



Everett City Council Preliminary Agenda 6:30 p.m., Wednesday, August 13, 2025 City Council Chambers

Roll Call

Pledge Of Allegiance

Land Acknowledgment

Approval Of Minutes: August 6, 2025

Mayor's Comments

Public Comment

Council Comments

Administration Update

City Attorney

CONSENT ITEMS:

(1) Adopt Resolution Authorizing Claims Against The City Of Everett In The Amount Of \$5,897,831.32 For The Period Ending July 26, 2025 Through August 1, 2025.

Documents:

[RES_CLAIMS PAYABLE 08.01.25.PDF](#)

(2) Adopt Resolution Authorizing Payroll Claims Against The City Of Everett In The Amount Of \$5,678,852.50 For The Period Ending July 26, 2025.

Documents:

[2025 RESOLUTION FOR PAYROLL PAY PERIOD 16.PDF](#)

(3) Authorize The Mayor To Sign The Aquatic Lands Lease Agreement No. 20-107205 Between The City Of Everett And Washington Department Of Natural Resources In Substantially The Form Provided.

Documents:

[ECLIPSE MILL PARK AQUATIC LANDS LEASE WITH WA DEPT. OF NATURAL RESOURCES.PDF](#)

(4) Authorize The Mayor To Sign The City-Conquer Amendment No. 2 For EMOTE Services.

Documents:

[EMOTE HCA SUBCONTRACT AMENDMENT.PDF](#)

(5) Authorize The Mayor To Sign The Washington State Health Care Authority Agreement Amendment No. 1 For EMOTE.

Documents:

[EMOTE HEALTH CARE AUTHORITY AMENDMENT.PDF](#)

(6) Authorize The Mayor To Sign The Certificate Of Completion With Brink Electric, Inc. For The Everett Transit Operations Base Inductive Charging Infrastructure Project.

Documents:

[EVERETT TRANSIT OPERATIONS BASE INDUCTIVE CHARGING
INFRASTRUCTURE PROJECT CERTIFICATE OF COMPLETION.PDF](#)

(7) Authorize The Mayor To Sign The PSA With HDR Engineering, Inc. For The 2026 Stormwater Impervious Surface Study.

Documents:

[HDRENGINEERING_IMPERVIOUSSURFACESTUDY_PSA.PDF](#)

(8) Authorize The Mayor To Sign The 2025-2027 Washington State Department Of Transportation Green Transportation Grant Agreement.

Documents:

[PTD1158 WSDOT BUS CHARGING AT EVERETT STATION GRANT
AGREEMENT.PDF](#)

(9) Adopt A Resolution Declaring An Emergency And Authorizing Repairs Of Fire Engine J0142.

Documents:

[RES_J0142 FIRE ENGINE EMERGENCY.PDF](#)

PROPOSED ACTION ITEMS:

(10) CB 2507-41 – 2nd Reading – Adopt An Ordinance Creating A Civil Infraction Against A Graffiti Tagger For The Unauthorized Application Of Illegal Graffiti, Amending Chapter 10.62 Everett Municipal Code. (3rd & Final Reading 8/20/25)

Documents:

[CB 2507-41.PDF](#)

(11) CB 2508-42 – 1st Reading - An Ordinance Amending Ordinance No. 4003-24 Entitled A Special Improvement Project "Forest Park Pickleball Court Installation", Fund 354, Program 093, To Accumulate All Costs For The Project. (3rd & Final Reading 8/27/25)

Documents:

[CB 2507-42.PDF](#)

(12) CB 2508-43 – 1st Reading - Adopt An Ordinance Creating A Special Improvement Project Entitled "Lion's Park Lighting Project", Fund 354, Program 106, To Accumulate All Construction Costs For The Project. (3rd & Final Reading 8/27/25)

Documents:

[CB 2507-43.PDF](#)

(13) CB 2508-44 – 1st Reading - Adopt An Ordinance Closing A Special Improvement Project Entitled "Walter E. Hall Community Amenities", Fund 354, Program 092, As Established By Ordinance No. 3971-23. (3rd & Final Reading 8/27/25)

Documents:

[CB 2507-44.PDF](#)

ACTION ITEM:

(14) CB 2507-40 – 3rd & Final Reading - Adopt An Ordinance Creating A Special Improvement Project Entitled "Lion's Park Skate Dot", Fund 354, Program 098, To Accumulate All Design, Permitting And Construction Costs For The Project In The Amount Of \$360,000.

Documents:

[CB 2507-40.PDF](#)

Executive Session

Adjourn

PARTICIPATION IN REMOTE COUNCIL MEETINGS

- Participate remotely via Zoom by registering to speak at everettwa.gov/speakerform. You must register no later than 30 minutes prior to the meeting. You may contact the Council office at 425.257.8703 or aely@everettwa.gov 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.
- Watch live meetings and recordings at [YouTube.com/EverettCity](https://www.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 or call the Council offices at 425.257.8703.

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->.



Whereas the claims payable by check against the City of Everett for the period July 26, 2025 through August 1, 2025, 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:

Fund	Department	Amount
001	City Council	491.53
002	General Funds	1,501.13
003	Legal	9,771.71
004	Administration	339.65
005	Municipal Court	3,083.81
007	Human Resources	416.55
009	Misc Financial Funds	594,694.51
010	Finance	1,398.76
015	Information Technology	136.39
018	Communications, Mktg & Engag	2,801.51
021	Planning & Community Dev	862.14
024	Public Works-Engineering	170,379.78
026	Animal Shelter	755.34
030	Emergency Management	122.22
031	Police	5,524.12
032	Fire	3,889.15
038	Facilities Maintenance	335.54
TOTAL GENERAL FUND		\$ 796,503.84

Fund	Department	Amount
101	Parks & Recreation	19,055.70
110	Library	8,632.75
112	Municipal Arts	2,530.00
114	Conference Center	1,200.00
120	Public Works - Streets	33,317.01
138	Hotel/Motel Tax Fund	15,000.00
145	Cum Res/ Real Prop Acq.	50,133.00
146	Property Management	10,362.73
148	Cum Res/Parks	80.85
151	Fund for Animals	55.00
153	Emergency Med Svc	7,083.89
155	Capital Reserve Fund	10,345.84
156	Criminal Justice	2,267.21
197	CHIP Loan Program	16,011.21
198	Comm Dev Block Grants	1,212.89
303	Public Works Impr. Projects	73,868.71
308	Riverfront Development	900.00
336	Water & Sewer Sys Improv I	1,808,291.96
342	City Facilities Const.	1,144,457.24
354	Parks Capital Const.	371,867.07
401	Public Works-Utilities	887,694.53
402	Solid Waste Utility	2,558.30
425	Public Works-Transit	17,649.00
430	Everpark Garage	634.54
440	Golf	120,136.55
501	MVD - Trans Services	106,764.47
503	Self-Insurance	29,984.76
505	Computer Reserve	81,841.22
508	Health Benefits Reserve	2,828.05
637	Police Pension	3,046.70
638	Fire Pension	55,680.53
661	Claims	215,835.77
TOTAL CLAIMS		5,897,831.32

Councilperson introducing Resolution _____

Passed and approved this _____ day of _____, 2025



RESOLUTION NO. _____

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

That the payroll of the employees of the City of Everett as of July 26, and checks issued August 01, 2025, having been audited, be and the same is hereby approved and the proper officers are hereby authorized and directed to charge checks on the Payroll Fund in payment thereof:

Fund	Department	Gross Payroll	Employer Contributions
001	Legislative	13,741.44	7,202.09
003	Legal	100,225.00	26,495.02
004	Administration	50,243.93	9,770.41
005	Municipal Court	87,101.13	25,654.73
007	Personnel	55,452.97	15,378.24
010	Finance	113,696.01	31,590.18
015	Information Technology	124,705.66	34,491.74
018	Communications and Marketing	21,152.92	5,994.67
021	Planning & Community Dev	139,376.27	37,055.07
024	Public Works	238,510.27	66,990.62
026	Animal Shelter	62,165.34	21,093.47
030	Emergency Management	8,446.91	2,409.77
031	Police	1,297,067.73	309,043.05
032	Fire	769,105.85	202,431.93
038	Facilities/Maintenance	105,346.05	35,571.09
101	Parks & Recreation	187,875.48	55,536.10
110	Library	112,238.53	34,865.55
112	Community Theatre	9,108.95	2,374.86
120	Street	86,669.57	28,467.21
153	Emergency Medical Services	425,973.31	109,149.19
197	CHIP	8,107.59	1,782.12
198	Community Dev Block	4,110.32	1,137.56
401	Utilities	963,247.21	321,532.36
425	Transit	548,938.50	180,851.76
440	Golf	53,818.99	15,727.82
501	Equip Rental	92,426.57	30,422.27
		<u><u>\$5,678,852.50</u></u>	<u><u>\$1,613,018.88</u></u>

Councilperson Introducing Resolution

Passed and approved this _____ day of _____, 2025.

Council President

Aquatic Lands Lease Agreement No. 20-107205 with the Washington Department of Natural Resources

Project title:**Council Bill #****Agenda dates requested:**

Briefing
Proposed action
Proposed action
Consent 08/13/25
Action

Public hearing
Yes ☒ No

Budget amendment:
Yes ☒ No

PowerPoint presentation:
Yes ☒ No

Attachments:

Aquatic Lands Lease

Department(s) involved:

Parks & Facilities
Legal
Real Property Management

Contact person:

Bob Leonard

Phone number:

425-257-8335

Email:

bleonard@everettwa.gov

Initialed by:

RML

Department head

Administration

Council President

Project: Eclipse Mill Park

Partner/Supplier: TBD

Location: Riverfront Development Area

Preceding action: N/A

Fund: Fund 308, Program 083

Fiscal summary statement:

On December 13, 2023, City Council adopted an Ordinance to fund design and construction support services for the Eclipse Mill Park and Riverfront Trail Projects. Since this is a permitted use of the property and it meets the requirements of RCW 79.105.230, it qualifies for free or reduced rent. There will be no cost to the City for this lease agreement.

Project summary statement:

The work at Eclipse Mill Park will develop the waterside portion of the future park, the site of a former lumber mill. Completed amenities include a river overlook deck, gangway and personal watercraft floating boarding dock on the Snohomish River, debris deflector, and access trail in the lowland park area. The permitted use of the lease agreement is to provide public access to the Snohomish River.

The term of the lease is thirty (30) years, beginning August 1, 2025 and ending July 31, 2055, unless terminated sooner.

The lease is for a portion of the aquatic lands commonly known as Eclipse Mill Park along the Snohomish River.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Aquatic Lands Lease Agreement No. 20-107205 between the City of Everett and Washington Department of Natural Resources in substantially the form provided.

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
NOR A COMMITMENT TO EXTEND AN OFFER**

When recorded, return to:
City of Everett Parks & Facilities
Attn: Real Property
802 East Mukilteo Boulevard, Bldg. 100
Everett, WA 98203



DAVE UP THE GROVE
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS LEASE

Lease No. 20-107205

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Everett Parks & Facilities
Legal Description: Govt. Lot. 5 (NE 1/4 SE 1/4), Section 29, Township 29 North, Range 5 East, W.M., in Snohomish County, WA
Complete Legal Description on Page 37
Auditor Reference Number(s): 202505305002
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 2905290020-2000

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF EVERETT, a government agency ("Tenant").

BACKGROUND

Tenant desires to lease a portion of the aquatic lands commonly known as Eclipse Mill Park along the Snohomish River, which are tidelands and bedlands located in Snohomish County, Washington, from State, and State desires to lease the Property to Tenant pursuant to the terms

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and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Snohomish County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Property boundaries, and the location of the Improvements to be constructed. Tenant's obligation to provide a true and accurate description of the Property boundaries, and the location of the Improvements to be constructed, is a material term of this Lease.
- (b) Unless State has given Grantee written authorization to use such lands, Tenant's use or occupancy of any state-owned aquatic lands outside the Property boundaries is a material breach of this Lease and State may seek remedies under Section 14 of this Lease in addition to any other remedies afforded by law or equity or otherwise.
- (c) Tenant warrants that the Property lies only in front of upland property owned or otherwise legally controlled by the Tenant.
- (d) Tenant shall hold harmless State and will not seek damages from State in the event a subsequent record of survey reveals an error in the legal description provided in Exhibit A.

1.3 Inspection. State makes no representation regarding the condition of the Property, Improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the

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Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for:

Public Access to the Snohomish River,

(the "Permitted Use"), and for no other purpose. Exhibit B includes additional details about the Permitted Use, the Property, and Improvements, and additional obligations on Tenant. The Permitted Use of this Lease shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

2.2 Restrictions on Permitted Use and Operations. The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease or the law.

- (a) Tenant shall not cause or permit:
 - (1) Damage to land or natural resources, except to the extent expressly permitted in Exhibit B,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing and except to the extent expressly permitted in Exhibit B. This prohibition includes, but is not limited to, deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) If pressure washing or cleaning any equipment, machinery, or floating or fixed structures, Tenant shall avoid scouring the substrate and damaging any aquatic land and vegetation. Tenant shall also comply with the following limitations:
 - (i) If equipment contains or is covered with petroleum based products: (1) Tenant shall not pressure wash such equipment in or over the water and (2) all wash water must be contained and taken to an approved treatment facility.
- (d) Tenant shall avoid damage caused by propeller wash from vessels.
- (e) Tenant shall not allow vessels to come in contact with underlying tidelands and bedlands (commonly referred to as "grounding out") at any time.
- (f) Tenant shall not allow floating structures to come in contact with underlying tidelands and bedlands (commonly referred to as "grounding out"). Tenant must either (1) locate all floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to prevent grounding, keeping the bottom of the structure above the level of the substrate.
- (g) Tenant shall not construct new bulkheads or place new hard bank armoring.

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2.3 Conformance with Laws. Tenant shall keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

2.5 Residential Uses Prohibited. Residential uses, as defined by WAC 332-30-106(63), are not permitted on the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years, beginning on the 1st day of August, 2025 (the "Commencement Date"), and ending on the 31st day of July, 2055 (the "Termination Date"), unless terminated sooner under the terms of this Lease (the "Term"). Whenever the phrase "termination of this Lease" or "termination of the Lease" is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant or deny. Tenant must apply for a new lease at least one (1) year prior to the Termination Date.

3.3 End of Term.

- (a) **Removal of Improvements and Personal Property:** Prior to the termination of this Lease, Tenant shall remove Improvements and Personal Property in accordance with Section 7.
- (b) **Restoration of Property:**
 - (1) Prior to the termination of this Lease, Tenant shall restore the Property to its condition before the installation of any Improvements on the Property.
 - (2) This restoration is to be done at Tenant's expense and to the satisfaction of State. Restoration of the Property is considered to be Work, as described in Section 7 of the Lease. Tenant's plans for restoring the Property shall be submitted to State for prior approval in accordance with Section 7 of this Lease.
 - (3) If Tenant fails to restore the condition of the Property as required by this Paragraph, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.
- (c) **Vacation of Property:** Upon the termination of this Lease, Tenant shall cease all operations on and use of the Property and surrender the Property to State.

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3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, and State has not notified Tenant that Tenant must vacate the Property, in the absence of a new lease agreement between State and Tenant, the following terms apply: Tenant's occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, except that either Party may terminate the tenancy on thirty (30) days' written notice. The month-to-month occupancy will not be an extension or renewal of the Term.
 - (1) The monthly rent during the month-to-month tenancy will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
 - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe State all amounts due under RCW 79.02.300 or other applicable laws.

3.5 Adjustment of Term Resulting from Tenant's Possession.

- (a) If, for any reason whatsoever, State cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease will not be void or voidable, nor will State be liable to Tenant for loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession will be the Commencement Date for all purposes, including the payment of rent.
- (b) If Tenant takes possession before the Commencement Date, the date of possession will be the Commencement Date for all purposes, including the payment of rent. If the Term commences earlier or later than the scheduled Commencement Date, the Termination Date adjusts accordingly.

SECTION 4 RENT

4.1 Annual Rent.

- (a) The Annual Rent is based on the use classification of Tenant's Permitted Use of the Property and the square footage of each use classification, as set forth in Exhibit A.
- (b) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Zero Dollars (\$00.00), consisting of Zero Dollars (\$00.00) related to the water-dependent rent.
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or

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before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

- (d) **Public Use and Access.** This Lease allows for free or reduced rent for areas that meet the requirements of RCW 79.105.230 and WAC 332-30-131. If Tenant's use of these areas cease to meet the requirements for free or reduced rent in RCW 79.105.230 and WAC 332-30-131, State will charge Tenant water-dependent rent for using these areas.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Change in Use Classification. Neither the use classification, nor the square footage of a use classification, shall be changed without the prior written consent of State. If the use classification or the square footage of a use classification is changed, the Annual Rent shall be adjusted based on the revised use classification or square footage of each use classification.

4.4 Rent Adjustment Procedures.

- (a) **Notice of Rent Adjustment.** State shall provide notice of adjustments to the Annual Rent allowed under Paragraph 4.5(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Commencement Date.
- (b) **Procedures on Failure to make Timely Adjustment.** If State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) **Inflation Adjustment.** State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) **Revaluation of Rent.** At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) **Rent Cap.** State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until State implements the full amount of increase as determined by the statutory rent formula.

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SECTION 5 OTHER EXPENSES**

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the Improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. If Tenant fails to pay rent when due under this Lease, State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

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6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. Improvements include, but are not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant, (2) acquired by Tenant from the prior tenant, (3) made by subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.
- (f) "Improvements Owned by Others" are Improvements owned by others (not including Tenant or a subtenant) with a right to occupy or use the Property.

7.2 Existing Improvements. On the Commencement Date, the following Tenant-Owned Improvements are located on the Property: nine (9) pilings, remnants of steel bulkhead/retaining wall, four (4) 18" railroad ties and one (1) 24" diameter concrete pipe partially on SOAL.

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7.3 Construction, Major Repair, Modification, and Other Work.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively “Work”).
- (b) Except in an emergency, Tenant shall not conduct Work without State’s prior written consent. Tenant shall obtain State’s prior written consent as follows:
 - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
 - (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if the proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions intended to protect and preserve the Property or adjacent state-owned aquatic lands.
 - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Tenant shall immediately notify State of emergency Work. Upon State’s request, Tenant shall provide State with as-built plans and specifications of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant’s contractor has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant or Tenant’s contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
 - (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant on the Property during the Term, but State may charge rent for such Improvements when

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and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

7.4 Standards for Work.

- (a) Applicability of Standards for Work.
 - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work commences when State approves plans and specifications.
 - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's current standards for Work.
 - (3) If Tenant commences Work five (5) or more years after the Commencement Date, Tenant shall ascertain State's current standards for Work as follows:
 - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with State's current standards for Work on state-owned aquatic lands.
 - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with State's current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work, provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
 - (iii) If State does not timely provide State's current standards upon Tenant's request, the standards for Work under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for State's current standards for Work.
 - (iv) If Tenant fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Tenant shall, at Tenant's sole expense, make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date:
 - (1) Tenant shall not install skirting on any overwater structure.
 - (2) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-110, Authorized Work Times in Freshwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).
 - (3) Tenant shall install grating on new floats, piers, wharves, fingers, docks, decks, fixed docks, and/or gangways as follows: For floats, fingers, and

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docks, Tenant shall install unobstructed grating on at least fifty percent (50%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space. For gangways, piers, wharves, decks, and fixed docks, Tenant shall install grating on one hundred percent (100%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space.

- (4) Tenant shall maximize water exchange by locating facility openings to promote flushing and prevent trapping surface debris and oily residue.
- (5) Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner that minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Tenant shall implement the following measures to achieve this requirement:
 - (i) Tenant shall direct light to walkways,
 - (ii) Tenant shall use light shields which prevent light from being emitted upward and prevent glare on the water,
 - (iii) Tenant shall use fixtures that do not emit light upward,
 - (iv) Tenant shall use lights that are “warm-white” or filtered.
- (6) Tenant shall not allow new floating structures to come in contact with underlying tidelands (commonly referred to as “grounding out”). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to prevent grounding, keeping the bottom of the structure above the level of the substrate.

7.5 Tenant-Owned Improvements.

- (a) Removal of Tenant-Owned Improvements upon termination.
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State’s consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
 - (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State of Washington,

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and regardless of whether Tenant enters into a new Lease for the Property.

- (2) If Tenant enters into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
- (3) If Tenant does not enter into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant shall submit its request to leave Tenant-Owned Improvements to State at least one (1) year before the Termination Date.
 - (ii) State, within ninety (90) days of receiving Tenant's request, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
 - (1) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall not remove such Tenant-Owned Improvements.
 - (2) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

7.6 Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Tenant fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%)

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higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

7.7 Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the termination of the Lease. Tenant is liable for damage to the Property and any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the termination of the Lease.
 - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Tenant to State. State shall pay the remainder, if any, to the Tenant. Tenant shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
 - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

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8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Property; and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
 - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned aquatic lands.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's Permitted Use or Tenant's use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;

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- (2) Result in human or environmental exposure to contaminated sediments, if any;
- (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

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8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary

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Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations (“Tests”) of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant’s obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with such Tests, provided State gave Tenant thirty (30) days’ advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublease, or otherwise transfer or encumber all or any part of Tenant’s interest in this Lease or the Property without State’s prior written consent, which shall be at State’s sole discretion.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee’s financial condition, business reputation, and experience, the nature of the proposed transferee’s business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
 - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
 - (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

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- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant. Tenant shall remain liable for the full and complete performance, satisfaction, and compliance with the terms of this Lease.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for prior approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;
 - (5) The sublease must include an acknowledgment that the subtenant has received a copy of this Lease;
 - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than one year of rent.
 - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
 - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
 - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
 - (10) The subtenant's permitted use must be within the scope of the Permitted Use;
 - (11) The sublease must require the subtenant to indemnify, defend, and hold harmless State to the same extent Tenant is required to indemnify, defend, and hold harmless State under this Lease ;
 - (12) The sublease must require the subtenant to meet the Insurance requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;
 - (13) The sublease must require the subtenant to comply with the Financial Security requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement; and

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- (14) If the sublease includes moorage of a vessel, the sublease must require the subtenant to procure marine insurance as set forth in Paragraph 10.2(c)(4) of this Lease.

9.4 Event of Assignment. If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. If Tenant is a limited liability company, conveyance of an economic interest of greater than fifty percent (50%) is an assignment of this Lease. Assignments defined in this Paragraph 9.4 require State's consent under Paragraph 9.1.

SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to: bodily injury; sickness; disease; death; and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value to tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.
- (c) State shall not require Tenant to indemnify, defend, and hold harmless State, or its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (d) Tenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Tenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.

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- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the Tenant or Tenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Tenant and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Tenant certifies that on the Commencement Date of this Lease it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism. If during the Term Tenant's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Lease, Tenant shall procure additional commercial insurance coverage to meet the requirements of this Lease. The requirements in Paragraph 10.2(a)(3) and (4) only apply where the Tenant procures additional commercial insurance to meet the requirements of this Lease.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
 - (4) All property insurance, builder's risk insurance, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.

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- (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
 - (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference the Lease number.
 - (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
 - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance required in this Lease within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.

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- (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
- (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
- (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Two Million Dollars (\$2,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
 - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs

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or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
 - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
 - (2) Tenant shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
 - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
- (e) Builder's Risk Insurance.
 - (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and all subcontractors in the work as insured.

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- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Tenant or Tenant's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured.
- (f) Business Auto Policy Insurance.
 - (1) Tenant or Tenant's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".
 - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.
- (g) Protection and Indemnity Insurance (P&I). For each vessel owned, used, and/or operated on the Property by Tenant or Tenant's contractor(s), Tenant or Tenant's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than One Million Dollars (\$1,000,000). The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property sustained in, on, or about the property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. If necessary, Tenant shall procure and maintain commercial umbrella liability insurance covering claims for these risks.
- (h) Hull Insurance. Tenant or Tenant's contractor(s) shall procure and maintain hull insurance for each vessel owned and/or operated by the Tenant or Tenant's contractor(s) on the Property. The coverage amount of each hull insurance policy must be equal to the value of the covered vessel.

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10.4 Financial Security.

- (a) On the Commencement Date of this Lease, Tenant is not required to procure and maintain a corporate security bond or other financial security ("Security"). During the Term, State may require Tenant to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1). Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.

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- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair, replacement, alterations, or additions. The following limitations also apply whenever Tenant conducts Work on the Property.

- (a) Tenant shall not use or install treated wood on decking, docks, rafts, floats, wharves, piers, fixed docks, gangways, pilings, or any other structure at any location above or below water, except that Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements in accordance with Section 7 and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

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12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs, reconstruction, replacement, removal, or restoration may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

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SECTION 14 DEFAULT AND REMEDIES**

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease; or
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days. This cure period does not apply where State terminates this Lease under Paragraph 10.2(f) or Paragraph 12.5.
- (c) For nonmonetary defaults not capable of cure within thirty (30) days, Tenant may submit a reasonable alternative cure schedule for State's approval, which State has discretion to grant or deny. The default is not an Event of Default if State approves the alternative cure schedule and Tenant cures the default in accordance with the approved alternative cure schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) State's Rights to Cure Tenant's Defaults.
 - (1) If an Event of Default occurs, State may, without terminating this Lease, remedy the default (in whole or in part) on behalf of Tenant at Tenant's expense. Tenant shall pay State all costs, expenses, fees, and damages incurred by State in connection therewith.
 - (2) If Tenant is in default under the terms of the Lease, and State determines that such default poses an imminent threat of injury or damage to persons or property, State may enter the Property and take actions to eliminate, mitigate, or remedy the imminent threat at Tenant's expense. On demand by State, Tenant shall pay State the amount of all costs, expenses, and fees incurred by State in connection therewith.

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- (3) The rights given to State under Paragraph 14.3(b)(1)-(2) shall neither impose a duty on State nor excuse any failure on Tenant's part to comply with any term, covenant, or condition of this Lease.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
 - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
 - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Tenant's default or threatened default of any provision of this Lease.

SECTION 15 ENTRY BY STATE

15.1 Right to Enter The Property.

- (a) State and persons authorized by State may, without notice to Tenant, enter the Property and any Improvements on the Property at any reasonable hour to inspect the Property and Improvements, to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, to survey habitat and species, enforce the terms of the Lease, or to exercise any right of State under the Lease or the law.
- (b) State and persons authorized by State, may enter the Property and any Improvements at any time without notice in the case of an imminent threat of injury or damage to persons or property or to prevent waste on the Property.

15.2 Disclaimer. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease. The rights given to State under this Section 15 do not impose, nor does State assume by reason thereof, any responsibility for the care, maintenance, or supervision of the Property or any part thereof.

15.3 Right to Enter Tenant's Land. Tenant grants State and persons authorized by State permission to cross Tenant's private upland property to access the Property.

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SECTION 16 DISCLAIMER OF QUIET ENJOYMENT**

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Orca-Straits District
919 North Township Street
Sedro-Woolley, WA 98284

Tenant: CITY OF EVERETT PARKS & FACILITIES
Attn: Real Property
802 East Mukilteo Boulevard, Bldg. 100
Everett, WA 98203

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

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SECTION 18 MISCELLANEOUS**

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. Subject to the limitations set forth in Section 9, this Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

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18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

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18.15 Exhibits and Attachments. All referenced exhibits and attachments are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

APPROVED AS TO FORM

Dated: _____, 2025

By: TIM BENEDICT
Title: Deputy City Attorney
Address: 2930 Wetmore Ave, Suite 10-C, Everett,
WA 98201
Phone: 425-257-8669

CITY OF EVERETT

Dated: _____, 2025

By: CASSIE FRANKLIN
Title: Mayor of the City of Everett
Address: 2930 Wetmore Ave, Everett, WA 98201
Phone: 425-257-7115

ATTEST

Dated: _____, 2025

By: MARISTA JORVE
Title: City Clerk
Address: 2930 Wetmore Ave, Suite 1A, Everett,
WA 98201
Phone: 425-257-8609

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 2025

By: KATIE ROSE ALLEN
Title: Acting Deputy Supervisor Forest
Regulation and Aquatic Resources
Address: 1111 Washington Street SE
Olympia, WA 98504-7027

STATE OF WASHINGTON)
) ss.
County of)

I certify that I know or have satisfactory evidence that CASSIE FRANKLIN is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor of the City of Everett to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20__

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

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NOR A COMMITMENT TO EXTEND AN OFFER**
STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

County of) ss.
)

I certify that I know or have satisfactory evidence that KATIE ROSE ALLEN is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Acting Deputy Supervisor for Forest Regulation and Aquatic Resources of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20__

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
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EXHIBIT A**

LEGAL DESCRIPTION OF PROPERTY & USE CLASSIFICATIONS

Agreement Number 20-107205

1. LEGAL DESCRIPTION OF THE PROPERTY:

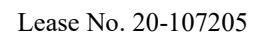
That portion of lands fronting government lot 5 in the fractional northeast quarter of the southeast quarter of section 29, township 29 north, range 5 east, w.m., in Snohomish County, Washington, described as follows: commencing at City of Everett control point "inca 9" which bears south 45°37'32" west, 2160.62 feet from inca 9" which bears south 45°37'32" west, 2160.62 feet from which bears south 45°37'32" west, 2160.62 feet from Washington Department of Transportation control point "gp31005-192"; gp31005-192"; ; thence north 75°21'46" east, a distance of 1808.84 feet to the centerline of riverfront boulevard as per the plat of the towns at riverfront, recorded under auditor's file number 201611215001, records of Snohomish County, Washington; thence south 17°16'13" west along said centerline, a distance of 523.32 feet to the centerline of 36th street; thence south 88°06'04" east along said centerline, a distance of 413.49 feet to the westerly waterway line of the Snohomish River as per unrecorded plat of Everett tide lands no. 3, on file with the Commissioner of Public Lands at Olympia, Washington, and the point of beginning; thence north 07°28'23" east along said waterway line, a distance of 40.19 feet to the north margin of said 36th Street; thence north 88°06'04" west along said north margin, a distance of 27.00 feet to the mean high tide line of the Snohomish River; thence north 10°41'41" east along said mean high tide line, a distance of 13.01 feet; thence north 04°08'00" west along said mean high tide line, a distance of 8.86 feet; thence north 07°46'42" east along said mean high tide line, a distance of 28.27 feet; thence north 08°37'56" west along said mean high tide line, a distance of 9.56 feet; thence north 09°17'13" east along said mean high tide line, a distance of 16.32 feet; thence north 00°42'41" east along said mean high tide line, a distance of 32.54 feet; thence north 06°17'54" east along said mean high tide line, a distance of 12.68 feet; thence north 09°45'28" east along said mean high tide line, a distance of 7.19 feet; thence south 81°55'07" east, a distance of 70.78 feet; thence south 08°04'53" west, a distance of 119.91 feet; thence south 46°15'44" west, a distance of 57.13 feet to the point of beginning. Containing 0.21 acres (8,957 square feet) more or less.

**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
NOR A COMMITMENT TO EXTEND AN OFFER
EXHIBIT A**

2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	<u>0</u>
Water-dependent that is public use and access	<u>8,957</u>
Nonwater-dependent	<u>0</u>
Water-oriented subject to water- dependent rental rates	<u>0</u>
Water-oriented subject to nonwater- dependent rental rates	<u>0</u>
Total Square Feet	<u>8,957</u>

EXHIBIT A



**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
NOR A COMMITMENT TO EXTEND AN OFFER
EXHIBIT B**

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities. Eclipse Mill Park will encompass approximately 3.70 acres of currently undeveloped property adjacent to the Snohomish River. Most of the site consists of gravel fill and weedy grasses and shrubs. The existing riverbank in this area is steep and consists of remnant debris from historical mill operations including timber piles and walls, an approximately 60-foot-long overwater timber structure, a steel sheet pile wall, a broken concrete foundation, and other miscellaneous debris. There are derelict creosote pilings in the tidelands fronting the upland property. Residential development is located to the north, a cleared area is to the west (the future park area), and an undeveloped partially forested area and cleared area are to the south. An existing outfall pipe (approximately 60 inches in diameter) extends from the riverbank at the southern portion of the project area.

B. Proposed Work.

Tenant has submitted to State plans and specifications for the Proposed Work, which are attached as Attachment 1 to this Exhibit B (Proposed Work). State grants its consent to the Proposed Work. Tenant shall conform the Proposed Work to the plans and specifications. Tenant's Proposed Work is considered Work and subject to the terms and conditions of this Lease. If the Proposed Work is not commenced within five years of the Commencement Date of the Lease, or if Tenant is required to renew, extend, modify, or obtain a new regulatory permit for the Proposed Work, Tenant shall obtain State's prior written consent before conducting the Proposed Work pursuant to Section 7.3 of the Lease.

C. Permits for Proposed Work. Tenant has secured the following permits for the Proposed Work:

- City of Everett Permit Services; Commercial Building Permit; Permit No. B2412-040; Issued July 10, 2025.
- City of Everett Land Use Hearing Examiner; Shoreline Substantial Development Permit and Floodplain Development Permit; Permit No. REVIII23-010; Issued October 1, 2024.
- Department of Ecology; Substantial Development Permit; Permit No. 2024-NWRO-8272; Issued October 2, 2024.
- Washington Department of Fish & Wildlife; Hydraulic Project Approval; Permit No. 2025-4-135+01; Issued March 19, 2025; Expires March 18, 2030.
- US Army Corps of Engineers; Nationwide Permit 27; Effective February 25, 2022; amended June 28, 2024.
- US Army Corps of Engineers; Letter of Permission; Reference No. NWS-2023-709; Issued April 11, 2025.

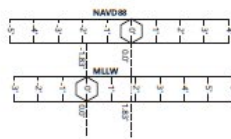
**THIS DRAFT DOES NOT CONSTITUTE AN OFFER
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2. ADDITIONAL OBLIGATIONS

Except for the Proposed Work authorized in Section 1.B. of this Exhibit B, State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Paragraph 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

- A. By December 31, 2026, Tenant shall post visible signage on the floating dock that includes all national and state emergency reporting numbers for oil and chemical spills.
- B. By December 31, 2026, Tenant shall mark all no wake zones with visible signage.

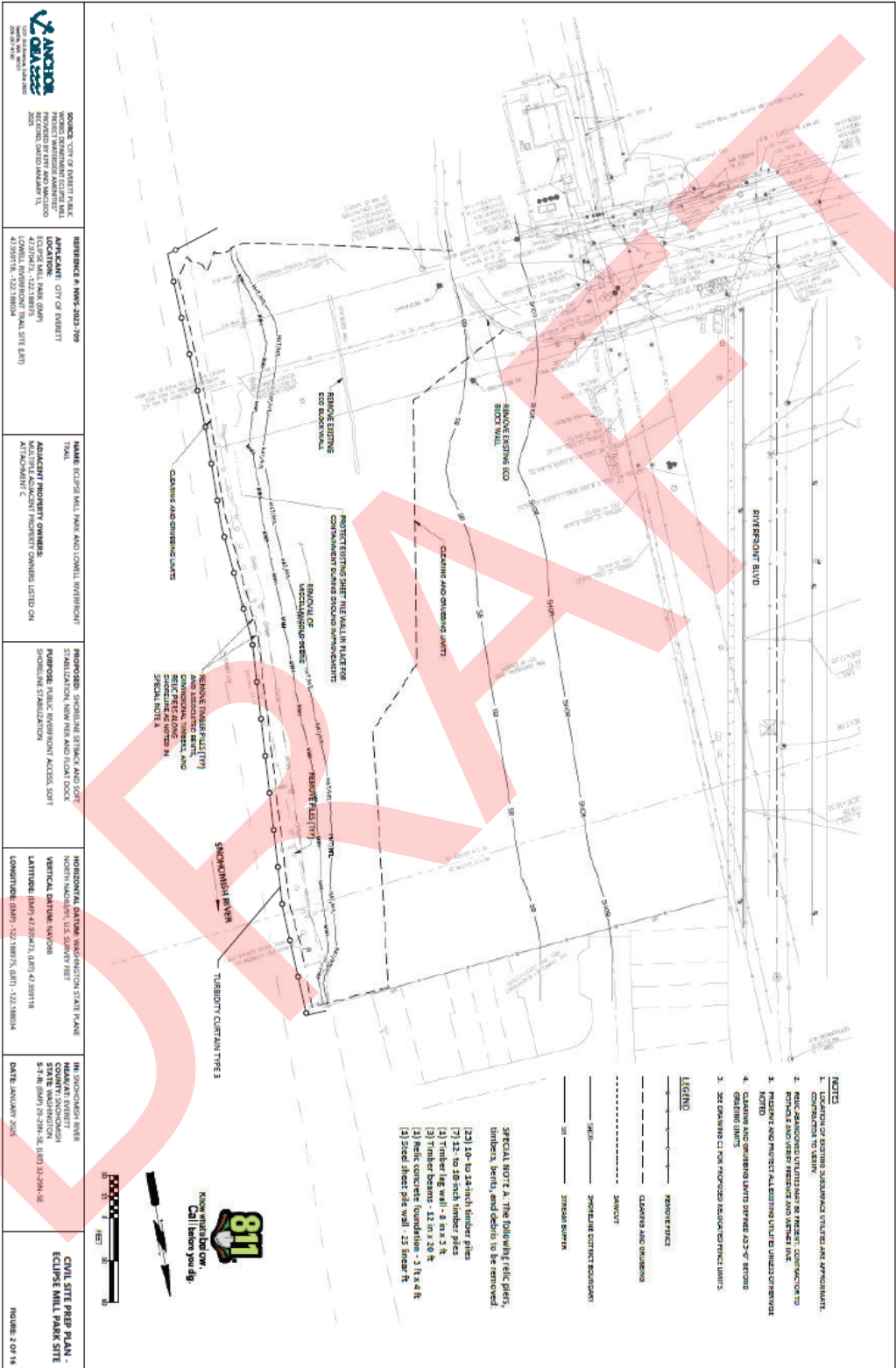
ATTACHMENT 1



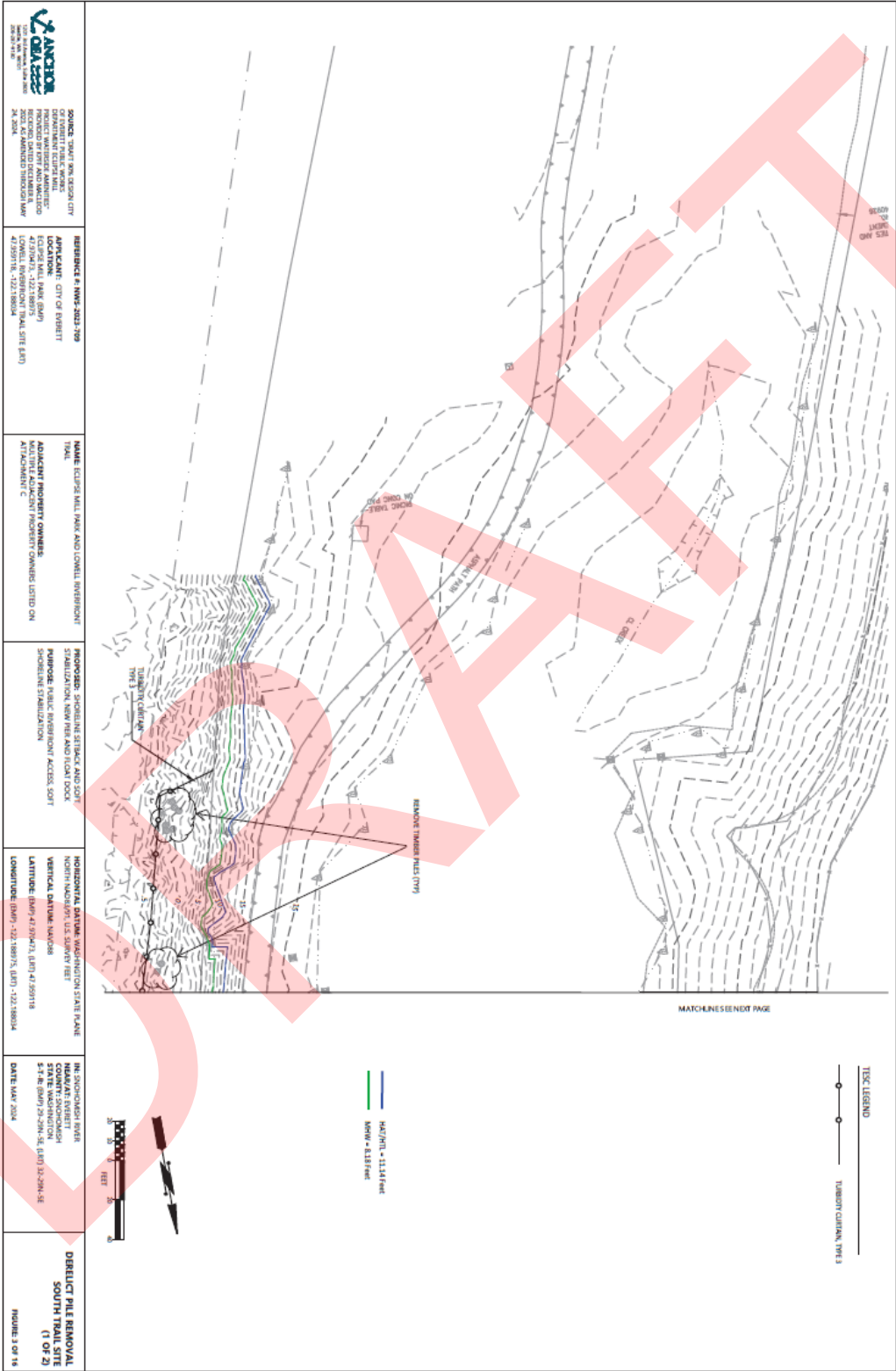
Highest Astronomical Tide (HAT) = +11.14 ft
High Tide Line (HTL) = +11.14 ft
Mean High Water (MHW) = +8.18 ft

VERTICAL DATUM CONVERSION
(MUTW = NAVD83 + 1.83)

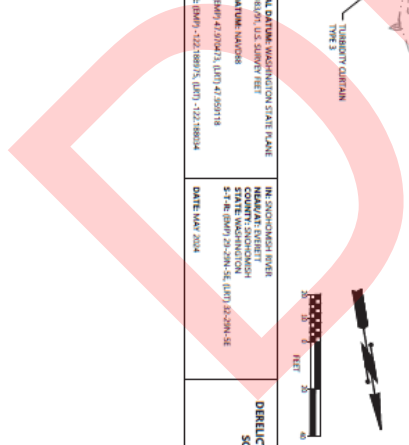
ATTACHMENT 1



ATTACHMENT 1



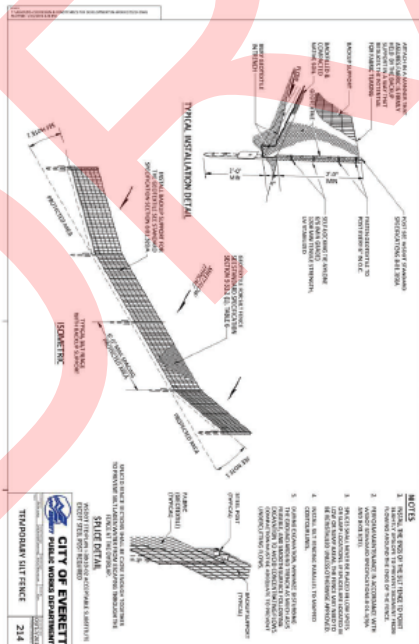
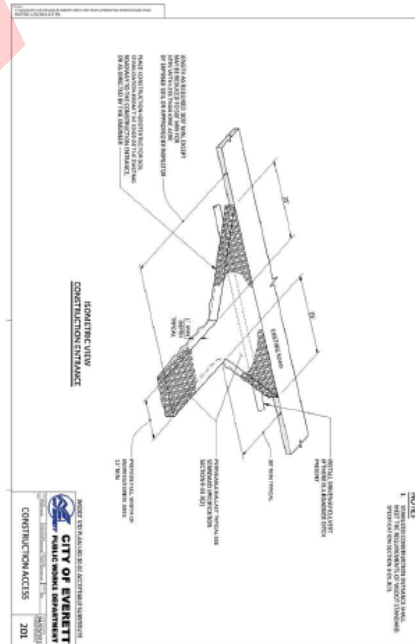
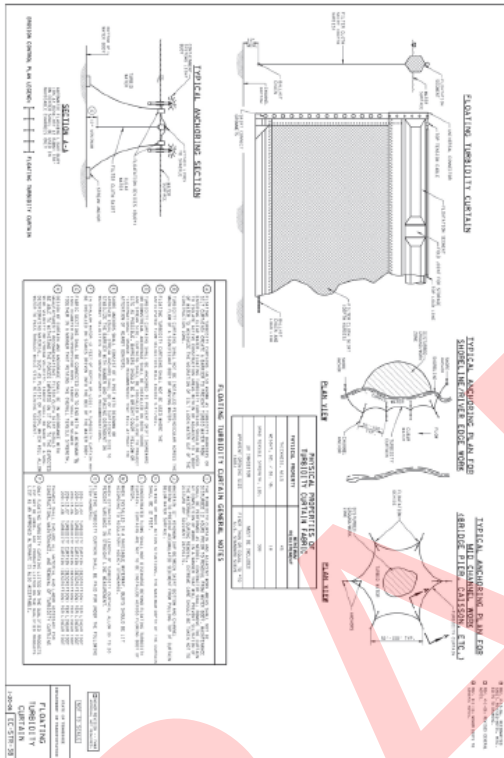
ATTACHMENT 1



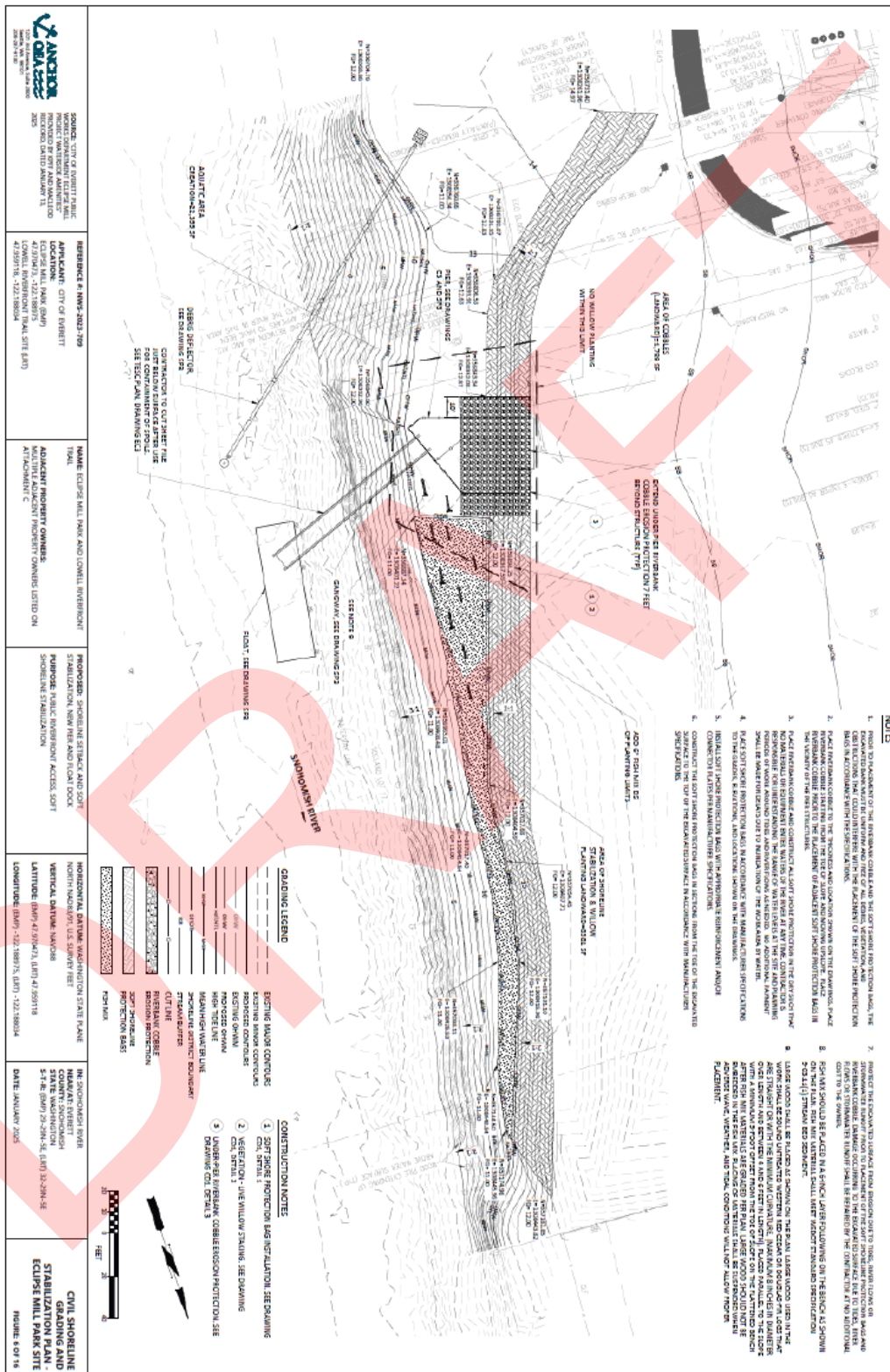
ATTACHMENT 1

TESC NOTES

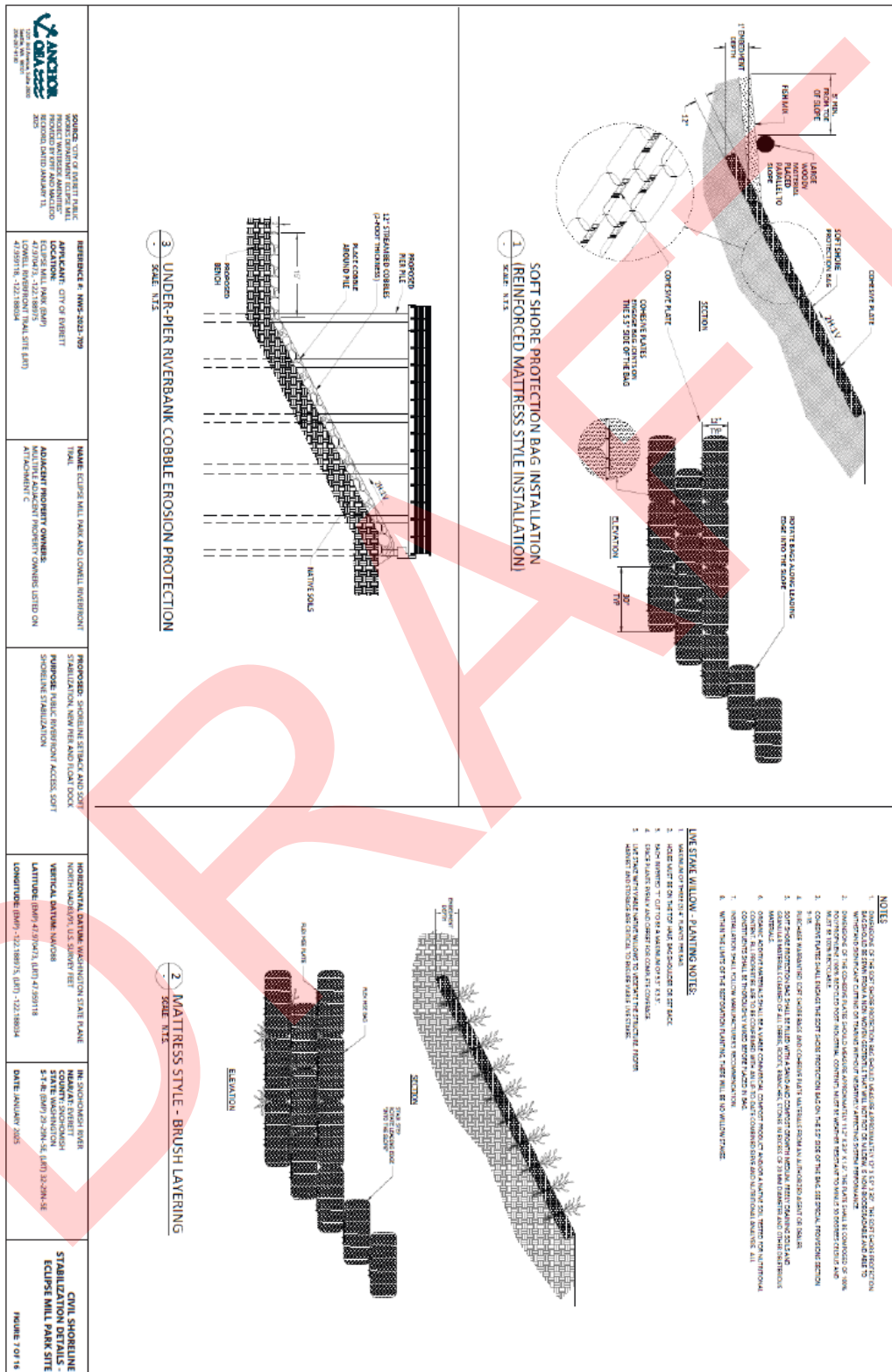
1. REMOVAL OF THIS CONVEYANCE/CONSTRUCTION CONTROL (CEC) FLAG DOES NOT CONSTITUTE AN APPROVAL OR PERMANENT TREAT OR DRAINAGE DESIGN. FOR EXAMPLE, SIZE AND LOCATION OF TRAILS, PILES, RESTRICTIONS, CHANNELS, RETENTION FACILITIES, UTILITIES, ETC., ARE THE RESPONSIBILITY OF THE APPLICANT/CONTRACTOR UNTIL ALL CONSTRUCTION IS COMPLETED AND APPROVED. RESTORATION/ADJUSTING IS ESTABLISHED.
2. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THIS FLAG SHALL BE CLEARLY PLACED IN THE FIELD PRIOR TO CONSTRUCTION. DURING THE CONSTRUCTION PERIOD, NO DISTURBANCE BEYOND THE PLANNED CLEARING LIMITS SHALL BE PERMITTED. THE FLAGGING SHALL BE MAINTAINED BY THE APPLICANT/CONTRACTOR.
3. THE THESE FACILITIES SHOWN ON THIS FLAG MUST BE CONDUCTED IN CONJUNCTION WITH ALL CLEARING AND GRADING ACTIVITIES, AND IN SUCH A MANNER AS TO INSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DOES NOT ENTER THE CLEARING AND/OR ROADWAYS, OR VIOLATE APPLICABLE WATER STANDARDS.
4. THESE FACILITIES SHOWN ON THIS FLAG ARE THE MINIMUM REQUIREMENTS FOR ALLOCATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE FACILITIES SHALL BE IMPROVED AS NEEDED FOR UNEXPECTED RUNOFF EVENTS AND TO INSURE THAT SEDIMENT AND SEDIMENT-LADEN WATER DOES NOT LEAVE THE SITE.
5. THE THESE FACILITIES SHALL BE INSPECTED DAILY BY THE APPLICANT/CONTRACTOR AND MAINTAINED AS NECESSARY TO INSURE THEIR CONTINUED FUNCTIONING.
6. FOLLOWING RUNOFF ON INACTIVE SITES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A MONTH OR WITHIN 48 HOURS FOLLOWING A MAJOR STORM EVENT.
7. AT NO TIME SHALL MORE THAN ONE FOOT OF SEDIMENT BE ALLOWED TO ACCUMULATE WITHIN A CATCH BASIN. ALL CATCH BASINS AND CONVEYANCE LINES SHALL BE CLEARED PRIOR TO PLANTING. THE CLEANING OPERATION SHALL NOT WASH SEDIMENT-LADEN WATER INTO THE PROJECT. ADDITIONAL MEASURES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED FOR THE DURATION OF THE PROJECT. ADDITIONAL MEASURES SHALL BE REQUIRED TO INSURE THAT ALL PLANTED AREAS ARE KEPT CLEAN FOR THE DURATION OF THE PROJECT.
8. BEFORE EXISTING GRABER OR ROAD AT ACCESS.
9. BEFORE EXISTING GRABER OR ROAD AT ACCESS.
10. BEFORE EXISTING GRABER OR ROAD AT ACCESS.

[illegible]

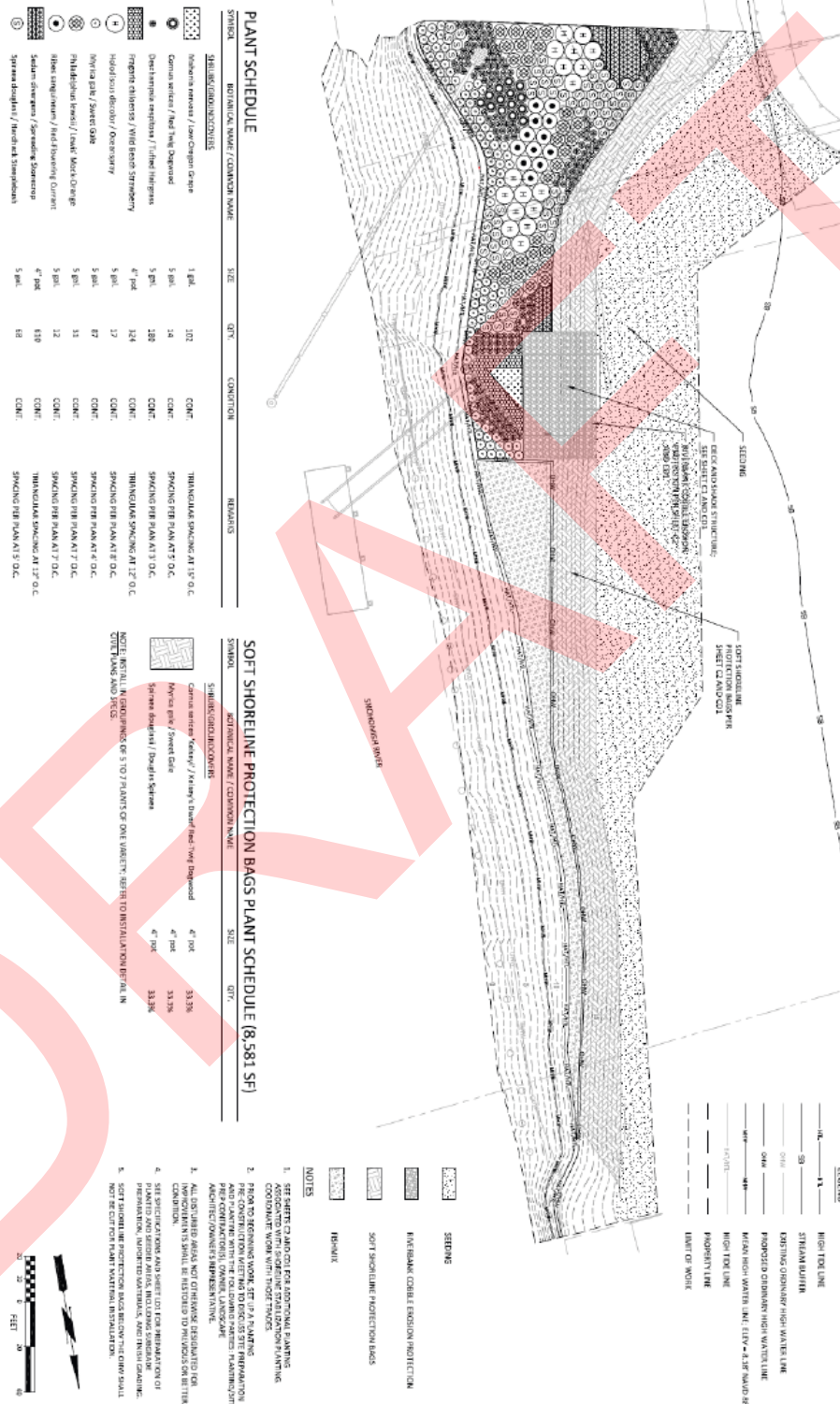
ATTACHMENT 1



ATTACHMENT 1



ATTACHMENT 1



SECTION

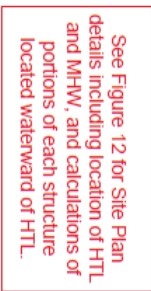
PLANT AT SOME GRADE AS AT TRANSIT

SOIL PREP

GROUND COVER SPACING

FIGURE 3 OF 14

ATTACHMENT 1



ATTACHMENT 1



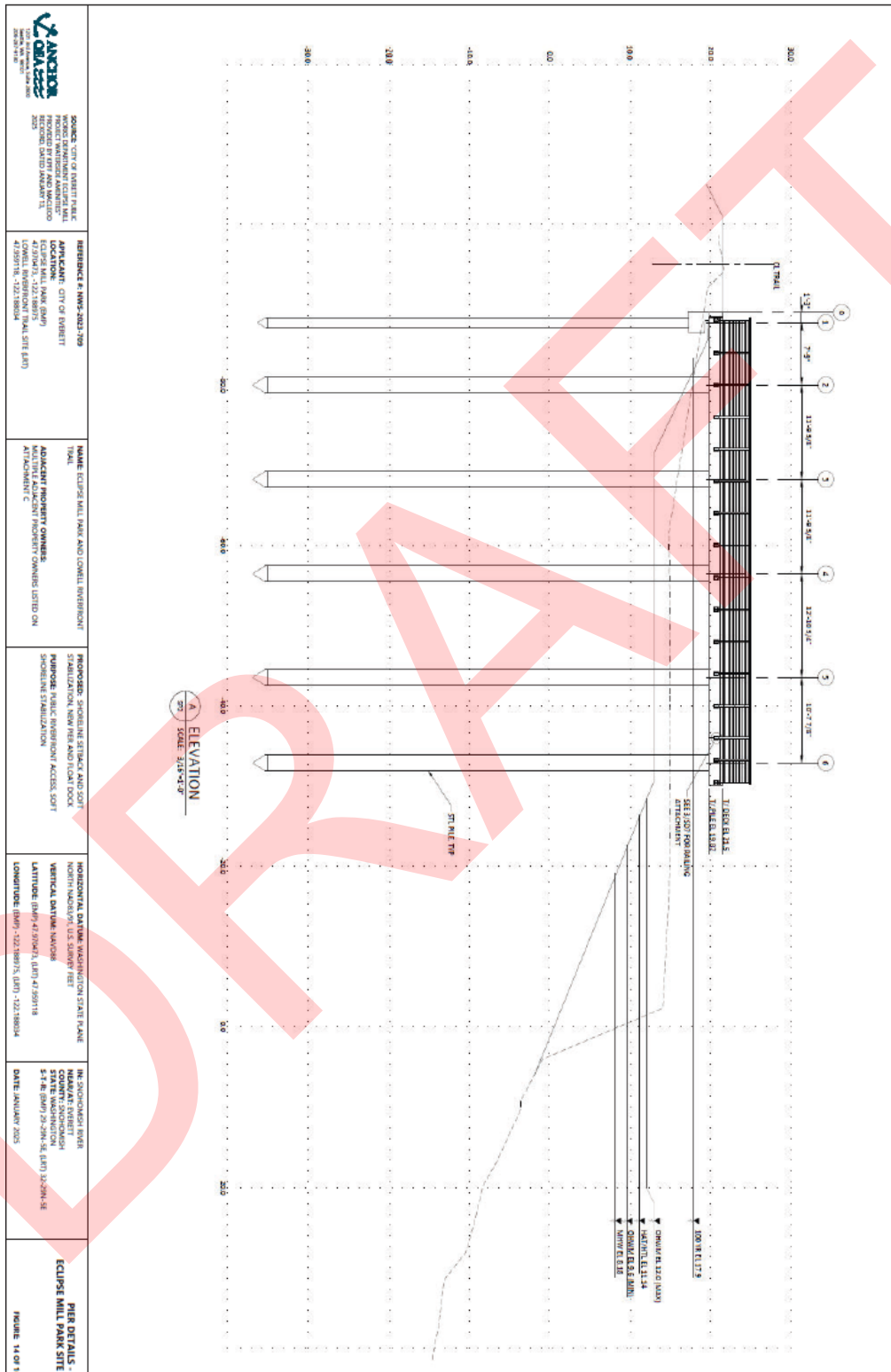
ATTACHMENT 1



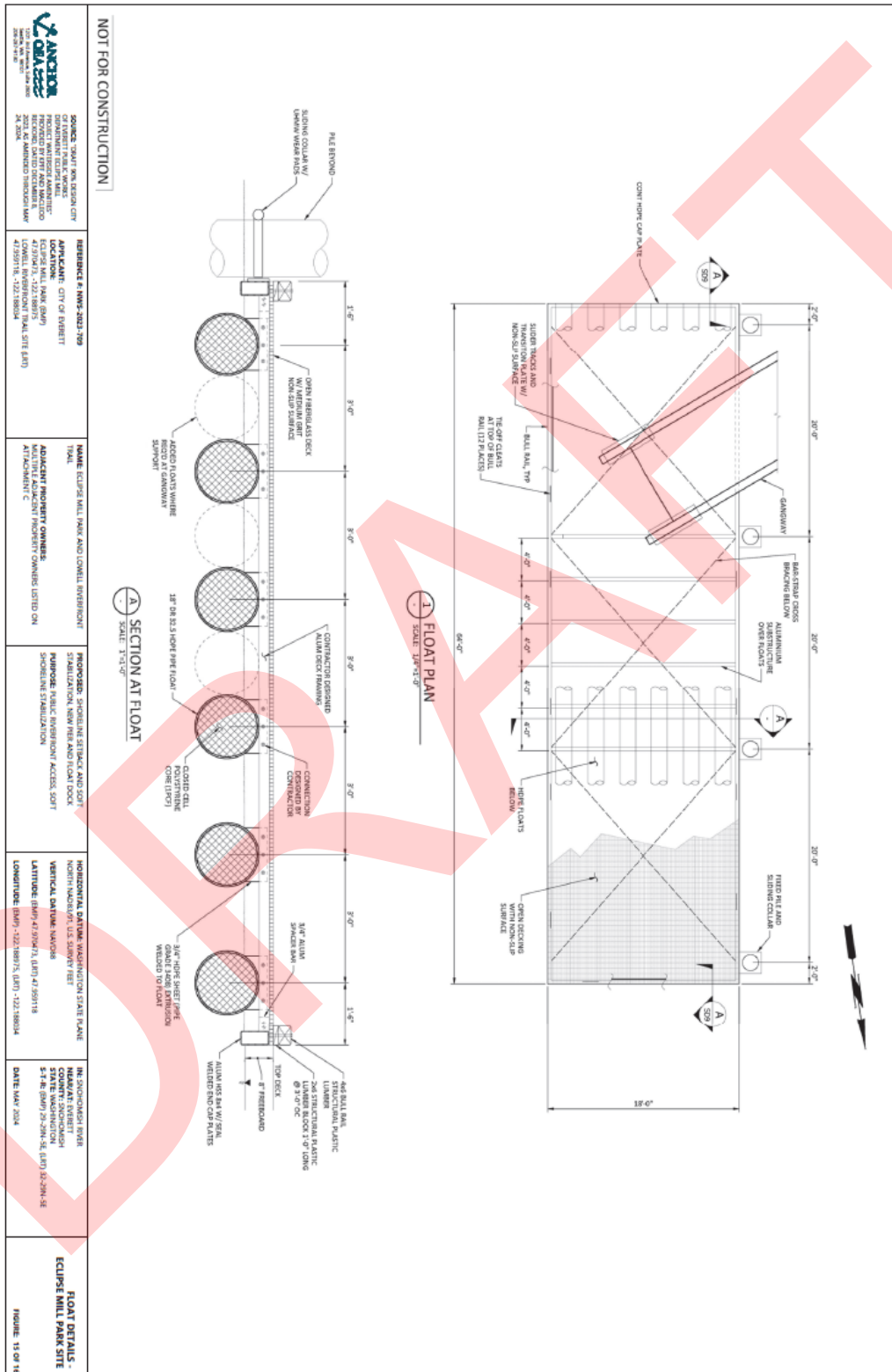
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ATTACHMENT 1**

Pile Schedule											
FILE NO.	LOCATION	DEPTH (ft)	DIAMETER (in)	WALL THICKNESS (in)	REINFORCED CONCRETE (ft)	ADJACENT PROPERTY (ft)	ADJACENT PROPERTY (ft)	ADJACENT PROPERTY (ft)	ADJACENT PROPERTY (ft)	ADJACENT PROPERTY (ft)	ADJACENT PROPERTY (ft)
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ATTACHMENT 1





City Council Agenda Item Cover Sheet

Project title: EMOTE Health Care Authority Agreement Amend No. 2

Council Bill # *interoffice use*

Agenda dates requested:

Briefing

Proposed action

Consent 8/13/25

Action

Ordinance

Public hearing:

Yes X No

Budget amendment:

X Yes No

PowerPoint presentation:

Yes X No

Attachments:

HCA Professional Services
Contract (#K7759)

Department(s) involved:

Community Development

Contact person:

Julie Willie, Director

Phone number:

425-257-7120

Email:

jwillie@everettwa.gov

Project: Emergency Mobile Opioid Team in Everett (EMOTE)

Partner/Supplier: Washington State Health Care Authority

Location: City-wide

Preceding action: Professional Service Agreement, Council Action 9/27/2024

Fund: Fund 155 – General Government Special Projects

Fiscal summary statement:

In FY 24, the City of Everett received \$500,000 in funding from state operating budget appropriations, passed through by the Association of Washington Cities (AWC) and the Washington State Health Care Authority (HCA), to fund a “Street Medicine Pilot Program” which covered the operational expenses for the EMOTE program.

The City of Everett received a contract amendment from HCA for an additional \$716,000.00 (total contract award of \$1,216,000) to continue the EMOTE program from July 1, 2025 thru June 30, 2027. This will cover all operational expenses of the EMOTE program. \$500,00.00 will be awarded to the City’s subcontractor, Conquer Addiction PLLC, dba Conquer.

Project summary statement:

The Emergency Mobile Opioid Team in Everett (EMOTE) brings street level treatment to Everett’s most vulnerable population. It provides medicine, counseling, and peer support to Everett residents who are unable or choose to not interact with traditional medical office-based care.

EMOTE aims to increase the number of unhoused individuals who will receive addiction treatment, increase health insurance uptakes, reduce crisis interventions (emergency transfers, 911 calls, arrests, etc.), provide an alternative municipal response to drug use, and enable inpatient and outpatient treatment via telemedicine or transport.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the City-Conquer Amendment No. 2 for EMOTE services.

Initialed by:

Department head

Administration

Council President



AMENDMENT NO. 2 PROFESSIONAL SERVICES CONTRACT

This Amendment No. 2 to Professional Services Contract is dated for reference purposes July 1, 2025, and is between the City of Everett (the "**City**") and Conquer Addiction PLLC dba Conquer ("**Conquer**").

RECITALS

A. The City and Washington State Health Care Authority ("**HCA**") are parties to a Professional Services Contract dated September 24, 2024 ("**Master Contract**"), under which the City is to cause provision of certain services to vulnerable populations. Pursuant to the Professional Services Contract signed on October 2, 2024 (the "**City-Conquer Contract**"), the City subcontracted this to Conquer.

B. The term of the Master Contract and City-Conquer Contract is from July 1, 2024 to June 30, 2025 (the "**Initial Term**"). During June 2025, the HCA indicated that the Master Contract with Everett would be extended. Since that extension would not be finalized until July or August, the City and Conquer entered into an Amendment No. 1 to the City-Conquer Contract to extend the City-Conquer Contract for the interim.

C. The Master Contract has now been amended and extended by the City and HCA until June 30, 2027 ("**Master Contract Amendment No. 1**").

D. This Amendment No. 2 supersedes and replaces Amendment No. 1 to the City-Conquer Contract. This Amendment No. 2 also extends the City-Conquer Contract until June 30, 2027.

AGREEMENT

In consideration of the covenants, terms and conditions set forth below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Conquer agree to amend the City-Conquer Contract as set forth below:

1. This Amendment No. 2 supersedes and replaces Amendment No. 1 to the City-Conquer Contract.

2. The City-Conquer Contract is extended until June 30, 2027 (the "**Extension Term**").

3. Unless otherwise directed by the City in writing, Conquer will continue to provide services during the Extension Term in the same manner and subject to the same City-Conquer Contract terms and conditions as during the Initial Term. For services during the Extension Term, the City will pay Conquer as in the Initial Term, with the Total Maximum Contract Amount for the City-Conquer Contract for the Extension Term fixed at \$500,000.00. (The parties acknowledge that Master Agreement Amendment No. 1 contains funding for the City to provide Extension Term services beyond those to be provided by Conquer, which is why the Extension Term Total Maximum Contract Amount for the City-Conquer Contract is less than

the Extension Term Total Maximum Contract Amount under Master Agreement Amendment No. 1.)

4. Regardless of the date(s) on which this Amendment No. 2 is signed by the parties, and regardless of any City-Conquer Contract end date(s) that may have been in the City-Conquer Contract as amended prior to this Amendment No. 2, the parties agree that the City-Conquer Contract is deemed reinstated and to have been continuously in effect since the beginning of the Initial Term until the end of the Extension Term.

5. This Amendment may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. All provisions in the Contract shall remain in effect except as expressly modified by this Amendment.

IN WITNESS WHEREOF, the City and Conquer have executed this Amendment.

**CITY OF EVERETT
WASHINGTON**

CONQUER ADDICTION PLLC DBA CONQUER

Cassie Franklin, Mayor

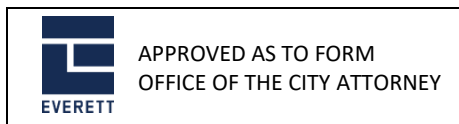
Signature: _____

Name of Signer:

Date

ATTEST

Office of the City Clerk





City Council Agenda Item Cover Sheet

Project title: EMOTE Health Care Authority Agreement Amend No. 1

Council Bill # *interoffice use*

Agenda dates requested:

Briefing
Proposed action
Consent 8/13/25
Action
Ordinance
Public hearing
Yes X No

Budget amendment:

X Yes No

PowerPoint presentation:

Yes X No

Attachments:

HCA Amendment No. 1
(#K7759)

Department(s) involved:

Community Development

Contact person:

Julie Willie, Director

Phone number:

425-257-7120

Email:

jwillie@everettwa.gov

Initialed by:

Department head

Administration

Council President

Project: Emergency Mobile Opioid Team in Everett (EMOTE)

Partner/Supplier: Washington State Health Care Authority

Location: City-wide

Preceding action: Professional Service Agreement, Council Action 5/1/2024

Fund: Fund 155 – General Government Special Projects

Fiscal summary statement:

In FY 24, the City of Everett received \$500,000 in funding from state operating budget appropriations, passed through by the Association of Washington Cities (AWC) and the Washington State Health Care Authority (HCA), to fund a “Street Medicine Pilot Program” which covered the operational expenses for the EMOTE program.

The City of Everett received a contract amendment from HCA for an additional \$716,000 (total contract award of \$1,216,000) to continue the EMOTE program from July 1, 2025 thru June 30, 2027. This will cover all operational expenses of the EMOTE program.

Project summary statement:

The City of Everett subcontracted with Conquer Addiction PLLC (dba Conquer), to launch and implement the Emergency Mobile Opioid Team in Everett (EMOTE) last year. The EMOTE program brings street level treatment to Everett’s most vulnerable population. It provides medicine, counseling, and peer support to Everett residents who are unable or choose to not interact with traditional medical office-based care.

EMOTE is intended to increase the number of unhoused individuals who will receive addiction treatment, increase health insurance uptakes, reduce crisis interventions (emergency transfers, 911 calls, arrests, etc.), provide an alternative municipal response to drug use, and enable inpatient and outpatient treatment via telemedicine or transport. In it’s first year, the program was successfully able to achieve these goals.

Data highlights from the first three quarters of the EMOTE program are:

- 601 meaningful contacts with clients/peers
- 45 substance use disorder assessments completed
- 375 in-patient rehab referrals made
- 54 detox placements
- 293 referrals to Conquer outpatient

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Washington State Health Care Authority Agreement Amendment No. 1 for EMOTE.



**CONTRACT
AMENDMENT**

HCA Contract No.: K7759
Amendment No.: 01

THIS AMENDMENT TO THE CONTRACT is between the Washington State Health Care Authority and the party whose name appears below, and is effective as of the date set forth below.

CONTRACTOR NAME

City of Everett

CONTRACTOR doing business as (DBA)

CONTRACTOR ADDRESS

2930 Wetmore Avenue, Suite 10A
Everett, WA 98201

CONTRACTOR CONTRACT MANAGER

Name: Julie Willie
Email: jwillie@everettwa.gov

AMENDMENT START DATE

July 1, 2025

AMENDMENT END DATE

June 30, 2027

CONTRACT END DATE

June 30, 2027

Prior Maximum Contract Amount

\$500,000.00

Amount of Increase

\$716,000.00

Total Maximum Compensation

\$1,216,000.00

WHEREAS, HCA and Contractor previously entered into a Contract to establish a mechanism for payment to fund the creation of a street medicine team program in accordance with the legislative mandate in ESSB 5950, and;

WHEREAS, HCA and Contractor wish to amend the Contract pursuant to Section 4.4 Amendments, to (1) extend the period of performance and (2) add funding for SFY 2026 and SFY 2027;

NOW THEREFORE, the parties agree the Contract is amended as follows:

1. Section 3, Special Terms and Conditions, 3.2 Term, subsection 3.2.1 is amended to read as follows:
 - 3.2.1 The initial term of the Contract will commence on July 1, 2024 and continue through June 30, 2027 unless terminated sooner as provided herein.
2. Section 3, Special Terms and Conditions, 3.3 Compensation, subsection 3.3.1 is amended to read as follows:
 - 3.3.1 The parties have determined the cost of accomplishing the work herein will not exceed \$1,216,000.00, inclusive of all fees, taxes, and expenses. Compensation for satisfactory performance of the work will not exceed this amount unless the parties agree to a higher amount through an amendment.
3. Attachment 1: Statement of Work, is amended in its entirety and is attached hereto and incorporated herein.
4. This Amendment will be effective July 1, 2025 ("Effective Date").
5. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Contract.
6. All other terms and conditions of the Contract remain unchanged and in full force and effect.

The parties signing below warrant that they have read and understand this Amendment and have authority to execute the Amendment. This Amendment will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE <u>Cassie Franklin, Mayor</u>	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

Approved as to Form:

Office of the City Attorney

Attest:

Office of the City Clerk

ATTACHMENT 1: STATEMENT OF WORK

The contractor will provide street medicine services and will staff street medicine (SM) teams as such, and otherwise do all things necessary for, or incidental to, the performance of work as described in this statement of work (SOW).

Period of performance July 1st, 2024, and be completed on or before June 30th, 2027 unless terminated sooner or extended.

1. Purpose

The purpose of this agreement is to contract with five municipalities – King County, City of Spokane, City of Tacoma, City of Everett and Kitsap County to implement SM teams in support of the unhoused populations. This document outlines performance expectations, reporting requirements and deliverables for this initiative. HCA will incorporate elements of these to submit a legislative report due June 2025 outlining the implementation of the SM program with recommendations for maximizing leveraging of federal Medicaid match and further expansion of the SM model.

Funding for SM program is only to be used for expenses incurred related to direct service delivery of SM clients. Allowable uses of funding:

- Staffing for SM teams
- Capital equipment for SM teams
- Operating expenses for SM teams for medical and other supplies, lab services, vehicle maintenance, and incidental costs.

2. Performance Expectations

The contractor will be responsible for all internal staffing, training, and any technology requirements necessary to implement the expectations outlined in this contract. In addition, the contractor shall ensure funds are responsibly used towards the care core components of SM.

- 2.1 The main objectives of the Street Medicine program are to reduce health disparities and to improve health outcomes among the unhoused population.
- 2.2 The contractor will implement a street medicine team that will provide direct care to the unhoused population which includes but is not limited to unhoused people living in encampments, tent cities, living in cars, under bridges and in the woods.
- 2.3 The contractor will engage and collaborate with community stakeholders to develop the components needed for a successful SM program. The contractor will report the functions of the SM team and report a policy that includes organizational structure of SM teams, standard referral procedures and protocols to ensure continuity of care, liability coverage, data reporting systems, medication dispensing as well as proper safety guidelines for the SM team.
- 2.4 The contractor will meet with HCA SM program manager on a frequency as determined by the SM program manager.

- 2.5 The contractor will participate in a Street Medicine Learning Collaborative with other Street Medicine participants on a frequency as determined by SM program manager.
- 2.6 The contractor will assemble a SM team comprising the following makeup:
 - 2.6.1 a MD/DO or Physician Assistant (PA) or Nurse Practitioner (NP) , AND
 - 2.6.2 a behavioral health specialist (masters level).
 - 2.6.3 The SM team may include a community health worker (with preferred lived experience) or certified peer counselor (CPC).
 - 2.6.4 SM teams should be comprised, at a minimum, a pair of individuals or a makeup of 3 to 4 people depending on staffing needs. Staffing will be flexible and scalable depending on location.
- 2.7 The contractor will provide and support regular quarterly (4 sessions per year) trainings for the SM team to cover key SM protocols such as clinical guidelines, infection and infestation prevention, skills to prevent and de-escalate crises, situational awareness and safety precautions in a range of settings, understanding boundaries between street medicine and law enforcement, street medicine 911 protocols, safety precautions for transporting individuals and staff well-being that includes self-care and burnout prevention.
- 2.8 The contractor will coordinate, collaborate and communicate with community stakeholders as well as law enforcement agencies.
- 2.9 The contractor will ensure there is close collaboration as well as wraparound health services and referrals between SM teams and:
 - 2.9.1 Primary care providers (including but not limited to Federally Qualified Health Centers, community clinics or other primary care providers) to assist the unhoused population with establishing longitudinal primary care appointments.
 - 2.9.2 Behavioral health providers including but not limited to mental health services, substance use disorder services (such as harm reduction and care services, Health Engagement Hubs, Syringe Services Providers)
- 2.10 The contractor will ensure SM teams will provide the following scope of services:
 - 2.10.1 Basic medical care, including but not limited to urgent care (addressing acute medical concerns), infectious disease control (HIV screening, HCV screening and treatment, wound and foot care), medication counseling, prescribing, and distribution of medications.
 - 2.10.2 Behavioral health services
 - 2.10.3 Substance use disorder services, including provision of harm reduction supplies as appropriate
 - 2.10.4 Care coordination and case management services, such as:

- 2.10.4.1 Wraparound health services and referrals, including referrals to appropriate clinical and non-clinical services
- 2.10.4.2 Medical and psychosocial case management,
- 2.10.4.3 Provision of life necessities as able (providing free materials such as hygiene supplies, food/water and some clothing),
- 2.11 The contractor will ensure that SM teams will be held to the same standards as any healthcare facility delivering medical care and includes clinical record keeping and licensing requirements. In addition, the contractor will establish a quality assurance (QA) and quality improvement (QI) plan for SM teams.
- 2.12 Contractor to meet with HCA on a quarterly schedule to discuss progress on contract work, including successes and challenges. Additional meetings as needed by the contractor.
- 2.13 The contractor will set up billing systems and bill for services eligible for Medicaid reimbursement and include details in final report.

3. Reporting:

The contractor will submit quarterly reports due the last business day of the month after end of quarter to include the following:

- 3.1 Individuals on SM teams who attended quarterly training during the reporting period and report the training on an attendance sheet to include date/time and duration of time, type of training involved, name of personnel attending the training, and instructor/title providing the training.
- 3.2 Data collection. The contractor will collect and report on the following data elements on a quarterly basis.
 - 3.2.1 Program information
 - 3.2.1.1 Quarterly staffing report including number and type of providers.
 - 3.2.1.2 Total number of sites visited to include date/time/location and participating staff.
 - 3.2.1.3 Any manner of deaths (natural, accident, homicide, undetermined and pending) if possible.
 - 3.2.2 Billable services
 - 3.2.2.1 Total number of patients seen, including:
 - 3.2.2.1.1 Client demographics to include age, racial, ethnic and gender.
 - 3.2.2.1.2 Number and type of treatments/services performed on individuals and outcomes such as testing and overdose

prevention, number of wound care services, number of individuals started on medications (including injectables) for opioid use disorder, infections and pain management, including infection disease screening and follow up.

- 3.2.2.1.3 Number of referrals made to primary care and behavioral health treatments/appointments.
- 3.2.2.1.4 Number of top medical and behavioral health diagnosis.
- 3.2.2.1.5 Number of transportation arranged for individuals to ER, primary care and behavioral health.
- 3.2.2.1.6 Number of ER avoidance encounters (ex: Would you have sought Emergency Care for this condition?)

3.2.3 Non-billable services

- 3.2.3.1 Non-billable encounters with patients
- 3.2.3.2 Number of 911 calls made when SM teams encounter unhoused people.
- 3.2.3.3 Total number of harm reduction supply encounters.
- 3.2.3.4 Number of naloxone kits distributed.
- 3.2.3.5 Number of hygiene items distributed.
- 3.2.3.6 Number of harm reduction supplies distributed.
- 3.2.3.7 Number of inclement weather and catastrophic care avoidance encounters

3.2.4 Enrollment Screening Efforts

- 3.2.4.1 Number of clients screened for Medicaid eligibility
- 3.2.4.2 Number of clients enrolled in Medicaid services

4. Deliverables, due dates, and payment expectations

FY 25 (July 2024 – June 2025)					
Deliverable	Description	Due date	# of Reports/ Payments	Payment Amount	Deliverable Total Amount
Implementation Plan	Detailed report, including: - Estimated Staffing for SM teams and hiring plan - Capital equipment needs for SM teams	7/15/2024	1	\$375,000.00 each	\$375,000.00

	Operating expenses for SM teams for medical and other supplies, lab services, vehicle maintenance, and incidental costs.				
Quarterly Report	Contractor will provide summary written report of contract-related progress each quarter	10/20/2024 1/20/2025 4/20/2025	3	\$33,333.00 each	\$100,000.00
Final Report	Detailed report, including: - Details on Medicaid billing - Challenges and Barriers to providing and implementing care - Summary of budget; including expenditures and how funds were utilized - Lessons learned and future implementation plans	06/01/2025	1	\$25,000.00 each	\$25,000.00
				FY25 Total	\$500,000.00

FY 26 (July 2025 – June 2026)					
Deliverable	Description	Due date	# of Reports/ Payments	Payment Amount	Deliverable Total Amount
Quarterly report	Contractor will provide summary written report of contract-related progress each quarter	10/30/2025 01/30/2026 4/30/2026	3	\$89,500.00 each	\$268,500.00
Final Report	Detailed report, including: - Details on Medicaid billing - Challenges and Barriers to providing and implementing care - Summary of budget; including expenditures	06/01/2026	1	\$89,500.00 each	\$89,500.00

	- and how funds were utilized - Lessons learned and future implementation plans - Top 5 medical concerns addressed				
				FY26 Total	\$358,000.00

FY 27 (July 2026 – June 2027)					
Deliverable	Description	Due date	# of Reports/ Payments	Payment Amount	Deliverable Total Amount
Quarterly report	Contractor will provide summary written report of contract-related progress each quarter	10/30/2026 01/30/2027 4/30/2027	3	\$89,500.00 each	\$268,500.00
Final Report	Detailed report, including: - Details on Medicaid billing - Challenges and Barriers to providing and implementing care - Summary of budget; including expenditures and how funds were utilized - Lessons learned and future implementation plans - Top 5 medical concerns addressed	06/01/2027	1	\$89,500.00 each	\$89,500.00
				FY27 Total	\$358,000.00



City Council Agenda Item Cover Sheet

Project title: Certificate of Completion with Brink Electric, Inc. for the Everett Transit Operations Base Inductive Charging Infrastructure Project

Council Bill # *interoffice use*

Agenda dates requested:

Briefing
Proposed action
Consent 8/13/25
Action
Ordinance
Public hearing
Yes X No

Budget amendment:
Yes X No

PowerPoint presentation:
Yes X No

Attachments:
Certificate

Department(s) involved:
Transit

Contact person:
Vince Bruscas

Phone number:
425-257-6292

Email:
vbruscas@everettwa.gov

Initialed by:

MJS

Department head

Administration

Council President

Project: Inductive Bus Charger Installation

Partner/Supplier: Inductive EV

Location: 3225 Cedar Street

Preceding action: Call For Bids 2/23/22

Fund: 425/Transit

Fiscal summary statement:

Brink Electric, Inc. was the lowest responsive and responsible bidder to the Call for Bids Everett Transit Operations Base Inductive Charging Infrastructure Project approved by City Council on February 23, 2022. The initial engineer's estimate of \$250,000 is funded by Federal Transit Administration funds 86.5% and Department of Ecology funds 13.5%. 425 local funds will cover the remaining amount of \$248,000. Additional work was added to the project with grant funding and local funds.

Project summary statement:

Everett Transit purchased an additional six (6) 100% electric buses and needs to expand the bus charging system(s) on its property at 3225 Cedar Street, Everett. On February 23, 2022, Council approved a call for bids for the project.

Plans and specifications were prepared by Elcon Associates, Inc. to the satisfaction of Everett Transit. The plans and specifications included all costs associated for the construction of the inductive charging system.

The scope of work for the Operations Base Inductive Charging Infrastructure includes concrete saw cutting, trenching, electric cabinets, conduits, and inductive charging ground assemblies

All work was completed for the installation and operation of ten (10) inductive bus chargers.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the Certificate of Completion with Brink Electric, Inc. for the Everett Transit Operations Base Inductive Charging Infrastructure Project.

SECTION 00 65 19 - CERTIFICATE OF COMPLETION FORMCONTRACTOR: BRINK ELECTRIC, LLCADDRESS: 8223 BROADWAYCITY: EVERETT STATE: WA 98203PROJECT TITLE: INDUCTIVE CHARGER INSTALLATION at OPERATION BASE
PROJECT NO.

DATE WORK COMPLETED: _____

FINAL CONTRACT SUM: \$ 912,924.30**CONTRACTOR'S CERTIFICATION**

I, the undersigned, certify and declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct: I am authorized to sign for the claimant; that in connection with the work performed and, to the best of my knowledge, no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Everett, nor have I rented or purchased any equipment or materials from any employee of the City of Everett; that the attached final statement is a true and correct statement showing all the monies due the claimant from the City of Everett for work performed and material furnished under this Contract; that I have carefully examined said final statement and understand the same and; that I, on behalf of the claimant, hereby release and forever discharge the City of Everett from any and all claims of whatsoever nature which I or the claimant may have, arising out of the performance of said Contract, which are not set forth in the attached statement.

DATED at Kirkland WA this 24 day of July, 2025
(City, State)X [Signature] X President
CONTRACTOR AUTHORIZED TITLE
SIGNATURE**DEPARTMENT CERTIFICATION**APPROVED DATE: 7/24/2025

I certify the attached final statement to be true and correct to the best of my knowledge.

X [Signature]
Project ManagerX [Signature]
Director

ADMINISTRATION USE ONLY

Date of Final Acceptance _____

By: X _____
Cassie Franklin, Mayor

Standard Document
Approved as to Form
Office of the City Attorney
(10.22.21)

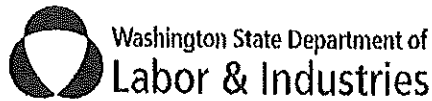
INSTRUCTIONS

The Affidavit of Wages Paid must be prepared by the prime contractor, all subcontractors, and all subcontractor's agents and forwarded with the Final Contract Voucher Certification.

Contractor's Claims, if any, must be included and the Contractor's Certification must be labeled indicating a claim attached.

END OF SECTION 00 65 19

Printed on 7/24/2025



Affidavit: 1340911 *Approved Date 1/28/2025*

Intent: 1264357

BRINK ELECTRIC LLC
8223 Broadway, EVERETT, WA 98203
candls@brinkelectric.com
425-522-4480

UBI REGISTRATION WORKERS' COMPENSATION
603 124 572 BRINKEL890M6 219,842-00

Affidavit Details

Filed by: Brink, Candis
Job work performed: 9/16/2022-5/6/2024
Contract amount: \$912,924.30
Work was performed in the following places:
Cities: Everett
Counties: Snohomish

Received Date: 8/27/2024

Performed work on the project:

Employees: Yes
Subcontractors: Yes
Owner/operators owning 30% or more of the company: No
Apprentices: No
Active OMWBE certification existed when this Intent was submitted on 8/27/2024: No

Affidavit Subcontractor(s)

<i>Company Name</i>	<i>UBI</i>	<i>Registration</i>
BDS CONCRETE & CONTR SVS LLC	602 906 729	BDSC0CC894CC
DIVERSE EARTH WORKS, INC.	604 651 134	DIVEREW804NU
KASSEL & ASSOCIATES INC	602 944 979	KASSEAI914OM

Project Details

Project Name: Inductive Charging Infrastructure for Everett Transit

Project Address: 3225 Cedar Street, Everett, WA 98201

Project Description: Installation of owner furnished wireless charging systems including inductive coils and charging cabinets.

Contract#: N/A

Contract Type: Bid-Build (Traditional)

Total Contract Amount: \$498,000.00

Bid Due Date: 5/3/2022

Awarded Date: 5/3/2022

Requirements and Restrictions:

Apprenticeship Utilization: No

Awarding Agency

EVERETT, CITY OF

3200 CEDAR ST EVERETT, WA - 98201

Vincent Bruscas, 425-257-6292

Prime Contractor

Prime Intent: 1264357

BRINK ELECTRIC LLC

425-522-4480

UBI **REGISTRATION**

603 124 572 BRINKEL890M6

Journey Level Wages

<i>Trade (County)</i>	<i>Job Classification</i>	<i># of Workers</i>	<i>Hours</i>	<i>Rate</i>	<i>Wage</i>	<i>Fringe</i>
Electricians - Inside (Snohomish)	Journey Level	2	23.33	\$90.59	\$85.59	\$5.00
Electricians - Inside (Snohomish)	Journey Level	1	495.39	\$78.98	\$73.98	\$5.00
Electricians - Inside (Snohomish)	Journey Level	3	81.26	\$80.00	\$75.00	\$5.00
Electricians - Inside (Snohomish)	Journey Level	5	141.34	\$77.98	\$72.98	\$5.00
Electronic Technicians (Snohomish)	Electronic Technicians Journey Level	1	1.58	\$67.50	\$65.00	\$2.50

Electricians - Inside (Snohomish)	Journey Level	2	75.84	\$90.59	\$85.59	\$5.00
Electricians - Inside (Snohomish)	Journey Level	1	10.42	\$78.00	\$73.00	\$5.00
Electricians - Inside (Snohomish)	Journey Level	2	91.06	\$85.00	\$80.00	\$5.00
Electricians - Inside (Snohomish)	Journey Level	1	48.25	\$90.00	\$85.00	\$5.00

Public Notes

- 1/27/2025
This job was installing main service switchboard, panelboard, conduit/ductbank, raceway and cables. Brink Electric hired contractors for all site work which included concrete pads, trench work. Electronic Technician was onsite to consult if they were needed for any low voltage wiring work. On site for 1 1/2 hour and did not complete any work.



City Council Agenda Item Cover Sheet

Project title: Professional Services Agreement for the 2026 Stormwater Impervious Surface Study

Council Bill # *interoffice use*

Agenda dates requested:

Briefing
Proposed action
Consent 8/13/25
Action
Ordinance
Public hearing
Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Proposed PSA

Department(s) involved:

Public Works, Legal

Contact person:

Ryan Sass

Phone number:

425-257-8942

Email:

rsass@everettwa.gov

Initialed by:

RLS

Department head

Administration

Council President

Project: 2026 Stormwater Impervious Surface Study

Partner/Supplier: HDR Engineering, Inc.

Location: Citywide

Preceding action: 2024 Cost-of-Service Study

Fund: Fund 401 – Water & Sewer Utility

Fiscal summary statement:

The programmed available funding for the 2026 Stormwater Impervious Surface Study is \$132,595 and the source of funds will be Fund 401 – Water & Sewer Utility.

Project summary statement:

The increasing regulatory requirements to remain in compliance with the National Pollution Discharge Elimination System (NPDES) and changing Best Management Practices (BMPs) in stormwater utilities make an in-depth analysis of the City's stormwater rate structure necessary. Rate-making that uses pollution generating impervious surface (PGIS) or similar methods may better reflect how different customer classes directly impact the City's stormwater system.

This PSA, if approved, will examine rate designs that maintain revenue stability, potentially mitigate rate volatility, and more accurately reflect how various customer classes interact with the stormwater system.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the PSA with HDR Engineering, Inc. for the 2026 Stormwater Impervious Surface Study.



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("**Agreement**") is effective as of the date of the Mayor's signature below and is between the City of Everett, a Washington municipal corporation (*the "City"*), and the Service Provider identified in the Basic Provisions below ("**Service Provider**"). This Agreement is for the purpose of the Service Provider providing services to the City as set forth in the Agreement. This Agreement includes and incorporates the Basic Provisions, the attached General Provisions, the attached scope of work (Exhibit A), and the attached method of compensation (Exhibit B).

BASIC PROVISIONS	
Service Provider	HDR Engineering, Inc.
	555 110th Ave, Suite 1200 Bellevue, WA 98004
	shawn.koorn@hdrinc.com
City Project Manager	Shaun Bridge
	City of Everett – Public Works 3200 Cedar Street Everett, WA 98201
	sbridge@everettwa.gov
Brief Summary of Scope of Work	Stormwater Impervious Surface Study
Completion Date	December 31, 2027
Maximum Compensation Amount	\$132,595

BASIC PROVISIONS	
Service Provider Insurance Contact Information	Lockton Companies
	(816) 960-9000
	kcasu@lockton.com
State Retirement Systems (must answer both questions)	Does Service Provider have 25 or more employees? Answer: Yes If Service Provider has less than 25 employees, did any Service Provider Personnel who will work under this Professional Services Agreement retire under a DRS retirement system? Answer: N/A - Service Provider has 25 or more employees “DRS retirement system” refers to any of the following Public Employers’ Retirement System (PERS), School Employees’ Retirement System (SERS), Teachers’ Retirement System (TRS), and Law Enforcement Officers and Fire Fighters plan (LEOFF). “Service Provider Personnel” includes Service Provider employees and owners (such as shareholders, partners or members). If Service Provider is a sole proprietor, then “Service Provider Personnel” refers to the sole proprietor.
Agreed Amendments to General Provisions	The attached General Provisions are amended as follows: The following is inserted after the first sentence of <u>Section 2</u>: “Any reuse by the City of these reports, drawings, plans, specifications and intangible property for purposes other than in connection with the Work is at the sole risk of the City.” The first sentence of <u>Section 10</u> is replaced with the following sentence: “To the extent of Service Provider’s negligence, breach of this Agreement, violation or law, or willful misconduct, and except as otherwise provided in this Section, Service Provider hereby agrees to defend and indemnify and save harmless the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory.” The definition of Claims in <u>Section 10</u>-is replaced with the following: “(2) ‘Claims’ include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney’s fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and whether

	the damage alleged is bodily injury, damage to property, or other type of event or theory of recovery.”
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END OF BASIC PROVISIONS

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement, which includes and incorporates the above Basic Provisions, the attached General Provisions, the attached scope of work (Exhibit A), and the attached method of compensation (Exhibit B).

**CITY OF EVERETT
WASHINGTON**

HDR ENGINEERING, INC.

Cassie Franklin, Mayor

Signature: _____

Name of Signer: Olivia Williams

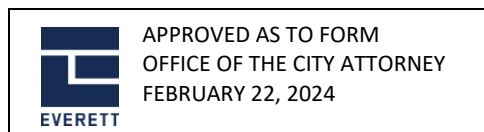
Signer's Email Address: olivia.williams@hdrinc.com

Title of Signer: Washington Area Operations Manager

Date

ATTEST

Office of the City Clerk



ATTACHMENT
PROFESSIONAL SERVICES AGREEMENT
(GENERAL PROVISIONS v.071423.1)

1. **Engagement of Service Provider.** The City hereby agrees to engage Service Provider, and Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the Scope of Work attached as Exhibit A. The Scope of Work so identified is hereafter referred to as “Work”. Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If Service Provider’s proposal or other document generated by Service Provider is incorporated or attached as an exhibit or part of any exhibit to this Agreement or in any amendment or task or work order pursuant to this Agreement, then such proposal or document is part of this Agreement solely to the extent that it describes the Work, the Work schedule, and the amounts or rates to be paid for such Work, and Service Provider expressly agrees that no terms or conditions from such proposal or document are incorporated or included into this Agreement. In the event of difference or conflict between parts of this Agreement, Service Provider shall be bound by whichever is more stringent on Service Provider. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider’s design shall be reasonably accurate, adequate and suitable for its intended purpose.
2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City, belong to the City. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of mutual execution of this Agreement and the Work shall be completed by Completion Date stated in the Basic Provisions.
4. **Compensation.**
 - A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.
 - B. Service Provider shall be paid such amounts and in such manner as described in Exhibit B.
 - C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. “Eligible Expenses” means those expenses as set forth in an exhibit to this Agreement or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. An expense shall not be reimbursed if: (1) the expense is not identified as an Eligible Expense; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified as an Eligible Expense; or (3) the expense was not approved in writing by an authorized City representative prior to Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging

- expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for Service Provider.
- D. Total compensation, including all services and expenses, shall not exceed the Maximum Compensation Amount in the Basic Provisions.
 - E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.
5. **Method of Payment.**
- A. To obtain payment, Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.
 - B. All requests for payment should be sent to the City Project Manager Address in the Basic Provisions or to an address designated by the City Project Manager in writing.
6. **Submission of Reports and Other Documents.** Service Provider shall submit all reports and other documents as and when specified in the Scope of Work. This information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.
7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date"). The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by email, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The City does not by this Section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, and without limitation of or prejudice to any other available remedy or recourse, the City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.
8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of Service Provider to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.
9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.
10. **Indemnification.** Except as otherwise provided in this Section, Service Provider hereby agrees to defend and indemnify and save harmless the City from any and all Claims arising out of, in

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

11. Insurance.

- A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the policies of insurance as set forth in this Section with companies authorized to do business in the State of Washington, which are rated at least "A-" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.
 1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless Service Provider covers such employees.
 2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
 3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle

will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. Such coverage may be written on a claims made basis.
- B. The above CGL and auto liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Service Provider to furnish the required insurance during the term of this Agreement.
- C. Upon written request by the City, the insurer or its agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.
- D. The Description of Operations on the Certificate of Insurance must substantially read as follows: "The above commercial general and auto liability policies are primary as to the City of Everett; have the City of Everett, its officers, employees, agents, and volunteers as additional insureds; and contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City of Everett."
- E. Prior to Service Provider performing any Work, Service Provider shall provide the City or the City's designee with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City or the City's designee with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees, agents and volunteers 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 Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City or the City's designee of any certificate showing less coverage than required is not a waiver of Service Provider's obligations to fulfill the requirements.
- F. If the policy listed above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy.
- G. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.
- H. In case of the 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 Service Provider, such types of insurance in the name of Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.

12. **Risk of Loss.** Service Provider shall be solely responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be solely responsible for any loss of or damage to Service Provider's materials, tools, or other articles used or held for use in connection with the work.
13. **Independent Contractor.**
- A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.
 - B. In addition to the other requirements of this Section, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:
 - (1) Service Provider is free from control or direction over the performance of the service; and
 - (2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and
 - (3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and
 - (4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and
 - (5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and
 - (6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.
 - C. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of only Service Provider and not employees of the City. Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of such employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work.
 - D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and

- harmless from all actions, claims, demands and expenses arising out of such act, and rules and regulations that are or may be promulgated in connection therewith.
- E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefor, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.
14. **Employment/Conflict of Interest.** Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Further, it is recognized that Service Provider may or will be performing professional services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with Service Provider's ability to perform the Work. Service Provider agrees to resolve any such conflicts of interest in favor of the City.
15. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
16. **City of Everett Business License.** Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.
17. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.
18. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.
19. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide

notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section.

20. **Compliance with Grant/Loan Terms and Conditions.** Service Provider shall comply with any and all terms, conditions, terms and requirements of any federal, state or other agency grant or loan that wholly or partially funds Service Provider's work hereunder. If the grant or loan requires that the agency be a third party beneficiary to this Agreement, then the agency is a third party beneficiary to this Agreement.
21. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, or national origin or other circumstance prohibited by applicable federal, state, or local law or ordinance. Service Provider shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.
22. **Waiver.** Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
23. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.
24. **Modification of Agreement.** This Agreement may only be modified as provided in Section 8, or by a writing explicitly identified as a modification or amendment of this Agreement that is signed by authorized representatives of the City and Service Provider.
25. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
26. **Notices.**
 - A. Notices to the City shall be sent to the City Project Manager address in the Basic Provisions.
 - B. Notices to Service Provider shall be sent to its address in the Basic Provisions.
27. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.
28. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
29. **City Marks.** Service Provider will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
30. **No Personal Liability.** No officer, agent or employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
31. **Federal Debarment.** Service Provider shall immediately notify the City of any suspension or debarment or other action that excludes Service Provider or any Service Provider subcontractor from participation in Federal contracting. Service Provider shall verify all subcontractors that are intended and/or used by Service Provider for performance of Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at

<https://www.epls.gov/epls/search.do>. Service Provider shall keep proof of such verification within Service Provider records.

32. **Signature/Counterparts.** This Agreement and any amendment thereto may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.
33. **Standard Document.** This General Provisions document is a standard City form document. No changes by Service Provider are authorized to the General Provisions. Notwithstanding anything to the contrary in this Agreement, in the event that Service Provider makes unauthorized changes to the General Provisions, such changes are deemed to have never been made and the contract between the City and Service Provider is deemed to be the unchanged standard City form General Provisions in version stated below, regardless of whether the City signs this Agreement in a form that may contain the unauthorized changes.

**END OF GENERAL PROVISIONS
(v.071423.1)**

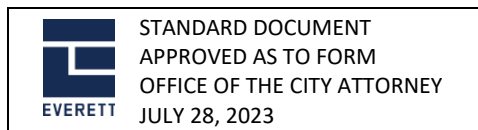


EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
(SCOPE OF WORK -- ATTACHED)

SCOPE OF WORK

1. Project Approach

Introduction

The following discussion identifies the professional and technical activities that HDR Engineering, Inc. (HDR) will perform for the development and support of the City of Everett's (City) Stormwater Rate Design Study (Study). The overall objective of the Study is to develop alternative rate design options for their stormwater utility.

The City's current stormwater rates are based on the sewer rate structure and the City wants to explore rate designs that are directly related to the customer's impact on the system. The study will utilize the last rate study's (2024) revenue requirement, and the overall rate revenue will be in line with the revenue levels from the revenue requirement. The identified tasks will provide a detailed set of recommendations based upon our review and analysis.

Goals and Objectives for the Study

The City has identified a number of specific issues to be reviewed and addressed as a part of this scope of services. These specific issues include, but are not limited to:

- ✓ Utilize the 2024 stormwater rate study revenue requirement as a basis for the cost of service and to set revenue requirement targets.
- ✓ Transition the City's stormwater rates to an impervious surface basis; review and consider approaches to smooth transition and phase-in commercial stormwater rates from a flat to impervious surface basis.

Scope of Work

This scope of work will provide a cost basis for the proposed stormwater rates. It will result in updated stormwater rates for 2027 - 2028. Provided below is a more detailed discussion of the scope of work for the City's Study.

Task 1: Project Management and Quality Control

Perform miscellaneous project set up activities, work paper documentation, internal scheduling / workload planning, invoicing, ongoing client correspondence, quality control, and other miscellaneous administrative / project management activities throughout the Study.

Task 1 Assumptions:

- Provide quality control through HDR's QC process on all deliverables provided to the City.
- Provide overall project administration and management.

Task 1 Deliverables:

- Monthly invoicing and progress report.

Task 2 – Data Collection / Kick-Off Meeting

A kick-off meeting will be held with City staff to discuss key issues and objectives and review readily available information. HDR will provide a written data request to the City in advance of the kick-off meeting.

A two-hour Initial kick-off virtual meeting with the HDR project manager and project analyst will

provide the opportunity to review and discuss any issues or concerns by either party for the Study. The meeting will also review the data issues associated with the Study, particularly as it relates to updating the impervious surface parcel data. After the meeting, HDR will follow-up with City staff (via telephone / email) for additional items or explanations, as necessary.

Task 2 Assumptions:

- A two hour virtual kick-off meeting with the HDR project manager and project analyst.
- The City will provide the data necessary to complete the requested analyses.

Task 2 Deliverables:

- Electronic version of the written data request.

Task 3: Revenue Requirement Analysis

The revenue requirement will be based on the 2024 rate study stormwater revenue requirement. The intention is to design rate alternatives for 2027 through 2028 fiscal year (FY) that are revenue neutral as compared to revenue requirements determined in the 2024 rate study. Some adjustments to the revenue requirement may need to be made due to changing financial conditions.

Task 3 Assumptions:

- Use the 2024 stormwater revenue requirement for the cost of service.

Task 3 Deliverables:

- An adjusted revenue requirement for which the cost of service will be based.

Task 4: Cost of Service Analysis

A cost of service analysis differs from a revenue requirement analysis in that a revenue requirement analysis reviews the overall adequacy of a utility's rate revenues, while a cost of service analysis proportionally distributes the revenue requirement of a utility to the utility's customer classes of service. The cost of service provides a defensible basis for proportionally assigning costs and establishing "cost-based" rates which reflect each customer group's unique facility requirements and the demands that they place upon each system. Though the main purpose of this project is to design stormwater rates, the cost of service is used as a basis for establishing proportional rates by customer type. HDR will develop a cost of service using generally accepted rate making principles utilizing different allocation methods for allocating the revenue requirement such as impervious area, total area customer related costs and other methods as appropriate.

Task 4 Assumptions:

- Review of the customer classes and customer class characteristics.
- Proportional distribution of the stormwater costs to the applicable customers classes.
- Average unit costs for the stormwater utility will be developed for use in developing rates.

Task 4 Deliverables:

- An electronic copy of the rate model with the updated cost of service analysis.

Task 5: Rate Design Analysis

This task will review and analyze the current utility stormwater rate structure. HDR will recommend rate structure modifications reflective of the cost of service findings and the City's policy objectives for rate and revenue stability, customer equity, efficiency of use, and administrative practicality. For each proposed rate design, the revenues to be generated from

the fixed and variable-based components of the rate structure will be identified to help better address the issue of revenue stability. Bill comparisons will be developed to show the bill impacts numerically and graphically of the proposed rates compared to the present rates.

The City has identified a number of specific issues to be addressed within the rate design task. These issues vary by utility and are discussed in more detail below.

Sewer/Stormwater Charges – The other sewer charge issue to be addressed in this task is the separation of stormwater charges from sewer charges. The current sewer rates include stormwater charges. The City is ready to establish stormwater rates based upon impervious areas. If that is the case, then the sewer charges (i.e., rates) developed as a part of the Study will eliminate that portion of the rate which is related to stormwater costs. Bill comparisons will need to be developed to illustrate the combined customer bill impact of the elimination of the stormwater charges within the sewer rates and the establishment of separate stormwater charges.

Stormwater Charges – As noted above, the City is interested in transitioning to separate stormwater rates based upon impervious area. This issue and the transition to impervious charges has been studied extensively by the City since the last comprehensive rate study. Similar to the City's previous studies on this topic, this is a relatively complex task requiring a number of analytical steps jointly performed by HDR and the City. Provided below is a more detailed discussion of these steps and the role of the City and HDR in them.

- ✓ **Review of Parcel/Impervious Surface Data** – The development of stormwater charges based upon the impervious surface area of a parcel requires a detailed review of non-residential parcel data. The City and HDR will jointly work on this particular aspect of stormwater rates. The parcel data developed in 2020 for a similar project will be used for this analysis unless the City chooses to provide updated parcel data. In the past, HDR has been responsible for sorting and “scrubbing” the City's parcel data (e.g., duplicates, data errors, non-billable parcels).
- ✓ **Establishing Data (Billing) Units** – The development of impervious surface-based stormwater charges cannot be developed until the parcel data has been scrubbed and resolved to the satisfaction of the City and HDR. In part, the data must be sorted to accommodate the residential and non-residential stormwater rate structures. For residential, the City is anticipating the continued use of a flat rate, with possibly a small/large category. For non-residential, each parcel must be assessed and the impervious surface area determined. From that, an impervious surface unit (ISU) must be established. Once the ISU is defined, then the number of commercial ISU billing units can be established.
- ✓ **Design of Stormwater Rate Alternatives** – With the billing information above, HDR can design the stormwater rates for residential and non-residential customers/parcels. HDR will design two alternatives for the residential customer class, one similar to the current structure which is flat rate per parcel and another that has two rates, one for small parcels and another for large parcels. For the non-residential rates, two alternatives will be designed; a \$/square foot of impervious area and an approach based upon the relationship of lot size and impervious area (% range). Bill comparisons will be developed comparing the current rate structure and the alternatives developed for residential and non-residential parcels. This comparison will quantify the impact to different types parcels and identify parcels with the

largest impact.

- ✓ **Rate Transition** – HDR and the City recognize the challenges and customer bill impacts of moving from the current non-residential stormwater rate structures to an impervious approach. Given that, the Study will review the possible methods of rate transition to gradually move non-residential to full, cost-based, impervious stormwater rates. HDR will collaborate with City staff on the overall billing/rate setting approach. However, the City will be responsible for the ultimate billing approach that works within the City's billing system. Working with the City, HDR will develop a rate transition plan for the new non-residential stormwater rates.

Task 5 Assumptions:

- Develop an excel model to review and sort the stormwater parcel data (City is responsible for reviewing and assembling data).
- Develop two (2) alternative stormwater rate designs, residential and non-residential and bill comparisons.

Task 5 Deliverables:

- An electronic copy of the rate model with the updated rate design analysis for each utility.

Task 6: Rate Study Documentation – Written Report

Prepare/submit a Study report summarizing assumptions, findings, and Study recommendations. The supporting spreadsheet analyses for the stormwater utility will be included as technical appendices. Develop an electronic (PDF) draft final report and incorporate any City comments or corrections into the final electronic (PDF) written report.

Task 6 Assumptions:

- An electronic draft report will be provided to City staff for review and comments.

Task 6 Deliverables:

- A final electronic report which includes a technical appendices of the analyses completed.

Task 7: Management Reserve

This task is intended to cover, if necessary, additional unspecified activities not identified in tasks 1 through 6, as directed by the City. Access to this reserve will be through written request by HDR and written approval by the City.

Task 7 Assumptions:

- Unspecified

Task 7 Deliverables:

- Unspecified

Summary

This completes the scope of services and approach for the City's stormwater rate design study.

Project Team

Introduction

This section of the proposal will discuss our project team organization and the key project team members.

Key Project Team Members

Provided below is a brief discussion of HDR's key project team member expertise, their roles in the project, and their experience related specifically to this project.

Kevin Lorentzen – Project Manager



- More than 20 years of industry experience in utility financial planning, cost of service and rate design.
- Expert level expertise in Excel™ computer/rate modeling and financial planning models
- Previously worked in the Finance Department of the City of Bellevue as the lead forecaster.
- Developed rate models for the City of Everett during the 2016, 2020 and 2024 rate studies.
- Provided as needed assistance in updating the rate models for the City of Everett since the completion of the rate study

Shawn Koorn – Project Principal



- More than 25 years of experience in utility rate setting, including revenue requirements, cost of service, and rate design.
- Project manager for numerous stormwater cost of service and rate studies.
- Recognized expert in the area of stormwater cost of service and rate design.
- Co-instructor for the American Water Works Association (AWWA) Financial Management seminar.
- Contributing author to the AWWA M-54 manual, Developing Rates for Small Systems.
- Provides effective presentations to City Councils, the public, and industry conferences (e.g., AWWA, WEF).

Jack Adams – Project Analyst



- 2 years of experience in utility rate setting, including revenue requirements, cost of service, and rate design.
- Has worked several similar projects such as the King County Stormwater Rate Design Study
- Proficient in working with Microsoft products like Excel and Word

To assist in Tasks outlined in the scope of services, engineering assistance will be necessary. HDR wastewater engineering staff will be collaborated with to assist in reviewing and developing components for each of the tasks.

Should other individuals be required for the City's Study, HDR has a number of other highly qualified financial, planning, and engineering individuals available to meet any specific technical need associated with this study.

Summary

This section of HDR's proposal has provided an overview of the proposed project team organization for the City's Study.

Project Time Schedule

Introduction

Based on the scope of service developed, a project time schedule can be developed.

Project Time Schedule

HDR's estimated project time schedule is, in part, driven by and based upon the availability of data, the ability to schedule internal project meetings in a timely manner, and work with City staff to develop the study final recommendations. Based upon our experience working with the City, along with the complexity of these studies, the rate study is expected to be completed by the end of 2026.

Summary

The estimated schedule is based upon the previously discussed scope of work. Given an agreed upon scope of work, HDR will work with the City to establish a final project time schedule which meets the City's scheduling requirements.

Project Fees

Introduction

This section of the proposal discusses the overall fee estimate for the City's comprehensive rate study and associated tasks. Our estimated project fees have been developed based on our proposed scope of work.

Project Fee Estimate

The estimated project fees were developed based upon the previously discussed scope of work. For each task, the labor hours, by individual, was developed. The total labor hours were then applied to the current hourly billing rates for each individual. For the proposed study, the following hourly billing rates were used to establish the proposed fees for this study. These hourly billing rates will be in effect through December 31, 2025. After December 31, 2025, billing rates will be adjusted annually to reflect salary changes. If billing rates are adjusted for annual salary adjustment the contract totals will remain the same.

<u>Individual</u>	<u>Project Role</u>	<u>Hourly Rate</u>
Kevin Lorentzen	Project Manager	\$265.00/hour
Shawn Koorn	Project Principal	335.00/hour
Jack Adams	Financial Analyst	140.00/hour
Josiah Close	Senior Financial Analyst	225.00/hour
Sara Anderson	Financial Analyst	140.00/hour
Various	Engineering Assistance	180.00/hour
Others	Project Administrative/Clerical Support	140.00/hour

The billing rates shown above cover payroll cost, employee benefits, and HDR overhead and profit.

In-House Expenses:

Vehicle Mileage	Current Federal Travel Regulation (FTR)
Black/white Photocopies (per copy)	\$0.05 to \$0.09
Color Copies (per copy)	\$0.15 to \$0.30

Direct Expenses:

No markup on expenses. Other direct expenses (parking, mileage, meals, airfare, etc.) will be billed at cost.

Based on the hourly billing rates, and the previously developed scope of services, provided below is a summary of the estimated fees for the services discussed above.

**City of Everett
2026 Rate Study Fee Estimate**

Task Description	Total
Task 1: Project Management	\$14,430
Task 2: Data Collection/Initial Project Meeting	5,030
Task 3: Revenue Requirement Analysis	6,650
Task 4: Cost of Service Analysis	35,600
Task 5: Rate Design Analysis	40,400
Task 6: Rate Study Documentation – Written Report	13,810
Task 7: Management Reserve	16,640
Total Labor	\$132,560
Plus: Expenses	<u>\$35</u>
Grand Total Fees	<u>\$132,595</u>

HDR Engineering, Inc. is willing to negotiate a final fee based upon a final agreed upon scope of work. Should the City request any additional out-of-scope services under this contract (e.g., additional public presentations), the services will be agreed to in writing and will then be provided at the hourly billing rates then in effect.

All portions of this proposal can be expanded or reduced as mutually agreed upon in writing by the City and HDR. HDR proposes that fees for this study will be billed monthly on a time-and-material basis. Should other HDR individuals be required for this project, they will be billed at their standard hourly billing rate, after a written agreement by the City.

Provided on the following page is a more detailed exhibit of the development of the fee estimate for this study. The detailed fee estimate provides the hours by individual, by task.

Summary

This section of our proposal has summarized HDR's hourly billing rates and our project fee estimate. HDR is willing to work with the City to reach a mutually acceptable scope of work and fee estimate.

City of Everett
2026 Stormwater Rate Design Analysis
Level of Effort by Task and Project Team Member

Task	Task Description	Project Principal	Project Manager	Project Analyst	QA /QC	Acct. /Admin.	Total Project
	Hourly Billing Rates	\$335	\$265	\$140	\$225	\$140	
1	Project Management						
	Hours -	4	16	0	2	60	82
	Labor Cost	\$1,340	\$4,240	\$0	\$450	\$8,400	\$14,430
2	Data Collection/ Initial Project Meeting						
	Hours -	4	8	8	2	0	22
	Labor Cost	\$1,340	\$2,120	\$1,120	\$450	\$0	\$5,030
3	Revenue Requirement						
	Hours -	2	12	20	0	0	34
	Labor Cost	\$670	\$3,180	\$2,800	\$0	\$0	\$6,650
4	Cost of Service Study						
	Hours -	20	60	80	8	0	168
	Labor Cost	\$6,700	\$15,900	\$11,200	\$1,800	\$0	\$35,600
5	Rate Design						
	Hours -	25	65	80	16	0	186
	Labor Cost	\$8,375	\$17,225	\$11,200	\$3,600	\$0	\$40,400
6	Study Documentation						
	Hours -	6	20	40	4	0	70
	Labor Cost	\$2,010	\$5,300	\$5,600	\$900	\$0	\$13,810
7	Management Reserve						
	Hours -	16	32	20	0	0	68
	Labor Cost	\$5,360	\$8,480	\$2,800	\$0	\$0	\$16,640
	Total Hours	77	213	248	32	60	630
	Total Fees	\$25,795	\$56,445	\$34,720	\$7,200	\$8,400	\$132,560
	Percentage of Hours by Employee	12.2%	33.8%	39.4%	5.1%	9.5%	100.0%
Expenses							
	Airfare (0 Round Trip @ \$425/RT)						\$0
	Hotel (0 Nights @ \$200/night)						0
	Car Rental(0 days @ \$85/Day)						0
	Parking/Miles/Meals/Etc.						0
	Copies/Printing						35
	Total Expenses						\$35
	Grand Total Project Fee Estimate						\$132,595

**EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT**

**SELECT ONE OF THE FOLLOWING METHODS OF COMPENSATION, EACH OF WHICH IS
SUBJECT TO THE MAXIMUM COMPENSATION AMOUNT**

- ☐ **HOURLY RATE.** The City shall pay Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified below for staff performing the Work.

Name	Title	Rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate
enter name	enter title	enter rate

If there are more staff than rows in the table above, then those staff names, titles, and rates shall be provided in the Scope of Work.

- ☐ **PROGRESS PAYMENTS.** The City shall pay Service Provider the following amounts upon the completion of the following tasks.

Task	Amount Paid on Task Completion
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount
enter task	enter amount

If there are more tasks than rows in the table above, then those tasks and payment amounts shall be provided in the Scope of Work.

- ☐ **LUMP SUM.** The City shall pay Service Provider \$ enter amount upon the completion of the Work.

- ☒ **METHOD CONTAINED IN SCOPE OF WORK.** The City shall pay Service Provider as set forth in the Scope of Work.

- ☐ **METHOD CONTAINED IN ATTACHED PAGE(S).** The City shall pay Service Provider as set forth in the spreadsheets or other documents attached to this Exhibit B.



City Council Agenda Item Cover Sheet

Project title: 2025-2027 Green Transportation Grant – Everett Station Charging

Council Bill # *interoffice use*

Agenda dates requested:

Briefing
Proposed action
Consent 8/13/25
Action
Ordinance
Public hearing
Yes X No

Budget amendment:
Yes X No

PowerPoint presentation:
Yes X No

Attachments:
Grant agreement

Department(s) involved:
Transit

Contact person:
Mike Schmieder

Phone number:
(425) 257-7761

Email:
mschmieder@everettwa.gov

Initialed by:
MJS
Department head

Administration

Council President

Project: Install bus charging equipment

Partner/Supplier: Washington State Department of Transportation

Location: In proximity to Everett Station

Preceding action: N/A

Fund: 425/Transit

Fiscal summary statement:

Everett Transit has been awarded the Washington State Department of Transportation Green Transportation grant in the amount of \$2,550,000 with a 20% match requirement of \$637,500 which will come from Fund 425. No budget amendment is required.

Project summary statement:

Everett Transit has made a significant investment in electric transit vehicles and charging systems. This project will allow for the installation of additional charging systems for electric buses at Everett Station. This funding is expected to cover at least two charging systems. Additional charging systems will maintain and improve service reliability for the electric fleet.

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the 2025-2027 Washington State Department of Transportation Green Transportation Grant Agreement.

WSDOT Contact: Lucas Rogers

WSDOT E-mail: lucas.rogers@wsdot.wa.gov

WSDOT Phone: 360-705-7761

Green Transportation Grant Program Construction Grant Agreement			
Agreement Number	PTD1158	Grantee:	City of Everett
Term of Agreement	July 1, 2025 through June 30, 2027		Everett Transit
Vendor #	916001248		3201 Smith Ave.; Suite 200
UEI	NB35N2NU35J3		Everett, WA 98201-4594
ALN # / ALN Name	N/A		
Indirect Cost Rate	N/A		
R & D	No	Contact:	Amanda Koerber
Service Area	Snohomish County	Email:	akoerber@everettwa.gov

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter "WSDOT," and the Grantee identified above, hereinafter the "GRANTEE," individually the "PARTY" and collectively the "PARTIES."

WHEREAS, the State of Washington in its Sessions Laws of 2025, ESSB 5161 Sections 221 and 308 authorizes funding for Public Transportation Programs and other special proviso funding as identified in the budget through its 2025-2027 biennial appropriations to WSDOT; and

WHEREAS, the GRANTEE has requested funds for the project(s) or program(s) shown under the heading titled "Funding by Project" (hereinafter known as the "Project(s)") which has been selected by WSDOT for funding assistance.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 SCOPE OF WORK AND BUDGET

Funding by Project

Project Title: City of Everett - Inductive Charging at Everett Station

UPIN # GT252702

Scope of Work: Purchase and install charging units and associated equipment.

Funds	Current Percentage	Current Funds	Projected Funds	Total Funds
Green Transportation - CCA	80.00%	\$2,550,000		\$2,550,000
Grant Funds	80.00%	\$2,550,000	\$0	\$2,550,000
Contractor's Funds	20.00%	\$637,500	\$0	\$637,500
Total Project Cost	100%	\$3,187,500	\$0	\$3,187,500

Budget: Current State Funds reflect total funding appropriated by the Washington State Legislature for the 2025-2027 biennium. As applicable, Federal Funds are subject to availability of federal apportionments and obligation by the Federal Transit Administration (FTA).

Construction Milestones

Phases	Date
Preliminary Engineering Start Date	Aug-25
Environmental Documents (NEPA/SEPA)	Aug-25
Right of Way Certification	Aug-25
Contract Award Date	Aug-25
Construction Operationally Complete	Feb-27

Section 2

Purpose of Agreement

- A. The purpose of this AGREEMENT is for WSDOT to provide funds to the GRANTEE for the planning, design, acquisition, construction, and/or improvements of capital rolling stock, equipment, facilities, and/or infrastructure to be used in the provision of public transportation services to persons in the State of Washington, referred to as the "Project." Reference to the "Project" shall include all such capital rolling stock, equipment, facilities, and/or infrastructure (collectively, "Project Assets") designed, acquired, constructed, improved, or installed under this AGREEMENT.
- B. If this AGREEMENT includes any federal funding through WSDOT Public Transportation Division, in addition to the requirements of Sections 1 through 47 of the AGREEMENT the GRANTEE will also comply with all requirements imposed by, or pursuant to 49 USC Chapter 53, all other applicable federal laws, regulations and requirements and the requirements set forth in Exhibit I, Summary of Federal Requirements, which is attached hereto and by this reference incorporated into this AGREEMENT.
- C. On projects where WSDOT is providing only state funds and the GRANTEE is using funds received directly from the federal government as their share or part thereof on the Project, the GRANTEE must assume full responsibility for complying with all federal rules and regulations.
- D. If the GRANTEE is found in non-compliance with federal rules and regulations, the GRANTEE shall provide written notification to WSDOT supplying details related to the non-compliance. Both PARTIES will analyze and determine the impact on the scope, schedule, and funding of the Project. Remedies required up to and including the return of funds will be identified to ensure the Project's scope of work is met as intended.

Section 3

Scope of Agreement

- A. The GRANTEE agrees to perform the work and complete the Project as described and detailed in Section 1. The GRANTEE shall complete the Project within the project limits described in Section 1. The GRANTEE shall operate the rolling stock/equipment in the service area as described in Section 1.
- B. **Project Administration:** WSDOT is responsible for the Federal Transit Administration's (FTA) oversight and management functions for FTA-funded projects if FTA funds are awarded through WSDOT Public Transportation Division. The GRANTEE agrees that WSDOT shall have the authority to carry out this responsibility, which includes but is not limited to, access to project-related documents for review, processing, and approval, as applicable, for each Project. For any Project where the GRANTEE requires work or services to be performed by WSDOT for the GRANTEE to be in compliance with state and federal requirements, the GRANTEE agrees to reimburse WSDOT for all of the actual direct and indirect costs incurred by WSDOT for the performance of the work or services.

Section 4

General Compliance Assurance

- A. The GRANTEE agrees to comply with all instructions as prescribed in the *WSDOT Public Transportation State Grant Programs Guidebook*, hereinafter referred to as the “Guidebook”, and any amendments thereto, found at <https://wsdot.wa.gov/business-wsdot/grants/public-transportation-grants/manage-your-public-transportation-grant> which by this reference is incorporated herein as if fully set forth in this AGREEMENT.
- B. The GRANTEE agrees that WSDOT, and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the GRANTEE with respect to the provisions of this AGREEMENT but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT.

Section 5

Term of Agreement

The Project period of this AGREEMENT shall commence and terminate on the dates shown in the caption space header titled “Term of Agreement” regardless of the date of execution of this AGREEMENT unless terminated as provided herein. The caption space header titled “Term of Agreement” and all caption space headers above are by this reference incorporated herein into the AGREEMENT as if fully set forth in the AGREEMENT.

Section 6

State Review of Project

- A. WSDOT shall review the Project identified in this AGREEMENT as **Section 1- Scope of Work and Budget**, at least semiannually to determine whether the Project is making satisfactory progress. If WSDOT has awarded funds, but the GRANTEE does not report satisfactory activity within one (1) year of the initial grant award, WSDOT shall review the Project to determine whether the grant should be terminated as provided in **Section 37, Termination**.
- B. The GRANTEE shall deliver the scope of the Project as described in **Section 1- Scope of Work and Budget**. WSDOT shall review deviations from the approved scope or non - delivery of a specific phase to determine whether the project still meets the Project intent. If the Project is found in misalignment with the original intent, WSDOT will determine the best course of action including extending the Project’s schedule, requesting approval for the change, or requesting repayment. The time for repayment and the amount will be negotiated between WSDOT and the GRANTEE.

Section 7

Project Costs and Minimum GRANTEE’s Match Requirement

- A. The reimbursable costs of the Project shall not exceed the amounts detailed in **Section 1- Scope of Work and Budget**. The GRANTEE agrees to expend eligible funds, together with other funds allocated for the Project, in an amount sufficient to complete the Project as detailed in **Section 1**. If at any time the GRANTEE becomes aware that the cost of the Project will exceed or be less than the amount identified in **Section 1**, the GRANTEE shall notify WSDOT in writing within thirty (30) calendar days of making that determination.

- B. The GRANTEE is required to provide a minimum match percentage of funds for the Project as identified in **Section 1 – Scope of Work and Budget**, indicated as GRANTEE's Funds. Any reduction in the match will result in a proportional reduction in grant funds.

Section 8 Energy Credit

To the extent GRANTEE receives any monies from the sale or disposition of energy credits, decarbonization credits, environmental credits, or any other monies through its participation in a like program, GRANTEE agrees to reinvest those monies into services and projects consistent with WSDOT's public transportation grant program. GRANTEE'S obligation to reinvest these monies under this provision shall be in an amount no less than the proportion of WSDOT's funding of this AGREEMENT.

Section 9 Inspection of the Project

- A. The GRANTEE shall inspect any Project Assets purchased pursuant to this AGREEMENT at the time of delivery to the GRANTEE. The GRANTEE has fifteen (15) calendar days from delivery to either accept or reject the Project Assets. If rejected, the GRANTEE shall provide a written notice specifying the Project Asset deficiencies to its vendor and WSDOT, allowing the vendor a reasonable amount of time to cure the deficiencies or defects. Upon receipt and acceptance of Project Assets, the GRANTEE agrees that it has fully inspected the Project Asset and accepts it as suitable for the purpose under this AGREEMENT, as being in good condition and state of good repair, and that the GRANTEE is satisfied with the Project Asset and that the Project Asset complies with all applicable regulations, rules, and laws. Payment to the vendor must occur within thirty (30) days of the Project Asset acceptance.
- B. The GRANTEE shall inspect the Project to ensure conformity with the approved plans and specifications. WSDOT shall review the completed work to ensure conformity with the Project described and detailed in **Section 1** and state, local, and federal requirements as appropriate. WSDOT shall also review project documentation during various phases, as appropriate, to ensure conformity with state, local, and federal requirements.

Section 10 Provisions for Specific Grant Programs

- A. **Regional Mobility Grant Program.**
1. In accordance with RCW 47.04.290 a transit agency that receives state grant funding for a park and ride lot must establish a process for private transportation providers to apply for the use of the park and ride facility.
 2. A draft Performance Measurement Plan (PMP) must be submitted to WSDOT before submitting the first reimbursement request. If the GRANTEE does not submit a PMP and is nonresponsive to requests from WSDOT for improvements and information, the GRANTEE may be deemed out of compliance.
 3. The GRANTEE must provide annual performance reports for four calendar years after the project is operationally complete, as prescribed in the GUIDEBOOK, and any amendments thereto, or as WSDOT may require, including, but not limited to interim and annual reports. Annual Performance Report must include a summary of overall project performance and supporting data.

B. Public Transit Rideshare Grant Program.

1. All vehicles purchased under this program must be placed into service within twelve (12) months of the vehicle acceptance date.
2. Vehicles that are being replaced must be disposed of by selling, donating, or surplusizing each vehicle within three (3) months of the GRANTEE's written acceptance of the WSDOT funded replacement.

Section 11

Miscellaneous Charges and Conditions

The GRANTEE shall pay and be solely responsible for all storage charges, parking charges, late fees, and fines, as well as any fees (including vehicle registration, license, safety, and emission control inspection fees) and taxes, except applicable state sales or use tax, which may be imposed with respect to the Project by a duly constituted governmental authority as the result of the GRANTEE's use or intended use of the Project and Project Assets. Required visual and road test inspection fees related to the acceptance of vehicles, and software licensing use fees, are eligible for reimbursement. All replacements, repairs, or substitutions of parts for Project Assets shall be at the cost and expense of the GRANTEE.

Section 12

Purchases

The GRANTEE shall make purchases pursuant to this AGREEMENT through written procurement procedures in alignment with the GUIDEBOOK and compliant with state and federal requirements as applicable.

Section 13

Payment

- A. State and/or federal funds may be used to reimburse the GRANTEE for allowable expenses incurred in completing the Project as described in **Section 1**. Allowable Project expenses shall be determined by WSDOT as described in the GUIDEBOOK, and any amendments thereto. In no event shall the total amount reimbursed by WSDOT exceed the Total Project Cost, less any GRANTEE's Funds, identified in **Section 1**.
- B. Payment will be made by WSDOT on a reimbursable basis for actual net Project costs incurred within the timeframe identified in **Section 1**. Such costs to be reimbursed shall be calculated as described in the GUIDEBOOK, and any amendments thereto. WSDOT shall make no payments for costs incurred prior to the beginning or after the end date of the "Term of Agreement" as set forth in the caption space header above. The GRANTEE shall submit a claim reimbursement detailing the costs incurred and necessary supporting documentation. Such claim reimbursements may be submitted no more than once a month and no less than once per quarter as warranted by project expenditures. If approved by WSDOT, said claim reimbursements shall be paid by WSDOT within thirty (30) days of submission to WSDOT. Payment is subject to the submission to and approval by WSDOT of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to WSDOT must include a record of the actual costs.
- C. The GRANTEE shall submit a claim reimbursement for completed work in the same state fiscal year in which it was incurred. Pursuant to RCW 43.88.020(13) "fiscal year" is defined as the year beginning July 1 and ending the following June 30. Reimbursement requests must be received no later than July 15th of the following state fiscal year. If the GRANTEE is unable to provide a claim reimbursement by this date, the GRANTEE shall provide an

estimate of the charges to be billed no later than July 15th so WSDOT may accrue the expenditures in the proper fiscal year. Any claim reimbursement submitted after the timeframe prescribed above may not be eligible for reimbursement.

- D. Progress Payments for Federally Funded Construction:** For federally funded construction contracts, the GRANTEE is required to make progress payments based on a percentage-of-completion method. WSDOT will reimburse the GRANTEE for eligible costs as identified in the claim reimbursement.
- E. Progress Payments for Heavy-Duty Buses:** For heavy-duty transit bus (“bus”) purchases, WSDOT may reimburse the GRANTEE for progress payments made to a bus manufacturer prior to the final delivery of the bus.
1. Progress payments will only be made for the completion of specific, discrete activities necessary for the manufacture of the bus.
 2. Progress payments are only allowable to bus manufacturers that are eligible to receive federal funds. It is the GRANTEE’s responsibility to obtain assurances confirming the manufacturer’s ability to deliver and comply with state and federal regulations and requirements.
 3. The GRANTEE must obtain adequate security for progress payments. The security for progress payments is typically a performance bond or letter of credit in the amount of the payments but there may be other types of security negotiated by the GRANTEE and the bus manufacturer as appropriate, such as receipt of title to the rolling stock at an appropriate point in the manufacturing process.
 4. The GRANTEE shall determine if progress payments are in the best interest of the GRANTEE after negotiating an anticipated delivery date for the bus(es) with the manufacturer. Regardless of whether the GRANTEE pursues progress payments, the GRANTEE shall include an anticipated delivery date for the bus(es) in the Purchase Order (PO) for the bus(es).
 5. To be eligible for reimbursement of progress payments, and prior to issuing a PO, the GRANTEE must negotiate a milestone payment schedule (MPS) with the bus manufacturer as applicable for each vehicle type and specifications. The MPS must identify a limited number of discrete activities whose completion qualifies for a milestone progress payment and an anticipated delivery date for the bus(es). The GRANTEE must submit the MPS to WSDOT for concurrence.
 6. Once the MPS is approved, the GRANTEE will include the MPS in the PO for the bus(es). A copy of the PO with the agreed-upon terms for the manufacturer’s delivery of the bus(es) must be submitted to WSDOT.
 7. During manufacture, if any of the terms of the PO need to be updated, the GRANTEE will implement a change order process. WSDOT concurrence on the change order is required prior to approving any changes to the terms of the PO.
 8. The GRANTEE will submit documentation of completion of each progress milestone when submitting a request for progress payment reimbursement. Images and/or other forms of tangible verification of milestone completion will be required.
 9. The GRANTEE will submit Quarterly Status Reports for the grant while the bus(es) is/are being built and until the final reimbursement is made. WSDOT will make final reimbursement for the bus(es) upon delivery and acceptance of the bus(es), per standard procedures. The GRANTEE is to comply with post-delivery bus purchase requirements.

If a bus(es) is/are not delivered within the terms and conditions of the PO, and WSDOT has reimbursed the GRANTEE for one or more progress payments, the GRANTEE shall reimburse WSDOT for all progress payments incurred.

Section 14

Assignments, Subcontracts, and Leases

- A. The GRANTEE shall submit to WSDOT as requested a copy of any contract, amendment, or change order thereto pertaining to this Project for review and documentation. This includes any completed Project facilities and/or infrastructure under this AGREEMENT, or other actions obligating the GRANTEE in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT, including any leasing and/or lending the Project or any part thereof to be used by anyone not under the GRANTEE's direct supervision.
- B. The GRANTEE agrees to include all applicable sections of the AGREEMENT such as **Section 4 and Sections 15 through 34** of this AGREEMENT in all third-party contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT. Third-party contractors must include these sections in any subsequent subcontracts, as applicable.

Section 15

State Interest and Satisfactory Continuing Control

- A. This provision shall survive termination of this AGREEMENT.
- B. WSDOT shall retain a legal interest in all Project Assets, defined as any rolling stock, equipment, facilities, and infrastructure, through the minimum useful life of the assets. For rolling stock purchases, the title of the rolling stock shall designate the GRANTEE as the legal owner and registered owner. Through the end of the minimum useful life, as defined in the GUIDEBOOK, the GRANTEE shall maintain satisfactory continuing control of all Project Assets, defined as the legal assurance that Project Assets will remain available to be used for its authorized purpose until disposition. The GRANTEE shall certify its satisfactory continuing control through the reporting described in Section 16(F) below. The GRANTEE accepts WSDOT's legal interest in all Project Assets during their minimum useful life. The GRANTEE must receive pre-approval from WSDOT to dispose of any Project Asset prior to the end of its minimum useful life. Regardless of the date of disposal, WSDOT will receive the proportional Federal and/or State funded share, as identified in this AGREEMENT, of the value of the disposed asset.
- C. Subject to the GRANTEE's compliance with all terms of this AGREEMENT, WSDOT's legal interest in each Project Asset will be released at the end of the minimum useful life of the Project Asset, as defined in the GUIDEBOOK.

Section 16

Reports and Project Use

- A. This provision shall survive termination of this AGREEMENT.

- B. The GRANTEE agrees that the Project shall be used for the provision of public transportation services within the area indicated in **Section 1** for the duration of the Project Asset's minimum useful life, as set forth in the GUIDEBOOK. The GRANTEE further agrees that it will not use or permit the use of the Project in a negligent manner or in violation of any applicable law, or so as to avoid any insurance covering the same or permit the Project to become subject to any lien, charge, or encumbrance.
- C. The GRANTEE shall maintain comprehensive and collision insurance for vehicles and property insurance for non-vehicle assets adequate to cover the value of the Project Assets prior to vehicles and assets being placed into operation. For vehicles, the GRANTEE shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT with the first Claim Reimbursement, and supply proof of renewal, annually thereafter until the vehicle depreciates fully. The GRANTEE shall name WSDOT as an additional insured on the insurance through the minimum useful life of the vehicles. If the GRANTEE is self-insured, the GRANTEE shall supply a copy of the Certificate of Self-Insurance specifying such coverage to WSDOT with the first Claim Reimbursement.
- D. Should the GRANTEE unreasonably delay or fail to use the Project during the Project term and reporting period, defined as through the end of the minimum useful life of the Project Assets, the GRANTEE agrees that it may be required to refund up to the entire amount of the "State and/or Federal Funds" expended on the Project. The GRANTEE shall immediately notify WSDOT when any Project Assets are withdrawn from Project use or when the Project or any part thereof is used in a manner substantially different from that identified in **Section 1**. If the Project is permanently removed from public transportation services, the GRANTEE agrees to immediately notify WSDOT of its intentions regarding the disposal of Project Assets or any part of the Project thereof.
- E. **Reports.** The GRANTEE shall submit quarterly status reports to WSDOT for the Term of the Project, regarding the progress of the Project. The GRANTEE shall keep satisfactory written records regarding the use of the Project and shall submit the following reports to, and in a form, and at such times prescribed by WSDOT as set forth in the GUIDEBOOK, and any subsequent amendments thereto:
1. Quarterly status reports for the Term of the Project, regarding the progress of the Project.
 2. Grant program specific reports as prescribed in **Section 10**.
 3. Reports describing the current usage of the Project and other data which WSDOT may request from the GRANTEE by memos, e-mails or telephone requests.
 4. In the event any portion of the Project sustains disabling damage, the GRANTEE shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.
 5. The GRANTEE shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT.
- F. **Asset Management.** The GRANTEE shall submit a Transit Asset Management Plan, Facility Maintenance Plan, Equipment Maintenance Plan, Infrastructure Maintenance Plan, and/or Vehicle Maintenance Plan to WSDOT, as applicable and prescribed in the GUIDEBOOK. Subsequently, the GRANTEE shall submit an Annual Asset Inventory to WSDOT, for the duration of the minimum useful life of the Project Assets.

- G. **Remedies for Misuse or Noncompliance.** If WSDOT determines that the Project has been used in a manner materially different from that described in **Section 1**, or in a “Service Area” different than that described in **Section 1**, WSDOT may require the GRANTEE to repay WSDOT the grant funded share of the Project. WSDOT may also withhold payments should it determine that the GRANTEE has failed to materially comply with any provision of this AGREEMENT.

Section 17

Maintenance of the Project

- A. This provision shall survive termination of this AGREEMENT.
- B. The GRANTEE shall make all necessary repairs and reasonably maintain the Project Assets to assure it remains in good and operational condition until the end of its minimum useful life. The minimum useful life of a constructed project is determined based on the Architectural/Engineering requirements for each type of structure, materials used, industry standards, and other federal and/or state standards and specifications, as described in the GUIDEBOOK. The minimum useful life for rolling stock is defined in FTA Circular 5010.1F, as referenced in the GUIDEBOOK. The minimum useful life for other equipment shall be determined according to provisions in the GUIDEBOOK including manufacturer’s estimated useful life and industry standards. All service, materials, and repairs in connection with the use and operation of the Project during its minimum useful life shall be at the GRANTEE’s expense.
- C. GRANTEES who are transit agencies and/or who receive direct federal funding from FTA must also have a Transit Asset Management Plan submitted to WSDOT that details their plan to maintain the Project. GRANTEES must submit a written Vehicle, Equipment, Facility, and/or Infrastructure Maintenance Plan to WSDOT prior to the occupation and/or operation of the Project, as applicable and prescribed in the GUIDEBOOK. The GRANTEE agrees, at a minimum, to maintain the Project and service or replace parts at intervals recommended in the manuals and/or instructions provided by contractors, vendors, and/or component manufacturers, or sooner if needed. The GRANTEE shall have the Project routinely inspected and make arrangements for any appropriate service and repair under the manufacturer’s warranty, if applicable. WSDOT shall not be liable for repairs. The GRANTEE shall retain records of all maintenance and parts replacement performed on the Project in accordance with Section 25. The GRANTEE shall provide copies of such records to WSDOT, upon request.

Section 18

Compliance with WSDOT Standards and Approval requirements

- A. This provision applies to all projects with construction elements.
- B. The GRANTEE agrees the Project must comply with all applicable Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction M 41-10, and any applicable revisions thereto.
- C. If the GRANTEE receives federal funds through WSDOT Public Transportation Division for this project, the project must comply with WSDOT General Special Provisions, Local Agency (APWA) specifications and Washington State Department of Transportation Construction Manual M41-01, as applicable. WSDOT General Special Provision (GSP) related to Buy America/BABA requirements shall be included in the Plans, Specifications and Estimate

(PS&E). After the DBE goals are determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set, shall be included in the Plans, Specifications and Estimate (PS&E). The GRANTEE shall coordinate with WSDOT for collecting the current version of both GSPs.

D. If the GRANTEE receives federal funds through WSDOT Public Transportation Division for this project, the GRANTEE shall coordinate with WSDOT and provide requested documentation for written approval prior to initiating any of the following classifications of work on this project after agreement execution, as applicable.

1. Preliminary engineering.
2. Right of way acquisition.
3. Final Design.
4. Construction.

E. If the project was initiated prior to agreement execution and the GRANTEE is seeking reimbursement for all or some of those activities up to pre-award authorization date, the GRANTEE shall submit requested documents to WSDOT to confirm federal aid requirements.

Section 19

No Obligations by the State Government

No contract between the GRANTEE and any contractor or subcontractor shall create any obligation or liability of WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, regardless of WSDOT's concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The GRANTEE hereby agrees to include this provision in all contracts it enters into for the design, acquisition, and construction of facilities and/or infrastructure related to the Project, or the performance of any work to be accomplished under this AGREEMENT.

Section 20

Ethics

A. Relationships with Employees and Officers of WSDOT. The GRANTEE shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the GRANTEE knowingly rent or purchase any Project equipment and materials from any employee or officer of WSDOT.

B. Employment of Former WSDOT Employees. The GRANTEE hereby warrants that it shall not employ on a full, part-time, or another basis during the period of this AGREEMENT, any professional or technical personnel who are or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without the written consent of WSDOT.

Section 21

Compliance with Laws and Regulations

- A. The GRANTEE agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The GRANTEE will adhere to all applicable labor provisions in Title 49 RCW including the nondiscrimination provisions in Chapter 49.60 RCW.
- B. Additionally, the GRANTEE agrees to comply, as applicable, with the following:
 - 1. SB 5974 Move Ahead Washington
 - 2. RCW 70A.02 Healthy Environmental for All (HEAL) ACT
 - 3. RCW 70A. 65.260 Climate Commitment ACT
- C. If the GRANTEE receives federal funds through WSDOT Public Transportation Division for this project, the GRANTEE agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 USC 4601 et seq.).
- D. The GRANTEE agrees to comply with all applicable requirements of chapter 43.21C RCW "State Environmental Policy Act" (SEPA) and for federally funded projects, with the "National Environmental Policy Act" (NEPA) 42 U.S.C. § 4321 et seq. The GRANTEE agrees to comply with Washington State Executive Order 21-02, Archaeological and Cultural Resources, and for federally funded projects, with Section 106 of the National Historic Preservation Act of 1966.
- E. **Permitting.** The GRANTEE agrees to be solely responsible for securing all required Federal, State and/or local permits as needed to complete the Project.
- F. Except when a federal statute or regulation preempts state or local law, no provision of the AGREEMENT shall require the GRANTEE to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. If any provision or compliance with any provision of this AGREEMENT violates state or local law or would require the GRANTEE to violate state or local law, the GRANTEE agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the GRANTEE agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the AGREEMENT.

Section 22

Civil Rights

- A. The GRANTEE shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any WSDOT-assisted contract or in the administration of its public transportation services.
- B. If the GRANTEE receives federal funds through WSDOT Public Transportation Division for this project, when advertising the GRANTEE must notify all bidders that it will affirmatively ensure that disadvantaged business enterprises will be afforded full and fair opportunity to submit bids and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Section 23
Accounting Records

- A. **Project Accounts.** The GRANTEE agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The GRANTEE agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and available to WSDOT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.
- B. **Documentation of Project Costs and Program Income.** The GRANTEE agrees to support all allowable costs charged to the Project, including any approved services contributed by the GRANTEE or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The GRANTEE also agrees to maintain accurate records of all program income derived from implementing the Project.

Section 24
Audits, Inspection and Retention of Records

- A. This provision shall survive termination of this AGREEMENT.
- B. **Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the Term of the Agreement as discussed in **Section 5** and for six (6) years thereafter, the GRANTEE agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six (6) year period the GRANTEE's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.
- C. **General Audit Requirements.** The GRANTEE agrees to obtain any other audits required by WSDOT at the GRANTEE's expense. Project closeout will not alter the GRANTEE's audit responsibilities.
- D. **Inspection.** The GRANTEE agrees to permit WSDOT, and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the GRANTEE and its contractors pertaining to the Project. The GRANTEE agrees to require each third-party contractor to permit WSDOT, the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, and other data and records involving that third-party contract, and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

Section 25
Loss or Damage to the Project

- A. This provision shall survive termination of this AGREEMENT.
- B. The GRANTEE, at its own expense, shall cover any loss, theft, damage, or destruction of the Project's rolling stock, equipment, facilities, and/or infrastructure for the duration of the Project's useful life using either of the following methods:

1. The GRANTEE shall maintain property insurance for rolling stock, equipment, facilities, and/or infrastructure adequate to cover the value of the Project; the GRANTEE shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT with the first request for reimbursement, and supply proof of renewal annually thereafter; or
 2. The GRANTEE shall certify that it has self-insurance and provide a written certificate of self-insurance to WSDOT with the first request for claim reimbursement, and annually thereafter. The GRANTEE will cover from its own resources the costs of repairing or replacing any Project facilities, associated equipment, and/or infrastructure if it is stolen, damaged, or destroyed in any manner.
- C. If the damage to the Project does not result in a total loss, payments for damage shall be paid directly to the GRANTEE. The GRANTEE shall, within thirty (30) days, either:
1. Devote all the insurance proceeds received to repair the Project and place it back in service, and the GRANTEE shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or
 2. In the event the GRANTEE is certified to self-insurance, devote all funds necessary to repair the Project and place it back into service.
- D. If the Project is a total loss the insurance proceeds or equivalent shall be paid directly to the GRANTEE, and within fifteen (15) days the GRANTEE shall pay WSDOT its proportionate funded share of such proceeds received. The GRANTEE shall within sixty (60) days of loss, theft, or damage, notify WSDOT that it either:
1. Intends to replace the lost rolling stock, equipment, facilities, and/or infrastructure; or
 2. Does not intend to replace the lost rolling stock, equipment, facilities, and/or infrastructure. In this case, WSDOT will require the GRANTEE to reimburse WSDOT for the proportional Federal and/or State funded share of the insurance proceeds.
- E. Coverage, if obtained or provided by the GRANTEE in compliance with this section, shall not be deemed as having relieved the GRANTEE of any liability in excess of such coverage as required by the limitation of liability section of this AGREEMENT, or otherwise.

Section 26

Liens on the Project

- A. This provision shall survive termination of this AGREEMENT.
- B. WSDOT will maintain a copy of vehicle registrations for all funded vehicles under this agreement and oversight responsibility on those vehicles through their minimum useful life. The GRANTEE agrees that it shall not use Project Assets or any portion thereof as collateral, nor shall the GRANTEE encumber the Project in any way without the consent of WSDOT. If the GRANTEE determines to discontinue the use of any Project Asset before the end of its minimum useful life, it shall consult with WSDOT as to appropriate disposition alternatives, including transferring the use of the Project Asset to another agency for purposes consistent with the original grant award or reimbursing WSDOT for its proportional grant funded share of the disposal price. The GRANTEE shall follow the terms stated in **Sections 15 and 16** regarding the use and disposal of the Project and/or any portion thereof.

Section 27
Limitation of Liability

- A. This provision shall survive termination of this AGREEMENT.
- B. The GRANTEE shall indemnify, defend, and hold WSDOT, its agents, employees, and officers harmless from and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT, arising out of, in connection with or incident to this AGREEMENT and/or the GRANTEE's performance or failure to perform any aspect of this AGREEMENT. This indemnity and defense provision applies to all claims against WSDOT, its agents, employees, and officers arising out of, in connection with, or incident to the negligent acts or omissions of the GRANTEE, its agents, employees, officers, and contractors and subcontractors of any tier. Provided, however, that nothing herein shall require the GRANTEE to indemnify, defend, and hold harmless or defend WSDOT, its agents, employees, or officers to the extent that claims are caused by the negligent acts or omissions of WSDOT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the GRANTEE its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity and defense provisions provided herein shall be valid and enforceable only to the extent of the negligence of the GRANTEE, its employees, officers, authorized agents, and/or contractors.
- C. The GRANTEE shall be deemed an independent contractor for all purposes, and the employees of the GRANTEE or its contractors and subcontractors and the employees thereof, shall not in any manner be deemed to be employees of WSDOT.
- D. The GRANTEE agrees that its obligations under this AGREEMENT extend to any claim, demand, and/or cause of action by, or on behalf of its employees or agents while performing under this AGREEMENT. For this purpose, the GRANTEE, by MUTUAL NEGOTIATION, hereby waives any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions in Title 51 RCW.
- E. In the event either the GRANTEE or WSDOT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs, and expenses shall be recoverable by the prevailing PARTY.

Section 28
Personal Liability & WSDOT Advice

- A. **Personal Liability of Public Officers**, no officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters he or she is acting solely as an agent of WSDOT.
- B. **WSDOT Advice**, the GRANTEE bears complete responsibility for the administration and success of the Project as it is defined by this AGREEMENT and any amendments thereto. If the GRANTEE solicits advice from WSDOT on problems that may arise, the offering of WSDOT advice shall not shift the responsibility of the GRANTEE for the correct administration and success of the Project, and WSDOT shall not be held liable for offering advice to the GRANTEE.

Section 29
Forbearance by WSDOT Not a Waiver

Any forbearance by WSDOT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

Section 30
Lack of Waiver

In no event shall any WSDOT payment of funds to the GRANTEE constitute or be construed as a waiver by WSDOT of any GRANTEE breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default.

Section 31
Agreement Modifications

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by persons authorized to bind each of the PARTIES. Provided, however, that changes to the federal award identification number, DUNS, project title, federal ID number, CFDA number, milestones, UPIN the contact person of either PARTY, or dollar amount changes that do not affect the Project total cost, will not require a written amendment, but will be approved and documented by WSDOT through an administrative revision. WSDOT shall notify the GRANTEE of the revision in writing.

Section 32
Disputes

- A. **Disputes.** Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Division's Assistant Director or designee. This decision shall be final and conclusive unless within ten (10) days from the date of GRANTEE'S receipt of WSDOT's written decision, the GRANTEE mails or otherwise furnishes a written appeal to the Director of the WSDOT Public Transportation Division or the Director's designee. The GRANTEE's appeal shall be decided in writing by the Director of the WSDOT Public Transportation Division within thirty (30) days of receipt of the appeal by the Director of the WSDOT Public Transportation Division or the Director's designee. The decision shall be binding upon the GRANTEE, and the GRANTEE shall abide by the decision.
- B. **Performance During Dispute.** Unless otherwise directed by WSDOT, GRANTEE shall continue performance under this AGREEMENT while matters in dispute are being resolved.
- C. **Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.

- D. **Rights and Remedies.** All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by WSDOT or GRANTEE shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Section 33 Termination

- A. **Termination for Convenience.** WSDOT and/or the GRANTEE may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. WSDOT and the GRANTEE shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms and conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However, if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, any of the following:
1. The requisite funding becomes unavailable through the failure of appropriation or otherwise.
 2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds.
 3. The GRANTEE is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of a war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
 4. The GRANTEE is prevented from proceeding with the Project because of a temporary, preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the GRANTEE.
 5. The State Government or WSDOT determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project.
 6. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the GRANTEE for all costs payable under this AGREEMENT that the GRANTEE properly incurred prior to termination. The GRANTEE shall promptly submit its claim reimbursement to WSDOT. If the GRANTEE has any property in its possession belonging to WSDOT, the GRANTEE will account for the same and dispose of it in the manner WSDOT directs.

Termination for Default. WSDOT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the GRANTEE, if the GRANTEE materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

7. Take any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT.
 8. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the GRANTEE operates.
 9. Failure to perform the Project or any part thereof including, but not limited to:
 - a) Failure to build the Project according to the design specifications and all applicable building code required standards.
 - b) Failure to remedy all material defects in the performance of the Project and correct all faulty workmanship by the GRANTEE or its contractors and subcontractors in a timely manner.
 - c) Failure to take any necessary and reasonable action which could affect the ability of the Project to perform its designated function or takes any action which could shorten its useful life for Project use or otherwise.
 - d) Failure to make reasonable and appropriate use of the Project's real property, facilities, equipment, and/or infrastructure.
 10. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project.
 11. Fails to perform in the manner called for in this AGREEMENT, or fails to comply with or, is in material violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the GRANTEE setting forth the manner in which the GRANTEE is in default hereunder. If it is later determined by WSDOT that the GRANTEE had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the GRANTEE, such as a strike, fire or flood, WSDOT may: a) allow the GRANTEE to continue work after setting up a new delivery of performance schedule, or b) treat the termination as a termination for convenience.
- B. WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the GRANTEE ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such cases, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the GRANTEE fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to GRANTEE. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against GRANTEE and its sureties for said breach or default.
- C. In the event that WSDOT elects to waive its remedies for any breach by GRANTEE of any covenant, term, or condition of this AGREEMENT, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

Section 34
Venue and Process

In the event either PARTY deems it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

Section 35
Changed Conditions Affecting Performance

The GRANTEE hereby agrees to immediately notify WSDOT in writing of any change in conditions or law, or of any other event, including any current or prospective dispute, which may adversely affect WSDOT's interest in the Project or affect the GRANTEE's ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 36
Subrogation

- A. Subrogation. WSDOT may require the GRANTEE to assign to WSDOT all rights of recovery against any person or organization for loss, to the extent of WSDOT's loss. Upon assignment, the GRANTEE shall execute, deliver, and do whatever else is reasonably necessary to secure WSDOT's rights. The GRANTEE shall do nothing after any loss to intentionally prejudice the rights of WSDOT.
- B. Duties of the GRANTEE. If WSDOT has exercised its right of subrogation, the GRANTEE shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT due to damage of Project Equipment. The GRANTEE shall attend hearings and trials as requested by WSDOT, assist in securing and giving evidence as requested by WSDOT, and obtain the attendance of witnesses as requested by WSDOT.

Section 37
Severability

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 38
Counterparts

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

Section 39
Complete Agreement

This document contains all covenants, stipulations, and provisions agreed upon by the PARTIES. No agent or representative of WSDOT or the GRANTEE has authority to make, and neither WSDOT nor the GRANTEE shall be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

Section 40
Order of Precedence

Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

1. Federal Law
2. Exhibit I, Summary of Federal Requirements, if applicable
3. State Law
4. This AGREEMENT
5. The GUIDEBOOK

Section 41
Agreement Close Out

The GRANTEE shall notify WSDOT if the AGREEMENT is completed prior to the end date set forth in the caption space header titled "Term of Agreement" by written notification and in its capital Quarterly Status Report, as referenced in the GUIDEBOOK, and any amendments thereto, for the quarter in which the project is completed. WSDOT will send a closeout letter to the GRANTEE.

Section 42
Execution

This AGREEMENT is executed by the Director, Public Transportation Division, State of Washington, Department of Transportation, or the Director's designee, not as an individual incurring personal obligation and liability, but solely by, for, and on behalf of the State of Washington, Department of Transportation, in the capacity as Director, Public Transportation Division, or as a designee.

Section 43
Binding Agreement

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and/or entity(ies) to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year signed last below.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

GRANTEE

Authorized Representative
Public Transportation Division,
WSDOT

Authorized Representative

Title

Print Name

Date

Date



City Council Agenda Item Cover Sheet

Project title:

Adopt A Resolution Declaring an Emergency and Authorizing Repairs to Fire Engine J0142 and Security Upgrades to the Fire Apparatus Fleet.

Council Bill # *interoffice use*

Agenda dates requested:

Briefing

Proposed action

Consent 8/13/25

Action

Ordinance

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Resolution

Department(s) involved:

Fire, Finance, & Legal

Contact person:

Dave Demarco, Fire Chief

Phone number:

425-257-8101

Email:

ddemarco@everettwa.gov

Initialed by:

DD

Department head

Administration

Council President

Project: Resolution declaring an emergency and authorizing repairs to fire engine J0142 and security upgrades to the fire apparatus fleet.

Partner/Supplier: Hughes Fire Apparatus, Freightliner Northwest, and to be determined

Location: TBD

Preceding action: None

Fund: Fund 126 - Capital Equipment

Fiscal summary statement:

Repair estimates for J0142 are still being developed. Currently, the complete repair and recertification of the fire engine will cost less than \$250,000. Fund 126 has an emergency reserve of \$250,000 for unexpected capital expenses. Once the insurance claim is settled, any costs exceeding the \$100,000 insurance deductible will be reimbursed to Fund 126. This will happen after the repairs are finished. Security upgrades for the fire apparatus fleet are also needed, but the estimated costs are currently unknown.

Project summary statement:

J0142 was significantly damaged during its theft. While detailed estimates of repairs are not yet available, this resolution will allow the fire department to develop those estimates as quickly as possible and work with the factory-authorized vendors to repair and recertify the vehicle as a fire engine.

The repair work should be performed by factory-authorized facilities using original equipment-manufactured parts. It must be completed as quickly as possible to reduce the public safety impacts of a fire engine being unavailable for extended periods. Additionally, Everett Fire is researching possible security upgrades for its fire apparatus fleet, which will reduce the future risk of a similar event occurring.

The fire department does have reserve fire apparatus, but the absence of one engine will strain the operation and maintenance of the remaining engines. An emergency declaration regarding the procurement of repairs is appropriate in the interest of public safety.

Recommendation (exact action requested of Council):

Adopt a Resolution declaring an emergency and authorizing repairs to fire engine J0142 and security upgrades to the fire apparatus fleet.



RESOLUTION NO. _____

A RESOLUTION Declaring an Emergency and Authorizing Repairs to Fire Engine J0142 and Security Upgrades to the Fire Apparatus Fleet.

WHEREAS,

- A. The City operates a fire department that is continuously operating to meet the emergency services demands of the City of Everett.
- B. On July 18, 2025, just after 10:00 pm, Fire Engine 1, Apparatus #J0142, was blocking a lane of travel downtown on Hoyt Avenue. An unauthorized person accessed the driver's seat, engaged the transmission, released the brakes, and overcame a wheel immobilization device and stole the engine. Its theft resulted in significant damage to the unit on both sides of the apparatus.
- C. The Fire Department fleet is unique and operates with no surplus capacity. The repairs needed for J0142 will likely take months, and its absence from the fleet will impact on emergency services in Everett.
- D. The damage to J0142 represents unforeseen circumstances beyond the control of the City of Everett, and that (a) presents a real, immediate threat to the proper performance of essential functions and (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
- E. Security upgrades to the fire apparatus fleet are needed immediately to reduce the risk of a similar event occurring in the future.
- F. The necessary security upgrades to the fire apparatus fleet and if not immediately remedied represents unforeseen circumstances beyond the control of the City of Everett and that (a) present a real, immediate threat to the proper performance of essential functions and (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Finding and Declaration of Emergency. As stated above, the damage to J0142 is an unforeseen circumstance beyond the control of the City of Everett that (a) presents a real, immediate threat to the proper performance of essential functions and (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. In accordance with RCW 39.04.280 and the City's Procurement Policy, the City Council therefore declares and

finds that an emergency exists. The recitals above are hereby adopted as findings in support of this resolution.

2. Waiver of Competitive Requirements / Authorization to Award.

- a. General Waiver and Authorization. The City Council waives competitive requirements for procuring repairs to J0142 and security upgrades to the fire apparatus fleet. The Mayor or designee is authorized to execute and award all contracts and other instruments necessary for such repairs, including, but not limited to, contracts and purchase orders for the acquisition of materials, contracts for services, contracts for repair, and all change orders thereto.
- b. Approval of Ongoing Procurement. In light of the emergency circumstances, the City Council assumes that City staff have already begun work in responding and may have already begun to solicit bids, quotes, and make purchases. So long as such staff actions are consistent with this resolution, those actions prior to the date of this resolution are hereby ratified and approved.

3. Competition as Practical Under the Circumstances. In accordance with City's Procurement Policy, City staff will make efforts to include a level of competition that is practical under the circumstances in making emergency purchases under this resolution.

4. Summary to Council. After the work under this resolution is complete, City staff will provide a summary to Council providing details of the purchases made under this resolution.

Councilmember introducing resolution

Passed and approved this ____ day of _____, 2025.

Council President

Project title: Illegal Graffiti on Public and Private Property

Council Bill # *interoffice use*

CB 2507-41

Agenda dates requested:

Briefing 8/6/25

Proposed action 8/13/25

Consent

Action 8/20/25

Ordinance x

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Ordinance

Department(s) involved:

Legal, police

Contact person:

Tim Morgan, EPD Acting
Capt.; Lacey Offutt, Assistant
City Attorney

Phone number:

425-508-8321; 425-257-8528

Email:

TMorgan@everettwa.gov;
loffutt@everettwa.gov

Initialed by:

Department head

Administration

Council President

Project: An Ordinance creating a Civil Infraction against a graffiti tagger for the unauthorized application of illegal graffiti

Partner/Supplier: NA

Location: Everett, WA

Preceding action: NA

Fund: NA

Fiscal summary statement:

NA

Project summary statement:

This Ordinance will amend Chapter 10.62 of the Everett Municipal Code, permitting the city to impose a Civil Infraction in the Everett Municipal Court for a fine of \$250 for illegal application of graffiti violations on public or private property, and permitting restitution to the public or private party responsible for the property for the costs incurred to remove illegal graffiti. The ordinance provides that if the property owner gave permission for the graffiti, the tagger would have a defense and wouldn't be held legally responsible. This ordinance is in addition to other civil or criminal penalties available to the public or private property owner.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Civil Infraction against a graffiti tagger for the unauthorized application of illegal graffiti, amending chapter 10.62 Everett Municipal Code.

ORDINANCE NO. _____

An ORDINANCE relating to a new civil cause of action against graffiti taggers for illegal graffiti on public and private property and requiring restitution, amending and adding a new section to chapter 10.62 EMC.

WHEREAS,

- A. Illegal graffiti on public and private property is a significant public nuisance.
- B. Proliferation of illegal graffiti across Everett causes substantial public blight.
- C. In 2024, illegal graffiti was reported at many City-owned properties, including traffic signs, traffic control stations, parking pay stations, libraries, parks, and public utility facilities.
- D. In 2024, the City spent approximately \$73,987.77 on the abatement of illegal graffiti from public property, after spending approximately \$76,518.86 in 2023.
- E. In 2024, there were a total of sixty-five reports of illegal graffiti provided to the City.
- F. Washington law has long recognized the authority of municipalities to abate public nuisances through civil actions.
- G. Establishing an appropriate civil cause of action in the Everett Municipal Code will allow the City Attorney to bring these civil actions in the Everett Municipal Court.
- H. The intent of authorizing these civil actions is to discourage future illegal graffiti and remunerate the City for the substantial costs of abatement.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 10.62.010 is amended as follows, with underlined text add and strikeout text deleted.

10.62.010 Definitions

The definitions set forth in this section apply throughout this chapter.

- A. “Abate” means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent

as the applicable City department director or designee determines is necessary in the interest of the general health, safety, and welfare of the community.

- B. "Aerosol paint container" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint, dye, or other substances.
- C. "Felt tip marker" means any indelible marker or similar implement, with a tip at its broadest width greater than one-eighth inch, containing anything other than a solution which can be removed with water after it dries.
- D. "Graffiti" means any unauthorized inscription, word, figure, painting, design, label, or other defacement that is marked, etched, scratched, engraved, drawn, painted, sprayed, or otherwise affixed on any surface of public or private property, either natural or manmade; to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance.
- E. "Graffiti stick" or "paint stick" means any device containing a solid form of paint, chalk, wax, epoxy, or other substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-sixteenth of an inch in width.
- F. "Graffiti tagger" means any person or entity who applies illegal graffiti to public or private property, or who assists or encourages another person or entity to do the same.
- G. "Graffiti violation" means a single piece of graffiti, including but not limited to a graffiti tagger name or design, in a single location.
- H. "Gum label" means any sheet of paper, fabric, plastic, or other substance with an adhesive backing which, when placed on a surface, is not immediately removable.
- I. "Graffiti implement or paraphernalia" means any aerosol paint container, felt tip marker, graffiti stick or paint stick, gum label, brush, roller, or etching tool or any other device capable of scarring or marking any surface, including but not limited to glass, metal, concrete, or wood; and any piece, design, or scrapbook or drawings illustrating graffiti marks or signs.
- J. "Owner" means any entity or entities having a legal or equitable interest in real or personal property, including, but not limited to, the interest of a tenant or lessee.
- K. "Premises open to the public" means all public spaces, including, but not limited to, streets, alleys, sidewalks, parks, and public open space, as well as private property onto which the public is regularly invited or permitted to enter for any purpose, the doorways and entrances to those buildings or dwellings, and the grounds enclosing them.

- L. "Property" means any real or personal property which is affixed, incidental or appurtenant to real property, including, but not limited to, any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.
- M. "Responsible public agency" means a public owner, the United States of America, the state of Washington, or any other state, and all political subdivisions thereof, a federal, state, or local department or agency, or the director or administrator of a federal, state, or local department or agency who has authority over the public property's maintenance or management. There may be more than one responsible public agency for a particular public property.
- N. "Responsible private party" means a private owner, an entity, a person acting as an agent for a private owner by agreement, a person or entity who has authority over the private property, or a person or entity responsible for the private property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each private owner shall always be a responsible private party for the purposes of this chapter. There may be more than one responsible private party for a particular private property.
- O. "Unauthorized" means without the prior express permission or consent of a responsible public agency or a responsible private party .

Section 2. A new section 10.62.055 .is added to the Everett Municipal Code as follows:

10.62.055 Civil Infraction against graffiti taggers

A. In addition to any other civil or criminal penalties or other remedies authorized by law or equity, a graffiti tagger shall be subject to a civil infraction punishable by a fine of \$250 per illegal graffiti violation, and shall further be liable to the Responsible Public or Private Party for restitution of costs incurred by the Responsible Public or Private Party, including but not limited to all labor and materials costs of abating the illegal graffiti.

B. It is a complete defense that the graffiti tagger obtained the express permission of the Responsible Public or Private Party prior to applying the graffiti. The graffiti tagger has the burden of establishing this defense by a preponderance of evidence.

C. Restitution imposed pursuant to this Section 10.62.055 is payable immediately. On motion of the graffiti tagger supported by a showing of financial hardship, the court may convert some or all of the monetary penalty to community restitution pursuant to the procedure established in RCW 7.80.130(2), provided that the community restitution is performed for the purposes of graffiti abatement. Any penalties, restitution, and other costs ordered pursuant to this Section 10.62.055 that go unpaid may be referred to a collection agency, or the City Attorney may pursue collection in any other manner allowed by law.

Section 3. The following is provided for reference and may not be complete:

EMC Amended by this Ordinance	Ordinance History of EMC Amended by this Ordinance
10.62.010	(Ord. 3074-08 § 1, 2008.)

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. 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.

Section 6. 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 7. 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: _____

ORDINANCE NO. _____

An ORDINANCE relating to a new civil cause of action against graffiti taggers for illegal graffiti on public and private property and requiring restitution, amending and adding a new section to chapter 10.62 EMC.

WHEREAS,

- A. Illegal graffiti on public and private property is a significant public nuisance.
- B. Proliferation of illegal graffiti across Everett causes substantial public blight.
- C. In 2024, illegal graffiti was reported at many City-owned properties, including traffic signs, traffic control stations, parking pay stations, libraries, parks, and public utility facilities.
- D. In 2024, the City spent approximately \$73,987.77 on the abatement of illegal graffiti from public property, after spending approximately \$76,518.86 in 2023.
- E. In 2024, there were a total of sixty-five reports of illegal graffiti provided to the City.
- F. Washington law has long recognized the authority of municipalities to abate public nuisances through civil actions.
- G. Establishing an appropriate civil cause of action in the Everett Municipal Code will allow the City Attorney to bring these civil actions in the Everett Municipal Court.
- H. The intent of authorizing these civil actions is to discourage future illegal graffiti and remunerate the City for the substantial costs of abatement.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 10.62.010 is amended as follows, with underlined text add and strikeout text deleted.

10.62.010 Definitions

The definitions set forth in this section apply throughout this chapter.

- A. “Abate” means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent

as the applicable City department director or designee determines is necessary in the interest of the general health, safety, and welfare of the community.

~~B.~~ ~~A.~~ “Aerosol paint container” means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint, dye, or other substances.

~~C.~~ ~~B.~~ “Felt tip marker” means any indelible marker or similar implement, with a tip at its broadest width greater than one-eighth inch, containing anything other than a solution which can be removed with water after it dries.

~~D.~~ ~~C.~~ “Graffiti” means any unauthorized inscription, word, figure, painting, design, label, or other defacement that is marked, etched, scratched, engraved, drawn, painted, sprayed, or otherwise affixed on any surface of public or private property, either natural or manmade; to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance.

~~E.~~ ~~D.~~ “Graffiti stick” or “paint stick” means any device containing a solid form of paint, chalk, wax, epoxy, or other substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-sixteenth of an inch in width.

~~B-F.~~ “Graffiti tagger” means any person or entity who applies illegal graffiti to public or private property, or who assists or encourages another person or entity to do the same.

~~C-G.~~ “Graffiti violation” means a single piece of graffiti, including but not limited to a graffiti tagger name or design, in a single location.

~~D-H.~~ ~~E.~~ “Gum label” means any sheet of paper, fabric, plastic, or other substance with an adhesive backing which, when placed on a surface, is not immediately removable.

~~E-I.~~ ~~F.~~ “Graffiti implement or paraphernalia” means any aerosol paint container, felt tip marker, graffiti stick or paint stick, gum label, brush, roller, or etching tool or any other device capable of scarring or marking any surface, including but not limited to glass, metal, concrete, or wood; and any piece, design, or scrapbook or drawings illustrating graffiti marks or signs.

~~F-J.~~ ~~G.~~ “Owner” means any entity or entities having a legal or equitable interest in real or personal property, including, but not limited to, the interest of a tenant or lessee.

~~G-K.~~ ~~H.~~ “Premises open to the public” means all public spaces, including, but not limited to, streets, alleys, sidewalks, parks, and public open space, as well as private property onto which the public is regularly invited or permitted to enter for any purpose, the doorways and entrances to those buildings or dwellings, and the grounds enclosing them.

H.L.I. “Property” means any real or personal property which is affixed, incidental or appurtenant to real property, including, but not limited to, any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.

I.M.J. “Responsible public agency” means a public owner, the United States of America, the state of Washington, or any other state, and all political subdivisions thereof, a federal, state, or local department or agency, or the director or administrator of a federal, state, or local department or agency who has authority over the public property’s maintenance or management. There may be more than one responsible public agency for a particular public property.

J.N.K. “Responsible private party” means a private owner, an entity, a person acting as an agent for a private owner by agreement, a person or entity who has authority over the private property, or a person or entity responsible for the private property’s maintenance or management. Irrespective of any arrangement to the contrary with any other party, each private owner shall always be a responsible private party for the purposes of this chapter. There may be more than one responsible private party for a particular private property.

K.O. _____ L. “Unauthorized” means without the prior express permission or consent of a responsible public agency or a responsible private party .

Section 2. A new section 10.62.055 .is added to the Everett Municipal Code as follows:

10.62.055 Civil Infraction against graffiti taggers

A. In addition to any other civil or criminal penalties or other remedies authorized by law or equity, a graffiti tagger shall be subject to a civil infraction punishable by a fine of \$250 per illegal graffiti violation, and shall further be liable to the Responsible Public or Private Party for restitution of costs incurred by the Responsible Public or Private Party, including but not limited to all labor and materials costs of abating the illegal graffiti.

B. It is a complete defense that the graffiti tagger obtained the express permission of the Responsible Public or Private Party prior to applying the graffiti. The graffiti tagger has the burden of establishing this defense by a preponderance of evidence.

C. Restitution imposed pursuant to this Section 10.62.055 is payable immediately. On motion of the graffiti tagger supported by a showing of financial hardship, the court may convert some or all of the monetary penalty to community restitution pursuant to the procedure established in RCW 7.80.130(2), provided that the community restitution is performed for the purposes of graffiti abatement. Any penalties, restitution, and other costs ordered pursuant to this Section 10.62.055 that go unpaid may be referred to a collection agency, or the City Attorney may pursue collection in any other manner allowed by law.

Section 3. The following is provided for reference and may not be complete:

EMC Amended by this Ordinance	Ordinance History of EMC Amended by this Ordinance
10.62.010	(Ord. 3074-08 § 1, 2008.)

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. 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.

Section 6. 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 7. 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: _____

Project title: An Ordinance Amending Ordinance No. 4003-24 Entitled Special Improvement Project “Forest Park Pickleball Court Installation”, Fund 354, Program 093, to Accumulate All Costs for the Project.

Council Bill #

CB 2508-42

Agenda dates requested:

Briefing

Proposed Action 8/13/25

Proposed Action 8/20/25

Consent

Action 8/27/25

Ordinance ☒

Public hearing

Yes ☒ No ☐**Budget amendment:**Yes ☒ No ☐**PowerPoint presentation:**Yes ☒ No ☐**Attachments:**Funding Ordinance
Amendment**Department(s) involved:**

Parks & Facilities

Contact person:

Bob Leonard

Phone number:

425-257-8335

Email:

bleonard@everettwa.gov

Initialed by:*RML*

Department head

Administration

Council President

Project: Forest Park Pickleball Court Installation**Partner/Supplier:** TBD**Location:** 802 E. Mukilteo Blvd, Everett**Preceding action:** Ordinance [4003-24](#)**Fund:** Fund 354, Program 093 (CIP-3)**Fiscal summary statement:**

The proposed Ordinance will provide funding for the construction support services and the construction costs for the Forest Park Pickleball Court Installation.

The source of funds for this project is Fund 354, Program 093 (CIP 3). All related construction support services and the construction costs are estimated at \$1,320,000.

The Parks & Facilities Department has been awarded a Local Community Project Grant from the state in the amount of \$334,650 to help fund the project.

Project summary statement:

The City of Everett and the Mukilteo Everett Pickleball Club will partner in the planning, design and construction of Everett’s first multiple court outdoor recreational facility dedicated solely to pickleball the fastest growing sport, as all ages and abilities are able to play.

The project scope includes the replacement of approximately thirty underutilized covered horseshoe pits and related structures and storage outbuildings. The two existing multi-use sport courts will be renovated to complement the new pickleball facility and expand opportunities for basketball and hockey. The proposed new facility will add eight paved dedicated pickleball courts. Additional enhancements include related sport fencing, energy-efficient site lighting, drinking fountain, benches, new horseshoe pits, added cornhole, landscape and stormwater treatment.

Recommendation (exact action requested of Council):

An Ordinance amending Ordinance No. 4003-24 entitled a Special Improvement Project “Forest Park Pickleball Court Installation”, Fund 354, Program 093, to accumulate all costs for the project.



ORDINANCE NO. _____

An Ordinance Amending Ordinance No. 4003-24 Entitled Special improvement Project “Forest Park Pickleball Court Installation”, Fund 354, Program 093, to accumulate all costs for the project.

WHEREAS,

- A. The City Council recognizes the need to maintain and improve City Parks.
- B. The City Council recognizes the value and need to provide Everett residents and visitors with recreation spaces.
- C. The City recognizes that many park amenities have reached the end of their useful life and require replacement and renovation.
- D. Additional funding is required to complete construction support services and construction.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 4 of Ordinance No. 4003-24 which reads as follows:

The sum of \$250,000 is hereby appropriated to Fund 354, Program 093, “Forest Park Pickleball Court Installation” project.

A. Use of Funds

Design and Permitting	<u>\$250,000</u>
Total	\$250,000

B. Source of Funds

CIP 3	<u>\$250,000</u>
Total	\$250,000

- 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.

Be and the same is hereby amended to read as follows:

The sum of the increased amount \$1,070,000 is hereby appropriated to fund 354, Program 093, “Forest Park Pickleball Court Installation” project.

A. Use of Funds

Design & Permitting	\$ 250,000
Construction & Construction Support Services	<u>\$1,070,000</u>
Total Costs	\$1,320,000

B. Source of Funds

Fund 354 - CIP-3	\$ 985,350
Washington State Commerce Grant	<u>\$ 334,650</u>
Total	\$1,320,000

- 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.

Section 5. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 6. 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.

Section 7. 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: _____

Project title:

An Ordinance Creating a Special Improvement Project Entitled “Lion’s Park Lighting Project”, Fund 354, Program 106, to Accumulate All Construction Costs for the Project

Council Bill #

CB 2508-43

Agenda dates requested:

Briefing

Proposed Action 08/13/2025

Proposed Action 08/20/2025

Consent

Action 08/27/2025

Ordinance ☒

Public hearing

Yes ☐ No ☒

Budget amendment:

Yes ☐ No ☒

PowerPoint presentation:

Yes ☐ No ☒

Attachments:

Funding Ordinance

Department(s) involved:

Parks & Facilities

Contact person:

Bob Leonard

Phone number:

425-257-8335

Email:

bleonard@everettwa.gov

Initialed by:

RML

Department head

Administration

Council President

Project: Lion’s Park Lighting Project

Partner/Supplier: TBD

Location: 7530 Cascade Drive, Everett

Preceding action: None

Fund: Fund 354, Program 106(CIP-3)

Fiscal summary statement:

The proposed Ordinance will provide funding for the permitting and construction costs for the Lion’s Park Lighting Project.

The City will receive \$120,000 from Snohomish County REET2 Funds and an additional \$25,000 provided by Council Member Zarlingo from the Covid Recovery fund allocation.

All related permitting, and construction costs are estimated at \$145,000.

Project summary statement:

The project will add up to six (6) additional lights with controls at Lions Park to improve visibility throughout the park after closing hours. The lighting control system will allow the lights to go to 100% when a person is in the vicinity and then return to 25% after 10 minutes of no activity.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled “Lion’s Park Lighting Project”, Fund 354, Program 106, to accumulate all construction costs for the project.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled, “Lion’s Park Lighting Project”, Fund 354, Program 106, to accumulate all construction costs for the project.

WHEREAS,

- A.** The City Council recognizes the need to maintain and improve City Parks.
- B.** The City Council recognizes the value and need to provide Everett residents and visitors with recreation spaces.
- C.** The City Council recognizes the need for increased lighting and visibility in Lion’s Park.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project fund is hereby entitled “Lion’s Park Lighting Project”, Fund 354, Program 106.

Section 2. 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.

Section 3. The estimated cost of construction is \$145,000.

Section 4. The sum of \$145,000 is hereby appropriated to Fund 354, Program 106, “Lion’s Park Lighting”, project.

A. Use of Funds		
Construction		<u>\$145,000</u>
Total		\$145,000
B. Source of Funds		
Grant--Snohomish County REET2 Funds		\$120,000
Covid Recovery fund		\$ <u>25,000</u>
Total		\$145,000

- 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.

Section 5. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 6. 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.

Section 7. 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: _____



Project title: An Ordinance Closing a Special Improvement Project Entitled “Walter E. Hall Community Amenities”, Fund 354, Program 092, as Established by Ordinance No. 3971-23.

Council Bill #

CB 2508-44

Agenda dates requested:

Briefing

Proposed action 8/13/25

Proposed action 8/20/25

Consent

Action 8/27/25

Ordinance X

Public hearing

Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

Yes X No

Attachments:

Closing Ordinance

Department(s) involved:

Parks & Facilities

Contact person:

Bob Leonard

Phone number:

(425) 257-8335

Email:

BLeonard@everettwa.gov

Initialed by:*RML*

Department head

Administration

Council President

Project: Walter E. Hall Community Amenities**Partner/Supplier:** Great Western (KCDA)**Location:** 1226 W Casino Road, Everett, WA**Preceding action:** Funding Ordinance [3971-23](#)**Fund:** Fund 354, Program 092**Fiscal summary statement:**

The sources of funds for the Walter E. Hall Community Amenities were Capital Improvement Program 3 (CIP-3) in the amount of \$35,000 and a grant from LISC for \$50,000. The project was completed at a total cost of \$67,224.99. All expenses for the project have been paid. Grant reimbursement in the amount of \$50,000 has been received. The remaining balance of \$17,775.01 will be transferred to CIP-3.

Project summary statement:

This project added a new shade structure and site furnishings to Walter E. Hall Park. These amenities provide opportunities for Everett residents and visitors to gather and enjoy a picnic area at the park. These additions are supported by the Walter E. Hall Park Master Plan as well as partners within the community.

All work has been completed to the satisfaction of the Parks and Facilities Department.

Recommendation (exact action requested of Council):

Adopt an Ordinance closing a Special Improvement Project entitled “Walter E. Hall Community Amenities”, Fund 354, Program 092, as established by Ordinance No. 3971-23.



ORDINANCE NO. _____

An ORDINANCE closing a special improvement project entitled “Walter E. Hall Community Amenities”, Fund 354, Program 092, as established by Ordinance No. 3971-23.

WHEREAS,

- A.** The Parks special improvement project “Walter E. Hall Community Amenities”, Fund 354, Program 092, was established to accumulate all costs for the improvement project.
- B.** The purpose of the special improvement project has been accomplished.
- C.** There are neither outstanding obligations of the fund to be paid nor uncollected revenues to be received.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. That the project entitled “Walter E. Hall Community Amenities”, Fund 354, Program 092, be closed.

Section 2. That the final revenues and expenses for the “Walter E. Hall Community Amenities”, Fund 354, Program 092, are as follows:

REVENUES

LISC Grant	\$50,000.00
Fund 354 – CIP 3	<u>\$35,000.00</u>
Total	\$85,000.00

EXPENSES

Construction	\$67,224.99
Transfer Out to CIP 3	<u>\$17,775.01</u>
Total	\$85,000.00

Section 3. That the remaining balance of \$17,775.01 be transferred to CIP 3.



Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. 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.

Section 6. 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 7. 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: _____

EFFECTIVE DATE: _____



Project title:

An Ordinance Creating a Special Improvement Project Entitled “Lion’s Park Skate Dot”, Fund 354, Program 098, to Accumulate All Design, Permitting and Construction Costs for the Project in the Amount of \$360,000

Council Bill #

CB 2507-40

Agenda dates requested:

Briefing

Proposed Action 7/23/25

Proposed Action 8/06/25

Consent

Action 8/13/25

Ordinance ☒

Public hearing

Yes ☒ No ☐

Budget amendment:

Yes ☒ No ☐

PowerPoint presentation:

Yes ☒ No ☐

Attachments:

Funding Ordinance

Department(s) involved:

Parks & Facilities

Contact person:

Bob Leonard

Phone number:

425-257-8335

Email:

bleonard@everettwa.gov

Initialed by:

RML

Department head

Administration

Council President

Project: Lion’s Park Skate Dot

Partner/Supplier: N/A

Location: 7530 Cascade Drive, Everett

Preceding action: None

Fund: Fund 354, Program 098 (CIP-3)

Fiscal summary statement:

The proposed Ordinance will provide funding for the design, permitting, and construction costs for the Lion’s Park Skate Dot feature.

The source of funds for this project is Fund 354, Program 098 (CIP 3) and a grant in the amount of \$80,000 from Snohomish County REET 2 Funds. REET 2 funding from Snohomish County is a reimbursable grant that will be paid back into CIP-3 after the project is completed.

All related design, and permitting, and construction costs are estimated at \$360,000.

Project summary statement:

The City of Everett will construct a first-of its-kind Skate Dot within Lion's Park. This innovative Skate Dot strategy will maximize available resources by distributing a fun and challenging skate opportunity within an existing park and green space. In doing so we will help meet the ever-growing popularity of skating. At approximately 2,000 square feet, the Skate Dot will include a small half pipe, small quarter pipe and grinding curb and 150 lineal feet of dedicated meandering skate sidewalk.

Recommendation (exact action requested of Council):

Adopt an Ordinance creating a Special Improvement Project entitled “Lion’s Park Skate Dot”, Fund 354, Program 098, to accumulate all design, permitting and construction costs for the project in the amount of \$360,000.



ORDINANCE NO. _____

An ORDINANCE creating a special improvement project entitled, “Lion’s Park Skate Dot”, Fund 354, Program 098, to accumulate all design and permitting and construction costs for the project.

WHEREAS,

- A.** The City Council recognizes the need to maintain and improve City Park amenities.
- B.** The City Council recognizes the value and need to provide Everett residents and visitors with recreation spaces.
- C.** The City Council recognizes the need for more community access to skating amenities within the park system.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A special improvement project fund is hereby entitled “Lion’s Park Skate Dot”, Fund 354, Program 098.

Section 2. 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.

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

Section 4. The sum of \$360,000 is hereby appropriated to Fund 354, Program 098, “Lion’s Park Skate Dot”, project.

A. Use of Funds		
Design, Permitting & Construction		<u>\$360,000</u>
Total		\$360,000
B. Source of Funds		
CIP 3		\$280,000
Grant--Snohomish County REET2 Funds		<u>\$ 80,000</u>
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.

Section 5. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 6. 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.

Section 7. 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: _____





EVERETT CITY COUNCIL
Public Comment Form

A+ #10

Thank you for being here today. Please fill out this form to speak at the council meeting.

State your name and city of residence when you begin speaking. Each person is asked to limit comments to three minutes. This allows everyone a fair opportunity to speak. Return this form to the council administrator before the meeting begins.

The following comments are not allowed:

- Comments on any kind of campaigning, whether for or against ballot measures or candidates running for office
- 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.

City staff may wish to contact you for follow up, therefore, your contact information is appreciated.

DATE: August 13, 2025

NAME (required): Brandon Isleib

CITY (required): Everett, WA

ZIP (required): 98201

EMAIL (optional): earthdyedred@gmail.com

PHONE (optional): 334-593-7771

DISTRICT (circle one): 1 2 3 4 5 Not sure Don't live in city

Is your topic on today's agenda?

☒ YES – the comment period will follow the agenda item

AGENDA ITEM #: (10) CB 2507-41 (graffiti tagging)

☐ NO – speak during general public comment, topic you would like to speak on:

ORDINANCE NO. _____

An ORDINANCE relating to a new civil cause of action against graffiti taggers for illegal graffiti on public and private property and requiring restitution, amending and adding a new section to chapter 10.62 EMC.

WHEREAS,

- A. Illegal graffiti on public and private property is a significant public nuisance.
- B. Proliferation of illegal graffiti across Everett causes substantial public blight.
- C. In 2024, illegal graffiti was reported at many City-owned properties, including traffic signs, traffic control stations, parking pay stations, libraries, parks, and public utility facilities.
- D. In 2024, the City spent approximately \$73,987.77 on the abatement of illegal graffiti from public property, after spending approximately \$76,518.86 in 2023.
- E. In 2024, there were a total of sixty-five reports of illegal graffiti provided to the City.
- F. Washington law has long recognized the authority of municipalities to abate public nuisances through civil actions.
- G. Establishing an appropriate civil cause of action in the Everett Municipal Code will allow the City Attorney to bring these civil actions in the Everett Municipal Court.
- H. The intent of authorizing these civil actions is to discourage future illegal graffiti and remunerate the City for the substantial costs of abatement.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 10.62.010 is amended as follows, with underlined text add and strikeout text deleted.

10.62.010 Definitions

The definitions set forth in this section apply throughout this chapter.

- A. “Abate” means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent

as the applicable City department director or designee determines is necessary in the interest of the general health, safety, and welfare of the community.

- B. "Aerosol paint container" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint, dye, or other substances.
- C. "Felt tip marker" means any indelible marker or similar implement, with a tip at its broadest width greater than one-eighth inch, containing anything other than a solution which can be removed with water after it dries.
- D. "Graffiti" means any unauthorized inscription, word, figure, painting, design, label, or other defacement that is marked, etched, scratched, engraved, drawn, painted, sprayed, or otherwise affixed on any surface of public or private property, either natural or manmade; to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance.
- E. "Graffiti stick" or "paint stick" means any device containing a solid form of paint, chalk, wax, epoxy, or other substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-sixteenth of an inch in width.
- F. "Graffiti tagger" means any person or entity who applies illegal graffiti to public or private property, or who assists or encourages another person or entity to do the same.
- G. "Graffiti violation" means a single piece of graffiti, including but not limited to a graffiti tagger name or design, in a single location.
- H. "Gum label" means any sheet of paper, fabric, plastic, or other substance with an adhesive backing which, when placed on a surface, is not immediately removable.
- I. "Graffiti implement or paraphernalia" means any aerosol paint container, felt tip marker, graffiti stick or paint stick, gum label, brush, roller, or etching tool or any other device capable of scarring or marking any surface, including but not limited to glass, metal, concrete, or wood; and any piece, design, or scrapbook or drawings illustrating graffiti marks or signs.
- J. "Owner" means any entity or entities having a legal or equitable interest in real or personal property, including, but not limited to, the interest of a tenant or lessee.
- K. "Premises open to the public" means all public spaces, including, but not limited to, streets, alleys, sidewalks, parks, and public open space, as well as private property onto which the public is regularly invited or permitted to enter for any purpose, the doorways and entrances to those buildings or dwellings, and the grounds enclosing them.

- L. "Property" means any real or personal property which is affixed, incidental or appurtenant to real property, including, but not limited to, any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.
- M. "Responsible public agency" means a public owner, the United States of America, the state of Washington, or any other state, and all political subdivisions thereof, a federal, state, or local department or agency, or the director or administrator of a federal, state, or local department or agency who has authority over the public property's maintenance or management. There may be more than one responsible public agency for a particular public property.
- N. "Responsible private party" means a private owner, an entity, a person acting as an agent for a private owner by agreement, a person or entity who has authority over the private property, or a person or entity responsible for the private property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each private owner shall always be a responsible private party for the purposes of this chapter. There may be more than one responsible private party for a particular private property.
- O. "Unauthorized" means without the prior express permission or consent of a responsible public agency or a responsible private party .

Section 2. A new section 10.62.055 .is added to the Everett Municipal Code as follows:

10.62.055 Civil Infraction against graffiti taggers

A. In addition to any other civil or criminal penalties or other remedies authorized by law or equity, a graffiti tagger shall be subject to a civil infraction punishable by a fine of \$250 per illegal graffiti violation, and may further be ordered to make restitution to the Responsible Public or Private Party of costs incurred by the Responsible Public or Private Party, including but not limited to all labor and materials costs of abating the illegal graffiti.

B. It is a complete defense that the graffiti tagger obtained the express permission of the Responsible Public or Private Party prior to applying the graffiti. The graffiti tagger has the burden of establishing this defense by a preponderance of evidence.

C. Restitution imposed pursuant to this Section 10.62.055 is payable immediately. On motion of the graffiti tagger supported by a showing of financial hardship, the court may convert some or all of the monetary penalty to community restitution pursuant to the procedure established in RCW 7.80.130(2), provided that the community restitution is performed for the purposes of graffiti abatement. Any penalties, restitution, and other costs ordered pursuant to this Section 10.62.055 that go unpaid may be referred to a collection agency, or the City Attorney may pursue collection in any other manner allowed by law.

D. Responsibility for Juveniles. Any parent or legal guardian of a juvenile age sixteen or seventeen who is found to have committed a violation of paragraph (A) of this section is liable

for any restitution imposed under paragraph (C) of this section.

Section 3. The following is provided for reference and may not be complete:

EMC Amended by this Ordinance	Ordinance History of EMC Amended by this Ordinance
10.62.010	(Ord. 3074-08 § 1, 2008.)

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. 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.

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Section 7. 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: _____