



Interlocal Agreement with the City of Lake Stevens regarding water transmission line replacement at 91<sup>st</sup> Ave SE.

### City Council Agenda Item Cover Sheet

**Council Bill #**

**Consideration:** Interlocal Agreement with City of Lake Stevens

**Agenda dates requested:**

**Project:** Water Transmission Line Replacement at 91<sup>st</sup> Avenue SE

January 29 2020

**Partner/Supplier:** City of Lake Stevens

Briefing

**Location:** 91<sup>st</sup> Avenue SE, south of 20<sup>th</sup> Street, Lake Stevens WA

Proposed action

**Preceding action:** None

Consent

**Financial summary statement:** Fund 336 – Water & Sewer System Improvement Fund

Action

Fund 336 – Water & Sewer System Improvement Fund \$700,000

Ordinance

Public hearing

Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

Interlocal Agreement

#### Project summary statement:

The City of Lake Stevens is facilitating extending roadway improvements at 91<sup>st</sup> Avenue SE in Lake Stevens for development of a new Costco store taking access from 20<sup>th</sup> Street SE. This proposed access road extension crosses three City of Everett 48" Water Transmission Lines.

The City of Everett asserts property rights in the form of easements pertaining to the protection of our Water Transmission Line corridor and actively maintains the corridor. This critical infrastructure serves to transport drinking water from Everett's watershed and Water Filtration Plant to over 625,000 residents. The City of Everett requires a Transmission Line Right of Way Use Permit for any work within the corridor.

**Department(s) involved:**

Public Works, Legal, Admin

This interlocal agreement allows for the City of Lake Stevens to reconstruct approximately 125 LF of each of the three Water Transmission Lines in this corridor. This work is required to raise the Water Transmission Lines to a new profile so that they are not negatively impacted by the fill prism of the Lake Stevens 91<sup>st</sup> Ave SE roadway extension. Work must conform to our Transmission Line Right of Way Use Permit requirements. The City of Lake Stevens will pay for 100% of the cost of the roadway improvements. The City of Lake Stevens and the City of Everett have agreed to a proposed cost share for the Water Transmission Line pipe replacement based on the Present Value of the three transmission lines and the additional extended lifetime of the transmission lines as a result of the project. Construction in 2020 is anticipated.

**Contact person:**

Ryan Sass

**Phone number:**

425.257-8942

**Email:**

rsass@everettwa.gov

**Initialed by:**

Department head

Administration

Council President

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

Authorize the Mayor to sign the Interlocal Agreement with the City of Lake Stevens regarding Water Transmission Line Replacement at 91<sup>st</sup> Avenue SE, in substantially the form provided.

**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF EVERETT AND THE CITY OF LAKE STEVENS REGARDING  
TRANSMISSION LINE REPLACEMENT AT 91<sup>ST</sup> AVE SE**

This Interlocal Agreement (this “*Agreement*”) is dated for reference purposes \_\_\_\_\_, 2019, and is between CITY OF EVERETT (“*Everett*”) and CITY OF LAKE STEVENS (“*Lake Stevens*”) (individually a “*Party*” and collectively the “*Parties*”), pursuant to Chapter 39.34 RCW and other applicable law.

**RECITALS**

A. Everett’s regional water system provides water to about 75% of Snohomish County, which is approximately 640,000 people, including Lake Stevens. Everett’s water transmission lines number two, three, and four run in a corridor through a portion of Lake Stevens. Each of the four pipelines is about four feet across and can each carry about 50 million gallons per day.

B. Lake Stevens intends to construct a road project improving 91<sup>st</sup> Ave. SE by extending this local collector roadway south to intersect with 24<sup>th</sup> Street SE. This project crosses the transmission line corridor. This project is generally described in the attached Exhibit A (the “*91st Ave Project*”). The estimated cost of the 91st Ave Project is \$8,000,000.00.

C. The Parties have agreed that Lake Stevens’ contractors will construct certain work related to the transmission lines. This work is schematically shown in the attached Exhibit B. As set forth in Section 1 of this Agreement, this transmission line work will be paid 43% by Lake Stevens, and 57% by Everett. The estimated total cost of this transmission line work is shown in the attached Exhibit C.

D. The Parties agree it is in the public’s best interest to extend the road and replace the transmission lines contemporaneously to save money and resources and to ensure the regional water supply is protected.

E. In addition, Everett will issue to Lake Stevens a Transmission Line Right of Way Use permit giving Everett’s permission for Lake Stevens’ 91st Ave Project across the transmission line corridor described in easements of record with Snohomish County. The permit sets forth certain terms and conditions relating to construction near the transmission lines and other matters related to the 91st Ave Project (the “*91st Ave Use Permit*”). The 91st Ave Use Permit is set forth in Exhibit D attached hereto. The 91st Ave Use Permit is conditioned on the full execution of this Agreement.

F. Subject to this Agreement and the 91st Ave Use Permit, Lake Stevens will be the lead agency responsible for design, permitting and construction for the 91st Ave Project and the Transmission Line Work.

NOW, THEREFORE, pursuant to RCW 39.34 and other applicable law, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, covenants, conditions, and performances contained herein, and the attached Exhibit A, Exhibit B, Exhibit C, and Exhibit D, that are incorporated herein by this reference,

**IT IS MUTUALLY AGREED AS FOLLOWS:**

**SECTION 1 91<sup>ST</sup> AVE PROJECT AND TRANSMISSION LINE WORK**

A. Project.

1. Plans and Specifications.

(a) Design of the Transmission Line Work. As part of its design contract(s) for the 91st Ave Project, Lake Stevens will select a designer with input and approval from Everett and direct its designer to prepare plans and specifications for the transmission line work in the 91st Ave Project. Lake Stevens will direct the transmission line designer to consult and coordinate with Everett.

(b) Specifications for Transmission Line Work. In addition to other transmission line specifications prepared by the designer, the bid package will contain the following specifications, as provided by Everett, relating to the transmission line work:

- (i) Specifications designating Everett as lead in the coordination, oversight and inspection of transmission line work during construction.
- (ii) Specifications designating Everett to oversee all connection of finished transmission line segments to existing transmission lines. Because this connection process requires shutdown of entire transmission lines, this connection must occur at specific times and must be completed in a matter of hours. The specifications will include Everett oversight of when the connection work can occur, the duration of the connection work, the inspection of the connections, and oversight of the contractor. Because connection work must occur within a tight time-window measured in hours, the specifications will include liquidated damages provisions if the connection time-window is missed by the contractor.

2. Design Review. Everett and Lake Stevens will provide review and comment on the plans and specifications for the transmission line work in the 91st Ave Project on the following schedule:

Design Milestone	Milestone Deadline
Task A: 60% plans and specifications for transmission line work are available for comment	8 weeks after ILA
Task B: Comments due on 60% plans and specifications for transmission line work	2 weeks after 60% submittal (Task A)
Task C: 90% plans and specifications for transmission line work are available for comment	5 weeks after 60% submittal (Task B)
Task D: Comments on 90% plans and specifications for transmission line work	3 weeks after 90% submittal (Task C)
Task E: Everett provides to Lake Stevens approval of final transmission line plans and specifications for inclusion in Lake Stevens' 91st Ave Project bid package	10 weeks after 90% submittal (Task C)

All portions of the table above may be adjusted by written agreement between the Directors of Public Works of Everett and Lake Stevens or their designees. For this Agreement, the final plans and specifications for transmission line work approved by Everett are the "***Final Transmission Line Project Plans and Specifications***." For this Agreement, the term "***Transmission Line Work***" refers to all construction, materials, labor and other activities and items necessary to complete all work and improvements in accordance with the Final Transmission Line Project Plans and Specifications.

3. Everett Approval of Final Plans. Lake Stevens will provide the final project plans and specifications for the 91st Ave Project and the Transmission Line Work to Everett at least 30 days before the 91st Ave Project and Transmission Line Work are advertised for bid. Lake Stevens will not start construction unless Everett's Public Works Director or his designee has approved in writing such project plans and specifications. This approval will not be withheld so long as such plans and specifications include the Final Transmission Line Project Plans and Specifications and are in accordance with this Agreement and the 91st Ave Use Permit.

B. Permitting.

1. Lake Stevens will be the lead agency responsible for review and approval of permitting including but not limited to SEPA review, land disturbance and civil construction drawings in coordination with affected agencies and interested parties

2. Lake Stevens will apply for and obtain any necessary permits to allow for construction of the 91st Ave Project and the Transmission Line Work. Everett will fully cooperate with Lake Stevens in obtaining such permits.

C. Procurement.

1. Construction Contract Award (Single Contract). If Lake Stevens determines that the 91st Ave Project and Transmission Line Work will be awarded in a single contract, then Lake

Stevens will call for bids and execute a construction contract in accordance with the Lake Stevens' usual procurement processes and in accordance with the following:

(a) The 91st Ave Project bid package and contract will include the Final Transmission Line Project Plans and Specifications for the Transmission Line Work. The Transmission Line Work will be a separate bid schedule in the 91st Ave Project bid package. The bid package will inform bidders that the bid award will be determined based upon bidders' total bid amounts for the entire 91st Ave Project, including the Transmission Line Work.

(b) Everett may require inclusion of the supplemental responsibility criteria regarding contractor experience in transmission line or similar work for the Transmission Line Work. If so, Everett will provide the criteria for inclusion in the 91st Ave Project bid package. The criteria will allow a bidder to meet the criteria either through the experience of the bidder itself or by the experience of the bidder's designated transmission line subcontractor.

(c) The construction contract will contain a provision requiring Everett be added as an additional insured on the contractor's required liability insurance policies.

(d) The construction contract will contain a clause acceptable to Everett that assigns all contractor's and manufacturer's warranties related to the Transmission Line Work to Everett.

2. Construction Contract Award (Two Contracts). If Lake Stevens determines that the 91st Ave Project and Transmission Line Work will be awarded as two separate contracts, then Lake Stevens will call for bids and execute construction contracts in accordance with the Lake Stevens' usual procurement processes and in accordance with Sections 1.C.1(b)-(d) above.

3. No Obligation to Award. Lake Stevens may reject all bids or otherwise determine to not proceed with a construction contract for the 91st Ave Project at Lake Stevens' sole discretion. However, if Lake Stevens awards the 91st Ave Project, it must also award the Transmission Line Work in accordance with this Agreement.

#### D. Construction

1. Lake Stevens shall complete the 91st Ave Project and all Transmission Line Work, in accordance with the Final Transmission Line Project Plans and Specifications and in accordance with the 91st Ave Use Permit. Lake Stevens will designate Everett as lead in the coordination, oversight and inspection of Transmission Line Work. Lake Stevens will substantially complete the Transmission Line Work no later than the date of substantial completion of the 91st Ave Project.

2. Everett will be invited to attend all construction meetings that involve the Transmission Line Work. Everett will manage all connections to the transmission lines and the operational coordination, including when the work can occur, the duration of the work, the inspection of the connections, and oversight of the contractor.

3. Lake Stevens shall not execute change orders for the Transmission Line Work without Everett's prior written approval, which Everett will not unreasonably withhold, delay or condition.

4. Lake Stevens may execute portions of the 91st Ave Project and Transmission Line Work in phases.

E. Completion of Transmission Line Work.

1. Everett may use the Transmission Line Work prior to final inspection and final acceptance as necessary for water operations, expected immediately after connections are made and approved by Everett for use.

2. Upon completion of the Transmission Line Work, Lake Stevens will notify Everett that the Transmission Line Work is ready for final inspection. Everett shall promptly perform a final inspection and provide punch-list items, if any, to Lake Stevens.

3. Upon the completion of such punch-list items and the release of any contractor or similar liens or claims against the Transmission Line Work and the approval by Everett of such completion and release, which approval will not be unreasonably withheld, then: (i) Lake Stevens will accept the Transmission Line Work from the contractor, (ii) the Transmission Line Work is the property of Everett, and (c) Everett has responsibility for the maintenance and operation of the Transmission Line Work.

4. Everett and Lake Stevens will cooperate to execute any documents (such as bills of sale) necessary to document Everett's ownership of the Transmission Line Work. Lake Stevens will transfer to Everett within 30 days after the completion of the Transmission Line Work (i) record drawings (as-built) of the Transmission Line Work and (ii) any contractor or manufacturer's warranties for the Transmission Line Work.

5. After acceptance by Lake Stevens of the Transmission Line Work in accordance with this Agreement, Everett has the exclusive right to determine whether to assert claims against the Transmission Line Work contractor or subcontractors or others with respect to the Transmission Line Work (such as, for example, enforcement of contractor warranties). Everett will bear all its own costs related to such claims. Lake Stevens will cooperate with Everett regarding such claims.

F. Cost Share.

1. Lake Stevens will be responsible for 100% of cost of 91st Ave Project.

2. Everett will reimburse Lake Stevens 57% of all design and construction costs paid by Lake Stevens for Transmission Line Work. This includes 57% of all costs arising from or relating to any claims asserted by construction contractors relating to the Transmission Line Work. In the event of such a claim, the Parties will meet and confer, and Lake Stevens will not settle such a claim without the prior approval of Everett, which will not be unreasonably withheld, delayed or conditioned. Each Party will bear the costs of their own staff.

3. The 57% cost share is based on calculations shown for reference in Exhibit C. However, the 57% share is fixed and not subject to adjustment, regardless of errors than may exist in Exhibit C.

G. Payment.

1. Lake Stevens will invoice Everett for Everett's 57% share of the Transmission Line Work. The Parties anticipate that Lake Stevens will invoice Everett as Lake Stevens makes payments to Transmission Line Work designers and contractors. An invoice will document in reasonable detail the amounts expended by Lake Stevens for Transmission Line Work.

2. Everett agrees to pay each invoice for its 57% of the Transmission Line Work within sixty (60) calendar days from the day it receives an invoice from Lake Stevens. Upon completion and acceptance of the Transmission Line Work and resolution of contractor claims (if any), the Parties will true-up the payments, so that Everett has paid its 57% share of all design and construction costs paid by Lake Stevens for the Transmission Line Work.

H. Right of Entry.

Everett grants Lake Stevens and its authorized agents, contractors, subcontractors, and employees, a right of entry upon the Water Corridor for purposes of the 91st Ave Project and the Transmission Line Work.

SECTION 2: GENERAL PROVISIONS

A. Administration. Each Party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement for the purposes of compliance with RCW 39.34.030. The parties' initial Administrators shall be the following individuals:

<b>City of Lake Stevens</b>	<b>City of Everett</b>
Eric Durpos Public Works Director City of Lake Stevens 1812 Main Street Lake Stevens, WA 98258 (425) 622-9441 <a href="mailto:edurpos@lakestevenswa.gov">edurpos@lakestevenswa.gov</a>	Ryan Sass Public Works Director City of Everett 3200 Cedar St. Everett, WA 98201 425.257-8942 <a href="mailto:rsass@everettwa.gov">rsass@everettwa.gov</a>

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

B. 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.

C. Term of Agreement. Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed.

D. Duration/Expiration. This Agreement expires upon completion of the true-ups set forth in Section 1.G above.

E. Amendment. No amendment to this Agreement will be effective unless in writing and signed by the Mayor of Everett and by an authorized representative of Lake Stevens.

F. Termination:

1 This Agreement may be terminated if both Parties agree, in writing, to terminate the Agreement. This termination must be signed by the Mayor of Everett and by an authorized representative of Lake Stevens.

2. This Agreement shall be terminated upon (ii) completion and final inspection and acceptance of the Transmission Line Work by the Parties as set forth in Section 1.E above, and (c) completion of the true-ups set forth in Section 1.G above.

3 The termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

G. Indemnification and Waiver. Each of the Parties shall protect, defend, indemnify, and hold harmless the other Party and its employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgements, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, that Party's negligence or breach of obligations performed or to be performed pursuant to the provisions of this Agreement. No Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the Parties and their employees, contractors, consultants, or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the other Party, its employees, contractors, consultants, and authorized agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

H. Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties agree to negotiate to resolve any issues. Should such negotiations fail to produce a satisfactory resolution the Parties shall proceed to mediation, using a mutually agreeable mediator. Each Party shall be responsible for its own costs and fees and agree to share equally in the cost of the mediator.

I. Venue. In the event that either Party deems it necessary to institute legal action or

proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought exclusively before the Snohomish County Superior Court.

J. Attorney's Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorney's fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

K. Severability. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

L. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (i) personal delivery to the address stated below; (ii) first class postage prepaid U.S. Mail to the address stated in Section 2.A above; or (iii) nationally recognized courier to the address stated below, with all fees prepaid.

M. Compliance with the Washington State Public Records Act. The parties acknowledge they are subject to the Public Records Act, chapter 42.56 RCW. Both parties shall cooperate with each other so that each may comply with all of its obligations under the Public Records Act.

M. Recording of this Agreement. This Agreement shall be recorded or otherwise made available to the public in accordance with RCW 39.34.040.

N. Complete Agreement. Except for the 91st Ave Use Permit, this Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

O. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

P. No Third-Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement. No other persons have any rights or remedies under this Agreement.

Q. No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

R. City of Everett Rights in the Water Corridor. This Agreement is solely for the 91st Ave Project. Everett reserves all its rights relating to its transmission line corridor, including without limitation those rights pursuant to easements granted to Everett and rights pursuant to the State Environmental Policy Act and any other applicable law.

Dated as of the reference date set forth above:

**CITY OF EVERETT**

By: \_\_\_\_\_  
Cassie Franklin, Mayor

Date: \_\_\_\_\_

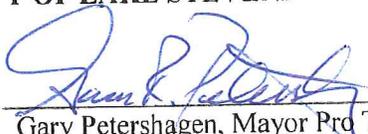
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

ATTEST:

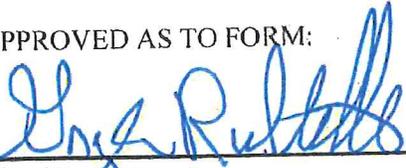
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City Clerk  
Date: \_\_\_\_\_

**CITY OF LAKE STEVENS**

By:   
Gary Petershagen, Mayor Pro Tem

Date: 12-30-19

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
Date: 12/27/19

ATTEST:

  
\_\_\_\_\_  
City Clerk  
Date: 12/30/2019

**EXHIBIT A**

**91<sup>ST</sup> AVE PROJECT**

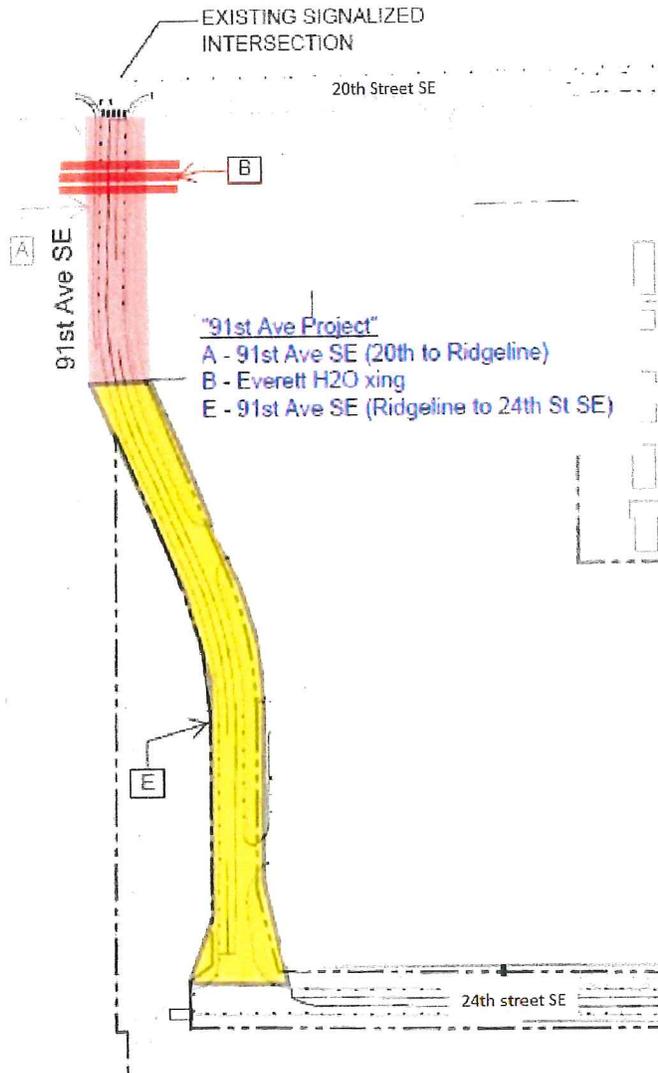
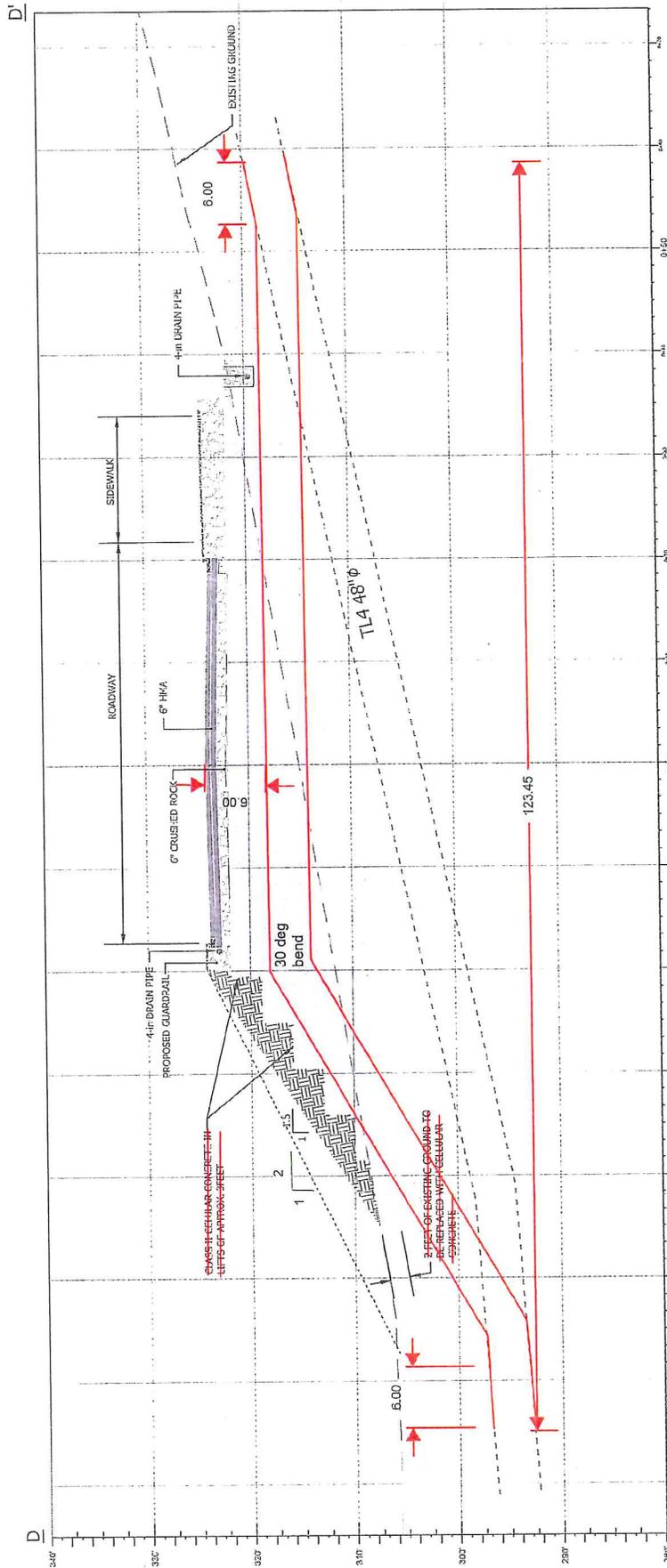


EXHIBIT B



\* NOTE: LAKE STEVENS UTILITIES CROSSINGS WILL BE LOCATED BELOW TRANSMISSION LINE. MINIMUM SEPARATION SHALL BE 18".

- GENERAL NOTES:
1. PROPOSED CONCEPTUAL CROSS-SECTION (ACTUAL GEOMETRY MAY VARY BASED ON CONTRACTOR MEANS AND METHODS).
  2. LOCATIONS AND DEPTHS OF PIPELINES ARE INFERRED FROM POT-HOLING INFORMATION.
  3. 4-INCH DIAMETER, SCHEDULE 40, PERFORATED, PLASTIC DRAIN, THE SUB-DRAIN PIPE DISCHARGE SHOULD BE TIGHT LINED TO A SUITABLE OUTFLET TO THE SOUTH.

SCALE 10V:10H

	<b>HWA GEOSCIENCES INC.</b>	24TH STREET SE AND 91ST AVENUE SE EXTENSION PROJECT 91ST AVENUE CROSSING LAKE STEVENS, WASHINGTON	SECTION D-D' CONCEPTUAL CELLULAR CONCRETE FILL DETAIL	DRAWN BY: <b>ES</b> CHECK BY: <b>ES</b> DATE: 04.02.2018	FIGURE NO. <b>4C</b> PROJECT NO. 2017-039-21 TASK 100-1400
			BASE MAP PROVIDED BY: LOTMIER S20017 PROJECT 18007-039-21 24TH STREET FINAL DESIGN/CD/HWA 2017-09-21 TASK 100-1400.DWG 49g (Station D-D' - Refer: 49B010) 1:05 5/4		

EXHIBIT C

Cost Sharing - Replacement and Relocation of Everett Transmission Lines Due to Extension of 91st Ave SE by Lake Stevens				
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	TL2	TL3	TL4	Total
<i>Background Data:</i>				
Capital Cost Estimate (2020 dollars)	\$ 302,000	\$ 302,000	\$ 302,000	\$ 906,000
Pipe Material	Concrete	Steel	Concrete	
Date of Original Construction	1993	1936	1960	
Age in 2020 (Yrs)	27	84	60	
<i>Tentative agreement: share cost based on remaining life of transmission lines (TLs).</i>				
<b>Everett Analysis of Cost Share:</b>				
Assumed Total Useful Life (Yrs)	100	100	100	
Remaining Useful Life (Yrs)	73	16	40	
<b>Everett Cost Share:</b>				
Present Value of Construction	\$ 302,000	\$ 302,000	\$ 302,000	\$ 906,000
Remaining Useful Life	73	16	40	
Present Value - Everett Cost Share	\$ 81,540	\$ 253,680	\$ 181,200	\$ 516,420
Everett % of Total	27%	84%	60%	57%
Present Value - Lake Stevens Cost Share	\$ 220,460	\$ 48,320	\$ 120,800	\$ 389,580
Lake Stevens % of Total	73%	16%	40%	43%
Reconciliation	\$ 302,000	\$ 302,000	\$ 302,000	\$ 906,000

Lochner / Murraysmith Design Contract, Supplement 3

- All Tasks of the Supplement 3 Murraysmith (transmission line subconsultant) scope of work fees (since they pertain directly to the Transmission Line portion of the work) are eligible for cost share per the percentages indicated above.
- Task 2 (Tasks 2.1 through 2.3) of the Lochner Supplement 3 Scope of Work fees (pertain to the Transmission Line relocation design) are eligible for cost share per the percentages indicated above.
- Task 3 and Task 4 of the Lochner Supplement 3 Scope of Work fees (pertain to roadway design) are NOT eligible for cost share.
- Task 1 and Task 5 of the Lochner Supplement 3 Scope of Work fees pertain to both transmission line and roadway work. 10% of the total of the Task 1 and Task 5 fees pertain to transmission line work and are eligible for cost share.  
Example: Everett cost share = 0.10 \* 0.57 \* Task 1 and Task 5 Lochner fees



CITY OF EVERETT  
Public Works

3200 Cedar Street, Everett, WA 98201

**Exhibit D**

**TRANSMISSION LINE ROW USE PERMIT**

11 December 2019

City of Lake Stevens Public Works  
Attn: Grace Kane  
1812 Main Street, Lake Stevens, WA 98258

**Re: Permit 2019-04 for Lake Stevens' crossing at 91<sup>st</sup> and 20<sup>th</sup> St SE**

Dear Ms. Kane:

The City of Everett Public Works Department has reviewed your right-of-way use application for the Lake Stevens crossing at 91<sup>st</sup> Ave SE and 20<sup>th</sup> St SE. The work will be allowed under the following conditions:

**Conditions of Easement Use**

1. This permit is being issued with the understanding that the final plan set has not been approved at this time. Prior to the start of any work the scope of work and plans must be approved by the City of Everett. An approved plan set must be onsite during all work relating to this project. Further conditions for this project are outlined in the project specific Interlocal Agreement between the City of Lake Stevens and the City of Everett.
2. Notify City of Everett Water personnel at least three (3) working days prior to the beginning of work. Contact Jim Spooner (425) 257-8827 or Scott Nielsen at (425) 238- 4421.
3. No work may be performed prior to submission of all required submittals and their acceptance by the City. Submit a written description of the work to be performed along with a plan view and scope of work description. Jim Spooner will coordinate with you regarding submittal needs.
4. The City of Everett requires that the Applicant provide a copy of the permit to any contractor(s) performing the work within the City's property/easement and ensure that the contractor complies with the permit.
5. These conditions of use must be acknowledged and accepted by the Applicant and Contractor prior to the beginning of work on City property or easement.

6. The Applicant is responsible for obtaining and compliance with all state, county and federal permits and environmental regulations: any omissions, penalty, or fines for non-compliance are solely the responsibility of the Applicant.
7. The Applicant has full responsibility for compliance with all safety rules and regulations. The presence of the City representative in no way implies City liability for the activities of the Applicant and Contractor while working on City property or easement.
8. The Applicant and Contractor will defend, indemnify, save and hold the City of Everett harmless for any claim, lawsuit, action, or judgment arising from, or relating to, its work on city property or easement.
9. Any party doing work within the City's property/easement shall maintain commercial general liability insurance coverage during the term of this permit with one million dollars (\$1,000,000) combined single limits, and no less than two million dollars (\$2,000,000) in the annual aggregate, which insurance shall be primary and non-contributing. Applicant shall ensure the City is endorsed as an additional insured on the policy. Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. They shall not be construed to limit the liability of Applicant, Contractor or any insurer for any claim that is required to be covered hereunder. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability, whether those limits are primary, excess, contingent or otherwise. Applicant shall provide the City evidence of coverage and endorsement prior to commencement of any work.
10. All activities and work on the City property/easement must conform to the current City of Everett Transmission Line Standards to include all utility crossings (attached w/permit).
11. The City's Representative must be notified (3 working days prior to) of all entrances onto city property or easement. No entrance shall be made without prior notice. A City representative shall be onsite during all work, unless otherwise approved by the City's Representative. The City's Representative is authorized to stop work at any time if in their sole discretion they feel that the pipeline(s) are at risk.
12. Construction vehicles or equipment may use a portion of the City easement as designated by the City's Representative but must not stage or park on top of the pipelines or within 10 feet of any pipeline. City crews must have access to the easement at all times.
13. In case of a maintenance need or emergency involving City facilities, or for any other need as determined by the City, the City use and needs will supersede any and all conditions of this Right of Way Use Permit. This may include suspension of Applicant and Contractor activities on the City property or easement and return of the full use of the property or easement to the City of Everett. Loss of service or costs incurred by the Applicant and Contractor as a result of City maintenance, emergencies, or need are the risk of the use of this site and will be borne by the Applicant.

14. For repairs or emergency access to the pipelines and easement the City at any time will occupy the easement (without prior notice) and the Applicant and Contractor use of the easement will be suspended until City work is completed.
15. Following any repairs and emergency access to the pipeline by the City, the City will restore the area to the condition that existed prior to the city's work. The Applicant's facilities are installed at the Applicant's risk - should the Applicant's facilities be impacted by City work or by a third party the Applicant will be responsible for replacement of the Applicant's facilities at the Applicant's sole cost.
16. The Applicant, his contractors and sub-contractors accept full responsibility and agree to pay for any damage to City facilities, loss of service, and loss of revenue resulting from their work upon the property or easement.
17. The Applicant agrees to restore the lands within and adjacent to the City property and/or easement to the conditions that existed prior to the Applicant's and Contractor's work to the satisfaction of the City's representative at the Applicant's sole expense. If the Applicant does not take immediate actions, City forces may remedy the impacts and the Applicant agrees to reimburse the City for all such costs.
18. The Applicant agrees to maintain all installations and facilities at all times. Any damage to the City easement resulting from Applicant's facilities will either be remedied by the Applicant or by the City at the Applicant expense. Water service lines from the customer's side of the meter are considered to be owned by the customer. Should the Applicant or Contractor cause these lines to fail or cause damage to the City easement, the Applicant shall be solely responsible for the repair or correction for any and all damages.
19. Lack of compliance with any condition of this permit will result in a suspension of right-of-way use and/or the cancellation of this permit.
20. In matters pertaining to protection of City facilities the City shall have the final word.
21. The Applicant and Contractor will carry out their work in such a way as to minimize to the extent possible any impacts to the City's property and/or easement and will restore the work area to include at minimum the following:
  - A. All woody debris will be cut up or chipped or removed, at the expense of the Applicant so as not to leave piles or obstructions within City's property or right-of-way easement.
  - B. All bare dirt will be covered with straw and reseeded within 24 hours of the completion of work.
  - C. Drainage courses shall not be altered or adversely impacted.
  - D. Parking, staging, or any use of the City's right-of-way easement or property will be supported by a gravel fill and compacted suitable to not to cause damage or rutting. Site must be left in better condition than prior to use as determined by City's Representative.



22. The Applicant, his contractor and sub-contractors accept full responsibility and agree to pay for any damage to City facilities or property or damage to the property of others who may be adversely impacted by this work.

Permit Issued By:



Grant Moen, PE  
Maintenance Superintendent  
City of Everett Public Works

Acknowledged and Accepted by:



Sign and Print Name  
Owner/Applicant

Dated: 12/20/19

\_\_\_\_\_  
Sign and Print Name  
Contractor

Dated: \_\_\_\_\_

CC: Jim Spooner  
Souheil Nasr

