EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Agreement with the Washington State Department of Natural Resources to provide a Washington Conservation Corps crew for urban forest restoration tasks at Forest Park

_____	Consent	COUNCIL BILL #	
_____	Action	Originating Department	Parks
_____	First Reading	Contact Person	John Petersen
_____	Second Reading	Phone Number	425-257-8371
_____	Third Reading	FOR AGENDA OF	Sept. 14, 2016
_____	Public Hearing		

Initialed by:
Department Head _____
CAA db
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Forest Park		Agreement	Parks, Legal, Administration

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

DETAILED SUMMARY STATEMENT:

The Washington State Department of Natural Resources (DNR) will provide the City of Everett a Washington Conservation Corps (WCC) crew, at no cost, to perform urban forestry restoration tasks at Forest Park. Under the terms of the Agreement, the WCC crew will remove English ivy and other non-native invasive species and replant native understory trees for a period of time not to exceed four weeks. The Parks and Recreation Department will coordinate the process in accordance with the requirements of the agreement.

City Council approved similar agreements with DNR in 2013 and 2015.

RECOMMENDATION:

Authorize the Mayor to sign the agreement with the Washington State Department of Natural Resources to provide a Washington Conservation Corps crew for urban forest restoration tasks at Forest Park at no cost to the City.

NATURAL RESOURCES

COOPERATIVE AGREEMENT WITH THE CITY OF EVERETT

Agreement No. CA 93-094458

This Agreement is between the City of Everett, referred to as the City, and the Washington State Department of Natural Resources Urban and Community Forestry Program, referred to as DNR.

DNR is under authority of RCW Chapter 43.30 of Washington State, Department of Natural Resources. DNR and the City enter into this agreement under Chapter 39.34, Interlocal Cooperation Act.

The purpose of this Agreement is to provide a Puget SoundCorps (SoundCorps) crew for urban forestry maintenance and restoration tasks in the City. SoundCorps is part of the broader Washington Conservation Corps/AmeriCorps program administered by Washington State Dept. of Ecology. SoundCorps crews work on projects that help restore and protect water quality in Puget Sound.

IT IS MUTUALLY AGREED THAT:

1.01 Statement of Work. DNR shall furnish SoundCorps crews and the City shall provide all materials and services pertinent to performing work set forth in the Attachment A – Statement of Work.

2.01 Period of Performance. The period of performance of this Agreement shall be October 1, 2016, to June 30, 2020, unless terminated sooner as provided herein. The City shall receive one calendar month, approximately four weeks, of crew assistance between November 1, 2016 and April 30, 2017.

3.01 Payment. No money is being exchanged via this agreement.

6.01 Rights to Data. Unless otherwise agreed, data originating from this Agreement shall be 'works for hire' as defined by the U.S. Copyright Act of 1976 and shall be equally owned by

DNR and the City. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to use, copyright, patent, register and the ability to transfer these rights.

7.01 Independent Capacity. The employees or agents of each party who are engaged in performing this agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

8.01 Amendments. This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

9.01 Termination for Convenience. Either party may terminate this Agreement by giving the other party 30 days prior written notice. If this Agreement is terminated, no further crew time shall be allocated to the City during the current project year.

10.01 Termination for Cause. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 5 working days to correct the violation or failure. If the failure or violation is not corrected within 5 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in writing.

11.01 Disputes. If a dispute arises, a dispute board shall resolve the dispute like this: Each party to this agreement shall appoint a member to the dispute board. These board members shall jointly appoint an additional member to the dispute board. The dispute board shall evaluate the facts, contract terms, applicable statutes and rules, then determine a resolution. The dispute board's determination shall be final and binding on the parties. As an alternative to the dispute board, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330. In this case, the Governor's process will control the dispute resolution.

12.01 Governance. This contract is entered into the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

(1) Applicable State and federal statutes and rules;
(2) Attachment A – Statement of Work; and
(3) Any other provisions of the agreement, including materials incorporated by reference.

13.01 Assignment. The work to be provided under this Agreement and any claim arising from this agreement can not be assigned or delegated in whole or in part by either party, without the

express prior written consent of the other party. Neither party shall unreasonably withhold consent.

14.01 Waiver. A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to his agreement.

15.01 Severability. The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

16.01 General Insurance. At all times during the term of this Agreement, the City shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the agreement at DNR's option.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best' s Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager or in the absence of, the DNR Contracts Specialist, before the agreement is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Before starting work, the City shall furnish DNR, with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The City shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit the City's liability or responsibility. Said certificate(s) shall contain the Agreement number CA 93-094427, name of DNR Project Manager, a description, and include the State of Washington, DNR, its elected and appointed officials, agents, and employees as additional insured on all general liability, excess, umbrella and property insurance policies.

All insurance provided in compliance with this agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. The City waives all rights against DNR for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Agreement.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

(1). Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give DNR 45 days advance notice of cancellation or non-renewal. If cancellation is due to nonpayment of premium, the DNR shall be given 10 days advance notice of cancellation.

(2). Insurers subject to Chapter 48.15 RCW (Surplus lines): DNR shall be given 20 days advance notice of cancellation. If cancellation is due to nonpayment of premium, DNR shall be given 10 days advance notice of cancellation.

In lieu of the coverages required under this section, DNR at its sole discretion may accept evidence of self-insurance by the City, provided the latter provides the following:

The City shall provide a statement by a CPA or actuary, satisfactory to DNR that demonstrates the City's financial condition is satisfactory to self-insure any of the required insurance coverages.

DNR may require the City to provide the above from time to time to ensure the City's continuing ability to self-insure. If at any time the City does not satisfy the self-insurance requirement, the City shall immediately purchase insurance as set forth under this section.

By requiring insurance herein, DNR does not represent that coverage and limits will be adequate to protect the City and such coverage and limits shall not limit the City's liability under the indemnities and reimbursements granted to DNR in this Agreement.

The limits of insurance, which may be increased by DNR, as deemed necessary, shall not be less than as follows:

(1) Commercial General Liability (CGL) Insurance: Agency shall maintain general liability (CGL) insurance, and, if deemed necessary as determined by DNR, commercial umbrella insurance with a limit of not less than $1,000,000 per each occurrence and $2,000,000 for a general aggregate limit. The products-completed operations aggregate limit shall be $2,000,000.

CGL insurance shall be written on ISO occurrence form CG 00 01 (or substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

(2) Employers Liability (Stop Gap) Insurance: If the City shall use employees to perform this contract, the City shall buy employers liability insurance, and, if deemed necessary as determined by DNR, commercial umbrella liability insurance with limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

(3) Business Auto Policy (BAP) Insurance: The City shall maintain business auto liability and, if deemed necessary as determined by DNR, commercial umbrella liability insurance with a limit not less than $1,000,000 per accident. Such

insurance shall cover liability arising out of "any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

The City waives all rights against DNR for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

(4) Workers' Compensation Insurance: The City shall comply with all State of Washington workers compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of the City and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this agreement. Except as prohibited by law, the City waives all rights of subrogation against DNR for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability insurance.

The City shall indemnify DNR for all claims arising out of the City's, its subcontractor's, or sub-subcontractor's failure to comply with any State of Washington worker's compensation laws where DNR incurs fines or is required by law to provide benefits to or obtain coverage for such employees. Indemnity shall include all fines, payment of benefits to the City or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to DNR by the City pursuant to the indemnity may be deducted from any payments owed by DNR to the City for performance of this Agreement.

17.01 Indemnification. To the fullest extent permitted by law, the City shall indemnify, defend and hold harmless DNR, its officials, agents and employees, from and against all claims arising out of or resulting from the performance of the Agreement. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. The City's obligation to indemnify, defend, and hold harmless includes any claim by the City's agents, employees, representatives, or any subcontractor or its employees. The City expressly agrees to indemnify, defend, and hold harmless DNR for any claim arising out of or incident to the City's or any subcontractor's performances or failure to perform the Agreement. The City's obligation to indemnify, defend, and hold harmless DNR shall not be eliminated or reduced by any actual or alleged concurrent negligence of DNR or its agents, agencies, employees and officials. The City waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless DNR and its agencies, officials, agents or employees.

18.01 Complete Agreement in Writing. This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

19.01 Contract Management. The Project Coordinator for each of the parties shall be the contact person for this agreement. All communications and billings will be sent to the project coordinator.

20.01 Project Coordinators.

(1) The Project Coordinator for the City is Anna Heckman, Telephone Number (425) 257-8582.

(2) The Project Coordinator for DNR is Micki McNaughton, Telephone Number (360) 902-1637.

By signature below, the Agencies certify that the individuals listed in this document, as representatives of the Agencies, are authorized to act in their respective areas for matters related to this instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF EVERETT	STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES
Signature Date	Signature Date
Name	Robert W. Johnson Name
Title	Wildfire Division Manager Title
Address	1111 Washington Street SE MS 47037 Olympia, Washington 98504-7037 Address
Telephone	(360) 902-1300 Telephone

Attachment A
STATEMENT OF WORK

DNR provides the services of the SoundCorps crew in exchange for the City's matching commitment to the project as described herein below.

Local projects must be on public property, and work performed by the crews may not replace workers already in place or contracted.

DNR will provide the following to the City for projects that receive one month of crew assistance under the Urban Forest Restoration Project between November 1, 2016 and April 30, 2017:

- Template for media release to assist in building public awareness of crew work.
- Puget SoundCorps crew time to perform urban forestry maintenance and restoration tasks as outlined below:
    - Pigeon Creek watershed, Forest Park, 802 E Mukilteo Boulevard. Assess forest across the lower watershed, remove invasive plant species, and plant native plant species for forest structure enhancement.
    - Other sites and/or locations as agreed by the City's Project Coordinator and the DNR Project Coordinator. Tasks and activities assigned must pertain to restoring the ecological health and functionality of the urban forest on the site or location.
- Report from DNR to the community that includes a description of the project and the work accomplished by the crew.
- Template for three-year maintenance and monitoring plan.
- Template for annual monitoring report.

The City commits to the following in consideration for the services of the DNR-sponsored crew:

- Post media releases in advance of and/or during the crew's time with the City.
- Acquire any permits necessary for project work.
- Dispose of materials removed during project activities (English ivy vines, blackberry canes, trash, etc.).
- Provide any and all materials required for project completion (plants, mulch, herbicide, staking materials, etc.).
- Provide traffic control, including traffic control plan, barriers, cones, flagging materials, etc. as necessary to ensure the safety of the crew and public.
- The City is responsible for the maintenance and repair of any equipment provided by the City and used by the SoundCorps crew under the direction of City staff.
    - Dept. of Ecology (SoundCorps crews) is responsible for the maintenance and repair of any equipment provided by SoundCorps and/or Ecology.
- Develop and implement a three-year maintenance and monitoring plan for the project site within 60 days of receiving the DNR Report of the crew's work.
- Report monitoring results to the DNR Urban and Community Forestry Program annually for three years beginning the year after the crew's work per the approved three-year maintenance and monitoring plan. Final Annual Monitoring Report for work performed under this

agreement will be due no later than June 30, 2020.

CITY ATTORNEY'S OFFICE

EVERETT

LETTER OF SELF-INSURANCE

For Period: 12/31/2015 – 12/31/2016

This is to inform you of the City of Everett's insurance program. The City of Everett maintains a comprehensive program of risk retention and insurance.

Based on discussion and direction from City Administration, the City has elected to self-insure its liability exposures. The City's self-insured retention for general, auto and professional liability is $1,250,000, which is fully funded. Excess liability is purchased with limits of $30,000,000 over the self-insured retention.

Please contact me at (425) 257-8702 if you have any questions relating to the City of Everett's insurance program.

Christine Muth-Schulz

Christine Muth-Schulz
Risk Manager

CITY OF EVERETT • 2930 Wetmore Ave. • Everett, WA 98201 • (425) 257-7000 • Fax (425) 257-8693