

#### WASHINGTON

## Everett City Council Preliminary Agenda 6:30 p.m., Wednesday, May 29, 2024 City Council Chambers

Roll Call

Pledge Of Allegiance

Land Acknowledgment

Approval Of Minutes: May 22, 2024

Mayor's Comments: Swear In Everett Police Officer: Jason Tutchtone

**Public Comment** 

Council Comments/Liaison Reports

Administration Update

City Attorney

**CONSENT ITEMS:** 

(1) Adopt Resolution Authorizing Claims Against The City Of Everett In The Amount Of \$3,851,523.18 For The Period Ending May 11, 2024 Through May 17, 2024.

Documents:

#### RES CLAIMS PAYABLE MAY 11, 2024 - MAY 17, 2024.PDF

(2) Adopt Resolution Authorizing Electronic Funds Transfer Claims Against The City Of Everett In The Amount Of \$8,242,087.15 For The Period Of April 1 Through April 30, 2024.

Documents:

#### EFT COUNCIL RESOLUTION 2024-4.PDF

(3) Authorize City Staff To Apply For And If Awarded Authorize The Mayor To Sign All Necessary Documents And Agreements With The Department Of Homeland Security And FEMA, Regarding The Application, Acceptance, And Utilization Of The Port Security Grant Program, In The Amount Of \$60,000.

Documents:

#### PORT SECURITY GRANT.PDF

(4) Authorize A Call For Bids For The Completion Of The WFP Air Scour Blower Building Replacement Project.

Documents:

#### WFP AIR SCOUR BLD-CALL FOR BIDS.PDF

(5) Adopt A Resolution Declaring A 2009 Navistar International 7600 10 Yard Dump Truck (J0095) Surplus And Authorizing Sale At Public Auction.

Documents:

#### NAVISTAR DUMP TRUCK SURPLUS.PDF

(6) Authorize Release Of Request For Proposal #2024-084 Job Order Contracting (JOC) For General Construction Services As Substantially Provided.

Documents:

#### JOC RELEASE AUTHORIZATION.PDF

(7) Authorize The Mayor To Sign The Master Services Agreement With Flock Group Inc. In Substantially The Form Provided.

Documents:

#### FLOCK SAFETY COMMUNITY CAMERA PROJECT.PDF

(8) Adopt A Resolution Waiving Public Bidding Requirements And Approving A Multiple-Year Sole-Source Purchase Of Flock Safety® LPR Cameras, PTZ Cameras, Gunshot Detection Devices, And Associated Services From Flock Safety.

Documents:

2024-092 FLOCK SAFETY.PDF

#### PROPOSED ACTION ITEM:

(9) CB 2405-08 – 2nd Reading - Adopt An Ordinance Creating A Special Improvement Project Entitled, "Clark Park Renovation And Off Leash Dog Area", Fund 354, Program 101, To Accumulate All Costs For The Project. (3rd & Final Reading 6/5/24)

Documents:

CB 2404-08.PDF

(10) CB 2405-09 – 1st Reading - Adopt An Ordinance Relating To Everpark Garage And Fund 430 Everpark Garage, And Repeal Ordinance 97-70. (3rd & Final Reading 6/12/24)

Documents:

CB 2405-09.PDF

#### **ACTION ITEMS:**

(11) Reject Bid From IMCO General Construction Inc. And Award The Edgewater Creek Bridge Replacement Project To Granite Construction Company Of Everett, WA In The Amount Of \$25,409,890.65.

Documents:

## EDGEWATER CREEK BRIDGE REPLACE-REJECT IMCO-REWARD GRANITE.PDF

(12) Adopt A Resolution Supporting City Of Everett Proposition 1, Placed On The Ballot By The City Council Through The Passage Of Resolution 8021, Concerning Public Safety And Essential Public Services.

Documents:

#### **BALLOT MEASURE SUPPORT RESO.PDF**

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.)

**BRIEFING ITEM:** 

(13) Everett 2044 Comprehensive Plan Periodic Update

Documents:

#### **EVERETT 2044 PERIODIC UPDATE.PDF**

**Executive Session** 

Adjourn

#### PARTICIPATION IN REMOTE COUNCIL MEETINGS

- o Call in to listen to the Council meetings: 425.616.3920, conference ID: 724 887 726#
- o Participate remotely via Zoom by registering to speak at <a href="everettwa.gov/speakerform">everettwa.gov/speakerform</a>. You must register no later than 30 minutes prior to the meeting. Or contact Angela Ely at 425.257.8703 or <a href="mailto:aely@everettwa.gov">aely@everettwa.gov</a> and identify the topic you wish to address.
- Provide written public comments by email to Council@everettwa.gov or mail to 2930
   Wetmore Avenue, Suite 9A, Everett, WA 98201. Emailing comments 24 hours prior to the meeting will ensure your comment is distributed to councilmembers and appropriate staff.
- Persons seeking to comment on non-agenda items may be asked to submit the comments in writing if the comment does not address an issue of broad public interest.

#### AGENDAS, BROADCAST AND RECORDINGS

- The Council agendas and meeting recordings can be found, in their entirety, at everettwa.gov/citycouncil.
- The Council meetings are broadcast on government-access cable Comcast Channel 21 and Frontier Channel 29. They are rebroadcast on Monday and Tuesday at noon;
   Thursday at 2 p.m. and 7 p.m.; Friday and Sunday at 7 p.m.; Saturday at 10 a.m.
- Watch live meetings and recordings at YouTube.com/EverettCity.

#### CONTACT THE COUNCIL

If you do not wish to participate in the meeting, we provide these other methods of contacting your

elected officials: Email the Council at Council@everettwa.gov.

- o Call the Council offices at 425.257.8703
- o You may call in just to listen to the meeting: 425.616.3920, conference ID 724 887 726#

The City of Everett does not discriminate on the basis of disability in the admission or access to, or treatment in, its programs or activities. Requests for assistance or accommodations can be arranged by contacting the Everett City Council Office at 425.257.8703. For additional information, please visit our website at https://www.everettwa.gov/3129/American-Disabilities-Act-ADA-and-Title-



R	ES	O	L	U	T	I	0	Ν	ı	V	O						

#### Be it Resolved by the City Council of the City of Everett:

Whereas the claims payable by check against the City of Everett for the period May 11, 2024 through May 17, 2024, having been audited and approved by the proper officers, have been paid and the disbursements made by the same, against the proper funds in payment thereof, as follows:

<u>Fund</u>	<u>Department</u>	<u>Amount</u>	<u>Fund</u>	<u>Department</u>	Amount
002	General Government	(1,220.40)	101	Parks & Recreation	10,099.60
003	Legal	61,357.42	110	Library	29,826.44
004	Administration	3,300.00	112	Community Theater	30,221.10
005	Municipal Court	4,798.16	119	Public Works-Street Improv	0.75
007	Human Resources	10,867.68	120	Public Works-Streets	20,631.14
009	Misc Financial Funds	133,132.86	126	MV-Equipment Replacemer	42,246.17
010	Finance	50.00	130	Develop & Const Permit Fee	154.00
021	Planning & Community Dev	3,587.60	146	Property Management	15,124.43
024	Public Works-Engineering	19,808.17	153	<b>Emergency Medical Services</b>	33,283.17
026	Animal Shelter	154.00	155	Capital Reserve Fund	13,645.04
031	Police	38,633.37	156	Criminal Justice	254,112.74
032	Fire	25,943.25	162	Capital Projects Reserve	33,438.05
038	Facilities Maintenance	4,642.30	197	CHIP Loan Program	25,359.22
			198	Community Dev Block Gran	2,534.26
	TOTAL GENERAL FUND	\$ 305,054.41	336	Water & Sewer Sys Improv	2,124,309.02
			401	Public Works-Utilities	448,973.03
			402	Public Works-Utilities	1,618.37
			425	Public Works-Transit	143,614.85
			430	Everpark Garage	51,727.01
			440	Golf	42,247.72
			501	MVD-Transportation Service	19,417.92
			503	Self-Insurance	14,120.41
			505	Computer Reserve	94,182.14
			507	Telecommunications	4,091.04
			508	Health Benefits Reserve	58,580.67
			637	Police Pension	2268.19
			638	Fire Pension	3,007.87
			665	Other Special Agency Funds	27,634.42
				TOTAL CLAIMS	\$ 3,851,523.18

Councilperson introducing Resolution							
Passed and approved this	day of	, 2024					
Council President							



RESOLUTION NO.	

Be it Resolved by the City Council of the City of Everett:

That the claims made by electronic transfer against the City of Everett for the month April 1 through April 30 2024, having been audited, be and the same are hereby approved, and the proper officers are hereby authorized and directed to charge claims made by electronic transfer against the proper funds in payment thereof, as follows:

<u>Fund</u>	<u>Department</u>	<u>Amount</u>			
002	General Fund	253,425.64			
101	Park	39,889.37			
110	Library	6,280.61			
112	Community Theater	320.43			
119	Public Works - Street Imp	400.53			
120	Streets	9,588.12			
126	Moter Vehicle/Equip Repl	173.79			
145	ESCROQ	43.72			
146	Parking Lot Reserve	3,518.24			
148	Municipal Art Fund	208.23			
151	Animal Reserve	12,792.42			
152	Library Reserve	3,093.37			
153	EMS	28,815.17			
155	Gen Gov Spec Proj	1,644.86			
156	Criminal Justice	32,460.28			
162	Capital Rreserve	14,560.67			
197	CHIP	689.49			
198	CDBG	82.06			
303	Public Works Improvement Proj	272.13			
401	Utilities	416,509.09			
402	Solid Waste Utility	3,211.73			
425	Transit	42,082.46			
430	Everpark Garage	1,697.26			
440	Golf	189,447.94			
501	Transportation Services	125,461.77			
503	Self-Insurance Fund	263,048.52			
505	Computer Reserve Fund	3,909.48			
507	Telecom	35,893.17			
508	Health Benefits Reserve	1,197,047.53			
637	Police Pension	66,786.32			
638	Fire Pension	108,891.70			
661	Payroll Withholding	5,378,805.82			
670	Custodial Funds	1,035.23			
TOTAL C	LAIMS				
В	Y ELECTRONIC TRANSFER	8,242,087.15			
Councilmember Introducing Resolution					
Passed and approved this day of, 2024					

Council President

## **EVERETT** City Council Agenda Item Cover Sheet

Project title: Port Security Grant Program FY23

Council Bill #	Project: Port Security Grant Program FY23
	Partner/Supplier: US Dept. of Homeland Security and FEMA
Agenda dates requested:	Location: NA
Briefing	Preceding action: N/A
Proposed action	Fund: Criminal Justice Fund/156 and Police/031
Consent 05/29/24 Action	Fiscal summary statement:
Ordinance Public hearing Yes X No  Budget amendment:	The Everett Police Department would like to apply for the Port Security Grant Program (PSGP) for \$60,000. Of that \$45,000 would be the Federal share and the other \$15,000 is the city match requirement of 25%. This would be added to a future budget amendment.
x Yes No	Project summary statement:
PowerPoint presentation: Yes X No Attachments:	The primary response vessel that the Everett Police Department and Everett Fire Department use for response is a 33-foot Safeboat that was purchased with the 2009 Port Security Grant funding. The vessel has all weather day or night response capabilities for the Port of Everett and the region. The Safeboat is the only waterborne firefighting asset for the Port of Everett and north Snohomish County.
<b>Department(s) involved:</b> Police, Legal, Procurement	We have used this boat to respond to emergencies throughout the region from South Seattle to North Island County. We have responded to possible active threat situations
Contact person:	on the Ferry System and Protestors blocking commercial vessels In King and Snohomish
Deputy Chief Jeff Hendrickson	Counties with this asset. If this boat is not functional it significantly decreases our ability
	to respond to threats and emergencies on the water throughout the region. Without
Phone number: 425-257-8550	this vessel, it leaves us without waterborne firefighting capabilities in and around the Port of Everett. With the age of the Safeboat, the electronics are becoming outdated
	and unreliable. There has been an increased need for repairs and service that is
Email: jhendrickson@everettwa.gov	routinely taking the boat out of service for repair. Many repairs are due to the outdated electronics. This down time has increased over the last few years. We expect that this down time will increase in the future, significantly reducing our readiness to respond to emergencies. The hull and cabin of the boat are in very good condition and can continue to be in service for a significant number of years. The motors were also replaced earlier this year at the expense of the city. By refitting the boat, it will provide a significant
Initialed by:	increase in service life for a minimum amount of money, maximizing the overall Port
JD	Security Grant investment.
Department head	Recommendation (exact action requested of Council):
Administration	Authorize city staff to apply for and if awarded authorize the Mayor to sign all necessary documents and agreements with the Department of Homeland Security and FEMA,
Council President	regarding the application, acceptance, and utilization of the Port Security Grant Program, in the amount of \$60,000.



Project title:

## **EVERETT** City Council Agenda Item Cover Sheet

Council Bill #	Consideration: Call for Bids				
	<b>Project:</b> WFP Air Scour Blower Building Replacem				
Agenda dates requested:	Partner/Supplier: None				
Briefing	Location: Water Filtration Plant				
Proposed action	Preceding action: PSA agreement with BHC Consultants (01				
Consent 05/29/24 Action Ordinance	Fund: 336 – Water/Sewer System Improvemen				
Public hearing Yes x No	Fiscal summary statement:				
Budget amendment: Yes x No	The programmed available funding for this project, as esta 3915-22, is \$900,000.				
PowerPoint presentation:  Yes x No					
	Project summary statement:				
Attachments:	Staff requests authorization to call for bids for the WFP Air Replacement Project.				
Department(s) involved:	This project encompasses the replacement of a small exist				
Public Works  Contact person:	houses a single blower. The existing building will be demo new larger building that will house two air scour blowers a equipment and controls, which will provide operational re				
Jeff Marrs	The Engineer's estimate for construction of this project is				
Phone number: 425.257.8967	The Engineer 3 estimate for construction of this project is				
	Recommendation (exact action requested of Council):				
Email: jmarrs@everettwa.gov	Authorize a Call for Bids for the completion of the WFP Air Replacement Project				
Initialed by: RLS					
Department head					
Administration					

**Council President** 

Consideration:	Call for Bids
•	WFP Air Scour Blower Building Replacement
Partner/Supplier:	
	Water Filtration Plant
	PSA agreement with BHC Consultants (01/05/2023)
. المصد	336 – Water/Sewer System Improvements

#### **Fiscal summary statement:**

The programmed available funding for this project, as established by Ordinance No. 3915-22, is \$900,000.

#### **Project summary statement:**

Staff requests authorization to call for bids for the WFP Air Scour Blower Building Replacement Project.

This project encompasses the replacement of a small existing building structure that houses a single blower. The existing building will be demolished and replaced with a new larger building that will house two air scour blowers along with associated electrical equipment and controls, which will provide operational redundancy.

The Engineer's estimate for construction of this project is \$990,000.

#### Recommendation (exact action requested of Council):

Authorize a Call for Bids for the completion of the WFP Air Scour Blower Building Replacement Project



**Project title:** 

Adopt a Resolution Declaring a 2009 Navistar International 7600 10 Yard Dump Truck Surplus and Authorizing Sale at Public Auction

Council Bill #	Project: Resolution declaring a 2009 Navistar International 7600 10 Yard Dump Truck (J0095) Surplus and Authorizing Sale at Public Auction
Agenda dates requested:	Partner/Supplier:
May 29, 2024	Location:
Briefing	Preceding action:
Proposed action	Fund: 401 Utilities
Consent X Action	Tura. 401 damaes
Ordinance	Fiscal summary statement
Public hearing	Funds received from this surplus sale will be returned to Fund 401 Utilities.
Yes X No	
Budget amendment:	Project summary statement:
Yes X No	The Public Works Department, Utility Division, owns a 2009 Navistar International 7600 10 Yard
PowerPoint presentation: Yes X No	Dump Truck, J0095. J0095 has approximately 79,555 miles and requires significant engine repairs, including replacing a blown head gasket on the engine. Luckily, based on age, maintenance cost, and maintenance cost scoring, it was already scheduled to be replaced in
Attachments:	2024.
Resolution	J0095 has an estimated surplus value of \$40,000 and will be replaced with a 2024 Peterbilt 548
Department(s) involved: Procurement & Motor Vehicles	10-yard dump truck (J0210).  Recommendation (exact action requested of Council):  Adopt a Resolution declaring a 2009 Navistar International 7600 10 Yard Dump Truck (J0095)
Contact person: Theresa Bauccio-Teschlog	surplus and authorizing sale at public auction.
<b>Phone number:</b> (425) 257-8901	
Email: tbauccio@everettwa.gov	
Initialed by:	
Department head	
Administration	
Council President	



Category 2: Sensitive information

RESC	LUTION NO
	OLUTION declaring a 2009 Navistar International 7600 10 Yard Dump Truck (J0095) s and authorizing it for sale at public auction.
WHER	EAS,
1.	The City has a 2009 Navistar International 7600 10 Yard Dump Truck (J0095), and
2.	The above-referenced equipment is no longer of value or use to the City; and
3.	Ordinance 2963-06 establishes a procedure and methods for surplus or disposition of Cityowned personal property; and
4.	Based on the guidelines set forth in EMC 3.88.020, a public auction is the disposition method that best meets the City's interests and
5.	The City's Procurement Manager has reported the basis for the estimated value of the surplus property and has recommended the surplus of the above-referenced vehicle and equipment by public auction.
NOW,	THEREFORE, BE IT RESOLVED BY THE MAYOR AND EVERETT CITY COUNCIL THAT:
1.	The City has a 2009 Navistar International 7600 10 Yard Dump Truck (J0095);
2.	The disposition of this equipment at a public auction is hereby authorized.
Counc	ilmember introducing Resolution
Passed	d and approved this day of
Counc	il President



**Project title:** 

Authorize release of Request for Proposal #2024-084 Job Order Contracting (JOC) for General Construction Services as substantially provided

Council Bill #	Project: Request for Proposal #2024-084 Job Order Contracting (JOC) for General Construction Services						
A	Partner/Supplier: To be determined						
Agenda dates requested:	Location:						
Briefing	Preceding action: None						
Proposed action	Fund: Various						
Consent 05/29/24 Action	runu. various						
Ordinance							
Public hearing	Fiscal summary statement:						
Yes X No	The highest-scored proposal will be brought to the council for consideration and award.						
Budget amendment: Yes X No	Project summary statement:						
PowerPoint presentation: Yes X No	RCW 39.10.420 authorizes the City to establish Job Order Contracting (JOC) as a means to reduce the total lead time and cost for the construction of public works projects for repair and renovation at public facilities. JOC uses a competitive proposal process to						
Attachments:	select general contractors to oversee the completion of smaller projects at established						
Request for Proposal	unit pricing. In addition to cost, contractor selection will be based on their experience						
<b>Department(s) involved:</b> Procurement	with similar work, ability to manage multiple projects, and a plan to include local and diverse sub-contractors.						
Contact person:	Staff estimates potential JOC projects totaling approximately \$4 million a year.						
Theresa Bauccio-Teschlog	Recommendation (exact action requested of Council):						
Dhana mumhau	Authorize release of Request for Proposal #2024-084 Job Order Contracting (JOC) for						
Phone number: (425) 257-8901	General Construction Services as substantially provided.						
Email:							
tbauccio@everettwa.gov							
Initialed by:							
sh							
Department head							
Administration							
Coursell Bussident							
Council President							



## **PROCUREMENT**

## Request for Proposal #2024-084

Procurement Professional Point of Contact: Theresa Bauccio-Teschlog, MBA, NIGP-CPP, CPPB Procurement Manager (425) 257-8901 bids@everettwa.gov

## **Job Order Contracting for General Construction Services**

TIMELINE - The following represents the schedule for this solicitation.				
Event	<u>Date</u>			
Issue Date	2024			
Deadline for Final Questions	2024			
Proposal Due Date	2024, 11:59 p.m. Pacific Time			
Anticipated Award	2024			
Anticipated Contract Start Date	2024			
Anticipated Contract Term	2 years with one (1) one-year extension option at the sole discretion of the City of Everett			

#### **Submit Sealed Proposals to:**

City Clerk's Office – Attention: Procurement 2930 Wetmore Avenue, Suite 1A Everett, WA 98201

Clearly label the outside of the sealed envelope containing the original proposal response plus five (5) complete identical copies with the Proposal Name, Proposal Number, and contact information listed above. Only Proposals that arrive in the Clerk's office by the deadline will be considered.

The Clerk's office is open Monday – Thursday from 8:00 a.m. – 12 p.m. and 1:00 p.m. – 5:00 p.m.

**Information & Addenda:** All Information, including Addenda regarding this solicitation, can be found at:

https://everettwa.gov/2711/Everett-Procurement-Information-Contract

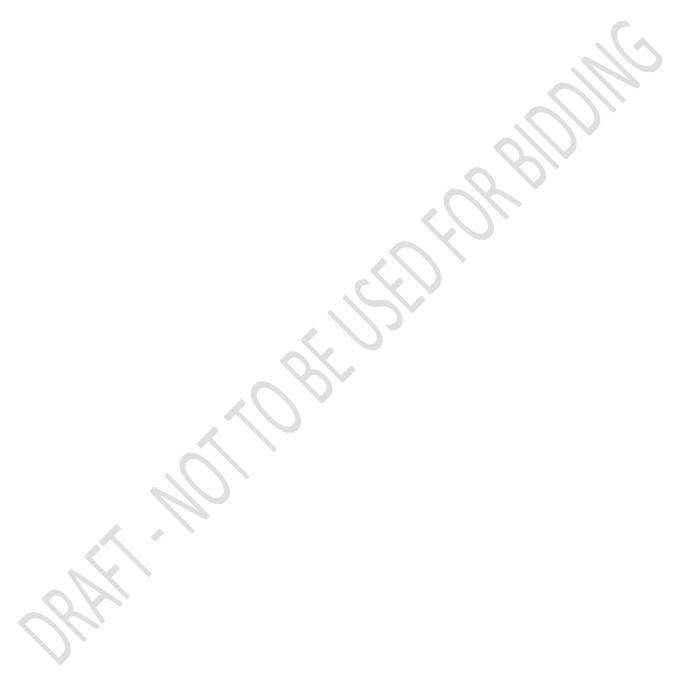
Suppliers are responsible for checking the City of Everett website for the issuance of any addenda prior to submitting a proposal.

**Questions:** All questions must be requested electronically utilizing the above link or e-mailed to the Procurement Professional listed above.

Unauthorized contact with City of Everett employees or contractors regarding this Request for Proposal may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City of Everett. Proposers should rely only on written statements issued by the individual named listed above.

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#### **SECTION 1 - INSTRUCTIONS**

#### 1.1 PROPOSAL SUBMITTAL

The City Clerk's office must receive the supplier's proposal in its entirety by 2:00 p.m. Pacific Time. Proposals arriving after the deadline will be returned unopened to their senders. All proposals and accompanying documentation will become the property of the City of Everett and may not be returned.

Proposal pricing must be submitted on the forms provided in this document. To receive consideration for award, the proposal must be completed and signed by an authorized representative of the Supplier. Submission of a proposal constitutes acceptance of the procedures, evaluation criteria, and other instructions of this Request for Proposal (RFP).

No supplier may withdraw its Proposal after the hour set for the opening unless the award is delayed for a period exceeding one hundred and twenty (120) days.

#### 1.2 OFFER PERIOD

All Proposals submitted must remain open for one hundred and twenty (120) days from the receipt date. The City of Everett reserves the right to extend this period.

#### 1.3 REQUEST FOR DUE DATE EXTENSION

Suppliers may request an extension of the Proposal Due Date. The supplier must supply any justification and additional information that will facilitate the City of Everett's evaluation and decision. Any approved extension will be issued as an addendum.

#### 1.4 WITHDRAWAL OF PROPOSALS

Suppliers may withdraw a Proposal that has been submitted at any time up to the due date and time. To accomplish this, a written request signed by an authorized representative of the supplier must be submitted to the procurement professional named on the Request for Proposal cover sheet.

#### 1.5 SINGLE RESPONSE

A single response to the RFP may be deemed a failure of competition, and in the best interest of the City of Everett, the RFP may be canceled.

#### 1.6 MULTIPLE PROPOSALS

Suppliers interested in submitting more than one Proposal may do so long as each Proposal stands alone and independently complies with the instructions, conditions, and specifications of this RFP.

#### 1.7 EVALUATION AND AWARD

The City of Everett will award the Proposal to the responsive and responsible supplier(s) whose offer best meets the needs of the City or reject any and all Proposals.

- a. Responsive Supplier A business entity or individual who has submitted a bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.
- b. Responsible Supplier A business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.

#### 1.8 WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES

The City of Everett reserves the right, at its sole discretion, to waive minor administrative irregularities and informalities contained in any proposal submitted and accepted by the City. The City further reserves the right to make awards to the responsible offer whose proposal is determined to be the most advantageous to the City of Everett. The City of Everett reserves the right to reject any and all proposals.

#### 1.9 EXCLUDED PARTIES

All suppliers must certify that they are not on the Comptroller General's list of ineligible contractors nor the list of parties excluded from Federal procurement or non-procurement programs. <a href="https://www.sam.gov">https://www.sam.gov</a>

#### 1.10 BUSINESS LICENSE

The successful supplier will be required to possess or be able to obtain a City of Everett Business License and pay City of Everett Business & Occupation Tax (B & O), when applicable. B & O Tax questions may be directed to the Everett Business Tax Division at (425) 257-8610.

#### 1.11 BID PROTEST PROCEDURES

Chapter 3.46 of the Everett Municipal Code (EMC) governs all protests. Protest Procedures are available for review in the Everett Municipal Code 3.46, which can be found at <a href="https://everett.municipal.codes/">https://everett.municipal.codes/</a>

The City reserves the right to require strict compliance with all requirements of Chapter 3.46 EMC.

#### 1.12 NON-ENDORSEMENT

As a result of the selection of a supplier to provide services to the City of Everett, the City of Everett is neither endorsing nor suggesting that the supplier's product is the best or only solution. The supplier agrees to make no reference to the City of Everett in any literature, promotional material, brochures, sales presentation, or the like without the express written consent of the City of Everett.

#### 1.13 PROPRIETARY MATERIAL SUBMITTED/PUBLIC DISCLOSURE

#### A. Property of the City of Everett

All materials submitted in response to this RFP must become the property of the City of Everett. Selection or rejection of a proposal does not affect this. In this section, the term "proposal" is generic and refers to proposals, statements of qualification, letters of interest, and any other material submitted in response to this RFP.

#### B. Proposals are Public Records

Pursuant to Chapter 42.56 RCW and other statutes regarding public agencies, all materials (including, for example, proposals) submitted under this RFP must be considered public records and, except to the extent protected by state and or federal laws, will be available for inspection and copying by the public following contract award. Records will not be released by the City of Everett prior to contract award in order to protect the integrity of the procurement process, unless otherwise required by law.

#### C. Public Records Exemption / Notice of RCW 39.10.470

In accordance with RCW 39.10.470, trade secrets (as defined in RCW 19.108.010) or other proprietary information submitted by a proposer in connection with this RFP might not be subject to public disclosure under chapter 42.56 RCW if the proposer specifically states in writing the reasons why protection from disclosure is necessary, and identifies the data or materials to be protected. Proposers must specifically designate and clearly label as "CONFIDENTIAL" any and all such materials or portions thereof that they deem to contain trade secrets or other proprietary information. Proposers should carefully consider what is truly confidential and should not mark an entire proposal as confidential. The proposer must provide the legal basis for the exemption to the City upon request. Proposers are advised that this exemption is subject to judicial review, and the proposer's designation of confidential may or may not be upheld by a Court.

#### D. Proposals Not Marked as Confidential

If a proposal or other material does not clearly identify the "CONFIDENTIAL" portions, the City will not notify the proposer that its proposal will be made available for inspection and copying, and the City may publicly disclose such non-clearly identified portion with no liability whatsoever to the proposer.

#### E. Process for Disclosing Information

If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Proposer of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the proposer's sole expense and liability. If the proposer does not, within such ten (10) business days, serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City from disclosure of the material marked "CONFIDENTIAL," then the proposer will be deemed to have consented to the public disclosure of the material marked "Confidential," and the City may publicly disclose such material without any liability whatsoever to the proposer.

#### F. Indemnification by Proposer

To the extent that the City withholds from disclosure all or any portion of the proposer's material marked "CONFIDENTIAL," the proposer, by submitting a proposal in response to this RFP, agrees to indemnify, defend, and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City incurs arising from or relating to such withholding from disclosure.

#### G. Consent to Procedure

Proposers, by submission of materials marked "CONFIDENTIAL," acknowledge and agree that the City will have no obligation to advocate for nondisclosure in any forum and has no liability whatsoever to any proposer for the disclosure of any material or record of any kind when that disclosure is in accordance with applicable law or in accordance with an order applying applicable law entered by the Snohomish County Superior Court or a Washington appellate court. By submitting a proposal, the proposer consents to the procedure in this Section as its sole remedy and waives and releases all claims against the City arising from the City's actions taken in accordance with this procedure.

#### 1.14 RESPONSE PROPERTY OF THE CITY OF EVERETT

All materials submitted in response to this request become the property of the City of Everett. Selection or rejection of a response does not affect this right.

#### 1.15 NO OBLIGATION TO BUY

The City of Everett reserves the right to refrain from contracting with any supplier. The release of this RFP does not compel the City of Everett to purchase.

#### 1.16 COST OF PREPARING PROPOSALS

The City of Everett is not liable for any costs incurred by suppliers in the preparation and presentation of proposals and demonstrations submitted in response to this RFP.

#### 1.17 CONTRACT TERMINATION

In determining any contract award, the City of Everett reserves the right to consider past performance by supplier in City of Everett contracts. If the City of Everett has previously terminated a contract with a supplier for the supplier's default or other non-performance, the City of Everett reserves the right to reject bids or quotes received from that supplier.

#### 1.18 RECYCLE

The City of Everett is committed to the environment and encourages suppliers to recycle material to the extent practicable.

#### 1.19 COOPERATIVE PURCHASING

**Suppliers**: RCW 39.34 allows cooperative purchasing between public agencies, also called political subdivisions. Public agencies that have an Intergovernmental Cooperative Purchasing Agreement with the City of Everett may purchase from the City of Everett contracts, provided that the supplier has agreed to such participation. Each supplier must indicate on the submittal form if they will not honor other public agency orders in accordance with contract terms and conditions in addition to orders from the City of Everett. The City of Everett does not accept any responsibility for purchase orders issued by other public agencies.

Cooperating Political Subdivisions: Public agencies desiring to use Everett's contracts must have executed an Intergovernmental Cooperative Purchasing Agreement with the City of Everett, as required by RCW 39.34. Only those public agencies who have complied with these requirements are eligible to use this contract. The public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. A purchase by a public agency must be affected by a purchase order from the public agency directed to the supplier or other party contracting to furnish goods or services to the City of Everett.

The City of Everett accepts no responsibility for the performance of any purchasing contract by the supplier, and the City of Everett accepts no responsibility for payment of the purchase price for any public agency.

#### **SECTION 2 – SCOPE OF WORK**

#### 2.1 <u>INTENT SUMMARY</u>

The City of Everett has determined that the use of the Job Order Contracting system benefits the public by effectively reducing total lead time, facilitating collaboration between the Contractor and design team, and potentially reducing costs for public works projects. Using unit price books and Job Orders, time-consuming, costly aspects of traditional public works contracting processes can be eliminated.

As a part of the Job Order Contracting program, the City is accepting proposals from experienced general construction firms. The City expects a collaborative process of project procurement that combines the commitment, expertise, and skills of the City and the Contractor(s) to achieve the completion of projects in the best interest of the public.

#### 2.2 CONTRACT VALUE

The Minimum Contract Value for each awarded Contract is \$25,000. The awarded Contractor(s) are each guaranteed to receive the opportunity to perform Job Orders totaling at least \$25,000 during the Base Term of the Contract.

Currently, the total estimated annual value is \$4,000,000 per year.

The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue up to the maximum amount specified in RCW 39.10.440, which is up to \$4 million per contractor per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. Any unused capacity from the previous year may be carried over for one (1) year and added immediately to the following year's limit. The maximum annual volume, including unused capacity, shall not exceed the limit of two (2) years.

#### 2.3 CONTRACTOR LICENSE FEE/ IDENTITY OF UNIT PRICE BOOK

The City selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog®, which will be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A copy of the license agreement is attached and is included by reference. This Section is repeated in Section 18.1.1.

Link to the Job Order Contract Construction Task Catalog® (CTC): https://fortive.box.com/s/qp0secec0ufz20d0wbh89a60y3bv88aa

#### 2.4 BACKGROUND

In August 2015, the City of Everett awarded its first job order contracts to two (2) general construction contractors. In November 2018, the City of Everett awarded its second job order contract to two (2) general construction contractors. Then, in 2021, the City conducted its third request for proposal process and again awarded to two (2) general construction firms.

From 2021 - 2024, City departments utilized the Job Order Contracting program to successfully complete over 129 construction, maintenance, and repair projects valued at over \$15 million. The Projects have ranged from:

- facility maintenance, including elevators, electrical, and HVAC.
- structural maintenance and remodels, including roofing.
- road repair & sidewalk construction.
- right of way improvements.
- water main repairs & pipe installation.
- park improvements, including fencing and sports court upgrades.
- structural demolition.
- Pedestrian walkway and parking improvements.
- Upgrades to Everett station and bus stations for commuters.

#### 2.5 SCOPE OF WORK

The City is seeking to obtain the services of experienced general construction contractors with work experience like the type of work the City may procure through its Job Order Contracting program.

As part of the Job Order Contracting program, the City is accepting proposals from experienced general construction firms. Contracts will be awarded through an advertised multi-phased process. The city intends to award a contract to one or two separate Contractors using the evaluation factors and the relative weight of the Adjustment Factors. Awards will be made to the highest-scored contractors.

#### 2.6 KEY PERSONNEL

The Contractor agrees to provide all key personnel necessary to perform all work, including the individuals who were named in the proposal submitted in response to this Request for Proposals. These key personnel shall remain assigned for the duration of the contract unless otherwise agreed to in writing by the City. In the event the Contractor proposes to substitute any of the key personnel designated in the Proposal, the individual(s) proposed must demonstrate similar qualifications and experience as required to perform such duties successfully. The City shall have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the project. The City shall not unreasonably withhold approval of staff changes.

#### 2.7 JOB ORDER CONTRACTING PROCESS OVERVIEW

i. Projects are identified by City departments.

- ii. The Contractor jointly scopes the work with the City.
- iii. The Contractor prepares a detailed Scope of Work.
- iv. The City reviews the scope of work, modifies the scope as applicable, and requests a price proposal from the Contractor.
- v. The Contractor prepares a Job Order Proposal for the Project, including a Price Proposal, Schedule, list of Subcontractors, sketches or drawings, and other requested documentation.
- vi. If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued.
- vii. A Job Order will reference the detailed Scope of Work and set forth the completion time and price. The price will be a lump sum, a fixed price for the completion of the detailed Scope of Work.
- viii. A separate Job Order will be issued for each Project. Supplemental change orders will contain extra work, credits, and deletions.

All Job Orders issued prior to the expiration of this Contract shall be performed and completed as part of this contract. Payments will be made, and the guarantee period will continue after the contract term has expired.

All terms and conditions of the Contract apply to each Job Order.

#### 2.8 COMPLIANCE WITH APPLICABLE CODES, LAWS AND REGULATIONS

The Work shall be conducted by the Contractor in strict accordance with the Contract Documents and all applicable Federal, State, and City laws, regulations, and codes, including but not limited to:

- City of Everett Standard Plans, current edition
- City of Everett Standard Specifications, current edition
- WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and all amendments
- Manual of Uniform Traffic Control Devices (MUTCD)
- EPA and Washington Department of Ecology Standards
- Others, as required.

#### 2.9 FEDERAL REGULATIONS

At times, the City is a recipient of federal funding. When a Job Order is funded with federal funds, the City will attach any grant terms, conditions, and special requirements that will be applicable to the Job Order with the Job Order Intake form. The Contractor agrees to abide by all federal terms and conditions in effect for that Job Order. Current Federal Transit Administration clauses are attached as references. However, the City may obtain additional federal funding from other sources.

#### 2.10 ADJUSTMENT FACTORS

- 1. Contractors must provide three separate Adjustment Factors. The Adjustment Factors are as follows:
  - Normal Working Hours: Monday through Friday, 7:00 am to 4:00 pm, except holidays.
  - Other Than Normal Working Hours: Monday through Friday, 4:01 pm to 6:59 am and all day Saturday, Sunday, and Holidays;
  - **Non-Pre-priced:** For Non-Pre-Priced Work.
- 2. The Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor.

The Non-Pre-Priced Adjustment Factor must be equal to or greater than 1.0000.

3. For bid evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

Adjustment Factor	% Weight (For Evaluation Only)
Normal Working Hours	70%
Other than Normal Working Hours	20%
Non-Pre-priced	10%

4. The Construction Task Catalog® is priced at a net value of 1.0000. The price shall be an increase to (e.g., 1.1000) or decrease from (e.g., 0.9500) to the Unit Prices listed in the Construction Task Catalog®. Suppliers who submit Adjustment Factors other than those listed above may be considered non-responsive, and their proposal may be rejected.

#### 2.11 MANDATORY QUALIFICATIONS

Contractors must meet the qualifications described in this section or be subject to disqualification from the RFP process. To be considered to be awarded a Job Order Contract, the Proposer must:

- a) At the time of proposal submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
- b) Have a current state unified business identifier (UBI) number.
- c) If applicable,
  - 1. have industrial insurance coverage for the proposer's employees working in Washington as required in Title 51 RCW.
  - 2. an employment security department number as required in Title 50 RCW.
  - 3. and a state excise tax registration number as required in Title 82 RCW.
- d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

- e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320 not have been found out of compliance by the Washington State Apprenticeship and Training Council for working apprentices out of ratio, without appropriate supervision or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and
- f) Have received training on the requirements related to public works and prevailing wage under chapter 39.04 RCW and chapter 39.12 RCW as required by RCW 39.04.350.
- g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Washington State Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

#### 2.12 PREVAILING WAGE COMPLIANCE

Job order contractors shall pay state prevailing wages for all work that would otherwise be subject to the requirements of Chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each job order must be the rates in effect at the time the individual Job Order is issued.

Some Job Orders may be funded through federal programs. For these Job Orders, contractors must comply with the Davis Bacon Act, Copeland Anti-Kickback Act, and all other relevant federal clauses as provided with the Job Order. Contractors must pay state prevailing wages or Davis-Bacon wages, whichever is higher.

Upon contract execution and prior to performing Job Orders, the Job Order Contractor must submit to the City an Intent to Pay Prevailing Wage as filed online with the Washington State Department of Labor and Industries.

#### 2.13 INTENTS AND AFFIDAVITS

Each job order issued will require the submittal of a 'Statement of Intent to Pay Prevailing Wages' and 'Affidavit of Wages Paid' that has been approved by the Department of Labor and Industries by the prime contractor and any subcontractors.

- 1. The City of Everett must have a copy of the approved forms before it can make payment(s) to the contractor.
- 2. The applicable wage rate for the repair is the rate in effect on the date the Job Order is issued.

Throughout the contract, the Contractor and any subcontractor must pay at least the prevailing wage rates that are in effect at the time the Job Order is issued.

#### 2.14 PERFORMANCE AND PAYMENT BONDS

The Payment and Performance Bond will be in the penal sum equal to \$2,000,000. In the event that the parties agree to extend the Base Term, or if the cumulative amount of Work issued and not yet completed and accepted exceeds such amount, the Contractor shall deliver new Payment and Performance Bonds or rider(s) as required by the City. The Contractor must use the Performance Bond form and the Payment Bond form provided by the City.

#### 2.15 RETAINAGE BOND

The City requires each Contractor to provide a Retainage Bond in the penal sum equal to \$100,000. If the cumulative amount of required Retainage under Chapter 60.28 RCW exceeds this amount, the Contractor shall deliver a rider or a new Retainage Bond as required by the City. The Contractor must use the Retainage Bond form provided by the City.

#### 2.16 OPTION TO EXTEND

The parties may elect to extend the contract for one (1) year, in which case all contract terms and conditions will remain unchanged for the extension year.

#### 2.17 OPTION YEAR PRICE INCREASE

See Article 17.

#### 2.18 PAYMENT

Within thirty (30) days after delivery, acceptance of items ordered, and a properly prepared invoice, but not more often than once per month, the City of Everett will pay the Supplier according to the rate(s) stated on the price sheet.

No down payment or advance payment of any kind will be made. Washington State law requires proof that the materials have been furnished, the services rendered, or the labor performed as described before payment may be made. All invoices must list the PO number and are to be submitted to the following address:

City of Everett – Procurement tbauccio@everettwa.gov Attn: JOC Contract Administrator 2930 Wetmore Avenue, Suite 9E Everett, WA 98201

#### SECTION 3 – PROPOSAL EVALUATION PROCESS

#### 3.1 GENERAL

All proposals will be reviewed to determine compliance with the requirements specified in the RFP. Proposals will be evaluated on how well they meet the city's needs, as described in the supplier's response to each requirement and the evaluation criteria identified in this RFP. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal.

#### 3.2 SELECTION PROCESS

The City will select the proposal that, in its sole discretion, is the most advantageous to the City. The City reserves the right to make an award without further discussion of the proposal submitted; there may be no best and final offer procedure. Therefore, the proposal should be initially submitted on the most favorable terms that the supplier can offer. The specifications may be altered by the City of Everett based on the supplier's proposal, and an increase or reduction of services with the supplier may be negotiated before contract signing, award, and execution.

#### 3.3 CONTRACT AWARD AND EXECUTION

A contract award will be for the supplier that best meets the needs of the City of Everett.

The award of a contract to the successful supplier will be the notice of acceptance. The award of a contract will bind the supplier to furnish the service in accordance with the information herein, responses to questions, the supplier's proposal, other representations made, as well as all other terms and conditions of the contract in its final form.

#### 3.4 EVALUATION CRITERIA

<u>Minimum Qualifications</u>: The City of Everett will first examine proposals to eliminate those that do not meet the following minimum qualifications.

#		Points	Description	
1	Eligibility	Pass/Fail	Minimum requirement(s):	
			<ul> <li>Registered/Licensed Contractor.</li> <li>UBI number.</li> <li>Current Employment Security account.</li> <li>Current Dept. of Revenue account.</li> <li>Current Workmen's compensation account</li> </ul>	

Proposals will then be evaluated based on the following weighted criteria and how well they meet the requirements described in the RFP.

Ph	Phase 1 Evaluation			
#	Criteria	Points	Description	
1	Qualifications and Relevant Experience	50	Evaluate responses to Questionnaire 4.03.	

2	Technical Capability, Approach,	75	Evaluate responses to Questionnaire 4.03.
	and Capacity		

Ph	Phase 2 Evaluation				
#	Criteria	Points	Description		
3	Communication and Customer Service	100	Evaluate responses to Questionnaire 4.03.		
4	Risk, Performance, and Quality Assurance	50	Evaluate responses to Questionnaire 4.03. which includes past performance on similar contracts.		
5	Price Proposal	125	<ul> <li>Evaluate the Contractor's Adjustment Factors to determine fair and reasonableness.</li> <li>60% of the points will be determined by the lowest adjustment factor receiving the most points.</li> <li>40% of the points will be based on the perceived value of the proposal response in relation to the listed scope of work.</li> </ul>		
	Total	400			

#### 3.5 <u>INTERVIEWS</u>

The City of Everett may request interviews with the highest-ranked Supplier(s). The purpose of the interview, if held, will be to further review the finalist(s) in specific areas to determine which proposal provides the best fit and value to the City of Everett. The finalist (s) must have key employees available for these interviews. The City of Everett will notify the finalist(s) as to the time, date, and location for an interview or conference call.

#### **SECTION 4 – PROPOSAL SUBMITTAL REQUIREMENTS**

#### 4.1 SUBMITTAL REQUIREMENTS

The City will adhere to RCW 39.10.430. Proposals will be evaluated in two (2) phases.

- A. The following documents are required and will be evaluated as part of the **original Proposal Submittal package:** 
  - 1. Minimum Qualifications per Section 4
  - 2. Form 4.01 Supplier Commitment and Information
  - 3. Form 4.03 Questionnaire Sections 1 & 2
  - 4. Form 4.04 Debarment Form
  - 5. Form 4.05 Wage Compliance Form
  - 6. Form 4.06 Certification Regarding Lobbying by Contractor
  - 7. Form 4.07 Disclosure of Lobbying Activities
  - 8. Federal Transit Administration Clause Certifications. See back of RFP.
- B. After an initial evaluation, the finalists will be requested to provide and will be evaluated on the following documents as part of the **Final Proposal package:** 
  - 1. Form 4.02 Price Sheet
  - 2. Form 4.03 Questionnaire- Sections 3 & 4
- C. Awarded Contractor(s) will be requested to provide the following documents as part of the **Award Package:** 
  - 1. Signed Contract
  - 2. Performance Bond
  - 3. Payment Bond
  - 4. Retainage Bond
  - Insurance Certificates
  - 6. City of Everett business license

#### 4.2 SUGGESTED RESPONSE FORMAT

- Standard 8 1/2" x 11" paper
- Single or double-sided, numbered pages
- Typed with a minimum of 12-point font.
- Form 4.03 re-type the question before responding.

**Sealed Proposal Submissions** must be submitted in a SEALED ENVELOPE using the optional Proposal Opening Label (below) or clearly marked with the Proposal Number and Title to the City of Everett no later than the proposal due date and time.

## URGENT – SEALED PROPOSAL ENCLOSED Do Not Delay – Deliver Immediately

City Clerk's Office
Attention: Procurement
2930 Wetmore Avenue, Suite 1A
Everett, WA 98201

RFP Number: 2024-084
JOB ORDER CONTRACTING FOR
RFP Title: GENERAL CONSTRUCTION SERVICES
Procurement
Professional: Theresa Bauccio-Teschlog

**Supplier:** 

# FORM 4.01 SUPPLIER COMMITMENT AND INFORMATION RFP #2024-084 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES PHASE 1 SUBMITTAL

Company Name:						
Company Address:						
City:	State:	ZIP:				
Tax ID #:	UBI#:					
Legal status of supplier organization, i.e., corporation, partnership,	sole proprietorship.					
Diversity Certification (if applicable):   Disadvantaged Business Enterprise	se (DBE) 🗆 Minority Business	s Enterprise (MBE) 🗆 Women				
Business Enterprise (WBE)    Minority Women Business Enterprise (MWBE)	Certification number:	),				
Website:	City of Everett Business	License #				
Supplier Contact Name (if different from Authorizing Official):	Supplier Contact Title:					
Supplier Contact Email: Supplier Contact Direct Phone:						
Supplier Contact Address (if different from above):						
City:	State:	ZIP:				

By responding to this solicitation, the Supplier understands and agrees to be bound by all requirements and contract terms and conditions contained in this solicitation. By signing this form, the Supplier acknowledges receipt and understanding of any and all addenda issued for this solicitation. This form, signed by an individual authorized to legally commit the Supplier, must be submitted as the cover page.

The Supplier also certifies that:

- I am authorized to commit my firm to this Proposal and that the information herein is valid for 120 days from this date.
- That all information presented herein is accurate and complete and that the scope of work can be performed as presented in this proposal upon the City's request.
- That I have had an opportunity to ask questions regarding this Proposal and that those questions have been answered.
- That this Proposal response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this Proposal and is in all respects fair and without collusion or fraud.

This form may be signed by ink signature, copy of ink signature, copy of signature, e-signature or any other form of signature. By submitting this bid, the bidder agrees that its signature will have the same legal effect as an original ink signature.

Authorizing Official Name:	Authorizing Official Title:
Authorizing Official Email:	Authorizing Official Phone:
Authorizing Official Signature and <b>Date</b> :	

#### **FORM 4.02 PRICE SHEET – PHASE 2 SUBMITTAL**

#### RFP #2024-084 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES

#### Supplier Name:

Specify all Adjustment Factors to (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5<sup>th</sup> decimal place is 0-4, the number in the 4<sup>th</sup> decimal remains unchanged; if the number in the 5<sup>th</sup> decimal place is 5-9, the number in the 4<sup>th</sup> decimal is rounded upward). If any of the Adjustment Factors are not specified to the 4<sup>th</sup> decimal, the remaining decimals will be considered to be zero.

The City reserves the right to make arithmetic corrections, if any. In the event of a discrepancy between the Adjustment Factors and the calculation of the Award Criteria Figure, the individual Adjustment Factors in the column titled "Proposed Adjustment Factors" will prevail and will be used to calculate the Award Criteria Figure.

The weighted multipliers are for the purpose of calculating the Award Criteria Figure only. No assurances are made by the City that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Award Criteria Figure is only used for the purpose of determining the lowest proposed price.

When submitting Job Order Price Proposals related to specific Job Orders, the Contract must utilize one or more of the Adjustment Factors applicable to the Work being performed.

Having carefully examined the contract documents prepared by the City of Everett and having familiarized ourselves with the JOC procurement system and procedure for ordering work, the undersigned proposes to perform the Tasks required by each individual Job Order using the following Adjustment Factors:

	Adjustment Factor Name	Proposed Adjustment	Multiplier	Total
	70	Factor		
1	Normal Working Hours		x 0.70	
2	Other Than Normal Working Hours		x 0.20	
3	Non-Pre Priced Work		x 0.10	
	Add all the total amounts in the right			
	The sum of these total amounts is the Award Criteria Figure.			

#### FORM 4.03 QUESTIONNAIRE - PHASE 1 AND 2 SUBMITTALS

Suppliers must complete this "Questionnaire," providing the information in the same order requested below. In their narrative, suppliers may emphasize any areas of their proposal that they believe exceed our requirements.

#### **PHASE 1 SECTIONS**

#### 1. Qualifications and Relevant Experience

- A. Briefly describe your company. Include:
  - how long the company has been in the business under the current name,
  - approximate volume of annual work,
  - an estimated percentage of work that is subcontracted,
  - percentage of work that is general contracting,
  - percentage of work that is Job Order Contracting,
  - total number of staff dedicated to job order contracting contracts.
- B. What other public agencies does your company have under contract? What is their annual volume of work? What percentage of your capacity do you estimate to be available for the City of Everett projects?
- C. Describe the qualifications of your company, its business experience and achievements.
- D. If awarded this contract, who are you proposing to be the project manager, superintendent, and contract coordinator? What is their experience with job order contracting? What are their years of experience, years in the industry, years with the firm, years of applicable licenses, etc.? Provide a list of three major projects that each person has been involved in and their role.
- E. Provide names, tenure, roles, and responsibilities for other key team members.
- F. What is your staff turnover rate annually for the past five years?
- G. Describe your firm's prior subcontracting experience and ability to manage multiple subcontractors working on multiple project sites simultaneously.
- H. What characteristics most distinguish your organization from your competitors?

#### 2. Technical Capability, Approach, and Capacity - Phase 1

- A. How do you schedule projects so that the City of Everett projects are accomplished within the required completion timeframe?
- B. Describe how your firm will select subcontractors and the basis for such selection. What is your process, and how do you ensure the best price available for your clients?
- C. What is your approach to managing multiple subcontractors? Describe your execution, management, and control of a sample job order project.

- D. Describe your approach to subcontracting versus self-performing the work with your own forces. Identify the types of work the Proposer intends to self-perform.
- E. Describe your company's quality assurance and inspection policy.
- F. Provide your firm's small and disadvantaged business plan. Identify, in specific detail, how the firm will maximize the participation of small and disadvantaged businesses under this Contract.
- G. Provide your firm's local business utilization plan. Identify, in specific detail, how the firm will maximize the participation of local businesses under this contract. Local businesses are considered those businesses residing within the City of Everett limits.
- H. Describe your process to ensure compliance with Washington State laws and regulations.
- I. Describe your approach to small project completion and contracts under \$50,000. Provide metrics on how many of these types of projects your firm completes in a given year.

#### 3. Communication and Customer Service – Phase 2 Submittal

- A. How will your project manager communicate with the City of Everett's project managers in all phases of the contract? Include how often status reports are provided.
- B. Describe your company's policy for correcting defective workmanship, both your own and that of subcontractors. Include information on your warranty policy.
- C. How does your company ensure continuity and timely project completion when project staff turnover?
- D. How does your company manage non-responsive subcontractors?
- E. Describe your approach to achieving Customer Satisfaction.

#### 4. Risk, Performance, and Quality Assurance – Phase 2 Submittal

- A. Provide a list of current and past job order contracts. Priority should be on providing current and active contracts within the past five years that demonstrate successful contract performance. Include the following for each reference:
  - 1. Entity name and full address
  - 2. Point of contact name, title, e-mail address, and phone number
  - 3. Contract title, number, start and completion dates
  - 4. Describe the job orders, clearly indicating the scope of work for which you were responsible. Detailed project information and pictures are not required but may be submitted at the Proposer's discretion. Submit projects that have achieved final acceptance after January 1, 2019.
  - 5. Describe any problems or major issues encountered during the projects listed and what was done to resolve them.
  - 6. Provide the percentage of projects that exceeded the estimated cost from your firm's original estimates. Include examples of how these were handled.

- 7. Provide information and percentages of projects that came in under the original initial estimates.
- B. Have you defaulted on any contracts within the past three years or failed to meet contract terms? If so, describe.

### FORM 4.04 CERTIFICATE OF NON-DEBARMENT/SUSPENSION - PHASE 1 SUBMITTAL

# REQUEST FOR PROPOSAL #2024-084 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS

THIS FORM MUST BE COMPLETED BY THE PRIME SUPPLIER AND ANY SUB-TIER SUPPLIERS THAT WILL BE AFFILIATED WITH THE WORK IN THIS PROPOSAL. RETURN ALL COMPLETED FORMS WITH ORIGINAL PROPOSAL PACKAGE.

The Lower Tier Participant (Applicant	for a third-party subcontract or subgrant under a federal funded project),
document, that neither it nor its princ	hereinafter referred to as <i>Supplier</i> , certifies, by submission of this ipals is presently debarred, suspended, proposed for debarment, declared
	participation in this transaction by any federal department or agency.
Where the Supplier is unable to certify explanation to this submittal.	y to any of the statements in this certification, such Supplier must attach an
The Supplier, contents of the statements submitted U.S.C. Section 3801 et seq. are applica	, certifies or affirms the truthfulness and accuracy of the d on or with this certification and understands that the provisions of 31 able thereto.
Signature of Authorized Official	
Title of Authorized Official	Date

# FORM 4.05 CERTIFICATION REGARDING LOBBYING BY CONTRACTOR RFP #2024-084 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES PHASE 1 SUBMITTAL

Pursuant to 40 CFR Part 20 (which is by this reference incorporated herein), the undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- **B.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL *Disclosure Form to Report Lobbying*, in accordance with its instructions.
- **C.** The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification must be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor,	, certifies or affirms the truthfulness and accuracy of each statement of its				
certification and disclosure, if an	y. In addition, the Contractor understands and agrees	that the provisions of 31			
U.S.C. A 3801, et seq., apply to th	nis certification and disclosure, if any.				
Signature of Contractor	Date				
Print Name	Address				
Title	City, State, ZIP				

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

### **FORM 4.06 DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

0348-0046

1. Type of Federal Action: 2. Status of Federal		Action:	3. Report Type:		
a. contract a. bid/offer/appli		ication	a. initial filing		
b. grant b. initial award		ication	b. material change		
c. cooperative agreement c. post-award			b. material cha	ngc	
d.loan	c. post awara				
e.loan guarantee			For Material Chang	ge Only: year quarter	
f. loan insurance			Date of last report		
1. Idan insurance					
4. Name and Address of Reporting	Entity:			oawardee, Enter Name	
Prime Subawarde	e	and Address of	Prime:		
Tier if known	:				
Congressional District, if known:	4c	Congressional D	District, if known:		
, ,					
6. Federal Department/Agency:		7. Federal Progra	m Name/Descriptio	n:	
		,CX, Y			
		CFDA Number,	if applicable:		
8. Federal Action Number, if known:		9. Award Amount	t if known•		
o. rederal Action Number, ij known.					
	~\\\	\$			
10. a. Name and Address of Lobbyi		b. Individuals Per	-		
(if individual, last name, first	name, MI):	(including address if different from No. 10A)			
		(last name, first name, MI):			
Information requested through this form is author	rized by title 31 U.S.C.	G: .			
section 1352. This disclosure of lobbying activities representation of fact upon which reliance was p	s is a material				
when this transaction was made or entered into.	This disclosure is	Print Name:			
required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure must be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Title:			
		Telephone No.:		Date:	
Federal Use Only:				Authorized for Local	
reacial osc omy.				Reproduction	
				·	
				Standard Form LLL (Rev. 7-97)	

(See next page for instructions.)

# INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form must be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

- 1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
- 2. Identify the status of the covered Federal action.
- **3.** Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
- **4.** Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
- **5.** If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
- **6.** Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
- **7.** Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
- **8.** Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
- **9.** For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
- 10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying

Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

- (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
- 11. The certifying official must sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Managementand Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

# **EXCLUDED PARTIES LISTING SYSTEM SEARCH - PHASE 1 SUBMITTAL**

# RFP #2024-084 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower-tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification
in this clause is a material representation of fact relied upon by
<b>[Insert agency name]</b> . If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to
{insert agency name}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.
Date:
Signature:
Company Name:
Title:

# **SECTION 5 – ACRONYMS & DEFINITIONS**

Bidder: see "Supplier".

CFR: Code of Federal Regulations.

**City Facility:** the location(s) where work is to be performed.

**City:** refers to the City of Everett ("COE"), located in Washington State.

**Code Requirement:** all applicable requirements of the City of Everett Municipal Code (EMC) Title 16, along with any applicable codes including, but not limited to, International Mechanical Code, International Plumbing Code, and International Energy Conservation Code. EMC Title 16 can be found here: <a href="https://everett.municipal.codes/EMC/16">https://everett.municipal.codes/EMC/16</a>

**Contractor**: see "Supplier".

Contract Administrator: see "Procurement Professional".

Cost Analysis: comparison of offered price to the offeror's own costs and evaluation of the difference (profit).

**Desired Features:** features that a requested commodity or solution does not have to possess to be considered responsive. However, inclusion of such features are considered value added qualities that may lead to a higher level of success and evaluation score for the proposal response. These are in addition to the salient characteristics included in the solicitation.

L&I: the Washington State Department of Labor and Industries.

Lower Tier Participant: see "Supplier".

**Mandatory Features:** a condition set out in the scope of work or specifications that must be met without alteration. Not meeting a mandatory requirement may be grounds for disqualification of a bid or proposal.

Must: see "Shall".

Offeror: see "Supplier".

Price Analysis: comparison of proposed price to comparable pricing data.

Prime Contractor: see "Supplier".

**Procurement Professional:** the individual in Procurement assigned by the City of Everett who is responsible for resolving contractual issues and supporting the Project Manager during Contract performance. This includes the issuance of a written document to amend, modify, or deviate from the Contract terms, conditions, requirements, specifications, details, or delivery schedule.

**Project Manager**: the individual assigned by the requesting department that is responsible for managing, inspecting, and monitoring all Contractor work performed to ensure compliance with the contract requirements. The Project Manager is the Contractor's primary point of contact and acts as the agency's representative in charge of work at the site.

Proposer: see "Supplier".

**RCW:** Revised Code of Washington.

**Recipient:** see "City".

**Shall or Must:** the terms "shall" or "must" are used whenever a specification expresses a requirement by either the City or the Supplier.

**Subcontractor**: the individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Supplier to perform any portion of the work covered by this contract.

**Submittals:** information that is submitted to the City of Everett by the Supplier.

**Supplier:** the individual, association, partnership, firm, company, corporation, or a combination thereof, including joint ventures, submitting a response to perform the work.

**UCC:** Uniform Commercial Code.

**WAC:** Washington Administrative Code.

**WFP:** Water Filtration Plant located in the city of Monroe, Washington.

WISHA: Washington Industrial Safety and Health Act of 1973.

WPCF: Water Pollution Control Facility located in the city of Everett, Washington.



# **CITY OF EVERETT, WASHINGTON**

# **JOB ORDER CONTRACT**

THIS JOB ORDER CONTRACT by and between the City of Everett (City) and	
(Contractor). This Contract was awarded pursuant to RFP	(RFP). City and Contractor, in
consideration of the mutual covenants hereinafter set forth, agree as follows	

#### **SECTION 1 - WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

The value of a Job Order Price Proposal shall be calculated by summing the total of the calculation for each Prepriced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.

#### **SECTION 2 – CITY REPRESENTATIVES**

- 2.1 **Project Manager**: The City will appoint a Project Manager for each Job Order, who shall be the City's representative and assume all duties and responsibilities and have the rights and authority assigned to the Project Manager in the Contract Documents in connection with the completion of the Work in accordance with the Job Order and the Contract Documents.
- 2.2 Contract Administrator: The JOC Contract Administrator is designated by the City to manage the Job Order Contracting program for the City. The Contract Administrator will oversee the execution of the program on behalf of the City and will provide overall guidance to the Project Managers and Contractor(s) in the execution of Job Orders. The Contract Administrator shall intervene in disputes or disagreements between the Project Manager and the Contractor. The Contract Administrator also may exercise any authority granted to Project Managers under the Contract Documents with respect to any Job Order at any time.

# **SECTION 3 - CONTRACT TIME**

- 3.1 The Base Term of the Contract is two (2) years.
- 3.2 There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term, which will be formalized as an amendment to this Contract. The duration of the Option Term is one year.
- 3.3 The City and the Contractor may agree to extend the Option Term, which will be formalized as an amendment to this Contract.
- 3.4 All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee

- period may continue, after the Contract term has expired. All terms and conditions of the Contract apply to each Job Order.
- 3.5 The Contractor shall commence work upon issuance of a Job Order and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

#### **SECTION 4 - CONTRACT PRICE**

- 4.1 City shall pay Contractor for completion of the Detailed Scopes of Work in accordance with the Contract Documents.
- The Contract is an indefinite-quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is Twenty-Five Thousand Dollars (\$25,000). The Estimated Annual Value is Three Million Dollars (\$3,000,000) for the City's Job Order Contracting Program. The City reserves the right to issue up to the maximum amount specified in RCW 39.10.40 of Four Million Dollars (\$4,000,000) per year or such greater amount that may be authorized by statute. The Maximum Contract Value shall not exceed the value set forth in the RCW.
- 4.3 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

#### **Normal Working Hours Adjustment Factor**

7:00 am to 4:00 pm Monday through Friday, except for City Holidays:
Other Than Normal Working Hours Adjustment Factor
4:01 pm to 6:59 am Monday through Friday, and all day Saturday, Sunday and Owner Holidays:
Non-Prepriced Adjustment Factor:

## **SECTION 5 - PAYMENT PROCEDURES**

Contractor shall submit Applications for Payment in accordance with Article 12 the General Conditions. Applications for Payment will be processed by the Contract Administrator with approval by the Project Manager as provided in the General Conditions.

- 5.1 <u>Progress Payments</u>. City shall make progress payments on account of the Job Order Price on the basis of Contractor's Invoices as recommended by Project Manager and Contract Administrator in accordance with Article 12.1 of the General Conditions. All progress payments will be on the basis of the progress of the Work as established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).
- 5.2.1 Final Payment: Upon final completion and acceptance of the work in accordance with the General Conditions, City shall pay the remainder of the Job Order Price as recommended by Project Manager and Contract Administrator. A Certificate of Completion signed by the Project Manager is required prior to payment of any final invoice(s).

- 5.2.2 As determined by the Project Manager, progress payments shall be made per the Project Payment Schedule.
- 5.2.3 In accordance with RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job Order issued shall be treated as a separate contract. Contractor will provide the bonds as set forth in the RFP and in the General Conditions on the forms provided by the City. The alternate filing provisions of RCW 39.12.040(2) apply to each Job Order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

#### **SECTION 6 INDEMNIFICATION**

The indemnity and defense obligations in this Section 6 are in addition to any other indemnity and defense obligation elsewhere in the Contract Documents.

- A. Contractor will defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor relating to, or arising out of its performance of, this Contract. The Contractor will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The amount of insurance obtained by, obtainable by, or required of the Contractor does not in any way limit the Contractor's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.
- B. The Contractor's obligations under this Section 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 Contractor, its employees, subcontractors/subconsultants or agents and (b) the City, then the Contractor's obligations under this Section 6 shall apply only to the extent allowed by RCW 4.24.115.
- C. As used in this section: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Contractor" includes Contractor, its employees, agents, representatives and subcontractors.
- D. Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Contractor's and City's signatures hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill this indemnity. SOLELY FOR THE PURPOSE OF INDEMNIFICATION AND DEFENSE AS PROVIDED IN THIS CONTRACT, THE CONTRACTOR SPECIFICALLY WAIVES ANY IMMUNITY UNDER THE STATE INDUSTRIAL INSURANCE LAW, TITLE 51 RCW. THE CONTRACTOR EXPRESSLY ACKNOWLEDGES THAT THIS WAIVER OF IMMUNITY UNDER TITLE 51 RCW WAS THE SUBJECT OF MUTUAL NEGOTIATION AND WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115.

#### **SECTION 7 - CONTRACTOR'S REPRESENTATIONS**

Contractor, by submittal of a Proposal and entering into this Contract, makes the following representations:

- 7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 Contractor is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.
- 7.3 Contractor has given Project Manager written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Project Manager is acceptable to Contractor.

## **SECTION 8 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between City and Contractor concerning the work, consist of the following:

- 8.1 This Contract and its exhibits, if any. In a Federally Funded Job Order (as defined in the General Conditions) this Contract includes the applicable current Federal Contract Clauses, which the City will specifically designate in the Job Order. These Federal Contract Clauses are only applicable to that specific Federally Funded Job Order and have no force or effect with respect to any other Job Order. A Federally Funded Job Order may also include one-time changes to the Contract Documents specifically for that Job Order signed for the City by the Contract Administrator as necessary to coordinate the requirements of the applicable Federal Contract Clauses with the requirements of the Contract Documents.
- 8.2 General Conditions, attached hereto as Exhibit A, incorporated by reference.
- 8.3 Supplementary Conditions, incorporated by reference.
- 8.4 The RFP and all addenda, incorporated by reference.
- 8.5 Contractor's Proposal, incorporated by reference. If there is inconsistency between any provision of the Contractor's Proposal and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.
- 8.6 The Construction Task Catalog®, incorporated by reference.
- 8.7 All Job Orders and related documents, including but not limited to, the Detailed Scope of Work with Drawings and/or Specifications, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties, incorporated by reference. If there is inconsistency between any provision of the documents listed in this Section 8.7 and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

All Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. In cases of conflict in the requirements and provisions as set out by the Contract

Documents, the specifications, or the drawings, such conflict shall be reconciled by the order of precedence in the order the Contract Documents are set forth above.

Any modification of any Contract Document listed in sections 8.1 to 8.6 above requires an amendment executed by an authorized representative of the City and by an authorized representative of the Contractor. Changes to Contract Documents listed under Section 8.7 may executed by an authorized representative of the Contractor and by the Project Manager or the Contract Administrator for the City, as determined by Contract Administrator policy.

#### **SECTION 9 – PREVAILING WAGE**

Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor will be required to file prevailing wage intents and affidavits with Labor & Industries for each Job Order. A Federally Funded Job Order may specify the Davis-Bacon Act and Copeland Anti-Kickback Act, in which case Contractor shall comply with these requirements. The Contractor will pay state prevailing wage or Davis-Bacon wages, whichever is higher.

#### **SECTION 10 - MISCELLANEOUS**

- 10.1 Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in an written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.3 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 10.4 This Contract is governed by the laws of the State of Washington, without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be exclusively brought in the Superior Court of Snohomish County, Washington.

IN WITNESS WHEREOF, City and Contractor have signed this Contract. This Contract is effective as of the date of the last person to sign it, and may be executed in multiple counterparts, each of which shall be deemed an original. Signatures with AdobeSign are fully binding

CITY OF EVERETT, WASHINGTON	CONTRACTOR [Contractor's Complete Legal Name]		
By:	Ву:		
	Name: Title: Date:		
Attest:	08/10		
Office of the City Clerk			

# **PERFORMANCE BOND**

Bond No.:	
	(Principal), the contract designated as Job Order Contract,
obligations under the Contract.	Contract), and said Principal is required to furnish a bond for performance of all
The Principal, and	(Surety), a corporation organized under the laws of the
State of and license	ed to do business in the State of Washington as surety and named in the
current list of "Surety Companies Acceptable in	n Federal Bonds" as published in the Federal Register by the Audit Staff Bureau
of Accounts, U.S. Treasury Dept., are jointly an	d severally held and firmly bound to the City of Everett in the sum of Two
Million US Dollars (\$2,000,000), subject to the	provisions herein.
successors, or assigns shall well and faithfully paterms and conditions of all duly authorized mo	e null and void, if and when the Principal, its heirs, executors, administrators, perform all of the Principal's obligations under the Contract and fulfill all the odifications, additions, and changes to said Contract that may hereafter be pecified; and if such performance obligations have not been fulfilled, this bond
The Surety agrees to indemnify, defend, and p	rotect the City of Everett against any claim of direct or indirect loss resulting

from the failure of the Principal, its heirs, executors, administrators, successors, or assigns (or any of the employees, subcontractors, or lower tier subcontractors of the Principal) to faithfully perform the Contract.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract,

the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

[signatures on following page]

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety. The Surety agrees to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

PRINCIPAL	SURETY
Printed Name:	Printed Name:
Title:	Title:
STANDARD BOND FORM  OFFICE OF THE CITY ATTORNEY  APPROVED AS TO FORM  APPROVED AS TO CITY CHARTER § 4.1	Local Office/ Agent of Surety: Name: Address: Phone Number: Email:

# **PAYMENT BOND**

Bond No	
under RFP 2024-084, in Everett, Washington (Contra	(Principal), the contract designated as Job Order Contract, act), and said Principal is required under the terms of that Contract to evised Code of Washington (RCW) and (where applicable) 60.28 RCW.
State of and licensed to current list of "Surety Companies Acceptable in Fede	(Surety), a corporation organized under the laws of the do business in the State of Washington as surety and named in the eral Bonds" as published in the Federal Register by the Audit Staff Bureau erally held and firmly bound to the City of Everett in the sum of Two sions herein.
successors, or assigns shall pay all persons in accord mechanics, subcontractors, and material suppliers, a provisions and supplies for the carrying on of such w	void, if and when the Principal, its heirs, executors, administrators, ance with RCW Titles 39.08 and 39.12 including all workers, laborers, and all persons who shall supply such contractor or subcontractor with vork, and all taxes incurred on said Contract under Title 50 and 51 RCW RCW; and if such payment obligations have not been fulfilled, this bond
from the failure of the Principal, its heirs, executors, tier subcontractors of the Principal) to pay all labore	t the City of Everett against any claim of direct or indirect loss resulting administrators, successors, or assigns, (or the subcontractors or lower ers, mechanics, subcontractors, lower tier subcontractors materialpersons subcontractors with provisions and supplies for the carrying on of such
	, extension of time, alteration or addition to the terms of the Contract,

the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

[signatures on following page]

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety. The Surety agrees to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

PRINCIPAL	SURETY	
Printed Name:	Printed Name:	
Title:	Title:	
STANDARD BOND FORM OFFICE OF THE CITY ATTORNEY APPROVED AS TO FORM APPROVED AS TO CITY CHARTER § 4.1	Local Office/ Agent of Surety: Name: Address: Phone Number: Email:	

# **RETAINAGE BOND**

BOI	10 NO			
con Star Sur City trus wel	OW ALL MEN BY THESE PRESENTS, that is of the State of	gistered to transact bus tors, successors and ass called "City", and are sir s, in the sum of One Hur	I to do business in the State, a corporation organized siness in the in the State of igns, are jointly and severa milarly held and bound untended Thousand (\$100,000)	e of Washington as a under the laws of the Washington as surety, as lly held and bound to the o the beneficiaries of the l, the payment of which,
THE	CONDITIONS OF THE ABOVE OBLIGAT	TION ARE THAT:		
WH	EREAS, the Principal has executed a co	ontract (the "Contract")	with the City under RFP 20	)24-084 known as:
	JOB ORDER CONTRACT			
And	d,			
	IEREAS, said Contract and RCW Chapting the progress of the construction, h			
WH	IEREAS, the Principal requested that th	ne City release earned re	etained funds, as allowed u	nder RCW Chapter. 60.28
defe rele	W, THEREFORE, the condition of this o end and hold the City harmless from a ease of said earned retained funds to P te and effect.	ny and all loss, costs or	damages that the City may	sustain by reason of
PRC	OVIDED, HOWEVER, it is expressly unde	erstood and agreed tha	t:	
1.	Any suit or action under this bond me bond shall be subject to all claims an and in the same manner and priority Contract.	d liens provided for by l	aw or Contract against the	earned retained funds
2.	The Surety hereby consents to and wassignment of obligations under the	-	· · · · · · · · · · · · · · · · · · ·	
3.	3. Until written release of this obligation by the City, this bond may not be terminated or canceled by the Princo or Surety for any reason. Any extension of time for the Principal's performance on the Contract, assignment obligations under the Contract, or Contract alteration, amendment or change order shall not release the Surfrom its obligation under this bond.		Contract, assignment of	
4.	<ol> <li>RCW Chapter 60.28 authorizes the City to substitute a retainage bond in lieu of earned retained funds and the Surety hereby waives any defense that this bond is void or otherwise not authorized by law.</li> </ol>			
5.	Any claim or suit against the City to fagainst the Principal and Surety and against the Principal and the Surety.		· · · · · · · · · · · · · · · · · · ·	
6.	The laws of the State of Washington hereunder. Venue for any dispute or County, Washington.			
SIG	INFD AND SFALED THIS	of	20	

PRINCIPAL  Printed Name:	SURETY
Printed Name:	Printed Name:
Title:	Title:
STANDARD BOND FORM OFFICE OF THE CITY ATTORNEY APPROVED AS TO FORM APPROVED AS TO CITY CHARTER § 4.1	Local Office/ Agent of Surety:  Name:  Address: Phone Number:  Fmail:

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#### ARTICLE 1 DEFINITIONS

#### 1.1 Definition of Terms:

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

<u>Acceptance</u> The official act of the City, Contract Administrator, or Project

Manager as described in Article 12.

Addenda Written or graphic instruments issued prior to the submittal of

Contractor Proposals which clarify, correct or change the Proposal

documents or the Contract Documents

Contract (or Job Order Contract)

The written agreement between City and Contractor.

Application for Payment The form accepted by Project Manager which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract

Documents.

**Bonds** Performance and payment bonds and other instruments of

security.

<u>Contract</u> Administrator The authorized representative of the City who is assigned immediate

charge of the administration of the Job Order Contract.

**Contract Documents** All of the documents constituting the Contract.

<u>Contractor</u> The individual, firm, partnership, corporation or combination

thereof with whom City has entered into the Contract.

<u>City</u> The City of Everett. Depending on the context, the term City may

also include all of the City's elected officials, officers, employees

and other authorized representatives.

<u>Day</u> Unless otherwise designated in the Contract Documents, a calendar

day of twenty-four (24) hours measured from midnight to the next

midnight.

**<u>Defective</u>** An adjective which when modifying the word Work refers to

Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Project Manager's

recommendation of final payment.

<u>Drawings</u> The drawings which show the character and scope of the Work to be

performed and which have been prepared or approved by Project Manager assigned to the Job order and which are referred to in the

Detailed Scope of Work.

Effective Date of the Contract

The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to

sign and deliver.

**Federally Funded Job** 

<u>Order</u>

A Job Order designated by the City as federally funded, in which

case the Job Order includes the Federal Contract Clauses.

**Federal Contract Clauses** 

The current federal contract clauses determined by the City to be

applicable to a Federally Funded Job Order. .

<u>Field Order</u> A written order issued by Project Manager which orders minor

changes in the Work in accordance with section 10.1.5, but which does not involve a change in the Price or the Completion Time.

<u>Final Completion</u> Occurs when all requirements have been completed as stated in

section 2.3 and Article 12

<u>Final Payment</u> The payment to be made to the Contractor in accordance with

Article 12.

<u>Hazardous Materials</u> The term "Hazardous Materials" means any hazardous or toxic

substances, materials and wastes listed in the United States
Department of Transportation Hazardous Materials Table 49 CFR
172.101 or listed by the Environmental Protection Agency as
hazardous substances in 40 CFR Part 302 and any amendments
thereto, and any substances, materials or wastes that are or become
regulated under federal, state or local law. Hazardous Materials or

substances shall also include, but not

be limited to: regulated substances, petroleum products, pollutants, and any and all other environmental contamination as defined by, and in any and all federal. State and/or local laws, rules, regulations, ordinances or statutes now existing or hereinafter enacted relating to air, soil, water, environmental or health and safety conditions.

<u>Inspector</u> The City's authorized representative assigned to make

Award

inspections of the Contractor's performance of the Work.

Liquidated Damages The amount prescribed herein to be paid to the City, or to be

deducted from any payments due or to become due the Contractor, for each day's delay in completing the whole or any specified

portion of the work beyond the time allowed in the Job Order.

<u>Notice of Intent to</u> The written notice by City identifying the highest ranked Proposers

and indicating that the City intends to award a contract to that Proposer(s) or enter into negotiations with such Proposer(s).

## **Notice to Proceed**

A written notice given by City to Contractor fixing the date on

which the start of Work will commence and on which Contractor shall start to perform its obligation within the completion time under the Contract Documents.

# **Payment Bond**

The form of security approved by the City, furnished by the

Contractor and its surety guaranteeing the complete and faithful payment of all labor, material, equipment, and any other services provided to the Work.

# **Performance Bond**

The form of security approved by the City, furnished by the

Contractor and its surety guaranteeing the complete and faithful performance of the construction of the Work as specified in the Contract Documents.

# <u>Plans</u>

The concept or mental formulation for the Work. The plans may be represented graphically by drawings, by the written words within the Contract Documents, or both.

# City Furnished Materials or Equipment

Materials or equipment furnished by the City which is to be incorporated into the Work by the Contractor.

<u>Product Data</u> The illustrations, standard schedules, performance charts,

brochures, diagrams, and other information furnished by the

Contractor to illustrate a material, product, or system.

<u>Proiect</u> The collective improvements to be constructed by the Contractor

pursuant to issuance of a Job order. A Project will consist of one

Job order and any Supplemental Job Orders issued.

<u>Project Manager</u> The authorized representative of the City who is assigned

immediate charge of the work of the project.

<u>Proposal</u> The offer or proposal of the Contractor submitted in response to the

City's Request For Proposal for the selection of Contractor(s).

Usually referred to as the Contractor's Proposal.

<u>Proposer</u> Any individual, firm, partnership, corporation or combination

thereof formally submitting a proposal for the work contemplated, or any portion thereof, acting directly or through an authorized

representative.

<u>Provide</u> The all-inclusive actions required to furnish, install, connect,

adjust, test, and make ready for use or occupancy.

Punch List Shall have the meaning set forth in Article 12.

**RFP** The Request for Proposal issued by the City for the selection of the

Contractor(s).

<u>Samples</u> Physical examples that illustrate materials, equipment or

workmanship and establish standards by which the Work will be

judged.

<u>Schedule of Prices</u> Means the Unit Prices set forth in the Contract Documents.

**Shop Drawings** All drawings, diagrams, illustrations, brochures, standard schedules,

performance charts, instructions, and other data which are

specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the

Work, material or equipment.

**Specifications** Those portions of the Contract Documents consisting of written

technical descriptions of materials, equipment, construction

systems, standards, performance requirements and workmanship as applied to the Work and certain administrative details applicable

thereto.

# **Subcontractor**

An individual, firm, or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

# **Sub-Subcontractor**

A Sub-Subcontractor is a business entity that has an agreement with a Subcontractor to perform a portion of the Work. The term Sub-Subcontractor means and includes the Sub-Subcontractor at all tiers.

# Substantial Completion

The Work or a specified part thereof has progressed to the point where, in the opinion of Project Manager as evidenced by his/her certificate of Substantial Completion, the Detailed Scope of Work is sufficiently complete, in accordance with the Contract Documents, so that the Work or specified part can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when final payment is due in accordance with section 12.4. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion

# Supplementary Conditions

That portion of the Contract Documents that amends or supplements these General Conditions.

# **Supplier**

A vendor, supplier, distributor, or materialman which supplies material or equipment used in the performance of the Work.

## Surety

The company or association which is bound with and for the Contractor for the acceptable performance of the Contract and for its payment of all obligations arising out of the Contract

# **Titles or Headings**

The titles or headings of the sections, divisions, parts articles, paragraphs, or subparagraphs of the specifications are intended only for convenience of reference and shall not be considered as having any bearing on the interpretation of the text.

#### **Unit Prices**

The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Prepriced Tasks can be established during the course of the Contract and added to the Construction Task Catalog(s)®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Prepriced Task.

#### Work

The entire completed project or the various separately identifiable parts required to be furnished in accordance with the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the project, all as required by the Contract Documents.

## 1.1.1 Job Order Contracting Specific Definition of Terms:

Adjustment Factor A competitively bid adjustment to be applied to the unit prices

listed in the Construction Task Catalog®. Also known as a

"coefficient."

<u>Base Term</u> The initial period of the Contract and does not include any Option

Terms.

Construction Task Catalog® A comprehensive listing of construction related tasks together

with a specific unit of measure and a published Unit Price.

Detailed Scope of Work A document setting forth the work the Contractor is obligated to

complete for a particular Job Order.

Estimated Annual Value An estimate of the value that could be issued to the Contractor each

year.

<u>Job Order</u> A written order issued by the City, such as a Purchase Order,

requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one Job Order with one or more

Supplemental Job Orders.

Job Order Completion The time within which the Contractor must complete the Detailed

Scope of Work.

Time The time within which the Contractor must complete the Detailed

Scope of Work.

Job Order Price The value of the approved Job Order Price Proposal and the

amount the Contractor will be paid for completing a Job Order.

Job Order Price The value of the approved Price Proposal and the amount the

Contractor will be paid for completing the Detailed Scope of Work

within the Job Order Completion Time.

<u>Proposal</u> A price proposal prepared by the Contractor that includes the

Prepriced Tasks, Non-Prepriced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of

Work.

Job Order Proposal A set of documents including at least: (a) Job Order Price Proposal;

(b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and

(e) other requested documents.

Joint Scope Meeting A site meeting to discuss the work before the Detailed Scope of

Work is finalized.

Maximum Contract Value The estimated maximum value of Job orders that the Contractor may

receive under this Contract.

Minimum Contract Value The minimum value of Job orders that the Contractor is

guaranteed the opportunity to perform under this Contract.

Non-Prepriced Task A task that is not set forth in the Construction Task Catalog<sup>®</sup>.

Normal Working Hours Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through

Friday, except for City holidays.

Notice to Proceed A written notice issued by the City directing the Contractor to

proceed with construction activities.

Option Term An additional period of time beyond the Contract Term which

extends the termination date of the Contract.

Other than Normal

Working Hours Includes the hours of 4:01 p.m. to 6:59 a.m., Monday to Friday and

all day Saturday, Sunday, and City Holidays.

<u>Proposal Criteria Figure</u> The amount determined in the Proposal Criteria Figure Calculation

section of the Price Proposal, which is used for the purposes of

determining the lowest price.

Prepriced Task A task described in and for which a unit price is set forth in the

Construction Task Catalog®.

Request for Proposal A written request to the Contractor to prepare a Proposal for the

Detailed Scope of Work referenced therein. <u>Note</u>: For clarity, the Request for Proposal issued by the City for the selection of the

Contractor is referred to as the "RFP".

Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job

Order Completion Time.

<u>Technical Specifications</u> The written requirements for materials, equipment, systems,

standards and workmanship for the Work, and performance of

related services.

## 1.2 Definitions/Abbreviations

AAR Association of American Railroads

ACI American Concrete Institute

AISC American Institute of Steel Construction

ANSI American National Standards Institute APA American Plywood Association

API American Petroleum Institute

ARA American Railway Association

AREA American Railway Engineering Association ASCE American Society of Civil Engineers

ASHRAE American Society of Heating, Refrigeration and Air Conditioning Engineers

ASME American Society of Mechanical Engineers

ASTM American Society for Testing and Materials AWS American Welding Society

COE City of Everett

CPM Critical Path Method of Project Scheduling

CRSI Concrete Reinforcing Steel Institute

FAA Federal Aviation Administration

FHWA Federal Highway Administration FM Factory Mutual

FS Federal Specification

FTA Federal Transit Administration

IEEE Institute of Electrical and Electronics Engineers ISO Insurance Service Office

JIC Joint Industrial Council

NAAMM National Association of Architectural Metal Manufacturers

NBFU National Board of Fire Underwriters NEC National Electrical Code

NEMA National Electrical Manufacturer's Association

NESC National Electrical Safety Code

NIOSH National Institute of Occupational Safety and Health

NFPA National Fire Protection Association

OFCCP Office of Federal Contract Compliance Programs

OSHA Occupational Safety and Health Act

PCA Portland Cement Association

PSCAAPCA Puget Sound Clean Air Pollution Control Agency

SAE Society of Automotive Engineers

SMACNA Sheet Metal and Air Conditioning Contractors National Association

SSPC Steel Structures Painting Council

SWI Steel Window Institute

UFC Uniform Fire Code

UL Underwriter's Laboratory

WISHA Washington Industrial Safety & Health Act Administration

END ARTICLE 1

#### ARTICLE 2 PRELIMINARY MATTERS

# 2.1 City Operations

The City is an operating facility which will continue in full operation throughout the term of this contract. Where facility operations conflict with those of the Contractor, the operations of the facility will take precedence over those of the Contractor. It shall be the sole responsibility of the Contractor to schedule and coordinate its activities with those of the facility to assure minimum disruption of facility operations.

# 2.2 Starting the Job Order (Notice to Proceed)

The Contractor shall show evidence that work has commenced on the Job Order within seven (7) days from the effective date of the Notice to Proceed. Work in this case is not limited to physical work at the project site. Work started prior to the effective date stated in the Notice to Proceed shall be at the Contractor's risk.

# 2.3 Job Order Completion Time

- 2.3.1 The Job Order Completion Time will commence to run on the effective date stated in the Notice to Proceed. The City Contract Administrator will transmit an executed copy of the Job Order to the Contractor as well as a Notice to Proceed.
- 2.3.2 The Job Order Completion Time is that period of time allotted in the Job Order, as adjusted, for Contractor to achieve Substantial and/or Final Completion of the Detailed Scope of Work.
- 2.3.3 The term "day" as used in the Contract Documents shall mean a calendar day unless otherwise specifically designated.
- 2.3.4 Substantial Completion occurs when the City can use the Work for the use for which it is intended, and when all required documentation has been properly submitted to the City in accordance with the Job Order. Such documentation shall include but is not necessarily limited to:
  - a. Maintenance and Operations manuals;
  - b. Warranties; and
  - c. Submittals required by the Specifications
- 2.3.5 Final Completion occurs when all requirements of the Job Order and Contract Documents have been properly and completely fulfilled including but not limited to:
  - a. Completion of re-inspection and City approval of all Punch List items;
  - b. Submittal of final invoice and approval by the Contract Administrator and Project Manager;
  - c. Submittal of all properly completed as-built record drawings; and
  - d. Submittal of any other documents required by the Job Order.

- 2.3.6 Final Acceptance is the formal action of the City accepting the Work as complete.
- 2.3.7 Progress and Completion
  - a. All time limits stated in the Job Orders are of the essence of this Contract.
  - b. The Contractor shall begin the Work on the date indicated in the Notice to Proceed and shall diligently prosecute the Work with adequate equipment and forces in order to bring the Work to completion within the Job Order Completion Time.

# 2.4 Extension of Time

Any extension of Job Order Completion Time must have the written approval of the Project Manager/City and must conform to the procedures set forth in Article 10.3.

# 2.5 Before Starting Work

- 2.5.1 Before undertaking each part of the Work, Contractor shall carefully study and compare the Detailed Scope of Work and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Project Manager any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to City for failure to report any conflict, error or discrepancy in the Detailed Scope of Work, Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.
- 2.5.2 If requested, within five (5) days after the effective date of the Notice to Proceed and prior to start of work (unless otherwise specified in the General Requirements), Contractor shall submit to Project Manager for review a preliminary Schedule of the Values of the work. Each bid item shall be broken down to its basic elements. The cost breakdown for both lump sum and unit price estimates shall include:
  - a. Labor;
  - b. Materials;
  - c. Equipment;
  - d. Overhead, profit and taxes;
  - e. Other factors;
  - f. Time required.
- 2.5.3 If requested, within ten (10) days after the effective date of the Notice to Proceed and prior to start of Work, unless otherwise specified in the General Requirements, Contractor is to submit to Project Manager for review an estimated Progress Schedule indicating the starting and completion dates of the various stages of the Work and a Preliminary Schedule of Shop Drawings submissions. The Schedule should include a bar chart. The Contractor may use a commercial scheduling program such as the "Microsoft Project" or equal. All submissions of schedule information to the Project Manager or other city representatives are to be provided in hard copy format and electronic format.

# 2.6 Preconstruction Conference

Within seven (7) days after the effective date of the Job Order, but before Contractor starts the Work at the site, unless otherwise specified in the Contract Documents, a conference will be held with Contractor, Project Manager, Contract Administrator and others as determined by the Project Manager for review of the schedules to establish procedures for handling Shop Drawings and other submittals, for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

**END ARTICLE 2** 

# ARTICLE 3 CONTRACT DOCUMENTS: INTENT, CORRELATION, EXECUTION OF AND OWNERSHIP OF CONTRACT DOCUMENTS

# 3.1 Intent

- 3.1.1 The Contract Documents comprise the entire Contract between City and Contractor concerning the Work.
- 3.1.2 The Detailed Scope of Work is complementary; what is called for by one is as binding as if called for by all.
- 3.1.3 It is the intent of the Detailed Scope of Work to describe a complete Project or part thereof or performance requirements to be completed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Detailed Scope of Work and the Contractor's Price Proposal as being required to produce the intended result shall be supplied whether or not it is specifically called for. Words, which have a well-known technical or trade meaning and are used to describe Work, materials or equipment, shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of Price Proposal Submittal or on the effective date of the Job Order. However, no provision of any referenced standard specification, manual or code whether or not specifically incorporated by reference in the Detailed Scope of Work shall change the duties and responsibilities of City or Contractor, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Detailed Scope of Work shall be issued by Project Manager as provided for in section 9.2.

# 3.2 Correlation of the Contract Documents

- 3.2.1 Each Contract Document is an essential part of the Contract between the City and the Contractor. The Contract Documents are intended to be complementary and prescribe and provide for all Work required by the Job Orders. Anything mentioned in the Specifications and not shown in the Detailed Scope of Work or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. Any Work, materials or equipment that has not been specifically included in the Detailed Scope of Work, but which is reasonably required to produce the intended result shall be provided by the Contractor as though it had been specifically included.
- 3.2.2 If there are discrepancies between the various Contract Documents, Specifications shall govern over Conditions and Drawings, Drawings shall govern over Conditions, larger scale drawings shall govern over smaller scale drawings, Supplementary Conditions shall govern over General Conditions, computed dimensions shall govern over scaled dimensions, and specific descriptions shall govern over general ones.

3.2.3 In the event of a conflict between the Detailed Scope of Work or the Contract Documents and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the Work or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern and be considered as a part of this Contract in order to afford the City the maximum benefits thereof.

# 3.3 No Warranties by the City

- 3.3.1 No information derived from inspection of records or reports of investigation concerning the Work or conditions at the site(s) of the Work made or provided by the City will in any way relieve the Contractor from its responsibility for properly performing its obligations under the Contract Documents. Such records and reports are provided solely for the convenience of the Contractor with no warranties whatsoever, express or implied, by the City. Such records and reports are not part of the Contract Documents. The Contractor shall make its own conclusions and interpretations from the data supplied, information available from other sources, and the Contractor's own observations.
- 3.3.2 The Contract Documents will be governed by the laws of the State of Washington.

**END ARTICLE 3** 

# ARTICLE 4 PHYSICAL CONDITIONS AND REFERENCE POINTS

# 4.1 Unforeseen Physical Conditions

Contractor shall promptly notify Project Manager in writing of any latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Detailed Scope of Work. Project Manager will promptly review those conditions. If Project Manager finds that there are latent physical conditions which differ materially from those intended in the Detailed Scope of Work, Project Manager will prepare a Supplementary Job Order incorporating modifications to plans and specifications as necessary to proceed with and complete the Work.

**END ARTICLE 4** 

#### ARTICLE 5 BONDS AND INSURANCE

# **5.1** Performance Bond

Contractor shall furnish a duly executed Performance Bond upon a form provided by the City within ten (10) calendar days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety which is registered with the Washington State Insurance Commissioner and the surety's name shall appear in the current Authorized Insurance Company List for the State of Washington published by the Office of the Insurance Commissioner and must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the surety must be rated "A-, FSC (6)" or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in an amount equal to the amount stated in the Proposal Requirements and conditioned upon the faithful performance of the Contract by the Contractor.

If the Surety on any Performance Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state of Washington, or it ceases to meet the requirements as stated above, Contractor shall within five days thereafter substitute another Bond and Surety. City reserves the right to approve or reject any substitute Bond and Surety.

The Performance Bond will initially be in the penal sum equal to \$2,000,000. In the event the parties agree to exercise to extend the Contract, or if the cumulative amount of Work issued and not yet completed and accepted exceeds such amount, the Contractor shall deliver a new Performance Bond or a rider as required by the City.

For a Federally Funded Work Order, the Contractor may be required to submit an additional performance bond in accordance with the applicable Federal Contract Clauses.

# 5.2 Payment Bond

Contractor shall also furnish a duly executed Payment Bond upon a form provided by the City, within ten (10) calendar days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety which is registered with the Washington State Insurance Commissioner and the surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner and must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the surety must be rated "A-, FSC (6)" or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in the amount stated in the Proposal Requirements and conditioned upon the payment by the Contractor to all laborers, mechanics, Subcontractors, suppliers, and all persons who shall supply for the performance of the Work covered by this Contract.

If the Surety on any Payment Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state of Washington, or it ceases to meet the requirements as stated above, Contractor shall within five days thereafter substitute another Bond and Surety. City reserves the right to approve or reject any substitute Bond and Surety.

The Payment Bond will initially be in the penal sum equal to \$2,000,000. In the event the parties agree to exercise to extend the Contract, or if the cumulative amount of Work issued and not yet completed and accepted exceeds such amount, the Contractor shall deliver a new Payment Bond or a rider as required by the City.

For a Federally Funded Work Order, the Contractor may be required to submit an additional payment bond in accordance with the applicable Federal Contract Clauses.

# 5.3 Contractor's Liability Insurance

- 5.3.1 Contractor shall purchase and maintain such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
  - a. <u>Commercial General Liability Insurance</u> on an Occurrence Basis in an amount not less than \$2,000,000 per occurrence and at least \$5,000,000 in the annual aggregate, including but not limited to:
  - 1. Bodily Injury Liability;
  - 2. Property Damage Liability (to include explosion, collapse and underground);
  - 3. Blanket Contractual Liability;
  - 4. Premises/Operations (including off-site operations);
  - 5. Broad Form Property Damage Liability;
  - 6. Products: Completed Operations Liability;
  - 7. Personal Injury Liability;
  - 8. Liability for Property of Others in the Care, Custody and Control of the Contractor.

Commercial General Liability Insurance shall be written on Insurance Services Office ("ISO") occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products- completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named an insured under the Contractor's Commercial General Liability insurance policy with respect to the Work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

b. Comprehensive Automobile Liability Insurance in an amount not less than

\$1,000,000 per occurrence, including but not limited to:

- 1. Bodily Injury Liability;
- 2. Property Damage Liability;
- 3. Personal Injury Liability;
- 4. Owned and Non-Owned Auto Liability;
- 5. Hired and Borrowed Auto Liability.

Comprehensive Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles as well as employee vehicles utilized in performance or the Work or at the Work site shall be provided. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. The insurance policy shall be endorsed to provide contractual liability coverage.

c. <u>Worker's Compensation</u> as required by Washington law and <u>Employer's Liability Insurance</u> (<u>Stop Gap</u>) with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Contractor shall require each subcontractor to provide Worker's Compensation Insurance for its employees, unless the Contractor covers such employees.

Contractor shall comply with the following conditions and procure and keep in force during the term of this Contract, at Contractor's own cost and expense, the 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 VII, by A.M. Best Company and which are acceptable to the City.

The Contractor's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance or other coverage maintained by the City shall be for the protection of the City and excess to the Contractor's insurance and shall not contribute with it. The above liability policies shall be endorsed to contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Contract.

The Insurer or his/her agent will furnish to the Contract Administrator upon request, prior to any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

Contractor shall provide the Contract Administrator, prior to any Work being performed, a Certificate of Insurance and additional insured endorsement(s) acceptable to the City Attorney evidencing the above-required insurance(s) and 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 this Contract; and that such insurance shall apply as primary insurance on behalf of such Additional Insureds. The City shall be named as an Additional Insured by endorsement using ISO Form CG 2010 or equivalent. Receipt by the City of

- any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.
- 5.3.2 <u>Contractor's Insurance for Other Losses</u>. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or subcontractors as well as to any temporary structures, scaffolding and protective fences.

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

In case of breach of any provision of this section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Contractor, such types of insurance in the name of the Contractor, 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 Contractor under this Contract or may demand Contractor to promptly reimburse the City for such cost.

#### 5.4 Contractor Pollution Liability

5.4.1 If a Job Order requires Contractor Pollution Liability, the successful Contractor(s) will be required to provide Contractor Pollution Liability with minimum limits of liability not be less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one (1) year.

If the Contractor Pollution Liability coverage is written on a claims-made form:

- a. The retroactive date must be shown and must be before the date of the Contract or the start of Work;
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Work;
  - c. If coverage is canceled or non-renewed and not replaced with another claims- made policy form with a retroactive date prior to the Contract Date the Contractor must purchase an extended period coverage for a minimum of five (5) years after the completion of the Work;
    - d. A copy of the claims reporting requirements must be submitted to the City for review.

# END ARTICLE 5



#### ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

# 6.1 Examination of the Site of Work and Detailed Scope of Work

- 6.1.1 By submitting a Job Order Proposal for a Job Order, the Contractor represents that it has carefully examined and investigated the site(s) of the Work, including material site(s), and Detailed Scope of Work. The submission of its Job Order Proposal shall be conclusive evidence that the Contractor represents and acknowledges that it has made such examinations and investigations and is satisfied as to the conditions to be encountered in the performance of the Work, including the character, quantity, quality, and Detailed Scope of the Work, safety precautions to be undertaken, the quantities and qualities of materials to be supplied, and equipment and labor to be used, the requirements of the Detailed Scope of Work and how all such requirements correlate to the conditions at the site(s) of the Work.
- 6.1.2 The Contractor shall determine from careful examination of the Detailed Scope of Work and the site of the Work, the methods, materials, labor, and equipment required to perform the Work in full, and the Contractor shall reflect the same in its Proposal.

# 6.2 Error, Inconsistency, Omission or Variance in the Contract Documents

6.2.1 The Contractor shall promptly report to the Project Manager and/or the Contract Administrator any error, inconsistency, omission, or variance from applicable laws, statutes, codes, ordinances, or regulations which it discovers in the Detailed Scope of Work. If the Contractor promptly reports such discovery prior to commencement of any portion of the Work affected by any such error, inconsistency, omission, or variance, the Contractor shall not be liable to the City for damage resulting from such error, inconsistency, omission, or variance. If, however, the Contractor fails either to carefully study and compare the Detailed Scope of Work, or to promptly report the discovery of any error, inconsistency omission, or variance known or believed by the Contractor to exist, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages attributable to such error, inconsistency, omission, or variance.

# 6.3 Supervision

- 6.3.1 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Detailed Scope of Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Work. Contractor shall be responsible to see that the finished Work complies accurately with the Detailed Scope of Work.
- 6.3.2 Contractor will provide a competent resident supervisor who understands the contract and the task being performed to continuously oversee the contract work. Supervisor will not be replaced without written notice to Project Manager except under extraordinary circumstances. The supervisor will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the supervisor shall be as binding as if given to Contractor.
  - a. Any supervisor who repeatedly fails to follow the Project Manager's written or oral orders, directions, instructions, determinations or has proven to be incompetent, careless or negligent shall be subject to removal from the work

- site. Upon the written request of the Project Manager or Contract Administrator, the Contractor shall immediately remove such supervisor and name a replacement in writing.
- 6.3.3 Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform Work as required by the Detailed Scope of Work.

  Contractor shall at all times maintain good discipline and order at the site.
- 6.3.4 Non-compliance with the Project Manager's request to remove and replace personnel at any level shall be grounds for terminating the Contract under the terms of Article 13.
- 6.3.5 The Contractor shall be fully responsible to the City for the acts or omissions of its employees, agents, Subcontractors, Sub-Subcontractors, suppliers, and their agents and employees, and all other persons who are to perform any of the Work.
- 6.3.6 The Contractor may not assign any portion of this Contract without the City's prior written consent.

# 6.4 Labor, Materials, and Equipment

- 6.4.1 Contractor shall furnish all materials, equipment, labor, transportation, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- 6.4.2 All materials and equipment shall be of good quality and new, except as otherwise provided in the Detailed Scope of Work. If required by Project Manager, Contractor shall furnish satisfactory evidence (including reports or required tests) as to the kind and quality of materials and equipment.
- 6.4.3 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- 6.4.4 For equipment and materials that are permanently incorporated in the Work, the Contractor will provide to the Project Manager all Owners Manuals and Operating Instructions furnished by the equipment or material manufacturer.

# 6.5 Equivalent Materials and Equipment, "or Equal"

6.5.1 Whenever materials or equipment are specified or described in the Detailed Scope of Work, Drawings, Construction Task Catalog® or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by Project Manager if sufficient information is submitted by Contractor to allow Project Manager to determine that the material or

- equipment proposed is equivalent to that named. The procedure for review by Project Manager will be as set forth in sections 6.5.2 below as supplemented in the General Requirements.
- 6.5.2 Requests for review of substitute items of material and equipment will not be accepted by Project Manager from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Project Manager for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by Project Manager in evaluating the proposed substitute. Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute. Project Manager will be the sole judge of acceptability, and no substitute will be ordered or installed without Project Manager's prior written acceptance. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

#### 6.6 Disposal of Demolished Materials

- 6.6.1 Waste material is defined as all material from demolition or other source that is unsuitable to, or in excess of the needs of the work, or material that is designated for removal and disposal off of City property. All waste materials shall become the property of the Contractor. Materials containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable Local, State and/or Federal regulations which shall be handled and disposed of as directed by applicable regulations, the Detailed Scope of Work and/or the Contract Documents.
  - Proof of proper disposal of substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous are required by the City.
- 6.6.2 The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the City harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration arising from or in any way connected with, the demolition, removal or disposal of materials, except as specified for hazardous materials.

- 6.6.3 The value of waste materials, if any, shall be reflected in the total Job Order price.
- 6.6.4 During the course of the Work, if Contractor encounters site materials that it believes may be hazardous, potentially hazardous, infectious, toxic or dangerous, Contractor will immediately notify the Project Manager and Contract Administrator.
- 6.6.5 The City will retain title to all hazardous waste presently on-site encountered during demolition and removal. This does not include hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste according to the Detailed Scope of Work and the Contract Documents, following local, State, and Federal regulations. The City of Everett will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of City or generator of hazardous waste substances for non-contractor generated hazardous wastes.
- 6.6.6 Contractor shall follow all Environmental Protection Agency (EPA) and all other regulations regarding reporting the disposal of all materials.

#### **6.7** *Subcontractors and Sub-Subcontractors*

- 6.7.1 Mandatory Criteria: As required by RCW 39.06.020 and 39.04.350(1), all subcontractors must satisfy all of the following criteria:
  - At the time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
  - Have a current state unified business identifier number;
  - If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
  - Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
  - If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and
  - 6.7.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Project Manager may have reasonable objection. Acceptance of any Subcontractor, other person

or organization by City or Project Manager shall not constitute a waiver of any right of City to reject defective Work. If City after due investigation has reasonable objection to any Subcontractor other person or organization proposed by Contractor after the issuance of the Job Order, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

- 6.7.3 Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between City or any contractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any contractor or other person or organization, except as may otherwise be required by law. City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 6.7.4 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City. The City reserves the right to obtain copies of any Subcontractor and supplier agreements at any tier from the Contractor.
  - 6.7.5 Contractor will pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from City on account of their work. Contractor will impose similar requirements on Subcontractors to pay those parties with whom they have contracted.

#### 6.8 Patent Fees and Royalties

6.8.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Detailed Scope of Work for use in the performance of the Work and if to the actual knowledge of City its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Job Order. Contractor shall indemnify and hold harmless City and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Detailed Scope of Work, and shall defend all such claims in connection with any alleged infringement of such rights.

#### 6.9 Laws and Regulations

6.9.1 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If Contractor performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to Project Manager, Contractor shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Detailed Scope of Work, Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

#### **6.10** Taxes

6.10.1 Contractor shall pay all sales, consumer, use and other similar taxes required to be paid in accordance with the law of the State of Washington. All taxes are considered to be included in the Adjustment Factors.

# 6.11 Use of Premises

- 6.11.1 Contractor shall confine equipment, the storage of materials and equipment and the operations of workmen to areas permitted by the City, and shall not unreasonably encumber the premises with equipment or other materials or equipment.
- 6.11.2 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials. Contractor will leave the site clean and ready for occupancy by City and restore to original condition any portions of the site not designated for alteration by the Detailed Scope of Work.
- 6.11.3 Contractor will not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor will Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 Record Documents

6.12.1 Contractor shall keep one (1) record copy of all Specifications, Drawings, Addenda, modifications, Shop Drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These will be available to Project Manager and Contract Administrator for examination and shall be delivered to Project Manager for City upon completion of the Work before final payment is made.

# 6.13 Safety and Protection

- 6.13.1 Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to:
  - All employees on the Work and other persons who may be affected thereby;
  - b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and,
  - c. Other property at the site or adjacent thereto, including vegetation, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
  - d. It will be the Contractor's responsibility to protect the Work and repair any damages to the Work until after Final Acceptance, as defined in Article 12, has been achieved.
- 6.13.2 Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and will erect and maintain all necessary safeguards for such safety and protection. Contractor will notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work will continue until such time as all the Work is completed and Project Manager has issued a notice to Contractor in accordance with these General Conditions that the Work is acceptable.
- 6.13.3 Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's supervisor unless otherwise designated in writing by Contractor to City.

# 6.14 Emergencies

6.14.1 In emergencies affecting the safety or protection of persons, Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager, is obligated to act to prevent threatened damage, injury or loss. Contractor will give Project Manager and Contract Administrator prompt written notice of any significant changes in the Work or deviations from the Detailed Scope of Work caused thereby.

# 6.15 Shop Drawings and Samples

- 6.15.1 After checking and verifying all field measurements, Contractor will submit Shop Drawings to Project Manager for review and approval, as specified in the Job Order. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Project Manager to review the information as required.
- 6.15.2 Contractor will promptly submit to Project Manager for review and approval all samples required by the Job Order. All samples will have been checked by and stamped with the approval of Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- 6.15.3 At the time of sample & drawings submission, any identified deviations from the Detailed Scope of Work will be called in writing to the Project Manager's attention.
- 6.15.4 Project Manager will review Shop Drawings and samples within fifteen (15) days, but Project Manager's review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Detailed Scope of Work and will not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor will make any corrections required by Project Manager and return the required number of corrected copies of Shop Drawings and resubmit new samples for review and approval. Contractor will direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to City and Project Manager that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Detailed Scope of Work and the Contract Documents.
- 6.15.5 Where a Shop Drawing or sample is required by the Job Order, no related Work shall be commenced until the submittal has been reviewed and approved by Project Manager.

#### **6.16** Continuing the Work

6.16.1 Contractor shall carry on the Work and maintain the progress schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and City may otherwise agree in writing.

#### 6.17 Warranties

- 6.17.1 All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Detailed Scope of Work. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered defective.
- 6.17.2 All Subcontractors', Sub-Subcontractors', manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the Contractor for the benefit of the City without the necessity of separate transfer or assignment thereof. When directed by the Project Manager or required by the Contract Documents, the Contractor shall require that Subcontractor, Sub-Subcontractor, manufacturers, and Suppliers execute separate warranties and guarantees in writing directly to the City. Warranty provisions which support to limit or alter the City's rights under the Contract Documents are null and void.
- 6.17.3 The Contractor warrants that title to all Work, materials and equipment covered by a request for a progress payment or final payment will pass to the City either by incorporation in the Work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. The Contractor further warrants that no Work, materials, or equipment covered by a request for a progress payment or final payment will have been acquired by the Contractor, or by any other person performing Work at the project site or furnishing materials and equipment for the project, which Work, materials, or equipment are subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller of the same or is otherwise imposed by the Contractor or other person.

#### 6.18 Not Used

#### 6.19 Progress Schedule

Within ten (10) days after the effective date of the Notice to Proceed and prior to start of Work unless otherwise specified in the Job Order, Contractor will prepare and submit a Progress Schedule in a form satisfactory to the Project Manager. Failure to submit a proposed Progress Schedule within the allowed time will not constitute grounds for an extension of the Job Order Completion Time.

- 6.19.1 The Progress Schedule will consist of a network analysis of the Critical Path Method (CPM) in arrow diagram form showing an activity description, cost, and calendar day duration for all significant design, manufacturing, construction, and installation activities. An activity list will be included with each copy of the Progress Schedule.
- 6.19.2 Within thirty (30) calendar days after receipt, the City will review, add comments and return three (3) copies of the Progress Schedule to the Contractor. Review by the City of the proposed Progress Schedule does not constitute an approval of the Contractor's construction means, methods, sequences, or schedule.

- 6.19.3 The Progress Schedule shall outline the proposed operations, the interrelations of the various operations, and the order of performance in sufficient detail that progress of the Work can be evaluated accurately at any time during the performance of the Work. If abbreviations are used in the make-up of the Progress Schedule, a legend is to be provided to define all abbreviations.
- 6.19.4 If milestone completions are required by the Job Order, then those milestones are to be clearly defined on the Progress Schedule.
- 6.19.5 Should it become evident that the Contractor may fail to meet the scheduled dates as shown, the Project Manager may require the Contractor to submit a recovery schedule demonstrating its proposed plan to make up lag in scheduled progress and to ensure completion of the work within the Job Order Completion Time. The Contractor, upon request, will be required at Contractor's own expense to submit a revised Progress Schedule and to increase Contractor's work force and working hours (second and third shifts) as required to bring the actual completion dates of the activities into conformance with the Progress Schedule. Further, Contractor will submit a revised Progress Schedule at no cost to the City when, in the opinion of the Project Manager, Contractor's sequence of Work varies significantly from that shown on the Progress Schedule. The City reserves the right to withhold progress payments until such time as an approved modified Progress Schedule in a form satisfactory to the Project Manager has been provided by the Contractor.
- 6.19.6 Failure of the Contractor to substantially comply with the requirements of this section may be considered grounds for a determination by the City that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified, and to take whatever action the City deems necessary and appropriate under the terms of the Contract Documents.

# 6.20 On-Site Documents

6.20.1 The Contractor is to maintain at the Project site, in good order for ready reference by the Project Manager, one (1) complete record copy of the Detailed Scope of Work, including changes in the Work, Field Orders, and all working drawings, Progress Schedule, and other approved submittals.

The Job Order record drawings are to be marked to truly record all changes made during construction, i.e., the "as-built" conditions. The Project's record drawings are to be updated on a weekly basis and before elements of the Work are covered or hidden from view. After the completion of the Work or portions of the Work and before requesting final inspection, the record copy of the Drawings will be given to the Project Manager.

# **6.21** Working Drawings, Product Data, Samples, and Other Submittals

6.21.1 The Contractor will review and submit all working drawings, product data, samples and other items required to be submitted to the City accompanied by a "shop drawing multi-transmittal" form. Such submittals will be given to the City

in a complete and final form at least thirty (30) days prior to any Contractor need for review response or such other longer time that may be needed to allow time for detailed review by the City or others. The Contractor should allow sufficient time for the possibility of rejection of the submittal, needed revisions, and resubmittal review time.

- 6.21.2 By submitting working drawings, product data, and samples, the Contractor represents that it has determined and verified all materials, field measurements, and related field construction criteria are in accordance with the Detailed Scope of Work, and that the Contractor has checked and coordinated the information contained within the submittal with the requirements of the Detailed Scope of Work. The costs incurred by the City to review resubmitted working drawings, product data, and samples may be offset from any monies due the Contractor when the Contractor has failed to comply with this Subsection.
- 6.21.3 Review and approval by the City of the Contractor's working drawings, product data, or samples does not relieve the Contractor of responsibility for the accuracy of dimensions and details. Likewise, any review and comments do not relieve the contractor from complying with every requirement of the Job Order drawings and specifications unless the Contractor has called written attention to any deviations contained in the submittal and these deviations have been reviewed and accepted. By omission of any feature, capability or part of any item submitted the Contractor implies that these missing features, capabilities or parts will be furnished exactly as required by the Job Order documents. Review and approval shall not constitute acceptance by the City of the correctness or adequacy of such submittals, nor shall it constitute a representation or warranty by the City that the drawings will satisfy the requirements of the Job Order. The review of a specific item shall not indicate approval of an assembly in which the item functions. The City's review or approval of a submittal shall not relieve the Contractor from responsibility for errors or omissions in the submittals.
- 6.21.4 Any Work delayed by reason of a properly rejected submittal is deemed to be entirely the Contractor's risk and will not be the basis for a claim by the Contractor for additional compensation or an extension of Job Order Completion Time. Drawings marked "subject to change" or the like will not be reviewed. The City is not required to review submittals that depend for their review on other submittals not yet submitted.
- 6.21.5 When resubmitting a submittal, the Contractor is to direct specific attention, in writing or on the resubmittal itself, to all revisions it has made.
- 6.21.6 No portion of the Work requiring submittal of a working drawing, product data, or sample is to be commenced until the submittal has been approved by the City as provided in these General Conditions. All portions of the Work involving submittals shall be performed in accordance with the approved submittals.

- 6.22.1 The Contractor will be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.
- 6.22.2 The Contractor will not damage or endanger any portion of the Work, other work of the City, or that of any separate Contractor's by cutting, fitting, patching or other altering of any work, or by excavation. The Contractor will not alter any of the work of the City or any separate Contractor without written authorization from the City.

# **Inspection of the Work**

6.22.3 The Project Manager or authorized representative shall have the right but not the obligation to inspect the Work, and to reject and refuse all labor and materials or methods of application, or any part thereof, which does not comply in kind, quality or material with the requirements of the Detailed Scope of Work. Any labor or material rejected, as not conforming to the Contract Documents shall be promptly removed. Labor and materials which do so conform will be furnished and delivered in place thereof; and if the Contractor refuses or neglects to remove such rejected material or to rebuild any such rejected Work, or otherwise correct the defects as the Project Manager directs, the City may obtain, use and employ materials, labor, tools and implements to do the same and the expense thereof will be deducted from moneys which may otherwise be due or become due to the Contractor.

#### **Uncovering of Work**

- 6.22.4 If any portion of the Work should be covered prior to inspection called for by law or as required by the Contract Documents, the Contractor will, upon request of the Project Manager, uncover or remove the Work for inspection by the Project Manager or other governmental representatives, and replace the Work to the standard required by the Detailed Scope of Work, all at the Contractor's expense.
- 6.22.5 If any other portion of the Work has been covered or completed, the Contractor will, upon the request of the Project Manager, remove or uncover such Work for the Project Manager's observation. The Contractor will subsequently restore that portion of the Work to the standard required by the Detailed Scope of Work at no additional costs to the City.

#### **Correction of Work**

6.22.6 The Contractor will, at no additional expense to the City, promptly correct all Work which is defective or otherwise fails to conform to the requirements of the Detailed Scope of Work. Such Work is to be corrected even though it was previously inspected by the City, payment for it was included in a progress payment, whether or not it was completed, and whether or not it was observed before or after the date of Substantial Completion.

- 6.22.7 If, within one (1) year after Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable additional warranty required by the Job Order, any of the Work is found to be defective or otherwise not in conformance with the Detailed Scope of Work, the Contractor will, at its cost, promptly correct such defective or non-conforming Work after receipt of written notice from the City. The obligation of this subsection shall survive termination of the Contract.
- 6.22.8 If the Contractor refuses or neglects to correct the defects as directed by the Project Manager, the City may obtain, use and employ materials, labor, tools and implements to do the same and the expense thereof shall be deducted from moneys which may otherwise be due or become due to the Contractor or the City. If the Contractor fails to promptly correct defective or non-conforming Work, the City may correct it as provided in section 6.25 or may terminate this Contract.
- 6.22.9 Work corrected by the Contractor pursuant to section 6.25 will also be subject to the provisions of this section to the same extent as Work originally performed and for an additional one-year period commencing upon City acceptance of corrected work.
- 6.22.10 Nothing contained in this section is to be construed to establish a period of limitation with respect to any other obligation imposed on the Contractor by the Contract Documents or law, including the obligations imposed by section 6.17. The establishment of the time period of one year after the date of Final Completion Acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Job Order relates only to the specific obligation of the Contractor to correct defective or non-conforming Work, and bears no relationship to the time within which the Contractor's obligation to comply with the Job Order may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to obligations imposed on it by the Contract Documents or as otherwise may exist in law.
- 6.22.11 The City may, at its sole option, elect to retain defective or nonconforming Work. In such case, the Contractor will reduce the Job Order Price in a reasonable amount to account for such defect or non-conformance.

# **Responsibility for Work**

6.22.12 All Work performed under the Contract and all materials to be incorporated in the Work, whether in storage or on the Project site and whether under the care, custody and control of the Contractor, Subcontractor, or Sub-Subcontractor, shall be at the sole risk of loss and responsibility of the Contractor until Final Completion of the entire Project, except as may be limited by the Project Manager in writing for the period following Substantial Completion of the Work or designated portion thereof as provided in section 12.4. Damage from any cause to either permanent or temporary Work, utilities, materials, equipment,

existing structures, the Project site, and other property owned by the City or others, shall be repaired by the Contractor to the satisfaction of the Project Manager at no additional cost to the City. At no time during the execution of this Contract shall the Contractor direct City staff or City agents to assist in the execution of the Work.

#### **Hazardous Materials**

- 6.22.13 The Contractor will comply with WAC 296-901 Global Harmonized System for Hazard Communication; and provide properly communications with personnel to prevent injury or illness.
- 6.22.14 The Contractor will take the following precautions to lessen the possibility of exposure to any hazardous material(s):
  - Notify all Subcontractors and/or suppliers of any Hazardous Materials that may be on site;
  - Label any Hazardous Materials brought on site as to contents, hazard warning, name and address of manufacturer;
  - Provide the following written information to Project Manager prior to commencement of Work:
    - 1. A list of Hazardous Materials to be used during the construction phase of the Work along with appropriate Material Safety Data Sheets.
    - 2. A list of any Hazardous Materials that have been incorporated into the project and will remain on site, along with the Material Safety Data Sheets.
- 6.22.15 Contractor is not to cause or permit any Hazardous Material(s), as defined herein, to be brought upon, kept or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required pursuant to the Contract Documents.

Removal of such Hazardous Materials will be undertaken within twenty-four (24) hours following City's demand for such removal. Removal will be undertaken by Contractor at its sole cost and expense and will be performed in accordance with all applicable laws. Any damage to the Work, the job site or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials will be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor will immediately notify City of any release or discharge of any Hazardous Materials on the job site. Contractor will be responsible for making any and all disclosures required under applicable "Community Right-to- Know" laws. Contractor will not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue

and waste materials resulting from any such cleaning or servicing will be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor will immediately notify City of any citations, orders or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site. Without limiting any other indemnification provisions pursuant to law or specified in this Contract, Contractor will indemnify, defend at Contractor's sole cost with legal counsel approved by City and hold City harmless from and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from or about the job site, arising out of or relating to, directly or indirectly, Contractor's failure to comply with any of the requirements of Section 6.27.

#### Clean-up

- 6.22.16 At all times, and as may specifically be requested by the Project Manager, the Contractor will clean-up and remove all refuse resulting from the Work in order that the Project site remains free from an accumulation of construction debris. Upon failure to do so within 24 hours after request by the Project Manager, such clean-up Work may be done by the City and the cost be charged to the Contractor and deducted from the Job Order Price.
- 6.22.17 Upon completion of the Work and before final inspection, the Contractor will clean the entire Work premises occupied or used in connection with the Work of all rubbish, surplus and discarded materials, false work, temporary structures, equipment, and debris. The entire Work premises shall be left in a clean, neat, and presentable condition. The Contractor will not remove warning, regulatory, or guide signs prior to Final Completion Acceptance except as requested by the Project Manager.

# **Protection of Work During Suspension**

6.22.18 In preparation for and during any suspension of Work as provided in section 13.1, the Contractor will take every precaution to prevent damage to, or deterioration of, the Work. Except as provided elsewhere in the Job Order, the Contractor will be responsible for all damage or deterioration to the Work during the period of suspension and shall, at its sole expense, correct or restore the Work to a condition acceptable to the Project Manager prior to resuming Work. A suspension of Work will not relieve the Contractor of any of its responsibilities under the Job Order.

### **Notice and Detailed Breakdown of Claim**

6.22.19 Notice. If unforeseen conditions or changes in the Work arise for which the Contractor believes an equitable adjustment in time or money or any other adjustment in Job Order Completion Time or Job Order Price is or will be due, the Contractor will give the City immediate oral notice followed by written notice within seven (7) calendar days of such event. In all events, Notice must be given

- and the Project Manager's direction received prior to performing the Work which Contractor believes entitles it to such adjustments. Notice must identify in detail the basis for the claim. The date such written notice is received by the City shall define the start of time for any purpose regarding the claim.
- 6.22.20 Detailed Breakdown. Within thirty (30) calendar days of the City's receipt of written notice above, the Contractor is to provide the City with a written breakdown of all of the elements and sub elements of the claim detailing the increase in the Job Order Completion Time or Job Order Price being sought.
- 6.22.21 If the Contractor fails to satisfy the requirements of this section, the Contractor will be deemed to have waived all rights to assert the claim against the City.
- 6.22.22 Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- 6.22.23 For Federally Funded Job Orders, the requirements in this Section 6.30 are in addition to any claim requirements in the Federal Contract Clauses.

# **6.23** Prerequisite to Suit

No legal action against the City may be filed on account of a claim or other liability arising out of or related to Work unless:

- a. The requirements of section 6.30 have been complied with; and,
- b. The lawsuit is filed and served on the City within one hundred eighty (180) days of the date of Substantial Completion. The Contractor's failure to strictly comply with all requirements of this section shall be a complete bar to any claims, suit or cause of action against the City.

For Federally Funded Job Orders, the requirements in this Section 6.31 are in addition to any claim requirements in the Federal Contract Clauses.

# 6.24 Indemnification

6.24.1 The Contractor shall defend, indemnify and hold harmless the City and its agents from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of the Work, which is caused, or alleged to be caused, in whole or in part, by any negligent act or omission of the Contractor (which for the purposes of this Article 6.33 shall include the Contractor and all of its Subcontractors, SubSubcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the City or its agents, and (2) the Contractor, it is expressly agreed that the Contractor's obligations of indemnity under this section shall be effective only to the extent of the Contractor's

- negligence. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this section. This section shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the City from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the City or its agents.
- 6.24.2 In any and all claims against the City or its agents, the indemnification obligation of Article 6.32.1 above shall not be limited in any way to the extent of insurance coverage described in Articles 5.3 and 5.4 of the General Conditions, or by articles, which apply to insurance coverage, of the Supplementary Conditions, or by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor under applicable workers' compensation, benefit, or disability laws (including, but not limited to the Industrial Insurance laws, Title 51 of the Revised Code of Washington). The Contractor expressly waives any immunity the Contractor might have had under such laws with respect to the indemnities set forth in these General Conditions, and, by agreeing to enter this Contract, acknowledges that the foregoing waiver has been mutually negotiated by the parties.
- 6.24.3 For federally funded job orders, the following clause applies:

# **No Federal Government Obligations to Third Parties**

- (1) The City of Everett and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**END ARTICLE 6** 

# ARTICLE 7 ADDITIONAL WORK AND WORK BY OTHERS

#### 7.1 Additional Work

- 7.1.1 City may perform additional work related to the Project by itself or let other direct contracts which may contain General Conditions similar to these. Contractor shall afford the other contractors who are parties to such direct contracts (or City, if City is performing the additional work with City employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its Work with theirs.
- 7.1.2 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or City, Contractor shall inspect and promptly report to Project Manager in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.
- 7.1.3 Contractor will do all Work required to make its several parts come together properly and integrate with such other work. Contractor will not endanger any work of others by otherwise altering their work and will only alter their work with written consent of Project Manager and the others whose work will be affected.
- 7.1.4 If the performance of additional work by other contractors or City was not noted in the Detailed Scope of Work, written notice will be given to Contractor prior to starting any such additional work. City will coordinate and schedule any such additional Work not noted in the Detailed Scope of Work to avoid interference or conflict with ongoing or scheduled work by the Contractor.

**END ARTICLE 7** 

# **ARTICLE 8 CITY'S RESPONSIBILITIES**

# **8.1** Authority of the Project Manager

- 8.1.1 A Project Manager's authority is specific to the Job Order to which he or she is assigned.
- 8.1.2 The Contract Administrator will exercise all authority of the Project Manager with respect to any and all Job Orders at any time.
- 8.1.3 The Contract Administrator will be the City's representative and shall administer all contract documents. With respect to a Job Order, Final Acceptance as provided for in Article 12 will be accomplished by the Project Manager. The Project Manager and the Contract Administrator have the authority to enforce all obligations imposed on the Contractor by the Contract Documents.
- 8.1.4 The Work will be performed in accordance with the Detailed Scope of Work and the Contract Documents. The Project Manager has the authority but not the obligation to reject Work that is defective or does not otherwise conform to the Detailed Scope of Work.
- 8.1.5 The Project Manager is not responsible for and will not have control or charge of the means, methods, techniques, sequences, or procedures of Work, or for safety precautions or programs incidental thereto, these being the sole responsibility of the Contractor. The Project Manager will not be responsible for or have any control or charge of the acts or omissions of the Contractor, Subcontractor, Sub-Subcontractor, suppliers, or any of their agents or employees, or any other persons performing a portion of the Work.
- 8.1.6 City will issue all communications to Contractor through the Project Manager or Contract Administrator, as determined. In case of termination of the employment of Project Manager or Contract Administrator, the City will appoint a replacement(s).

#### 8.2 Administration of the Contract

8.2.1 Nothing in this Article or elsewhere in the Contract Documents shall be construed as requiring the Project Manager, Contract Administrator, Inspector, consultant, or other representative of the City to direct or advise the Contractor as to the method or manner of performing the Work. No approval or advice given by the City as to the method or manner of performing the Work or procuring materials to be furnished will constitute a representation or warranty by the City that the result of such method or manner will conform to the Detailed Scope of Work or achieve the desired results. Such approval or advice will neither relieve the Contractor of any of its obligations under the Contract nor create any liability to the City on account of approval or advice. The Project Manager or Inspectors may call to the attention of the Contractor defective Work or Work that does not conform otherwise to the Detailed Scope of Work. However, the failure of the Project Manager or inspectors to so

- inform the Contractor will not constitute approval or acceptance of such defective or non- conforming Work.
- 8.2.2 The presence of the Project Manager or Inspector during the progress of any Work does not relieve the Contractor from responsibility for defects in the Work, nor does it bind the City in determining Final Completion Acceptance of the Work.
- 8.2.3 Work done or material furnished which at any time is found not to conform to the requirements of the Contract Documents shall be at the Contractor's risk and expense and shall furnish no basis for an increase in the Contract Sum or Contract Time, even though the Project Manager or inspector fails to reject such Work or material.

# 8.3 City's Right to Carry Out Other Work

8.3.1 The City reserves the right at all times to perform or cause to be performed other and additional work on or near the site of the Project. Should such other or additional work or City operations be either underway or subsequently undertaken at or near the Project, the Contractor will coordinate its activities with those of all other work forces and conduct its activities to avoid or minimize any conflict between the operations of the Contractor and those persons performing the other or additional work or operations.

Officers and Employees of the City Have No Personal Liability.

Neither the Elected officials, Project Manager, Contract Administrator, Inspector, nor any other officer, employee or agent of the City shall be personally liable to Contractor for any of their acts or omissions arising out of the Project.

#### 8.4 Gratuities

8.4.1 The Contractor will not extend any loan, gratuity, or gift of money or services in any form whatsoever to any employee or officer of the City or City consultant, nor will the Contractor rent or purchase any equipment, materials, or services from any employee or officer of the City or City consultant.

#### 8.5 Service of Notices on the Contractor

8.5.1 Any written notice required under the Contract Documents to be given to the Contractor may, at the option of the City, be served on the Contractor by personal service, electronic or facsimile transmission, mail, or private courier delivery to the last address provided in writing to the City Project Manager and Contract Administrator. For the purpose of measuring time in determining the parties' rights and obligations with respect to notice given pursuant to the Job Order and Contract Documents (other than that given by the personal service) is conclusively presumed to be received by the Contractor on the next business day following the City's electronic or facsimile transmittal placing the notice in the U.S. mail or delivering it to the private courier.

# ARTICLE 9 PROJECT MANAGER'S STATUS DURING WORK

#### 9.1 City's Representative

9.1.1 Project Manager will be City's representative for a Job Order. The Project Manager and City's Contract Administrator will be identified to the Contractor prior to commencement of the work.

# 9.2 Clarifications and Interpretations

9.2.1 Project Manager will issue with reasonable promptness such written clarifications or interpretations of the Detailed Scope of Work in the form of Drawings or otherwise as Project Manager may determine necessary, which will be consistent with or reasonably inferable from the overall intent of the Detailed Scope of Work. If Contractor believes that a written clarification or interpretation justifies an increase in the Job Order Price or Job Order Completion Time, Contractor may make a claim as provided in Article 10.

# 9.3 Rejecting Defective Work

9.3.1 Project Manager will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.

#### 9.4 Not Used

# 9.4 Decisions on Disagreements

- 9.5.1 The Contract Administrator will be the initial interpreter of the Contract Documents while the Project Manager will be the initial interpreter of the requirements of the Job Order and judge of the acceptability of the Work. Additional disputes relating to the acceptability of the Work or the interpretation of the requirements of the Detailed Scope of Work or Contract Documents pertaining to the execution and progress of the Work shall be referred to the Contract Administrator in writing with a request for a formal decision in accordance with this section, which Contract Administrator will render in writing within a reasonable time. Written notice of each such dispute shall be delivered by the claimant to Contract Administrator within fifteen (15) calendar days of the occurrence after the event giving rise thereto and written supporting data will be submitted to Contract Administrator within forty-five (45) calendar days of such occurrence unless the Contract Administrator allows an additional period of time to ascertain more accurate data.
- 9.5.2 The rendering of a decision by Contract Administrator pursuant to section 9.6.1 with respect to any such dispute (except any which have been waived by the making or acceptance of final payment as provided in section 12.8) will be a condition precedent to any exercise by City or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such dispute.

#### 9.5 Limitations on Project Manager's Responsibilities

- 9.6.1 Neither Project Manager's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by Project Manager in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Project Manager to Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.
- 9.6.2 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of Project Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents unless there is a specific statement indicating otherwise. The use of any such term or adjective never indicates that Project Manager shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of sections 9.7.2 or 9.7.3.
- 9.6.3 Project Manager will not be responsible for Contractor's means, methods, techniques, sequences or procedures of Work, or the safety precautions and programs incident thereto, and Project Manager will not be responsible for Contractor's failure to perform the Work in accordance with the Detailed Scope of Work.
- 9.6.4 Project Manager will not be responsible for the acts or omissions of Contractor or of any Subcontractor, or of the agents or employees of any Contractor or Subcontractor Contractor, or of any other persons at the site or otherwise performing any of the Work.

#### 9.7 Not Used

#### 9.8 Requests for Instruction

- 9.8.1 Due to the highly variable nature of the materials and facilities encountered within the site, the Contractor will require instructions from the Project Manager as new areas are uncovered or exposed by the work in progress. In the event that the Contractor requests such instructions in order to comply with the Contract requirements, the Project Manager will provide the instructions in writing, within forty-eight (48) hours. During the 48-hour period, no additional payments will be made to the Contractor for equipment, labor, or any other item related to the request for instructions.
- 9.8.2 In addition, the requirements of the Detailed Scope of Work may be supplemented and minor variations and deviations in the work may be authorized, in one or more of the following ways:

- a. Project Manager may authorize minor variations in the work from the requirements of the Detailed Scope of work which do not involve an adjustment in the Job Order Price or Job Order Completion Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on City, and also on Contractor who shall perform the work involved promptly. If Contractor believes that a Field Order justifies an increase in the Job Order Price or an extension of the Job Order Completion Time and the parties are unable to agree as to the amount or extent thereof. The Contractor may make a claim as provided in Article 10.
- b. Project Manager's approval of a Shop Drawing or sample.
- c. Project Manager's written interpretation or clarification.

**END ARTICLE 9** 

# ARTICLE 10 CHANGES IN THE WORK

#### 10.1 Changes to Contract Documents

#### Non-Job Order Specific Contract Documents.

Modification of the following Contract Documents after the effective date of the Contract requires a Contract amendment signed by an authorized representative of the Contractor and an authorized representative of the City: Contract, General Conditions, Supplementary Conditions, RFP and addenda thereto, Contractor's Proposal, and the Construction Task Catalog®.

#### **Job-Order Specific Contract Documents.**

Modification of the following Contract Documents and requirements after the effective date of the Contract are to be signed by the Contract Administrator and the Project Manager: all Job Orders and Job-Order specific documents, including but not limited to, the Detailed Scope of Work, Job Order Completion Time, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties. Any modification that increases/decreases the Job Order Price must be signed by the Contract Administrator.

# 10.2 Change Order and Supplemental Job Order

Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract.

The City, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.

Credits for Prepriced and Non-Prepriced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

All such Work shall be executed under the applicable conditions of the Contract Documents.

Project Manager may authorize minor changes that do not change the Job Order price, in the Work which are consistent with the overall intent of the Detailed Scope of Work. These may be accomplished by a Field Order and shall be binding on City, and also on Contractor who shall perform the change promptly.

Additional Work performed without authorization of a Supplemental Job Order will not entitle Contractor to an increase in the Job Order Price or an extension of the Job Order Completion Time.

Contractor may request a Supplemental Job Order to reflect modifications to the Work resulting from unforeseen site conditions. If Project Manager determines that such unforeseen site conditions require a modification of the Work, Project Manager will prepare a Supplemental Job Order for execution by the Contract Administrator incorporating such modifications as necessary to proceed with and complete the Work. The Contractor shall be responsible for reallocation of its work

force when work cannot be continued in an area due to unforeseen conditions. In no event will the City reimburse the Contractor for charges caused by delays unless prior written authorization is provided by the City.

# 10.3 Job Order Price

The Job Order Price constitutes the total compensation subject to authorized adjustments payable to Contractor for performing the Detailed Scope of work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Job Order Price.

Contractor Mobilization consists of preconstruction expenses and costs of preparatory work and operations performed by the Contractor that are not defined as a part of a payment item are considered to be part of the Job Order Price.

# 10.4 Job Order Completion Time

Any extension of Job Order Completion Time must have the written approval of the City and must conform to the procedures set forth here.

In event of delay in completion of the Work caused by acts of God, or the public enemy, or another contractor in the performance of a contract with the City, or caused by fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or weather, the sole and exclusive remedy of the Contractor will be an equitable extension of time allowed for completion.

Reasonable Delays. The Contractor should anticipate that some reasonable delays, including those caused by normal weather patterns, may occur. The Contractor shall not be entitled to any compensation, damages, or extension of the Contract Time for such reasonable delays.

Excusable Delays. The Job Order Completion Time may be extended without compensation by the City for a period equivalent to the time that the Contractor was delayed in the Work by one or more of the following causes, beyond the control of the City and the Contractor, occurring during the performance of the Work:

- a. Fire or other casualty for which the Contractor is not at fault or otherwise responsible;
- b. Strike, riot, war, or civil disorder;
- c. Suspension of Work due to unusual and severe weather;
- d. Suspension of Work due to other unsuitable conditions in accordance with Article 13.

Unreasonable Delays. Extensions of Job Order Completion Time, if any, will be determined by the Project Manager. Time extensions will be allowed only to the extent that completion of the Work is unreasonably delayed through no fault of the Contractor, which must in all cases unless otherwise determined by the Project Manager be substantiated by impact to the critical path on the Progress Schedule. Any extension of the Job Order Completion Time by the City will be set forth in writing, which shall specify the calendar days by which the Contract Time is to be increased.

No extension of time shall be allowed for any claimed delay which is caused by or results from concurrent delay or the fault, negligence, or collusion of the Contractor or its Subcontractors, suppliers, or any others, or any of their acts or failure to act or to timely perform the Work according to the Contract. Failure to make timely submittals to the City, procure materials or workmen, or perform the Work in accordance with the requirements of the Detailed Scope of Work, or to adequately plan for such functions will not be an adequate reason for an extension of the Job Order Completion Time.

In no event shall the Contractor be entitled to loss or damage, including a change in Job Order Price for any delay in the Contractor's prosecution of the Work, even if such delay is caused by the City, except to the extent such acts or omissions of the City result in a delay to the Project's critical path, in which case the Contractor may receive an adjustment to the Job Order Price and/or an extension of the Job Order Completion Time. Any request for such cost shall be established and documented by the Contractor in detail to the satisfaction of the Project Manager. If the Contractor fails to fully comply with section 6.30, its claim for an extension of the Job Order Completion Time or adjustment to the Job Order Price on account of such claimed delay is waived.

The Job Order Completion Time may only be changed by the City. Any request for an extension in the Job Order Completion Time shall be based on written notice delivered to the Project Manager and Contract Administrator within fifteen (15) days of the occurrence of the event giving rise to the request. All requests for adjustment in the Job Order Completion Time shall be determined by Contract Administrator if Project Manager and Contractor cannot otherwise agree. Any change in the Job Order Completion Time resulting from any such request shall be incorporated in a Field Order.

The Job Order Completion Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a request is made therefore as provided in this Article 10.

All time limits stated in the Job Orders and the Contract Documents are of the essence of the Contract. The provisions of this Article 10 shall not exclude recovery for damages including compensation for additional professional services for delay by either party.

**END ARTICLE 10** 

# ARTICLE 11 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

# 11.1 Warranty and Guarantee

Contractor warrants and guarantees to City that all Work will be in accordance with the Detailed Scope of Work and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

#### 11.2 Access to Work

Project Manager and Project Manager's representatives, other representatives of City, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

#### 11.3 Tests and Inspections

- 11.3.1 Contractor will give Project Manager a minimum of seven (7) days' notice of readiness of the Work for all required inspections, tests or approvals.
- 11.3.2 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work or part thereof to specifically be inspected, tested or approved, Contractor will assume full responsibility, pay all costs in connection, and furnish Project Manager with the required certificates of inspection, testing or approval. Contractor will also be responsible for and pay all costs in connection with any inspection or testing required in connection with City's or Project Manager's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by City unless otherwise specified.
- 11.3.3 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction will be performed by organizations acceptable to City and Contractor or by Project Manager if so specified.
- 11.3.4 If any Work that is to be inspected, tested or approved is covered without written concurrence of Project Manager, it must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover such Work and Project Manager has not acted with reasonable promptness in response to such notice.
- 11.3.5 Neither observations by Project Manager nor inspections, tests or approvals by others will relieve Contractor from its obligations to perform the Work in accordance with the Detailed Scope of Work.

# 11.4 City May Stop the Work

If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor or any other party.

#### 11.5 Correction or Removal of Defective Work

If required by Project Manager, Contractor shall promptly, without cost to City and as specified by Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Project Manager, remove it from the site and replace it with non-defective Work.

# 11.6 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. In such case, if acceptance occurs prior to Project Manager's recommendation of final payment, a Supplemental Job Order shall be issued incorporating the necessary revisions in the Detailed Scope of Work, including appropriate reduction in the Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to City.

# 11.7 City May Correct Defective Work

If Contractor fails within a reasonable time after written notice of Project Manager to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Project Manager in accordance with section 11.5, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), City may, after seven (7) days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this section City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, City may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees such access to the site as may be necessary to enable City to exercise its rights under this section. All direct and indirect costs of City in exercising such rights shall be charged against Contractor in an amount verified by Project Manager, and a Supplemental Job Order shall be issued incorporating the necessary revisions in the Detailed Scope of Work and a reduction in the Job Order Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Job

Order Completion Time because of any delay in performance of the Work attributable to the exercise by City of City's rights hereunder.

**END ARTICLE 11** 



## ARTICLE 12 PAYMENTS TO CONTRACTOR AND COMPLETION

# 12.1 Application for Progress Payment

Unless otherwise specified in the General Requirements, Contractor will submit applications for payment & invoices to the Contract Administrator for review and approval following completion of each Job Order. Under no circumstances will the City pay Job Order Invoices more often than once a month. The payment application shall be accompanied by such supporting documentation as is required by the Contract Documents and also as Contract Administrator reasonably requires. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Invoice shall also be accompanied by such data, satisfactory to City, as will establish City's title to the material and equipment and protect City's interest therein, including applicable insurance.

# 12.2 Contractor's Warranty of Title

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

## 12.3 Review of Applications for Progress Payment

- 12.3.1 Contractor Administrator and Project Manager will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Invoice for payment, or return the Invoice to Contractor indicating in writing reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Within thirty (30) days of receipt of a correct Invoice and with Contract Administrator and Project Manager's recommendations, pay Contractor the invoiced amount.
- 12.3.2 Not Used
- 12.3.3 Not Used
- 12.3.4 Project Manager may refuse to recommend the whole or any part of any payment if, in his/her opinion, it would be incorrect to make such representations to City. He/she may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify and such payment previously recommended to such extent as may be necessary in Project Manager's opinion to protect City from loss because:
  - a. the Work is defective, or completed Work has been damaged requiring correction or replacement;
  - b. written claims have been made against City or Liens have been filed in connection with the Work;

- c. the Job Order Price has been reduced because of Supplemental Job Order(s);
- d. City has been required to correct defective Work or complete the Work in accordance with section 11.7;
- e. of Contractor's unsatisfactory prosecution of the Work in accordance with the Detailed Scope of Work;
- f. Contractor's failure to make payment to Subcontractor, or for labor, materials or equipment; or,
- g. of quantity adjustment or correction.

# **12.4** Substantial Completion

- 12.4.1 When Contractor considers the entire Work ready for its intended use Contractor will certify in writing to Project Manager that the entire Work is substantially complete and request that Project Manager issue a Certificate of Substantial Completion. Within a reasonable time thereafter, Contractor and Project Manager will make an inspection of the Work to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor in writing giving his/her reasons. If Project Manager considers the Work substantially complete, Project Manager will prepare a Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative "punch list" of items to be completed or corrected before final payment. A copy of the Certificate of Substantial Completion shall be forwarded to the Contract Administrator.
- 12.4.2 City has the right to exclude Contractor from the Work after the date of Substantial Completion, but will allow Contractor reasonable access to complete or correct items on the punch list.

### **12.5** Partial Utilization

Use by City of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

a. City at any time may request in writing to Contractor to permit City to use any part of the Work which is believed to be substantially complete and can be used without significant interference with the other parts of the Work. If Contractor agrees, Contractor will certify to City and Project Manager that said part of the Work is substantially complete and request Project Manager to issue a Certificate of Substantial Completion for that part of the Work. Within a reasonable time City, Contractor and Project Manager will make an inspection of that part of the Work to determine its status of completion. If Project Manager does not consider that part of the Work to be substantially complete, Project Manager will notify Contractor in writing giving his/her reasons. If Project Manager considers that part of the Work to be substantially complete, Project Manager will execute and deliver to Contractor a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching a tentative list (punch list) of items to be completed or corrected before final payment. City will have the right to exclude Contractor from any part of the Work which Project Manager has so certified to

- be substantially complete, but will allow Contractor reasonable access to complete or correct items on the tentative list.
- b. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, City may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, City and Contractor have agreed as to the division of responsibilities between City and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

# 12.6 Final Inspection

Upon written notice from Contractor that the Work is complete, Project Manager will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

## 12.7 Final Application for Payment

At the time of submission of its Final Application for Payment, Contractor shall, unless otherwise determined by the Contract Administrator, provide the following information:

- 12.7.1 an affidavit for Contractor confirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;
- 12.7.2 a general release executed by Contractor in a form acceptable to City waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;
- 12.7.3 all operating manuals, warranties and other deliverables required by the Contract Documents;
- 12.7.4 if applicable, certified payrolls from the Contractor and all Subcontractors,
- 12.7.5 "Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid" from Contractor and each Subcontractor filed with the City and the Department of Labor and Industries,
- 12.7.6 Certification of Use or Deferred Sales Tax Paid or both, and if required by the City, other data establishing payment or satisfaction of obligations, including, but not limited to, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If a Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

# 12.8 Final Payment and Acceptance

12.8.1 If, on the basis of Project Manager's observation of the Work during construction and final inspection, and Contract Administrator and Project Manager's review of the final Application for Payment and accompanying documentation, Project Manager is satisfied that the work has been completed and Contractor has fulfilled all of its obligations with regard to construction of the Project, the Project Manager will indicate approval of final payment by signing such invoice. The Contract Administrator will sign the final invoice as well and submit for final payment. Project Manager will give written notice to Contractor that the Work is acceptable subject to the provisions of Section 12.9.

Otherwise, Contract Administrator will return the Payment Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, City will, within thirty (30) days after receipt, pay Contractor.

12.8.2 Payment will be made to Contractor only for those portions of the work that have been fully completed and accepted.

## 12.9 Contractor's Continuing Obligation

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Project Manager, nor the issuance of a Certificate of Substantial Completion, nor any payment by City to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor the issuance of a notice of acceptability by Project Manager pursuant to section 12.8, nor any correction of defective Work by City shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## 12.10 Waiver of Claims

The making and acceptance of final payment shall constitute Contractor's waiver of all claims by Contractor against City other than those previously made in writing and still unsettled.

**END ARTICLE 12** 

## 13.1 Suspend the Work

City may, at any time and without cause, suspend the Work or any portion for a period of not more than thirty (30) calendar days with written notice to Contractor. Notice will state the date when work will resume. Contractor will resume the work on said date. Contractor will be allowed an increase in the Job Order price or an extension of the Job Order completion time or both directly attributable to any suspension if it makes a claim as provided in Article 10 unless suspension of the Work is mutually agreed upon by the City and the Contractor.

## 13.2 City May Terminate

- 13.2.1 Upon the occurrence of any one or more of the following events of default:
  - a. Contractor is adjudged bankrupt or insolvent;
  - b. Contractor makes a general assignment for the benefit of creditors;
  - c. a trustee or receiver is appointed for Contractor or for any of Contractor's property;
  - d. Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
  - e. Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
  - f. Contractor repeatedly fails to make prompt payments to Subcontractor or for labor, materials or equipment;
  - g. Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
  - h. Contractor disregards the authority of Project Manager or Contract Administrator; r
  - Contractor refuses or fails to prosecute Job Orders or any separable part thereof, with the diligence that will ensure its completion within the Job Order Completion Time or any extension or fails to complete the work within this time; or
  - j. Contractor otherwise violates in any substantial way any provisions of the Contract Documents, this includes without limitation breach of applicable Federal Contract Clauses in a Federally Funded Job Order.

City may, after giving Contractor and its Surety sixty (60) days' written notice specifying the event of default, terminate the services of Contractor, exclude Contractor from the site, and take possession of the Work and of all Contractor's tools, appliances, equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor but which

are stored elsewhere, and finish the Work as City may deem expedient. The City may complete the Work itself or with other contractors. The Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Job Order Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor or its Surety shall pay the difference to City. The Contractor and its sureties shall be liable for any other damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated.

- 13.2.2 Where Contractor's services have been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
- 13.2.3 Upon seven (7) days written notice to Contractor, City may without cause and without prejudice to any other right or remedy elect to abandon the Work and terminate the Contract. The City will have all remedies in law and equity, including the right to specific performance (or injunction or other appropriate equitable remedy), without further assistance, and the rights to termination or suspension as provided herein. In such case, Contractor shall be paid for all work completed and accepted as complete by the Project Manager.
- 13.2.4 Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.
- 13.2.5 If there is a dispute regarding a Federally Funded Job Order, the parties will use the dispute resolution in the Federal Contract Clauses, if any.
- 13.2.6 Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved

## 13.3 Termination for Convenience

- 13.3.1 In addition to City's other termination rights, City may terminate the Contract for convenience. Upon ten (10) days' written notice to Contractor, City may, for its convenience and without cause, elect to terminate this Contract or any portion of this Contract.
- 13.3.2 If the Work or any portion thereof is terminated for convenience, Contractor shall, subject to the limitation set forth in 13.3.3 below, be entitled to be paid that portion of the Job Order Price that corresponds to the percentage of work that is complete and accepted, in accordance with the Contract Documents, but shall not be entitled to any other costs or damages whatsoever including without limitation fee or profit on terminated Work. If the Contractor has any property in its possession belonging to City, the Contractor will account for the same, and dispose of it in the manner City directs.
- 13.3.3 The total sum to be paid to Contractor under this Section 13.3 shall not exceed the Job Order Price(s) outstanding at the time of termination, as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this

Contract. The amounts payable to Contractor shall exclude the fair value of property not under City's control which is destroyed, lost, stolen or damaged so as to become undeliverable to City.

13.3.4 Any claim, request for equitable adjustment or other demand for extra compensation or time extension by Contractor arising from or related to acts, events, occurrences or omissions prior to the effective date of the convenience termination shall continue to be subject to and resolved in accordance with the rules (contractual or legal, express or implied) in effect prior to the termination. The convenience termination will not convert this Contract into a cost reimbursement contract.

## 13.4 Minimum Contract Value Not Achieved

If, in the Base Term, City, at no fault of the job order contractor, fails to issue Job Orders totaling at least the Minimum Contract Value, then the Contractor sole remedy is as set forth in RCW 39.10.440(7).

# 13.5 Contractor May Stop Work or Terminate

If, through no act or fault of Contractor or its subcontractors, the Work is suspended for a period of more than sixty (60) days by City or under an order of court or other public authority, then Contractor may, upon seven (7) days' written notice to City, terminate the Contract and recover from City payment for all Work completed and accepted.

**END OF ARTICLE 13** 

**ARTICLE 14 NOT USED** 

**END OF ARTICLE 14** 

### **ARTICLE 15 MISCELLANEOUS**

## 15.1 General Requirements

- 15.1.1 Should City or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- 15.1.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by sections 11.1, and 13.2 and all of the rights and remedies available to City thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this section shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Contract.

## 15.2 Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

## 15.3 Computation of Time

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### 15.5 Non-Discrimination

Contractor shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in such discrimination, including discrimination in employment practices. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract Documents or applicable law, City may impose such sanctions as it, or the City's funding agencies, may determine to be appropriate, including, but not limited to: (a) withholding of payments to Contractor until Contractor complies, and (b) termination or suspension of the Contract, in whole or in part.

#### ARTICLE 16 JOC PROCEDURE FOR ORDERING WORK

## 16.1 Initiation of a Job Order.

- 16.1.1 As the need exists, the Contract Administrator will notify the Contractor of a Project, schedule a Joint Scope Meeting, and issue a Notice of Joint Scope Meeting.
- 16.1.2 The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - a. the work to be performed;
  - b. alternatives for performing the work and value engineering;
  - c. access to the site and protocol for admission;
  - d. any long lead time materials;
  - e. staging area;
  - f. requirements for catalog cuts, technical data, samples and shop drawings;
  - g. requirements for professional services, sketches, drawings, and specifications;
  - h. construction duration, schedule, work hours and any phasing requirements;
  - i. the presence of hazardous materials;
  - j. date on which the Job Order Proposal is due;
  - k. if the Job Order will be a Federally Funded Job Order, the applicable Federal Contract Clauses, such as, for example, Davis-Bacon and DBE requirements.
  - I. Job Order specific insurance (if any)
  - m. Required permits;
  - n. Controlled inspections, testing requirements;
  - o. Value Engineering;
  - p. Any other items as required by the City
- 16.1.3 Upon completion of the joint scoping process, the Contractor will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The City shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work is complete, the City will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal within a certain period of time. The Detailed Scope of Work will be the basis on which the Contractor will develop its Job Order Proposal and the City will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

## 16.2 Preparation of the Price Proposal.

- 16.2.1 The Contractor's Job Order Proposal shall include, at a minimum:
  - a. Job Order Price Proposal;
  - b. Support documentation for Non-Prepriced Tasks;
  - c. Required drawings or sketches;
  - d. List of anticipated Subcontractors and Materialmen;
  - e. Construction schedule;
  - f. Other requested documents.
- 16.2.2 The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 16.2.3 The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Prepriced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.
- 16.2.4 The Contractor will prepare Price Proposals in accordance with the following:
  - a. **Prepriced Task:** A task described for which a unit price is set forth in the Construction Task Catalog<sup>®</sup>.
  - b. Non-Prepriced Task: A task that is not set forth in the Construction Task Catalog®.
  - c. Information submitted in support of Non-Prepriced Tasks shall include, but not limited to the following:
  - 1) Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
  - 2) If Contractor will perform Work with its own forces, it must submit three (3) independent quotes for all material to be installed and will use Prepriced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three (3) independent quotes from subcontractors. The Contractor will not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The City may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three (3) quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Owner's approval. If approved, less than three (3) quotes or bids will be allowed.
  - 3) The final price submitted for Non-Prepriced Tasks shall be according to the following formula:

## For Non-Prepriced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials.

**Total for a Non-Prepriced Tasks performed with Contractor's Own Forces =** (A+B+C) x Non-Prepriced Task Adjustment Factor

## For Non-Prepriced Tasks Performed by Subcontractors:

If the Non-Prepriced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the work.

D = Lowest of three (3) Subcontractor Quotes

## **Total Cost for Non-Prepriced Tasks performed by Subcontractors**

- = D x Non-Prepriced Task Adjustment Factor
- 4) After a Non-Prepriced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non-Prepriced Task which will no longer require price justification.
- 5) The City's determination as to whether a task is a Prepriced Task or a Non-Prepriced Task will be final, binding and conclusive to the Contractor.
- 6) If the City chooses, it may approve less than three quotes at its discretion.
- 16.2.5 Contractor will make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid for which a receipt is obtained will be treated as a Reimbursable Task to be paid without markup.
- 16.2.6 The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- 16.2.7 The Contractor's Job Order Proposal is to be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven (7) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 16.2.8 In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal.

- 16.2.9 By submitting a Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the City.
- 16.2.10 If the Contractor requires clarifications or additional information regarding the scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

# 16.3 Review of the Job Order Proposal and Issuance of the Job Order

- 16.3.1 The City will evaluate the entire Price Proposal and compare these with the City's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 16.3.2 The Contractor may choose the means and methods of construction; subject however, to the City's right to reject any means and methods proposed by the Contractor that:
  - a. Will constitute or create a hazard to the work, or to persons or property; or
  - b. Will not produce finished Work in accordance with the terms of the Contract; or
  - c. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 16.3.3 The City reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The City also reserves the right not to issue a Job Order if it is determined to be in the best interests of the City. The City may perform such work by other means. The Contractor will not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal including incidental architectural and engineering services, subcontractor costs, and the costs to review the Job Order Proposal with the City.
- 16.3.4 By submitting a Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre- priced Tasks and Non-Prepriced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the City.
- 16.3.5 Each Job Order provided to the Contractor will reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the City and delivered to the Contractor constitutes the City's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.

## 16.4 Federally Funded Job Orders

When the City initiates a Job Order, the City will specify whether the Job Order is a Federally Funded Job Order or not. If the Job Order has no such specification, then the Job Order is not a Federally Funded Job Order. A Federally Funded Job Order is subject to the Federal Contract Clauses, which will be provided by the City. In the event of irreconcilable conflict between the Federal Contract Clauses applicable to a Federally Funded Job Order and other Contract Documents, such Federal Contract Clauses control. The Federal Contract Clauses do not apply to Job Orders that are not Federally Funded Job Orders.

**END ARTICLE 16** 

# ARTICLE 17 ENGINEERING NEWS RECORD CONSTRUCTION COST INDICES ADJUSTMENT OF THE ADJUSTMENT FACTORS

- 17.1 Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the Contract date to account for changes in construction costs, provided, the Contractor requests in writing, approximately thirty (30) days prior to the anniversary of the Contract date, that the Adjustment Factors be updated. Such request shall be delivered to the City and to the Consultant/Gordian. In the event the Contractor fails to deliver the request timely, then the City will determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty (30) days after the written request is received by the City. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- 17.2 The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:
  - 17.2.1 A Base Year Index will be calculated by averaging the 12-month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months immediately prior to the month of the bid due date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
  - 17.2.2 A Current Year Index will be calculated by averaging the 12-month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (12) months beginning with the month of anniversary of the bid due date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
  - 17.2.3 The Economic Price Adjustment will be calculated by dividing the Current Year Index by the Base Year Index.
  - 17.2.4 The Contractor's original Adjustment Factors will be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next twelve (12) months.
  - 17.2.5 Averages shall be obtained by summing the 12-month indices and dividing by twelve (12).
- 17.3 All calculations in this article will be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - 17.3.1 The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
  - 17.3.2 The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 17.4 Engineering News Record occasionally revises indices. Engineering News Record Construction Cost Indices used in the calculations described above will be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an Engineering News Record revision. Revised Construction Cost Indices, if any, will be used in subsequent calculations.

- 17.5 Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 17.6 The Contractor cannot delay submission of the Job Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 17.7 The Adjustment Factor for Non-Prepriced Tasks will remain constant for the duration of the Contract.

**END ARTICLE 17** 



## ourchasing

## 18.1 JOC System License

18.1.1 The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Information Management System ("JOC IMS"), construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's General Terms of Use and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A copy of the license agreement is attached and is included by reference.

# 18.2 Cooperative Purchasing

- 18.2.1 Contractor hereby agrees that other agencies or members of cooperative purchasing entities may purchase construction services from the Contractor utilizing this Contract. To utilize the construction services from the Contractor under this Contract, the agency or entity must first execute with the City an Intergovernmental Purchasing Agreement (or other form of agreement) acceptable to the City and agree to pay Gordian's fee directly. For the purposes of this Section 18, the other public agency or entity is referred to as the "User Agency.
  - If the Contract is utilized by a User Agency, the Contractor agrees to pay Gordian the 1% JOC System License Fee.
  - Job order construction services for User Agency job orders will be provided by Contractor directly to the User Agency on the same terms and conditions as this Contract, except that for User Agency job order construction services: (a) the City will not be a party to the contract between User Agency and Contractor for such services; (b) the obligations owed by Contractor to the City under the terms and conditions of the Contract will instead be owed by Contractor to the User Agency, including but not limited to obligations to provide performance and payment bonds to User Agency for work performed for the User Agency and to provide insurance endorsements that name the User Agency as additional insured; and (c) the obligations owed by the City to Contractor under the terms and conditions of this Contract will instead be owed by the User Agency to Contractor, including but not limited to obligations to pay for construction services rendered by Contractor.
  - Contractor specifically agrees that the City shall have no liability or responsibility whatsoever for the User Agency's use of the terms and conditions of this Contract or for the performance of the User Agency with respect to User Agency job orders. The City will not pay

Contractor for any services related to User Agency job orders. The City makes no representations or warranties of any kind, including without limitation no representations or warranties regarding whether the User Agency will pay Contractor for job order construction services rendered and no representations or warranties regarding the enforceability of the terms and conditions of this Contract against the User Agency. Contractor accepts job orders from the User Agency solely at Contractor's own risk. Contractor will solely look to the User Agency, and not the City, for all matters relating to job order construction services rendered to the User Agency.

The Contractor releases and shall indemnify, defend and hold harmless the City and its officers, employees and agents (each such person, an "Indemnitee") from and against any and all claims, actions, damages, liability, costs and expenses, including attorney's fees, arising out of or relating to (a) Contractor's provision of services to the User Agency and (b) job orders issued by User Agency to Contractor. The foregoing indemnity, defense, and hold harmless obligation includes without limitation indemnity, defense, and hold harmless for each Indemnitee from and against any request, claim or demand for payment by Contractor or Contractor's contractors or Contractor's suppliers or Contractor's employees in connection with User Agency job orders. This Section is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide each Indemnitee with a full and complete indemnity from claims made by the Contractor and its employees, to maximum extent allowed by law. CONTRACTOR AND CITY ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

### 18.2.2

- 18.2.3 Within two (2) business days of receipt of a Purchase Order from User Agency, Contractor is to provide notification to the City and Gordian by forwarding a copy of the Purchase Order to Gordian via email to PO@ezIQC.com or via facsimile to (864) 233-9100; and to the City via email to the Contract Administrator.
- 18.2.4 Within two (2) business days of sending an invoice to User Agency, Contractor is to provide notification to the City and Gordian by forwarding a copy of the invoice to Gordian via email to Invoice@ezIQC.com or via facsimile to (864) 233-9100; and to the City via email to the Contract Administrator.
- 18.2.5 The City and Gordian may request records from the Contractor for all cooperative purchasing and payments of all JOC System License Fees through this contract. The Contractor hereby agrees and authorizes the City and/or User Agency to provide Gordian with purchase order and/or invoice copies. If discrepancies exist between cooperative purchasing activity and License Fees paid, Gordian will provide written notification to the

Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of Gordian, Gordian reserves the right to engage a third party to conduct an independent audit of the Contractor's records and in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

**END ARTICLE 18** 

### ARTICLE 19 COMPLIANCE WITH THE JOC RCW REQUIREMENTS

## 19.1 CONTRACTOR'S RESPONSIBILITY

Contractor acknowledges that it has carefully examined the RFP documents and the Job Order Contracting RCW's. For example, the Contract is subject to RCW 39.10.200; 39.10.210; 39.10.420; 39.10.430; 39.10.440; 39.10.450; 39.10.460; and, 39.10.470.

# 19.2 MAXIMUM JOB ORDER VALUE/APPRENTICE UTILIZATION

The maximum dollar amount for an individual Job Order is five hundred thousand dollars (\$500,000) pretax, as may be adjusted by amendments to statute. All Job Orders for the same project (original plus any Supplemental Job Orders) shall be treated as a single Job Order for the purpose of the dollar limit on Job Orders.

Unless otherwise allowed by statute, a Job Order issued for a particular project may not exceed \$500,000 excluding sales tax and Gordian fees. As required by RCW 39.10.450(3), no more than twenty percent of the dollar value of a Job Order may consist of items of work not contained in the unit price book. As required by RCW 39.10.450(4), any new stand-alone permanent structure constructed under a Job Order shall not exceed three thousand gross square feet.

Any Job Order over three hundred fifty thousand dollars (\$350,000), excluding Washington state sales and use tax, and including over six hundred single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW 39.04.320. The City may adjust this requirement for a specific Job Order for the following reasons:

- (a) The demonstrated lack of availability of apprentices in specific geographic areas;
- (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310; or
- (d) Other criteria the awarding entity deems appropriate.

## 19.3 ADJUSTMENT FACTORS AND CONSTRUCTION TASK CATALOG®

The Contractor is paid for the Job Order based upon a fixed percentage multiplier (Adjustment Factor) and fixed prices based on The Gordian Group's Construction Task Catalog® agreed to in the initial contract. Everything that is to be included in the Contractor's Adjustment Factors is listed and identified in the Construction Task Catalog® under Construction Task Catalog® Section and "Using the Construction Task Catalog®," pages 00-1 through 00-7.

### 19.4 PREVAILING WAGE RATES TO BE PAID

A. Prior to making any payment, the City must receive a Labor and Industries approved copy of the "Statement of Intent to Pay Prevailing Wages" form from the Contractor, all sub-contractors and lower-tiers. Each progress payment application is to include a signed statement that

- prevailing wages have been paid. With final invoicing of a project, the City must receive a Labor and Industries certified copy of the "Affidavit of Wages Paid" form from the Contractor, all sub-contractors and lower-tiers.
- B. It is the Contractor's sole responsibility to ensure that the approved Intents and certified Affidavits are filed from all sub-contractors and lower-tiers and file with the City for each Job Order.
- C. Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each Job Order must be the rates in effect at the time the individual Job Order is issued.
- D. If the Job Order is Funded by the Federal Transit Administration, the Davis-Bacon Act and Copeland Anti-Kickback applies.

### 19.5 EXECUTED OMWBE PLAN

- A. Per RCW 39.10.450, the City may issue no Job Orders under this Contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the Contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.
- B. The executed plan is required before the City will sign the Contract.

## 19.6 SUBCONTRACTING/RETAINAGE BOND/NOTIFICATION OF INTENT

- A. At least ninety percent (90%) of all work contained in a Job Order Contract must be subcontracted to entities other than the Contractor. The Contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.
- B. The City requires each Contractor to provide a Retainage Bond in the penal sum equal to \$100,000. If the cumulative amount of required retainage under Chapter 60.28 RCW exceeds this amount, the Contractor shall deliver a new Retainage Bond as required by the City. The Contractor must use the Retainage Bond form provided by the City.
- C. The Contractor shall publish notification of intent to perform public works projects at the beginning of each Contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated. The job order Contractor is encouraged to post the notification of intent to perform public works projects in other areas, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize subcontractor opportunities.

### 19.7 PUBLIC RECORDS

Under Washington state public records laws, records and documents including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions provided to City or used by the City in connection to the Contract Documents become a public record subject to mandatory disclosure upon request by any person, unless the records and documents are exempt from public disclosure by a specific provision of law. The City has no obligation to enforce any exemption. Contractor will fully cooperate with the City to comply with the Washington state public records laws.

### 19.8 AUDITS AND RETENTION OF RECORDS

- A. All of the Project Records related to this Contract shall be open to inspection, audit, and/or copying by the City:
  - i. During the Contract Time;
  - ii. For a period of not less than six (6) years after the date of Final Acceptance of the last Work or termination of the Contract. The Contractor shall also ensure that the wage, payroll and cost

records of all Subcontractors and Suppliers at all tiers is retained and open to similar inspection or audit for the period required above by incorporating the provisions of this Audit section into any agreements with Subcontractors or Suppliers related to this Contract; and

- iii. If any Claim, audit, or litigation arising out of, in connection with, or related to this Contract is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- B. The Contractor, its Subcontractors and Suppliers will make a good faith effort to cooperate with the City when the City gives notice of its need to inspect or audit Project Records. Cooperation will include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation will also include establishing a specific mutually agreeable timetable for making the records available for inspection by the City and its designee. Unless otherwise agreed, if the Contractor, its Subcontractors and Suppliers cannot make at least some of the relevant records available for inspection within fourteen (14) days of the City's written request, cooperation will necessarily entail providing the City with a reasonable explanation for the delay in production of records. Failure to cooperate will impact future responsibility determinations.
- C. The Contractor agrees that no Claim will be made against the City for the Work described herein unless the Contractor makes available to the City all documents and records. Failure to maintain and retain sufficient records to allow the City to verify all costs or damages or failure to permit the City or its designee access to the books and records shall constitute a waiver of the rights of the Contractor, Subcontractor, and Supplier to claim or be compensated for any damages, additional time or money under this Contract and shall bar any recovery there under.
- D. Inspection, audit, and/or copying of Project Records may be performed by the City at any time with not less than fourteen (14) days written notice; provided however, if an audit is to be commenced more than sixty (60) days after Final Acceptance of the Contract, the Contractor will be given thirty (30) days' notice of the time when the audit or inspection is to begin.
- E. The Contractor and its Subcontractors and Suppliers shall provide adequate facilities, acceptable to the City, for inspection, auditing, and/or copying during normal business hours.
- F. No additional compensation will be provided to the Contractor, its Subcontractors, or Suppliers for time or money spent in complying with the requirements of this Audit section. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it will immediately notify the City and preserve such records, at its expense, as directed by the City.
- G. This Audit Section shall survive for six (6) years after the termination or expiration of this Contract, or conclusion of all Claims, audits or litigation, whichever occurs later.
- H. At a minimum the following documents shall be considered Project Records and made available for inspection, auditing and copying:
  - i. Daily time cards, time-sheets, daily reports, inspection reports, and supervisor's reports;
    - ii. Insurance, welfare, and benefits records;
      - iii. Payroll registers;

- V. All relevant tax forms and records, including any state and federal payroll tax rate schedules governing the employer's payroll tax rates paid on behalf of employees that work on the project and any payroll tax forms summarizing the amounts paid;
  - vi. Material invoices and requisitions;
  - vii. Material cost distribution worksheets;
- viii. Equipment records including a list of company-owned equipment and an equipment distribution report containing equipment descriptions, equipment number, equipment rates, recorded equipment hours, phase or cost codes, dates, and any other relevant information as related to how equipment was recorded to the project;
  - ix. Contractors' rental agencies', Subcontractors', and lower tier subcontractors' invoices;
    - x. Contracts, purchase orders and agreements between the Contractor and each of its Subcontractors, and all lower tier subcontractor contracts and supplier contracts;
    - xi. Subcontractor's and lower tier subcontractors' payment certificates/payment applications;
      - xii. Canceled checks, payroll and Contractors;
- xiii. Job cost reports, including both a job cost summary report comparing budgeted amounts to recorded amounts by cost type and phase or cost code and a job cost history/detail/transaction report listing each individual transaction by phase or cost code;
  - xiv. General Ledger;
  - xv. Cash disbursements journal;
- xvi. All documents which relate to each and every claim together with all documents which support the amount of damages to each claim;
- xvii. All schedule documents, including man-loaded schedules, work plans, planned resource codes, phasing documents and summaries;
  - xviii. All other documents, including email, related to the Project, Claims, or Change Orders;
- xix. Any documentation or information relied upon for the purposes of translating the bid amounts to original budget amounts;
- xx. Original budget and updated budgets used for tracking job performance throughout the project;
- XXI. Labor distribution reports summarizing straight time, overtime, and double time by employee and also separately summarizing base wage amounts versus labor burden and benefit amounts;
  - XXII. Copies of all draft and approved change orders including a supplementary documentation or information relied upon for the purposes of pricing the change orders;

XXIII. To the extent any of the above-referenced records exist in machine readable format, Contractor will make them available in that form. This requirement specifically includes but is not limited to an obligation to provide the information and access in the native format in which it is maintained by Contractor. The Contractor will, as reasonably requested by the City, provide read-only access to and reasonable technical support necessary to make use of any enterprise or legacy software utilized by the Contractor to manipulate and/or store the relevant data.

# 19.9 PUBLIC NOTICE REQUIREMENTS

The Contractor will publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated, per RCW 39.10.440 (5).

## 19.10 PUBLIC INSPECTION OF CERTAIN RECORDS-PROTECTION OF TRADE SECRETS

- A. RCW 39.10.470(1) and (2) state as follows:
  - (1) Except as provided in subsections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with Chapter 42.56 RCW.
  - (2) Trade secrets, as defined in RCW <u>19.108.010</u>, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to Chapter <u>42.56</u> RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.
- B. The following shall govern to the application of RCW 39.10.470 to this Contract and the Work:
  - 1. Proprietary information and trade secrets must be clearly identified as "CONFIDENTIAL."
  - If any document or record does not clearly identify the "CONFIDENTIAL" portions, the
    City will not notify the Contractor that such documents and records will be made
    available for inspection and copying, and the City may publicly disclose such nonclearly identified portions without notice and with no liability whatsoever to the
    Contractor.
  - 3. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Contractor of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the Contractor's sole expense and liability. If the Contractor does not within ten (10) business days serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City from disclosure of the material marked "CONFIDENTIAL," then the proposer will be deemed to have

- consented to the public disclosure of the material marked "Confidential" and the City may publicly disclose such material without any liability whatsoever to Contractor.
- 4. To the extent that the City withholds from disclosure all or any portion of Contractor's material marked "CONFIDENTIAL", the Contractor shall indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City incurs arising from or relating to such withholding from disclosure.

**END OF SECTION 19** 

# **EVERETT** City Council Agenda Item Cover Sheet

**Project title:** Community Public Safety Cameras

Council Bill # interoffice use	Project:	Community Public Safety Cameras Master Services Agreement
	Partner/Supplier:	Flock Safety
Agenda dates requested:	Location:	Various
Briefing	Preceding action:	Briefing to Safe Community Committee, 5/22/24
Proposed action	Fund:	Grant funded
Consent 05/29/24 Action Ordinance Public hearing	Fiscal summary state	
Yes x No  Budget amendment:	The Everett Police Department agreement with Flock Safety will have associated contract costs not to exceed \$250,000 per year. This 2-year project will be fully grant funded. To fund the first year (2024-2025), the department has applied for a grant through the Washington State Auto Theft Prevention Authority. To fund the second year (2025-2026), the department has applied for funding through the Department of Justice's Project Safe Neighborhoods program.	
Yes X No		
PowerPoint presentation:  Yes X No	Project summary sta	tement:
Attachments: Flock Master Services Agreement  Department(s) involved:  Contact person: Chief John DeRousse  Phone number: 425-754-6709  Email:	The Flock Safety LPR (license plate recognition) and PTZ (pan-tilt-zoom) cameras were designed to support police operations and investigations. This project is a response to spikes in crime, especially violent crime, in the Everett community. Some of that crime has occurred in and around several city parks. The police department wants to utilize the technology to help address that crime in the community and open public areas where people are feeling unsafe. The LPR cameras can capture and process up to 30,000 vehicles per day and utilize Vehicle Fingerprint Technology. This technology includes effective searching mechanisms to turn digital images into investigative leads. The program also has an audit function, allowing the police department to review how it is being used by employees.  Under this contract the police department will deploy approximately 74 LPR cameras across the City of Everett. In addition, one PTZ camera each will be deployed in Jackson Park, Lions Park, and Walter Hall Park for situational awareness when the police department is responding to crimes or life safety issues.	
jderousse@everettwa.gov	Recommendation (e	xact action requested of Council):
		o sign the Master Services Agreement with Flock Group Inc. in substantially
Initialed by:		
Department head		
Administration		
Council President		

## **Master Services Agreement**

This Master Services Agreement is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 ("Flock") and the entity identified in the signature block ("Customer") (each a "Party," and together, the "Parties"). This Agreement is effective on the date of mutual execution ("Effective Date"). Parties will sign an Order Form ("Order Form") which will describe the Flock Services to be performed and the period for performance, attached hereto as Exhibit A.

### **RECITALS**

**WHEREAS,** Flock offers a software and hardware situational awareness solution through Flock's technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer ("*Notifications*");

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock's standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the *Order Form*. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

**WHEREAS,** Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, ("*Permitted Purpose*").

### **AGREEMENT**

#### 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

- 1.1 "Agreement" means this Master Services Agreement, the order form (to which this Master Services Agreement is attached), and any document therein incorporated by reference in section 11.4.
- 1.2 "Anonymized Data" means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.
- 1.3 "Authorized End User(s)" means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.
- 1.4 "*Customer Data*" means the data, media, and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.
- 1.5. "Customer Hardware" means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.
- 1.6 "*Effective Date*" means the date this Agreement is mutually executed by signatures on the order form by both Parties.
- 1.7 "*Embedded Software*" means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.
- 1.8 "*Flock Hardware*" means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable Order Form.
- 1.9 "*Flock IP*" means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

- 1.10 "*Flock Services*" means the provision of Flock's software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.
- 1.11 "*Footage*" means still images, video, audio, and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.
- 1.12 "*Installation Services*" means the services provided by Flock for installation of Flock Services.
- 1.13 "*Permitted Purpose*" means for legitimate public safety and/or business purpose, including but not limited to the awareness, prevention, and prosecution of crime; investigations; and prevention of commercial harm, to the extent permitted by law.
- 1.14 "*Retention Period*" means the time period that the Customer Data is stored within the cloud storage, as specified in the applicable Order Form. Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the Order Form. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices.
- 1.15 "*Term*" means the date, unless otherwise stated in the Order Form, upon which the cameras are validated by both Parties as operational.
- 1.16 "Web Interface" means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

## 2. SERVICES AND SUPPORT

- 2.1 **Provision of Access.** Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the Retention Period. Authorized End Users will be required to sign up for an account and select a password and username ("*User ID*"). Customer shall be responsible for all acts and omissions of Authorized End Users. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).
- 2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.
- 2.3 **Support Services.** Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at <a href="mailto:support@flocksafety.com">support@flocksafety.com</a> (such services collectively referred to as "Support Services").
- 2.4 **Updates to Platform.** Flock may make any updates to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such updates are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.
- 2.5 **Service Interruption.** Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Services are being used for

malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("Service Interruption"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term. 2.6 Service Suspension. Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("Service Suspension"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 **Hazardous Conditions.** Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, or toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

## 3. CUSTOMER OBLIGATIONS

- 3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up-to-date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services (e.g., laptops, internet connection, mobile devices, etc.). Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as "Customer Obligations").
- 3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

## 4. DATA USE AND LICENSING

- 4.1 **Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. <u>Flock</u> does not own and shall not sell Customer Data.
- 4.2 **Customer Generated Data.** Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information,

content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer ("Customer Generated Data"). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer's intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

## 5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the "*Receiving Party*") understands that the other Party (the "*Disclosing Party*") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "*Proprietary Information*" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the

foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret. The entirety of this Section 5.1 is subject to Section 5.4 below.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

- 5.3 **Disclosure of Footage.** Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage with prior written notice Customer to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.
- 5.4 **Washington Government Transparency Laws**. <u>Regardless of anything to the contrary in</u> the Agreement, Flock and Customer agree as follows:
  - This Agreement does not require the Customer to keep confidential or otherwise refrain from disclosing anything that is determined by the City of Everett Office of the City Clerk or by the City of Everett Office of the City Attorney to be subject to disclosure under the Washington Public Records Act, chapter 42.56 RCW. The Agreement does not require the City to give notice(s) to Flock regarding such disclosure(s) or require the City to advocate in any forum that any record is confidential or that any record is not subject to disclosure under the Washington Public Records Act, chapter 42.56 RCW.
  - ➤ This Agreement does not require the Customer to destroy or return anything that is subject to retention requirements established by the Washington Secretary of State or established by applicable law.
  - ➤ This Agreement does not require the Customer to have any Customer employee sign any agreement regarding confidentiality.
  - ➤ This Agreement itself (and its related amendments, purchase orders, scopes of work, service orders or similar documents stating work to be done for the Customer or stating pricing for the Customer) are never confidential and may at any time without notice be posted to the Customer's public website.
  - ➤ The law of the State of Washington exclusively governs this Section 5.4 and all matters under this Agreement regarding confidentiality and exclusive venue for all disputes regarding the same is the Superior Court of Washington in Snohomish County

- 6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. To the extent the Order Form is silent, Customer shall pay all invoices net thirty (30) days from the date of receipt. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.
- 6.2 **Notice of Changes to Fees.** In the event of any changes to fees, Flock shall provide Customer with sixty (60) days' notice (email sufficient) prior to the end of the Initial Term or Renewal Term (as applicable). Any such changes to fees shall only impact subsequent Renewal Terms.
- 6.3 **Taxes.** To the extent Customer is not a tax exempt entity, Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge Customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

#### 7. TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "*Term*"). The Term shall commence on the date, unless otherwise stated in the Order Form, upon which the cameras are validated by both Parties as operational.. Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew

for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "*Renewal Term*") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

7.2 **Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period ("*Cure Period*"). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the *Cure Period*, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 **Survival**. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

### 8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

- 8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "*Defect*"), Customer must notify Flock's technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.
- 8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<a href="https://www.flocksafety.com/reinstall-fee-schedule">https://www.flocksafety.com/reinstall-fee-schedule</a>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that Flock is not liable for any resulting impact to Flock service, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.
- 8.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
- 8.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6. 8.5 Insurance. Flock will maintain commercial general liability policies as stated in Exhibit B. 8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

### 9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS NOR EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND SUCH PARTY'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED AN AMOUNT EQUAL TO THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 11.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

- 9.2 **Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.
- 9.3 **Flock Indemnity.** Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

### 10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 **Ownership of Hardware**. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's

rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

- 10.2 **Deployment Plan**. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("*Deployment Plan*"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.
- 10.3 **Changes to Deployment Plan.** After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, repositioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<a href="https://www.flocksafety.com/reinstall-fee-schedule">https://www.flocksafety.com/reinstall-fee-schedule</a>). Customer will receive prior notice and confirm approval of any such fees.
- 10.4 **Customer Installation Obligations**. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C. Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.
- 10.5 **Flock's Obligations**. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this Agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

#### 11. MISCELLANEOUS

- 11.1 **Compliance With Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).
- 11.2 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.
- 11.3 **Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.
- 11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (https://www.flocksafety.com/reinstall-fee-schedule), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.
- 11.5 **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

- 11.6 **Governing Law; Venue.** This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.
- 11.7 **Special Terms.** Flock may offer certain special terms which are indicated in the Order Form and will become part of this Agreement, <u>upon Customer's prior written consent and the mutual execution by authorized representatives</u> ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.
- 11.8 **Publicity.** Upon prior written consent, Flock has the right to reference and use Customer's name and disclose the nature of the Services in business and development and marketing efforts. Nothing contained in this Agreement shall be construed as conferring on any Party, any right to use the other Party's name as an endorsement of product/service.
- 11.9 **Feedback.** If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.
- 11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system.

Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

- 11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.
- 11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing upon the Effective Date.
- 11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.
- 11.14 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.
- 11.15 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of public funds are conditioned on the availability of funds appropriated for that purpose. To the extent applicable, Customer shall have the right to terminate this Agreement for non-appropriation with thirty (30) days written notice without penalty or other cost.

[signatures on following pages]

Dated as of date of last signature below:

CITY OF EVERETT	FLOCK GROUP INC.
By:Cassie Franklin, Mayor	By:
Cassie Franklin, Mayor  Date:	Name:
	Title:
	Date:
ATTEST:	
Office of the City Clerk	
FLOCK NOTICES ADDRESS:	
1170 HOWELL MILL ROAD, NW	SUITE 210
ATLANTA, GA 30318	
ATTN: LEGAL DEPARTMENT	
EMAIL: legal@flocksafety.com	
CUSTOMER NOTICES ADDRESS:	
ADDRESS:	
ATTN:	
EMAIL:	

# EXHIBIT A ORDER FORM

### Flock Safety + WA - Everett PD

Flock Group Inc. 1170 Howell Mill Rd, Suite 210 Atlanta, GA 30318

MAIN CONTACT: Mack Larkin mack.larkin@flocksafety.com 3603912071

# fłock safety



# EXHIBIT A **ORDER FORM**

Customer: City of Everett Police Department

Legal Entity Name: City of Everett, a Washington municipal

corporation

Accounts Payable Email: Payment Terms: Net 30

Address: 3002 Wetmore Ave Everett, Washington 98201 Billing Frequency: Annual Plan - Invoiced at the end of the Opt-Out period.

Retention Period: 30 Days

12 Months

24 Months

Initial Term:

Renewal Term:

#### PROJECT PROVE IT

The Term shall commence upon first installation and validation of Flock Hardware. Customer will have the first 60 days of the Term as an opt-out period ("Opt-Out Period"). During the Opt-Out Period, the Customer may terminate this Agreement without penalty or fees. After the Opt-Out Period, Customer may not terminate the Agreement (except as may be provided in the attached Master Services Agreement), and Customer will pay any invoice(s) for the remainder of the Term, Net 30.

#### **Hardware and Software Products**

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$234,000.00
Flock Safety Flock OS			
FlockOS TM - Essentials	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon ®	Included	71	Included
Flock Safety Falcon ® Flex	Included	2	Included
Flock Safety Falcon ® LR	Included	1	Included
Flock Safety Video Products			
Flock Safety Condor ™ PTZ w/ LTE Service	Included	3	Included

#### **Professional Services and One Time Purchases**

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Professional Services - Existing Infrastructure Implementation Fee	\$150.00	59	\$8,850.00
Professional Services - Standard Implementation Fee	\$650.00	12	\$7,800.00
Condor Professional Services - Standard Implementation Fee	\$750.00	3	\$2,250.00
Professional Services - Advanced Implementation Fee (Falcon LR)	\$1,000.00	1	\$1,000.00

Subtotal Year 1: \$253,900.00 Annual Recurring Subtotal: \$234,000.00

**Estimated Tax:** \$25,136.10

**Contract Total:** \$253,900.00

Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "Renewal Term") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

# **Billing Schedule**

Billing Schedule	Amount (USD)	
Year 1		
At PPI End Date	\$253,900.00	
Annual Recurring after Year 1	\$234,000.00	
Contract Total	\$253,900.00	

<sup>\*</sup>Tax not included

## **Product and Services Description**

Flock Safety Platform Items	Product Description	Terms
FlockOSTM	Flock Safety's situational awareness operating system.	
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.
Flock Safety Falcon® Flex	An infrastructure-free, location-flexible license plate reader camera that enables the Customer to self-install.	The Term shall commence upon execution of this Statement of Work.
Flock Safety Falcon® LR	A long-range infrastructure-free license plate reader camera designed for high speed vehicles that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.
Flock Safety Condor™	Flock's pan, tilt, zoom (PTZ) or fixed cameras which capture video footage with the option to stream live video, capture and view video recordings, and upload videos.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

### FlockOS Features & Description

FlockOS Features	Description	
Community Network Access	The ability to request direct access to feeds from privately owned Flock Safety Falcon® LPR cameras located in neighborhoods, schools, and businesses in your community, significantly increasing actionable evidence that clears cases.	
Unlimited Users	Unlimited users for FlockOS	
State Network (License Plate Lookup Only)	Allows agencies to look up license plates on all cameras opted into the Flock Safety network within your state.	
Nationwide Network (License Plate Lookup Only)	With the vast Flock Safety sharing network, law enforcement agencies no longer have to rely on just their devices alone. Agencies can leverage a nationwide system boasting 10 billion additional plate reads per month to amplify the potential to collect vital evidence in otherwise dead-end investigations.	
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations	
License Plate Lookup	Look up specific license plate location history captured on Flock devices	
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint <sup>TM</sup> technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.	
Insights & Analytics	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.	
ESRI Based Map Interface	Map-based interface that consolidates all data streams and the locations of each connected asset, enabling greater situational awareness and a common operating picture.	
Real-Time NCIC Alerts on Flock ALPR Cameras	Receive automated alerts when vehicles entered into established databases for missing and wanted persons are detected, including the FBI's National Crime Information Center (NCIC) and National Center for Missing & Detected Children (NCMEC) databases.	
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera	
Law Enforcement Network Access	The ability to request direct access to evidence detection devices from Law Enforcement agencies outside of your jurisdiction.	

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Master Services Agreement attached.

The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.	Customer: City of Everett, a Washington municipal corporation	
Ву:	Ву:	
Name:	Name:	
Title:	Title:	
Date:	Date:	
	PO Number:	

### **EXHIBIT B**

### **INSURANCE**

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII". Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

**Types and Amounts Required**. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) Commercial General Liability insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and
- (v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

# EXIHBIT C CUSTOMER IMPLEMENTATION GUIDE

# **Customer Implementation Guide**

# Law Enforcement



fłock safety

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# **Implementation Timeline**

This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:

### **REVIEW LOCATIONS**

**Confirm Camera Locations With Your Sales Representative** 

FLOCK: Your sales representative will present several viable options for camera locations

**CUSTOMER:** Review Deployment Plan & approve camera locations

PLEASE NOTE: If Public Works is required to move forward, please obtain approval

#### **FINALIZE LOCATIONS**

### **Prepare For Finalized Camera Locations**

**FLOCK:** Confirm Deployment Plane and signed agreement. Flock will move forward with next steps for locations that don't need permits (minimum 10 locations needed to move forward with partial installation)

**CUSTOMER:** Prepare the below items, as needed

- · If permits are required, begin application process
- If camera will be AC-powered, hire an electrician/street department

#### STEP 1

### **Conduct On-site Survey & Place Flags**

**FLOCK:** Flock technician conducts site survey to (1) evaluate/reconfirm solar or power access, (2) check line of sight to the road, and (3) evaluate/reconfirm cellular service in the area. When the technician deems the locations suitable, s/he will place a white flag at each spot

**PLEASE NOTE:** If the initially determined locations don't meet Flock standards, we will evaluate a new location, obtain customer approval, and redo a site survey. This may push timeline for installation

### STEP 2

### **Call 811**

**FLOCK:** Flock Safety will coordinate with Call 811 to mark each camera location for underground utilities within a 10-foot radius

PLEASE NOTE: Call 811 is a government service, so turnaround times may vary and is outside of Flock control

#### STEP 3

#### **Schedule Installation**

**FLOCK:** Flock will (1) ship any site specific material that the technician does not have locally (2) schedule the installation date

### STEP 4

### **Install & Validate Cameras**

**FLOCK:** After installation, your Onboarding Specialist will confirm that cameras are capturing footage well and functioning properly. They will then give you full access to the system along with helpful training resources

#### **ONGOING - AS NEEDED**

### **Finalize Any Installation Needs**

**FLOCK:** While we typically complete installations within 4 weeks of finalizing locations, delays may occur due to external factors. In these instances, we will continue to work through this process until your cameras are fully installed and operational

# **Flock Safety Team**

# **Implementation Team How They Will Support You** Your Project Manager is your primary contact during camera installation. Your project manager will guide you through the entire installation process, keeping you apprised of all implementation updates as well as answering any questions you have during this time. They will **Project Manager** ensure that all the cameras are on the ground and operating for at least 48 hours before transitioning you to your Customer Success Manager. The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of the product. **Field Operations** They take the technical plan you finalized with Team Product Implementation and work closely with other teams at Flock to make sure that the cameras are installed quickly and safely and in a way that maximizes the opportunity to solve crime at a specific location. • \*Note\*: For all Installation questions or concerns, please always direct them to your

technician.

**Customer Success Manager** and not the

### **Relationship Team**

### **How They Will Support You**



Customer Success Manager

Your Customer Success Manager is your strategic partner for your lifetime as a Flock customer.

While the cameras are getting installed, your CSM will help get your account set up and get all key users trained on the system.

Post-Camera-Installation, your CSM will be your go-to for most account-related needs: You should reach out to them to:

- Set up Account Training
- Understand benefits of features
- Learning best practices for getting relevant data
- Identifying opportunities to expand the security network in your area
- Provide feedback on your partnership with Flock



Flock Safety Support

The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To get in touch with support, simply email <a href="mailto:support@flocksafety.com">support@flocksafety.com</a> or call 866-901-1781 Mon-Fri 8am-8pm EST.

Support can help you:

- Request camera maintenance
- Troubleshoot online platform
- Contract / Billing questions
- Update account information
- Camera Sharing questions
- Quick "How to" questions in your Flock Account

Outside Party	When They May Be Involved
Electrician/Street Department	If the Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity
Public Works (LE)	To weigh in on the use of public Rights of Way or property
Department of Transportation (DOT), City, or County agencies	If installation in your area requires permitting

PLEASE NOTE: On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

# Implementation Service Briefs: Existing Infrastructure vs Standard vs Advanced

	Existing Infrastructure Install	Standard Install	Advanced Install
Pole	None	Flock	NCHRP 350 / MASH
Timeline	Short	Medium	Longest
Cost	Lowest	Mid	Highest

# **Existing Infrastructure Implementation**

**COST:** \$150 per camera (one time cost)

### **Included In Scope:**

Once designated locations are approved by the customer, as part of the **Existing Infrastructure Implementation Service** Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
  - Cameras need sufficient power. Since a solar panel is required per camera, it can prevent adequate solar power if two cameras and two solar panels are on a single pole (blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.
- Confirm that a location is safe for work by following State utility locating procedures.
- Each installation may include the following:
  - Installation of camera and solar panel or AC adapter box on a suitable existing pole

- Types of existing infrastructure such as existing utility, light, and traffic signal poles.
- Pole no higher than 8'-12' (approval at Flock Safety's discretion)
- Flock will provide and mount an AC adapter unit that a qualified electrician can connect to AC power following our electrical wiring requirements. Flock is unable to make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material). Electrical work requiring a licensed electrician and associated costs, not included in the scope.
- o Access requiring up to a 14' using an A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the city and state of camera location

# **Out Of Scope:**

By default, Flock does **not** include the following as part of the **Existing** Infrastructure Implementation Service but can provide a quote for sourcing at an additional cost:

- Mounting on mast arms (always require bucket truck and traffic control)
- Call 811 'Call-before-you-Dig' system
- Installation of any poles including but not limited to
  - o Standard, 12' above grade Flock breakaway pole
  - NCHRP 350 or MASH approved pole (as may be required for locations in DOT right of way)
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or city-specific specialty contractor licenses or unique attachment/ connection requirements
- Custom engineered drawings
- Electrical work requires a licensed electrician.

- Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)
- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Any fees or costs associated with filing for required city, county, or state permits
- Licensing or attachment agreements with asset / infrastructure owners
- · Utility contracts and billing
- Customer requested relocations (see fee schedule)

# **Standard Implementation**

**COST:** \$650 per camera (one time cost)

### **Included In Scope:**

Once designated locations are approved by the customer, as part of the **Standard Implementation Service** Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
- Confirm that a location is safe for work by following state utility locating procedures. Work with local utilities to prevent service interruptions during the installation
  - o Engage 811 'Call-before-you-Dig' system to receive legal dig date
  - Apply approved markings Coordinate with 811 regarding any necessary high-risk dig clearances or required vendor meets
- Each installation may include the following:
  - Installation of camera and solar panel with <u>standard, 12' above grade</u>
     Flock breakaway pole

- Installation of camera and AC adapter that a qualified electrician can connect to AC power on a suitable existing pole, no higher than 8-12' (approval at Flock Safety's discretion)
  - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power following our <u>electrical wiring requirements</u>. Flock is unable to make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material). Electrical work requiring a licensed electrician and associated costs, not included in the scope.
- Access requiring up to a 14' A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the City and State of camera location

# **Out Of Scope:**

By default, Flock does **not** include the following as part of the Standard Implementation Service but can provide a quote for sourcing at an additional cost:

- Use and/or mounting to existing infrastructure.
- NCHRP 350 or MASH approved pole (as may be required for locations in DOT right of way)
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or city-specific specialty contractor licenses
- Custom engineered drawings
- Electrical work requires a licensed electrician.
  - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)

- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Any fees or costs associated with filing for required city, county, or state permits
- Licensing or attachment agreements with asset / infrastructure owners
- Utility contracts and billing
- Customer requested relocations (see fee schedule)

# **Advanced Implementation**

**COST:** \$1,900 per camera (one time cost)

## **Included In Scope:**

Once Designated Locations are confirmed, as part of the Advanced **Implementation Service**, Flock will perform the following:

- An in-person site survey to confirm the installation feasibility of a location (location assessment, solar assessment, visibility review, etc.)
- Confirm that a location is safe for work by following State utility locating procedures. Work with local utilities to prevent service interruptions during the installation
  - Engage 811 'Call-before-you-Dig' system to receive legal dig date
  - Apply approved markings Coordinate with 811 regarding any necessary high-risk dig clearances or required vendor meets
- Each installation may include the following:
  - Installation of camera and solar panel on a suitable NCHRP 350 or MASH approved pole.
  - Installation of camera and AC adapter that a qualified electrician can connect to AC power.
    - Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power following our electrical wiring requirements. Flock cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).

Electrical work requiring a licensed electrician and associated costs, not included in the scope.

- Access requiring up to a 14' A-frame ladder
- Standard MUTCD traffic control procedures performed by a Flock technician
- Obtain a business license to operate in the City and State of camera location

## **Out Of Scope:**

By default, Flock does not include the following as part of the Advanced Implementation Service but can optionally provide a quote for sourcing (additional cost):

- Installation on Standard, 12' above grade Flock breakaway pole or existing infrastructure.
- A Bucket Truck for accessing horizontal/cross-beams and/or height above 14'
- Special equipment rentals for site access
- Site-specific engineered traffic plans
- Third-party provided traffic control
- State or City-specific specialty contractor licenses
- Custom engineered drawings
- Electrical work requires a licensed electrician. Flock will provide and mount an AC adapter that a qualified electrician can connect to AC power but cannot make any AC connections or boreholes in any material other than dirt, grass, loose gravel (or other non-diggable material).
- Concrete cutting
- Private utility search for privately owned items not included in standard 811 procedures (communication, networking, sprinklers, etc.)
- Upgrades to power sources to ready them for Flock power (additional fuses, switches, breakers, etc.)
- Fees or costs associated with filing for required City, County, or State permits

# **Things to Consider When Selecting Locations**

### **Falcon Cameras**

### Use Cases

- Flock LPRs are designed to capture images of rear license plates aimed in the direction of traffic.
- Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections.



### Placement

- They capture vehicles driving away from an intersection.
- They cannot point into the middle of an intersection.
- They should be placed after the intersection to prevent stop and go motion activation or "stop and go" traffic.

### Mounting

- o They can be mounted on existing utility, light, traffic signal poles, or 12 foot Flock poles.\*
- They should be mounted one per pole.\*\* If using AC power, they can be mounted 2 per pole.
- They can be powered with solar panels or direct wire-in AC Power (no outlets).\*\*\*
- They will require adequate cellular service using AT&T or T-Mobile to be able to process & send images.

<sup>\*</sup> Permitting (or permission from pole owner) may be required to use existing infrastructure or install in specific areas, depending on local regulations & policies.

<sup>\*\*</sup> Cameras need sufficient power. Since a solar panel is required per camera, it can prevent adequate solar power if two cameras and two solar panels are on a single pole (blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.

<sup>\*\*\*</sup> Flock does not provide Electrical services. Once installed, the agency or community must work with an electrician to wire the cameras. Electrician services should be completed within two days of installation to prevent the camera from dying.

# **Solar Panels**

Solar panels need unobstructed southern-facing views.



## Pole

If a location requires a "DOT Pole" (i.e., Advanced Pole, not Flock standard pole), the implementation cost will be \$5,000/camera.





# **Customer Responsibilities: AC-Powered Cams**

If the Flock cameras need to be AC-powered, the **customer is responsible** for acquiring an electrician and ensuring they connect the camera to power. **See steps 2 and 6 below**.

### How to Get Started with a Powered Install



### 1. Create a Deployment Plan

Work with us to select the best location(s) for Flock Safety cameras and power sources



### 2. Acquire an Electric Quote

Contact an electrician to receive a quote to run 120volt AC power to the camera



### 3. Sign Flock Safety Agreement

Sign the Flock Safety purchase order to begin the installation of cameras



### 4. Conduct Site Survey

Flock will mark camera locations, locate underground utilities and mark if present



### 5. Install Camera

Flock will install the camera and AC power kit at the specified camera location



### 6. Connect Camera to Power

Notify the electrician that the camera is ready for the power connection installation

## **Electrician Handout**

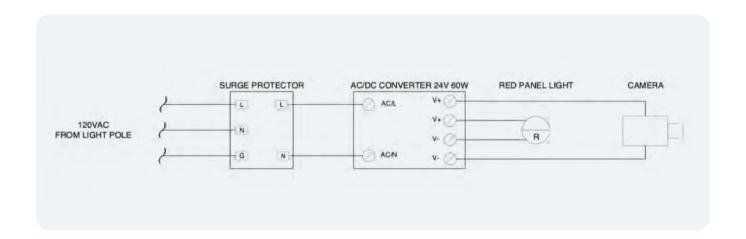
## **Electrician Installation Steps**

- 1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts 1/2" conduit.
- 2. Open the box using hinges.
- 3. Connect AC Mains per wiring diagram below:



- a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
- b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
- c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
- 4. Verify that both the RED LED is lit on the front of the box
- 5. Close box and zip tie the box shut with the provided zip tie
- 6. While still on-site, call Flock, who will remotely verify that power is working correctly:

Southeast Region - (678) 562-8766 West-Region - (804) 607-9213 Central & NE Region - (470) 868-4027



#### **FAQs about AC-Powered Flock Cameras**

#### What voltage is supported?

The AC kit is designed to work with 120VAC Infrastructure by default. A 240VAC version is available on request.

#### How much power does this consume?

Peak current draw is 1.5 A at 120VAC. The average power draw is roughly 30W in high traffic conditions but maybe lower when fewer vehicles are present.

#### Who is responsible for contracting the electrician?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

#### Who is responsible for maintenance?

Flock will handle all maintenance related to Flock's camera and power equipment. However, any problems with the electrical supply are the customer's responsibility. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

 If the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verifies the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated, the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.

#### How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is unavailable. Primary cost drivers include arrow boards and the distance from the camera location to the AC power source.

#### What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of the existing power infrastructure before creating the deployment plan.

Can you plug it into my existing power outlet? The Flock AC power adapter does not use a standard outlet plug but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged, presenting a tampering risk to this critical safety infrastructure. The electrician can route power directly to the camera with a direct wire-in connection if an outlet is close to the camera.

#### How long does this process typically take?

The installation process typically takes 6-8 weeks. To accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

#### What kind of electrician should I look for?

Any licensed electrician should perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

#### What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

#### When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

### What if my electrician has questions about Flock's AC Kit?

You should share the AC-Power Kit Details packet with the electrician if they have questions.

### What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.

## **Installation Service Brief Summary**

Below outlines the statement of work for the Flock Camera Installation:

What Is Covered By Flock	What Is NOT Covered By Flock	Special Note
Flock Cameras & Online Platform	Traffic Control And Any Associated Costs	
Mounting Poles	*DOT Approved Pole Cost Electrician & Ongoing Electrical Costs	
AC Power Kit (As Needed)	Engineering Drawings	
Solar Panels (As Needed)	Relocation Fees	Excluding Changes During Initial Installation
Site Surveys And Call 811 Scheduling	Contractor Licensing Fees	
Installation Labor Costs	Permit Application Processing Fees	
Customer Support / Training	Specialist Mounting Equipment	Including, But Not Limited To, **MASH Poles Or Adapters
Cellular Data Coverage	Bucket Trucks	
Maintenance Fees (Review <u>Fees Sheet</u> For More Details)	Loss, Theft, Damage To Flock Equipment	
Data Storage For 30 Days	Camera Downtime Due To Power Outage	Only Applicable For AC-Powered Cameras
	***Field Technician Maintenance For <b>Falcon™ Flex</b>	

<sup>\*</sup>If a location requires a "DOT pole" (i.e., not our standard), the implementation cost will be \$5,000/camera; This cost is applicable for installations in GA, IL, SC, TN, and CA.

<sup>\*\*</sup>MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results

<sup>\*\*\*</sup>If a camera is lost, stolen, or damaged, a replacement device can be purchased at a discounted price of \$800

## **Permitting: Pre-Install Questionnaire**

#### 1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can add 2+ months to the installation timeline.
- The SLA for permit document submission is within 15 days from contract signature date (contract Closed-Won)

#### 2. Right of Way

- Will any Flock Safety cameras be installed on the city, state, or power company-owned poles or in the city, county, or state Right of Way (RoW)?
  - What is the RoW buffer?
  - Will additional permits or written permission be required from third-party entities (such as DOT, power companies, public works, etc.)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
  - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.
    - Note: A bucket truck is required if the height exceeds 15 feet tall.

#### 3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered installation kit?
- If solar-powered, consider the size of the solar panel and potential to impact the visibility of DOT signs/signals:
  - Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
  - Double Panel: 21.25" x 28" x 2" (LxWxD)

#### 4. Traffic Control & Installation Methods

• If a bucket truck is required, this typically necessitates an entire lane to be blocked in the direction of travel. Can you provide a patrol car escort, or will full traffic control be required?\*

**PLEASE NOTE:** If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.

- If full traffic control is required (cones, arrow boards, etc.):
  - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices (MUTCD).
  - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
  - Are there state-specific special versions/variances that must be followed?
- If a bucket truck is not required, the shoulder or sidewalk should suffice and enable Flock Safety to proceed without traffic control systems in place.
  - Note: In some states (i.e., arrow boards), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?

#### 5. Paperwork & Required Forms

 Flock Safety will need copies of paperwork to complete before proceeding (ex., business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

#### 6. Contacts

- If Flock Safety needs to interface directly with the departments, please share the contact information of the following departments:
  - Permitting
  - Public Works
  - Traffic Department

## \*Fee Schedule

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan ("Reinstalls") driven by a Customer's request will incur a fee per the table below.

#### **What Services Incur Fees:**

- Requested relocations post-approval by customer
- Relocations due to poor performance will be the responsibility of Flock
  - o If a customer requests a location against the advisement of Flock, performance issues and any requested relocations will be the responsibility of the customer.
- Per the contract and absent a defect, in the event that Flock Hardware is lost, stolen, or damaged, Customer may request that Flock replace the Flock Hardware at a fee according to the then-current Reinstall policy https://www.flocksafety.com/reinstall-fee-schedule
- Misc billables for out of scope items for each implementation

#### **Incurred Fees:**

Camera relocation	
Existing infrastructure (non-AC powered)	<b>\$350</b>
Flock pole (non-AC powered)	\$750
Advanced pole (non-AC powered)	\$5000
Replacements	
o Camera only as a result of vandalism, theft, or damage	\$800
o Pole replacement only as a result of vandalism, theft, or damage	
■ Flock pole	\$500
Advanced pole	\$5000
<ul> <li>Full replacement as a result of vandalism, theft, or damage</li> </ul>	
° ■ Flock pole, camera, and solar (non-AC Powered)	\$1300
<ul><li>Advanced pole, camera, and solar (non-AC Powered)</li></ul>	\$5800

\$350 Trip charge ......

- Examples:
  - Angle adjustment (elective)
  - Install additional Flock signage

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email support@flocksafety.com.

## **Help Center**

Our Help Center is filled with many resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

How do I search camera footage?

How do I add a user?

How do I add a vehicle to my own Hot List?

How do I enable browser notifications for Hot List alerts?

How do I get text alerts for Hot List?

How do I request camera access from other nearby agencies?

## How do I use the National Lookup to search for a plate?

(National Lookup - network of law enforcement agencies that have opted to allow their network of Flock cameras to be used for searches)

How do I reset my / another user's password?

## **Customer Support**

You can reach our customer support team anytime by emailing support@flocksafety.com. They can help answer any "How-To" questions you may have.



## **EVERETT** City Council Agenda Item Cover Sheet

**Project title:** 

Adopt a Resolution Waiving Public Bidding Requirements and Approving A Multiple Year Sole-Source Purchase Of Flock Safety® Automated License Plate Readers (ALPR) Cameras, Pan-Tilt-Zoom Cameras, Gunshot Detection Devices, and Associated Services from Flock Safety

Council Bill # interoffice use	Project: Resolution to waive public bidding requirements
	Partner/Supplier: Flock Safety
Agenda dates requested:	Preceding action: None
Briefing	Fund:
Proposed action	
Consent 05/29/24	Fiscal summary statement:
Action	Flock Safety products support police operations and investigations. Approval of the sole
Ordinance	source resolution will allow the Police Department to adopt technology that will
Public hearing  Yes X No	increase its efficiency, put officers in areas where criminal activity is occurring, and solve
	more crimes.
Budget amendment:	The anticipated spend is approximately \$250,000 annually.
Yes X No	
PowerPoint presentation:	Project summary statement:
Yes X No	The Flock Safety® LPR (license plate recognition) and PTZ (pan-tilt-zoom) cameras were
Attachments:	designed to support police operations and investigations. The LPR cameras can capture
Resolution	and process up to 30,000 vehicles per day and utilize Vehicle Fingerprint Technology®.
Department(s) involved:	This technology includes effective searching mechanisms to turn digital images into
Procurement & Police	investigative leads through visual searching. Vehicle Fingerprint Technology® is only
	compatible and available with Flock Safety® cameras.
Contact person: Theresa Bauccio-Teschlog	Flock Safety is the only authorized supplier that sells Flock Safety® LPR Cameras, PTZ
Theresa Bauccio-Teschiog	cameras, gunshot detection devices, and associated services in a combined system that
Phone number:	provides pertinent public safety information in near real time. The LPR cameras read
425-257-8901	and analyze vehicle license plates, while connecting directly with NCIC criminal
Email:	databases, missing persons' databases and Police Department mobile data computers
tbauccio@everettwa.gov	and cell phones. Flock Safety also directly connects with the other police departments
	using the same systems in their jurisdictions.
	Recommendation (exact action requested of Council):
	Adopt a Resolution waiving public bidding requirements and approving a multiple-year
Initialed by:	sole-source purchase of Flock Safety® LPR cameras, PTZ cameras, gunshot detection
sh	devices, and associated services from Flock Safety.
Department head	
Administration	
Council President	



RESOLUTION	NO.
KE3OLUTION	NO.

A RESOLUTION waiving public bidding requirements and approving a multiple-year solesource purchase of Flock Safety® Automated License Plate Readers (ALPR) Cameras, pan-tiltzoom cameras, gunshot detection devices, and associated services from Flock Safety

#### WHEREAS,

- 1. The City chose Flock Safety® Automated License Plate Readers (ALPR) Cameras, pan-tilt-zoom cameras, gunshot detection devices, and associated services for Everett Police Department operations; and
- 2. Flock Safety is the sole manufacturer, developer, and distributor of the Flock Safety® Automated License Plate Readers (ALPR) Cameras, pan-tilt-zoom cameras, gunshot detection devices, and associated services; and
- 3. As long as Flock Safety is the only authorized provider of the Flock Safety® Automated License Plate Readers (ALPR) Cameras, pan-tilt-zoom cameras, gunshot detection devices, and associated services, it is in the City's best interests to approve the sole source purchase for multiple years rather than on an annual basis.

#### NOW, THEREFORE, BE IT RESOLVED BY THE EVERETT CITY COUNCIL THAT:

There is clearly and legitimately only one source capable of supplying Flock Safety® Automated License Plate Readers (ALPR) Cameras and associated services for Everett Police Department operations. The City Council hereby waives competitive bidding requirements and authorizes the purchase of the Flock Safety® Automated License Plate Readers (ALPR) Cameras, pan-tilt-zoom cameras, gunshot detection devices, and associated services from Flock Safety, which will extend for multiple years, in an amount of approximately \$250,000 in year one, and approximately \$250,000 annually in the years thereafter.

Councilmember introducing r	esolution	<del></del>
Passed and approved this	day of	, 2024.
Council President		_



**Project title:** 

An Ordinance Creating a Special Improvement Project Entitled, "Clark Park Renovation and Off Leash Dog Area", Fund 354, Program 101, to Accumulate All Costs for the Project

Council Bill # CB 2405-08
Agenda dates requested:
Briefing & 1st Reading 5/22/24 Proposed action 5/29/24 Consent Action 6/5/24 Ordinance X Public hearing Yes X No
Budget amendment: Yes X No
PowerPoint presentation: X Yes No
Attachments: -Funding Ordinance -Historical Commission Review Process Memo -Historical Commission Letter
<b>Department(s) involved:</b> Parks and Facilities
Contact person: Bob Leonard
<b>Phone number:</b> 425-257-8335
Email: BLeonard@everettwa.gov
Initialed by:  RML  Department head
Administration
Council President

Project:	Clark Park Renovation and Off Leash Dog Area
Partner/Supplier:	
	2400 Lombard Ave.
Preceding action:	None
	Fund 354, Program 101 (CIP 3)

#### **Fiscal summary statement:**

The source of funds for the project is CIP-3. The City was awarded a grant from Snohomish County in the amount of \$10,000 to help fund the project. This County grant was a Small Capital Project Partnership Grant, applied for in partnership with the Bayside Neighborhood and the City.

The amount of the construction and project costs is estimated to be \$360,000.

#### **Project summary statement:**

This project will construct a new 29,700 sq. ft. off leash dog area. The construction of the off-leash dog area will include installation of a 5' high ornamental metal fence with 2 gates in the sally port and a double 4' gate for the maintenance entrance. This project will also include park renovations adding lighting upgrades, removal and storage of the gazebo, interpretive signage, and tree protection measures.

#### Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled, "Clark Park Renovation and Off Leash Dog Area", Fund 354, Program 101, to accumulate all costs for the project.



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An Ordinance creating a special improvements project entitled "Clark Park Renovations and Off Leash Dog Area", Fund 354, Program 101, to accumulate all costs for the project.

#### WHEREAS,

- **A.** The City Council recognizes the desire of the Bayside neighborhood to have an off-leash dog area in their neighborhood.
- **B.** The City Council has recognized the need for Clark Park renovations and construction of a neighborhood 29,700 sq. ft. off leash dog area.
- **C.** The City has received a Snohomish County grant in the amount of \$10,000 as a contribution to fund the construction of an off-leash dog area at Clark Park.

#### NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

**Section 1.** A special improvement project fund is hereby entitled "Clark Park Renovations and Off Leash Dog Area" Fund 354, Program 101.

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

<u>Section 3</u>. The estimated cost of design, permitting, and construction is \$360,000.

<u>Section 4</u>. The sum of \$360,000 is hereby appropriated to Fund 354, Program 101, "Clark Park Renovations and Off Leash Dog Area", project

Repair and Construction	<u>\$360,000</u>
Total	\$360,000

B. Source of Funds

CIP-3	\$350,000
<b>Snohomish County SCPP Grant</b>	\$ 10,000
Total	\$360,000

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

<u>Section 5</u>. 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.

<u>Section 6</u>. 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.

<u>Section 7</u>. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

**Section 8**. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Cassie Franklin, Mayor	
ATTEST:	
City Clerk	_
PASSED:	_
VALID:	
PUBLISHED:	
EFFECTIVE DATE:	



TO: **Everett Historical Commission** FROM: David Hall, City Attorney

DATE: April 17, 2024

Historical Commission review process for Clark Park project SUBJECT:

Everett Parks initiated a project in Clark Park in response to a desire among the community for more dog parks and active recreation opportunities and in response to unacceptable levels of crimes and park rule violations that often occur in, around, or related to the gazebo structure. The project scope includes installation of a dog park, removal of the gazebo structure, and lighting improvements.

The Everett historical commission requested more information on whether the proposed project would require a certificate of appropriateness or a waiver of a certificate of appropriateness.

#### **BACKGROUND**

Under EMC 19.28, changes to properties on the Everett Register of Historic Places requires a review by the historical commission, which applies to all features of the property that contribute to its designation as identified on the nomination form.

As part of that review, the historical commission may recommend a certificate of appropriateness for the use, construction of any new building or structure, or reconstruction, alteration, restoration, remodeling, repairing, or moving the register property. The decision concerning the granting or denial of a certificate of appropriateness is made by the planning director.

The historical commission may also issue a waiver of a certificate of appropriateness for demolition or partial demolition of a register property, including potential conditions of the waiver. The commission may also recommend that the property be removed from the register upon demolition. The decision concerning the waiver of certificate of appropriateness is made by the city council.

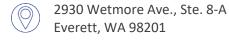
#### **CLARK PARK REGISTER PROPERTY**

On July 7, 1993, the City Council placed the Clark Park site on the Everett Register of Historic Places. The nomination references Clark Park's significance as Everett's first park and as an early example of civic concern for creating public spaces in the new city.

> Significance: Clark Park is significant as Everett's first park and as an early example of civic concern for creating public spaces in the new city. The name is also important as a way of honoring and remembering people who have contributed to Everett's development.

The nomination also reflects the evolution of the park over the years and laments the state of disrepair, at the time, of the popular bandstand. The recommendation notes that the park would be the first nonstructure site on the register.

> Historical Commission Recommendation: Clark Park certainly qualifies for recognition as an Everett Register property. It will be the first non-structure site to be put on the Register and is a good example of the types of sites that are valuable to the history of the City of Everett.







Features noted in the register nomination for Clark Park include: large, significant, and historic trees, newer tennis courts and fitness track, a bandstand (gazebo), the park's name, the diagonal sidewalks, and the wide lawns.

#### CONCLUSION

The Clark Park Everett Historic Register property is a site. Site means "the spatial location of an actual or planned structure or set of structures (such as a building, town, or monuments)", or "a space of ground occupied or to be occupied by a building", or "the place, scene, or point of an occurrence or event".

While it is possible to alter ("to make different without changing into something else"¹) a site, one cannot demolish ("tear down", or "raze"¹) a spatial location, space, place, scene, or point. In this case the planning director correctly determined that the proposed project – installation of a dog park, removal of the gazebo structure, and lighting improvements – affects features of the site which are noted in the register nomination and that the project should be reviewed by the Historical Commission. The planning director also correctly characterized the project as an *alteration of the Clark Park site*, which requires a certificate of appropriateness under EMC 19.28.140(C)(3).

<sup>&</sup>lt;sup>1</sup> Merriam-Webster



# EXHIBIT 1 – EVERETT MUNICIPAL CODE: EVERETT REGISTER OF HISTORIC PLACES

#### EMC 19.28.130 Everett register of historic places.

- A. [Criteria for Placement on the Everett Register]
- B. [Process for Designating Properties or Districts to the Everett Register]
- C. Removal of Properties from the Register. In the event that any property is no longer deemed appropriate for designation to the Everett register of historic places, the commission or property owner may initiate removal from such designation by the same procedure as provided for in establishing the designation, subsection (B) of this section.
- D. Effects of Listing on the Register.
  - 1. Listing on the Everett register of historic places is an honorary designation denoting significant association with the historic, archaeological, engineering or cultural heritage of the community.
  - 2. Prior to the commencement of any work on a register property, excluding painting, and emergency measures, the owner must request a certificate of appropriateness from the commission for the proposed work. Violation of this rule shall be grounds for the commission to review the property for removal from the register.
  - 3. As a certified local government (CLG), the commission may grant special tax valuation for the rehabilitation of properties listed on the Everett register of historic places.
  - 4. Prior to whole or partial demolition of a register property, the property owner must request and receive a waiver of a certificate of appropriateness.

#### EMC 19.28.140 Changes to properties on Everett register of historic places.

- A. Review Required. No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move or demolish any existing property on the register without review by the historical commission and issuance of a certificate of appropriateness, or in the case of demolition a waiver as a result of the review. The review shall apply to all features of the property that contribute to its designation as identified on the nomination form.
- B. *Exemption*. This section shall have no application to ordinary repair and maintenance, including painting, nor to emergency repairs.
- C. Review Process.
  - 1. Requests for Review and Issuance of a Certificate of Appropriateness or Waiver. The building official shall report any application for a permit to work on a designated Everett register property to the commission staff, who shall notify the applicant of the commission review requirements. The commission shall review the application for certificate of appropriateness or waiver prior to the building official granting a permit. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. If conditions are not met, the certificate of appropriateness may be revoked or, in the case of a waiver involving demolition, the city may take such action it deems appropriate including issuance of stop-work orders and/or suspension of permits.
  - 2. Commission Review. The owner or their agent shall apply to the commission for a review of the proposed changes to a register property or within a register historic district and request a



certificate of appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

- 3. Commission Procedures. The commission shall meet with the applicant and review the proposed work according to the requirements set forth in this chapter, and, in the case of reconstruction, alteration, restoration, remodel, repair or moving, the design review criteria established in the Washington State Advisory Council's Standards for Rehabilitation and Maintenance of Historic Properties. The commission's recommendation shall state the findings of fact and reasons relied upon in reaching its decision. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. The decision concerning the granting or denial of a certificate of appropriateness shall be made by the planning director on the advice of the commission according to the standards established in the commission's rules. Once a decision is rendered, it shall be transmitted to the building official. The building official may then issue the permit provided the proposed work meets all other appropriate regulations.
- 4. Demolition. A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Everett register property. The owner or their agent shall apply to the commission for review of the proposed demolition and request a waiver. When there is no feasible alternative to demolition, then either the significant historic character defining features should be saved and incorporated as part of the new design, or the new design should, in some measure, preserve or recognize the historic character or provide reasonable mitigation. The commission shall make a recommendation to the city council. The commission may recommend that: (a) the waiver be granted; (b) the waiver be granted with conditions; or (c) the waiver be denied. In addition, the commission may recommend that the property be removed from the register upon demolition. Conditions, in the case of a recommendation waiving a certificate of appropriateness involving demolition, may include a recommendation that the owner provide reasonable mitigation for the loss of the Everett register property. Reasonable mitigation for the loss may include a demolition that: (1) saves significant facade features and incorporates them into the design of the structure; (2) incorporates identified character defining features into the design of the new structure; or (3) such other alternatives found acceptable to the historical commission or the city council.

#### EMC 19.28.150 Review and monitoring of properties for special property tax valuation.

- A. The class of properties eligible for special valuation shall be limited to properties listed on the Everett register of historic places.
- B. Applications for special property tax valuation in connection with substantial improvement of historic properties, as defined in Chapter 84.26 RCW, shall be submitted to the commission by the county assessor within ten days of filing.
- C. The commission shall approve applications for special valuation if the property meets the provisions of Chapter 84.26 RCW and is not altered in a way which adversely affects those elements which contribute to its designation and the owner(s) enters into an agreement with the commission which requires the owner(s) for the ten-year period of classification to:
  - 1. Monitor the property for its continued qualification for special valuation;
  - 2. Comply with rehabilitation plans and maintenance as defined in the agreement;



- 3. Make the historic aspects of the property accessible to public view one day a year, if the property is not visible from the public right-of-way;
- 4. Apply to the commission for approval or denial of any demolition or alteration; and
- 5. Comply with all other provisions in the original agreement.
- D. Owners of Everett register properties that have been granted special valuation must execute an historic preservation agreement with the city. This agreement covers the owner's obligation for maintenance, repair or alteration of the historic structure. Any breach of this historic preservation agreement may result in the loss of special valuation.
- E. Once an agreement between an owner and the commission has become effective, there shall be no changes in standards of maintenance, public access, alteration or report requirements, or any other provisions of the agreement, during the period of the classification without the approval of all parties to the agreement.
- F. An application for classification as an eligible historic property shall be approved or denied by the commission before December 1st of the calendar year in which the application is made.
- G. The commission shall notify the county assessor and the applicant of the approval or denial of the application.
- H. If the commission determines that the property qualifies as an eligible historic property, the commission shall certify the fact in writing and shall file a copy of the certificate with the county assessor within ten days of the determination and no later than December 31st.
- I. Any decision of the commission acting as the local review board on any application for classification as historic property, eligibility for special valuation, may be appealed to superior court.



**Everett Historical Commission** 

April 23rd, 2024

Everett City Council and Mayor Franklin,

After much consideration, the Historical Commission has decided to indefinitely postpone the City's request for a certificate of appropriateness to demolish the Clark Park gazebo and build a dog park. This is because the commission strongly feels that a certificate of appropriateness is not the appropriate mechanism for this request. We believe that a *waiver of a certificate of appropriateness* would have been the correct path.

The first sentence of the Everett Municipal Code section on Demolition (EMC 19.28.140.C.4) states: "A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Everett register property." We believe this is abundantly clear at face value, and is not in need of creative explanations.

Furthermore, the Historical Commission would also like to draw the Council's attention to the following facts:

- The dog park would likely be an excellent way to activate the park. However, demolition of the gazebo is not strictly necessary to build the dog park. In fact, the existing gazebo could be thoughtfully integrated into the design of the dog area.
- The City has acknowledged that demolishing the gazebo won't stop crime in Clark Park. Furthermore, it's very possible that activating the park with dogs and their owners will go a long way towards mitigating those issues, rendering demolition unnecessary. Therefore, there is no particular urgency to demolish the gazebo.
- Although the City claims that the gazebo isn't made of the original wood, it has apparently been rehabilitated in accordance with the Secretary of the Interior Standards as the Everett Register requires. Therefore, it maintains its historical integrity.
- It was the clear intent of the 1993 nomination of the park to the Everett Register that the
  gazebo be protected. Since the park has always been owned by the City and there are no tax
  benefits to be gained by anybody, protection would have been the primary motivation for
  placing it on the register.
- The 1993 Everett Register nomination form for the park listed Architecture, Landscape Architecture, and Community Development as the three areas of significance. At the time, there was the gazebo, a bandstand, and a cannon in the park. The gazebo is now the only remaining structure within Clark Park that offers any sense of architectural significance. Its demolition would rob the park of a major reason why it was put on the register in the first place. Without it, its historical status would be a mere technicality, and it would lose any visible sense of its identity.

- The purpose of the Everett Register is to encourage preservation of our heritage. Demolitions or radical alterations of Everett Register properties are contrary to this goal. As such, they should be approved only in highly exceptional circumstances. For example, if a structure were to be destroyed by fire, or if there is an overwhelmingly obvious public benefit (like the hospital expansion a few years ago). The current proposal is not a compelling enough reason for such radical action. It should surprise no one that this commission is not predisposed to endorse such exceptions.
- The City of Everett is a Certified Local Government (CLG) under the National Historic Preservation Act (NHPA). This is essentially a sort of National Park Service accreditation. The City has held this designation since the 1980s. Under the State of Washington Certified Local Governments Program Requirements and Procedures Amended 2002, the NHPA requires that all CLGs "Enforce appropriate state or local legislation for the designation and protection of historic properties" [Section 101(c)(1)(A)]. By demolishing one of its own historic properties, the City of Everett would be flagrantly disregarding its obligations as a CLG, and would also be setting a bad precedent for other owners of historic properties.

In conclusion, we understand and appreciate that the City is trying to reduce crime and create a healthy environment for its residents, under very difficult financial circumstances. We also believe that the best way to achieve these goals is to collaborate with the Historical Commission on possible solutions, rather than trying to simply force your will upon it. The commission remains willing to entertain less drastic alternatives, if and when they are proposed by the City.

Respectfully,

Patrick Hall

Chair, Everett Historical Commission

# **EVERETT** City Council Agenda Item Cover Sheet

**Project title:** Everpark Garage Ordinance relating to Fund 430 and repealing Ordinance 97-70

Council Bill # interoffice use	Project: Fund 430 Everpark Garage Ordinance
CB 2405-09	Partner/Supplier: NA
Agenda dates requested:	Location: 2815 Hoyt Avenue
1 <sup>st</sup> Reading 05/29/24	Preceding action: Ordinance 97-70
2 <sup>nd</sup> Reading 06/05/24 Consent	Fund: 430/Everpark Garage
Action 06/12/24	
Ordinance X	Fiscal summary statement:
Public hearing	Adoption of this ordinance will have no General Fund impact. Fund 430 will continue to be the
Yes X No  Budget amendment:	Enterprise Fund for Everpark Garage revenue, accumulated interest, and expenditures with a priority given to maintenance.
Yes X No	Project summary statement:
PowerPoint presentation: Yes X No  Attachments: Ordinance	In October 1970, the Everett City Council, recognizing the need for off-street parking in downtown Everett, adopted Ordinance 97-70 that provided the bond financing for the construction of what is now called the Everpark Garage and established "special funds and accounts" to construct the garage. All debt has long since been retired, and the special funds and accounts established in Ordinance 97-70 have been superseded by Fund 430 ("Everpark
Department(s) involved: Economic Development  Contact person: Dan Eernissee, Director	Garage").  Since 1970 expenditures from Fund 430 have been restricted to operation, maintenance, repair, and capital improvement of the Everpark Garage. Downtown Everett has significant parking needs, and an adequate supply of well-managed parking is a key driver of the economic health of the downtown.
Phone number: 425-257-8681  Email: deernissee@everettwa.gov	This proposed Ordinance reestablishes the purposes for which the revenues in Fund 430 Everpark Garage may be expended. While keeping Everpark maintenance as the priority, it also allows expenditures of surplus funds to improve downtown parking. As the debt issued under Ordinance 97-70 is long retired, this Ordinance also repeals Ordinance 97-70. This repeal will eliminate any confusion about whether Ordinance 97-70 still affects City management or use of Everpark Garage.
	The briefing on this proposed Ordinance was given to the Council's Parks & Quality of Life Committee at its meeting on May 15, 2024.
	Recommendation (exact action requested of Council):
Initialed by:	Adopt an Ordinance relating to Everpark Garage and Fund 430 Everpark Garage, and repeal
DE	Ordinance 97-70.
Department head	
Administration	
Council President	



An ORDINANCE relating to Everpark Garage and Fund 430 Everpark Garage, and repealing Ordinance 97-70

#### WHEREAS,

- A. In 1969-1970, the City of Everett City Council, recognizing the need for off-street parking in downtown Everett, adopted ordinances that provided the financing for the construction of what is now called the Everpark Garage.
- B. Ordinance 97-70, adopted in October 1970, directed the issuance of bonds for Everpark Garage construction. Section 12 of Ordinance 97-70 also established four "special funds and accounts," including accounts for revenue, for bond and interest sinking fund, for repair and replacement reserve, and for construction.
- C. The Everpark Garage was built with the proceeds of the bonds issued under Ordinance 97-70 and from other revenue sources.
- D. All debt issued under Ordinance 97-70 or otherwise related to the construction of Everpark Garage has been long retired. In addition, the accounts created in Section 12 of Ordinance 97-70 have long since been superseded by Fund 430 (entitled "Everpark Garage").
- E. Fund 430 receives revenue from Everpark Garage parking fees and accumulated interest. Expenditures from Fund 430 have since 1970 been only for operation, maintenance, repair and capital improvement of the Everpark Garage.
- F. Downtown Everett has significant parking needs, both on-street and off-street. Parking is a key driver of the economic health of the downtown.
- G. This Ordinance reestablishes the purposes for which the revenues in Fund 430 Everpark Garage may be expended, to include both downtown off-street and downtown on-street purposes.
- H. As the debt issued under Ordinance 97-70 is long retired, this Ordinance also repeals Ordinance 97-70. This repeal will eliminate any confusion about whether Ordinance 97-70 still affects City use of Everpark Garage revenue.

#### NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

**Section 1.** Fund 430 Everpark Garage is hereby revised as follows:

A. Fund 430 Everpark Garage revenues will continue to be derived from Everpark Garage revenues, including without limitation parking receipts collected from garage customers and interest on the invested fund balance.

- B. Fund 430 Everpark Garage expenditures may include, in accordance with the City budget, the following expenditures:
  - 1. Expenditures for the Everpark Garage, including without limitation its operation, maintenance, repair, or capital improvement; or
  - 2. After reasonable provision for the requirements of the Everpark Garage are met, then expenditures for purposes related to publicly owned off-street and on-street parking in the downtown Everett area bounded by Broadway on the east, 32<sup>nd</sup> Street on the south, West Marine View Drive on the west, and 25<sup>th</sup> Street on the north.

Section 2. Ordinance 97-70 is hereby repealed.

<u>Section 3</u>. 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.

<u>Section 4</u>. 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.

<u>Section 5</u>. The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

<u>Section 6</u>. It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Cassie Franklin, Mayor	
ATTEST:	
Marista Jorve, City Clerk	

PASSED:	_
VALID:	_
PUBLISHED:	
FFFFCTIVE DATE:	

## **EVERETT** City Council Agenda Item Cover Sheet

**Project title:** 

Reject bid from IMCO General Construction Inc. and award the Edgewater Creek Bridge Replacement Project to Granite Construction Company of Everett, WA in the amount of \$25,409,890.65.

Council Bill #	Consideration: Award of Construction Contract
	Project: Edgewater Creek Bridge Replacement Project
Agenda dates requested:	Partner/Supplier: Granite Construction Company
Briefing	Location: Mukilteo Boulevard at Shore Avenue
Proposed action	Preceding action: Call for Bids 3/1/23
Consent Action 05/29/24	Fund: Fund 303, Program 115
Ordinance 05/29/24	Fiscal summary statement:
Public hearing Yes X No	The funding sources for this project are two Federal grants, and local matching funds.
Budget amendment:  Yes X No	The programmed available funding, as established by City Ordinance No. 4002-24 is \$34,000,000.
PowerPoint presentation: Yes X No	Project summary statement:
Attachments: Bid Summary	This project will remove and replace the existing Edgewater Creek Bridge, which was built in 1946 and is a vital link in a chain of three bridges that provide the only access to neighborhoods along Mukilteo Boulevard.
Department(s) involved: Public Works, Legal Contact person:	Bids were opened on December 19, 2023, with two bid proposals received for the project. IMCO General Construction of Everett, WA submitted a bid of \$25,004,258.50, and Granite Construction Company of Everett, WA submitted a bid of \$25,409,890.65.
Tom Hood  Phone number: (425) 257-8809  Email:	The Washington State Department of Transportation's (WSDOT) Office of Equity and Civil Rights (OECR) found IMCO, the lowest apparent bidder, non-responsive regarding their DBE Bid Item Breakdown describing the scope of work to be performed by each DBE listed on the Certification.
thood@everettwa.gov	The lowest responsive responsible bidder is Granite Construction Company of Everett, WA in the amount of \$25,409,890.65.
	Recommendation (exact action requested of Council):  Reject bid from IMCO General Construction Inc. and award the Edgewater Creek
Initialed by:  RLS  Department head	Bridge Replacement Project to Granite Construction Company of Everett, WA in the amount of \$25,409,890.65.
Administration	
Council President	



3200 Cedar Street, Everett WA 98201 (425) 257-8800

BID SUMMARY Edgewater Creek Bridge Replacement W.O.# PW 3694

Date: 12/19/2023

For: Dan Enrico, Project Engineer

Bidder Name: Bidder Totals:

ENGINEER'S ESTIMATE \$26,113,789.00

IMCO General Const Inc. \$25,004,258.50

Granite Const Company \$25,409,890.65



**Project title:** Resolution in Support of Everett Proposition 1

Council Bill # interoffice use	Proje
	Partner/Suppli
Agenda dates requested:	Locatio
Briefing	Preceding action
Proposed action	Fur
Consent	
Action 5/29/24	
Ordinance	Fiscal summary s
Public hearing	_
Yes X No	The proposed ballo \$1,000 of assessed
Budget amendment:	average home in Ev
Yes X No	Project summary
PowerPoint presentation:	In compliance with
Yes X No	ballot measure, aft
··············	views on the measi
Attachments:	Danama was alaw
Resolution	Recommendation
Department(s) involved:	Adopt a Resolution
Administration	Council through the services.
	SEI VICES.
Contact person:	
Jennifer Gregerson	
Phone number:	
425.257.8671	
Email:	
jgregerson@everettwa.gov	
Initialed by:	
Department head	
JRG	
Administration	
Council President	

Project:	Resolution Supporting City of Everett Proposition 1
Partner/Supplier:	NA
Location:	NA
Preceding action:	Resolution 8021 approved May 1, 2024
Fund:	General Government Fund

#### statement:

ot measure, if approved by voters, would change the city levy rate to \$2.19 per value. This would be an impact of approximately \$28 per month for the verett, assessed at \$521,000.

#### statement:

RCW 42.17 A.555, the City Council can consider a resolution in support of a er allowing members of the public an equal opportunity to express opposing

#### n (exact action requested of Council):

supporting City of Everett Proposition 1, placed on the ballot by the City e passage of Resolution 8021, concerning public safety and essential public



RESOLUTION NO.	
----------------	--

A RESOLUTION of the City of Everett supporting City of Everett Proposition 1, placed on the ballot by the City Council through the passage of Resolution 8021, concerning public safety and essential public services.

#### WHEREAS,

- 1. On May 1, 2024, the Everett City Council approved the submission of a proposition to the August 6, 2024 primary election; and
- 2. As provided in Section 3 of Everett Resolution 8021, the ballot title for Proposition No. 1 will read as follows:

# City of Everett, Washington Proposition 1 Levy Lid Lift for

#### **Public Safety and Essential Public Services**

The City Council has adopted Resolution 8021 concerning funding for quality of life and essential public services.

If approved, this proposition would authorize a maximum regular property tax rate in 2025 of not more than \$2.19/\$1,000 assessed value. The incremental increase in 2025 would fund essential public services, including park maintenance, libraries, animal shelter, street maintenance, neighborhood groups, social services, the arts, events and public safety, all as described in the Resolution. The 2025 maximum levy amount would be the basis to calculate subsequent levy limits. Qualifying seniors, veterans, and others would be exempt (ch. 84.36 RCW). Should this proposition be \_\_Approved? \_\_Rejected?

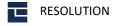
- 3. in compliance with RCW 42.17 A.555, the public meeting notice included the title and number of the City of Everett's Proposition No. 1 measure and members of the public were given equal opportunity to express opposing views on the measure; and
- 4. The City Council has worked for two decades to address growing budget deficits caused largely by a 1% cap in property tax increases passed by the Washington State legislature in 2007, while

- demand for city services continues to grow and city costs for providing those services increase at least 4% each year which exceeds the 1% tax cap, and
- 5. The City has made reductions year after year in order to minimize impacts to services including finding efficiencies, ensuring the most responsible use of all tax revenues, deferring investments in capital projects, workforce layoffs and elimination of vacant positions, encouraging early retirements, deferring payments to reserve funds, shuttering beloved services, eliminating recreational programs, and so much more, and
- 6. After streamlining, cutting, and finding efficiencies in every possible area of operations, further cuts to meet a balanced budget will be detrimental to our quality of life and will have broad impacts on city services, including impacts on economic development, public safety, park maintenance, libraries, the animal shelter, street maintenance, neighborhood groups, social services, the arts and events, and
- 7. Without approval of Proposition 1, the Mayor and City Council will need to identify substantial cuts year after year including \$12.6 million in cuts for the 2025 budget, growing to an additional projected \$35 million in cuts needed in 2030, and
- 8. The Mayor and City Council understands that funding public safety and essential public services is essential for a strong, safe community and that funding is required for these services;

#### NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND EVERETT CITY COUNCIL THAT:

That the Mayor and City Council of the City of Everett hereby expresses its support for the City of Everett Proposition No. 1, authorizing the City of Everett to fund essential public services, including park maintenance, libraries, animal shelter, street maintenance, neighborhood groups, social services, the arts, events and public safety through a property tax levy, and encourages voters to approve Proposition No. 1 at the primary election to be held on August 6, 2024.

Councilmember introducing R	tesolution	
Passed and approved this	day of	 , 2024.
 Council President		





**Project title:** Everett 2044 Comprehensive Plan Periodic Update

Council Bill #
Agenda dates requested:
Briefing Proposed action Consent Action Ordinance Public hearing Yes X No
Budget amendment:  Yes X No
PowerPoint presentation:  X Yes No  Attachments:
Department(s) involved: Planning, Public Works, Transit, Parks, others
Contact person: Yorik Stevens-Wajda
<b>Phone number:</b> 425-257-8725
Email: ystevens@everettwa.gov
Initialed by: YSW Department head
Administration
Council President

Project:	Everett 2044 Comprehensive Plan Periodic Update
Partner/Supplier:	NA
Location:	Citywide
Preceding action:	Previous council /committee and date of latest action
Fund:	Department fund example: 004/Admin

#### **Fiscal summary statement:**

No direct impact from the update project, although the plan itself will affect city revenues and guide city expenditures into the future.

#### **Project summary statement:**

Planning staff will provide the council an update briefing on the Everett 2044 Comprehensive Plan and Development Regulation Periodic Update project.

For more information, see:

- The project website at everettwa.gov/2044
- Planning commission packets and presentation slides at everettwa.gov/676/Planning-
- Planning commission meeting videos on **YouTube**

#### **Recommendation (exact action requested of Council):**

Briefing only at this time.

From: Magaly Quinones <shybirdchew@gmail.com>

**Sent:** Monday, May 27, 2024 5:48 PM

To: Angela Ely

Subject:[EXTERNAL] Clark ParkAttachments:clark park 5-22-2024.pdf

Follow Up Flag: Follow up Flag Status: Completed

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please share with all city council members and thank you in advance.

5/27/2024

City Council;

On May 22, 2024, I attended the city council meeting to support and advocate for the proposed installation of a dog park at Clark Park and the removal/relocation of the gazebo. I feel inclined to reiterate my concerns and hopes for the park.

During the past few years I have written letters sharing my experience and concerns regarding Clark Park as I live directly across the street. I have recently felt a sense of encouragement that the "Bayside Association", is now in support of having the gazebo removed/relocated. The gazebo by far is the "HUB" of the elicit activity that occurs at the park full stop! The Historical Society of Everett has stated they do not believe this will stop this sort of activity. I think most of us are aware that removing the gazebo will not stop "all" of this activity, but I do believe it will have a dramatically positive impact as there will no longer be a place to shelter and hide this sort of behavior. I expect the addition of the dog park will too have a positive effect as many dog owners will meet there, engage in conversation and socialize while their dogs play. I believe the positive activity will feed on itself and folks will begin to regain a sense of safety and the park will become a hub of more positive activity. Parents will feel more inclined to have their children play in the playground as the elicit activity becomes displaced. Most of us understand the problem is not magically going to go away. It will take an ongoing combined effort.

During the meeting it became apparent to me that some folks have a higher regard for maintaining property, historical or not, over the safety, security and sense of well being within the community. That somehow keeping a structure in place is more important than the citizens of the community feeling safe to enjoy a resource. This "thing" is more important than you. If the structure reaches a point where it is no longer used for its intended purpose and becomes dilapidated, vandalized, or otherwise abused, does it continue to retain historical value? The Everett Historical Society's mission statement says "It is to encourage, preservation and rehabilitation". In my opinion they have failed miserably. The preservation of this historical feature has been proven to be a failure at Clark Park. I believe the Historical Society is potentially missing an opportunity to also activate the gazebo by supporting its move to a more suitable location where it could retain its historical value. Clark Park is no longer that place. It has not been that place for a very long time. It is no longer the Center Stage Park it use to be. It is simply a neighborhood park with historical significance in that it is the oldest park in Everett.

The park has always experienced change. The Gazebo itself is awkwardly spaced within the park due to the addition of the tennis courts. I am not sure how much more awkward it may potentially be if sandwiched between tennis courts and fencing for a dog park. Leaving the Gazebo so that it is inside the dog park sounds rediculous at best.

The park is long overdue for an update. I am hopeful the City Council approves the proposed changes and we can move on from this issue.

Thank you for your time Magaly Quinones Bayside resident From: Patty Kreemer <pattyjk@comcast.net>
Sent: Tuesday, May 28, 2024 11:33 PM

To: DL-Council

**Subject:** [EXTERNAL] Please save the historic gazebo!

Follow Up Flag: Follow up Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We need to preserve this lovely historic public gathering structure! Patty Kreemer

From: Katie Vaal <ktvlsp3@gmail.com>
Sent: Wednesday, May 29, 2024 2:30 PM

To: DL-Council

Subject: [EXTERNAL] Public comment EPD

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

#### Hello City Council!

I wanted to write in and express my gratitude for the Everett Police Department and Cheif Derousse.

Myself and a group of neighbors have been working together to tackle some of the issues we've experienced in our neighborhood. This includes squatters in unoccupied buildings, problem vehicles, drug dealers, and some issues related to the social services in our neighborhood. We've had the ears of many in our local government, which is so appreciated. That being said EPD has been the most amazing partner.

During this time my neighbor Alexis and I met Cheif DeRousse and were able to do a ride along and show him some of the problem properties. He showed up for a neighborhood meeting about some of the problems we're experiencing. At a city council meeting I met a woman who told me Cheif DeRousse was helping her with a drug dealer in her neighborhood. A couple weeks later I watched Rabbi Kort speak about the conflict between Isreal and Palestine and what that's meant for her temple and community. Rabbi Kort said that after October 7th Cheif DeRousse was the first person to call and check in.

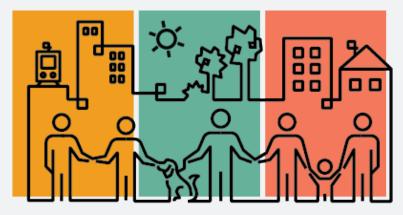
Hearing stories from other community members that got to connect and feel heard by the Cheif really drove home what a dedicated man he is to the community he serves. It must be a lot to listen to so many concerns, to connect with so many people, and I'd like to give him all the kuddos.

I know he's got a great team of people supporting him and I'd like to mention a few I've had the pleasure to interact with. Sergeant Wallace with the COET team is fantastic and has been really receptive to information about problem people and properties. Captain Fairchild has been having meetings with Compass Health to help improve communication with the neighborhood and make some changes to security. We appreciate him having those conversations and listening to all our thoughts on how to make things safer for everyone. Officer Guzman has no idea who we are but we've got to watch her work on a couple calls, she's a total badass. I think she might be younger than me but I want to be that cool when I grow up.

We all know it hasn't been easy to be a cop the last few years. Admittedly I had my own opinions that were not super favorable towards police. Interactions I've had in the last year have totally changed my perspective. We are lucky to have the police department we have, and we're lucky to have Cheif DeRousse.

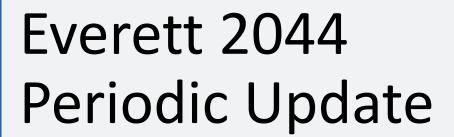
Now, not that I've heard a lot of pushback, but please support the EPD having whatever cameras or technology they need. They're doing the work to understand our cities issues and know what would be helpful. It is imperative that they have the right tools to do their jobs.

Katie Incognito Port Gardner, Everett



**Everett 2044** 

Planning our future together

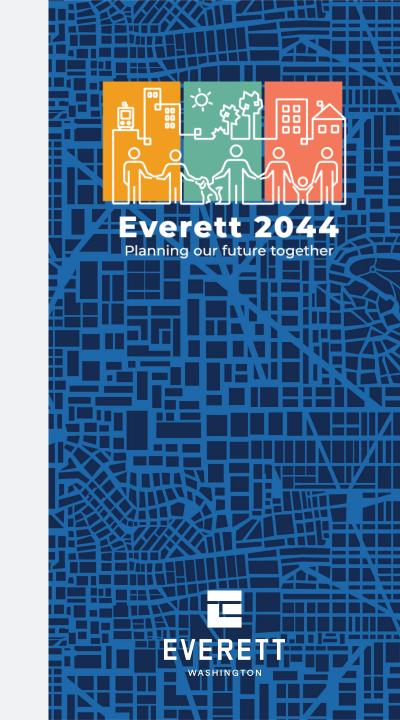


Everett City Council May 29, 2024



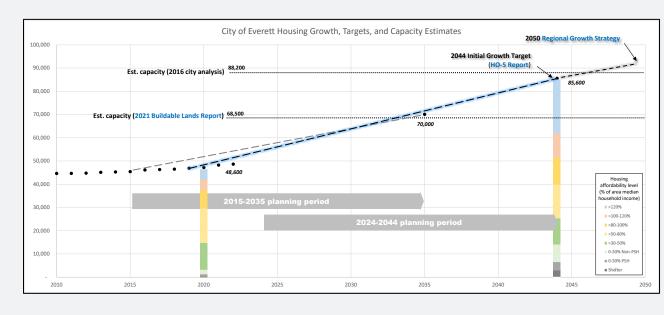
# Meeting Goals

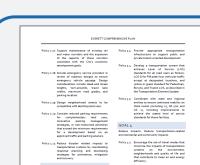
- Update on work over the winter
- > Engage for discussions and decisions
- Build foundation for a preferred alternative (the plan)



## Background – Statutory Requirements

- Extend planning horizon to 2044
- Respond to new state laws
- Consistency with
   Multicounty Planning Policies
   Regional Growth Strategy
   Countywide Planning Policies
- Public participation
- Environmental review





GOAL 3

Link Transportation to Land Use. Develop its proportation system that accommodates the adopted land use plan.

y3.4: Integrate land use and transportation planning to ensure that the transportation system supports the City's land use vision and that planned land use supports the preferred transportation system.

3.2: Develop a Concurrency Management Strategy for the city that facilitates the full integration for the programming and administration of transportation improvements, services and programs with implements the Comprehensive Plan.

TRANSPORTATION ELEMEN

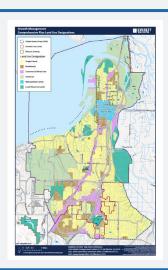
**Policies** 





Regulations





Growth Pattern



Capital Facilities

Plan

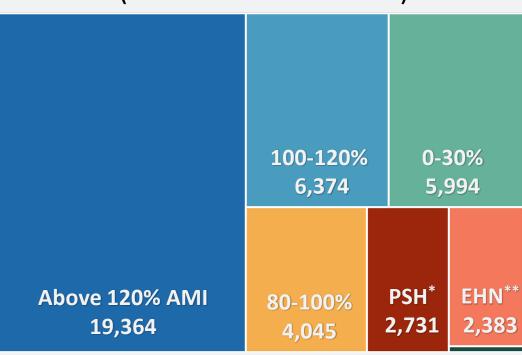
Implementation

## Background – Growth Targets

2024-2044 planning period	2023 (OFM)	2044 Target	Difference	
Population	114,200	179,200	+ 65,000	
Housing	49,100	85,600	+ 36,500	
Employment	82,900 (2022 <u>PSRC</u> )	167,200	+ 84,300	

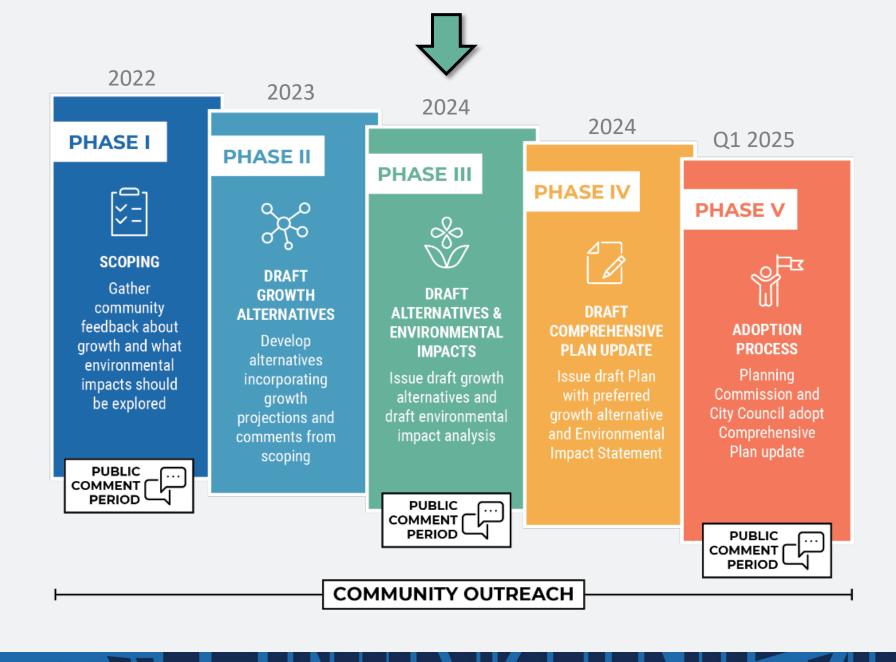
#### Everett 2020 to 2044

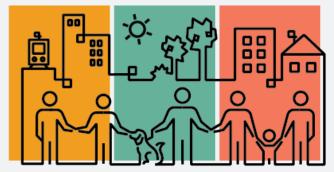
Allocation by Economic Segment (Area Median Income)



30-80% AMI negligible

- \* Permanent Supportive Housing
- \*\* Emergency Housing Need





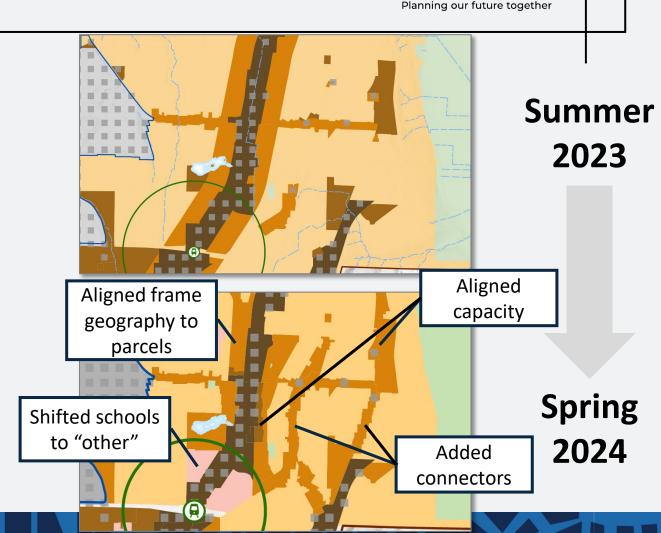
Everett 2044
Planning our future together

**■** EVERETT

#### Work over the winter

- Everett 2044
  - Everett 2044

- Refined growth geography boundaries
- Audited housing typologies to avoid reducing capacity



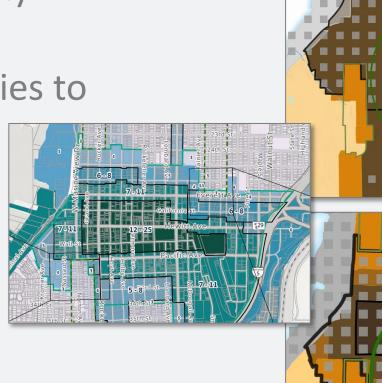
#### Work over the winter

**Everett 2044** 

 Refined growth geography boundaries

 Audited housing typologies to avoid reducing capacity

 Updated Metro Everett housing typology designations to reflect existing height map



Summer 2023

Spring 2024

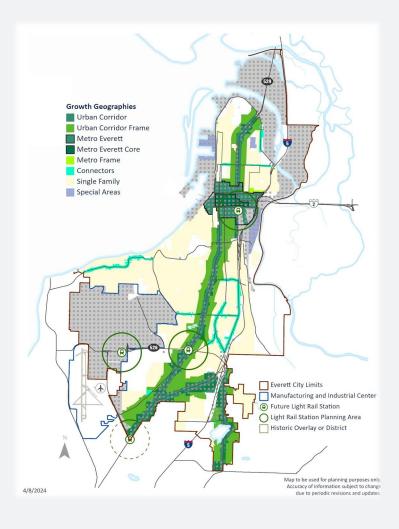
#### Work over the winter



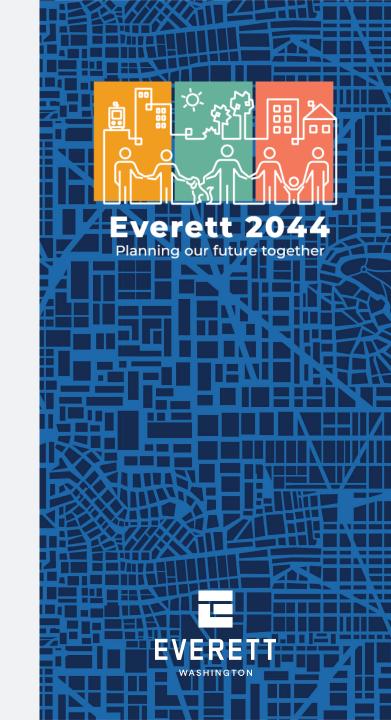
- Environmental analysis (SEPA)
- Agency & partner meetings
- Growth assumption/ land capacity analysis methodology and model
- Middle housing



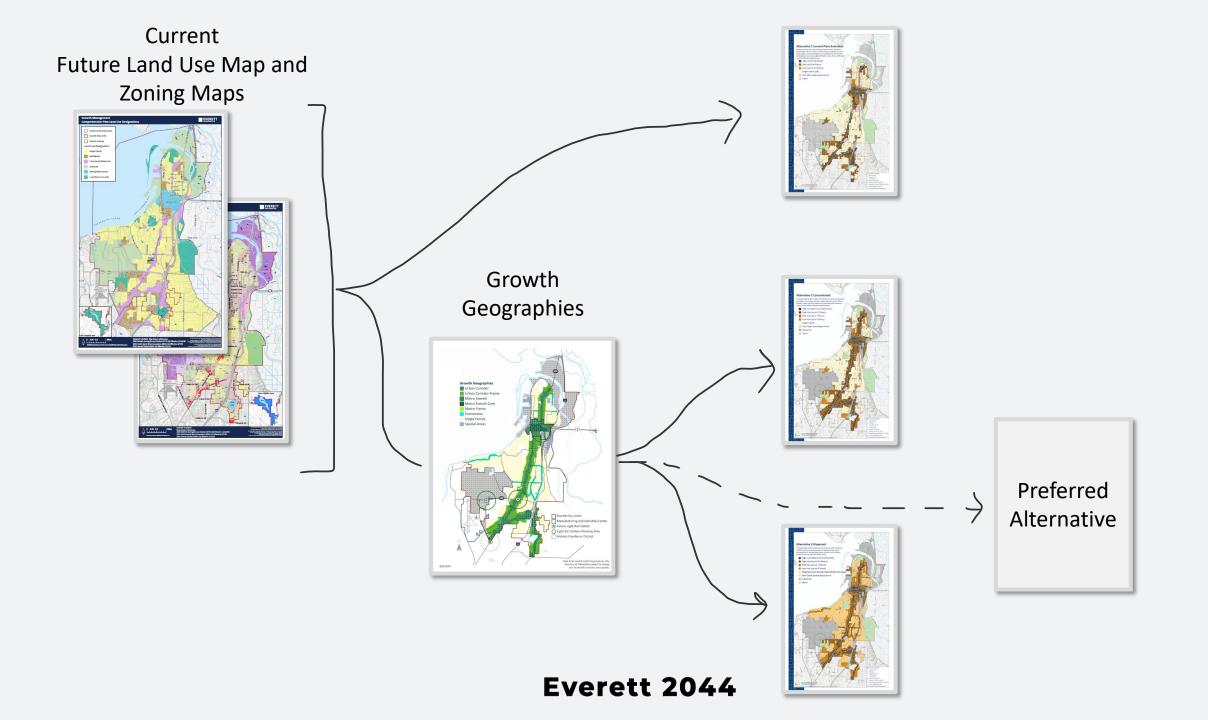
#### **Growth Alternatives**

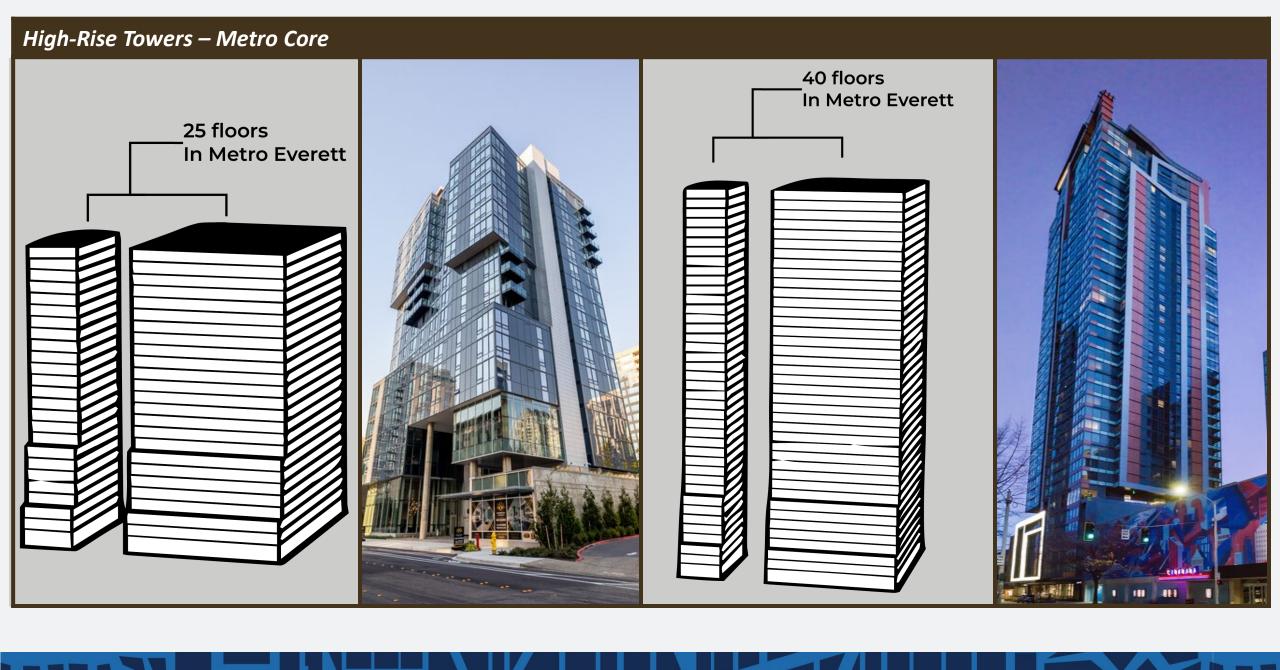






High-Rise Tower	Tall buildings with up to <b>40 floors</b>	Tall buildings with up to <b>25 floors</b>				
	Metro Core (current 12-25 floor limit)					
	81 acres (79 buildable)					
High-Rise	Buildings with up to <b>25 floors</b> Buildings with up to <b>15 fl</b>					
	Metro Everett outside core, urban corridors					
	1,246 acres (1,028 buildable)					
Mid-Rise	Apartments / condominiums in buildings up to <b>7 floors</b>					
	Metro Everett frame	Existing mid-rise zones				
	Urban corridor frame	684 acres (572 buildable)				
	Existing mid-rise zones					
	1,771 acres (1,415 buildable)					
Low-Rise	Apartments / condominiums in buildings up to <b>4 floors</b>					
Residential	Existing low-rise zones	Urban corridor frame & connectors				
	581 acres (423 buildable)	Existing low-rise zones				
		1,887 acres (1,454 buildable)				
Neighborhood	Detached houses and accessory	Townhouses, plexes, cottages, and				
Residential	dwelling units	courtyard apartments				
	4,034 acres (2,901 buildable)	3,816 acres (2,712 buildable)				

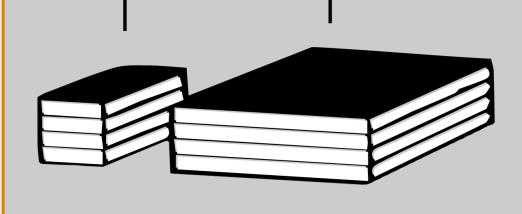




# High-Rise – Metro Everett outside core, urban corridors 25 floors In Metro Everett outside core, urban corridors 15 floors In Metro Everett outside core, urban corridors

# Mid-Rise – Metro Everett frame, Urban corridor frame, Existing mid-rise zones 7 floors In Metro Everett, urban corridor frame, existing mid-rise zones

# Low-Rise – Existing low-rise zones, (Urban corridor frame & connectors – Alternative 3) 4 floors Urban corridor frame & connectors,

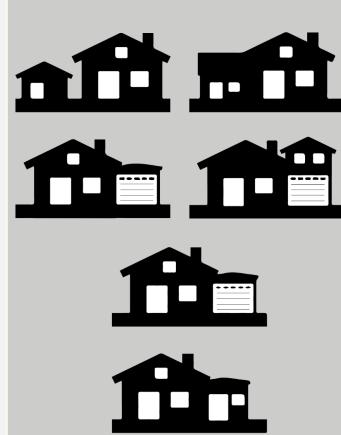


**Existing low-rise zones** 



#### **Neighborhood Residential**

Detached houses and accessory dwelling units





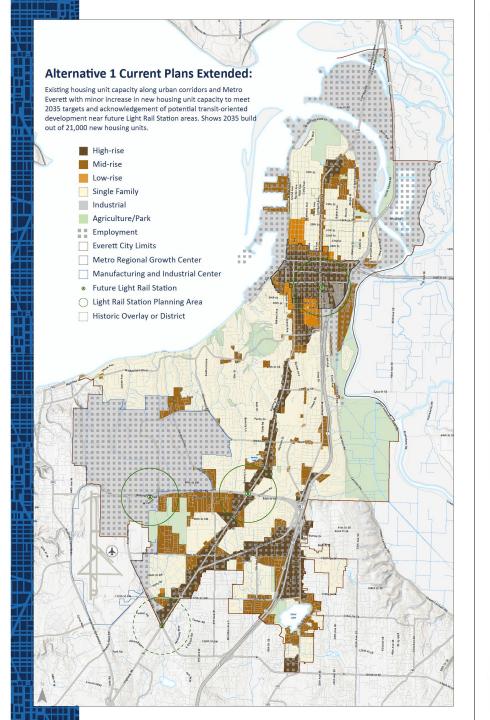
Townhouses, plexes, cottages, and courtyard apartments

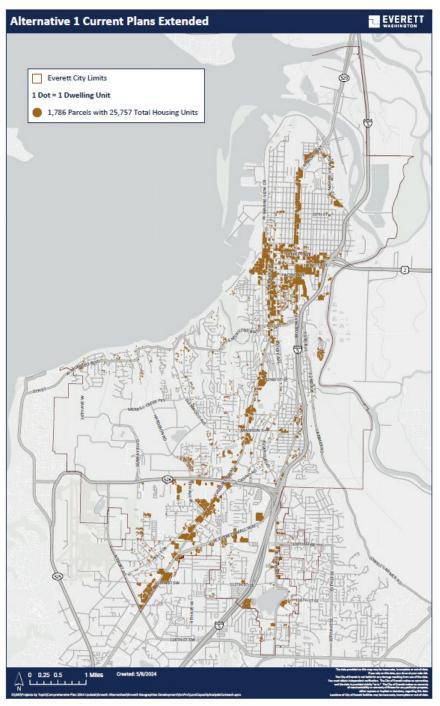


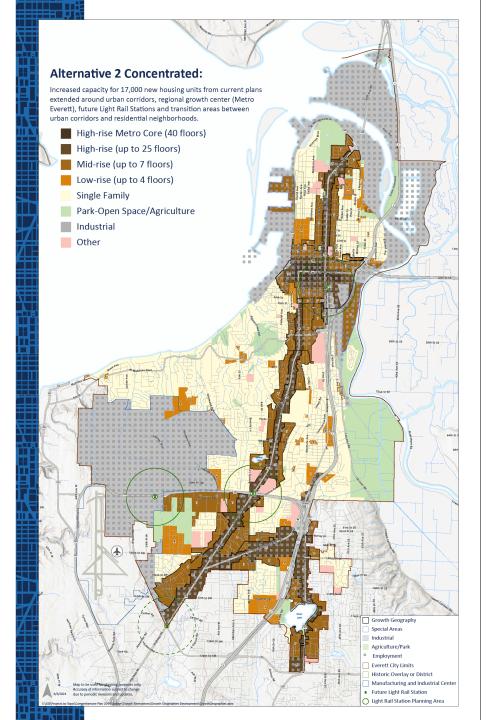


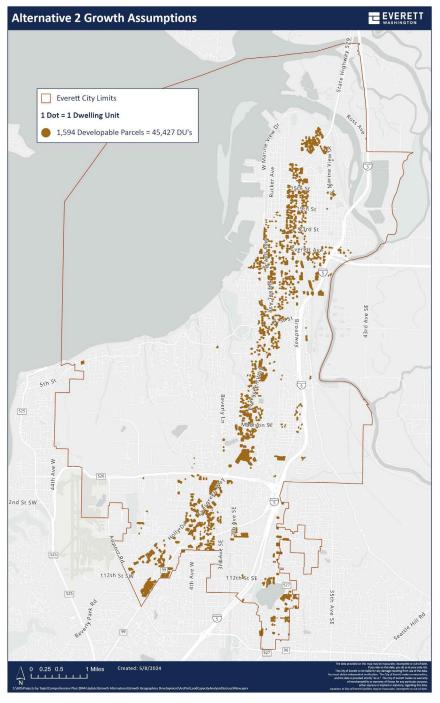
# Definition of

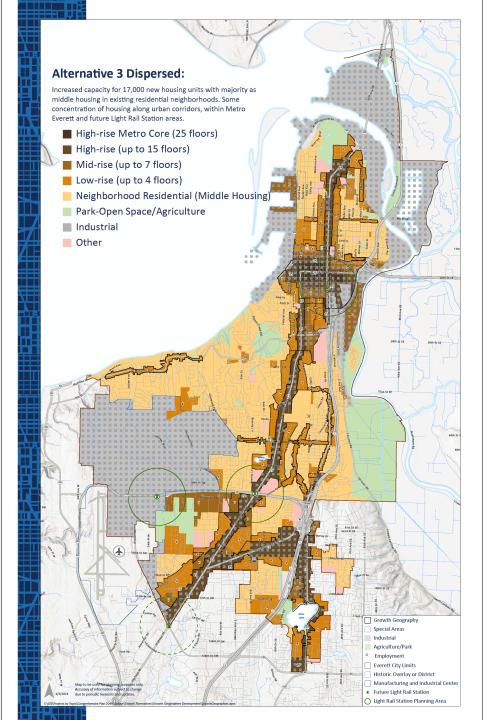
Delinition of					
	Alt 1: Current Plans	Alt 2: Concentrated Growth	Alt 3: Dispersed Growth		
Alternatives	Extended				
요[비호상 메 마스마하다) Everett 204					
Linhan Cannidana	Mid-rise	High vice	High vice		
Urban Corridors	High Rise	High-rise	High-rise		
Urban Corridor Frame	Single Family Detached	Mid-rise	Low-rise residential		
Orban Corndor Frame	Single-Family Detached	Wild-Hise	LOW-HSE residential		
Metro Core	High Rise	High-Rise/Tower	High-Rise		
Metro Everett	High-rise	High-rise	High-rise		
Metro Frame	Single-Family Detached	Mid-rise	Low-rise residential		
	January 2 datases				
Connectors	Single-Family Detached	Single-Family Detached	Low-rise residential		
	Mid-rise				
	Wild 113C	Reserved for subarea	Reserved for subarea		
Light Rail Station areas	Single-Family Detached	planning.	planning.		
	Julian Farming Detactives				
Neighborhood Residential	Single-Family Detached	Single-Family Detached	Neighborhood Residential		
	7	,			
Special areas	Date to the second				
(Waterfront/Riverfront)	Mid-rise	Mid-rise	Mid-rise		

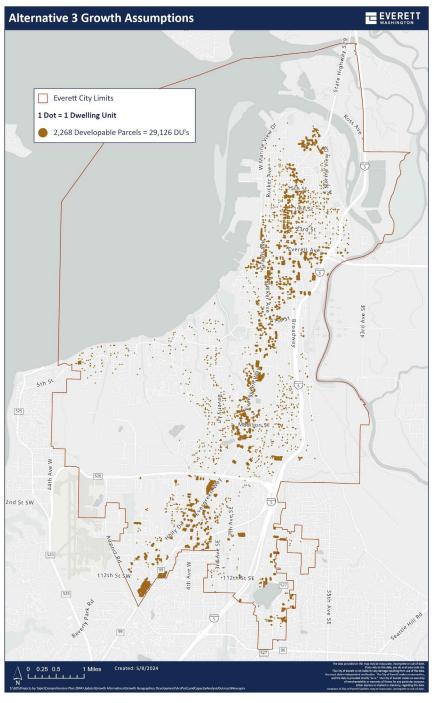


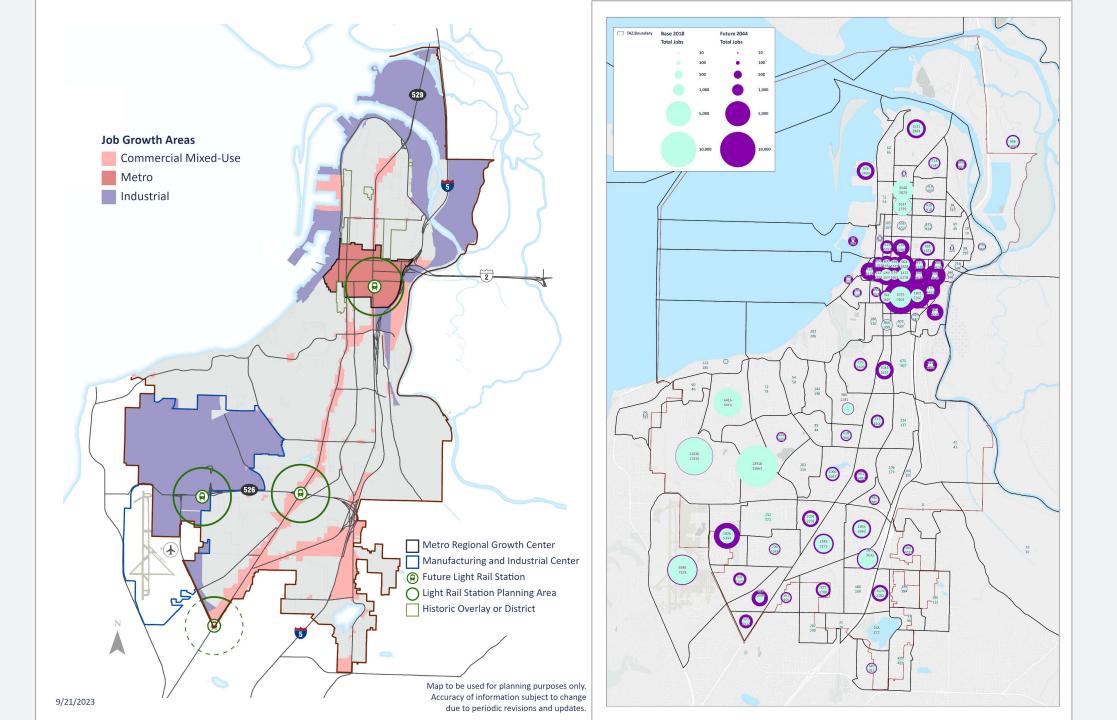


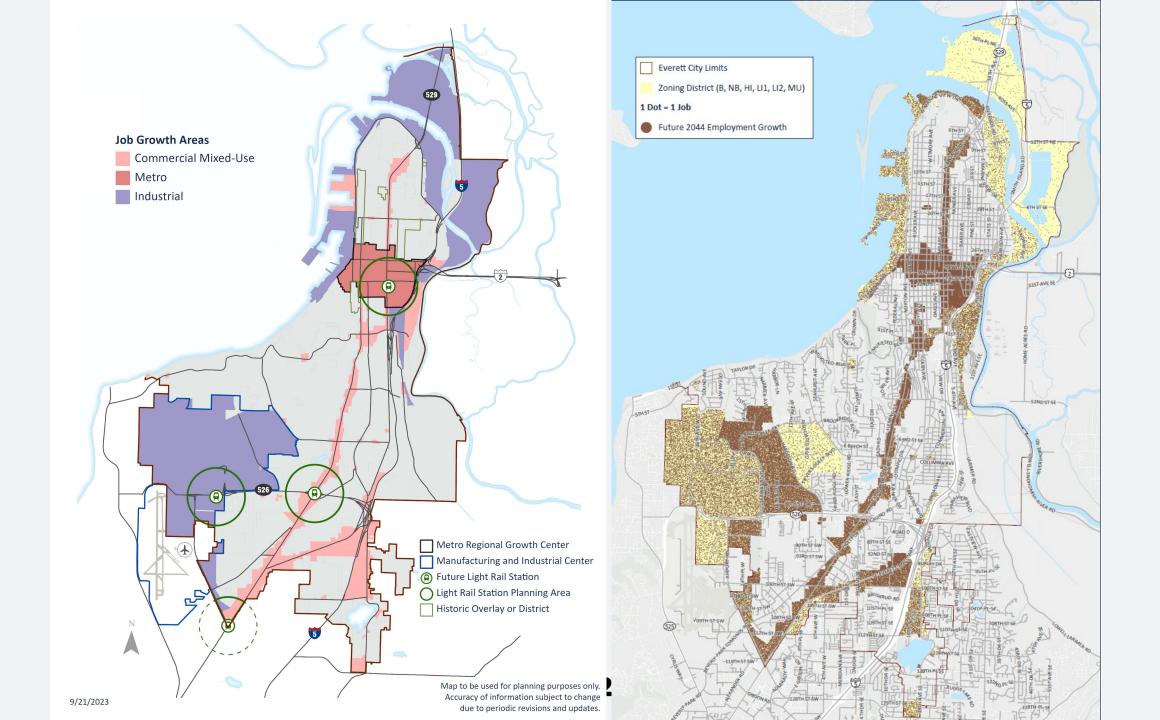








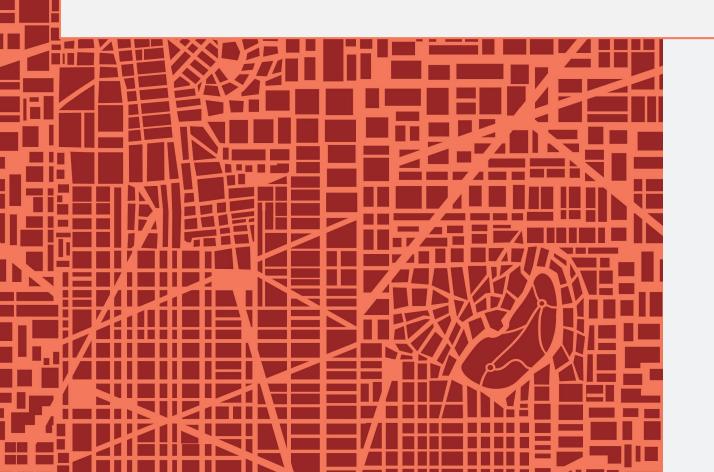


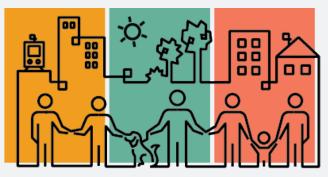


#### **EVERETTWA.GOV/2044**



#### **BACKUP SLIDES**





**Everett 2044** 

Planning our future together







## **Buildable Lands Analysis**



# Snohomish County 2021 Buildable Lands Report



Adopted by the Snohomish County Council on September 8, 2021

Approved by the Snohomish County Tomorrow Steering Committee on July 28, 2021

Funded in part through grant funding provided by the Washington State Department of Commerce
Contract numbers 19-63312-005 and 20-63312-005

M/S # 604 3000 Rockefeller Avenue Everett, WA 98201-4046

(425) 388-3311 Fax: (425) 388-3670

### Buildable lands analysis

- Determine whether there is sufficient suitable land to accommodate the [growth target] (RCW <u>36.70A.215</u>)
- Observed development history = assumed density
- 2021 report

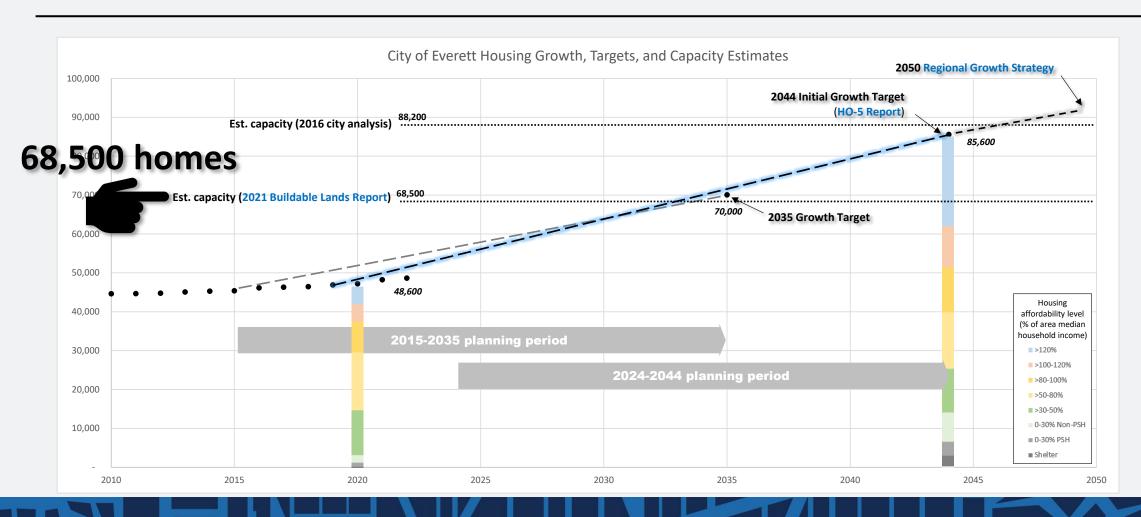
### Buildable Lands – Land Status & Housing Capacity



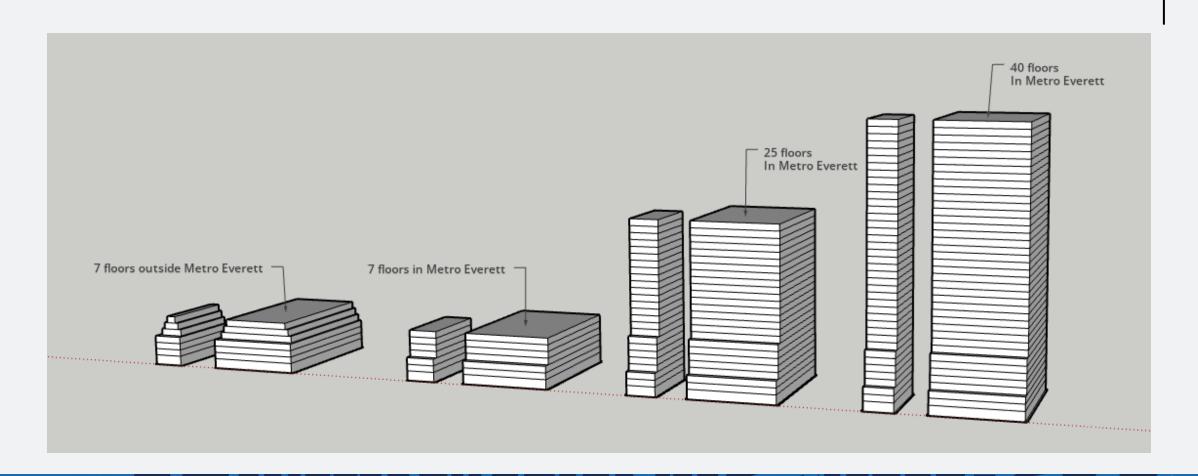
#### Buildable Lands – Assumed Densities

				Residential Development			Non-Residential Development				
		Buildable	% Buildable							Estimated	Employmen
	Type of	Acres	Acres	Dwelling	Units / Acre in	Density	Non-Res.	Floor Area	Estimated	Employment	Density
Zone or Plan	Development	Developed	Developed	Units	Total Zone	Assumed	Square Feet	Ratio	Total Emp.	Per Acre	Assumed
B (New Proj											
	Senior Apartments	2.38	17%		12.77	12.77	-	-	-	-	-
	Non-Residential	11.71	83%		-	-	209,772	0.34	151	10.73	10.73
	Total	14.09	100%	180	12.77	12.77	209,772	0.34	151	10.73	10.73
B (Infill Proj	ects)										
	Non-Residential	36.66	100%	-	-	-	434,694	0.27	906	24.08	24.08
MU (New Pı	ojects)										
	Multi-Family	0.94	8%	42	3.51	35.80(2)	-	-	-	-	-
	Mixed Use	4.33	36%	562	46.94	38.08(2)	170,166	0.33	425	35.50	0.24(2)
	Non-Residential	6.71	56%	-	-	-	247,888	0.48	387	32.33	34.76 (2)
	Total	11.97	100%	604		73.88 (2)	418,054	0.80	812	67.83	35.00(2)
* *	actual and proposed		v a higher reside	ntial density	and lower empl	oyment dens	aty than what pro	eviously occu	irred. The ass	umed job sector	r breakdown 19
26 Services,	Food Services, 3 R	etail, 1 FIRE.									
MU (Infill P	rojects)										
	Mixed-Use	2.88	14%	80	4.01	4.01	150	0	1	0.03	0.03
	Non-Residential	17.05	86%	-	-	-	215,541	0.25	456	22.89	22.89
	Total	19.94	100%	80	4.01	4.01	215,691	0.25	457	22.92	22.92
UR3											
	Townhouse	6.94	94%	86	11.66	6.70(3)	_	_	-	_	_
	Multi-Family	0.44	6%	12	1.63	15.03 (3)	_	_	_	_	_
	Total	7.37	100%	98	13.29	21.73 (3)	-	-	-	-	_
(3) Projects s	ubmitted after 2018	ndicate a high	ner density when	averaged w	ith the entire dev	elopment hi	story.				
UR4											
	Townhouse		No I	Data		1.42(3)		No I	Data		-
	Multi-Family	1.02	100%	81	79.78	92.99 (3)	-	-	-	-	-
	Total					94.42 (3)					
(3) Projects s	ubmitted after 2018	ndicate a high	ner density when	averaged w	ith the entire dev	elopment hi	story				

## Everett's Buildable Lands Capacity



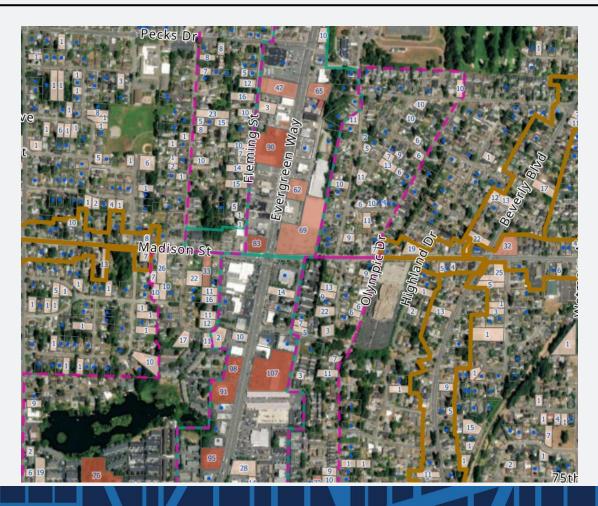
# Visualizing



# Visualizing



# Visualizing



# **Employment Capacity**

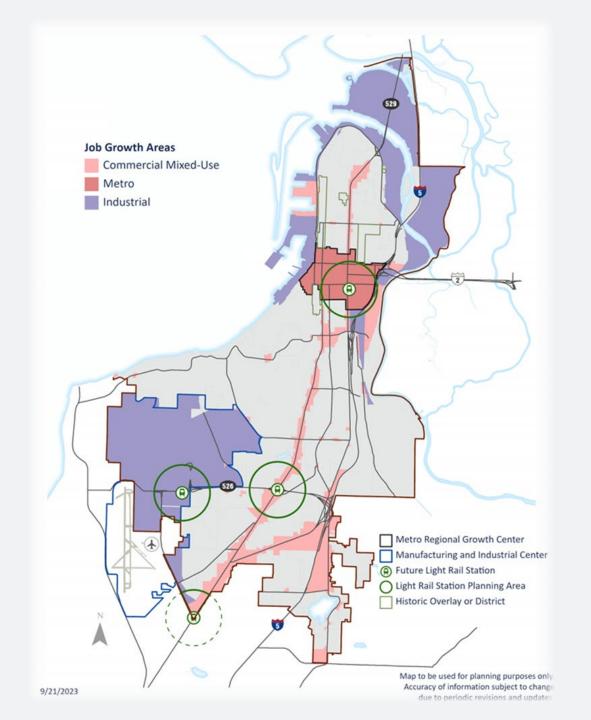
Growth Geography

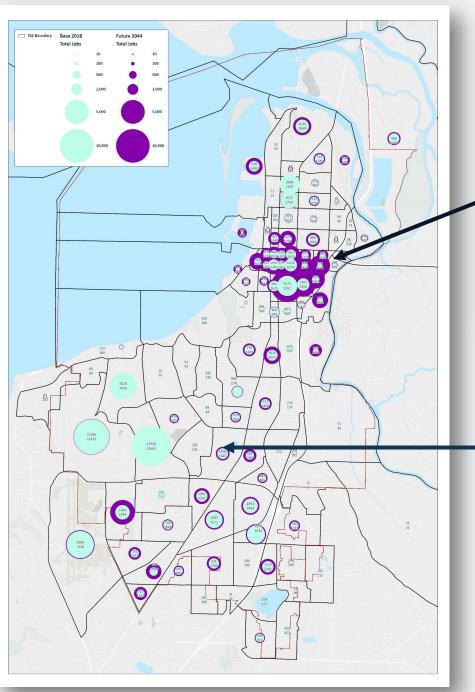
**Features** 

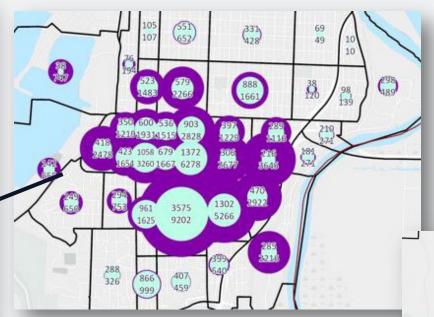
**Employment** areas

**Concept**: Areas designated for employment.

Employment areas overlap residential areas along major arterial corridors, in Metro Everett, and in a few other areas.





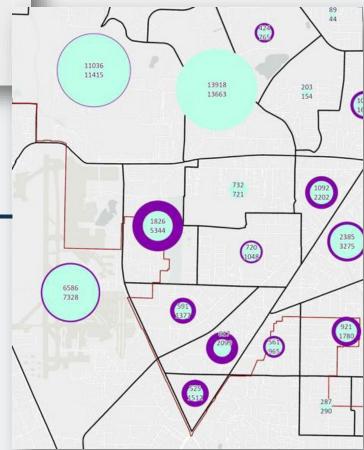


**Metro Everett** 

# **Employment Distribution**

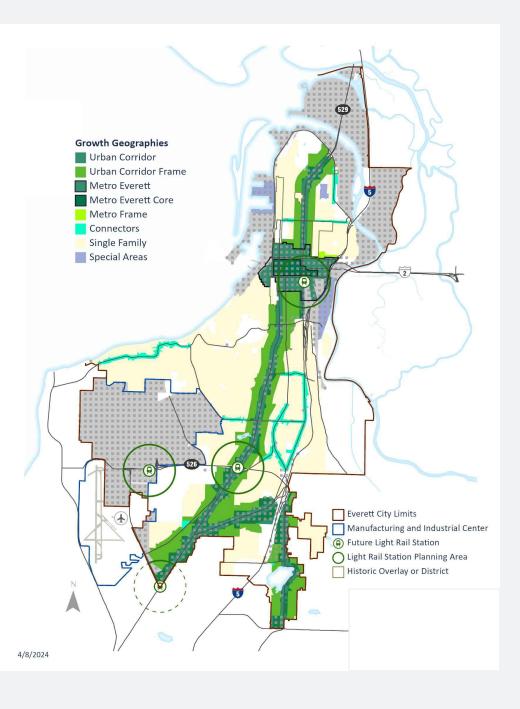
**Regional Centers** 

Paine
Field/Boeing
Manufacturing
and Industrial
Center



#### **EVERETTWA.GOV/2044**





#### **Growth Geographies**

#### **Updates since August 2023**

- Refined boundaries to align with parcels (economic units)
- Adjusted housing typology on some parcels to avoid reducing development allowance

#### Growth Geography

#### **Features**

**Urban Corridors** 

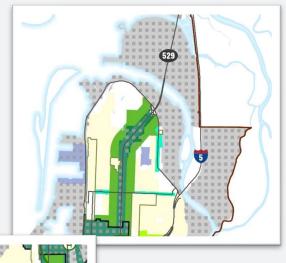


**Concept:** Major roadways with existing MU zone, frequent transit service, and other daily amenities.

Urban Corridor Frame



Concept: Areas associated with arterial frontages and serve as transition areas between high intensity development and neighborhood residential areas.





### **Growth Geography**

### **Features**

Metro Everett and Core



**Concept:** Areas within the Metro Everett Boundary and the core.

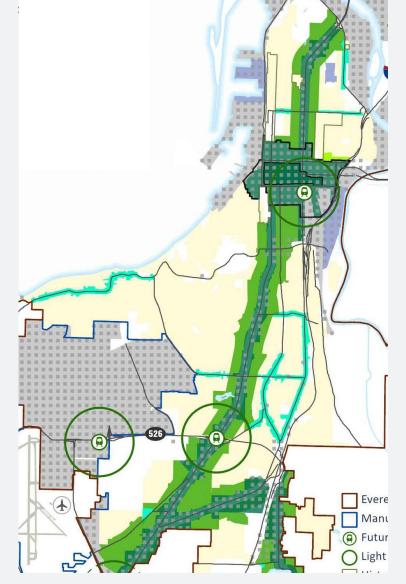
**Metro Frame** 



**Concept:** Opportunities areas adjacent to Metro Everett boundary.



### Growth **Features** Geography **Concept:** Connector streets feature similar attributes to arterials, i.e., sidewalks, **Connectors** parking, wider rights-of-way, creating growth opportunities. Single Family/ Neighborhoods throughout Neighborhood the city characterized by Residential single-unit housing.



From: John Peeples
To: DL-Council

Subject: [EXTERNAL] Everett City Council 5/29/24 Agenda Item #7 - Flock Contract

**Date:** Wednesday, May 29, 2024 5:11:29 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Evening Everett City Council,

Please do not pass Item #7 - Flock Contract along to the major to sign.

The contract with Flock should not be entered into.

Surveillance of American citizens and other Everett residents should not be done.

The use of the listed surveillance machines and our cherished American liberties are mutually exclusive.

Only mischief can come from this proposed project.

The very collection and keeping of this surveillance data is an offense against our dignity.

But, if you must commit the proposed offense against our dignity and liberty, you must make available on the city's main webpage a map of the locations of all of the devices. And, you should wear GPS-enabled and active ankle bracelets while on city property so that we, the people, can monitor your whereabouts. Your consideration of this surveillance scheme reduces your trustworthiness to conduct city business.

Severe penalties, including termination of employment and legal charges, should be levied against any city municipal employee who mishandles the data collected. In a just society, no surveillance would be committed against people who have not broken any rules. And, in a just society, any data collected would be deleted.

Consider the dastardly proposal and the simple use of license plate readers by human police officers to reduce the tedium of performing the civic service of locating a reported stolen vehicle. I'm all for the latter. By using such readers, human police officers can scan dozens of license plates each hour. The decent thing to do is immediately delete the record of any scanned license plate that does not match the list of reported stolen vehicles. Can you see? As Agatha asks in the film 'Minority Report,' Can you see? Can you see the difference between a service provided to dignified citizens and subjects of a surveillance scheme?

A good day for Everett will be when this equipment is removed and tossed in the trash can.

One the night of July 1st to July 2nd, 1776, Caesar Rodney rode 70 miles from Dover to Philadelphia to cast the tie-breaking vote for independence for Delaware. He risked his neck for all of us. He did not risk his neck just so that you could subjugate us to a surveillance scheme because you don't have the courage or smarts to figure out how to hire more police officers.

Laws passed by intellectually-limited human beings must be enforced by the physiologically limited human senses in the persons of duly-sworn police officers. Image if we handed your temporary jobs over to machines to pass laws that you have to abide by.

So much more to say in the future.

Good day, John Peeples, Silver Lake Everett, Wash. jethro302@yahoo.com (240) 434-6817 From: Angela Ely
To: Ashleigh Scott

Cc: <u>DL-Council</u>; <u>David Hall</u>; <u>Jennifer Gregerson</u>

Subject: FW: [EXTERNAL] Comments regarding Clark Park gazebo and dog park

**Date:** Wednesday, May 29, 2024 5:57:53 PM

Category 2: Sensitive information

ONE more for written comment tonight (see email below)...thank you!

Category 2: For official use only / disclosure permissible by law.

From: Bayside Neighborhood <info.bayside.na.wa@gmail.com>

**Sent:** Wednesday, May 29, 2024 5:55 PM **To:** DL-Council <Council@everettwa.gov> **Cc:** Angela Ely <AEly@everettwa.gov>

**Subject:** [EXTERNAL] Comments regarding Clark Park gazebo and dog park

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Members of the City Council and Mayor Franklin,

Members of City Council, I write to you again to speak in favor of Council Bill 2405-08. During last week's meeting, and for months now, I've noticed the "supporters" of the Clark Park gazebo have employed two different strategies as reasons for the gazebo not to be removed. I want to address those now.

First, the "supporters" have repeatedly used the word 'demolish' when referring to the removal of the gazebo. I understand why they do it. It's a scary word that suggests a bulldozer toppling the structure and the parts carted off to the landfill. This is wrong. BNA has NEVER advocated for the demolishing of the gazebo. We do not support demolition. We are asking only that it be removed from Clark Park and transferred to another location, where it can stand in a safer environment. There are two proposed ways to achieve this aim:

- 1) Councilmember Rhyne has proposed declaring the gazebo as 'surplus property' to sell the gazebo so that it might be restored and put elsewhere. BNA can support this. Perhaps an organization like Historic Everett might purchase it with their funds.
- 2) The other proposal was stated by Parks Director Leonard, to carefully dismantle it, store it, and later restore and reassemble it in another Everett City Park. BNA can get behind this also. These are two good, credible ideas.

The second strategy employed by gazebo "supporters" is that removing the gazebo will not solve the drug issues afflicting the park. This is true. Everett Parks and BNA have always acknowledged this from the very beginning. I'm not telling you anything you don't already know, but the issues of drug addiction and drug dealing are a difficult issue that requires the resources of the city, the county, the state, and from federal agencies. It takes the hard work of social workers, non-profits, treatment centers, the courts and law enforcement to stem the tide of drugs and their destructive effects in our city. It is certainly above the abilities of a neighborhood association to address.

What BNA does know is that whenever we hold an event at Clark Park, the folks occupying the gazebo and the park don't want attention brought to themselves by event goers, and they'll leave. It happens every time. We don't even

have to ask. Again, the removal of the gazebo and the installation of the dog park will draw neighbors to the park and will draw parents and children to the playground, disrupting the drug situation and seriously mitigating it.

To make perfectly clear, our goal is for Clark Park to be used for the equitable enjoyment for all, and for all to feel comfortable and safe using the park. The dog park is only a first step for the park, and we are constantly batting around new ideas for improvements. We would like to see the playground updated and expanded in the near future. We wouldn't mind seeing something like a community garden or maybe tables and seating for a picnic area. We are constantly considering new ideas to present, and we always welcome ideas from the public. We see what a gem Clark Park is and what it can be, and we strive to make it a real asset for Bayside Neighborhood and the City of Everett.

Thank you, Henry Cotter Chair - Bayside Neighborhood Association Everett, WA

--

Bayside Neighborhood Association www.baysidena.yolasite.com



RESOLUTION NO.	8032	
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A RESOLUTION of the City of Everett supporting City of Everett Proposition 1, placed on the ballot by the City Council through the passage of Resolution 8021, concerning public safety and essential public services.

#### WHEREAS,

- 1. On May 1, 2024, the Everett City Council approved the submission of a proposition to the August 6, 2024 primary election; and
- 2. As provided in Section 3 of Everett Resolution 8021, the ballot title for Proposition No. 1 will read as follows:

# City of Everett, Washington Proposition 1 Levy Lid Lift for Public Safety and Essential Public Services

City Council has adopted Resolution 8021 concern

The City Council has adopted Resolution 8021 concerning funding for quality of life and essential public services.

If approved, this proposition would authorize a maximum regular property tax rate in 2025 of not more than \$2.19/\$1,000 assessed value. The incremental increase in 2025 would fund essential public services, including park maintenance, libraries, animal shelter, street maintenance, neighborhood groups, social services, the arts, events and public safety, all as described in the Resolution. The 2025 maximum levy amount would be the basis to calculate subsequent levy limits. Qualifying seniors, veterans, and others would be exempt (Ch. 84.36 RCW). Should this proposition be \_\_Approved? \_\_Rejected?

- 3. in compliance with RCW 42.17 A.555, the public meeting notice included the title and number of the City of Everett's Proposition No. 1 measure and members of the public were given equal opportunity to express opposing views on the measure; and
- 4. The City Council has worked for two decades to address growing budget deficits caused largely by a 1% cap in property tax increases passed by the Washington State legislature in 2007, while demand for city services continues to grow and city costs for providing those services increase at least 4% each year which exceeds the 1% tax cap, and

- 5. The City has made reductions year after year in order to minimize impacts to services including finding efficiencies, ensuring the most responsible use of all tax revenues, deferring investments in capital projects, workforce layoffs and elimination of vacant positions, encouraging early retirements, deferring payments to reserve funds, shuttering beloved services, eliminating recreational programs, and so much more, and
- 6. After streamlining, cutting, and finding efficiencies in every possible area of operations, further cuts to meet a balanced budget will be detrimental to our quality of life and will have broad impacts on city services, including impacts on economic development, public safety, park maintenance, libraries, the animal shelter, street maintenance, neighborhood groups, social services, the arts and events, and
- 7. Without approval of Proposition 1, the Mayor and City Council will need to identify substantial cuts year after year including \$12.6 million in cuts for the 2025 budget, growing to an additional projected \$35 million in cuts needed in 2030, and
- 8. The Mayor and City Council understands that funding public safety and essential public services is essential for a strong, safe community and that funding is required for these services;

#### NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND EVERETT CITY COUNCIL THAT:

That the Mayor and City Council of the City of Everett hereby expresses its support for the City of Everett Proposition No. 1, authorizing the City of Everett to fund essential public services, including park maintenance, libraries, animal shelter, street maintenance, neighborhood groups, social services, the arts, events and public safety through a property tax levy, and encourages voters to approve Proposition No. 1 at the primary election to be held on August 6, 2024.

Councilmember introducing Resolution	_
Passed and approved this 29th day of May	, 2024.
Cassie Franklin, Mayor	Don Schwab, President, District 3
Ben Zarlingo, Vice President, District 5	Mary Fosse, Council member, District 1

Paula Rhyne, Council member, District 2	Elizabeth Vogeli, Council member, District 4
 Scott Bader, Council member, at Large	Judy Tuohy, Council member, at Large



### **PROCLAMATION**

**WHEREAS**, the City of Everett is a diverse community that welcomes and supports LGBTQ+ members, recognizes the importance of celebrating Pride Month and recognizes the years of struggle for civil rights and the ongoing pursuit of freedom to be one's true self;

**AND**, we cannot ignore the direct or passive attacks against our friends and neighbors who live, work and play in Everett. Or the fact that LGBTQ+ youth have reported that hateful political messaging around the LGBTQ+ community has negatively impacted them;

**AND**, that the pursuit for equality began long before the Stonewall Riots on June 27, 1969, but that day in history 55 years ago this month marks the beginning of the lesbian, gay, bisexual, transgender and queer civil rights movement;

**AND**, the City of Everett has only been strengthened by the PRIDE of the LGBTQ+ community who contribute to the growth, success and beautiful character of our city. These contributions include the many local organizations that work toward building a future without discrimination, such as Everett Pride, which produces and facilitates LGBTQ events to give all people under the LGBTQ+ intersectionality platforms for safety, celebration and fulfillment;

**AND,** the City of Everett stands unwavering with the LGBTQ+ community 365 days a year and officially recognizes June as PRIDE Month and this Everett Pride event as an opportunity to celebrate and recommit to delivering safety and equality to our LGBTQ+ families and community members;

**THEREFORE BE IT RESOLVED**, that on this 1<sup>st</sup> day of June 2024, I, Mayor Cassie Franklin, herby proclaim June as

#### "PRIDE Month"

And urge all citizens to peacefully and joyfully join in the community festivities of the **Everett Pride Block Party event on Saturday, June 15**<sup>th</sup> as an integral part of our City's month-long celebration of PRIDE

Month.

Signed this 29th day of May 2024.

Mayor Cassie Franklin



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- Comments advertising any product

DATE -79 7/4

Comments focused on personal matters that are unrelated to City business

You can also submit a comment and attend meetings online at everettwa.gov/city council. Click on "Council meeting public comment sign up form." This must be done at least 30 minutes prior to the meeting. Additional instructions are available on the web page.

DATE:
NAME (required): Terri Amburgy
CITY (required):ZIP (required):ZIP (required):
EMAIL (optional): 3amburgys egmal. PHONE (optional): 425-315-6387
DISTRICT (circle one): 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5/27/29
NAME (required): THE Kell
CITY (required):ZIP (required):ZIP (required)
EMAIL (optional): + stry kelleg / PHONE (optional): 200 801-2806
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: May 29, 2024
NAME (required): SAN CARRILLO
CITY (required):
EMAIL (optional):PHONE (optional):
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE:5/29
NAME (required): ED Glazen
CITY (required): ZIP (required): 96204
EMAIL (optional):PHONE (optional):
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: S 29 24

NAME (required): Short Phillips

CITY (required): PHILLIPS

EMAIL (optional): PHILLIPS

DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city

When would you like to deliver your comments: Is your topic on today's agenda?

During the comment period that will follow the agenda item AGENDA ITEM #: 3405-08 9

During the general public comment. Please state the topic you would like to speak on: \_\_\_\_\_\_\_



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DATE: 5/21/24
NAME (required): John Pholips
CITY (required): <u>Everest</u> ZIP (required): <u>9830</u> /
EMAIL (optional):PHONE (optional):
DISTRICT (circle one): 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #: 2405-08
During the general public comment. Please state the topic you would like to speak on:



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DATE: 05,29,2024
NAME (required): Somaiyek
CITY (required):ZIP (required):
EMAIL (optional):PHONE (optional):
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: $6 \frac{5/29}{24}$
NAME (required): KRYSTYNA SIMM
CITY (required):
EMAIL (optional): PHONE (optional):
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item AGENDA ITEM #: $2405-08$
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5/29/24
NAME (required): Dilly Stant
CITY (required): Everett ZIP (required): 98201
EMAIL (optional):PHONE (optional):
DISTRICT (circle one): 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #: 2405-68 + 49
During the general public comment. Please state the topic you would like to speak on:



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City staff may wish to contact you for follow up, therefore, your contact information is appreciated.
DATE: 5/29/24 5 mail
NAME (required): Thuresa Gemmer (
CITY (required): SP201
EMAIL (optional):PHONE (optional):PHONE (optional)
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5-29-24	
NAME (required): IFENRY COTTER	
CITY (required):ZIP (required):ZIP (required):	
EMAIL (optional):PHONE (optional):	
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city	
When would you like to deliver your comments: Is your topic on today's agenda	?
During the comment period that will follow the agenda item AGENDA ITEM #: 2 405~08	
During the general public comment. Please state the topic you would like t speak on:	0



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DATE: S-Z9-24
NAME (required): Michille Pendergrass
CITY (required): ZIP (required): 9820
EMAIL (optional): pgass PN @gmanl.cmPHONE (optional): 2063030723
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5/29/29
NAME (required): Paul Br Ruz
CITY (required): <u>Everity</u> ZIP (required): <u>9820's</u>
EMAIL (optional): phone (optional) 206 904132
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:   Lawful grant 7/8
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5-29-2024
NAME (required): SONTA BODGE
CITY (required):EVerettZIP (required):98201
EMAIL (optional): PHONE (optional): 2062296486
DISTRICT (circle one): 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #:
During the general public comment. Please state the topic you would like to speak on: Flock 738



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DATE: 5-29-24
NAME (required): Jose Villalaz
CITY (required):ZIP (required):
EMAIL (optional): J-VILLACAZ@Hotmail.com PHONE (optional): 425 344-73 63
DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city
When would you like to deliver your comments: Is your topic on today's agenda?
During the comment period that will follow the agenda item  AGENDA ITEM #: 8
During the general public comment. Please state the topic you would like to speak on:



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DATE: 5/28/24

NAME (required): SCOTT SPARLING.

CITY (required): EVERETT ZIP (required): 9820/

EMAIL (optional): PHONE (optional):

DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city

When would you like to deliver your comments: Is your topic on today's agenda?

During the comment period that will follow the agenda item

AGENDA ITEM #:

During the general public comment. Please state the topic you would like to speak on:

Public Comment forms are public records and are subject to disclosure pursuant to the Public Records Act (RCW 42.56) and may be posted online with City archived records.