

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Rick Lapinski Property
 Access Agreement to
 conduct Environmental
 Site Assessments under
 the Environmental
 Protection Agency
 Brownfield Community-
 Wide Assessment Grant
 Project.

_____ Briefing
 _____ Consent
8/03/2016 Action
 _____ First Reading
 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing

COUNCIL BILL # _____
 Originating Dept. Planning
 Contact Person Paul Popelka
 Phone Number 425-257-7155
 FOR AGENDA OF August 3, 2016

Initialed by:
 Department
 Head _____
 CAA db
 Council _____
 President sm

| | | | |
|-----------------------|-------------------------|---------------------------|-------------------------------|
| <u>Location</u> | <u>Preceding Action</u> | <u>Attachments</u> | <u>Department(s) Approval</u> |
| 3132 Rucker Avenue | | Property Access Agreement | Legal, Planning |

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

DETAILED SUMMARY STATEMENT:

The City is conducting Environmental Site Assessments funded under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant. Brownfield site inventories and prioritization of sites was completed in 2015, and several properties have been approved by the EPA for Environmental Site Assessments. Phase I assessments are complete or underway for four properties; Phase II assessments will be done for three properties.

This Property Access Agreement will allow Stantec, the City's lead consultant for the grant work, access to the Rick Lapinski property at 3132 Rucker Avenue for a Phase II assessment.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Rick Lapinski Property Access Agreement to conduct Environmental Site Assessments under the Environmental Protection Agency Brownfield Community-Wide Assessment Grant Project at 3132 Rucker Avenue.

**CITY OF EVERETT
PROPERTY ACCESS AGREEMENT
RICK LAPINSKI**

THIS AGREEMENT made and entered into on this 8 day of July, 2016, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City", and **RICK LAPINSKI**, whose address is PO Box 1978, Everett, WA 98206, hereinafter referred to as the "Property Owner".

BACKGROUND

Stantec Consulting Services Inc. ("Stantec") has been retained by the City to conduct Phase I and II Environmental Site Assessments (ESAs) on priority sites throughout the City as part of its U.S. EPA Brownfield Community-Wide Assessment Grant project. To complete a Phase I ESA, Stantec personnel will require access to the property for the purpose of visually inspecting existing conditions and identifying recognized environmental conditions (RECs), if present, as defined by ASTM E1527-13. Upon completion of the Phase I ESA, a Phase I ESA Report will be provided to the Property Owner. The Phase I ESA Report will identify RECs (if present), and provide recommendations for supplemental assessment activities (if necessary), such as a Phase II ESA. If supplemental assessment activities are warranted and requested by the Property Owner, the City may require additional access to the property so that its consultant Stantec can complete sampling of soil, groundwater, soil vapor, air and/or hazardous building materials to verify the presence, nature and extent of environmental impacts at the site. Prior to conducting Phase II ESA activities, the City will cause Stantec to prepare a site-specific Sampling & Analysis Plan (SAP) for review by the City, the Property Owner and the U.S. EPA. Upon completion of the Phase II ESA, the Property Owner will be provided a copy of the Phase II ESA Report.

REQUEST

The Property Owner hereby grants the City, its subconsultants and subcontractors, including Stantec, permission to enter upon the site located at 3132 Rucker Avenue, Everett, Washington and identified by Snohomish County Parcel Numbers 00437573401700 & 00437573401900 (referred to as the "site" or "property") to engage in Phase I and/or II ESA and/or other environmental assessment activities at the site, hereinafter referred to as the "Work".

PURPOSE

The City and the Property Owner are entering into this Agreement so that the City's subconsultant, Stantec, may enter the property to perform the Work. Without waiver of any protections pursuant to the laws of the State of Washington, the City agrees to require Stantec to act in accordance with all applicable statutes and regulations in conducting the Work. Property Owner acknowledges and agrees that neither the City nor Stantec have given the Property Owner any guarantee or representation the Work will have any particular result regarding the existence, non-existence, or extent of hazardous materials or any other condition that may be located on or near the property.

CITY COMMITMENTS

In return for the Property Owner granting the City and its subconsultant Stantec access to the property to perform the Work, the City agrees to the following:

- a. The City will cause Stantec to give the Property Owner reasonable notice before commencing any on-site activities.
- b. The City will require that Stantec, to the greatest extent possible, performs the Work in a way that minimizes interference with any ongoing operations. The City will require that, if Stantec determines that any on-site activity may interfere with the site operations, Stantec will first notify, and consult with, the Property Owner before commencing the activity.
- c. The Property Owner will have the opportunity to be present for any on-site activity.
- d. The City agrees to require Stantec, as practicable, to return the property to the general condition that existed before the commencement of on-site activities.
- e. The City by this Agreement does not guarantee that Stantec will complete the Work. The City reserves the right to terminate or otherwise limit Stantec's Work in the City's sole discretion. In the event that the Work is terminated in whole or in part prior to completion, the City will provide the Property Owner with the data and information regarding the Work that the City received from Stantec prior to the termination.

INDEMNIFICATION

The City agrees to indemnify the Property Owner from liability, claims, damages and actions to the extent that they result from the negligent use or occupancy of the Property by the City and its subconsultants and subcontractors, subject to the following exceptions: 1) the City and its subconsultants and subcontractors shall have no obligation to indemnify the Property Owner, its heirs, successors or assigns, or any of them, for any claims or damages for which the City and/or its subconsultants and subcontractors would have no liability under the laws of the State of Washington; and 2) The agreement of the City to indemnify, as set forth in this paragraph, shall not apply to any claims, actions or damages (a) that may arise out of, be occasioned by or result from any condition (including without limitation hazardous materials) existing on, or which did exist on, the property at the time of the execution of this Agreement, or at any time prior to the execution of this Agreement, or (b) that were caused by the Property Owner or any of its predecessors or any of their tenants, licensees, employees, heirs, successors, or assigns.

GENERAL CONDITIONS

This Agreement represents the entire agreement between the parties concerning site access for the City and its subconsultants and subcontractors, and supersedes all prior access negotiations, representations, or agreements, either written or oral between the parties unless otherwise expressly stated.

This Agreement may only be terminated by the mutual written agreement of the Parties. Further, any modification to this Agreement shall be in writing.

This Agreement applies to and is binding upon the City and its subconsultants and subcontractors, and the Property Owner.

TERM

This Agreement shall take effect as of the date both parties have signed and dated it. Unless terminated sooner by mutual written agreement of the parties, this Agreement shall expire upon completion of the Work.

IN WITNESS THEREOF, the parties thereto have executed this Agreement on the day and year first written above.

RICK LAPINSKI

CITY OF EVERETT,
WASHINGTON


Rick Lapinski

Ray Stephanson, Mayor

7-8-16

Date

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

James D. Iles, City Attorney