other lien or encumbrance on Landlord's interest in the Property or any portion thereof, including without limitation any ground or master lease if Landlord's interest is or becomes a leasehold estate.

"Mortgagee" means the holder of any Mortgage, including any ground or master lessor if Landlord's interest is or becomes a leasehold estate.

"Normal Business Hours" means 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday legal holidays excepted.

"Property" means the Land, the Building, the Common Areas, and all appurtenances to them.

"Rent" means the Minimum Annual Rent and any other amounts payable by Tenant to Landlord under this Lease.

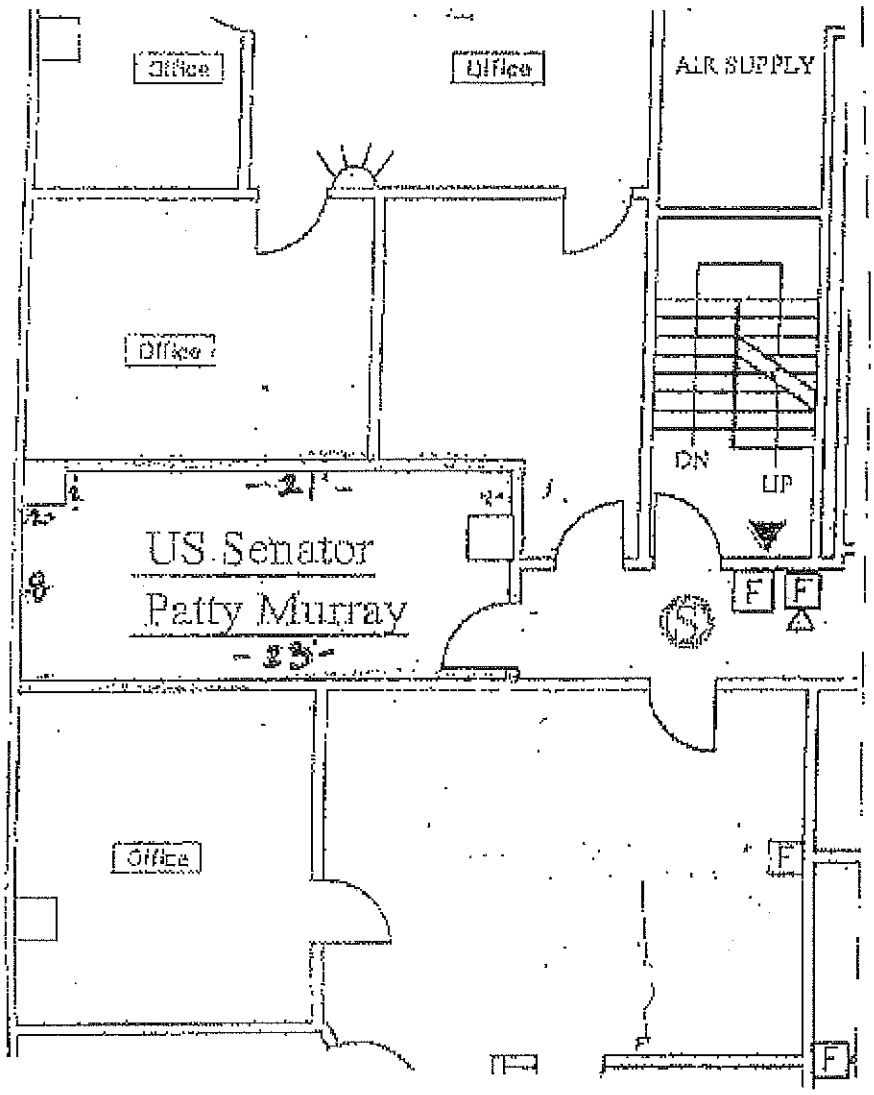
"Taken" or "Taking" means acquisition by a public authority having the power of eminent domain by condemnation or conveyance in lieu of condemnation.

"Transfer" means (i) any assignment, transfer, pledge or other encumbrance of all or a portion of Tenant's interest in this Lease, (ii) any sublease, license or concession of all or a portion of Tenant's interest in the Premises, or (iii) any transfer of a direct or indirect controlling interest in Tenant.

"Substantial Completion or Conformity" means the premises may be used for its intended purpose and the completion of any remaining work will not unreasonably interfere with Tenant's enjoyment of the premises. On the Commencement Date, the Property, Building and Premises must be in compliance with all applicable laws, regulations and local ordinances; be properly zoned according to the intended use, and Landlord must have a valid Certificate of Occupancy for the Building or Premises as required by local authorities.

EXHIBIT A (TO BE PROVIDED)

PLAN SHOWING PREMISES



Wall Street Building

EXHIBIT "D"

Tennant space* 46,570 Sq. Ft.	Mon	Tues	Wed	Thurs	Fri	2x monthly	Monthly	Quarterly	Annually
Vacuum & spot clean carpet	x	x	x	x	x				
Dust mop all hard surfaces	x	x	x	x	x				
Damp mop all hard surfaces		x		x					
Empty trash	x	x	x	x	x				
Clean partition glass	x	x	x	x	x				
Empty recycling	x		x		x				
Clean & polish off. Furniture							x		
Clean & sanitize telephones							x		
Dusting edge vacuum							x		
Clean door trim								x	
Bathrooms *									
Clean & disinfect									
Toilets sinks,& urinals	x	x	x	x	x				
Clean & polish fixtures& disp.	x	x	x	x	x				
Mop floors with germicide/disinfectant	x	x	x	x	x				
Restock paper products	x	x	x	x	x				
Restock soap	as	needed							
Spot clean walls& partitions	x	x	x	x	x				
Polish mirrors	x								
Seal floors								x	
Strip& seal floors									x
Personal products									
Kitchens(3)&breakrooms(1)									
Clean sink	x	x	x	x	x				
Empty trash	x	x	x	x	x				
Mop or vacuum floor	x	x	x	x	x				
Restock paper products	x	x	x	x	x				
Restock soap	as	needed							
Wax floor								x	
Strip& wax floors									x
Elevators/ Elevator lobbies 4200Sq.Ft.									
Vacuum	x	x	x	x	x				
Spot clean doors&walls	x	x	x	x	x				
Polish stainless steel						x			
Stairwells									
Sweep stairs						x			
Spot mop stairs						x			
Damp mop stairs								x	
Entry 1525 Sq. Ft.									
Clean glass	x	x	x	x	x				
Vacuum carpet	x	x	x	x	x				
Shampoo carpet/ elevator								x	
Spot mop tile		x	x	x	x				
Damp mop tile	x								
Police stairs&sidewalk (trash)	x	x	x	x	x				

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
2016 Cultural Arts Commission Capital & Programming Grant Awards

____	Briefing	COUNCIL BILL #	
____	Proposed Action	Originating Department	Cultural Arts
____	Consent	Contact Person	Carol Thomas
x	Action	Phone Number	425-257-7101
____	First Reading	FOR AGENDA OF	January 27, 2016
____	Second Reading		
____	Third Reading	Initialed by:	
____	Public Hearing	Department Head	
____	Budget Advisory	CAA	
		Council President	

Location **Preceding Action** **Attachments** **Department(s) Approval**

Amount Budgeted	$40,000	
Expenditure Required	$40,000	Account Number(s):112 5102202410
Budget Remaining	0	
Additional Required	0	

DETAILED SUMMARY STATEMENT:

Programming Grants: For thirty-two years the City of Everett, through the Cultural Arts Commission, has supported performing, visual and literary organizations by awarding annual programming grants. Through a competitive grant application and screening process, Cultural Arts Commissioners make awards based upon criteria such as non-profit status, Everett-based priority and ability to provide matching funds.

These awards enable artists and organizations to develop, produce and exhibit quality artwork and programs. They also increase exposure of the arts to the general public and strengthen partnerships with the artistic community. It is recommended that the arts organizations identified on the attachment receive grant funding and/ or the use of the Everett Performing Arts Center, waiving the rental fee, to support their programming projects. Programming Grant Awards total $34,000.

Capital Grants: The Everett Cultural Arts Commission's Capital Grants Program enhances the cultural life of Everett's citizens by funding the purchase, design, construction, and remodeling of buildings used for performing arts, visual arts, and cultural activities; and the purchase of production equipment intended to be used by the recipient cultural organization for at least ten years.

Through a competitive grant application and screening process, Cultural Arts Commissioners award grant support. It is recommended that the art organizations identified on the attachment receive funding to support capital projects. These Capital Grant Awards total $6,000.

RECOMMENDATION (Exact action requested of Council):

Approve the 2016 Cultural Arts Commission Capital & Programming Grant Awards as designated, in an amount not to exceed $40,000.

Organization	Description	EPAC Waiver	Grant Recommendation
PROGRAMMING GRANTS			
Everett Film Festival	Everett Film Festival	2 days	
Everett Norwegian Male Chorus	Sangerfest 2016	1 day	
Schack Art Center	2016 Regional Scholastic Art Awards		$1,000
Everett Philharmonic Orchestra	2016 Listener's Choice Concert		$1,500
Schack Art Center	2016 Juried Art Show		$3,000
Imagine Children's Museum	Guest Performer Series		$4,000
Everett Community College Foundation	2016 Japanese Anime Festival		$2,000
Village Theatre KIDSTAGE	KIDSTAGE Performances		$5,000
All Aboard of America 1	Opportunities for adults with special needs to participate in education/enrichment activities and "Give Back to Everett" community event		$2,000
Village Theatre Pied Piper	Sensory-Friendly Pied Piper Performances		$2,500
Flying House Productions	2016 Seattle Men's Chorus Holiday Concert		$1,000
The Dance School	Annual Year-End community performance	2 days	
The Dance Company (part of The Dance School)	Site-Specific Dance Works		$1,500
Sixth Day Dance Company	Pilot program teaching social dances to individuals with intellectual/developmental disabilities		
Pacifica Chamber Orchestra	Chamber Music Concerts		$2,000
Village Theatre	KIDSTAGE Summer Shows		$2,500
GROW Washington	GROW Washington Markerspace		
Evergreen Community Orchestra	2-3 free community concerts		$1,000
Poetry Northwest	Magazine publication and free literary reading events		$2,000
Trinity Lutheran College	From Gray to Green		
Historic Everett	Everett Massacre Graphic Novel (comic)		$3,000
Everett Chorale	2nd subscription concert - finale of 50th Anniversary season	9 days	
CAPITAL GRANTS			
Schack Art Center	Metalsmithing/Lapidary Studio equipment		$6,000.00
		14 days	$40,000