Everett City Council Agenda
City Council Chambers

Roll Call

Pledge of Allegiance

Approval of Minutes: September 14, 2016

Council Comments/Liaison Reports

Administration Update on prior business

Mayor's Comments - Swearing in Everett Police Officers Troy Moss and David Sanchez

City Attorney

Citizen Comments

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

(1) CB 1609-37 – 1st Reading – Adopt the Proposed Ordinance approving the appropriations of the 2016 revised City of Everett budget and amending Ordnance No. 3503-16. (3rd and final reading on 10-5-16)

Documents:

CB 1609-37.pdf

PROPOSED ACTION ITEMS:

(2) CB 1609-35 – 2nd Reading – Adopt the proposed Ordinance granting a Telecommunications Franchise to Astound Broadband, LLC d/b/a Wave. (3rd and final reading on 9-28-16)

Documents:

CB 1609-35.pdf

CONSENT ITEMS:

(3) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $1,239,675.41 for the period of September 3, 2016 through September 9, 2016.

Documents:

res-103.pdf

(4) Adopt Resolution No. ____ authorizing payroll claims against the City of Everett in the amount of $3,812,507.84 for the period ending September 3, 2016.

Documents:

payroll-69.pdf

(5) Authorize the closure of Cedar Street between 25th Street and Everett Avenue on October 7, 2016, 12 p.m. to 12 a.m., October 8, 2016, 12 p.m. to 12 a.m. and October 9, 2016, 12 p.m. to 7 p.m. for the Everett Sausagefest: Bavarian Family Festival, sponsored by Everett Sausagefest (Immaculate Conception and our Lady of Perpetual Help School Boosters Club).

Documents:

Bavarian Family Festival.pdf

PUBLIC HEARING:

(6) Revenue Workshop

ACTION ITEMS:

(7) THIS ITEM HAS BEEN PULLED Authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with the DLR Group for the design of the Service Center Redevelopment Project in the amount of $2,003,747.00.

Documents:

Service Center Redevelopment.pdf

(8) THIS ITEM HAS BEEN PULLED Authorize Advertisement of a Request for Proposals 2016-071 for General Contractor/Construction Management Services for the Service Center Redevelopment Project.

Documents:

Management Services.pdf

(9) CB 1609-36 – 3rd and final Reading – Adopt the proposed Ordinance relating to the City's integration of "Complete Streets" design principles.

Documents:

CB 1609-36.pdf

(10) Authorize the Mayor to sign the 2016-2017 Interlocal Agreement between Snohomish County and the City of Everett for Sex Offender Address and Residency Verification Program Services.

Documents:

Residency Verification-2.pdf

Executive Session

Adjourn

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance approving the appropriations of the 2016 revised City of Everett Budget and amending Ordinance No. 3503-16

	Briefing	COUNCIL BILL #	CB1609-37
	Proposed Action	Originating Department	Finance
	Consent	Contact Person	Susy Haugen
	Action	Phone Number	425-257-8612
09/21/16	First Reading	FOR AGENDA OF	Sept. 21, 2016
09/28/16	Second Reading		Sept. 28, 2016
10/05/16	Third Reading		October 5, 2016
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
		Ordinance, Attachment A	Finance

Amount Budgeted	$353,490,183	
Expenditure Required	$354,908,630	Account Number(s): See Attachment A
Budget Remaining	-0-	
Additional Required	$1,418,447	

DETAILED SUMMARY STATEMENT:
The proposed ordinance amends the City of Everett 2016 Operating Budget as follows:

- General Government amendments increase revenue by $380,072, expenditure budgets by $168,654, and ending fund balance by $211,418.
- Non-General Government amendments increase revenue budgets by $45,593, increase expenditure budgets by $1,249,793 and decrease ending fund balances by $1,204,200.

RECOMMENDATION (Exact action requested of Council):
Adopt an ordinance approving the appropriations of the 2016 revised City of Everett budget and amending Ordinance No. 3503-16.

ORDINANCE NO. _____

AN ORDINANCE approving the appropriations of the 2016 revised City of Everett budget and amending Ordinance No. 3503-16.

WHEREAS, the City Council has reviewed the amended budget appropriations and information which was made available; and approves the appropriation of local, state, and federal funds and the increase or decrease from previously approved programs within the 2016 Budget; and

WHEREAS, the applications of funds have been identified;

NOW, THEREFORE, the City of Everett does ordain that Ordinance No. 3503-16 is hereby amended by the amendments shown on Attachment A, which is incorporated by reference, which amendments shall be made to the 2016 Budget with a total increased appropriation amount of $1,418,447.

	Beginning Fund Balance and 2016 Revenues	Expenditures	Ending Fund Balance
2016 Previously Amended Budget	$ 508,540,762	$ 353,490,183	$ 155,050,579
Budget Amendment #3	425,665	1,418,447	(992,782)
2016 Amended Budget	$ 508,966,427	$ 354,908,630	$ 154,057,797

_____
MAYOR

ATTEST:

_____
CITY CLERK

Passed:
Valid:
Published:
Effective Date:

2016 BUDGET ADJUSTMENTS for Budget Amendment # 3

General Government Amendments

	Fund	Description	Increase/(Decrease) Revenues	Expenditures	Ending Fund Balance
GGA-28	Planning	Historic Preservation Grant	15,000	15,000	-
GGA-29	Police	Bulletproof vest grant	24,072	24,072	-
GGA-30	Engineering	Staffing adjustments		116,282	(116,282)
GGA-31	Library	Librarian I		13,300	(13,300)
GGA-32	Multiple Funds	Labor reduction for vacant positions		(1,860,000)	-
GGA-32	Non-Departmental	Slow roll labor adjustment		1,860,000	-
GGA-33	General Fund	Property tax- refund levy	341,000		341,000
		Total General Government Amendments	**380,072**	**168,654**	**211,418**

Non-General Government Amendments

	Fund	Description	Increase/(Decrease) Revenues	Expenditures	Ending Fund Balance
NGA-13	CIP 4	South Library Expansion Project		600,000	(600,000)
NGA-14	Motor Vehicle Division	Vehicle Purchases		161,000	(161,000)
NGA-15	EMS	Professional Services and Vehicle Purchase		443,200	(443,200)
NGA-16	Police	FY16 Byrne Memorial JAG grant	45,593	45,593	-
		Total Non-General Government Amendments	**45,593**	**1,249,793**	**(1,204,200)**
		Total General and Non-General Government Amendments	**425,665**	**1,418,447**	**(992,782)**

2016
Budget Adjustments
Tally Sheet

	Department		Code	Rev	Exp	FB
GGA-28	Planning	Amendment - Historic Preservation Grant	021A		15,000	
GGA-28	General Fund	Amendment - Historic Preservation Grant	002A	15,000		

The City has been awarded a Historic Preservation Grant in the amount of $15,000 to hire a consultant to assess building conditions and repair/preservation methods and materials. The project will include an assessment of 10 or more historic buildings in downtown Everett, an illustrated manual for building repair/preservation, and a public workshop for building owners and tenants.

Increase grant revenue	002	3331590417		15,000
Increase professional services budget	021	5010454410	15,000	

	Department		Code	Rev	Exp	FB
GGA-29	Police	Amendment - Bulletproof Vest Grant	031A		24,072	
GGA-29	General Fund	Amendment - Bulletproof Vest Grant	002A	24,072		

The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998, is a U. S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement. Fiscal Year (FY) 2016 BVP funds became available earlier this year for purchase of compliant armored vests ordered on or after April 1, 2016. The Police Department applied for funding to cover the maximum of fifty percent of the cost of 64 vests. The total cost of 64 vests is $48,144; therefore, the EPD applied for $24,072.

Council authorized the Mayor to sign the application for FY 2016 BVP award funding at the April 27, 2016, Council meeting.

Increase grant revenue	002	3311660031		24,072
Increase uniform budget	031	5220000260	24,072	

	Department		Code	Rev	Exp	FB
GGA-30	Engineering	Amendment - Staffing Adjustments	024A		116,282	
GGA-30	General Fund	Amendment - Staffing Adjustments	009A			(116,282)

Engineering has had several positions turnover this year requiring retirement payouts and advance hiring of replacement personnel in order to train for smooth transitions. They have also requested additional day labor funding to assist in increased workload. This amendment raises Engineering's labor budget by $116,282.

Increase salary budget	024	5831060241110	69,122	
Increase day laborer budget	024	5831060241170	18,576	
Increase benefit budget	024	5831060241210	28,584	
Decrease ending fund balance	009	5980000490		116,282

ATTACHMENT A

2016
Budget Adjustments
Tally Sheet

	Department		Code	Rev	Exp	FB
GGA-31	Library	Amendment - Add 0.60 FTE Librarian I	024A		13,300	
GGA-31	General Fund	Amendment - Add 0.60 FTE Librarian I	009A			(13,300)

This amendment increases Library's budget for the addition of a 0.60 FTE Librarian I to help reduce overtime at the South Library branch. The amount shown is for three months of salary and benefits. The 0.60 FTE will be added as a full year position in 2017.

Increase salary budget	110	5831060241110	9,500	
Increase benefit budget	110	5831060241210	3,800	
Increase property tax distribution	110	3111010000		13,300
Decrease property tax	002	3111002000	13,300	
Decrease ending fund balance	002	5980000490		13,300

	Department		Code	Rev	Exp	FB
GGA-32	Multiple Funds	Amendment - Labor Adjustment (slow roll)	009A		(1,860,000)	
GGA-32	Gen Gov Non Dept	Amendment - Labor Adjustment (slow roll)	009A		1,860,000	

This amendment proposes to lock in department labor under expenditures in the amount of $1,860,000. This amount will be allocated to the General Government Non-Departmental Fund 009 to offset the 2016 budgeted personnel slow roll assumption.

Decrease Council labor	001		5,000
Decrease Legal labor	003		35,000
Decrease HR labor	007		45,000
Decrease Finance labor	010		215,000
Decrease Information Technology labor	015		25,000
Decrease Planning labor	021		30,000
Decrease Animal Services labor	026		10,000
Decrease Police labor	031		1,300,000
Decrease Fire labor	032		20,000
Decrease Parks labor	101		150,000
Decrease Library labor	110		25,000
Increase Gen Gov Non-departmental expenditures (offset to slow roll)	009	1,860,000	

	Department		Code	Rev	Exp	FB
GGA-33	General Fund	Amendment - Property Tax refund levy	002A	341,000		
GGA-33	Gen Gov Non Dept	Amendment - Property Tax refund levy	009A			341,000

Late in 2015, the City received information that our refund levy would be signficantly higher than originally estimated. However, it was too late to change the original budget. This amendment recognizes the additional revenue associated with the refund levy.

Increase propety tax	002	3111000200		341,000
Increase ending fund balance	009	5980000490	341,000	

ATTACHMENT A

2016
Budget Adjustments
Tally Sheet

	Department		Code	Rev	Exp	FB
NGA-13	CIP 4	Amendment - CIP 4 Projects	162A		600,000	(600,000)

This amendment increases the CIP 4 expenditure budget for the South Branch Library Expansion Project as approved by Ordinance 3505-16.

Increase CIP 4 transfers out	162	5625230550	600,000	
Decrease ending fund balance	162	5620999490		600,000

	Department		Code	Rev	Exp	FB
NGA-14	MVD	Amendment - Vehicle & Equip. Purchases	126A		161,000	(161,000)

This amendment increases the vehicle and equipment expenditure budget in Fund 126, MVD, for the following replacements:

Fire $120,000 Add'l funds for a fire engine and a utility vehicle
Parks $ 41,000 4X4 pickup

Increase vehicle expenditures - Fire	126	5200032640	120,000	
Increase vehicle expenditures - Parks	126	5200101640	41,000	
Decrease ending fund balance	126	5980000490		161,000

	Department		Code	Rev	Exp	FB
NGA-15	EMS	Amendment - Prof Svcs and Vehicle Purchase	153A		443,200	(443,200)

This amendment will increase the Emergency Medical Services (EMS) budget for the following:

$184,000 for a replacement medic unit
$128,350 to cover costs associated with the EMS billing investigation and audit
$130,850 to cover EMS's share of costs associated with the interest arbitration and ULP

Increase capital outlay	153	5200000640	184,000	
Increase professional services	153	5200000410	259,200	
Decrease ending fund balance	153	5990000490		443,200

ATTACHMENT A

2016
Budget Adjustments
Tally Sheet

	Department		Code	Rev	Exp	FB
NGA-16	Criminal Justice Fund	Amendment - 2016 Byrne Memorial Grant	156A	45,593	45,593	-

The Police Department was awarded a $45,593 Edward Byrne Memorial Justice Assistance grant for the acquisition of law enforcement equipment and technology. Funds will be used in accordance with pre-allocations to provide the following; real-time video recording system, digital video cameras, mobile device forensics software, and an underwater communications system. This grant does not contain a matching requirement.

Council authorized acceptance of this award at the June 22, 2016, Council meeting.

Increase grant revenue	156	3311673866		45,593
Increase equipment budget	156	5660000xxx	45,593	

ATTACHMENT A

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance Granting a Telecommunications Franchise to Astound Broadband, LLC d/b/a Wave

	Consent	COUNCIL BILL #	CB1609-35
X	Action	Originating Department	Legal
09/14/16	First Reading	Contact Person	Katie Rathbun
09/21/16	Second Reading	Phone Number	425.257.7007
09/28/16	Third Reading	FOR AGENDA OF	Sept. 14, 2016
	Public Hearing		Sept. 21, 2016
			Sept, 28, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Review by Legal, Permit Services, and Information Technology	Ordinance	Legal, Permit Services, Information Technology

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

DETAILED SUMMARY STATEMENT:

Astound Broadband, LLC (Wave) requests a franchise to provide telecommunication services in Everett. Astound is the successor to Black Rock Cable which previously held an open video system franchise with the City. Initially, Astound will focus on providing services including telecommunications, high-speed Internet access, data transport and dark fiber leasing, to business customers.

Federal law allows cities to negotiate the terms of franchises, but does not allow cities to refuse to authorize a franchise. Authorization of the franchise will provide additional telecommunication services in Everett. Astound, the City Attorney's Office, Permit Services, and Information Technology staff negotiated the proposed franchise. This franchise is substantially similar to the telecommunications franchise granted to the Zayo Group, LLC in November 2012, Noel Communications in 2014, and Mobilitie Investments in 2015.

RECOMMENDATION: (Exact action requested of Council):
Adopt an Ordinance Granting a Telecommunications Franchise to Astound Broadband, LLC d/b/a Wave.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO ASTOUND BROADBAND, LLC D/B/A WAVE.

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1. RECITALS

WHEREAS, the City is authorized to grant franchises for the installation, operation and maintenance of telecommunications services within the City; and

WHEREAS, the Grantee, Astound Broadband, LLC d/b/a Wave, has represented to the City that it provides a telephone business as defined by RCW 82.16.010, and has applied to the City for a telecommunications services franchise to construct, operate and maintain a telecommunications service within the City; and

WHEREAS, the Grantee is willing to accept such a franchise subject to the terms and conditions stated herein and to abide by these terms and conditions; and

WHEREAS, the City Council finds that it would serve the public interest of the residents of the City to grant a non-exclusive telecommunications services franchise to the Grantee subject to the terms and conditions set forth below.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

2. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

2.1 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

2.2 "Assurance" shall mean an irrevocable letter of credit from a financial institution satisfactory to the City, a performance bond or other form of assurance of financial responsibility reasonably acceptable to the City. All Assurances shall be in a form acceptable to the City's Risk Manager and City Attorney, and if a bond, with a surety acceptable to the City's Risk Manager and City Attorney.

2.3 "Cable Service" means (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.4 "City" is the City of Everett, Washington, a body politic and corporate under the laws of the State of Washington, and all of the area within its boundaries, as such may change from time to time.

2.5 "City Council" means the Everett City Council, or its successor, the governing body of the City of Everett.

2.6 "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, and other Facilities in the public rights of way necessary to furnish and deliver Telecommunications Services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, ducts, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of Telecommunications Services.

2.7 "FCC" means the Federal Communications Commission.

2.8 "Franchise" means the document in which this definition appears, i.e., this ordinance or contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

2.9 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

2.10 "Fully Allocated Costs" means the City's proportionate share of all direct and indirect costs, including interest on debt or return on investment, of constructing, relocating or placing additional ducts, conduit or related structures by Grantee for the City alongside or together with ducts, conduit or structures by and for Grantee. If the construction, relocation, or placing of additional ducts, conduit or related structures by Grantee is performed by a third party or independent contractor, "fully allocated cost" shall be the proportional share of the amount charged by the third party or independent contractor to, and paid by, Grantee, together with a reasonable charge by Grantee for administration of the contract and work by the third party or independent contractor.

2.11 "GAAP" means generally accepted accounting principles.

2.12 "Grantee" means Astound Broadband, LLC d/b/a Wave, or its lawful successor, transferee or assignee.

2.13 "Gross Revenues" means all gross revenues received by Grantee or its affiliates from the provision of intrastate telephone business activities in the City of Everett, as described in Utility Tax below.

2.14 "Incremental Costs" means the direct and actual costs of materials, supplies and construction which would not have been incurred by Grantee but for the specific construction or placement of only additional ducts, conduit or related structures for the City. Incremental costs do not include a profit.

2.15 "Open Video System" means a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the Federal Communications Commission has certified that such system complies with 47 CFR 76.1500 et seq.

2.16 "Person" means any individual, sole proprietorship, partnership, limited liability company, association, or corporation, or any other form of entity or organization.

2.17 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and are maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

2.18 "State" means the State of Washington.

2.19 "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

2.20 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. §153(43)).

2.21 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the Facilities used (as provided in 47 §U.S.C. 153(46)). Telecommunication Service does not include Cable Service or an Open Video System.

2.22 "Telecommunications System" shall mean Facilities used to provide Telecommunications Service.

3. GRANT OF FRANCHISE

3.1. Grant

A. The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain and reconstruct a Telecommunications System for the limited purpose of providing Telecommunications Services, subject to the terms and conditions set forth in this Franchise. In order to provide any other services over the Facilities, the Grantee shall be required to obtain any additional governmental authorization(s) required by federal, State or local law.

B. Each and every term, provision or condition herein is subject to the provisions of state law, federal law, the City Charter and City ordinances and regulations. As provided by Everett City Charter §13.4, this Franchise shall be subject to the right of the City Council, or the people of the City acting for themselves by the initiative and referendum, at any time, subsequent to the grant, to repeal, amend or modify the Franchise with due regard to the rights of the Grantee and the interest of the public; and to cancel, forfeit and abrogate any such grant if the Franchise granted hereby is not operated in full accordance with its provisions, or at all; and at any time during the grant to acquire, by purchase or condemnation, for the use of the City itself, all the property of the Grantee

within the limits of the public streets, at a fair and just value, which shall not include any valuation of the Franchise itself unless required by law, which shall thereupon terminate.

C. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Telecommunications Service.

D. No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

E. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

F. This Franchise does not authorize Grantee to provide Cable or Open Video System services. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Cable or Open Video System services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

G. Grantee may not lease, rent, transfer, convey, or sell Facilities in whole or in part unless the Person to whom the Facilities will be transferred has first been granted a franchise by the City.

3.2. Use of Rights-of-Way

A. Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such Facilities as are necessary and appurtenant to the operation of Telecommunication Services within the City.

B. Grantee must follow City requirements for placement of Telecommunications Facilities in Rights-of-Way, including the specific location of Facilities in the Rights-of-Way, and must in any

event install Telecommunication Facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications Facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Telecommunication Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. With regard to its management of the Rights-of-Way, the City shall treat the Grantee and other users of the Rights-of-Way in a competitively neutral and nondiscriminatory manner in accordance with applicable law.

3.3. Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect thirty days after adoption by City Council (the "Effective Date"), and shall terminate five years later on the fifth anniversary of the Effective Date, unless terminated sooner as hereinafter provided.

3.4. Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Telecommunications Systems as the City deems appropriate.

3.5. Police Powers

A. Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power.

B. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

4. FEE PAYMENT AND FINANCIAL CONTROLS

4.1. Fees

4.1.1. FRANCHISE FEE

Notwithstanding the provisions of Section 13.8 of the City Charter, the parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for service providers, including for telephone business purposes. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way for telephone business purposes as defined by RCW 82.16.010. If this prohibition is removed or does not apply, Grantee agrees the City will assess a reasonable franchise fee in accordance with the City Charter, so long as local, State or federal law does not otherwise prohibit such fee.

4.1.2. UTILITY TAX

The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation, as now or may hereafter exist. Grantee stipulates that all of its business activities in the City of Everett as identified herein that are a telephone business shall be specifically taxable as a telephone business at six percent (6.0%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Everett Municipal Code Chapter 3.28. This provision does not limit the City's power to amend Everett Municipal Code Chapter 3.28 as may be permitted by law, including increases to the tax rate. This provision is subject to the exemptions and exceptions identified in Everett Municipal Code §3.28.055.

4.1.3. PERMIT AND ADMINISTRATIVE FEES

City shall charge, and Grantee shall pay, permit fees according to the schedule of permit fees in existence at the time Grantee applies for each Right-of-Way permit provided that such fees are reasonably related to City's costs. The rate charged shall be that rate that the City in good faith determines most closely matches the work to be performed. By way of example only and not limitation, Grantee would be charged the rate for trenching where Grantee intends to install conduit by directional drilling or boring. Where the City incurs reasonable costs and expenses for which a fee is not established, including but not limited to attorneys, consultants, City Staff and City Attorney's Office, in connection with the preparation, review, approval, and enforcement of this Franchise, or review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, the Grantee shall reimburse the City directly for any and all costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis.

4.1.4 OTHER FEES

This Franchise shall not be construed to prohibit the City from imposing any fee now or hereinafter authorized by law, including, without limitation, fees authorized pursuant to RCW 35.21.860.

4.2. Payments

Grantee's fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

4.3. Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.4. Quarterly Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Telecommunications System and shall be drafted in accordance with GAAP.

4.5. Annual Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

4.6. Audits

On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that fee payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit.

4.7. Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the rate of one percent (1%) per month, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

4.8. Tax Liability

The fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City.

4.9. Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the irrevocable letter of credit or performance bond provided by the Grantee.

5. ADMINISTRATION AND REGULATION

5.1. Authority

A. The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under law to any agent in its sole discretion.

B. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

5.2. Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

6. FINANCIAL AND INSURANCE REQUIREMENTS

6.1. Indemnification

6.1.1. GENERAL INDEMNIFICATION

Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers, harmless from any action or claim for injury, damage, loss, liability, cost, or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of Grantee's conduct. Grantee shall consult and cooperate with the City while conducting its defense of the City. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.2. INDEMNIFICATION FOR RELOCATION

Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.3. RCW 4.24.115

With regard to any indemnification obligation in this Franchise, if (1) RCW 4.24.115 applies to a particular claim for injury, damage, loss, liability, cost, or expense, and (2) such claim for injury, damage, loss, liability, cost, or expense is caused by or results from the concurrent negligence of (a) the Grantee, its agents, or its employees, and (b) the City, then the Grantee's obligations under this Section shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Grantee specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Grantee recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. This indemnity provision shall survive the expiration, revocation, or termination of this Franchise.

6.1.4. PROCEDURES AND DEFENSE

If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

6.1.5. NON-WAIVER

The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

6.1.6. EXPENSES

Grantee shall pay all expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The City's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents.

6.2. Insurance

A. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

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

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

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

B. Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without Grantee providing thirty (30) days' written notice to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

C. Self-insurance is not permitted for this Franchise, unless approved in advance and in writing by the City's Risk Administrator.

6.3. Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

6.3.1. ENDORSEMENTS

All policies shall contain, or shall be endorsed so that:

A. The City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, replacement or repair, or ownership of the Telecommunications Facilities;

B. Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, agents, representatives, and volunteers shall be in excess of the Grantee's insurance and shall not contribute to it; and

C. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

6.3.2. ACCEPTABILITY OF INSURERS

The insurance obtained by Grantee shall be placed with insurers licensed to do business in the State of Washington with a Best's rating of no less than "A- VII."

6.3.3. VERIFICATION OF COVERAGE

The Grantee shall furnish the City with certificates of insurance (ACORD 25-S) and endorsements (ISO CG 2010) or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City must receive and approve the certificates and endorsements prior to the commencement by Grantee of activities associated with this Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise and City laws.

6.4. Financial Assurances

A. No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an Assurance in the amount of twenty-five thousand dollars ($25,000.00).

B. An Assurance may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee; and

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the Assurance to the amount required under this Franchise. Grantee's maintenance of the Assurance shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Assurance or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the Chief Financial Officer for reimbursement in the event Grantee believes that the Assurance was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the Assurance has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the Assurance shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

7. REPORTS AND RECORDS

7.1. Records Required

Grantee shall at all times maintain, and shall furnish to the City upon request:

A. A complete set of maps showing the exact location of all Telecommunications System equipment and Facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices on ten days' prior notice for inspection by the City's authorized representative(s) or agent(s) and made available to such persons during the course of inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

B. A copy of all FCC filings on behalf of Grantee which relate to the operation of the Telecommunications System in the City;

C. All construction activity in the City for the previous twelve (12) months; and

D. Any records of Grantee, its parent corporations, and affiliates reasonably related to the administration of this Franchise.

The City may request in writing copies of any records described above, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all requested records shall be furnished to the City, at the sole expense of Grantee. If the requested records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's office. If any records of Grantee are not kept in a local office and not made available as copies to the City upon written request as set forth above, and if the City determines that an examination of such records is

necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee. Grantee shall reimburse the City for any costs and expenses incurred by the City in connection therewith within sixty (60) days of the City's request for reimbursement.

Any record inspected, or viewed, and any record, a copy of which is received by the City, is a public record for the purpose of the Washington State Public Records Act (Chapter 42.56 RCW) and will be treated as such by the City.

7.2. Compliance with Public Records Act

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

8. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

8.1. Right to Construct

Subject to applicable laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any Facility needed for the maintenance or extension of Grantee's Telecommunications System.

8.2. General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

8.3. Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose

such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the Facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

8.4. Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs immediately, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

8.5. Compliance with Applicable Codes

8.5.1. City Construction Codes

Grantee shall comply with all applicable City construction codes, including, without limitation, all building codes, zoning codes and regulations.

8.5.2. Tower Specifications

Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations. In the event that Grantee constructs antenna supporting structures (towers) in the City, such towers shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

8.5.3. Safety Codes

Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation, maintenance, and repair of its Telecommunications System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

8.5.4. One Call

Prior to placing any underground Facilities, Grantee shall join and maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization that is designated to coordinate underground equipment locations and installations.

Grantee is familiar with RCW Ch. 19.122 (Washington State's "Underground Utilities" statute) and understands, will abide by and adhere to local procedures, customs and practices relating to the one call locator service program.

8.6. GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, regulations and policies of the City regarding geographic information systems mapping for users of the Rights-of-Way, provided that all similarly situated users of the Rights-of-Way must also accordingly comply.

8.7. Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, drains, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other Facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Telecommunications System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, replacement or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

8.8. Prevent Injury/Safety

Grantee shall provide and use any equipment and Facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its Facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. The provisions of this Section 8.8 shall survive the expiration, revocation, or termination of this Franchise.

8.9. Underground Construction and Use of Poles

A. When required by the City, consistent with general ordinances, resolutions, regulations, rules or policies of the City, or applicable State or federal law, Grantee's Telecommunications System shall be placed underground at Grantee's expense. Placing Facilities underground does not preclude the use of ground-mounted appurtenances, small cells, or associated facilities.

B. Where electric and telephone lines are installed underground at the time of Telecommunications System construction, or when all such wiring is subsequently placed underground, all Telecommunications System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Telecommunications System equipment, such as pedestals or small cells and associated facilities must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

C. The Grantee shall utilize existing poles and conduit wherever possible.

D. In the event Grantee cannot obtain the necessary poles and related Facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other Facility needed for the maintenance or extension of Grantee's Telecommunications System. All poles of Grantee shall be located as designated by the proper City authorities and only upon written consent of the City. Grantee shall apply for and obtain appropriate permits prior to construction or installation of poles or Facilities.

E. At its sole option, the City may require Grantee to install conduit and other underground Facilities in the same trench or location as another permittee when such other permittee is constructing or installing similar facilities at approximately the same time as Grantee. In such case, Grantee shall reimburse the other permittee for its proportional share of the cost of construction and installation. Similarly, the City may require other franchisees or permittees to install conduit and other underground Facilities in the same trench or location as Grantee when such Grantee is constructing or installing similar facilities at approximately the same time as another permittee or franchisee. In such case, the other permittee or franchisee shall reimburse Grantee for the other permittee's or franchisee's proportional share of the cost of construction and installation.

F. This Franchise does not grant, give or convey to the Grantee the right or privilege to install its Facilities in any manner on specific utility poles or equipment of the City or any other Person. Documentation showing Grantee's right to use poles, conduits or other utility Facilities must be provided upon the City's request.

8.10. Electrical Bonding

Grantee shall ensure that all drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

8.11. Repair and Restoration of Property

8.11.1. GENERAL

A. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

B. Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense. The provisions of this Section 8.11 shall survive the expiration, revocation, or termination of this Franchise.

8.11.2. RIGHTS-OF-WAY AND OTHER PUBLIC PROPERTY

Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

8.11.3. PRIVATE PROPERTY

Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

8.12. Discontinuing Use/Abandonment of Telecommunications Facilities

Whenever Grantee intends to discontinue using any Facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the Facility and the date on which Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such Facility remain in place, the City may require Grantee to remove the Facility from the Right-of-Way or modify the Facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility. If Grantee abandons its Facilities, the City may choose to use such Facilities for any purpose whatsoever. Upon abandonment, with approval of the City, which approval shall be within the sole discretion of the City, Grantee may transfer ownership of the Facilities to City and, in that case, Grantee shall no longer have any ownership interest in the Facilities.

8.13. Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Telecommunications System.

8.14. Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Telecommunications System. Grantee shall comply with any ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's Facilities from imminent danger only.

8.15. Inspection of Construction and Facilities

The City may inspect any of Grantee's Facilities or equipment in the public rights of way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right, but not the obligation, to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor. The provisions of this Section 8.15 shall survive the expiration, revocation, or termination of this Franchise.

8.16. Stop Work

A. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City by issuing a stop work order using the procedures established by the EMC Chapter 13.72.

8.17. Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly

and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

8.18. Construction Bond

A. Prior to commencing construction, Grantee shall provide an Assurance to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to restore City streets and other property. The amount of the Assurance shall be two hundred fifty thousand dollars ($250,000), or such lesser or greater amount as is comparable to that required of Telecommunication System providers in the City for construction projects of comparable size, cost and complexity. Normally, the amount of the Assurance shall not exceed 125% of the Permittee's estimated cost of the construction in the public rights of way of the City. Grantee shall pay all premiums or costs associated with maintaining the Assurance, and shall keep the same in full force and effect until the construction of the Telecommunications System shall have been completed and all restoration of public and private property shall have occurred regarding thereto. Thereafter, the Assurance shall be exonerated, subject to the mutual written agreement of the parties.

B. The Assurance may be drawn upon by the City for any proper purpose under this Franchise or as otherwise provided by applicable law.

C. The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the Assurance to the amount required under this Franchise. Grantee's maintenance of the Assurance shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Assurance or otherwise to limit the City's recourse to any other remedy available at law or equity.

D. Grantee shall have the right to appeal to the Chief Financial Officer for reimbursement in the event Grantee believes that the Assurance was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the Assurance has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the Assurance shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

9. RELOCATION AND MOVEMENT OF FACILITIES

9.1. Movement of Telecommunication Facilities For City Purposes

A. The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's Facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade,

installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding $500,000 in expenditures by the City that requires the removal, replacement, modification or disconnection of Grantee's Facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its Facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise; provided that relocation shall not be required after the expiration of this Franchise if the City consents to the Grantee abandoning its facilities in place.

B. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all reasonable costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Telecommunications System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

9.2. Relocation of Telecommunication Facilities for Others

If any removal, replacement, modification or disconnection of the Telecommunications System is required to accommodate the construction, operation or repair of the Facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the benefited party pay the costs associated with the removal or relocation. Nothing in the provision shall be construed to give preference or priority to one franchise holder over another with respect to placement or location of facilities.

9.3. Temporary Changes for Other Permitees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.

10. ADDITIONAL FACILITIES

10.1. Grantee to Provide Additional Facilities

Pursuant to RCW 35.99.070, the City may require Grantee, on thirty days' notice, to provide additional ducts, conduits, and related structures necessary to access the conduit when and where

requested by the City in accordance with this Section 10. The City shall only be charged for or responsible for the Incremental Costs, except as provided for in Section 10.5.

10.2. Notice of Incremental and Fully Allocated Costs

At least one hundred twenty (120) days prior to any construction, relocation, or placement of ducts, conduits or related structures in public Rights-of-Way, Grantee shall notify the City of the Incremental and Fully Allocated Costs of the Grantee of providing the City with additional duct, conduit and related structures necessary to access the conduit and of the date such construction, relocation or placement will begin; provided, however, that Grantee need not notify the City of Incremental or Fully Allocated Costs related to Facilities for which the City granted permits for construction prior to the effective date of this Franchise. At its sole option, the City may examine, inspect or audit Grantee's books and records to confirm Grantee's calculation of Incremental or Fully Allocated Costs. If Grantee and the City disagree regarding the appropriateness of Grantee's proposed Incremental or Fully Allocated Costs, the parties agree to negotiate. If the parties do not agree, the City may order Grantee to proceed with the work, and the Superior Court of Snohomish County, Washington shall determine the actual amount of Incremental or Fully Allocated Costs.

10.3. Omitted

10.4. Contract and Compliance with RCW Chap. 80.36

If the City requires Grantee to furnish additional duct, conduit or related structures pursuant to this section, the City and Grantee shall construct the facilities to the same standards as Grantee's own facilities, and shall turn such additional duct, conduit or related structures over to the City upon completion of same and satisfactory inspection thereof by the City. Grantee shall be responsible for required filings, if any, with state agencies or commissions, including, but not limited to, the Washington Utilities and Transportation Commission pursuant to RCW Chap. 80.36.

10.5. Subsequent Responsibility for Fully Allocated Costs

If the City makes the additional duct or conduit and related access structures available to any entity other than Grantee for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the City shall pay Grantee the difference between the Incremental Costs and the Fully Allocated Costs.

11. FRANCHISE VIOLATIONS, REVOCATION AND TERMINATION

11.1. Procedure for Remedying Franchise Violations

A. The City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default if:

(1) Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

(3) Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(4) Grantee fails to comply with all provisions of federal, state or local law pertaining to Telecommunications System operators.

B. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (C), below; or

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

C. If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date, or denies the default and requests a meeting in accordance, or the City orders a meeting in accordance with subsection (B), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting.

D. If, after the meeting, the City determines that default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time as the City shall determine. In the event Grantee does not cure within such time frame to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the Assurance as monetary damages;

(2) Revoke and terminate this Franchise; and

(3) Take any other legal or equitable remedy available under this Franchise or any applicable law.

These remedies are cumulative and not exclusive.

E. The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be appealed to the Chief Financial Officer or for review by a court of competent jurisdiction under applicable law.

11.2. Termination

A. In addition to revocation or termination in accordance with other provisions of this Franchise, the City may terminate this Franchise and all rights and privileges associated with this Franchise in the procedure described in this Section 11.2.

B. If Grantee has not already had an opportunity to cure a default pursuant to subsection 11.1, the City shall give written notice to the Grantee of its intent to terminate the Franchise prior to its termination of the Franchise. The notice shall set forth the nature of the noncompliance or default. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a satisfactory response from Grantee, it may then seek a termination of the Franchise by the City Council in accordance with this subsection.

C. Any proceeding to terminate this Franchise shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

D. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the termination, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

E. Within ninety (90) days after the hearing, the City Council shall determine whether to terminate the Franchise and declare that the Franchise is terminated and the irrevocable letter of credit or performance bond forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City Council determines that the Franchise should be terminated, the City Council shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City Council's decision to terminate the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

F. The City Council may at its sole discretion take any lawful action that it deems appropriate to enforce the City's rights under the Franchise in lieu of terminating this Franchise, including, but not limited to, declaratory judgments, injunctions and specific performance.

11.3. Procedures in the Event of Termination or Revocation

A. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may order the removal of the above-ground Telecommunication Facilities and such

underground Facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its Facilities, plant, structures and equipment, Grantee shall backfill at its own expense any excavation made by it and shall restore all Rights-of-Way, public places and private property to the same condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone wires or attachments. The indemnification and insurance provisions and the Assurance, as applicable, shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

B. If Grantee fails to complete any removal required by this subsection to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the Assurance provided by Grantee.

11.4. Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

11.5. Failure to Construct or Acquire

This Franchise terminates without further action by the City, notice of default, or opportunity to cure, if Grantee fails to apply for permits, commence construction, or acquire existing Facilities within on hundred and eighty (180) days of the effective date of this Franchise as provided in section 3.3.

12. FRANCHISE TRANSFER

A. The Franchise granted by the City and the entire Telecommunications System in the public rights of way of the City subject to the Franchise shall not be leased, assigned, or otherwise alienated without the express consent of the city by ordinance. This Section in no way prevents or prohibits Grantee from leasing portions of its dark fiber in accordance with its business plan for the provision of Telecommunications Services to the general public. No dealing with the lessee or assignee on the part of the city to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. The Grantee shall promptly notify the City of any actual or proposed lease, assignment or other alienation of the Franchise and the Telecommunications System in the public rights of way of the City. The parties to the proposed lease, assignment or other alienation of the Franchise and the Telecommunications System in the public rights of way of the Franchise shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City. Nothing

contained herein shall require the approval of the City for the provision of telecommunications services or service elements by Grantee to any customer of Grantee.

B. The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

C. Within thirty (30) days of any lease, assignment or other alienation, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other duly notarized written instrument evidencing such lease, assignment or other alienation, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law.

D. In reviewing a request for sale or transfer, the City may inquire into the financial and operational qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said lease, assignment or other alienation upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the financial and operational qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

E. Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Telecommunications System to an entity controlling, controlled by or under the same common control as Grantee, provided that that such proposed successor shall have the same or greater financial qualifications as has Grantee as of the effective date of this Franchise or at the time of such sale, assignment, or transfer, whichever financial qualifications are greater. The proposed assignee or transferee must agree in a duly notarized writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Telecommunications System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

F. Grantee may sell or issue securities to its employees, or to the public, or in a private placement to private investors, in accordance with applicable law, without the consent of the City, provided, however, that such sale or issuance of securities is not likely to adversely affect the ability of Grantee to perform all of its obligations under the Franchise.

13. MISCELLANEOUS PROVISIONS

13.1. Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. The City or the

Grantee may change these addresses by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Astound Broadband, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO and Byron Springer, EVP

The City's address shall be:

City of Everett
Paul McKee
3200 Cedar St.
Everett, WA 98201
With a copy to:

City of Everett
City Attorney's Office
2930 Wetmore Avenue
Everett, WA 98201

13.2. Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

13.3. Costs and Expenses to be Borne by Grantee

Grantee shall reimburse the City for all costs and expenses of preparation and publication of this Franchise and any Ordinance related hereto.

13.4. Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

13.5. Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

13.6. No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

13.7. Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

13.8. Venue

Venue for any judicial proceeding regarding this Franchise shall be in Snohomish County.

13.9. Governing Law

This Franchise shall be governed by applicable local, Washington state and federal law. Grantee agrees to comply with all such applicable law.

13.10. Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written negotiations between the parties.

13.11. Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

13.12. Acceptance

After the passage and approval of this Ordinance and within thirty days after such approval, this Franchise shall be accepted by Grantee by filing with the City Clerk an unconditional, acknowledged written acceptance of all terms and conditions of this Franchise. Failure of Grantee to file such an acceptance within thirty days of approval shall be deemed a rejection by Grantee, and the rights and privileges herein granted shall cease after expiration of the thirty day period after approval, unless the thirty day period is extended by ordinance duly passed for that purpose.

_____
Ray Stephanson, Mayor

ATTEST:

Passed: _____
Valid: _____
Published: _____
Effective: _____

_____
City Clerk

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 September 3, 2016 through September 9, 2016 having been audited and approved, have been paid and the disbursements have been made against the proper funds in payment thereof, as follows:

Fund	Department	Amount
002	General Government	5,129.75
003	Legal	2,786.98
004	Administration	8,816.93
005	Municipal Court	1,569.23
007	Human Resources	175.00
009	Misc Financial Funds	48,108.53
021	Planning & Community Dev	14.13
022	Neighborhoods & Community Serv	785.18
024	Public Works -Engineering	706.08
026	Animal Shelter	7,373.46
027	Senior Center	840.00
031	Police	5,218.66
032	Fire	33,687.33
038	Facilities/Maintenance	5,876.69
	TOTAL GENERAL FUND	**121,087.95**

Fund	Department	Amount
101	Parks & Recreation	70,144.20
110	Library	12,339.49
112	Community Theater	46,003.97
114	Conference Center	1,200.00
120	Public Works-Streets	3,349.99
126	MV-Equipment Replacement Reser	26,177.19
146	Property Management	5,357.10
149	Senior Center Reserve	1,792.25
152	Cum Reserve-Library	94.00
153	Emergency Medical Services	28,319.10
156	Criminal Justice	69.55
197	CHIP Loan Program	9,109.37
198	Community Dev Block Grants	833.33
303	PW Improvement Projects	1,187.00
308	Community Dev Block Grants	17,123.33
336	Water & Sewer Sys Improv Project	23,920.91
401	Public Works-Utilities	513,293.64
425	Public Works-Transit	33,443.58
430	Everpark Garage	223.86
440	Golf	59,547.90
501	MVD-Transportation Services	2,487.39
503	Self-Insurance	107,058.08
505	Computer Reserve	37,818.21
507	Telecommunications	5,890.17
661	Claims	111,803.85
	TOTAL CLAIMS	**1,239,675.41**

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 September 03, 2016, and checks issued September 09, 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	10,565.75	$5,558.96
003	Legal	$57,768.21	20,065.17
004	Administration	50,634.16	15,506.01
005	Municipal Court	43,943.76	18,700.08
007	Personnel	44,884.18	16,432.71
010	Finance	53,435.51	20,476.99
015	Information Technology	50,758.50	19,361.77
021	Planning & Community Dev	44,154.72	14,608.39
022	Neighborhoods & Community Svcs	5,370.07	2,322.32
024	Public Works	154,136.47	58,443.35
026	Animal Shelter	35,426.67	13,278.53
027	Senior Center	11,404.98	4,106.73
031	Police	814,854.53	244,975.15
032	Fire	629,051.91	169,082.29
038	Facilities/Maintenance	67,190.37	28,917.24
101	Parks & Recreation	212,634.51	74,490.03
110	Library	117,864.23	41,301.27
112	Community Theatre	6,891.26	3,086.63
120	Street	66,374.86	26,843.01
153	Emergency Medical Services	167,664.52	46,804.31
197	CHIP	9,033.99	3,918.44
198	Community Dev Block	6,474.96	2,253.17
401	Utilities	670,498.68	261,800.48
425	Transit	375,182.10	156,601.68
440	Golf	33,731.94	10,636.24
501	Equip Rental	62,651.39	26,011.45
507	Telecommunications	9,925.61	4,045.74
		$3,812,507.84	$1,309,628.14

_____
Councilperson Introducing Resolution

Passed and approved this _____ day of _____ , 2016.

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Street Closure –The Everett Sausagefest: Bavarian family Festival

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	City Clerk
_____	Consent	Contact Person	Anna Pankevich
_____	Action	Phone Number	425 257-8614
_____	First Reading	FOR AGENDA OF	Sept. 21, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Cedar Street between 25th Street and Everett Avenue		Special Event Application	Police, Fire, Streets, Traffic Engineering, Transit

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

DETAILED SUMMARY STATEMENT:

Everett Sausagefest (Immaculate Conception and Our Lady of Perpetual Help School Boosters Club) is requesting the closure of Cedar Street between 25th Street and Everett Avenue on October 7, 2016, 12 p.m. to 12 a.m., October 8, 2016, 12 p.m. to 12 a.m., and October 9, 2016, 12 p.m. to 7 p.m. for the Everett Sausagefest: Bavarian Family Festival.

RECOMMENDATION (Exact action requested of Council):

Authorize the closure of Cedar Street between 25th Street and Everett Avenue on October 7, 2016, 12 p.m. to 12 a.m., October 8, 2016, 12 p.m. to 12 a.m., and October 9, 2016, 12 p.m. to 7 p.m. for the Everett Sausagefest: Bavarian Family Festival, sponsored by Everett Sausagefest (Immaculate Conception and Our Lady of Perpetual Help School Boosters Club).

2016

SPECIAL EVENT APPLICATION

Event Type: X Street Closure __Parade __ Walk/Run __ Other (_____)

Event Date: October 7, 8, 9, 2016 Event Time: Fri : Sat 12 Noon - 12 midnight / Sunday Noon - 7pm

Explain Event: The Everett Sausage Fest : Bavarian Family Festival : Food Booths, Vendor / Arts : Crafts : Comm 1 / Beer (Beer) : Wine Garden / Family Stage Carnival : Bingo

Location of Event: 2619 Cedar St - Our Lady of Perpetual Help Grounds

Sponsoring organization: OLPH Booster Club - The Everett Sausage Fest

Address: 2619 Cedar St City & State Everett, WA

Contact Person: Cecil Fisher, Secretary Phone No. (425) 422-6086

We **require** that you inform the neighborhood of the street closure **prior** to approval.
What method will be used to inform the neighborhood of the street closure? Individual / resident Letter, signs from City (Street not closed to them)

If applicable answer the following:
Approx. # of participants: _____ Persons _____ Animals _____ Vehicles
_____ Type of Animals

Assembly area (streets) Street to be closed 25th block of Cedar : Everett Ave

Portion of street to be used: X Full width _____ Half _____ Other

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

Official Use

	Admin.	Traffic	Police	Fire	Transit	Streets
Approved:		*✓	✓	✓	✓	✓
Rejected:						

Special Conditions: _____

Comments: _____

RECEIVED

Council agenda date: __/__/__ City Council approval: __/__/__

SEP 07 2016

Permit _____ TR # _____

CITY OF EVERETT
City Clerk

* Traffic Revision attached. ST

Indemnification, Hold Harmless, and Certification

As a material consideration to the City granting this approval, and without which the City would not do so, the Applicant, on behalf of the sponsoring organization, hereby agrees to defend, indemnify and hold harmless the City from and against any and all Claims for personal injury, death, property damage or destruction, arising from, relating to, or resulting from the Event that is the subject to this approval.

"City" shall mean the City of Everett, its officers, employees, agents, and volunteers.
"Claims" shall mean any actions, demands, suits, obligation or liability for payment of damages, fees, and costs, including, but not limited to, attorney's fees, expert witness fees, court costs and other legal expenses.

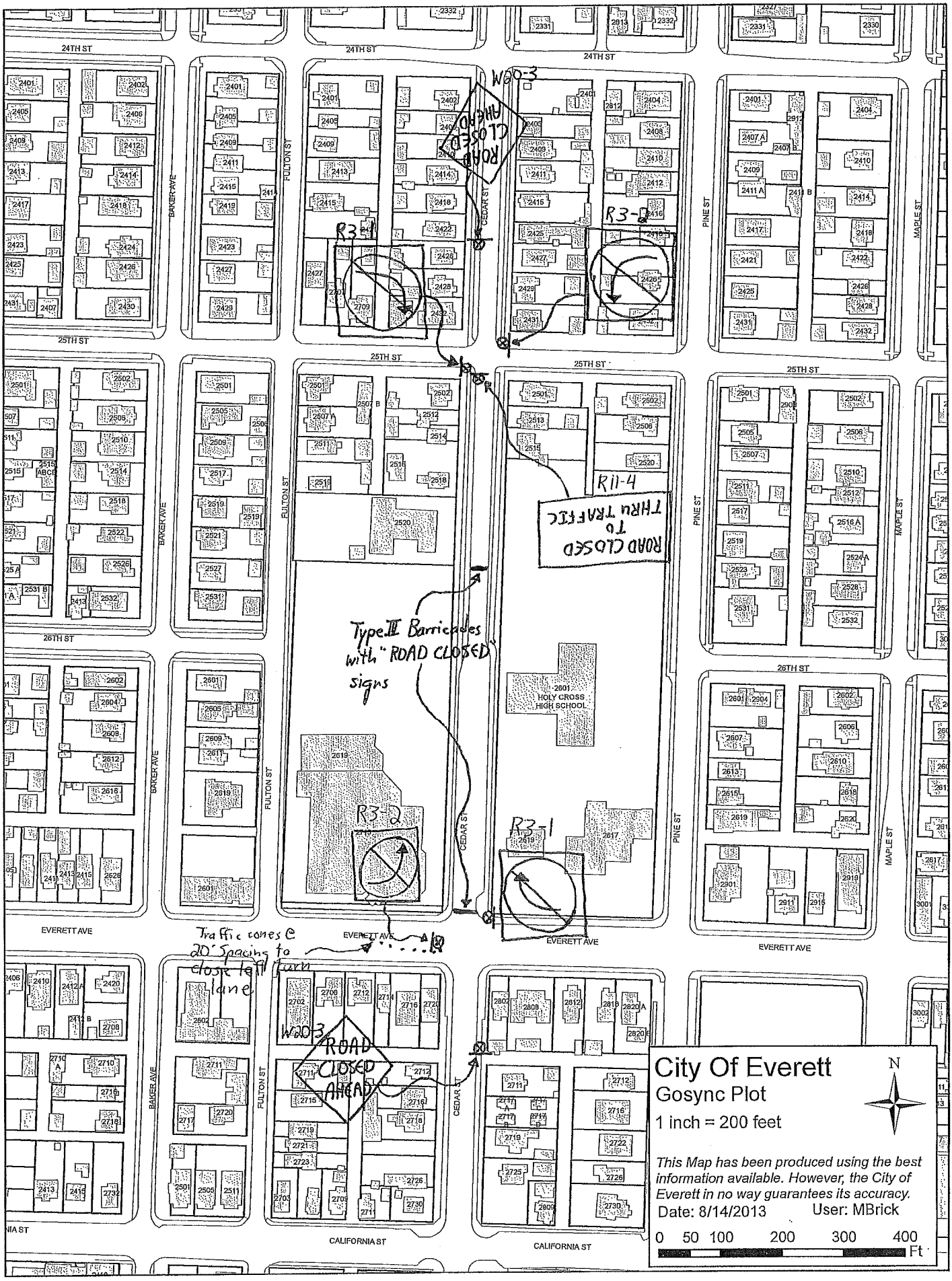
Provided, however, this agreement to defend, indemnify and hold harmless the City shall not apply to Claims arising out of bodily injury or death or property damage or destruction caused by the sole negligence or willful misconduct of the City.

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

Ceci Yang Fisher Signature	9/6/16 Date
Ceci Yang Fisher Printed Name	cyangfisher@hotmail.com Email
Secretary Organization Representing	(425) 422-6086 Phone No(s).

List businesses impacted by the Event and ask them to sign off if they concur with the closure.

	Business	Signature of Approval
1.		
2.		
3.		
4.		
5.		
6.		
7.		


24TH ST
25TH ST
26TH ST
EVERETT AVE
CALIFORNIA ST
BAKER AVE
FULTON ST
CEDAR ST
PINE ST
MAPLE ST
W20-3
ROAD CLOSED AHEAD
R3-1
R3-2
R11-4
ROAD CLOSED TO THRU TRAFFIC
Type III Barricades with "ROAD CLOSED" signs
HOLY CROSS HIGH SCHOOL
Traffic cones @ 20' Spacing to close left turn lane
City Of Everett
Gosync Plot
1 inch = 200 feet
N
This Map has been produced using the best information available. However, the City of Everett in no way guarantees its accuracy.
Date: 8/14/2013
User: MBrick
0 50 100 200 300 400 Ft

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

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

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Dave Davis
_____	Action	Phone Number	425-257-8913
_____	First Reading	FOR AGENDA OF	August 31, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
3200 Cedar Street	Professional Services Agreement	Amendment No.1	Public Works

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

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

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

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

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

In summary:

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

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign Amendment No.1 to the Professional Services Agreement with the DLR Group for the design of the Service Center Redevelopment Project in the amount of $2,003,747.

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

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

RECITALS

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

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

AGREEMENT

The City and Service Provider agree as follows:

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

   Time of Beginning and Completion of Performance: This Agreement shall commence as of the date of execution of this Agreement and shall be completed by April 30, 2017.

2. The Agreement is modified so that total compensation, including all services and expenses, shall not exceed $2,243,747.

3. The Work is modified to add the Work shown on Exhibit A to this Amendment.

4. Regardless of the date(s) on which this Amendment is signed by the parties, the parties agree that the Agreement has been continuously in effect since May 17, 2017.

5. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment.

CITY OF EVERETT
WASHINGTON

By: _____
Ray Stephanson, Mayor

_____
Date

ATTEST:

_____
Sharon Fuller, City Clerk
Date: _____

DLR GROUP

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

_____
Date

APPROVED AS TO FORM:

_____
James D. Iles, City Attorney
Date: _____

EXHIBIT A
AMENDEMENT NO. 1
SCOPE OF WORK

PROFESSIONAL SERVICES SCOPE

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

SCHEMATIC DESIGN SERVICES

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

Project Administration

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

Disciplines Coordination

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

Document Checking

Review and coordination of project documents.

Consulting Permitting Authority

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

Data Coordination User Agency

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

Architectural Design

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

Structural Design

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

Mechanical Design

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

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

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

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

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

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

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

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

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

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

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

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

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

Document Checking
Review and coordination of documents prepared for the project.

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

User Agency Data Coordination
Review and coordination of data furnished for the project by the City.

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

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

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

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

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

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

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

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

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

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

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

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

Schematic Design Services	$1,147,177
Design Development Services	$ 856,570
Amendment No.1 - Compensation	$2,003,747

Everett Service Center Redevelopment
Design Services Fee Proposal

DLR Group
August 17, 2016

Basic Services per State of Washington Fee Guidelines July 2015 Version on a project scope of $53,200,000 (MACC+Contingency) Schedule 'B'				Amendment 1 (through April 30, 2017)	
	Basic Fee %		Basic Services Fee	SD	DD
Base A&E Fee	6.111%		$ 3,250,875	$ 747,701	$ 422,614
Additional Services per State of Washington Fee Guidelines					
Renderings and Models			Included		
Interior Design			$ 240,000	$ 31,200	$ 55,200
FF&E Purchase Coordination			$ 45,000	$ -	$ 11,250
Environmental Graphics			$ 17,500	$ 4,025	$ 2,275
Wayfinding			$ 29,500	$ 3,835	$ 6,785
Educational Graphics			$ 5,250	$ 683	$ 1,208
GCCM Coordination & Multiple Bid Packages			$ 105,000	$ 26,250	$ 26,250
Weekly On-site CA Administration (Basic Services = Bi-monthly)			$ 151,200	$ -	$ -
Demolition drawings and documentation of existing structures			$ 30,000	$ 22,500	$ 7,500
Energy Life Cycle Cost Analysis			$ 53,000	$ 5,300	$ 26,500
Daylighting Analysis			$ 12,000	$ 3,000	$ 7,800
LEED Energy Model & Technical Credits			$ 95,000	$ 9,500	$ 47,500
LEED Certification Documentation Process			$ 135,000	$ 13,500	$ 40,500
City-Wide IT Data Center			$ 150,000	$ 34,500	$ 19,500
Envelope Consultant		RDH	$ 40,000	$ 4,000	$ 16,000
Shops Consultant		Pinnacle Consulting	$ 112,940	$ 25,976	$ 14,682
Cost Estimating (30%, 60%, 90% reconciliation)		Roen Associates	$ 100,880	$ 25,220	$ 35,308
Civil Engineering Consultant (on site & off site)		DEA	$ 354,000	$ 81,420	$ 46,020
Traffic		DEA	$ 15,300	$ 1,530	$ 9,180
Landscape		DEA	$ 23,432	$ 5,389	$ 3,046
Subconsultant Markup		10%	$ 64,655	$ 14,871	$ 8,405
Subtotal Additional Services			$ 1,779,657	$ 312,699	$ 384,909
Design Fee Contingency	(5% held in reserve for Owner authorization)		$ 251,527	$ 57,851	$ 32,698
DLR Group Reimbursable Costs, Design Printing, Mailing.			$ 125,763	$ 28,925.56	$ 16,349.23
Note: Expenses to be included in the lump sum fee for design services					
Total Design Services			$ 5,407,822	$ 1,147,177	$ 856,570
			Total Design Services	Amendment 1	$ 2,003,747

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Request for Proposals 2016-071 for General Contractor/Construction Management Services for the Service Center Redevelopment Project

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

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Dave Davis
Phone Number	425-257-8913
FOR AGENDA OF	Sept. 21, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Pacific Avenue & Cedar Street	Project Briefing August 31, 2016	Request for Proposals Advertisement	Public Works

Amount Budgeted	$55,900,000	
Expenditure Required	$55,900,000	Account Number(s):
Budget Remaining	$55,900,000	Public Works – Fund 401
Additional Required	$0	

DETAILED SUMMARY STATEMENT:

The Service Center Redevelopment Project meets the criteria established in RCW 39.10.340 for use of the General Contractor/Construction Manager (GC/CM) procedure. The Request for Proposals (RFP) will start the GC/CM selection process. Submittals shall be due at 2:00 PM on Tuesday October 25, 2016. The anticipated date for the final selection of the GC/CM is November 30, 2016.

The RFP will be advertised in the Everett Herald and the Daily Journal of Commerce on September 27, 2016 and October 4, 2016.

A breakdown of the estimated GC/CM cost is as follows:

Maximum Allowable Construction Cost	$47,000,000
Percent Fee and Specified General Conditions	$ 3,700,000
Sales Tax	$ 4,700,000
Total Contract Cost	$55,400,000
Preconstruction Services	$ 500,000
Total GC/CM Cost	$55,900,000

RECOMMENDATION (Exact action requested of Council):

Authorize the advertisement of a Request for Proposals 2016-071 for General Contractor/Construction Management Services for the Service Center Redevelopment Project

City of Everett
Request for Proposals 2016-071
for

General Contractor/Construction Management (GC/CM) Services for Service Center Redevelopment Project

Proposal Submittal Deadline by: October 25, 2016 at 2:00 pm

The City of Everett is soliciting proposals from firms to provide General Contractor/Construction Management (GC/CM) services for the redevelopment of the City's Service Center site.

The alternate public works contracting procedure authorized in state law (RCW 39.10.210 and 39.10.340 through 39.10.410) will be utilized for this Project. Firms with previous general contracting and construction management experience or experience using a similar CM/GM or GMP format are encouraged to submit proposals.

The City will select a GC/CM for this Project using the three step selection process as described in the Request for Proposals (RFP). Upon selection, the contractor will provide construction management services during both a preconstruction period and during construction, and will act as the general contractor during construction.

The estimated Maximum Allowable Construction Cost (MACC) for the Project is $47,000,000

Obtaining the RFP: Proposal documents are available on the City's website Bid Page at www.everettwa.gov/citybids or by contacting clangstraat@everettwa.gov

Pre-Proposal Meeting: Those interested in finding out more about the Project, the GC/CM selection and contracting process in the State of Washington, and potentially responding to the RFP, are encouraged to attend a Pre-Proposal Meeting and site tour to be held at 3200 Cedar St, Everett, WA 98201 beginning at 10:00 AM (Pacific Time) on October 12, 2016. Both contractors and subcontractors are encouraged to attend.

Questions: All questions regarding this RFP should be addressed in writing by email to Clark Langstraat, RFP Coordinator, at clangstraat@everettwa.gov.

Submission Deadline: All proposals must be received by the City Clerk at 2930 Wetmore Avenue, 1st Floor, Suite 1-A, Everett, WA 98201 no later than October 25, 2016 at 2:00 pm (Pacific Time). Proposals received after the deadline or at any other location will not be considered. The City is not responsible for misdirected mail or failure of a delivery service to deliver the proposal by the deadline. See the RFP for more details on submission of proposals.

The City reserves the right to reject all proposals or parts of proposals as may be in the best interest of the City, and to waive immaterial irregularities in proposals submitted.

Publication date(s):
September 27, 2016 and October 4, 2016

- Seattle Daily Journal of Commerce
- Everett Herald

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance relating to the City's integration of "Complete Streets" design principles.

_____	Briefing	COUNCIL BILL #	CB1609-36
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Ryan Sass
_____	Action	Phone Number	(425) 257-8942
_____	First Reading	FOR AGENDA OF	Sept. 14, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory	Initialed by:	
		Department Head	_____
		CAA	_____
		Council President	_____

Location	Preceding Action	Attachments	Department(s) Approval
	Resolution 6016	Proposed Ordinance	Public Works

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

DETAILED SUMMARY STATEMENT:

Complete Streets is a nationally recognized program established to promote multi-modal transportation and ensure safe access to transportation corridors for all users including pedestrians, bicyclists and transit riders.

The Transportation Element of the City's Comprehensive Plan is consistent with the principles outlined in the Complete Streets program. Additionally, City Council passed a resolution in May of 2008 regarding the adoption of principles outlined in the Complete Streets program.

External funding agencies, such as the Washington State Transportation Improvement Board, have embraced policies that require prospective grant applicants to have adopted an Ordinance incorporating Complete Streets principles to be eligible for funding. To be eligible for future funding opportunities, it is necessary to adopt an ordinance that supports the Complete Streets program.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance relating to the City's integration of "Complete Streets" design principles.

ORDINANCE NO. _____

An Ordinance Relating to the City's integration of "Complete Streets" design principles

WHEREAS, the Transportation Element of the City of Everett's Comprehensive Plan recognizes the need for a balanced, affordable, reliable, convenient and efficient transportation system; and

WHEREAS, a balanced transportation plan takes into account multiple modes of travel including personal vehicles, transit, ridesharing, bicycles and pedestrians; and

WHEREAS, "Complete Streets" is a nationally recognized program, established in 2005 by the National Complete Streets Coalition, promoting policies intended to accommodate and enable safe access for all right of way users and further promoting the safe movement along and across street corridors for pedestrians, bicyclists, and transit riders of all ages and varying abilities; and

WHEREAS, the implementation of improvements consistent with Complete Street principles encourage and facilitate the use of alternative transportation methods resulting in a cleaner environment and a reduced dependence on fossil fuels; and

WHEREAS, policy principles of the Complete Streets program have been incorporated into the Transportation Element of the City's Comprehensive Plan as follows:

- The Goals, Policies and Actions section of the Transportation Element identifies the objective of expanding multi-modal travel opportunities; and
- The Transportation Element encourages walking, bicycling and transit use as safe, convenient and widely available modes of transportation; and
- The Transportation Element plans for a comprehensive, integrated, and connected multi-modal network; and
- The Transportation Element identifies the need for, and provides, an integrated pedestrian and bicycle plan including trails, bike lanes and sidewalks to provide a non-motorized option for accessing transit facilities and for accessing local activity areas directly without driving a vehicle; and
- The Transportation Element directs that the City integrate the planning of sidewalks, walkways, bicycle facilities and trails into overall transportation planning, programming and construction activities; and
- The Transportation Element directs the development and use of appropriate design standards and procedures with a greater emphasis on minimizing person-travel delay, public safety, barrier-free pedestrian oriented accessibility, while assuring the continued movement of goods; and

WHEREAS, Everett's Transportation Element is consistent with the Complete Streets guiding principle to design, operate and maintain Everett's streets to promote safe and convenient access and travel for all users – pedestrians, bicyclists, transit riders, people of various abilities, as well as freight and motor vehicle drivers; and

WHEREAS, Everett's Bicycle Master Plan recognizes and identifies needed bicycle oriented transportation facilities and the City is actively implementing the plan; and

WHEREAS, the City of Everett has been a leader in incorporating Complete Streets principles with the Everett City Council passing a Resolution regarding the adoption of Complete Streets principles in May of 2008, and that the City has consistently incorporated Complete Streets elements into its transportation projects;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1.
A new Chapter shall be added to the EMC:

CHAPTER 13.77 COMPLETE STREETS

13.77.010 Purpose
The City of Everett shall to the maximum extent practical; plan, scope, design, construct, operate and maintain appropriate facilities for the safe accommodation of pedestrians, bicyclists, transit users, motorists, emergency responders, freight, and users of all ages and abilities it its new construction, retrofit or reconstruction projects.

13.77.020 Previous City Council Resolution
City Council Resolution 6016, May 2008, pertains to the City's initial adoption of Complete Streets principles.

13.77.030 Transportation Element to Incorporate Complete Streets Principles
The City's Transportation Element of the City's Comprehensive Plan shall incorporate Complete Streets principles to design, operate and maintain Everett's streets. Complete Streets principles ensure that the right of way is planned, designed, constructed, operated and maintained to provide safe access for all users. Complete Streets principles promote safe and convenient access and travel for all users – pedestrians, bicyclists, transit riders, people of various abilities, as well as freight and motor vehicle drivers.

13.77.040 Exceptions
Facilities for pedestrians, bicycles, transit and people of all abilities are not required to be provided when:

A. A documented absence of current or future need exists;
B. Non-motorized users are prohibited by law;
C. Routine maintenance of the transportation network is performed;
D. The cost would be disproportionate to the current or probable future uses;
E. Advancement of a complete network of facilities results in some facilities that emphasize particular uses, (e.g., a bicycle boulevard in proximity to, and as an alternative to, an established freight route) while furthering the overall Complete Streets transportation network.
F. In instances where a documented exception is granted by the City Engineer.

13.77.050 Goal to foster partnerships

It is a goal for the City of Everett to foster partnerships with adjacent local agencies and with transportation funding agencies including WSDOT, FHWA to implement the Complete Streets ordinance and to coordinate facilities at municipal boundaries and agency operational boundaries.

13.77.060 Best Practices Criteria

The City Engineer shall develop and incorporate Transportation Element policies and design criteria based upon recognized best practices in street design, construction, operation and maintenance including, but not limited to, the latest editions of Association of State Highway Transportation Officials (AASHTO), WSDOT, and National Association of City Transportation Officials (NACTO) guidelines, while reflecting the local context and character of the surrounding built and natural environments toward the enhancement of each.

13.77.070 Performance Standards

The City of Everett shall include performance standards within the Transportation Element to evaluate the success and continued implementation of Complete Streets by measuring appropriate transportation metrics such as mode split, mode share targets, and facilities built.

Section 2.

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

Section 3.

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

_____

Ray Stephanson, Mayor

ATTEST:

_____

Sharon Fuller, City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
2016-2017 Interlocal Agreement between Snohomish County and the City of Everett for Sex Offender Address and Residency Verification Program Services

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

COUNCIL BILL #	
Originating Dept.	Police
Contact Person	James Lever
Phone Number	425-257-8418
FOR AGENDA OF	September 21, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
		Interlocal Agreement	Police, Legal

Amount Budgeted	$101,000	Account Number: 156-334-0110-701
Expenditure Required	$101,000	Account Number(s): 031-570-1000-XXX 156-570-1000-XXX
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The State of Washington has provided the Washington Association of Sheriffs and Police Chiefs with funding for local units of government to verify addresses and residency of registered sex and kidnapping offenders. Snohomish County has used its share of the State grant funds to create and operate a multi-jurisdictional, regional task force to perform the address and residency verifications of registered sex and kidnapping offenders.

This Interlocal Agreement with Snohomish County allows for the City of Everett to assign a full-time police detective to work with this task force. The City will be reimbursed for the detective position by Snohomish County with the State grant monies in the amount of $101,000 for the period of July 1, 2016 to June 30, 2017.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the 2016-2017 Interlocal Agreement between Snohomish County and the City of Everett for Sex Offender Address and Residency Verification Program Services.

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF EVERETT FOR SEX OFFENDER ADDRESS AND RESIDENCY VERIFICATION PROGRAM SERVICES

This Interlocal Agreement Between Snohomish County And The City Of Everett For Sex Offender Address And Residency Verification Program Services (the "Agreement"), is entered into by and between Snohomish County, a political subdivision of the State of Washington (hereinafter referred to as the "County"), and the City of Everett, a municipal corporation of the State of Washington (hereinafter referred to as the "City").

RECITALS

A. The Washington Association of Sheriffs and Police Chiefs ("WASPC") has received funds from the State of Washington to provide grants to local units of government to verify the address and residency of all registered sex offenders and kidnapping offenders under RCW 9A.44.130; and

B. Snohomish County, through its Sheriff's Office ("SCSO"), and WASPC entered into an Interagency Agreement dated July 1, 2016 (hereinafter "Grant Contract"), whereby the County has agreed to use specified grant funds (hereinafter "Grant Funds") to create and operate a multi-jurisdictional, regional, task force (hereinafter the "Task Force") to coordinate selected law enforcement activities, resources, and functions to contact and verify the address and residency of sex offenders and kidnapping offenders within incorporated and unincorporated areas of Snohomish County; and

C. Chapter 39.34 RCW permits one or more public agencies to contract with any one or more public agency to perform any governmental service, activity, or undertaking that each public agency is authorized by law to perform; and

D. The City is authorized to perform each service contemplated herein; and

E. The City desires to participate as a member of the Task Force, with Snohomish County administering task force Grant Funds, pursuant to the terms and conditions set forth in this Agreement

AGREEMENT

NOW THEREFORE, in consideration of the covenants, conditions, performances, and promises contained herein, the parties agree as follows:

1.0 TASK FORCE COMPOSITION, PURPOSE, AND TERM

1.1 The Task Force will be composed of law enforcement and prosecutor personnel. Its purpose is to coordinate selected law enforcement activities, resources, and functions to contact and verify the address and residency of sex offenders and kidnapping offenders within incorporated and unincorporated areas of Snohomish County.

1.2 This Agreement shall govern each party's participation in the Task Force beginning July 1, 2016, and continuing through June 30, 2017, unless earlier terminated or modified as provided in this Agreement. As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website.

2.0 ORGANIZATION

2.1 The County is the administrator of this Agreement.

2.2 A SCSO Investigations Sergeant will direct all law enforcement personnel assigned to the Task Force under this Agreement or similarly executed agreements, in their operational duties.

2.3 The County will provide office space, including a workstation, telephone and office supplies for use by the City Officer.

2.4 Except as provided in Section 3.1, nothing in this Agreement shall restrict the ability of the County or the City to reassign personnel and related equipment and supplies assigned under this Agreement.

3.0 OBLIGATIONS OF CITY

3.1 During the term of this Agreement, the City shall employ, dedicate and assign one (1) full-time police officer ("City Officer") to the County for inclusion in the Task Force.

3.2 The City Officer's operational assignments will be directed by a SCSO Investigations Sergeant who supervises the Registered Sex Offender Unit.

3.3 The City Officer assigned to the Task Force pursuant to this Agreement shall remain subject to the policies, procedures and directives of the City.

3.4 The City agrees to make any certified assurances required by the Agreement that are within its particular control, and agrees to make all its records related to the Task Force available for inspection consistent with the Agreement and applicable state and federal laws.

4.0 BUDGET AND COMPENSATION

4.1 The County, through its Sheriff's Office, shall serve as the fiscal agent and manage Grant Funds, including reimbursement to participating jurisdictions. All revenues collected or generated by or for the Task Force shall be maintained by the County pursuant to law.

4.2 The County will reimburse the City one hundred and one thousand dollars and no cents ($101,000.00).

4.3 The City will send quarterly invoices to the County equal to 25% of the total reimbursement, $25,250.00.

4.4 The County will make payments within thirty (30) days from receipt of the quarterly invoice. Invoices shall be sent to Snohomish County Sheriff's Office, Fiscal Division, 3000 Rockefeller Avenue, M/S 606, Everett, WA 98201.

5.0 GENERAL ADMINISTRATION

5.1 The County agrees to provide WASPC with the necessary documentation to receive Grant Funds.

5.2 Any factual dispute between the County and the City that relates to this Agreement shall be referred for resolution to the Sheriff, or his/her designee, and

the City's Mayor, or his/her designee. In the event the dispute cannot be resolved between the parties to each party's mutual satisfaction, the issue shall be submitted to mediation through the Snohomish County Dispute Resolution Center. Both parties agree to utilize this process prior to the institution of any legal action to enforce the terms and conditions of this agreement. The cost of mediation shall be borne equally by the parties.

5.3 The City shall provide the maximum opportunity to Minority and Women Owed Business Enterprises to participate in the performance of this Agreement.

6.0 REAL AND PERSONAL PROPERTY

All real or personal property acquired through Grant Funds or activities of the Task Force will be held by the County.

7.0 ACQUISITION AND USE OF EQUIPMENT

7.1 All equipment purchased with Grant Funds by the County will be held by the County.

7.2 All equipment purchased with Grant Funds by the City will be held by the City

7.3 Any equipment purchased with Grant Funds will only be used as permitted by the terms of the Grant Contract.

7.4 Upon termination of this Agreement, any equipment purchased or otherwise provided by the City will be returned to the City unless otherwise agreed by the parties.

7.5 Upon termination of this Agreement, the County will dispose of all acquired equipment in accordance with applicable federal, state and county requirements.

8.0 MODIFICATION

Each party reserves the right to amend this Agreement in the future from time to time as may be mutually agreed upon. No such amendment shall be effective unless written and signed with the same formality as this Agreement.

9.0 TERMINATION OF AGREEMENT

Notwithstanding any provisions of this Agreement, either party may terminate this Agreement by providing written notice of such withdrawal specifying the effective date thereof at least thirty (30) days prior to such date. The terminating party may take with it any equipment it has loaned or donated to the Task Force.

10.0 HOLD HARMLESS

10.1 The County shall save, hold harmless, indemnify and defend the City, its elected and appointed officials, officers, employees and agents, from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or County employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the County in performance of this Agreement, its elected or appointed officials, officers, employees or agents, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the City, its elected or appointed officials, officers, employees or agents.

10.2 The City shall save, hold harmless, indemnify and defend the County and WASPC, its elected and appointed officials, officers, employees and agents from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or the City employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the City in performance of this Agreement, its elected or appointed officials, officers, employees or agents, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the County, its elected or appointed officials, officers, employees or agents.

11.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington without reference to choice of law principles, and venue

of any suit between the parties arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.

12.0 INTEGRATION

This Agreement constitutes the whole and entire agreement among the parties as to the Task Force and no other understandings, oral, or otherwise, regarding the Task Force shall be deemed to exist or bind the parties.

13.0 SEVERABILITY

If any part of this Agreement is unenforceable for any reason the remainder of the agreement shall remain in full force and effect.

Dated this _____ day of _____, 2016.

"County" SNOHOMISH COUNTY	"City" CITY OF EVERETT
_____ County Executive Date	_____ City Mayor Date
By_____ Ty Trenary, Sheriff Dated: _____	By _____ City Clerk Dated: _____
Approved as to form only: Lindsey M. Doms 8/18/16 Deputy Prosecuting Attorney	Approved as to form only: _____ City Attorney

Reviewed by Risk Management

_____
Risk Manager