

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Professional Services Agreement with Perteet, Inc to provide construction inspection services for the HMA Overlay 2016 Project

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

COUNCIL BILL # \_\_\_\_\_  
 Originating Department Public Works  
 Contact Person Mike Kangas  
 Phone Number 425-257-7731  
 FOR AGENDA OF April 27, 2016

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President dlb

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
Various locations as required for HMA Overlay 2016		Professional Services Agreement, Location Map	Public Works, Legal

Amount Budgeted	\$100,000.00	
Expenditure Required	\$57,839.00	Account Number(s): PW 3619
Budget Remaining	\$42,161.00	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

This agreement will provide supplemental construction inspection and reporting services including but not limited to construction observation and reporting with minor amounts of personnel management, administrative support and accounting for the HMA Overlay 2016 Project, in the amount of \$57, 839.

The additional observation and reporting will primarily be utilized for night shift work, supplementing City staff tasked with covering day shift work.

**RECOMMENDATION (Exact action requested of Council):**

Authorize the Mayor to sign the Professional Services Agreement with Perteet, Inc to provide construction inspection services for the HMA Overlay 2016 Project, in an amount not to exceed \$57,839.00.

**CITY OF EVERETT  
PROFESSIONAL SERVICES AGREEMENT**

This Professional Service Agreement (this "Agreement") is dated \_\_\_\_\_ 20\_\_\_\_, and is between the City of Everett, a Washington municipal corporation and Perteet, Inc (the "Service Provider").

1. Engagement of Service Provider. Service Provider shall provide the services described in the attached Exhibit A (the "Scope of Work" or the "Work"). The Service Provider shall perform the Work in a competent and professional manner. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2. Parts of the Agreement. This Agreement consists of this signed document, the Scope of Work attached as Exhibit A, the compensation provisions attached as Exhibit B, the reimbursable expenses provisions attached as Exhibit C, and the General Conditions attached as Exhibit D. If the Service Provider's proposal is attached as an exhibit or as part of an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into the Agreement between the City and Service Provider.

3. Date of Contract Completion: December 31, 2016

4. Maximum Total Compensation Amount: \$ 57,839.00

5. Service Provider Notice Address:

Perteet, Inc  
2707 Colby, Suite 900  
Everett, WA 98201

6. City Notice Address:

City of Everett  
Attn: Mike Kangas  
3101 Cedar Street  
Everett, WA 98201

7. City Billing Address:

City of Everett  
Attn: Mike Kangas  
3101 Cedar Street  
Everett, WA 98201

The City and Service Provider have executed this Agreement as of the date first above written.

**CITY OF EVERETT,  
WASHINGTON**

\_\_\_\_\_  
Ray Stephanson, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Sharon Fuller, City Clerk

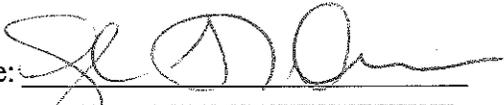
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
James D. Iles, City Attorney

\_\_\_\_\_  
Date

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

<p><b>Corporation</b></p> <p>Full Legal Name <b>Perteet, Inc.</b></p> <p>Signature: </p> <p>Name of Signer: <b>Crystal L. Donner</b></p> <p>Title of Signer: <b>President</b></p>
<p><b>Partnership</b></p> <p>Full Legal Name: _____</p> <p>Signature: _____, Partner</p> <p>Name of Signer: _____</p>
<p><b>Sole Proprietor</b></p> <p>Signature: _____, Sole Proprietor</p> <p>Name: _____</p>
<p><b>Limited Liability Company</b></p> <p>Full Legal Name _____</p> <p>Signature: _____, Managing Member</p> <p>Name of Signer: _____</p>

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of work is to provide supplement inspection services including but not limited to construction observation and reporting with minor amounts of personnel management, administrative support and accounting for the HMA Overlay 2016 Project, work order #PW 3619. Total cost estimate is presented as EXHIBIT B.1, Supplemental Inspection Cost Summary. Service provider payment will occur in accordance with Alternate A in EXHIBIT B and mileage expenses in accordance with EXHIBIT C.

The supplemental observation and reporting will primarily be utilized for night shift work supplementing city forces tasked with covering normal day shift work.

**EXHIBIT B  
COMPENSATION**

**ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]**

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

NAME	TITLE	RATE
	Principle	\$225.00 per hour
	Senior Associate	\$190.00 per hour
	Const. Eng. III	\$125.00 per hour
	Contract Admin	\$95.00 per hour
	Accountant	\$90.00 per hour

**ALTERNATE B [LUMP SUM]**

The City shall pay Service Provider \$ \_\_\_\_\_ upon the completion of the Work, subject to the maximum stated in ¶4(D) of the General Conditions.

**ALTERNATE C [PROGRESS PAYMENTS]**

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

TASK	PAYMENT AT TASK COMPLETION

Exhibit B.1



Project: Everett, 2016 Construction Inspection Services      Contract Start Date: 4/18/2016      Last Update date: 4/11/2016  
 Client: City of Everett      Contract End Date: 12/31/2016      Perteet Project No.: 20160070.000  
 PM: William Mitchell      Contract Duration: 8 Months

Task	Billing Rate	Principal	Sr. Associate	Construction Engineer III	Contracts Administrator	Accountant	Total Hours	Labor Dollars
		\$225.00	\$190.00	\$125.00	\$95.00	\$90.00		
Project Management		2.00	24.00		4.00	8.00	38.00	6,110.00
<b>Total Project Management</b>		<b>2.00</b>	<b>24.00</b>		<b>4.00</b>	<b>8.00</b>	<b>38.00</b>	<b>6,110.00</b>
Construction Inspection				408.00			408.00	51,000.00
<b>Total Construction Inspection</b>				<b>408.00</b>			<b>408.00</b>	<b>51,000.00</b>
<b>Total Hours</b>		<b>2.00</b>	<b>24.00</b>	<b>408.00</b>	<b>4.00</b>	<b>8.00</b>	<b>446.00</b>	
<b>Total Dollars</b>		<b>\$450.00</b>	<b>\$4,560.00</b>	<b>\$51,000.00</b>	<b>\$380.00</b>	<b>\$720.00</b>		<b>\$57,110.00</b>

Expenses:	1,350 miles	
Mileage - \$ .54		729
<b>Totals:</b>		<b>729</b>

SUMMARY		
Labor		57,110.00
Expenses		729.00
Subconsultants		
<b>CONTRACT TOTAL</b>		<b>57,839.00</b>

**EXHIBIT C  
EXPENSES**

<b>TYPE OF EXPENSE</b>	<b>MAX PER ITEM</b>	<b>CUMULATIVE MAX</b>
Mileage at .54 per mile	\$729.00	\$729.00

**EXHIBIT D  
GENERAL CONDITIONS**

1. **Scope of Work.** Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work.

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

3. **Time of Beginning and Completion of Performance.** The Agreement shall commence as of the Date of Contract Commencement and shall be completed by the Date of Contract Completion.

4. **Compensation.**

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

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

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

D. Total compensation, including all services and expenses, shall not exceed the Maximum Total Compensation Amount.

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

## **5. Method of Payment.**

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

B. All requests for payment should be sent to the payment address on the first page of the Agreement.

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

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

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

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

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

#### **11. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

## **12. Independent Contractor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**25. Notices.**

A. Notices to the City of Everett shall be sent to the notice address on the first page of the Agreement.

B. Notices to the Service Provider shall be sent to the notice address on the first page of the Agreement.

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

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

STATE RETIREMENT SYSTEMS EXHIBIT

ALL SERVICE PROVIDERS MUST COMPLETE THIS EXHIBIT

Service Provider Name: Perteet, Inc.

Service Provider Phone Number: (425) 252-7700

1. Does Service Provider have twenty-five (25) or more employees?

YES

IF YES: SKIP REMAINDER OF EXHIBIT E  
IF NO: ANSWER QUESTIONS 2 AND 3

2. If a Service Provider employee will perform Work under this Professional Services Agreement, did that employee retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), or Teachers' Retirement System (TRS)?

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

**Sole Proprietor.** Did Service Provider retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), or Teachers' Retirement System (TRS)?

**Partnership.** If a partner will perform Work under this Professional Services Agreement, did that partner retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), or Teachers' Retirement System (TRS)?

**Limited Liability Company.** If a member will perform Work under this Professional Services Agreement, did that member retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), or Teachers' Retirement System (TRS)?

**Corporation.** If a shareholder will perform Work under this Professional Services Agreement, did that shareholder retire under the Public Employers' Retirement System (PERS), School Employees' Retirement System (SERS), or Teachers' Retirement System (TRS)?

Client#: 326377

PERTEINC

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Kibble & Prentice, a USI Co PR
601 Union Street, Suite 1000
Seattle, WA 98101
CONTACT NAME:
PHONE (A/C, No, Ext): 206 441-6300
FAX (A/C, No): 610-362-8528
E-MAIL ADDRESS: pl.certrequest@kpc.com.com
INSURER(S) AFFORDING COVERAGE:
INSURER A: Travelers Indemnity Company of
INSURER B: Travelers Casualty and Surety C
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Excess Liab, Workers Compensation, and Professional Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: City of Everett 2016 Construction Inspection Services.
The General Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to the City of Everett, only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured.

CERTIFICATE HOLDER: City of Everett, Attn: Mark Kangas, 3101 Cedar Street, Everett, WA 98201
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. The following is added to WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

**INSURANCE (Section III) for this Coverage Part.**

**B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

**C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

## COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

**D. The following definition is added to DEFINITIONS (Section V):**

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.