Everett City Council Agenda
12:30 P.M. February 24, 2016
City Council Chambers

Roll Call

PROPOSED ACTION ITEMS:

Pledge of Allegiance

Approval of Minutes: February 17, 2016

Mayor's Comments - Swearing in Everett Police Officers Jared Snyder, Jeremy Vander Lei and Keith Christensen

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

(1) CB 1602-08 –2nd Reading – Adopt the Proposed Ordinance adding "Community Center" as a new Special Property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19) (3rd and final reading and public hearing on 3-2-16)

Documents: CB 1602-08.pdf

(2) CB 1602-09 – 2nd Reading – Adopt the Proposed Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a Special Property Use permit, amending Ordinance No. 1671-89, as amended. (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16) (3rd and final reading and public hearing on 3-2-16)

Documents: CB 1602-09.pdf

(3) CB 1602-10 – 2nd Reading – Adopt the Proposed Ordinance creating a Special Improvement Project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement. (3rd and final reading on 3-2-16)

Documents: CB 1602-10.pdf

CONSENT ITEMS:

(4) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $2,225,969.63 for the period of February 6, 2016 through February 12, 2016.

Documents: res-75.pdf

(5) Adopt Resolution No. ____ authorizing payroll claims against the City of Everett in the amount of $3,570,067.58 for the period ending February 6, 2016.

Documents: payroll-53.pdf

(6) Approve Bid Call 2015-019 for an Asphalt Patch Unit.

Documents: Asphalt.pdf

(7) Approve Bid Call for the 2016 Hot Mix Overlay Project.

Documents: overlay.pdf

ACTION ITEMS:

(8) Adopt Resolution declaring vehicles and equipment surplus and authorizing their disposition.

Documents: Vehicles.pdf

(9) Approve the Purchase of two Sewer-Vacuum Truck Bodies from State Contract 01912 in the amount of $684,329.54 including Washington State Sales Tax.

Documents: Vacuum.pdf

(10) Concur with the recommendation of the Lodging Tax Advisory Committee and the Budget Finance Chair to accept the long term obligations of the Hotel Motel Tax listed above and to allocate grant funding as designated in an amount not to exceed $150,000.00 and Authorize the Mayor to sign the contracts.

Documents: 2016 Hotel Motel.pdf

(11) Authorize the Mayor to sign the Fuel Tax Grant Agreement with the State of Washington Transportation Improvement Board for Downtown Streetscape Improvements.

Documents: Fuel Tax.pdf

(12) Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvements to Ariston Pacific, Inc. in the amount of $1,062,314.79 including Washington State sales tax.

Documents: Citywide-1.pdf

(13) CB 1602-05–3rd and final Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled "Duplex –Phone and Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.

Documents: CB 1602-05.pdf

(14) CB 1602-06 – 3rd and final Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled "Police Headquarters Masonry Restoration Project", Fund 342, Program 020, authorizing the design and restoration of the existing masonry at Police Headquarters.

Documents: CB 1602-06.pdf

(15) CB 1602-07 – 3rd and final Reading – Adopt the Proposed Ordinance creating a Special Construction Fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.

Documents: CB 1602-07.pdf

(16) Authorize the Mayor to sign the Distribution Easement Agreement with Public Utility District No. 1 of Snohomish County for electrical distribution facilities at Reservoir 3.

Documents: Distributipn Easement.pdf

(17) Authorize the Mayor to sign the Lease Renewal and Amendment No. 2 with the Village Theatre for Lease of space at 2730 Wetmore Avenue.

Documents: Village Theatre .pdf

(18) Authorize the Mayor to sign an Agreement with the University of Washington for development of new projections of changing heavy precipitation in Everett, substantially in the form provided, in an amount not to exceed $30,000.

Documents: percipitation.pdf

(19) Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with Roots Forestry LLC for forestry management for an additional cost of $31,320.

Documents: Forestry Consulting.pdf

(20) Authorize the Mayor to sign Amendment No. 1 to the Professional Service Agreement with KPFF Consulting Engineers of Seattle, WA to design, develop construction documents for and provide construction support services for repairs to Howarth Park Pedestrian Bridge at no additional cost.

Documents: KPFF-4.pdf

(21) Authorize the Mayor to sign the Memorandum of Agreement with the Federal Emergency Management Agency Integrated Public Alert and Warning System (IPAWS) Program Management Office to enhance our public alerting system, at no cost to the City.

Documents: IPAW.pdf

Executive Session

Adjourn

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

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance adding "community center" as a new special property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19)

	Briefing
	Consent
3/2/16	Action
2/17/16	First Reading
2/24/16	Second Reading
3/2/16	Third Reading
3/2/16	Public Hearing

COUNCIL BILL #	CB1602-08
Originating Dept.	Planning
Contact Person	Allan Giffen
Phone Number	425-257-8725
FOR AGENDA OF	February 17, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
City-wide	Planning Commission Resolution 16-03	Ordinance	Legal, Planning

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

DETAILED SUMMARY STATEMENT:

The City received a request to amend the zoning code to allow consideration of "community center" as a new use to be permitted through the special property use permit process. The Planning Commission held public workshops on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to the request. The Planning Commission held a public hearing on January 19, 2016 to consider public testimony and recommends that the City Council approve the attached ordinance.

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance adding "community center" as a new special property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19).

ORDINANCE NO. _____

An Ordinance adding "community center" as a new special property use allowed in all zones, amending Ordinance No. 1671-89, as amended (EMC Title 19).

WHEREAS, the City of Everett Zoning Code contains regulations for special property uses to allow in certain cases a use in a zone that is not specifically allowed in that zone; and

WHEREAS, it is necessary from time to time to update zoning regulations to provide clarification or create additional standards related to specific uses; and

WHEREAS, the City received a request to amend the Zoning Code to allow consideration of "community center" as a new use to be permitted through the special property use permit process; and

WHEREAS, the proposed amendment to the Zoning Code will provide for additional opportunities for the community to access recreational, educational, social, and cultural activities; and

WHEREAS, the proposed amendments were submitted for the mandatory 60-day state agency review; and

WHEREAS, the Planning Commission held a public workshop on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to community center as a new use; and

WHEREAS, the Planning Commission held a public hearing on January 19, 2016 to consider public testimony and make a recommendation concerning zoning regulations for community center as a new use; and

WHERAES, after holding a public hearing, The Planning Commission found that the proposed amendments are consistent with the Compressive Plan Policies; and

WHEREAS, the City Council finds the following:

1. The proposed amendments are consistent with the applicable provisions of the Everett Management Comprehensive Plan; and

2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and

2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and

3. The proposed amendments promote the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 4 of Ordinance No. 1671-89, as amended (EMC 19.4.020), is hereby amended by the addition of the following:

(a) **"Community Center"** means a building or other enclosed structure open to the general public that is owned and operated by a public agency or nonprofit corporation, organization or association registered by Washington State, and that is used primarily for cultural, educational, recreational, or social purposes, and may include other minor supporting uses or activities. Not included in the category of community center as a primary use are those businesses and occupations defined by this title as clinics, medical-related activities, personal services, service businesses, government administrative offices or uses such as churches, schools, private clubs or fraternal organizations.

Section 2. Section 5 of Ordinance No. 1671-89, as amended (EMC 19.5, Table 5.2), which reads as follows:

Table 5.2 Nonresidential uses.

ZONE USE	A-1	R-S R-2	R-1	R-1(A) R-2(A)	R-3(L)	R-3	R-4 R-5	B-1	B-2	B-2(B)	B-3 (66)	BMU	E-1	MUO	C-1	C-1R	C-2	C-2ES (60)	W-C	M-S	M-M	M-1	M-2 (70)
SPECIAL PROPERTY USES See Section 41.150.C for general evaluation criteria, and Section 41.150.D for specific use criteria																							
Aircraft landing facilities		III (32)		III (32)																	III	III	III
Church	III (33)	III (33)	III (33)	III (33)	III (33)	III (33)	III (33)	III	I	I	I (66)	I	I	I	I	I	I	I	III (54)	III	I	I	I
Crematorium			III (34)				III (34)		I		I	I	I		I		I	I			I	I	I
Day care, commercial	III	III (30)	III (30)	III (30)	III (30)	III (30)	III (30)	III (30)	I	I	I	I	I	I	I	I	I	I	I		I	I	I

is hereby amended to read:

Table 5.2 Nonresidential uses.

ZONE USE	A-1	R-S R-2	R-1	R-1(A) R-2(A)	R-3(L)	R-3	R-4 R-5	B-1	B-2	B-2(B)	B-3 (66)	BMU	E-1	MUO	C-1	C-1R	C-2	C-2ES (60)	W-C	M-S	M-M	M-1	M-2 (70)
SPECIAL PROPERTY USES See Section 41.150.C for general evaluation criteria, and Section 41.150.D for specific use criteria																							
Aircraft landing facilities		III (32)		III (32)																	III	III	III
Church	III (33)	III (33)	III (33)	III (33)	III (33)	III (33)	III (33)	III	I	I	I (66)	I	I	I	I	I	I	I	III (54)	III	I	I	I
Community Center	III	III (72)	III (72)	III (72)	III (72)	III (72)	III (72)	III (72)	I	III	I	I	I	I	I	I	I	I	I (54)	I	I	I	I
Crematorium			III (34)				III (34)		I		I	I	I		I		I	I			I	I	I
Day care, commercial	III	III (30)	III (30)	III (30)	III (30)	III (30)	III (30)	III (30)	I	I	I	I	I	I	I	I	I	I	I		I	I	I

Section 3. Section 5 of Ordinance No. 1671-89, as amended (EMC 19.5, Table 5.2), is amended by the addition of the following special regulations:

(72) Refer to Section 41.150.D.2.d

Section 4. Section 41 of Ordinance No. 1671-89, as amended (EMC 19.41.150), which reads in part as follows:

41.150.D.2. Community Service Facilities.

a. Public and Private Elementary and Secondary Schools, Colleges, Universities and Public Vocational Education Centers.
   (1) This section does not apply to private training schools such as beauty schools, business colleges or technical training facilities, which shall be treated as commercial uses by this title.
   (2) Elementary and middle schools may be located on local or arterial streets. High schools shall be located adjacent to or within four hundred feet of collector or arterial streets.
   (3) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties. Buildings over twenty-five feet in height shall have an additional setback of one foot for each foot over twenty-five feet in height.
   (4) Temporary classrooms of any size, and accessory structures smaller than one thousand square feet shall be reviewed using Review Process I.
b. Churches.
   (1) New church structures shall be located a minimum of fifteen feet from adjacent residentially zoned properties.
   (2) Church buildings shall comply with the height requirements of the zone in which it is located. Steeples may exceed the maximum building height.
   (3) Where churches are located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street.
c. Hospital.
   (1) Hospitals and directly related hospital functions shall only be located in areas which are designated "Hospital" (2.4) on the Everett general plan.
   (2) Hospital-owned or hospital-operated uses which are the same as uses which are permitted in the underlying zone shall be reviewed using Review Process I.
   (3) Vehicle, pedestrian and ambulance traffic shall be directed toward the nearest collector or arterial street and away from local residential streets.
   (4) Hospitals and hospital-related structures shall be set back a minimum of fifty feet from adjacent residentially zoned lots.
   (5) Hospitals and hospital-related uses shall be screened from adjacent residentially zoned lots by the landscaping requirements of Landscape Category B.

Is hereby amended to read as follows:

41.150.D.2. Community Service Facilities.

a. Public and Private Elementary and Secondary Schools, Colleges, Universities and Public Vocational Education Centers.

(1) This section does not apply to private training schools such as beauty schools, business colleges or technical training facilities, which shall be treated as commercial uses by this title.

(2) Elementary and middle schools may be located on local or arterial streets. High schools shall be located adjacent to or within four hundred feet of collector or arterial streets.

(3) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties. Buildings over twenty-five feet in height shall have an additional setback of one foot for each foot over twenty-five feet in height.

(4) Temporary classrooms of any size, and accessory structures smaller than one thousand square feet shall be reviewed using Review Process I.

b. Churches.

(1) New church structures shall be located a minimum of fifteen feet from adjacent residentially zoned properties.

(2) Church buildings shall comply with the height requirements of the zone in which it is located. Steeples may exceed the maximum building height.

(3) Where churches are located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street.

c. Hospital.

(1) Hospitals and directly related hospital functions shall only be located in areas which are designated "Hospital" (2.4) on the Everett general plan.

(2) Hospital-owned or hospital-operated uses which are the same as uses which are permitted in the underlying zone shall be reviewed using Review Process I.

(3) Vehicle, pedestrian and ambulance traffic shall be directed toward the nearest collector or arterial street and away from local residential streets.

(4) Hospitals and hospital-related structures shall be set back a minimum of fifty feet from adjacent residentially zoned lots.

(5) Hospitals and hospital-related uses shall be screened from adjacent residentially zoned lots by the landscaping requirements of Landscape Category B.

d. Community Center.

(1) A community center shall be located adjacent to or within four hundred feet of collector or arterial streets.

(2) A community center shall be located within ¼ mile of transit routes.

(3) Where a community center is located adjacent to local residential streets, the parking lot entrances/exits shall be oriented toward the nearest collector or arterial street. The Review Authority may allow other means of access through the review process to provide for safe circulation and emergency vehicle access.

(4) Structures shall be located a minimum of twenty-five feet from adjacent residentially zoned properties.

(5) Community center buildings shall comply with the height requirements of the zone in which it is located, however the Review Authority may consider allowing a greater height provided the additional height is necessary to accommodate the functional needs of the facility and that the facility is designed to be the lowest height that will accommodate the functional needs.

(6) All freestanding signs shall be monument signs with a maximum height of eight feet and shall include low plantings around the base of the sign to make it a part of the landscape.

Section 5. Section 34 of Ordinance No. 1671-89, as amended (EMC 19.34, Table 34-1), which reads in part as follows:

TABLE No. 34-1

Off-Street Parking for All Zones Except the B-3 Zone

Use	**Parking Requirement**
NONRESIDENTIAL USES	
SPECIAL PROPERTY USES	
Aircraft landing faciliti	See Section 34.030
Church	1 per each 5 seats in nave or chapel
Crematorium	See Section 34.030
Day care, commercial	1 per each 10 children or 1 employee, whichever is greater, plus I loading space for each 20 children

Is hereby amended to read as follows:

TABLE No. 34-1

Off-Street Parking for All Zones Except the B-3 Zone

Use	**Parking Requirement**
NONRESIDENTIAL USES	
SPECIAL PROPERTY USES	
Aircraft landing facil	See Section 34.030
Church	1 per each 5 seats in nave or chapel
Community Center	See Section 34.030
Crematorium	See Section 34.030
Day care, commercial	1 per each 10 children or 1 employee, whichever is greater, plus I loading space for each 20 children

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.

_____
Ray Stephanson, Mayor

ATTEST: _____
CITY CLERK

Passed:_____

Valid:_____

Published:_____

Effective Date:_____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16)

	Briefing
	Consent
3/2/16	Action
2/17/16	First Reading
2/24/16	Second Reading
3/2/16	Third Reading
3/2/16	Public Hearing

COUNCIL BILL #	CB1602-09
Originating Dept.	Planning
Contact Person	Allan Giffen
Phone Number	425-257-8725
FOR AGENDA OF	February 17, 2016

Initialed by:
Department Head
CAA
Council President

db

Location	Preceding Action	Attachments	Department(s) Approval
City-wide	Planning Commission Resolution 16-02	Ordinance	Legal, Planning

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

DETAILED SUMMARY STATEMENT:
The City received a request to amend the special property use regulations to allow consideration of alternative uses for a change of an existing non-residential use in a residential zone, such as a church that would otherwise not be permitted. The Planning Commission held public workshops on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to adaptive reuse of non-residential buildings in residential zones. The Planning Commission held a public hearing on January 19, 2016 to consider public testimony and recommends that the City Council approve the attached ordinance.

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16)

ORDINANCE NO. _____

An Ordinance authorizing adaptive reuse of non-residential buildings in residential zones as a special property use permit, Amending Ordinance No. 1671-89, as amended (EMC Title 19) and Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16).

WHEREAS, the City of Everett Zoning Code contains regulations for special property uses to allow in certain cases a use in a zone that is not specifically allowed in that zone; and

WHEREAS, the City of Everett Zoning Code contains regulations for adaptive reuse of properties located within a historic overlay zone; and

WHEREAS, it is necessary from time to time to update zoning regulations to provide clarification or create additional standards related to specific uses; and

WHEREAS, the City received a request to amend the special property use regulations to allow consideration of a change to existing non-residential uses in residential zones, such as a church, that would otherwise not be permitted; and

WHEREAS, the proposed amendment to the Zoning Code will provide for greater economic feasibility and improve neighborhood stabilization; and

WHEREAS, the proposed amendments were submitted for the mandatory 60-day state agency review; and

WHEREAS, the Planning Commission held a public workshop on December 1, 2015 and January 5, 2016 to discuss and consider potential amendments to the Zoning Code related to adaptive reuse of non-residential buildings in residential zones; and

WHEREAS, the Planning Commission held a public hearing on January 19, 2016 to consider public testimony and make a recommendation concerning zoning regulations for adaptive reuse of non-residential buildings in residential zones; and

WHEREAS, after holding a public hearing, The Planning Commission found that the proposed amendments are consistent with the Compressive Plan Policies; and

WHEREAS, the City Council finds the following:

1. The proposed amendments are consistent with the applicable provisions of the Everett Management Comprehensive Plan; and

2. The proposed amendments bear a substantial relation to the public health, safety and welfare of the Everett community; and

3. The proposed amendments promote the best long-term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 4 of Ordinance No. 1671-89, as amended (EMC 19.4.020), is hereby amended by the addition of the following definitions:

(a) **"Adaptive reuse"** means the process of reusing a building for a purpose or use other than for which it was built or designed.

(b) **"Business incubator"** means an organization designed to facilitate the growth and success of entrepreneurial companies through a variety of business support resources and services that could include physical space, capital, coaching, common services, and networking connections.

(c) **"Redevelopment"** means the process to rebuild, restore or develop an area or property that has previously been developed for a specific use or purpose.

(d) **"Religious facility"** means a place where religious services are conducted as the principal purpose, such as a church, mosque, synagogue or temple, and includes accessory uses in the primary or accessory buildings such as religious education, reading rooms, assembly rooms, and residences for pastoral staff.

Section 2. Section 41 of Ordinance No. 1671-89, as amended (EMC 19.41.150), which reads in part as follows:

41.150.E. Notification. Notification for special property use applications shall be provided according to the required review process, as specified in Title 15, Local Project Review Procedures.

F. Review Authority Decisions.

1. Conditions and Restrictions. If the review authority approves a special property use permit, conditions and restrictions may be applied thereto, which exceed the minimum standards required by this title, when necessary to assure that the proposed use complies with all requirements of this title and is compatible with surrounding land uses.

2. Time Limit on Approval. The effective time period in which the applicant may establish the use proposed by an approved special property use permit shall be five years from the date of the written order granting approval of the permit. The written order may specify a

shorter time period if the review authority determines that it is in the public interest to authorize a shorter period of time in which to establish the use. The planning department may authorize one extension of time for a period of not more than one year if it can be found that circumstances beyond the control of the applicant prevented the establishment of the use.

3. Appeals.
   a. Review Process II. The planning director's Review Process II determination may be appealed as provided by Title 15, Local Project Review Procedures.
   b. Review Process III. No administrative appeal is provided for Review Process III decisions.

Is hereby amended to read as follows:

41.150.E. Adaptive Reuse of Non-Residential Buildings in Residential Zones.

1. Purpose. The purpose of this section is to allow for adaptive reuse of non-residential buildings in residential zones that are functionally obsolete in order to improve the economic feasibility of a property by considering uses that are not otherwise permitted, but which, if properly designed and managed, would not create unacceptable impacts on surrounding properties or the immediate vicinity in general. This process differs from the unlisted use process listed in EMC Section 19.02.080 in that uses that are not specifically authorized in the underlying residential zone may be considered using the process described herein.

2. Procedures. Any request to allow a use that is not otherwise permitted in the underlying residential zone shall be processed as a special property use. If the property is in or within 500 feet of a single family residential zone, the application shall be reviewed using Review Process III. If the property is more than 500 feet from a single family residential zone but is in or within 150 feet of a multiple family residential zone, the application shall be reviewed using Review Process II. If the property is outside a historic overlay zone but listed on a historic register or as a contributing structure in a historic register district, the historical commission shall review the proposal and make a recommendation to the hearing examiner using Review Process III.

3. Circumstances. The city may allow a use in a residential zone that is not specifically allowed in that zone if it is necessary to encourage adaptive reuse of a building under the following circumstances:
   a. It is unlikely that the primary building on the subject property could be preserved if only uses permitted in the underlying zone were allowed.
   b. Allowing a different use would enhance the character of the building and immediate vicinity.
   c. The use would not have a detrimental effect upon surrounding properties or the immediate vicinity.

4. Uses. The following uses may be considered for adaptive reuse of an existing building in a residential zone:
   a. Dwelling units. Density based on underlying zoning plus one additional dwelling unit;
   b. Assisted living facilities;
   c. Libraries;

d. Museums and art galleries;
e. Social service facilities;
f. Public services;
g. Business incubator;
h. Artist studios;
i. Music venue;
j. Cafes and bistros;
k. Live-work units;
l. Bed & Breakfast
m. Other uses not listed above if determined through the review process to be compatible with surrounding properties and the immediate vicinity.

5. Review Criteria. The following criteria shall be used as the basis for determining compatibility with surrounding uses and approving, denying, or conditionally approving a request to allow the adaptive reuse of a non-residential building in a residential zone:

a. General evaluation criteria of 41.150.C.
b. The adaptive reuse would promote or aid in the preservation or rehabilitation of the primary building.
c. No significant adverse impacts to public safety.
d. Compliance with building and fire codes.
e. Hours of the day of proposed use or activity.
f. Proposed management and operational procedures to minimize and mitigate potential impacts.
g. Expansions to the primary building shall not exceed 10% of the existing footprint or 500 square feet, whichever is greater, and will not detrimentally affect the outside character of the building.
h. Other factors not specified herein that would create adverse impacts to the immediate vicinity.

6. Any proposal that would adversely affect properties in the immediate vicinity shall be denied. The city shall retain the right to revoke a permit issued under this section that fails to comply with any conditions of approval of said permit, or which operates in a manner inconsistent with representations made in the application, pursuant to EMC Title 1 Chapter 1.20.

F. Notification. Notification for special property use applications shall be provided according to the required review process, as specified in Title 15, Local Project Review Procedures.

G. Review Authority Decisions.

1. Conditions and Restrictions. If the review authority approves a special property use permit, conditions and restrictions may be applied thereto, which exceed the minimum standards required by this title, when necessary to assure that the proposed use complies with all requirements of this title and is compatible with surrounding land uses.

2. Time Limit on Approval. The effective time period in which the applicant may establish the use proposed by an approved special property use permit shall be five years from the date of the written order granting approval of the permit. The written order may specify a shorter time period if the review authority determines that it is in the public interest to authorize a shorter period of time in which to establish the use. The planning department

may authorize one extension of time for a period of not more than one year if it can be found that circumstances beyond the control of the applicant prevented the establishment of the use.

3. Appeals.

a. Review Process II. The planning director's Review Process II determination may be appealed as provided by Title 15, Local Project Review Procedures.

b. Review Process III. No administrative appeal is provided for Review Process III decisions.

Section 3. Section 3B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.080), which reads as follows:

Decisions included.

A. Review Process II applications include the following administrative decisions:*

1. Alteration of a designated significant feature within an historic overlay zone;

2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);

3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);

4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;

5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);

6. Comprehensive design plan permits as provided by Section 19.36.210;

7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;

8. Determination of proportionality for correctional facilities;

9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);

10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);

11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);

12. Deviation from historic overlay zone standards and guidelines;

13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);

14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));

15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));

16. Final PDO development plan as provided by Section 19.29.110;

17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));

18. Land divisions, as follows:
    a. Preliminary binding site plan;

    b. Preliminary binding site plan with site plan approval;

    c. Preliminary residential condominium binding site plan;

    d. Preliminary short subdivision alteration or vacation;

    e. Preliminary short subdivision of nine lots or less;

    f. Preliminary short subdivision with nonconforming structures;

    g. Preliminary subdivision of fifty lots or less;**

    h. Preliminary subdivision alteration or vacation;

    i. Subdivision or short subdivision variance as provided in Section 18.32.010;

19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);

20. Minor expansion of an existing special property use;

21. Outdoor use, activity, and storage: modification of standards;

22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);

23. Parking reduction with transportation management plan (Section 19.34.070(D));

24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;
25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;

26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;

27. Project review for public projects that are not categorically exempt under SEPA;

28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);

29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);

30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B);

31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);

32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;

33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);

34. Wetland alteration for category I, category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.120(B)(1), (2), and (3);

35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);

36. Clinic- and medical-related activities as provided by Section 19.16.040(C);

37. All other review processes listed in the zoning code as Review Process II;

38. All Review Process I and project permit applications that are not categorically exempt under SEPA;

39. Alternative best available science decisions as provided by Section 19.37.050(E);

40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);

41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);

42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);

43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d);

44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030;

45. Buffer management as provided by Section 19.37.060(B)(2);

46. Removal of nonhazardous trees as provided by Section 19.37.060(B)(3)(c).

* SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.

** An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii) either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

Is hereby amended to read as follows:

Decisions included.

A. Review Process II applications include the following administrative decisions:*

1. Alteration of a designated significant feature within an historic overlay zone;

2. Alteration of category II and III streams as provided by Section 19.33D.500(B)(2);

3. Atrium appurtenance approval as provided by Section 19.39.040(B)(2);

4. Buffer width reduction for streams (Sections 19.33D.490(D) and 19.37.170(C)) or wetlands (Sections 19.33D.450(E) and 19.37.110(C)) or alteration of geologically hazardous areas or standard buffer (Section 19.37.080(C)) if proposal is not categorically exempt under SEPA;

5. Change or expansion of a nonconforming use (up to twenty-five percent) as provided by Section 19.38.030(C) and (D);

6. Comprehensive design plan permits as provided by Section 19.36.210;

7. Design guideline approval, when proposal includes modification of development standards and design guidelines and for projects not categorically exempt under SEPA;

8. Determination of proportionality for correctional facilities;

9. Determination of prohibited heavy manufacturing uses with potentially noxious impacts in M-1 and M-M zones as provided by Sections 19.27.020(G)(19) and 19.28.020(D)(18);

10. Development of nonconforming lots which do not meet minimum lot area or building area requirements as provided by Section 19.38.080(C);

11. Development of previously altered ESAs when the proposal is not categorically exempt under SEPA as provided by Sections 19.33D.580(B)(1) and 19.37.250(B)(1);

12. Deviation from historic overlay zone standards and guidelines;

13. Driveway access from public street for multiple-family structures as provided by Section 19.15.080(B);

14. Extension of amateur radio tower or antenna beyond sixty-five feet (Section 19.39.040(A)(3));

15. Exterior finish for buildings in M-1 zone located within three hundred feet of residentially zoned properties (Section 19.27.020(A));

16. Final PDO development plan as provided by Section 19.29.110;

17. Floodplain development permit application when a shoreline permit is not required (Section 19.30.060(B));

18. Land divisions, as follows:
    a. Preliminary binding site plan;

    b. Preliminary binding site plan with site plan approval;

    c. Preliminary residential condominium binding site plan;

    d. Preliminary short subdivision alteration or vacation;

    e. Preliminary short subdivision of nine lots or less;

    f. Preliminary short subdivision with nonconforming structures;

    g. Preliminary subdivision of fifty lots or less;**

h. Preliminary subdivision alteration or vacation;

i. Subdivision or short subdivision variance as provided in Section 18.32.010;

19. Land uses in WRM zone consistent with adopted management plan when not categorically exempt under SEPA (Section 19.30A.020);

20. Minor expansion of an existing special property use;

21. Outdoor use, activity, and storage: modification of standards;

22. Parking modification of ten percent or less if supported by parking analysis and modification does not involve residential use parking standards as provided by Section 19.34.070(A);

23. Parking reduction with transportation management plan (Section 19.34.070(D));

24. Phase approval and development approval implementing an institutional overlay zone master plan or approval of minor revisions (cannot change use or character or allow increase in intensity of development) as provided by Section 19.33B.060;

25. Public park development not part of or in conformance with an adopted master plan or which exceeds the city's SEPA thresholds for categorical exemptions as provided by Section 19.33A.030;

26. Conceptual site plan review for projects that do not otherwise require a land use permit and are not categorically exempt under SEPA;

27. Project review for public projects that are not categorically exempt under SEPA;

28. Proposals required to be reviewed by the historic commission in the historic overlay zone per neighborhood conservation guidelines and historic zoning overlay standards (not including those listed under administrative review by staff, which is Review Process I);

29. Reasonable use determinations with modification of zoning standards (under Chapter 19.37);

30. Reestablishment or change in use of nonconforming grocery store as provided by Section 19.38.100(B);

31. Shoreline permits (less than one acre of the project footprint area is within shoreline jurisdiction);

32. Stream and wetland filling, modification, and mitigation as provided for in Chapter 19.37;

33. Transfer of development rights under Section 19.33D.400(D) or 19.37.050(B)(3);

34. Wetland alteration for category I, category II and Silver Lake watershed as provided by Sections 19.33D.460(B)(1), (2), and (5) and 19.37.120(B)(1), (2), and (3);

35. Wetland mitigation banking approval as provided by Sections 19.33D.460(C)(10) and 19.37.120(C)(12);

36. Clinic- and medical-related activities as provided by Section 19.16.040(C);

37. All other review processes listed in the zoning code as Review Process II;

38. All Review Process I and project permit applications that are not categorically exempt under SEPA;

39. Alternative best available science decisions as provided by Section 19.37.050(E);

40. Accessory buildings over two hundred square feet which have metal siding or corrugated roofing as provided by Section 19.07.020(K);

41. Accessory buildings which exceed one thousand square feet in area as provided by Section 19.07.020(M);

42. Accessory buildings which exceed fifteen feet in height as provided by Section 19.07.020(J);

43. Rockeries and retaining walls retaining soil (fill) four feet or greater in height in required building setback areas, as provided by Section 19.39.150(C)(5)(d);

44. Use of basement or other building spaces for uses not specifically listed as permitted use in the B-3 as provided by Section 19.22.030;

45. Buffer management as provided by Section 19.37.060(B)(2);

46. Removal of nonhazardous trees as provided by Section 19.37.060(B)(3)(c).

47. Adaptive reuse of non-residential buildings in residential zones as provided by Section 19.41.150.E.

* SEPA threshold determinations frequently include mitigation requirements as provided for in the SEPA ordinance (Chapter 20.04). Any SEPA condition based on SEPA substantive authority as provided for in the SEPA ordinance (Chapter 20.04) shall be identified in the land use permit decision, as provided in this integrated local project review process.

** An open public hearing may be required under the following circumstances, in which case the application shall be processed under Review Process III: (i) a public hearing is required by Title 18; (ii) any affected person files a written request for a hearing with the planning department within twenty-one days of the notice of application (public comment period); or (iii)

either prior to or within the public comment period, the director or the city engineer and/or their designees require an open public hearing.

Section 4. Section 4B of Chapter 4 of Ordinance No. 2530-01, as amended (EMC 15.16.110), which reads as follows:

Review Process IIIA.

A. Review Process IIIA applies to the following actions for which the examiner issues a final decision on the application after an open public hearing:

1. Appeals of Review Process I and II planning director decisions, including appeals of the application of development standards by the director;

2. Clinic and medical related activities overlay and office overlay as provided by Section 19.16.020(B) and 19.16.040(B);

3. Change in manufacturing activities which do not comply with M-1 zone uses and standards as provided by Section 19.27.040(C);

4. Commercial daycare in all residential zones and A-1 and B-1 zones;

5. Conditional use permits;

6. Detached accessory building which exceeds fifteen feet in height or one thousand square feet in area as provided by Section 19.07.020(K);

7. Expansion of a nonconforming use (greater than twenty-five percent);

8. Jails and correctional facilities siting in the B-3 and C-1 zones as provided by Section 19.39.105;

9. Land divisions, as follows:
   a. Preliminary cluster subdivision or cluster short subdivision;

   b. Preliminary subdivision of more than fifty lots;

   c. Preliminary subdivision of fifty lots or less if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);

   d. Subdivision or short subdivision alteration or vacation if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);

10. Land uses in WRM zone consistent with adopted management plan located in areas subject to a city shoreline substantial development permit as provided by Section 19.30A.020;

11. Parking modification requests for Review Process III projects (Section 19.34.070(A)(1)) and quantity and location of parking for Review Process III projects as provided by Section 19.34.060(F);

12. Public utility and infrastructure exception under Sections 19.33D.400(E) and 19.37.050(C);

13. Shoreline permits (one acre or more of the project footprint is within shoreline jurisdiction);

14. Shoreline permits requiring a shoreline variance or shoreline conditional use permit;

15. Special property use permits listed as Review Process III in city ordinance;

16. Time extension for nonconforming adult use business as provided by Section 19.39.025(B)(3);

17. Variances in accordance with Section 19.30.080, 19.41.130, 19.34.070(A)(2), or 20.08.180;

18. Waivers, exceptions, variances, and appeals from the city's street and sidewalk codes and commute trip reduction ordinance;

19. All other review processes listed in the zoning code as Review Process III;

20. Any other action not explicitly listed herein which the examiner is given jurisdiction over and for which a review process is not identified shall be processed using Review Process III.

Is hereby amended to read as follows:

Review Process IIIA.

A. Review Process IIIA applies to the following actions for which the examiner issues a final decision on the application after an open public hearing:

1. Appeals of Review Process I and II planning director decisions, including appeals of the application of development standards by the director;

2. Clinic and medical related activities overlay and office overlay as provided by Section 19.16.020(B) and 19.16.040(B);

3. Change in manufacturing activities which do not comply with M-1 zone uses and standards as provided by Section 19.27.040(C);

4. Commercial daycare in all residential zones and A-1 and B-1 zones;

5. Conditional use permits;

6. Detached accessory building which exceeds fifteen feet in height or one thousand square feet in area as provided by Section 19.07.020(K);

7. Expansion of a nonconforming use (greater than twenty-five percent);

8. Jails and correctional facilities siting in the B-3 and C-1 zones as provided by Section 19.39.105;

9. Land divisions, as follows:

   a. Preliminary cluster subdivision or cluster short subdivision;

   b. Preliminary subdivision of more than fifty lots;

   c. Preliminary subdivision of fifty lots or less if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);

   d. Subdivision or short subdivision alteration or vacation if an open public hearing is required (see footnote on Review Process II, Section 15.16.080);

10. Land uses in WRM zone consistent with adopted management plan located in areas subject to a city shoreline substantial development permit as provided by Section 19.30A.020;

11. Parking modification requests for Review Process III projects (Section 19.34.070(A)(1)) and quantity and location of parking for Review Process III projects as provided by Section 19.34.060(F);

12. Public utility and infrastructure exception under Sections 19.33D.400(E) and 19.37.050(C);

13. Shoreline permits (one acre or more of the project footprint is within shoreline jurisdiction);

14. Shoreline permits requiring a shoreline variance or shoreline conditional use permit;

15. Special property use permits listed as Review Process III in city ordinance;

16. Time extension for nonconforming adult use business as provided by Section 19.39.025(B)(3);

17. Variances in accordance with Section 19.30.080, 19.41.130, 19.34.070(A)(2), or 20.08.180;

18. Adaptive reuse of non-residential buildings in residential zones as provided by Section 19.41.150.E.

19. Waivers, exceptions, variances, and appeals from the city's street and sidewalk codes and commute trip reduction ordinance;

20. All other review processes listed in the zoning code as Review Process III;

21. Any other action not explicitly listed herein which the examiner is given jurisdiction over and for which a review process is not identified shall be processed using Review Process III.

Section 5. 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 6. 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 7. 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 8. 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.

_____

Ray Stephanson, Mayor

ATTEST: _____
CITY CLERK

Passed:_____

Valid:_____

Published:_____

Effective Date:_____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating a special improvement project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement

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

COUNCIL BILL #	CB1602-10
Originating Department	Public Works
Contact Person	Ryan Sass, PE
Phone Number	425-257-8942
FOR AGENDA OF	February 17, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Rucker Avenue from Pacific to Everett Avenues		Proposed Ordinance Vicinity map	Public Works

Amount Budgeted	$ 7,629,502	
Expenditure Required	$ 7,629,502	Account Number(s): PW3640
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
This project will complete Streetscape Improvements on Rucker Avenue from Pacific Avenue to Everett Avenue in accordance with the Downtown Plan and the Downtown Streetscape Plan.

The improvements included in the project are curbs, gutters, sidewalks, pavement, lighting, signs, traffic signals and streetscaping. The project will also include Americans with Disability Act required improvements.

The budget for this project is $7,629,502 and the sources of funds are:

Transportation Improvement Board (TIB) Grant	$ 4,103,982
CIP 4	3,525,520
Total sources of funds	$ 7,629,502

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance creating a special improvement project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement.

ORDINANCE NO. _____

AN ORDINANCE creating a special improvement project entitled, "Downtown Streetscape Phase 3," Fund 303, Program 109, to accumulate all costs for the improvement.

WHEREAS, the City of Everett is committed to a planned streetscape improvement program; and

WHEREAS, the City of Everett has identified the need and obtained funds to construct certain streetscape improvements to Rucker Avenue; and

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

A special improvement project is hereby established as Fund 303, Program 109, entitled "Downtown Streetscape Phase 3," to accumulate all costs for the improvement.

Section 2:

Authorization is hereby given to accumulate costs and distribute payments from Fund 303, Program 109, for the improvement project.

Section 3:

Authorization is hereby granted for the "Public Works Director" or "City Engineer," under direction of the Mayor, to assume full and complete responsibility for conducting all tasks and doing all things to accomplish the actions authorized in this ordinance.

Section 4:

The sum of $7,629,502 is hereby appropriated to Fund 303, Program 109, "Downtown Streetscape Phase 3," as follows:

A. Estimated Project Costs

Design & Construction	$ 7,629,502	
Total Estimated Cost		$ 7,629,502

B. Source of Funds

Transportation Improvement Board Grant	$ 4,103,982	
CIP 4	3,525,520	
Total Estimated Funds		$ 7,629,502

C. 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:

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 February 6, 2016 through February 12, 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
001	City Council	180.00
002	General Government	342.00
003	Legal	6,376.92
004	Administration	4,863.22
005	Municipal Court	12.60
007	Human Resources	590.59
009	Misc Financial Funds	402,164.91
010	Finance	140.60
015	Information Technology	4.20
024	Public Works-Engineering	13,995.92
026	Animal Shelter	1,198.20
031	Police	7,503.76
032	Fire	5,352.20
038	Facilities/Maintenance	2,375.35
	TOTAL GENERAL FUND	**445,100.47**

Fund	Department	Amount
101	Parks & Recreation	15,299.19
110	Library	19,899.34
112	Community Theater	27.00
120	Public Works-Streets	1,821.66
126	MV-Equipment Replacement Reser	23,663.55
146	Property Management	2,306.87
149	Senior Center Reserve	69.40
153	Emergency Medical Services	46,137.84
156	Criminal Justice	52.42
157	Traffic Mitigation	33,600.00
197	CHIP Loan Program	10,235.18
303	PW Improvement Projects	107,511.21
336	Water & Sewer Sys Improv Project	729,782.42
338	Solid Waste Improvements	49,718.84
354	Parks Capital Construction	19,573.39
401	Public Works-Utilities	289,844.16
402	Solid Waste Utility	5,131.50
425	Public Works-Transit	93,329.49
440	Golf	20,329.69
501	MVD-Transportation Services	32,312.52
503	Self-Insurance	122,288.33
505	Computer Reserve	3,857.98
507	Telecommunications	22,324.82
637	Police Pension	4,789.29
638	Fire Pension	17,117.21
661	Claims	108,787.86
663	Investment Earnings	1,058.00
	TOTAL CLAIMS	**2,225,969.63**

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 February 6, 2016, and checks issued February 12, 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	10,556.08	$5,882.74
003	Legal	$61,159.08	22,609.86
004	Administration	45,326.43	14,241.47
005	Municipal Court	52,165.58	21,015.47
007	Personnel	44,740.89	16,409.05
010	Finance	50,336.19	19,558.09
015	Information Technology	52,764.94	19,852.27
021	Planning & Community Dev	42,866.92	14,286.66
022	Neighborhoods & Community Svcs	8,647.36	2,985.12
024	Public Works	136,683.68	52,804.64
026	Animal Shelter	32,855.60	12,570.72
027	Senior Center	11,764.69	4,720.61
031	Police	803,400.26	241,707.92
032	Fire	557,739.85	161,955.81
038	Facilities/Maintenance	68,089.16	29,157.13
101	Parks & Recreation	160,042.90	64,005.37
110	Library	118,164.21	41,495.59
112	Community Theatre	5,767.76	2,602.50
120	Street	60,567.76	26,878.91
153	Emergency Medical Services	151,256.22	44,396.07
197	CHIP	9,034.00	3,918.88
198	Community Dev Block	6,474.96	2,254.99
401	Utilities	631,079.15	249,985.15
425	Transit	360,856.62	153,381.66
440	Golf	21,624.34	8,663.12
501	Equip Rental	56,630.36	24,104.09
507	Telecommunications	9,472.59	3,958.33
		$3,570,067.58	$1,265,402.22

_____
Councilman Introducing Resolution

Passed and approved this _____ day of _____, 2016.

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Bid Call 2016-019 for an Asphalt Patch Unit

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Finance/Purchasing
x	Consent	Contact Person	Clark Langstraat
	Action	Phone Number	425-257-8901
	First Reading	FOR AGENDA OF	February 24, 2016
	Second Reading		
	Third Reading		
	Public Hearing		

Initialed by:
Department Head
CAA db
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Public Works	None	None	Public Works, Motor Vehicle Division

Amount Budgeted	$137,000.00	
Expenditure Required	$137,000.00	Account Number(s): MV6M0081-401-N-640
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
Public Works needs to purchase an Asphalt Patch Unit to be mounted on a separately purchased truck chassis. This vehicle is on the 2016 Vehicle Replacement List.

RECOMMENDATION (Exact action requested of Council):
Approve Bid Call 2015-019 for an Asphalt Patch Unit.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Bid Call for the
2016 Overlay Project

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	425-257-8942
FOR AGENDA OF	February 24, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
City Wide		Vicinity Maps	

Amount Budgeted	$2,246,805	
Expenditure Required	$2,246,805	Account Number(s): PW 3619
Budget Remaining	N/A	
Additional Required	N/A	

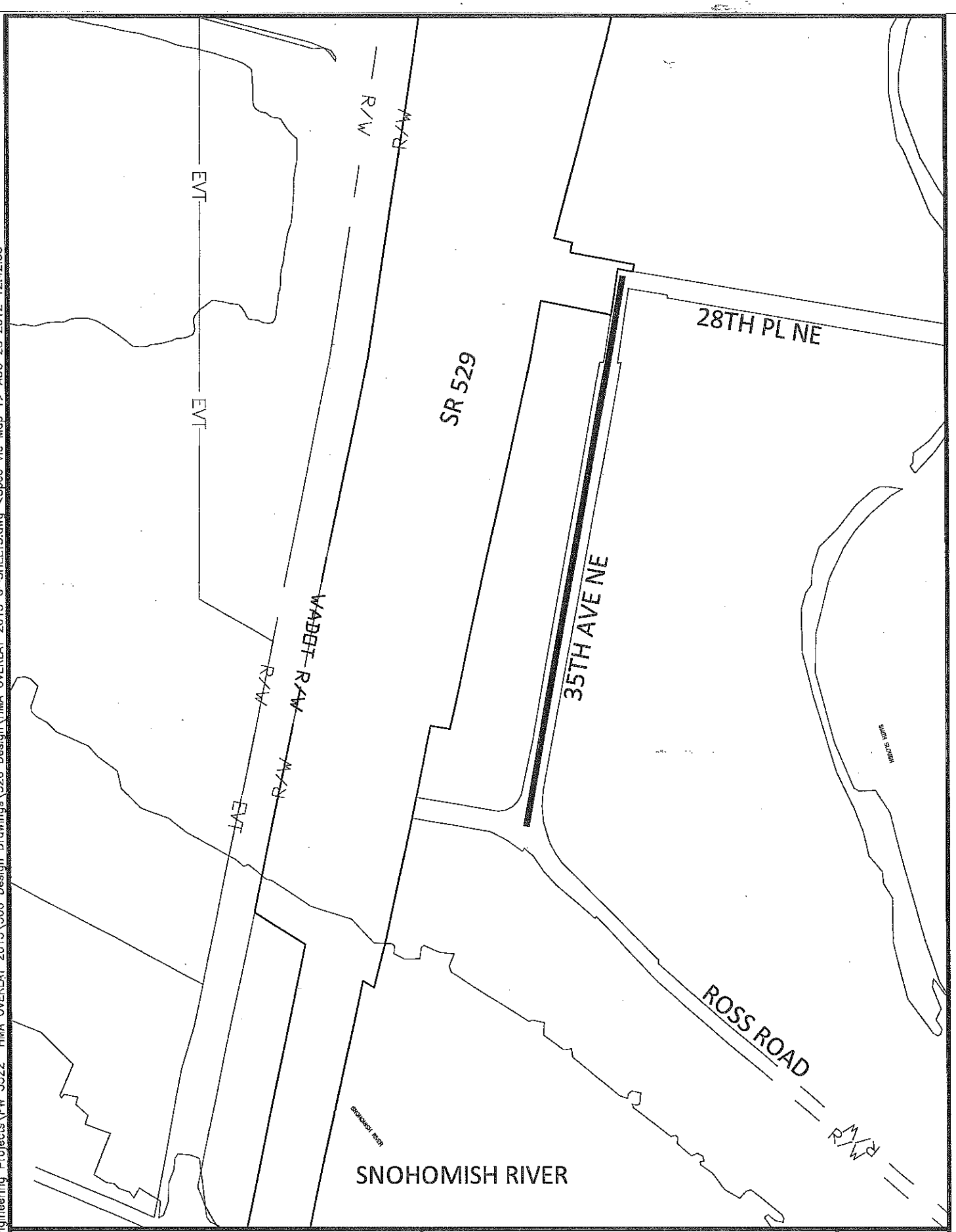
DETAILED SUMMARY STATEMENT:

The construction plans and specifications are complete and the 2016 Overlay Project is ready to be advertised for bids. The arterial streets to be overlaid this year have been prioritized and selected on the basis of the City's Pavement Management System. The 2016 Overlay Project includes a base bid of approximately 13,283 tons of hot-mix asphalt, utility adjustments, and all other appurtenances necessary to complete the work.

The budget for this project is $2,246,805 and the source of funds is:

Fund 119 – Street Improvements $2,246,805

RECOMMENDATION (Exact action requested of Council):
Approve a bid call for the 2016 Hot Mix Overlay Project.



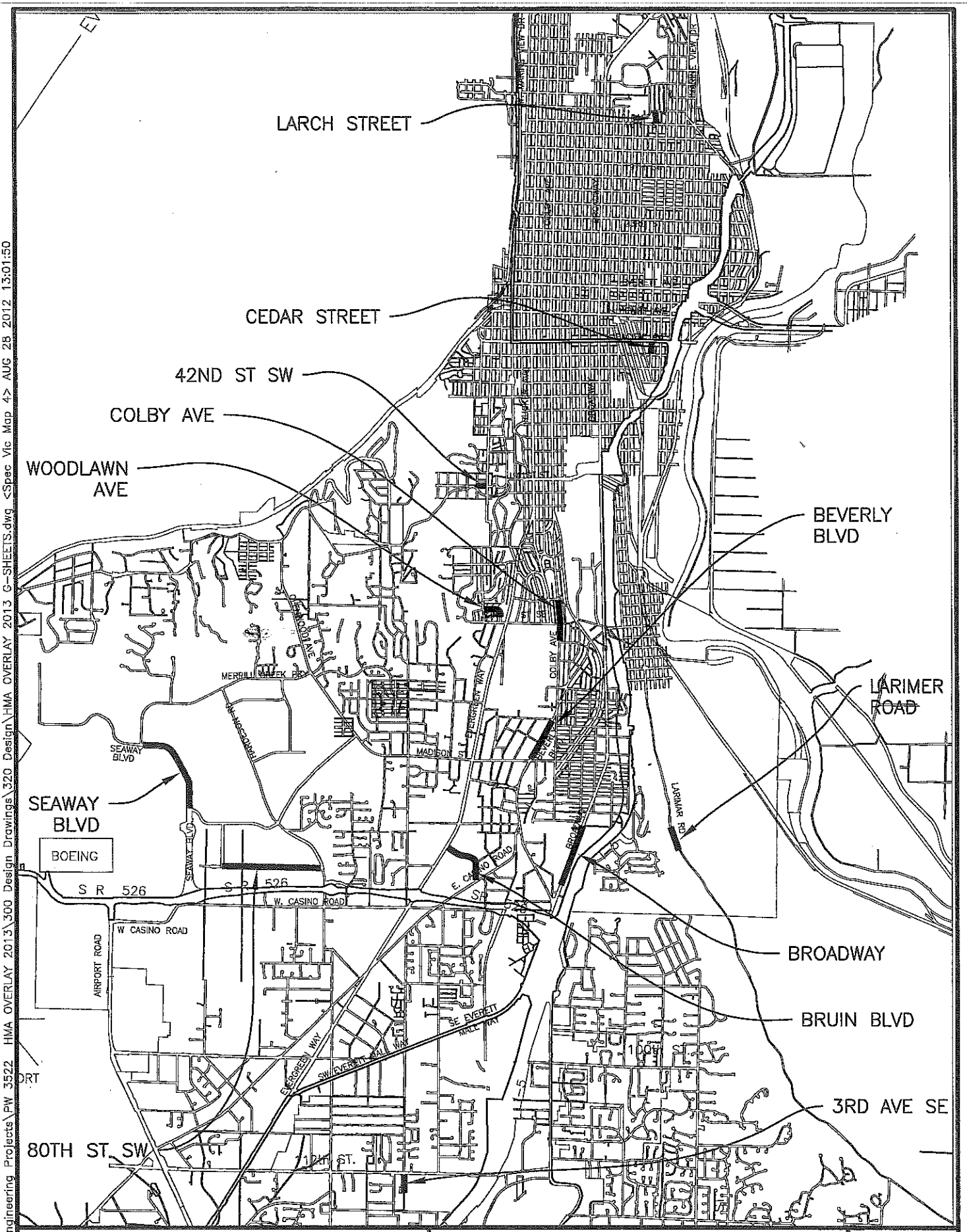
S:\#Common\Engineering Projects\PW 3522 HMA OVERLAY 2013\300 Design Drawings\320 Design\HMA OVERLAY 2013 G-SHEETS.dwg <Spec Vic Map 1> AUG 28 2012 12:42:53

CITY OF EVERETT
PUBLIC WORKS DEPARTMENT

HMA OVERLAY 2016
WO# PW3619

1-29-2016
date

1
number



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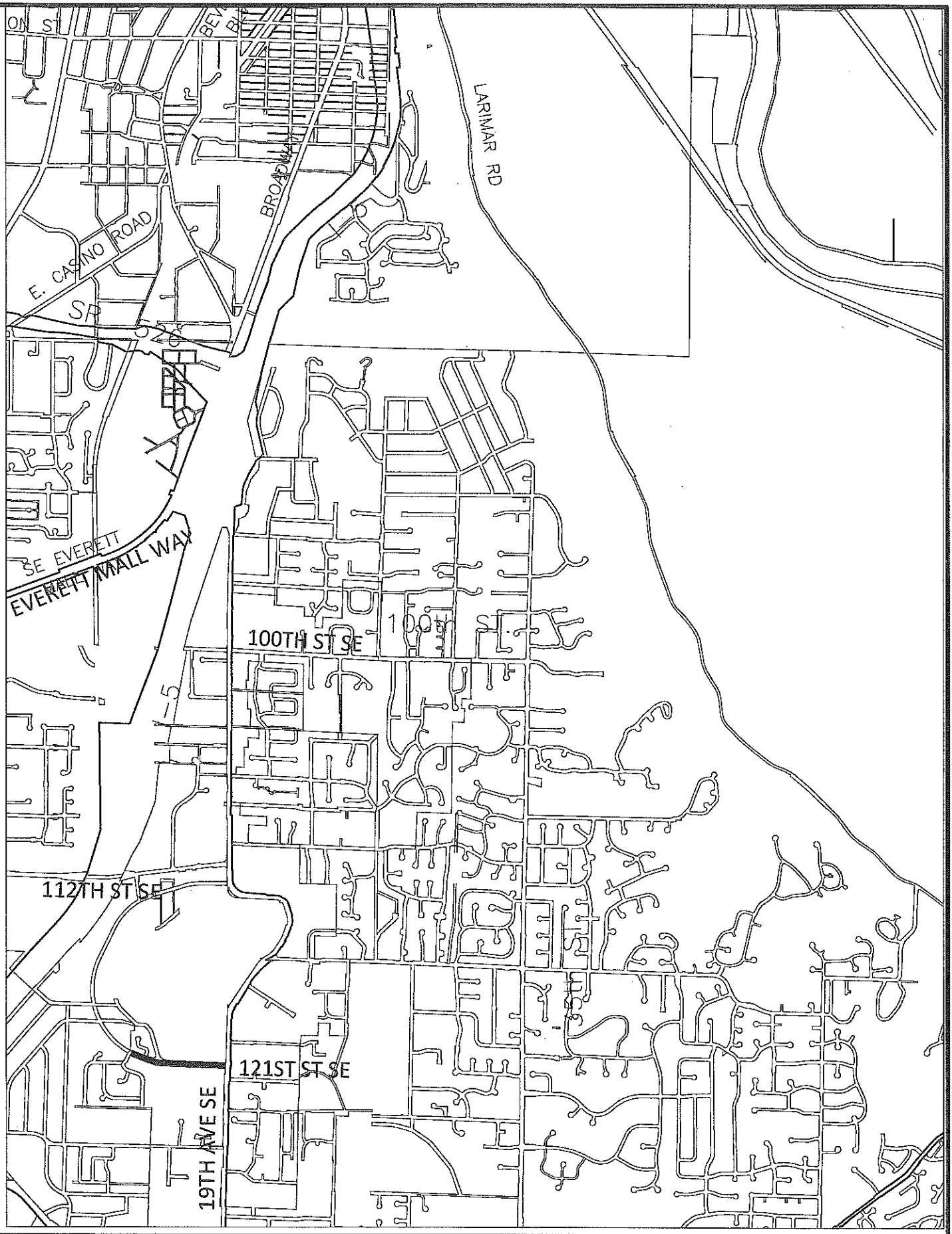
CITY OF EVERETT
PUBLIC WORKS DEPARTMENT

HMA OVERLAY 2016
WO# PW3619

1-29-2016
date

2
number



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CITY OF EVERETT
PUBLIC WORKS DEPARTMENT

HMA OVERLAY 2016
WO# PW3619

1-29-2016
date

3
number

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Resolution declaring vehicles and equipment surplus and authorizing their disposition

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Finance/Purchasing
_____	Consent	Contact Person	Clark Langstraat
x	Action	Phone Number	425-257-8901
_____	First Reading	FOR AGENDA OF	February 24, 2016
_____	Second Reading		
_____	Third Reading	Initialed by:	
_____	Public Hearing	Department Head	_____
		CAA	db
		Council President	

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Motor Vehicle Division		Proposed Resolution	Motor Vehicle Division, Purchasing

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

DETAILED SUMMARY STATEMENT:
The City owns the following equipment that is no longer of use to City departments.

WC003 – 2002 Pro-Fab Barge
BM005 – 2004 Ray 300 Commercial Electric Boat Motor
T0003 – 1993 Towmaster T40 Flatbed Trailer

Based on previous and current sales, staff estimates a present value from $5,000 to $10,000 for this equipment if sold as a package and recommends their sale at Public Auction.

RECOMMENDATION (Exact action requested of Council):
Adopt a resolution declaring vehicles and equipment surplus and authorizing their disposition.

RESOLUTION No._____

A Resolution declaring the listed vehicles and equipment surplus and authorizing their disposition.

WHEREAS, the City has a 2002 Pro-Fab Barge (#WC003) with a 2004 Ray 300 Electric Motor (#BM005) and a 1992 Towmaster T40 Trailer (#T0003) in its fleet; and

WHEREAS, the above-referenced equipment is no longer of value or use to the City; and

WHEREAS, Ordinance 2963-06 establishes a procedure and methods for surplusing or disposition of City-owned personal property; and

WHEREAS, based on the guidelines set forth in Section 2 of Ordinance 2963-06 a public auction is the disposition method that best meets the City's interests; and

WHEREAS, the City's purchasing manager has reported the basis for the estimated value of the surplus property and has recommended surplusing the above-referenced vehicles and equipment by public auction.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERETT:

1. The 2002 Pro-Fab Barge (#WC003, 2004 Ray 300 Electric Motor (#BM005) and 1992 Towmaster T40 Trailer (#T0003) are no longer of value or use to the City; and

2. The disposition of this equipment at a Public Auction is hereby authorized.

_____
COUNCIL MEMBER INTRODUCING RESOLUTION

PASSED AND APPROVED THIS ___ DAY OF FEBRUARY, 2016

_____
SCOTT MURPHY,
COUNCIL PRESIDENT

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Purchase of Sewer Vacuum Bodies from State Contract 01912

	Consent	COUNCIL BILL #	
X	Action	Originating Department	Finance/Purchasing
	First Reading	Contact Person	Clark Langstraat
	Second Reading	Phone Number	425-257-8901
	Third Reading	FOR AGENDA OF	February 24, 2016
	Public Hearing		

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Motor Vehicle Division		None	Motor Vehicle Division, Public Works

Amount Budgeted	$684,329.54	
Expenditure Required	$684,329.54	Account Number(s):
Budget Remaining	-0-	Utilities 401 Vehicle Replacement
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Public Works has a need to replace two sewer-vacuum truck bodies for installation on separately purchased chassis. This equipment is available from competitively bid Washington State contract 01912. The City has an interlocal cooperative purchasing agreement with the state that allows us to make purchases from their competitively awarded contracts in lieu of soliciting bids on our own.

This purchase will replace two vehicles on the 2016 Approved Replacement List. Replaced vehicles will be surplused when replacements are put into service.

RECOMMENDATION (Exact action requested of Council):

Approve the Purchase of two Sewer-Vacuum Truck Bodies from State Contract 01912 in the amount of $684,329.54 including Washington State Sales Tax.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Recommendation of the 2016 Lodging Tax Advisory Committee concurred by the Budget Finance Chair regarding the allocation of current Lodging Tax Revenue

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

COUNCIL BILL #	
Originating Department	
Contact Person	Cassie Franklin
Phone Number	8703
FOR AGENDA OF	02/24/16

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
City wide	LTA meeting 1/27/16 & 2/10/16.		

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

DETAILED SUMMARY STATEMENT:

As required by RCW, The Lodging Tax Advisory Committee met to review the annual long term obligations of the Hotel Motel Fund. These long term obligations include the Multi-Purpose Facility $150,000.00 and the Everett Tourism Marketing Plan $15,000.00 for a total $300,000.00. The Lodging Tax Advisory Committee along with the budget and finance chair also reviewed and discussed all applications received on or before February 1, 2016 to recommend the best allocation of current Lodging Tax revenues in an amount not to exceed $150.000.00. The total amount of grant recommendations, in an amount not to exceed $150,000.00; are as follows:

Schack Art Center 2016 Exhibit and Events Promotion	$ 49,115.00
Colors of Freedom	$ 15,000.00
Sorticulture, Everett Garden Festival	$ 20,000.00
2016 PAC RIM Gymnastics	$ 10,000.00
Sangerfest Pac Coast Norwegian Singers	$ 1,425.00
Outdoor Movies Summer Sail In- Port of Everett	$ 3,000.00
Sand-Tastic! Imagine Children's Museum	$ 6,460.00
Everett Memorial Baseball Stadium Misc. Improvements	$ 0
Village Theatre's 3 shows starting with **"My Heart is a Drum."**	$32,000.00
Yankee Doodle Dash Everett Family YMCA	$3,000.00
Fisherman's Village Everett's Music and Arts Festival	$10,000.00
Total	**$150,000.00**

RECOMMENDATION (Exact action requested of Council): Concur with the recommendation of the Lodging Tax Advisory Committee and the Budget Finance Chair to accept the long term obligations of the Hotel Motel Tax listed above and to allocate grant funding as designated in an amount not to exceed $150,000.00 and Authorize the Mayor to sign the contracts.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Fuel Tax Grant Agreement with the State of Washington Transportation Improvement Board for Downtown Streetscape Improvements

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	425-257-8942
FOR AGENDA OF	Feb 17, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Rucker Avenue from Pacific to Everett Avenues		TIB Grant Agreement, Project Status Form	Public Works

Amount Budgeted	$ 7,629,502	
Expenditure Required	$ 7,629,502	Account Number(s): PW 3640
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Public Works Department was successful in obtaining grant funds from the Washington State Transportation Improvement Board (TIB) for construction of Downtown Streetscape Improvements.

These improvements were developed as part of the Downtown Plan and the Downtown Streetscape Plan and will include: curbs, gutters, sidewalks, pavement, lighting, signs, traffic signals and streetscaping. The project will also include Americans with Disabilities Act required improvements.

The total cost of improvements is estimated to be $7,629,502 with the TIB grant providing $4,103,982 and the balance of $3,525,520 from local matching funds.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Fuel Tax Grant Agreement with the State of Washington Transportation Improvement Board for Downtown Streetscape Improvements.

Transportation Improvement Board
Project Funding Status Form

Agency: **EVERETT** TIB Project Number: **8-1-138(035)-1**

Project Name: Rucker Avenue
Pacific Avenue to Everett Avenue (SR 529)

Verify the information below and revise if necessary.

Return to:
Transportation Improvement Board
PO Box 40901
Olympia, WA 98504-0901

PROJECT SCHEDULE

	Target Dates
Construction Approval Date	January 31, 2017
Contract Bid Award	March 31, 2017
Contract Completion	February 28, 2018

PROJECT FUNDING PARTNERS

List additional funding partners and amount.

Funding Partners	Amount	Revised Funding
EVERETT	3,525,520	
WSDOT	0	
Federal Funds	0	
TOTAL LOCAL FUNDS	**3,525,520**	

Signatures are required from two different agency officials. Return the originally signed form to the TIB office.

Mayor or Public Works Director

Signature Date

Printed or Typed Name Title

Financial Officer

Signature Date

Printed or Typed Name Title

AGENCY

City of Everett
8-1-138(035)-1
Rucker Avenue
Pacific Avenue to Everett Avenue (SR 529)

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Everett
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the Rucker Avenue, Pacific Avenue to Everett Avenue (SR 529) (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Everett, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of $4,103,982 for the project specified above, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT's Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT's submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

a) Project Funding Status Form
b) Bid Authorization Form with plans and engineers estimate
c) Award Updated Cost Estimate
d) Bid Tabulations
e) Contract Completion Updated Cost Estimate with final summary of quantities
f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable

amounts are greater than $50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.

b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.

c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.

d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

a) RECIPIENT is not making reasonable progress toward correction and compliance.
b) TIB denies the RECIPIENT's request to amend the Project.
c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.

b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.

c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for costs incurred in excess of the grant amount. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the original ratio between TIB funds and total project costs.

12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.

b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.

c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.

d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form
Attorney General

By:

Signature on file

Guy Bowman
Assistant Attorney General

Lead Agency		Transportation Improvement Board	
Chief Executive Officer	Date	Executive Director	Date
Print Name		Print Name	

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvement projects to Ariston Pacific, Inc.

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	425-257-8942
FOR AGENDA OF	February 17, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Various	City Council authorized Call for Bids December 16, 2015	Bid Summary	Public Works

Amount Budgeted	$1,230,000	
Expenditure Required	$1,230,000	Account Number(s): PW3523 and PW3524
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Bids for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvements projects were opened on January 26, 2016 with eight (8) bid proposals received for the construction projects. The lowest responsive and responsible bidder, Ariston Pacific, Inc., submitted a bid for $1,062,314.79.

These improvements will include increasing the visibility of pedestrians in crosswalks, upgrading pavement markings, installing permanent radar speed signs, improving traffic signal phasing and installing police enforcement "telltale" lights at certain intersections.

The funding sources for these projects are:

Federal Grant – HSIP-000S (330)	$ 450,000
Federal Grant – HSIP-000S (331)	780,000
Total Funds:	$1,230,000

RECOMMENDATION (Exact action requested of Council):

Award the bid for the Citywide Safety Improvements and Pacific Avenue and Broadway Safety Improvement projects to Ariston Pacific, Inc. in the amount of $1,062,314.79 including Washington State sales tax.

BID SUMMARY
PACIFIC/BROADWAY & CITYWIDE SAFETY IMPROVEMENTS
W.O.# PW3523 & PW 3524
Date 1/27/2016

For: Corey Hert, Project Engineer

Bidder Name:	Bidder Totals:
ENGINEER'S ESTIMATE	$922,112.78
Ariston Pacific, Inc.	$1,062,314.79
Totem Electric	$1,106,236.00
Global Contractors, LLC	$1,138,107.46
Colacurcio Brothers, Inc.	$1,182,209.00
SRV Construction	$1,188,261.00
Faber Construction	$1,213,133.37
Kamins Construction	$1,219,408.78
Transportation Systems, Inc	$1,266,994.44

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room

		Consent
		Action
	2/10	First Reading
	2/17	Second Reading
	2/24	Third Reading
		Public Hearing

COUNCIL BILL #	CB1602-05
Originating Department	Facilities
Contact Person	Scott Pattison
Phone Number	425-257-8846
FOR AGENDA OF	February 10, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
9425 Holly Drive	None	Ordinance	Facilities, Information Technology

Amount Budgeted	$140,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 021
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The City-owned Duplex located between the South Library and Fire Station No. 6 has been abandoned for years and has become an attractive nuisance. An existing City phone and data hub is located in a garage in the Duplex. The plan for this project is to demolish the existing Duplex and create a solid and secure structure around the existing phone and data room. The proposed Ordinance will fund the design and remodel of the existing Duplex Phone & Data Room.

The estimated cost of the project is as follows:

Design	$ 10,000
Construction	$ 120,000
Project Costs	$ 10,000
TOTAL	$ 140,000

The source of funds will be CIP 1.

RECOMMENDATION: Adopt an Ordinance creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.

ORDINANCE NO. _____

AN ORDINANCE creating the special construction fund entitled "Duplex – Phone & Data Room Remodel Project", Fund 342, Program 021, authorizing the design and remodel of the existing Duplex Phone & Data Room.

WHEREAS, the City Council has recognized the need to remodel the Duplex phone and data room located at 9425 Holly Drive.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: A special construction fund is hereby established as Fund 342, Program 021 entitled "Duplex – Phone & Data Room Remodel Project" to accumulate the design and construction costs required to remodel the phone and data room at the Duplex.

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

Section 3: The estimated cost of the project is $140,000.00 including costs related to design, construction, equipment and contract administration.

Section 4: The sum of $140,000.00 is hereby appropriated to Fund 342, Program 021 "Duplex – Phone & Data Room Remodel Project".

A. Use of Funds

Design	$ 10,000
Construction	120,000
Project Costs	10,000
Total	$ 140,000

B. Source of Funds

CIP 1	$140,000

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

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

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

CITY OF EVERETT

_____
Ray Stephanson, Mayor

Attest:

_____
Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating the special construction fund entitled "Police Headquarters Masonry Restoration Project", Fund 342, Program 020, authorizing the design and restoration of the existing masonry at Police Headquarters.

_____	Consent
_____	Action
2/10	First Reading
2/17	Second Reading
2/24	Third Reading
_____	Public Hearing

COUNCIL BILL #	CB1602-06
Originating Department	Facilities
Contact Person	Scott Pattison
Phone Number	425-257-8846
FOR AGENDA OF	February 10, 2016

Initialed by:
Department Head _____
CAA db
Council President SM

Location	Preceding Action	Attachments	Department(s) Approval
3002 Wetmore Avenue	None	Ordinance	Facilities, Police Department.

Amount Budgeted	$515,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 020
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Police Headquarters is in need of a masonry restoration to repair defects, provide additional strength, and extend the life of the building. The scope of work includes cleaning and sealing, tuck pointing grout joints, rebuilding some parapet corners and installing helical wall ties. The construction documents for this project were completed in 2015. The design cost includes the cost for construction administration. The proposed Ordinance will fund the design and restoration of the existing masonry at the Police Headquarters.

The estimated cost of the project is as follows:

Design	$ 10,000
Construction	$ 495,000
Project Costs	$ 10,000
TOTAL	$ 515,000

The source of funds will be CIP 1.

RECOMMENDATION:

Adopt an Ordinance creating the special construction fund entitled "Police Headquarters Masonry Restoration Project", Fund 342, Program 020, authorizing the design and restoration of the existing masonry at Police Headquarters.

ORDINANCE NO. _____

AN ORDINANCE creating the special construction fund entitled "Police Headquarters Masonry Restoration Project", Fund 342, Program 020, authorizing the design and restoration of the existing masonry at the Police Headquarters.

WHEREAS, the City Council has recognized the need to restore the masonry at the Police Headquarters located at 3002 Wetmore Avenue.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: A special construction fund is hereby established as Fund 342, Program 020 entitled "Police Headquarters Masonry Restoration Project" to accumulate the design and restoration costs required to restore the existing masonry.

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

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

Section 4: The sum of $515,000.00 is hereby appropriated to Fund 342, Program 020 "Police Headquarters Masonry Restoration Project".

A. Use of Funds

Design	$ 10,000
Construction	495,000
Project Costs	10,000
Total	$ 515,000

B. Source of Funds

CIP 1	$515,000

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

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

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

CITY OF EVERETT

_____
Ray Stephanson, Mayor

Attest:

_____
Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.

_____	Consent
_____	Action
2/10	First Reading
2/17	Second Reading
2/24	Third Reading
_____	Public Hearing

COUNCIL BILL #	CB1602-07
Originating Department	Facilities
Contact Person	Scott Pattison
Phone Number	425-257-8846
FOR AGENDA OF	February 10, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
1121 SE Everett Mall Way	None	Ordinance	Facilities

Amount Budgeted	$500,000.00	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	Fund 342, Program 022
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The existing Everett Police Department South Precinct roof has suffered numerous leaks and membrane bubbles in recent years and needs to be replaced. The proposed Ordinance will fund the design and replacement of the South Precinct roof.

The estimated cost of the project is as follows:

Design	$ 50,000
Construction	$ 440,000
Project Costs	$ 10,000
TOTAL	$ 500,000

The source of funds will be CIP 1.

RECOMMENDATION:

Adopt an Ordinance creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.

ORDINANCE NO. _____

AN ORDINANCE creating the special construction fund entitled "South Precinct Roof Replacement Project", Fund 342, Program 022, authorizing the roof replacement at the South Precinct.

WHEREAS, the City Council has recognized the need to replace the existing roof at the South Precinct located at 1121 SE Everett Mall Way.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: A special construction fund is hereby established as Fund 342, Program 022 entitled "South Precinct Roof Replacement Project" to accumulate the design and construction costs required to replace the existing roof.

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

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

Section 4: The sum of $500,000.00 is hereby appropriated to Fund 342, Program 022 "South Precinct Roof Replacement Project".

A. Use of Funds

Design	$ 50,000
Construction	440,000
Project Costs	10,000
Total	$ 500,000

B. Source of Funds

CIP 1	$500,000

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

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

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

CITY OF EVERETT

_____

Ray Stephanson, Mayor

Attest:

_____

Sharon Fuller, City Clerk

Passed:

Valid:

Published:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Distribution Easement Agreement with Public Utility District No. 1 of Snohomish County for electrical distribution facilities at Reservoir 3

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Facilities/Real Property
	Consent	Contact Person	Barb Hardman
2/24/16	Action	Phone Number	(425) 257-7394
	First Reading	FOR AGENDA OF	February 24, 2016
	Second Reading		
	Third Reading	Initialed by:	
	Public Hearing	Department Head	
	Budget Advisory	CAA	
		Council President	

Location	Preceding Action	Attachments	Department(s) Approval
6107 Berkshire Drive		Agreement and Site Plan	Utilities; Facilities/Real Property

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

DETAILED SUMMARY STATEMENT:
Public Utility District No. 1 of Snohomish County (PUD) needs to replace an underground electric cable and add an additional 50 feet of new cable to connect to an existing electrical vault that was placed in 1988. The attached agreement provides for the PUD to install, operate and maintain the underground electric distribution lines and facilities. A one-time payment of $8,206.00 is being provided to the City for the additional easement area.

RECOMMENDATION:
Authorize the Mayor to sign the Distribution Easement Agreement with Public Utility District No. 1 of Snohomish County for electrical distribution facilities at Reservoir 3.

AFTER RECORDING, PLEASE RETURN TO:

Public Utility District No. 1 of Snohomish County
Attn: Kelly McGill,
Manager, Real Estate Services
P.O. Box 1107
Everett, Washington 98206-1107

E-_____
WO# 100000744-60 ROW# 19808 W# 21147

DISTRIBUTION EASEMENT

Grantor ("Owner"):	City of Everett, a Municipal Corporation
Grantee:	Public Utility District No. 1 of Snohomish County
Short Legal Description:	Ptn. NW/SE of Sec. 6, Twp. 28N, Rge. 5E, W. M.
Tax Parcel No:	28050600400900

THIS DISTRIBUTION EASEMENT ("Easement") is made this _____ day of _____ _____201_, by and between City of Everett, a Municipal Corporation ("Owner"), and Public Utility District No. 1 of Snohomish County, a Washington State municipal corporation ("District") and Frontier Communications Northwest Inc. The Owner, District and Frontier are sometimes referred to individually herein as "Party" and collectively as "Parties". The District and Frontier are collectively referred to as "Grantee".

WHEREAS, Owner is the owner of certain lands and premises situated in the County of Snohomish, State of Washington, legally described as follows (hereinafter "Property"):

All that portion of the Northwest Quarter of the Southeast Quarter of Section 6, Township 28 North, Range 5 East, W. M., more particularly described as follows; Beginning at the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 6, Township 28 North, Range 5 East, W. M., thence South for a distance of 858 feet; thence West for a distance of 1125.88 feet; thence North for a distance of 858 feet; thence East for a distance of 1125.88 feet to the True Point of Beginning; Except that portion of the Northwest Quarter of the Southeast Quarter of Section 6, Township 28 North, Range 5 East, W. M., described as follows; Beginning at the Northeast corner of said Northwest Quarter of the Southeast Quarter; thence North 89°40'27" West along the North line of said Northwest Quarter of the Southeast Quarter for 250.97 feet; thence South 49°18'47" East for 130.12 feet; thence South 42°05'25" East for 224.47 feet to the East line of said Northwest Quarter of the Southeast Quarter, thence North 0°25'23" East along said East line for 250.00 feet to the Point of Beginning. Also Except all of Block 3, Beverly Hills Division No. 2, according to the Plat thereof recorded in Volume 10 of Plats, page 78, records of Snohomish County, Washington.

Situate in the County of Snohomish, State of Washington

WHEREAS, the Grantee is desirous of acquiring certain rights and privileges across, over, under, upon and through the Property.

NOW, THEREFORE, the Parties agree as follows:

1. Distribution Easement. Owner, for good and valuable consideration, receipt of which is hereby acknowledged, hereby conveys and grants to Grantee, its agents, contractors, successors and assigns, a non-exclusive easement for the perpetual right, privilege, and authority to patrol, construct, erect, reconstruct, alter, improve, extend, repair, operate, and maintain underground electric distribution lines and facilities, Grantee-owned communication wires and cables, and other necessary or convenient appurtenances, necessary for District use, across, over, and upon the following portion of Owner's Property (hereinafter "Easement Area"):

The North 10 feet of the East 260 feet of the West 632 feet of the above described real property.

2. Access To and Across Property. Grantee has the right of ingress to and egress from the Easement Area across the adjacent Property of Owner where same is reasonably necessary for the purpose of exercising its easement rights described in Section 1.

3. Owner's Reservation of Rights and Use of Easement Area. Owner reserves the right to use the Easement Area in a manner that does not interfere with the Grantee's use of the Easement Area, and/or present a hazard to Grantee's electric distribution lines and facilities, communication wires and cables, and other appurtenances. The Owner shall not construct or permit to be constructed any structures of any kind in the Easement Area without prior approval of the District.

4. Clearing of Power Line Right of Way. Grantee has the right at all times to clear said Easement Area and keep the same clear of all brush, debris and trees, as provided for herein.

5. Trimming or Removal of Hazardous/Danger Trees. Grantee has the right at all times to cut, slash, or trim and remove brush, timber or trees from the Property which in the opinion of Grantee constitute a hazard to said lines and facilities, communication wires and cables, and other appurtenances or the Grantee's access thereto. Trees, brush or other growth shall be deemed hazardous to the lines or facilities or access of the Grantee when they are of such a height that they could, upon falling, strike the nearest edge of the Easement Area at a height of more than fifteen feet (15'). Except in emergencies, Grantee shall, prior to the exercise of such right, identify such hazards and shall coordinate and obtain Owner's permission prior to removal of any such hazards.

6. Title to Removed Trees, Vegetation and Structures. The title to all brush, debris, trees and structures removed from the Easement Area and the Property pursuant to Sections 4 and 5 shall be vested in the Grantee, and the consideration paid for this Easement and rights herein described is accepted by Owner as full compensation for said removed brush, debris, trees and structures. Owner shall be entitled to request fallen timber be set aside for Owner's personal use. Grantee shall make reasonable effort to set aside said fallen timber provided doing the same is safe in Grantee's sole opinion. Title to any fallen timber set aside in this manner shall revert to the Owner.

7. Restoration Provision. To the extent that Owner's Property is disturbed and/or damaged by Grantee's exercise of its rights hereunder, Grantee shall restore the condition of the Property as nearly as reasonably possible to its existing condition prior to said exercise of its rights.

8. Title to Property. The Owner represents that it has the lawful right and power to sell and

convey this Easement to Grantee.

9. Binding Effect. This Easement and the rights and obligations under this Easement are intended to and shall run with the Property and shall benefit and bind the Parties and their respective heirs, successors and assigns.

10. Governing Law and Venue. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Easement shall lie in the Superior Court of Washington for Snohomish County, Washington.

11. Authority. Each party signing this Easement, if on behalf of an entity, represents that they have full authority to sign this Easement on behalf of such entity.

12. Grantee Acceptance. By recording this Easement, Grantee hereby accepts all provisions set forth under this agreement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written

Please sign and have notarized below

By: _____
Mayor

Attest:

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

(REPRESENTATIVE ACKNOWLEDGMENT)

State of Washington
County of Snohomish

I certify that I know or have satisfactory evidence that _____ (is/are) the person(s) who appeared before me and said person(s) acknowledged that (he/she/they) signed this instrument on oath stated that (he/she/they) (are/is) authorized to execute the instrument and acknowledged as the _____ of the City of Everett. to be (his, her, their) free and voluntary act for the uses and purposes mentioned in the instrument.

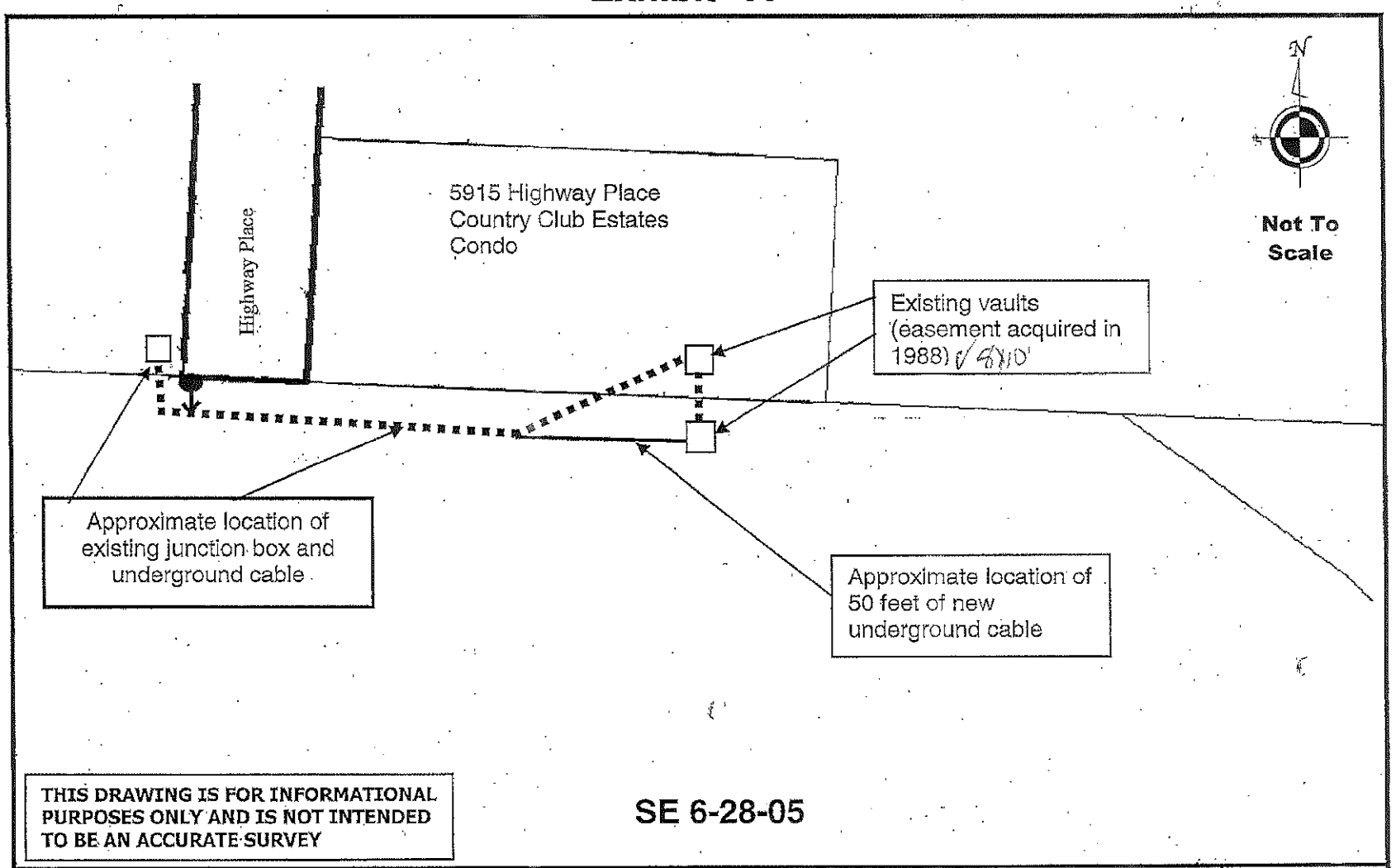
Given under my hand and official seal this _____ day of _____, 201_.

(Seal or Stamp)

Signature of
Notary Public _____
Print Name:_____
Residing at:_____

My appointment expires _____

Exhibit "A"



THIS DRAWING IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE AN ACCURATE SURVEY

SE 6-28-05

SNOHOMISH COUNTY PUD PUBLIC UTILITY DISTRICT NO. 1	City of Everett	Tax Lot #28050600400900	W.O. #100000744 R/W #19808	11/23/2015

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Lease Renewal and Amendment No. 2 with Village Theatre for lease of space at 2730 Wetmore Avenue

	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 24, 2016
	Second Reading		
	Third Reading	Initialed by:	
	Public Hearing	Department Head	
	Budget Advisory	CAA	
		Council President	

Location	Preceding Action	Attachments	Department(s) Approval
2730 Wetmore Avenue	Initial Lease Agreement dated July 18, 2009; Amendment No. 1 dated September 20, 2011	Amendment No. 2; Amendment No. 1; Lease Agreement	Facilities/Property Management

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

DETAILED SUMMARY STATEMENT:

Village Theatre leases the former Key Bank Building located at 2730 Wetmore Avenue. The current lease term expires on February 29, 2016. Village Theatre wishes to remain in the space and exercise their first option to extend the Lease for a period of five years, to begin March 1, 2016 and expire on February 28, 2021. All other lease terms remain unchanged.

RECOMMENDATION:

Authorize the Mayor to sign the Lease Renewal and Amendment No. 2 with Village Theatre for Lease of space at 2730 Wetmore Avenue.

.

LEASE RENEWAL
and AMENDMENT No. 2

This Lease Renewal and Amendment No. 2 is dated as of this __ day of February 2016, by and among **City of Everett**, a Washington State municipal corporation the ("City" or "*Lessor*") and VILLAGE THEATRE a nonprofit corporation , (the "Theatre" or "*Lessee*").

RECITALS

The City, and the Theatre are parties to the Former Key Bank Building Lease between Village Theatre and City of Everett dated June 18, 2009 and Amendment No.1 dated September 20, 2011(the "Lease").

The City and Village Theatre hereby express their mutual desire to renew the **Lease** by

Exercising the first option to extend the **Lease** for a period of five (5) years as provided for under Section 2. A.Term /Options to Renew to Extend of the **Lease.**

The Lease is hereby extended commencing on March 1, 2016, and will expire on February 28, 2021

Full Force and Effect. The parties acknowledge that the responsibilities for exterior repair and maintenance will remain with the Lessor during this lease term. The parties further agree that the **Lease** remains in full force and effect without interruption, except as expressly modified by this Amendment, and as of the date of this Amendment, the parties know of no facts or circumstances that would constitute a default under the **Lease.**

This LEASE RENEWAL and AMENDMENT No. 2 is hereby approved and accepted by:

LESSOR:

CITY OF EVERETT

By _____
Ray Stephanson, Mayor

Dated: _____

ATTEST:

By _____
Sharon Fuller, City Clerk

Dated: _____

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney

Dated: _____

On this day of 20___, before me the undersigned, personally appeared RAY STEPHANSON, to me known to be the MAYOR of the CITY OF EVERETT, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year above written.

Notary: _____
Print Name: _____
Notary Public in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON
:) ss.
COUNTY OF SNOHOMISH

LESSEE:

Village Theatre

By _____
Robert W. Hunt
Its Executive Producer

I certify that I know or have satisfactory evidence that Robert W. Hunt signed this instrument and acknowledged it as the Executive Producer to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-5-16
Signature of
Notary Public: _____
Notary (print name) David Alexander
Residing at 305 Front St N Issaquah Wa 98027
My appointment expires: 5-12-16

Notary Public
State of Washington
DAVID THOMAS ALEXANDER
MY COMMISSION EXPIRES
May 12, 2016

RETURN TO
EVERETT CITY CLERK
2930 Wetmore
Everett, WA 98201

AMENDMENT NO. 1
FORMER KEY BANK BUILDING LEASE BETWEEN VILLAGE THEATRE AND CITY OF EVERETT

THIS AMENDMENT is dated as of September __, 2011, by and between the CITY OF EVERETT, a Washington municipal corporation (the "*City*" or "*Lessor*") and VILLAGE THEATRE, a nonprofit corporation (the "*Theatre*" *or* "*Lessee*").

RECITALS

A. The City and the Theatre are parties to the Former Key Bank Building Lease between Village Theatre and City of Everett dated June 18, 2009 (the "*Lease*").

B. The City and the Theatre desire to make certain changes to the Lease.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Village Theatre
Key Bank Lease

1. The following sentence in Section 3 of the Lease is deleted:

   While Lessee is constructing Tenant Improvements, Lessee's rental amount shall be reduced to $2000 per month, provided that such rental reduction shall only apply to the first six months of the Lease term or until programmatic use of the premises occurs during the first six month period.

2. The following is added to the end of Section 3 of the Lease:

   The northwest portion of the first floor of the Premises contains a food and beverage space that opens to the area between the Everett Performing Arts Center and the Premises (the "*Concession Space*"). The Lessee's rental amount shall be reduced to $2000 per month until the City's construction activities in the area between the Everett Performing Arts Center and the Premises are completed to the extent necessary to allow the Lessee a commercially reasonable opportunity to sublease the Concession Space.

3. All provisions of the Lease remain in full force and effect, except as expressly modified by this Amendment. Capitalized terms not defined in this Amendment have the meaning given to them in the Lease.

IN WITNESS WHEREOF, the City and the Theatre have executed this Amendment as of the date first above written.

CITY/LESSOR:

CITY OF EVERETT
WASHINGTON

By: Ray Stephanson
Ray Stephanson, Mayor

9-20-2011
Date

ATTEST:

Sharon Marks
Sharon Marks, City Clerk
Date: 9/20/11

APPROVED AS TO FORM:

James D. Iles
James D. Iles, City Attorney
Date: 9/19/11

THEATRE/LESSEE:

VILLAGE THEATRE,
a nonprofit corporation

By: Ralph Hall
Title Executive Producer

9/26/11
Date

CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this 20th day of Sept., 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Ray Stephanson, to me known (or proved by satisfactory evidence) to be the Mayor of the City of Everett, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

TAM MOEN
COMMISSION EXPIRES
NOTARY
PUBLIC
7-17-2014
STATE OF WASHINGTON

Tam Moen
NOTARY PUBLIC in and for the State of Washington, residing at Everett
My Commission expires 7-17-2014
Print name: TAM Moen

VILLAGE THEATRE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Robb Hunt signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Producer of Village Theatre to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Washington, residing at 305 First St N Issaquah 98027
My Commission expires 10-11-14
Print name: Jeff Luu

JEFF L. LUU
COMMISSION EXPIRES
NOTARY
PUBLIC
10-11-14
STATE OF WASHINGTON

FORMER KEY BANK BUILDING LEASE BETWEEN VILLAGE THEATRE AND CITY OF EVERETT

This Lease is made this 18th day of June, 2009, between the City of Everett, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "Lessor", and Village Theatre, a nonprofit corporation, hereinafter referred to as "Lessee".

1. PREMISES. The Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain premises at 1621 California St., Everett, WA (hereinafter called "Premises"), legally described as:

The East 80 ft. of Lots 17 to 20 inclusive, Block 625, Plat of Everett, Volume 3 of Plats, page 32, records of the County of Snohomish, State of Washington.

2. TERM AND IMPROVEMENTS.

A. Term/Options to Renew. The term of this Lease shall be for five (5) years and commence on 12:00 AM of the first day of the month following substantial completion of the Shell Improvements (as defined below), and end at 11:59 PM of the sixtieth month thereafter. There shall be three options to renew for succeeding five year periods which may be exercised (provided that Lessee is in compliance with the provisions of this Lease) by Lessee by written notice of intent to renew delivered to Lessor within the period of the 54th and the 58th month period of each five year term. If, during the course of the lease, Lessor chooses not to renew Lessee's Everett Performing Arts Center management contract, Lessee may terminate this Lease without cause upon three (3) months written notice, and Lessor will reimburse Lessee for unamortized Tenant Improvement costs. Tenant Improvements to be amortized and amortization schedules will be provided upon occupancy when Tenant Improvements are placed in service. Provided that upon payment of such reimbursement, all Tenant Improvements listed in Exhibit B shall become the property of the City of Everett. Said amortization shall be fifteen years (15) straight line starting from the aforesaid Commencement Date. In any event, this Lease shall terminate and no longer be effective after December 31, 2029.

B. Shell Improvements. Lessor shall construct shell improvements on the Premises (the "Shell Improvements") as described on Exhibit A hereto. The City considers this lease for the Kidstage program to be part of an overall public facility which will include a Plaza planned for construction adjacent to the west of the Premises. Lessee agrees to cooperate with the Lessor in the construction of said Plaza and the integration of the two properties for public use; provided that it is understood that Lessee shall not be responsible for Plaza construction and Plaza maintenance costs.

C. Conditions Precedent to Lease Commencement. The Lessor shall have no obligation to construct the Shell Improvements or to go forward with the lease until the following conditions are satisfied: (1) Lessee shall provide to Lessor evidence satisfactory to the City Budget and Finance Director that Lessee has maintained minimum funding for Lessee's Tenant Improvements (as defined below), which amount

RETURN TO
EVERETT CITY CLERK
2930 Wetmore
Everett, WA 98201

is $900,000 (Lessor agrees that the current approved line of credit is satisfactory); and (2) Lessor shall have obtained a bid or bids for the construction of the Shell Improvements satisfactory to the Lessor and not exceeding $1,500,000 including taxes. In the event that the foregoing condition 1 is not satisfied, Lessor may at Lessor's sole discretion terminate this Lease on written notice thereof to Lessee, in which case Lessee shall have no claim against the Lessor for any costs incurred by Lessee prior to such termination or for any loss, damage or liability that may result from such termination; in the event condition 2 is not satisfied and Lessor terminates the Lease, Lessor will reimburse Lessee for all costs incurred after the date the Lease is signed, not to exceed $50,000.

D. Tenant Improvements. Lessee shall construct tenant improvements on the Premises ("Tenant Improvements") as described on Exhibit B hereto. The Tenant Improvements shall be subject to Section 5 of this Lease. Lessee shall also obtain Lessor's written approval prior to construction of the Tenant Improvements of (1) any contractors to be used in the construction of the Tenant Improvements and the insurance carried by such contractors and (2) the plans and specifications of the Tenant Improvements. In the event that the Tenant Improvements are not substantially completed on or before the date that is six months after the substantial completion of the Shell Improvements, Lessor may at Lessor's sole discretion terminate this Lease on written notice to Lessee, in which case Lessee shall have no claim against Lessor for any costs incurred by Lessee prior to such termination or for any loss, damage or liability that may result from such termination.

3. CONSIDERATION. Lessee leases said Premises for said term and agrees to pay the monthly rental amount for the Premises (which amount is set forth below in this Section 3) within 10 days after the first day of each month during the term of this Lease and any extensions thereof to:

Treasurer
City of Everett
2930 Wetmore
Everett, WA 98201

or such other place as the Lessor may from time to time designate in writing. If any rent is, at any time, ten (10) or more days past due, Lessee will be charged a late charge equal to ten (10) percent of the past due rental amount. All rent payments must be made without deduction or offset.

During the first year of the Lease, the monthly rental amount for the Premises shall be $4000.00. Throughout the Lease term and any extensions thereof, the monthly rental amount for the Premises shall increase on each anniversary of the commencement of the Lease. Such annual increase shall be an amount equal to the monthly rental amount for the Premises in effect for the year preceding such anniversary multiplied by the percentage change in the Consumer Price Index (CPI-U) for the Seattle-Tacoma area from the beginning to the end of such preceding year. In the event there is no CPI increase, rent shall remain the same as the previous year.

As additional consideration to Lessor, Lessee agrees to the following: a) Lessee will provide space on commercially reasonable terms by sublease or otherwise as approved by the Lessor for food and beverage dispensation with an opening to the area planned for development by the Lessor between the Everett Performing Arts Center and

the Premises, and such space shall be marked on the plans and specification submitted by Lessee for approval under Section 2(D) of this Lease; b) Lessee will allow Lessor use of the Premises at no charge for Lessor-sponsored functions to a maximum of ten (10) events over each twelve month period during the term of the Lease and any extensions thereof; c) Lessee will provide at least one lunch performance per week during the period of the first of July to mid-August of each year during the term of the Lease and any extensions thereof on the adjacent Plaza property of the Lessor; d) within one month of completion of Tenant Improvements and commencement of the full Lease, the Kidstage program will be removed from revenue-producing spaces at the Everett Performing Arts Center, except for Summerstock rehearsals and performances and contracted performances; e) Lessee agrees to reasonably cooperate and coordinate its programs and activities and use of the Premises with the programs and activities of the Lessor on the Plaza property adjacent to the Premises.

While Lessee is constructing Tenant Improvements, Lessee's rental amount shall be reduced to $2,000 per month, provided that such rental reduction shall only apply to the first six months of the Lease term or until programmatic use of the premises by Lessee occurs during that first six month period.

4. USE. The Lessee will use and occupy said Premises for Lessee's "Kidstage" program or other programs as approved by the Lessor to encourage children's interest and participation in the theater and in the arts. Lessee agrees that in the operation of the business to be conducted on said Premises and in any occupancy thereof Lessee shall comply with the laws, rules and regulations of the governments of the United States, State of Washington, Snohomish County and City of Everett. Lessee agrees to maintain the Premises in good condition and repair throughout the term of the Lease and any extensions thereof. Lessee agrees not to use any machinery or equipment in the Premises which might be injurious to the building or which might cause noise or vibration which would be objectionable to uses on the Lessor's adjacent property. Upon termination of the lease, Lessee shall quit and surrender the Premises in as good a state and condition as reasonable use and wear and tear thereof permit, damage by the elements or other actions not caused by Lessee or its employees, agents, customers or invitees excepted.

5. ALTERATIONS AND FIXTURES. Lessee is aware of the nature and extent of Shell Improvements to be constructed by Lessor and accepts the Premises as is, except for construction of said Shell Improvements. After prior written consent of Lessor, Lessee may make alterations, additions and improvements in said Premises, at Lessee's sole cost and expense. Lessee shall use contractors acceptable to Lessor and such contractors shall carry insurance acceptable to Lessor. In the performance of such work, Lessee agrees to comply with all laws, ordinances, rules, and regulations of any proper public authority, and to save Lessor harmless from damage, loss or expense. Upon termination of this Lease, (unless termination is due to Lessor not renewing Lessee's Everett Performing Arts Center management contract, in which case due compensation per 2A applies) if Lessor elects to not retain Lessee's alterations and improvements, Lessee shall remove such improvements installed by Lessee and restore the Premises to its original condition not later than the termination date, at Lessee's sole cost and expense. Any such improvements not so removed shall be removed at Lessee's expense including the cost to repair any damage caused by such removal

6. LIENS. In the event the Premises shall at any time during the term of this Lease or any extensions thereof become subject to any suit brought to enforce a lien or any statement or claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to Lessee on the Premises, Lessee may contest such lien by legal proceedings but shall, in any event, cause such lien, at its sole cost, to be discharged

within thirty (30) days after notice thereof by the substitution therefore of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to Lessor.

7. HOLD HARMLESS CLAUSE. Lessee agrees to and does hereby indemnify and hold Lessor and its officers, employees and agents and the property of Lessor free and harmless from and against any and all claims, actions, demands, suits, losses or liability resulting at any time from injury to or death of any person or persons, and/or damage to any and all property occurring from the negligence or other fault or omission of Lessee, its agents, servants, employees, subcontractors or sublicensees, in or about the Property, or resulting from any non-compliance with any law, ordinance or regulation respecting the condition, use or occupation of the Property or any part thereof, or arising or resulting from the exercise by Lessee of any of its rights under the terms of this Lease. Without limiting the generality of the foregoing, the within indemnification by Lessee of Lessor and its officers, employees and agents shall include indemnification from any claim, action, demand, cause of action, suit or proceeding and said indemnification shall in all events include any and all attorney's fees, court costs and other legal expenses, and shall include the obligation of Lessee to appear in and defend any and all such claims, actions or other legal proceedings whether judicial, quasi-judicial, administrative or otherwise, against or affecting Lessor arising out of or pertaining to the performance or non-performance of any duty by Lessee under the terms and provisions of the within Lease.

This paragraph does not purport to indemnify the Lessor against liability for damages arising out of bodily injury to persons or damages caused by or resulting from the sole negligence of the Lessor, its officers, employees and agents; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Lessor, its officers, employees or agents, and (b) Lessee, its agents, servants, employees, officers, subcontractors, sublicensees, sublessees, successors or assigns, this indemnity provision shall be valid and enforceable to the extent permitted by law. The Lessee specifically and expressly waives any immunity under Industrial Insurance, Title 51 R.C.W., and acknowledges that this waiver has been mutually negotiated by the parties.

8. LIABILITY INSURANCE. The Lessee shall, at its own expense, maintain Commercial General Liability Insurance with a reputable insurance company or companies satisfactory to the Lessor, in the minimum limits of two million dollars ($2,000,000) per occurrence and no less than $2,000,000 in the annual aggregate. The Lessee agrees to supply the Lessor with a certificate of insurance establishing (1) that its insurance obligations as herein provided have been met, (2) that the insurance policy or policies as herein required are not subject to cancellation without at least sixty (60) days advance written notice to the Lessor, and (3) that the City of Everett, its officers, employees and agents are named as additional insureds.

9. SUBLETTING AND ASSIGNMENT. Lessee shall not sublet the whole or any part of said Premises, nor assign this lease, or any part thereof, without the written consent of Lessor which consent shall not be unreasonably withheld. If consent is once given by Lessor to the assignment of this lease, or any interest therein, Lessor shall not be barred from afterward refusing to consent to any further assignment. This Lease shall not be assignable by operation of law. Lessee acknowledges that any assignment shall continue or parallel the uses outlined in Section 4 above.

Any assignment made by Lessee shall not become effective until the assignee, in writing, shall assume this Lease and agree to perform and be bound by all of the obligations of Lessee accruing under this Lease from and after the date of such assignment. In the event of such an assignment and assumption, Lessor shall remain bound by all of the obligations of Lessor accruing under this lease and, regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. Acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

In the event of a permitted assignment of this Lease, Lessor, without having written notice from the Lessee to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by Lessor only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Lessor for its consent.

Notwithstanding anything to the contrary herein, Lessor may assign its interest in the Lease and Lessee shall attorn to such assignee.

10. CASUALTY REBUILDING CONDEMNATION. In the event the building of which the Premises are a part shall be destroyed or damaged by fire or other causes (and regardless of the extent of the damage) to such an extent that the parties agree that the uses by the Lessee as outlined in Section 4 hereof, are no longer feasible, then rental obligations under this Lease shall terminate as of the date of the damage or destruction. Either party may elect to terminate the Lease if the cost of the repairs are in excess of Lessor's or Lessee's available insurance. Rent shall abate from the date of such damages or destruction to the date the premises are restored to the same condition as immediately before.

In the event that the Premises are not usable as contemplated in this agreement for over 180 days due to said damage or destruction and the parties have not reached an agreement as to future use and continuation of the Lease, Lessee or Lessor have the right to terminate the lease.

If the Premises or any part thereof is taken by state, federal, or other non-City of Everett action, such as eminent domain, this Lease and all options shall terminate and Lessee shall have no interest in the just compensation except to the extent of payment attributable to fixtures installed by the Lessee.

11. WAIVER OF SUBROGATION. Lessor and Lessee each mutually release the other from every right, claim and demand which may hereafter arise in favor of either arising out of or in connection with any loss occasioned by fire and such other perils as are included in the provisions of the normal extended coverage clauses of fire insurance policies, and do hereby waive all rights of subrogation in favor of insurance carriers arising out of any such losses and sustained by either the Lessor or the Lessee in or to the Premises or any property therein. Provided, however, that if at any time either Lessor or Lessee can obtain a waiver of subrogation clause only for an additional premium, such clause shall be obtained only if the party in whose favor it runs pays such additional premium. If such waiver of subrogation can be obtained only for an additional premium

by either Lessor or Lessee, and either party elects not to obtain a waiver of subrogation, this entire clause shall be null and void.

12. NOTICES. All notices to be given by the parties hereto shall be in writing and may either be served personally or may be deposited in the United States mail, postage prepaid, by either registered or certified mail, and if to be given Lessor, may be addressed to Lessor at:

Mayor of Everett City of Everett 2930 Wetmore Everett, WA 98201	Real Property Manager City of Everett 3200 Cedar Ave. Everett, WA 98201	City Clerk City of Everett 2930Wetmore Everett, WA 98201

or if to be given Lessee, may be addressed to Lessee at the following address(es):

Village Theatre
c/o Robert W. Hunt
303 Front Street N.
Issaquah, WA 98027

13. SERVICES. Lessor shall provide connection and initial turn-on of the premises to all utilities, except communications. Lessee shall be responsible paying the ongoing cost of those services and utilities, including electricity, gas, water, sewer, heating and air-conditioning. Lessee shall pay all janitorial and garbage service expenses, excluding costs incurred for the Plaza pump equipment.

14. REPAIRS AND MAINTENANCE. All interior repairs and maintenance of the premises and fixtures shall be the responsibility of the Lessee at Lessee's sole expense, excluding those repairs covered by warranty under Lessor's control or repairs of damage caused by actions of Lessor or its agent which will be the responsibility of Lessor. During the first five (5) years of the Lease, Lessor shall be responsible for exterior repairs and maintenance (except window washing) including but not limited to window damage, siding, roof, and landscaping. Lessor will be responsible for repairs to the exterior of the building covered by warranty under control of the Lessor. During the lease term and any extensions thereof, damage to the exterior of the building caused by public's use of the park will be the responsibility of the Lessor. Design and maintenance of landscaping and exterior artwork shall be at the Lessor's discretion to the Lessor's usual and accustomed standards for its properties. After the first five year term, exterior repair and maintenance responsibilities shall be negotiated and resolved before the Lessor's and Lessee's agreement to any succeeding lease term. In the event that the Lessor determines to make repairs or improvements during the Lease term or any extensions thereof, Lessee shall grant reasonable access to the Lessor and no compensation shall be made to or claimed by the Lessee from the Lessor by reasons of inconvenience, annoyance or damage of any kind whatsoever arising from the making of repairs to or maintenance or alteration of the building or appurtenances of the Premises covered hereby. Lessor reserves the right to make repairs, alterations, connections or extensions when and where the same may be deemed by the Lessor to be necessary. However, any repairs, maintenance or alteration of the building or appurtenances shall not render the building unusable for the purposes of this Lease because of any action arising from the making of the repairs, maintenance or alteration to the building or

appurtenances. However, nothing herein should be construed that the Lessor and Lessee may not negotiate the nature of and the cost of the repairs and alterations to the Premises.

15. SIGNS. Lessee shall have the right to place identifying signage on and about the Premises with consent of Lessor, subject to compliance with all applicable laws. This consent shall not be unreasonably withheld.

16. INSOLVENCY. In the event that the Lessee shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt, or if a receiver is appointed for the Lessee or if the property of the Lessee upon the Premises shall be seized by any enforcement officer by reason of an attachment, execution or other process, Lessor shall have the option to terminate this lease.

17. DEFAULT - TERMINATION. If Lessee fails to observe or perform any term or condition of this lease, the Lessor may elect to deliver written notice to the Lessee as specified in section 12 above. After failure to cure a monetary default within ten (10) days after receiving notice or a non-monetary default within thirty (30) days after receiving notice, the Lessee shall be deemed to be in default. In the event of default and upon thirty (30) days written notice of termination to the Lessee in default, the Lessor may terminate this Lease. In the event of default by Lessee, Lessee's current rent obligation shall continue until Lessee fully vacates the Premises and turns over the possession to Lessor, plus, after vacation, Lessee shall pay to Lessor an amount equal to six months rent.

18. NO WAIVER OF COVENANTS. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The acceptance by Lessor of rent with knowledge of the breach of any of the covenants of this Lease by Lessee shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

19. DELAYED POSSESSION. In the event of the inability of Lessor to deliver possession of the Premises for any reason whatsoever at the time of the commencement of the term of this Lease, neither Lessor nor its agents shall be liable for any damage caused thereby, nor shall this lease thereby become void or voidable, nor shall the term herein specified by in any way extended, but in such event Lessee shall not be liable for any rent until such time as Lessor can deliver possession, and in the event that possession is delayed over ninety (90) days, Lessee shall have the right to terminate this Lease.

20. HOLDING OVER. If Lessee, with the consent, express or implied, of the Lessor, shall hold over after the expiration of the term of this Lease, the Lessee shall remain bound by all the terms, covenants, and agreements hereof, except that the tenancy shall be from month to month, at 105% of the monthly rent payable for the last month of the Lease term.

21. REPRESENTATIVES. The rights, liabilities, and remedies provided for herein shall extend to the legal representatives, successors and, so far as the terms of this lease permit, assigns of the parties hereto; and the words "Lessor" and "Lessee" and their accompanying verbs or pronouns, wherever used in this lease, shall apply equally to all persons, firms or corporations which may be or become parties hereto.

22. RULES. Lessee and Lessor may from time to time agree on rules and regulations governing the operation of the Premises, and will use reasonable methods to induce customers, clients and all persons invited by Lessee into said building to observe the same.

23. LEASE TAX. The possessory interest of Lessee in the property herein leased may be subject to taxation under the laws of the State of Washington (Ch. 61, 1975-1976 Laws, 2d Ex. Sess., as amended) at the present rate of twelve point eighty four percent (12.84%), or as may be amended by Washington State legislation, of the taxable rent to be paid to the Lessor monthly under the terms of this lease. This tax is not included in the monthly rent required above. Lessee agrees to pay and the Lessor agrees to collect and pay over to the State Department of Revenue the aforesaid leasehold excise tax in accordance with the statutes governing same to the extent that it is applicable to this Lease. Lessee will be responsible for pursuing such leasehold excise tax exemption as may be applicable.

24. RECORDING. Lessee agrees that Lessor, at its sole option and at any time prior to the expiration of this Lease, may file same or a Memorandum Form thereof for recording with the Director, Records and Elections, Snohomish County, Washington. If a Memorandum Form of the lease is filed for recording, Lessee agrees to execute and return same promptly upon receipt from Lessor.

25. TIME. Time is of the essence of this agreement.

26. HAZARDOUS MATERIAL. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by Lessee, its agents, employees, contractors, or invitees, without the prior written consent of Lessor. Lessee's request for use of commercial products that may be considered Hazardous Materials shall include a listing of the products, their intended uses by Lessee, and the manufacturer's Material Safety Data Sheet for each product, as prepared in accordance with 29 CFR 1910.1200 (hazard communication). Lessee's request shall also include a statement that Lessee will handle, store, and dispose of the products in accordance with the manufacturers' Material Safety Data Sheets. Lessor shall not unreasonably withhold consent as long as Lessee demonstrates to Lessor's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material, brought upon or used or kept in or about the Premises.

If Lessee breaches the obligation stated in the preceding paragraph, or if the presence of Hazardous Material on the Premises caused or permitted by Lessee results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Lease term as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Premises.

Without limiting the previous portions of this Section, if the presence of any Hazardous Material on the Premises caused or permitted by Lessee results in any contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Provided, however, Lessor's approval of such actions shall first be obtained. Lessor's approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

If the Lessee spills, releases, or disposes of any Hazardous Material in the Premises, Lessor may, at Lessor's sole option, declare Lessee in default.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington, or the United States Government.

All portions of this Hazardous Material Section shall survive the expiration or early termination of this Lease.

27. PRIORITY/ESTOPPEL CERTIFICATES. Lessee agrees to execute any subordination or estoppel certificates which may be requested by Lessor within fifteen (15) days of their submission to Lessee. If the subordination or estoppel certificate notes or describes any outstanding dispute between the Lessor and Lessee, the certificate will not act as a waiver of the outstanding dispute.

28. NO BROKERS. Lessor and Lessee warrant to one another that neither has engaged a broker in connection with this Lease and agree to indemnify the other if a claim for a fee or commission arises in connection with this transaction as a result of such indemnifying parties' activities.

29. INSPECTION AND RIGHT-OF-ENTRY. Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, Lessor shall have the right, but not the duty, to immediately enter upon the Premises to remedy any violation caused by Lessee's failure to comply notwithstanding any other provision of this Lease. Lessor shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby. Lessor and its agents shall have the right of entry to inspect and make repairs to the pump equipment; entry is limited to reasonable times by prior arrangement with Lessee so as to minimize interference with Lessee's business. Lessor may enter premises upon notification of Lessee if an emergency occurs.

30. CAPTIONS. The Captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

31. ENTIRE AGREEMENT. This Lease represents the entire agreement between the parties and supersedes all other agreements and representations made prior hereto. No amendment hereof shall be binding on either party unless and until approved in writing by both parties.

32. SEVERABILITY. If any provision of this Lease or any application hereof shall be found to be invalid or unenforceable, for any reason, the remainder of this Lease and any other application of such provision shall not be affected thereby.

33. BINDING EFFECT. This Lease shall be binding upon the parties hereto and upon their respective representatives, successors and assign.

34. VENUE. This Lease shall be administered and interpreted under the laws of the State of Washington. Jurisdiction of litigation arising from this Lease shall be in Snohomish County, Washington.

IN WITNESS WHEREOF THE PARTIES hereto have executed this Lease the day and year first above written.

LESSOR:

CITY OF EVERETT

Ray Stephanson, Mayor

ATTEST:

Sharon Marks, City Clerk

APPROVED AS TO FORM:

James D. Iles, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Ray Stephanson signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Everett to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

TAM MOEN
COMMISSION EXPIRES
NOTARY
PUBLIC
7-17-2010
STATE OF WASHINGTON

Dated: 6-16-09
Signature of Notary Public: Tam Moen
Title: Deputy City Clerk
My commission expires: 7-17-2010

LESSEE:

BY: Robert Hunt

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Robert Hunt is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Executive Producer of Village Theatre, a Washington nonprofit corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated June 18, 2009
Signature of Notary Public
Title: Notary
My commission expires: 10-11-2010

Notary Public
State of Washington
JEFF LOC LUU
My Appointment Expires Oct 11, 2010

FORMER KEY BANK BUILDING LEASE
BETWEEN VILLAGE THEATRE AND
CITY OF EVERETT

EXHIBIT A
SHELL IMPROVEMENTS

The City of Everett, Lessor, shall construct the following shell improvements on the Premises:

GENERAL:

1. Abate all existing interior materials which contain asbestos.
2. Demolish all existing items as required that are associated with the former Key Bank Building
3. Abate all existing roofing materials which contain asbestos.
4. Demolish all existing roofing materials and roof insulation.

ARCHITECTURAL:

1. New roofing and roofing insulation to meet current energy codes.
2. New exterior wall insulation to meet current energy codes.
3. Replace storefront and window glazing with new glazing units or spandrel panels to meet current energy codes.
4. All items regarding the exterior finishes.
5. Exterior doors and hardware. (Locks shall accommodate Russwin removable key cores per City standards.)
6. All interior partitions, doors and hardware per drawings A2.1, A2.2, & A2.3. (See attached drawings)
7. All interior finishes, paint, doors and hardware, toilet partitions and toilet room accessories for Public Restrooms 102, 103, & 202. (See attached drawings)

STRUCTURAL:

1. Seismic upgrades to the buildings existing structural frame as required.
2. Install a seismic brace frame on the interior side of the east exterior wall between grid lines 5 & 6.
3. Install a seismic brace frame on the interior side of the west exterior wall between grid line 4 & 5.

MECHANICAL:

1. New, higher efficiency HVAC mechanical rooftop units and higher efficiency interior ceiling VAV units to help achieve LEED Silver rating and to accommodate the low floor to ceiling heights in the basement.
2. All main branches of the HVAC ductwork.
3. All HVAC lateral ductwork and terminations except for Room 105, 107, 200, 201, 203, 207, 208, 210, 211. (See attached drawings)
4. All mechanical equipment as required for Public Restrooms 102, 103, & 202. (See attached drawings)

5. The natural gas service and distribution to all gas burning equipment.

ELECTRICAL:

1. New 3 Phase, 208 Volt electrical service located in the Electrical Room 111.
2. One (1) electrical sub-panel shall be located in the Mechanical Room 101 and shall provide all power for the exterior lighting and power as required for the Plaza.
3. Two (2) electrical sub-panels shall be located as directed by the Lessee's Architect.
4. The electrical service shall have two (2) separate PUD meters. One PUD meter shall monitor all power used by the exterior Plaza and the other meter shall monitor all power used by the Building.
5. All exterior lighting that will illuminate the exterior walls of the building, entrances and adjacent walking surfaces as required.
6. Electrical service, conduit, wiring, and devices to all mechanical equipment installed by the Lessor.
7. All power and lighting as required for the Public Restrooms 102, 103, & 202, Mechanical Room 101, and Electrical Room 111. (See attached drawings)
8. Underground conduits as required to accommodate PUD, Verizon and Comcast entrances into the building.

PLUMBING:

1. All plumbing as required for the Public Restrooms 102, 103, & 202. (See attached drawings)
2. All rough-in plumbing to Lessee required plumbing. This rough-in work shall be to the general location of the Lessee plumbing and shall not be considered a complete rough-in. The Lessee shall be responsible for the rest of the rough-in to accommodate the exact location and details of Lessee provided plumbing fixtures.
3. One (1) public drinking fountain which shall meet current ADA requirements.
4. Roof drains and downspouts as required.

LIFE SAFETY:

1. A water service for a fire sprinkler system per City of Everett Design and Construction Standards.
2. A complete fire sprinkler system except for final drops and heads in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stairs 213.
3. If a Lighting Catwalk is installed by Lessee, a complete fire sprinkler system except for main pipe runs, final drops and heads to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4 including fire sprinklers to the existing vault.
4. The contract documents for the Shell Improvements shall include plans for the Tenant Improvement so that the Fire Sprinkler Contractor can size, design and make provisions for a complete fire sprinkler system.

5. A complete fire alarm system except for conduit, wiring, smoke detectors and horn/strobes in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stair 213.
6. If a Lighting Catwalk is installed by Lessee, a complete fire alarm system except the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4 including a fire alarm system to the existing vault.
7. The contract documents for the Shell Improvements shall include plans for the Tenant Improvements so that the Fire Alarm Contractor can size, design and make provisions for a complete fire alarm system.
8. Provide Fire Extinguishers as required.

FORMER KEY BANK BUILDING LEASE
BETWEEN VILLAGE THEATRE AND
CITY OF EVERETT

EXHIBIT B
TENANT IMPROVEMENTS

The Village Theatre, Lessee, shall be responsible for paying to construct the following tenant improvements if made to the Premises:

GENERAL:

1. The Lessee shall seek LEED Silver Certification for the tenant improvements.
2. All exterior signage and associated signage support structure

ARCHITECTURAL:

1. All interior partitions, doors and hardware per drawings A2.1, A2.2, & A2.3. (See attached drawings)
2. All interior doors with keyed locks shall accommodate Russwin removable key cores per City standards.
3. All finished ceilings as required.
4. All floor prep and leveling.
5. All movable seating and associated floor modifications as required.
6. All interior finishes and paint except for Public Restrooms 102,103, & 202. (See attached drawings.)
7. All interior casework.
8. All window treatments.
9. Room divider curtain.

STRUCTURAL:

1. All structural modifications as required for any movable seating.
2. All structural modifications as required for any room divider curtain.
3. All structural modifications as required for any overhead lighting grid.
4. All structural modifications as required for any catwalk construction.

MECHANICAL:

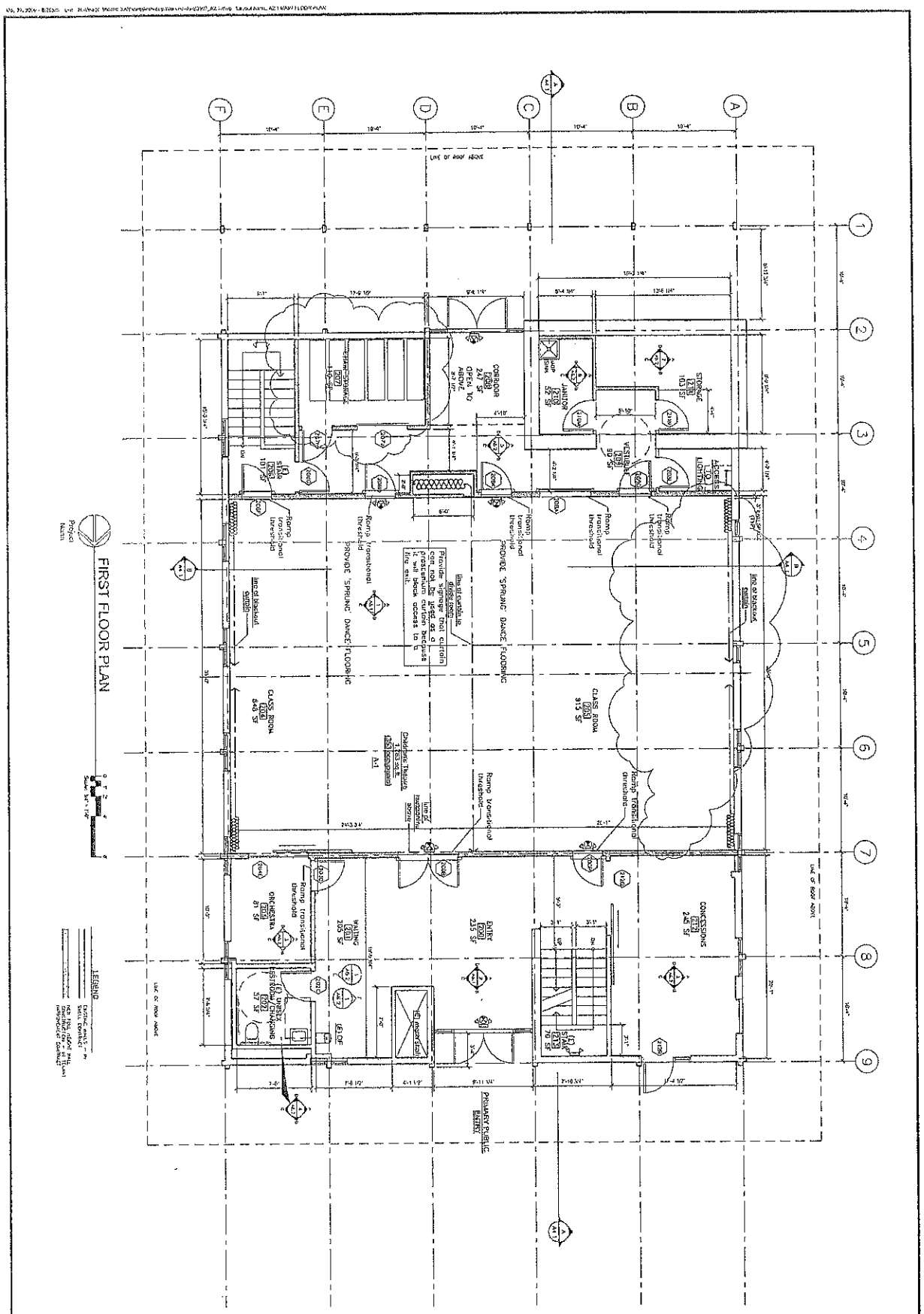
1. HVAC lateral ductwork and terminations for Rooms 105, 107, 200, 201, 203, 207,208, 210, 211. (See attached drawings)
2. If Lighting Catwalk is installed by Lessee, install all mechanical equipment, ductwork and terminations to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include all mechanical equipment, ductwork, and terminations as required for the existing vault. (See attached drawing)

ELECTRICAL:

1. All electrical conduit, wiring, and devices for power and lighting as required except for Public Restrooms 102,103, & 202, Mechanical Room 101, and Electrical Room 111. (See attached drawings)
2. All electrical conduit, wiring and devices for exterior signage.
3. All low voltage panels, patch boards, wiring, and devices as required for communication and data systems.
4. All television cable and devises as required.
5. All conduit, wire, and devices to all mechanical equipment installed by the Lessee.

LIFE SAFETY:

1. Complete the fire sprinkler system by installing the final drops and heads in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stairs 213.
2. If Lighting Catwalk is installed by the Lessee, complete the fire sprinkler system by installing main pipe runs, final drops and heads to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include fire sprinklers to the existing vault. (See attached drawings)
3. In order to obtain an Occupancy Permit the Lessee shall hire the Shell Improvement Fire Sprinkler Contractor to complete the fire sprinkler system.
4. Complete the fire alarm system by installing all conduit, wire, smoke detectors and horn/strobes in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stair 213.
5. If Lighting Catwalk is installed by Lessee, complete the fire alarm system by installing all conduit, wire, smoke detectors and horn/strobes to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include a fire alarm system as required to the existing vault.
6. In order to obtain an Occupancy Permit the Lessee shall hire the Shell Improvement Fire Alarm Contractor to complete the fire alarm system.
7. Install all lighted exit signs and emergency lighting except as required for Public Restrooms 102, 103, & 202. (See attached drawings)
8. Install all fire extinguisher cabinets.



PERMIT SET

DATE		FIRST FLOOR PLAN	PLAZA THEATRE Children's Educational Theater 1621 California Street Everett, WA 98201	DESIGNS northwest ARCHITECTS 19001 SR 532, SUITE B STANWOOD, WA 98292 PH 360.629.3441 FX: 360.629.6159 info@designsnw.com www.designsnw.com
DESIGNED	DRAWN			
CHECKED	FILE			
JOB NO.				
SHEET	A2.1			

REVISIONS:
1. 6/12/08 Scaling
2. 5/27/08 Scaling
3.
4.
5.

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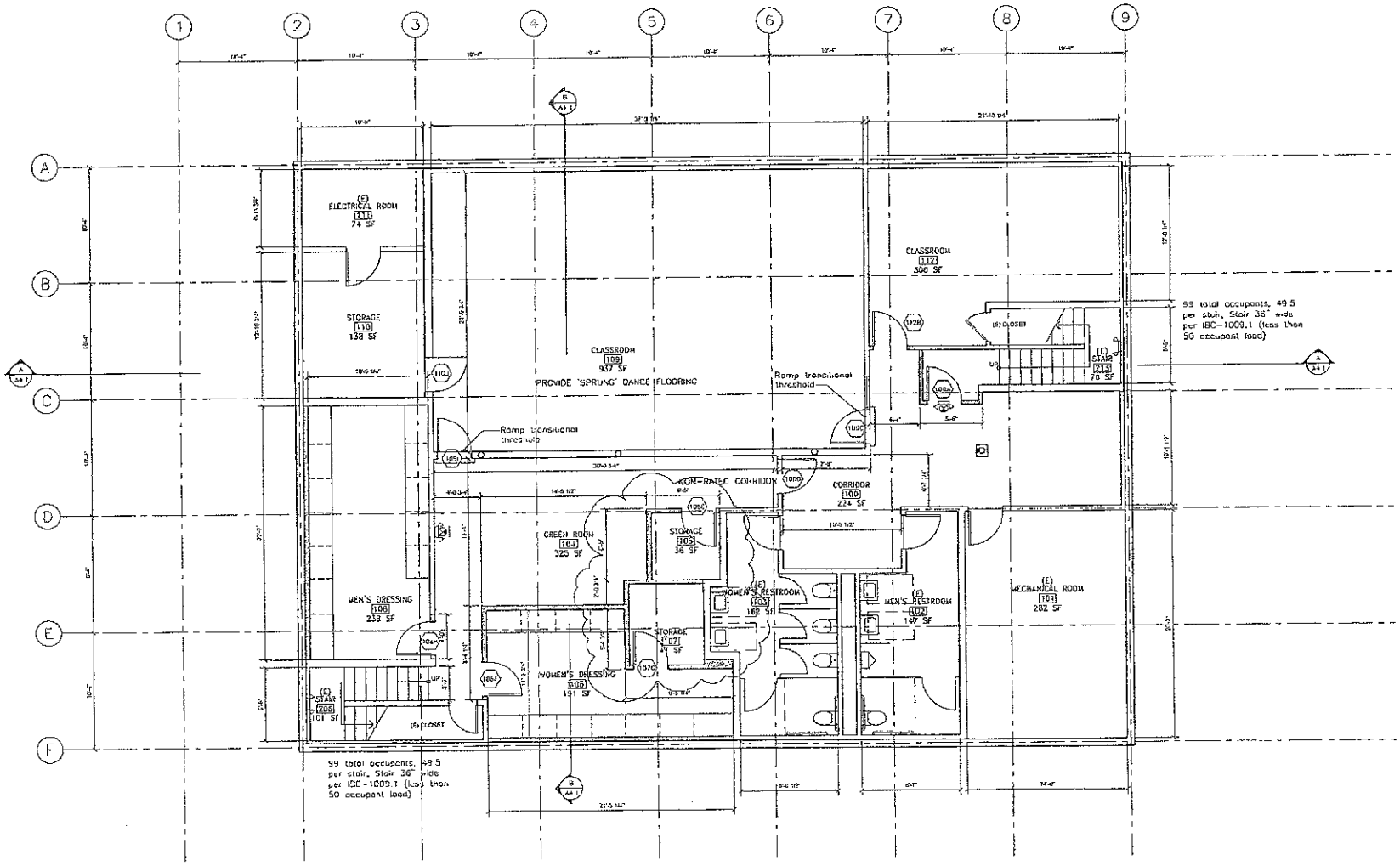

BASEMENT FLOOR PLAN

Project North

LEGEND

EXISTING WALLS - IN SHELL CONTRACT

NEW FULL HEIGHT WALL CONSTRUCTION - IN TENANT IMPROVEMENT CONTRACT

PERMIT SET

REVISIONS:
1. 6/12/08 Seating
2. 5/27/09 Seating Out
3.
4.
5.

DESIGNS northwest ARCHITECTS
16031 SR 522, SUITE B
STANWOOD, WA 98292
PH 360.629.3441
FX 360.629.4139
info@designsnw.com
www.designsnw.com

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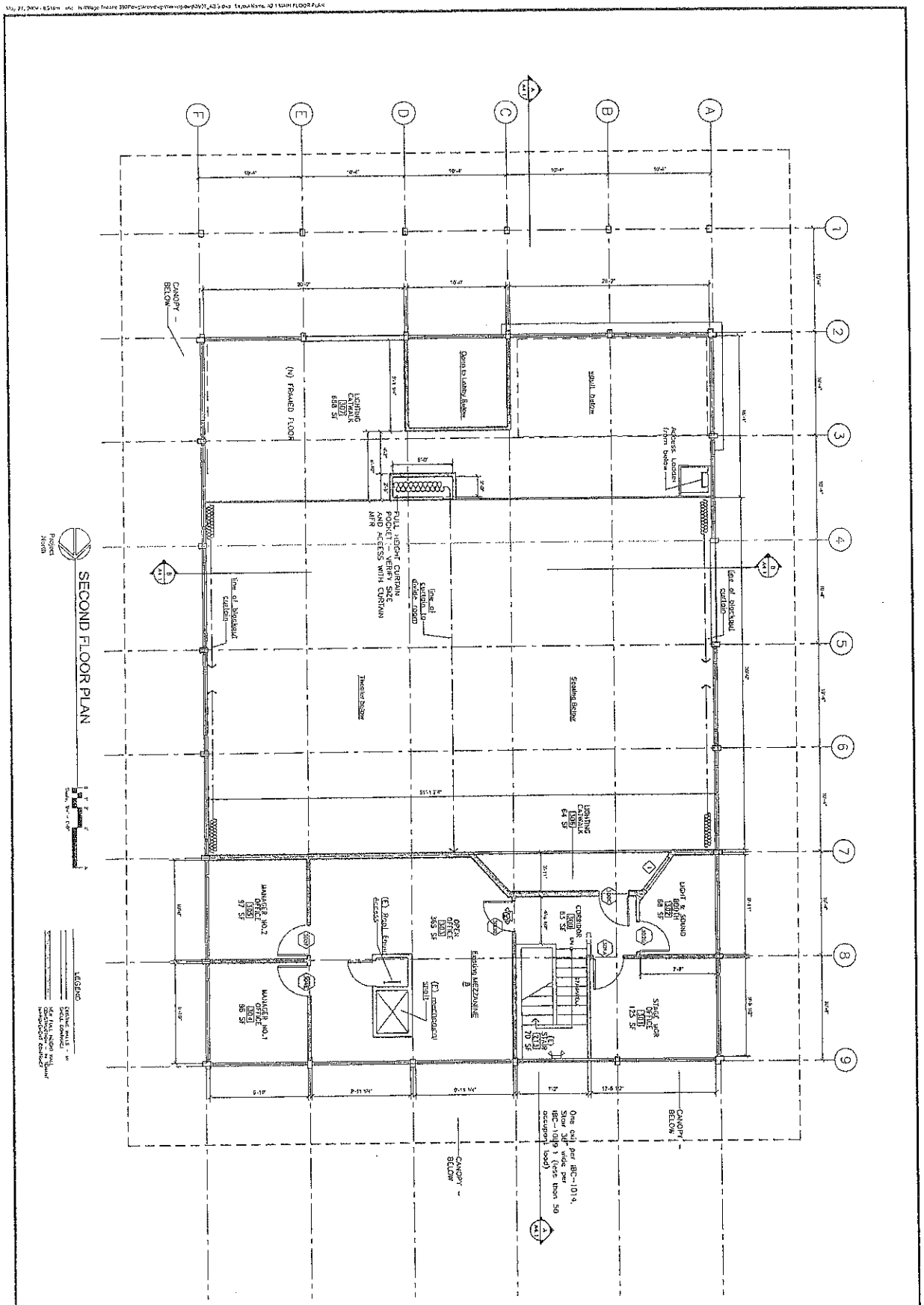
PLAZA THEATRE
Children's Educational Theater
1621 California Street
Everett, WA 98201

BASEMENT FLOOR PLAN

DATE: 5/7/07
DESIGNED: DNH
DRAWN: FAA
JOB NO.: 06-0007
SHEET A2.2



PERMIT SET

A2.3	SECOND FLOOR PLAN	PLAZA THEATRE Children's Educational Theater 1621 California Street Everett, WA 98201	DESIGNS northwest ARCHITECTS 10031 SR 532 SUITE 5 STANWOOD, WA 98292 PH 360.629.2141 FX 360.629.5158 info@designsnw.com www.designsnw.com

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REVISIONS:
1. 4/12/05 Seating
2. 5/27/05 Seating Out
3.
4.
5.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Agreement with the University of Washington for development of new projections of changing heavy precipitation in Everett

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Jim Miller
Phone Number	425-257-8880
FOR AGENDA OF	February 24, 2016

Initialed by:
Department Head
CAA db
Council President

Location	Preceding Action	Attachments	Department(s) Approval
City of Everett		Agreement	Public Works, Legal

Amount Budgeted	$30,000	
Expenditure Required	$30,000	Account Number: 401 5600 109 923 410
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Over the past decade, heavy rainfall events in Everett have been larger and more frequent than would be expected based on past history. This has also been observed in King County and Seattle. The Climate Impact Group at the University of Washington (UW) has been doing studies of this phenomenon for King County.

The agreement with UW is to evaluate the impacts of projected climate change on the intensity, duration and frequency of the City's heavy precipitation events. Data will provide for setting more accurate criteria for the design of upgrades to the combine sewer overflow (CSO) control system as well as the separate stormwater systems.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign an Agreement with the University of Washington for development of new projections of changing heavy precipitation in Everett, substantially in the form provided, in an amount not to exceed $30,000.

AGREEMENT BETWEEN THE CITY OF EVERETT AND THE UNIVERSITY OF WASHINGTON FOR SERVICES RELATED TO DEVELOPMENT OF NEW PROJECTIONS OF CHANGING HEAVY PRECIPITATION IN EVERETT

This Agreement is made and entered into by the City of Everett, a municipal corporation under the law of the State of Washington, herein referred to as the "City" and the University of Washington, herein referred to as "UW", an institution of higher education and an agency of the State of Washington having campuses located in Seattle and in Bothell, Washington, collectively referred to as the "Parties," for UW to provide services to the City to help evaluate the impacts of projected climate change on the City's combined sewer overflow (CSO) discharge points and stormwater management effectiveness on the City's aquatic resources ("Project").

I. Purpose

This Agreement provides the terms under which UW, under the direction of the Investigator as described in Exhibit One ("Scope of Work"), will provide services to the City as outlined in Exhibit One, attached to this Agreement and incorporated herein and made a part hereof.

II. Provision of Services

A. The provision of services under this Agreement will be managed for the City by Jim Miller, Engineering Superintendent, or other representative as designated by the City's Public Works Director, and for UW by technical contact Guillaume Mauger or administrative contact or other representative(s) as designated by UW ("Agreement Administrators").

B. In the event that a disagreement between the parties arises in the administration and provision of services under this Agreement, it shall be referred for informal resolution to the City's Public Works Director or designee, and the Dean of the College of Engineering or other representative designated by UW. This provision shall not be construed as prohibiting either Party from seeking enforcement of the terms of this Agreement, or relief or remedy from a breach of the terms of this Agreement, in law or in equity.

UW Administrative Contact:
Roberta L. Mondares
Grant and Contract Administrator
Office of Sponsored Programs
4333 Brooklyn Ave, NE
Box 359472
Seattle WA 98195-9472
Phone: 206-543-4043
Email: osp@uw.edu

UW Technical Contact:
Guillaume Mauger

III. Responsibilities

A. UW shall conduct the tasks and complete deliverables as described in Exhibit One. If UW determines that any task or deliverable is infeasible, it will notify the City and the Agreement Administrators will together modify the Scope of Work so that Project costs do not exceed $30,000.

B. UW will acknowledge the City as the funding source for work conducted under this Agreement in all publications that may result from this work.

C. UW will provide the City with the option to provide input for consideration in any manuscripts which may result from work conducted under this Agreement.

D. The City shall pay for the services provided as described in Exhibit One and make payments in accordance with the terms of Section IV, below.

E. The City will designate a staff member to perform the following project management functions: 1) act as a point of contact for UW; 2) maintain project records; 3) review invoices for payment, including invoices submitted to the City for payment; 4) coordinate project activities as needed; 5) perform quality control.

IV. Billing and Payment

A. Estimated costs to complete the scope of work are as outlined on Exhibit Two, attached to this Agreement and incorporated herein and made a part hereof.

B. UW shall not proceed to perform any unidentified tasks not specifically included in the scope of work in Exhibit One until authorized by the City's point of contact.

C. It is in the intent of the parties that the specific tasks and deliverables described in Exhibit One would be performed for a cost not to exceed $19,984. This leaves $10,016 as an amount available for undefined tasks.

D. UW will provide the City with documentation that such costs to provide services under this Agreement have been incurred in the form of usual and customary records from UW's accounting system.

E. Expenses to be reimbursed by the City shall be included on itemized invoices and shall be subject to approval by the City.

F. Payment to UW for approved invoices will be made by the City within sixty (60) days of receipt of invoices at and sent to the following addresses:

Jim Miller	Grant and Contract Accounting
Engineering Superintendent	Attention: UW OSP #A99492
Everett Public Works	University of Washington
3200 Cedar St.	12455 Collections Drive
Everett, Wa 98201	Chicago, IL 60693

G. The City represents that funds for service provision under this Agreement have been appropriated and are available for 2016. To the extent that service provision in future years requires appropriations beyond current appropriation authority, each of the Parties' obligations are contingent upon the appropriation of sufficient funds by that Party's legislative authority to complete the activities described herein. If no such appropriation is made for either Party, this Agreement will terminate at the close of the appropriation year for which the last appropriation that funds these activities was made.

V. Effectiveness and Duration

A. This Agreement is effective upon signature by both Parties and shall remain in effect until December 31, 2017.

B. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto.

C. This Agreement is not assignable by either Party, either in whole or in part.

D. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the parties which shall be attached to the original Agreement.

VI. Indemnification

The City shall protect, defend, indemnify, and save harmless the UW, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the City's own negligent acts or omissions. To the extent permitted by RCW 28B20.250 et seq., UW shall protect, defend, indemnify, and save harmless the City, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the UW's own negligent acts or omissions. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. In the event that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article VI, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. This Article VI shall survive the termination of this Agreement.

VII. Counterparts

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the ___day of _____, 2016.

Approved as to Form

By: _____

Title: James D. Iles, City Attorney

Date:_____

City of Everett, Washington:

By: _____

Title: Ray Stephenson, Mayor

Date:_____

Attest:

_____

Sharon Fuller, City Clerk

Date:_____

University of Washington:

By: _____

Print Name: Roberta L. Mondares_____

Title: Grant and Contract Administrator and Authorized Signing Authority

Office of Sponsored Programs__

Date:_____

Exhibit One

Scope of Work

New projections of changing heavy precipitation in the City of Everett

Investigator

Guillaume Mauger, Climate Impacts Group, UW Seattle

Proposal

Use new regional climate model simulations of 21st century changes in precipitation to develop projections that are specific to the City of Everett. Results will be tailored to address the decision needs of city planners.

Background

Changes in the intensity, duration, and frequency of precipitation may negatively affect stormwater facilities, exacerbate landslide and urban flood risk, and lead to other public safety and water quality concerns. King County has recently awarded funding to the UW Climate Impacts Group (CIG) to develop new regional climate model simulations of changing precipitation. These simulations are an improvement over statistically-based methods for "downscaling" global climate model output because they explicitly simulate the physics of changing local processes – for precipitation, the key distinction is that they simulate the interactions of weather systems with the complex terrain of the Pacific Northwest.[1]

The City of Everett currently uses a previous set of climate projections, with a middle estimate of a 9% increase in winter precipitation extremes and an 18% increase in summer extremes. These numbers are unlikely to hold for all precipitation intensities – for example, the 100-year event may not change by the same amount as the 10-year event. In addition, a median climate change estimate may not be suitable for mitigating the risks to stormwater facilities. Finally, new projections have since been developed, such that even the middle estimates, averaged over all precipitation quantiles, may no longer match the 9% and 18% estimates in use today.

The proposed work will develop updated heavy precipitation projections that are specific to the city of Everett. These will be evaluated for changes in user-specified metrics, selected for direct application to risk assessment and decision-making.

Methods

Project researchers will leverage existing regional climate model simulations to produce hourly precipitation time series and exceedance probabilities for specific locations of interest. The analysis would be based on two climate simulations that bracket the low and high end of precipitation projections for Puget Sound: one based on a cooler model and a low greenhouse

[1] Eric P. Salathé Jr., Alan F. Hamlet, Clifford F. Mass, Se-Yeun Lee, Matt Stumbaugh, and Richard Steed, 2014: Estimates of Twenty-First-Century Flood Risk in the Pacific Northwest Based on Regional Climate Model Simulations. J. Hydrometeor, 15, 1881–1899. doi: http://dx.doi.org/10.1175/JHM-D-13-0137.1

gas scenario, and another based on a warmer model run and a high scenario.[2] Both will include the years 1980 through 2099.

CIG researchers will develop estimated changes in exceedance probabilities for the city of Everett (e.g.: changes in the 2-, 10-, and 50-year events). Results will be summarized in terms of the change in both the magnitude (percent increase/decrease) and probability of heavy rain events (e.g.: how frequently will the 10-year event occur in the future?). The specific metrics analyzed will be determined in consultation with project sponsors. Changes will be evaluated for both short- (1 hour) and long-duration (48-72 hour) precipitation events.

In addition, city planners will identify several locations for which CIG researchers will produce an hourly record of simulated precipitation for the full 21st century. These can be used as input to hydrologic models, or simply as a complement to the changes in exceedance probabilities described above. Each location must have daily observations of precipitation that are sufficient for bias-correction (~30-year record is ideal) – researchers at CIG will help identify and evaluate available weather observations. For each site, an hourly time series of 21st century precipitation will be produced, obtained by bias-correcting simulated precipitation to match the observations.

Products

1. Projected change in the intensity, duration, and frequency of heavy rain events for the city of Everett.
2. Hourly time series of precipitation for historical and two future projections, developed for specific locations of interest (selected in consultation with city staff).
3. A short report describing the methodology and summarizing the results, including graphics and tabulated summaries.

UW researchers will work with city staff to ensure that products can be used as input to planning and hydrologic modeling.

Timeline

Start date: 03/01/2016.
Final products: 12/31/2016.

[2] For more information on regional climate projections and greenhouse gas scenarios, see the CIG *State of Knowledge* report: http://cses.washington.edu/cig/reports.shtml#sok

Budget

Salary *(Including benefits)*:	$12,835
Benefits:	$7,049
Travel:	$100
SubTotal:	**$19,984**
Undefined Tasks	**$10,016**
Total	**$30,000**

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No. 1 to Professional Services Agreement with Roots Forestry Consulting LLC for Forestry Management

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Julie Sklare
Phone Number	425-257-7208
FOR AGENDA OF	February 24, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
Lake Chaplain Tract	Professional Services Agreement dated March 16, 2015	Amendment No.1	Public Works

Amount Budgeted	$334,298	
Expenditure Required	$31,320	Account Number(s):401-5-200-121-124-923-410
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Roots Forestry has been providing forestry management and consultation for the City's Lake Chaplain Tract under a three-year Professional Services Agreement (PSA). Public Works desires to resolve several longstanding maintenance issues on the forestry roads in the vicinity of Lake Chaplain. Amendment No.1 modifies the scope and compensation to include an additional task for management of the forestry roads on Lake Chaplain Tract. This additional work will increase the maximum compensation of the three-year contract by $31,320 to $334,298 (from 302,978).

Additionally, Roots Forestry has been restructured as an LLC. This is reflected in the amendment as a change in provider from Travis Miranda dba Roots Forestry to Roots Forestry Consulting LLC.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No.1 to the Professional Services Agreement with Roots Forestry LLC for forestry management for an additional cost of $31,320.

AMENDMENT NO. 1
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF EVERETT
AND ROOTS FORESTRY CONSULTING LLC

This Amendment No. 1 is dated for reference purposes February 1, 2016. It is by and between the City of Everett, a municipal corporation under the laws of the State of Washington ("City"), Travis Miranda dba Roots Forestry ("Old Service Provider"), and Roots Forestry Consulting LLC ("New Service Provider").

RECITALS

A. The City and Old Service Provider are parties to the Professional Services Agreement dated March 16, 2015 (the "Agreement"). Old Service Provider has changed its business form to a limited liability company, which is the limited liability company defined above as New Service Provider. Effective February 1, 2016, Old Service Provider assigns to New Service Provider, and New Service Provider assumes, all of the obligations of the Agreement.

B. The City and the Service Provider also desire to amend the Agreement for the purpose of adding additional work and compensation.

AGREEMENT

The City and Service Provider agree as follows:

1. Assignment and Assumption. Effective as of February 1, 2016, (A) Old Service Provider assigns the Agreement to New Service Provider, (B) New Service Provider accepts the assignment, (C) New Service Provider assumes all of Old Service Provider's obligations under the Agreement, and (D) the City consents to the assignment and assumption. This is deemed effective February 1, 2016, regardless of the dates of the signatures on this Amendment.

2. Insurance. No later than March 1, 2016, New Service Provider will submit to the City insurance documents evidencing that New Service Provider maintains the insurance required under the Agreement. These insurance documents must be in the name of New Service Provider and must be effective February 1, 2016. Failure to submit such documents gives the City the option, effective on notice to New Service Provider and Old Service Provider, to void this Amendment.

3. Compensation. The Agreement is modified so that total compensation, including all services and expenses, shall not exceed Three Hundred and Thirty four Thousand Two Hundred Ninety Eight Dollars ($334,298).

4. Work. Effective as of the date of this Amendment, the Agreement's entire scope of Work is replaced with the scope of Work attached as Exhibit A to this Amendment.

5. Agreement Remains in Effect. Regardless of the date(s) on which this Amendment is signed by the parties, the parties agree that the Agreement has been continuously in effect since March 16, 2015. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment.

CITY OF EVERETT
WASHINGTON

By: _____
Ray Stephanson, Mayor

_____
Date

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney
Date: _____

ATTEST:

_____
Sharon Fuller, City Clerk
Date: _____

NEW SERVICE PROVIDER
Roots Forestry Consulting LLC

Signature: _____
Typed/Printed Name: Travis Miranda
Title: Principal

2-8-16
Date

OLD SERVICE PROVIDER

Signature: _____
Typed/Printed Name: Travis Miranda

2-8-16
Date

EXHIBIT A

SCOPE OF WORK

Task 1 - Federal and State Legislative and Regulatory Actions

Description

This task covers the tracking of Proposed Federal and State legislation and regulatory actions related to the City's forestry and watershed management responsibilities.

Services To Be Performed

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

Task 2 - Federal and State Regulation Compliance

Description

Track and comply with Federal and State regulations related to the City's forestry management activities.

Services To Be Performed

Prepare and administer contracts, agreements, reports and permits to ensure compliance with all State and Federal rules and regulations that pertain to the City's forest management activities.

Task 3 - Lake Chaplain Tract Forest Management (Safe Harbor Agreement implementation)

Description

Prepare the City's timber sales and other forest management activities that are required by the Lake Chaplain Tract Off-License Agreement (Off-License Agreement) as described in the Lake Chaplain Tract Safe Harbor and Cooperative Habitat Enhancement Agreements (SHA/CHEA).

Prepare reports to other parties to the Off-License Agreement as required by the SHA/CHEA and attend meetings with the other parties to review the reports and address any other questions or concerns.

Services To Be Performed

Conduct field work to complete the layout of timber sales as required under the SHA/CHEA. This will include the location and design of forest access roads, sale boundary design and location, snag and coarse woody debris selection, baseline habitat block location, special set-aside area location, special management area location, along with enhanced riparian and wetland buffer location. Contracts including mapping and construction specifications will be prepared for bid.

Permits for these activities will be acquired prior to sale of the timber sale. These permits may include Forest Practices Permit, Hydraulics Permit, Shoreline Management Permit and possible easements over private or public lands.

Upon completion of any final harvest timber sale, a contract will be prepared for the reforestation of the harvest area. Tree purchase will be arranged for, and the areas will be replanted according to SHA/CHEA standards.

Harvest areas will be monitored, and additional stand management activities will be recommended as appropriate. These activities may include replanting, slashing and thinning. Contracts will be prepared and executed for the needed activities.

Harvest roads will be monitored and contracts for maintenance will be prepared and executed as needed to protect the road investment as well as water quality according to the state law.

Task 4 - Contract Compliance

Description

Administer forest management contracts and agreements that are required to implement the City's forest management Plan.

Services To Be Performed

Conduct field inspections on all ongoing forest management contracts on City property. To ensure compliance with all applicable State laws, contract and permit conditions. Corrective actions will be recommended as needed. In addition to field inspections office audits will be made to ensure appropriate payments are made and acceptable insurances and bonds are in place.

Task 5 - Interagency Coordination

Description

Review and respond to proposed forest practices activities on or near the City's Chaplain Tract property, transmission line right-of-ways and on or near watershed lands. Work with regulatory agencies and Tribes to ensure protection of City facilities and City drinking water quality.

Services To Be Performed

Review and respond to proposed forest practices activities on or near the City's Chaplain Tract property, transmission line right-of-ways and on or near watershed lands. Work with regulatory agencies and Tribes to ensure protection of City facilities and City drinking water quality.

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

Review and prepare comments on proposed recreation activities that may be located on or near watershed lands. This would include activities such as the State Natural Resources Conservation Area (NRCA) planning and development, existing State recreation site maintenance and development, and other public recreation activities on or adjacent to watershed lands.

Monitor and prepare comments on any Federal or other public actions proposed on or adjacent to City watershed lands. This would include any actions in or adjacent to City watershed lands by the USFS or the PUD.

Task 6 - Fire Prevention and Control

Description

This task covers the tracking of State fire prevention regulations to ensure both City and City contractors are in compliance with state law while operation on City watershed lands. Monitor and assist in fire prevention and control activities on both the City's Chaplain Tract and City watershed lands.

Services To Be Performed

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

Assist the State DNR with fire detection and location on City and watershed lands as needed. Work with the DNR during fire control activities on watershed lands to ensure protection of drinking water quality and other resources on City lands.

Task 7 - Noxious Weed Coordination

Description

This task covers the implementation of the City's Noxious Weed Management Plan for lands in the vicinity of Lake Chaplain.

Services To Be Performed

Implement the City's Noxious Weed Management Plan with City staff including monitoring, mapping, and marking noxious weed occurrences.

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

Provide training to field staff with regard to noxious weed identification, treatment methods, and

management measures.

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

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

Task 8 – Forest Road Management

Description

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

Services To Be Performed

Manage the Lake Chaplain Tract Culvert Maintenance program.

Identify forest road issues and participate in design/implementation of solutions for these issues.

Acquire necessary permits for forest road projects when appropriate.

Establish maintenance needs and standards for forest roads.

Task 9 - Undefined

Due to the potential variability of effort for several tasks, 20% of the total hours for this contract are allocated as undefined. The City's Operations Superintendent or the contract manager may elect to allocate the hours in the task to either the aforementioned tasks as needed or to an undefined task otherwise related to the Scope of Services which is defined and authorized in writing by the City's Operations Superintendent or the contract manager.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No.1 to the Professional Services Agreement with KPFF Consulting Engineers of Seattle to design, develop construction documents for and provide construction for support services for repairs to the Howarth Park Pedestrian Bridge

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

COUNCIL BILL #	
Originating Department	Parks
Contact Person	Paul Kaftanski
Phone Number	425-257-8335
FOR AGENDA OF	February 24, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
1127 Olympic Boulevard	Council approval of PSA - July 8, 2015	Amendment No.1	Parks, Administration

Amount Budgeted	$55,000.00	
Expenditure Required	$0	Account Number(s): Fund 354, Program 045
Budget Remaining	$25,271.28	
Additional Required	$0	

DETAILED SUMMARY STATEMENT:
The Professional Services Agreement (PSA) with KPFF Consulting Engineers provides design, construction document development and construction support services for repairs to the Howarth Park pedestrian bridge. The bridge provides access over the Burlington Northern Santa Fe (BNSF) railroad tracks to the park's beach. At this time, design, construction document development and contractor selection is complete and the project will begin construction in early March 2016. The project will be open for public use by late spring 2016.

Amendment No.1 is a no cost time extension of the PSA to July 1, 2016 to provide construction support services.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with KPFF Consulting Engineers of Seattle, WA to design, develop construction documents for and provide construction support services for repairs to the Howarth Park Pedestrian Bridge at no additional cost

AMENDMENT NO. 01
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF EVERETT
AND
KPFF

This Amendment No. 01 is dated as of December 31, 2015, by and between the City of Everett (the "City") and KPFF ("Service Provider").

RECITALS

Service Provider and the City entered into a Professional Services Agreement dated July 2015 (the "Agreement"). The City and Service Provider desire to amend the Agreement.

AGREEMENT

Service Provider and the City agree as follows:

A. Section 3 of the Agreement is amended to read as follows:

3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by **July 1 2016**.

B. Except as expressly modified by this Amendment, all provisions of the Agreement remain in full force and effect.

CITY OF EVERETT
WASHINGTON

By: _____
Ray Stephanson, Mayor

_____
Date

ATTEST:

_____
Sharon Marks, City Clerk

Date: _____

_____

Signature: S L R
Typed/Printed Name: SARA L ROBERTS
Title: PRINCIPAL

02/11/2016
Date

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney

Date: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Memorandum of Agreement with the Federal Emergency Management Agency Integrated Public Alert and Warning System (IPAWS) Program Management Office

_____	Consent	COUNCIL BILL #	
_____	Action	Originating Department	Fire Department
_____	First Reading	Contact Person	Murray Gordon
_____	Second Reading	Phone Number	(425) 257-8100
_____	Third Reading	FOR AGENDA OF	February 24, 2016
_____	Public Hearing		

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
		Memorandum of Agreement	Office of Emergency Management

Amount Budgeted	$0	
Expenditure Required	$0	
Budget Remaining	$0	
Additional Required	$0	

DETAILED SUMMARY STATEMENT:

The Integrated Public Alert and Warning System (IPAWS) is a national system offered by the Federal Emergency Management Agency (FEMA) that municipalities can use for local alerting.

The City's use of IPAWS will enhance our existing public alerting system by enabling us to send wireless emergency alerts to all wireless phone carriers in a designated area. Using IPAWS will increase the impact of public alerts and warnings and will contribute to overall public safety for those living and working in Everett as well as anyone with a wireless phone in the area.

RECOMMENDATION:

Authorize the Mayor to sign the Memorandum of Agreement with the Federal Emergency Management Agency Integrated Public Alert and Warning System (IPAWS) Program Management Office to enhance our public alerting system, at no cost to the City.

Memorandum of Agreement
between the
City of Everett
and the

Federal Emergency Management Agency
Integrated Public Alert and Warning System
(IPAWS) Program Management Office

Regarding the use of:

City of Everett
Interoperable System(s)
and
IPAWS OPEN Platform for Emergency Networks
(IPAWS-OPEN)

Version 1.1

13 May 2015

MEMORANDUM OF AGREEMENT

SUPERSEDES: None

INTRODUCTION

The purpose of this memorandum is to establish a management agreement between the City of Everett hereinafter referred to as the Collaborative Operating Group (COG), and the Federal Emergency Management Agency (FEMA) IPAWS Division regarding the utilization and security of City of Everett Interoperable System(s) (as shown in Appendix A), which interoperate with the IPAWS Open Platform for Emergency Networks (IPAWS-OPEN). The expected benefit is to enable information interoperability across emergency response organizations and systems as intended by the IPAWS Initiative.

This agreement will govern the relationship between the Collaborative Operating Group and FEMA, including designated managerial and technical staff and system users associated with the aforementioned COG. As indicated within the terms of this agreement, both parties agree to allow system interoperability through the use of SOAP over HTTPS via the public internet. Under this agreement, no direct or networked connection using VPN (or equivalent technology) between the systems named in Appendix A and IPAWS-OPEN is allowed. In the event a direct connection is required, an Interconnection Security Agreement must be executed.

AUTHORITY

The authority for this agreement is based on the Communications Act of 1934, as amended (47 U.S.C § 606) and the implementation of regulation 47 C.F.R § 11 which establishes the statutory basis under which the FEMA IPAWS Program operates emergency alerting systems. In addition, Executive Order 13407 of June 26, 2006, Public Alert and Warning System Executive Order states, "It is the policy of the United States to have an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people...establish or adopt, as appropriate, common alerting and warning protocols, standards, terminology, and operating procedures for the public alert and warning system to enable interoperability and the secure delivery of coordinated messages to the American people". In response, FEMA established the IPAWS Program Management Office (PMO) in April 2007.

BACKGROUND

It is the intent of both parties to this agreement to establish and utilize a standardized web based application interface (as defined by the IPAWS-OPEN Web Service Interface Design Guidance) between the information technology (IT) systems shown below to facilitate the exchange of emergency messages within the production environment. The testing of the interoperability of these systems has been performed through the use of FEMA's Test and Development environment to ensure the transference and receipt of emergency messages using approved messaging standards. The interoperability between these systems is supported by the use of SOAP over HTTPS via the public internet.

COMMUNICATIONS

Frequent formal communications are essential to ensure the successful management and operation of system interoperability. Both parties agree to maintain open lines of communication between designated staff (as indicated in Appendix B) at both the managerial and technical levels. All communications described herein must be conducted in writing and may be disseminated by electronic means unless otherwise noted.

The owners of the respective systems agree to designate and provide contact information for technical leads for their respective systems, and to facilitate direct contacts between technical leads to support the management and operation of system interoperability. To safeguard the confidentiality, integrity, and availability of the systems and the data they store, process, and transmit, both parties agree to provide notice of specific events within the timeframes indicated below:

- **Security Incidents:** Technical, administrative and/or help desk staff will <u>immediately</u> notify their designated counterparts by telephone or e-mail when a security incident(s) is detected and/or a violation of the Rules of Behavior (see Appendix C) has been identified. Both parties agree to make the appropriate technical and administrative individuals available for all necessary inquiries and/or investigations. Containment and/or resolution procedures will be documented by the identifying party

and after action reports generated and submitted to the system owner and/or designated security officials within five (5) business days after detection of the incident(s).

- **Disasters and Other Contingencies:** The FEMA IPAWS Program Office will notify the COG by telephone, e-mail or other acceptable means in the event of a disaster or other contingency that disrupts the normal operation of IPAWS-OPEN.

- **System Interconnections:** This MOA is intended for systems interoperating with IPAWS OPEN using SOAP over HTTPS via the public Internet. If in the future, an interconnection (i.e. dedicated system-to-system connection) is required to IPAWS-OPEN, this MOA must be updated and an Interconnection Security Agreement (ISA) must be executed. If a change in status from interoperating to interconnected system is required, the initiating party will notify the other party at least 3 months before the planned interconnection is to be in place.

- **Discontinuation of Use:** In the event the use of IPAWS-OPEN is no longer required, the COG agrees to immediately notify, in writing, the FEMA IPAWS Program Office at which time the COGID and associated access credentials will be deactivated.

- **Personnel Changes:** Both parties agree to provide notification of changes to their respective system owner or technical lead. In addition, both parties will provide notification of any changes in the point of contact information provided in Appendix B. All relevant personnel changes and changes to contact information must be provided within 5 business days of the change.

TYPE OF INTERCONNECTIVITY

Both parties agree that the COG will utilize only the assigned COGID, associated credentials and digital certificates provided by the FEMA IPAWS Program Office to support interoperability between the system(s) listed in Appendix A and IPAWS OPEN. In addition, all interoperable systems must be configured to interface with IPAWS-OPEN over the public Internet using only approved web service standards and associated requirements. A listing of approved web service standards and supporting requirements can be obtained from the IPAWS-OPEN Web Service Interface Design Guidance document.

In the event, a dedicated connection is required, both parties will agree to negotiate and execute an Interconnection Security Agreement (ISA) as required per Department of Homeland Security (DHS) policy which must be signed by all required parties before the interconnection is activated. Proposed changes to either system that affect system interoperability will be reviewed and evaluated to determine the potential impact. If the proposed changes impact the agreed upon terms, the MOA will be renegotiated and executed before changes are implemented.

SECURITY

To ensure the joint security of the systems and the message data they store, process, and transmit, both parties agree to adhere to and enforce the Rules of Behavior (as specified in Appendix C). In addition, both parties agree to the following:

- Ensure authorized users accessing the interoperable system(s) receive, agree to abide by and sign (electronically or in paper form) the IPAWS-OPEN Rules of Behavior as specified in Appendix C. Each jurisdiction is responsible for keeping the signed Rules of Behavior on file or stored electronically for each system user.
- Utilize FEMA approved PKI certificates to digitally sign messages as they are transported over the public Internet.
- Certify that its respective system is designed, managed and operated in compliance with all relevant federal laws, regulations, and policies.
- Document and maintain jurisdictional and/or system specific security policies and procedures and produce such documentation in response to official inquiries and/or requests.
- Provide physical security and system environmental safeguards for devices supporting system interoperability with IPAWS-OPEN.

- Ensure physical and logical access to the respective systems as well as knowledge of the COGID and associated access criteria are only granted to properly vetted and approved entities or individuals.
- Where applicable, ensure that only individuals who have successfully completed FEMA-required training can utilize the interoperable systems to issue alerts and warnings intended for distribution to the public.
- Where applicable, document and maintain records of successful completion of FEMA-required training and produce such documentation in response to official inquiries and/or requests.

COST CONSIDERATIONS

This agreement does not authorize financial expenditures by the COG on behalf of FEMA. The FEMA – IPAWS Division is responsible for the costs associated with developing, operating and maintaining the availability of the IPAWS-OPEN system. The COG is responsible for all costs related to providing their users with access to IPAWS-OPEN via the public Internet. These costs may include hardware, software, monthly Internet charges, completion of security awareness training and other related jurisdictional costs.

PROPERTY OWNERSHIP

Each Party agrees and acknowledges that nothing in this Agreement shall be construed as giving a party any proprietary rights in or to the intellectual property of the other party. Each Party further agrees that nothing in this Agreement shall be construed as creating or granting to a party any implied or express license in or to the intellectual property of the other party.

TIMELINE

This agreement will remain in effect based on the life of the Authority to Operate (ATO) for IPAWS-OPEN or a maximum of three (3) years after the last date on either signature in the signature block below. Upon expiration of the IPAWS-OPEN ATO or after three (3) years (whichever comes first), this agreement will expire without further action and system access privileges will be revoked. If the parties wish to extend this agreement, they may do so by reviewing, updating, and reauthorizing this agreement. This newly signed agreement supersedes all earlier agreements, which should be referenced above by title and date. If one or both of the parties wish to terminate this agreement prematurely, they may do so upon 30 days' advanced notice or in the event of a security incident that necessitates an immediate response.

SIGNATORY AUTHORITY

I agree to the terms of this Memorandum of Agreement. Noncompliance on the part of either organization or its users or contractors concerning the policies, standards, and procedures explained herein may result in the immediate termination of this agreement.

City of Everett Official
Name: Ray Stephanson
Title: Mayor

X_____
(Signature Date)
City of Everett
2801 Oakes Ave
Everett, WA, 98201

Federal Emergency Management Agency

FEMA Authorizing Official or Designee

_____
(Signature Date)

IPAWS OPEN System Owner
Name: Mark A. Lucero
Title: Chief, IPAWS Engineering

_____
(Signature Date)
Attn: IPAWS-OPEN System Owner, Suite 506
Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20472-0001

FEMA CISO or Deputy CISO

_____
(Signature Date)

Appendix A

Listing of Interoperable Systems

IPAWS recognizes that Emergency Management organizations may utilize multiple tools to facilitate the emergency management process. As a result, jurisdictions may need to interoperate with IPAWS-OPEN using more than one system. In order to comply with DHS policy, all systems interoperating with IPAWS-OPEN must be documented and supported by a Memorandum of Agreement. As a result this appendix must be completed to identify all systems associated with the COG and used for interoperating with IPAWS-OPEN. This Appendix must be amended as applicable systems are added or removed from operations.

- **IPAWS-OPEN**

Function:	IPAWS-OPEN is the backbone system that structures the alert and distributes the message from one interoperating and/or interconnected system (message sender) to another interoperating and/or interconnected system (message recipient).
Location:	FEMA Emergency Operations Center
Description of data, including sensitivity or classification level:	Messaging data is considered Sensitive But Unclassified (SBU) information and does not contain Personally Identifiable Information (PII), Financial data, Law Enforcement Sensitive Information or classified information. Each message that flows through the IPAWS-OPEN system will be associated to a specifically assigned system User ID and COGID as captured within the message elements. This information will be retained in system logs.

The systems listed below are managed and operated by the COG and are subject to the terms defined within the Memorandum of Agreement including the Rules of Behavior in Appendix C. Each interoperable system will be assigned unique authentication credentials, which must be protected by the COG. In the event these credentials are compromised, the COG is expected to immediately contact the IPAWS Program Management Office. The systems listed below are only allowed to interoperate with IPAWS-OPEN based on the criteria set forth within the IPAWS-OPEN Web Service Interface Design Guidance.

- **AlertSense**

Function:	EAS,WEA (Formerly CMAS) and COG to COG Emergency Alert origination and communications, allowing county-wide alerting capability and precision. Location-based alerting sent to targeted jurisdictions.
Location:	Denver, CO; Manassas, VA;
Description of data, including sensitivity or classification level:	COTS FOUO Non-Weather related emergency alert notification including, but not limited to, AMBER alerts, Evacuation, Shelter-in-Place, Local Area Emergencies and other related emergency protection information

**Add additional tables as needed.*

Appendix B

COG Point of Contact Information

Designated COG Primary Point of Contact:

Name: Sarah LaVelle

Title: Emergency Planning and Operations Coordinator

Business Email Address: slavelle@everettwa.gov

Primary Phone Number: 425-257-7965

Alternate Phone Number: 425-297-0670

Organization: City of Everette

Mailing Address: 2801 Oakes Ave, Everett, WA, 98201

Designated Alternate Point of Contact:

Name: Lynn Sterbenz

Title: Outreach Coordinator

Business Email Address: lsterbenz@everettwa.gov

Primary Phone Number: 425-257-8111

Alternate Phone Number:

Organization: City of Everett

Mailing Address: 2801 Oakes Ave, Everett, WA, 98201

Designated Technical Point of Contact:

Name: Sarah LaVelle

Title: Emergency Planning and Operations Coordinator

Business Email Address: slavelle@everettwa.gov

Primary Phone Number: 425-257-7965

Alternate Phone Number:

Organization: City of Everett

Mailing Address: 2801 Oakes Ave, Everett, WA, 98201

FEMA: Integrated Public Alert and Warning System Open Platform for Emergency Networks (IPAWS-OPEN)

Contact Name	Contact Number	Email Address	Summary of System Responsibilities
Adrian R. Gardner	202-646-3006	Adrian.Gardner@fema.dhs.gov	Chief Information Officer, FEMA
Gerald Singleton	215-931-5698	Gerald.Singleton@fema.dhs.gov	Acting Chief Information Security Officer
Mark Lucero	202-646-1386	Mark.Lucero@fema.gov	System Owner
Gary Ham	703-899-6241	Gary.Ham@associates.dhs.gov	FEMA PMO - IPAWS-OPEN
Maurice Carter	202-212-4065	Maurice.Carter@associates.dhs.gov	FEMA ISSO - IPAWS-OPEN
Neil Bourgeois	703-732-6331	Neil.Bourgeois@associates.dhs.gov	FEMA-EADIS IPAWS-OPEN Tech Lead

Appendix C

IPAWS-OPEN Rules of Behavior

1.0 INTRODUCTION

The following rules of behavior apply to all persons with application access to City of Everett Interoperable System(s) and/or who have been issued a COGID with associated credentials for IPAWS-OPEN. These individuals shall be held accountable for their actions related to the information resources entrusted to them and must comply with the following rules or risk losing their access privileges. The Rules of Behavior apply to users on official travel as well as at their primary workplace (e.g., Emergency Operations Center – EOC) and at any alternative workplace (e.g., telecommuting from a remote or satellite site) using any electronic device including laptop computers and portable electronic devices (PED's). PED's include personal digital assistants (PDA's) (e.g. Palm Pilots), cell phones, text messaging systems (e.g., Blackberry), and plug-in and wireless peripherals that employ removable media (e.g. CDs, DVDs, etc.). PEDs also encompass USB flash memory (thumb) drives, external drives, and diskettes. These Rules of Behavior are consistent with existing DHS policies and DHS Information Technology (IT) Security directives and are intended to enhance the awareness of each user's responsibilities regarding accessing, storing, receiving and/or transmitting information using IPAWS-OPEN.

2.0 APPLICATION RULES

2.1 Official Use

- IPAWS-OPEN is a Federal application to be used only in the performance of the user's official duties in support of public safety as described in the National Incident Management System (NIMS).
- The use of the IPAWS-OPEN for unauthorized activities is prohibited and could result in verbal or written warning, loss of access rights, and/or criminal or civil prosecution.
- By utilizing IPAWS-OPEN, the user of the interoperable system(s) consents to allow system monitoring to ensure appropriate usage for public safety is being observed.
- EMA's will be held accountable for safeguarding all configuration items and information entrusted to them by FEMA. EMA's are expected to manage the relationship with supporting vendors, consultants and any other entities providing system support on their behalf. In addition, EMA's will be held accountable in the event of a security breach or disclosure of sensitive configuration information such as digital certificates. Each EMA understands that the use of digital signatures used on behalf of the EMA is binding for the EMA and EMA's will be held accountable accordingly. In the event sensitive information is mishandled, utilization of IPAWS-OPEN may be immediately revoked.
- If software interoperating with IPAWS-OPEN enables users to geo-target public alert messages by means of geospatial polygons or circles, then the user shall restrict any such geospatial boundaries so as to remain within the geographical limits of their public warning authority (or as near as possible), as determined by applicable state and/or local laws and duly adopted operational plans.

2.2 Access Security

- All Email addresses provided in connection with interoperable system(s) user accounts must be associated to an approved email account assigned by the user's emergency management organization. The use of personal email accounts to support emergency messaging through IPAWS-OPEN is prohibited.
- Upon approval of the MOA by FEMA, a COG account with COGID and Digital Certificate will be created and issued to the designated technical representative. All individuals with knowledge of these credentials must not share or alter these authentication mechanisms without explicit approval from IPAWS.
- Every interoperable system user is responsible for remote access security as it relates to their use of IPAWS-OPEN and shall abide by these Rules of Behavior.

2.3 Interoperable System User Accounts and Passwords

- All users must have a discrete user account ID which cannot be the user's social security number. To protect against unauthorized access, passwords linked to the user ID are used to identify and authenticate authorized users.
- Accounts and passwords shall not be transferred or shared. The sharing of both a user ID and associated password with anyone (including administrators) is prohibited.
- Accounts and passwords shall be protected from disclosure and writing passwords down or electronically storing them on a medium that is accessible by others is prohibited.
- The selection of passwords must be complex and include:
    - At least eight characters in length
    - At least two (02) upper case and two (02) lower case letters
    - At least two (02) numbers and one (01) special character.
- Passwords must not contain names, repetitive patterns, dictionary words, product names, personal identifying information (e.g., birthdates, SSN, phone number), and must not be the same as the user ID.
- Users are required to change their passwords at least once every 90 days.
- Passwords must be promptly changed whenever a compromise of a password is known or suspected.

2.4 Integrity Controls & Data Protection

- All computer workstations accessing IPAWS-OPEN must be protected by up-to-date anti-virus software. Virus scans must be performed on a periodic basis and when notified by the anti-virus software.
- Users accessing interoperable system(s) to utilize IPAWS-OPEN must:
    - Physically protect computing devices such as laptops, PEDs, blackberry devices, smartphones, etc;
    - Protect sensitive data sent to or received from IPAWS-OPEN;
    - Not use peer-to-peer (P2P) file sharing, which can provide a mechanism for the spreading of viruses and put sensitive information at risk;
    - Not program computing devices with automatic sign-on sequences, passwords or access credentials when utilizing IPAWS-OPEN.

Users may not provide personal or official IPAWS-OPEN information solicited by e-mail. If e-mail messages are received from any source requesting personal information or asking to verify accounts or other authentication credentials, immediately report this and provide the questionable e-mail to the Local System Administrator and/or the City of Everett Help Desk.

- Only devices officially issued through or approved by DHS, FEMA and/or approved emergency management organizations are authorized for use to interoperate with IPAWS-OPEN and use of personal devices to access and/or store IPAWS-OPEN data and information is prohibited.
- If a Blackberry, smartphone or other PED is used to access the interoperable system(s) to utilize IPAWS-OPEN, the device must be password protected and configured to timeout or lock after 10 minutes of inactivity.
- If sensitive information is processed, stored, or transmitted on wireless devices, it must be encrypted using approved encryption methods.

2.5 System Access Agreement

- I understand that I am given access to the interoperable system(s) and IPAWS-OPEN to perform my official duties.
- I will not attempt to access data, information or applications I am not authorized to access nor bypass access control measures.
- I will not provide or knowingly allow other individuals to use my account credentials to access the interoperable system(s) and IPAWS-OPEN.
- To prevent and deter others from gaining unauthorized access to sensitive resources, I will log off or lock my computer workstation or will use a password-protected screensaver whenever I step away from my work area, even for a short time and I will log off when I leave for the day.
- To prevent others from obtaining my password via "shoulder surfing", I will shield my keyboard from view as I enter my password.
- I will not engage in, encourage, or conceal any hacking or cracking, denial of service, unauthorized tampering, or unauthorized attempted use of (or deliberate disruption of) any data or component within the interoperable system(s) and IPAWS-OPEN.
- I agree to inform my Local System Administrator when access to the interoperable system(s) and/or IPAWS-OPEN is no longer required.
- I agree that I have completed Computer Security Awareness training prior to my initial access to the interoperable system(s) and IPAWS-OPEN and that as long as I have continued access, I will complete Computer Security Awareness training on an annual basis.

2.6 Accountability

- I understand that I have no expectation of privacy while using any services or programs interoperating with IPAWS-OPEN.
- I understand that I will be held accountable for my actions while accessing and using interoperable system(s) and IPAWS-OPEN, including any other connected systems and IT resources.
- I understand it is my responsibility to protect sensitive information from disclosure to unauthorized persons or groups.
- I understand that I must comply with all software copyrights and licenses pertaining to the use of IPAWS-OPEN.

2.7 Incident Reporting

- I will promptly report IT security incidents, or any incidents of suspected fraud, waste or misuse of systems to the Local System Administrator and/or the City of Everett Help Desk.

3.0 IPAWS-OPEN Rules of Behavior Statement of Acknowledgement

I have read and agree to comply with the requirements of these Rules of Behavior. I understand that the terms of this agreement are a condition of my initial and continued access to City of Everett Interoperable System(s) *and IPAWS-OPEN and related services and that if I fail to abide by the terms of these Rules of Behavior, my access to any and all IPAWS-OPEN information systems may be terminated and I may be subject to criminal or civil prosecution. I have read and presently understand the above conditions and restrictions concerning my access.*

Name (Print): _____

Signature: _____ Date: _____