

Project title: Authorize Mayor to sign a Professional Services Agreement with Shiels Obletz Johnsen Inc.**Council Bill #****Agenda dates requested:**

November 8, 2023

Briefing X
 Proposed action
 Consent
 Action X
 Ordinance
 Public hearing
 Yes X No

Budget amendment:

Yes X No

PowerPoint presentation:

X Yes No

Attachments:

Professional Services Agreement

Department(s) involved:

Administration; Economic Development

Contact person:

Dan Eernisse

Phone number:

425-257-8681

Email:

deernisse@everettwa.gov

Initialed by:*DE*

Department head

Administration

Council President

Consideration: Professional Services Agreement**Project:** Everett Stadium Project**Partner/Supplier:** Shiels Obletz Johnsen, Inc. (SOJ)**Location:** City of Everett**Preceding action:** Joint Resolution of Support for a new Everett outdoor multipurpose stadium: [9/28/22](#)**Fund:** Fund 145**Fiscal summary statement:**

In 2022, the State of Washington awarded eleven cities funds to upgrade community stadiums and fields. The Everett stadium project received the largest grant of \$7.4 million to pay for infrastructure costs associated with providing a facility for the AquaSox that meets Major League Baseball's new standards. Until state funds are made available to offset this expense, Shiels Obletz Johnsen, Inc. (SOJ) will be paid through Fund 145. If Council awards the PSA as recommended, a corresponding budget amendment to Fund 145 will be proposed at an upcoming Council meeting. Once state funds are available, a budget amendment will also be made to reflect this revenue.

Project summary statement:

On [September 28, 2022](#), the City and County passed Joint Resolution No. 22-056 in support of a new Everett outdoor multipurpose stadium. If the City is to execute this stadium project, centralized project management will be necessary. Projects of this size and complexity are beyond the scope of current City staffing. In July, the City executed a \$50,000 professional services agreement with SOJ, which is a Seattle and Portland-based project management firm, with projects such as ShoWare Center, Lumen Field Modernization, Climate Pledge Arena, T-Mobile Park (Safeco Field), FIFA World Cup 2026 Seattle Host City Capital Projects, Seattle Storm Temporary Improvements at Alaska Airlines Arena, Seattle Aquarium Ocean Pavilion, Pike Place Market Renovation and MarketFront. The purpose of the initial agreement was to get the project moving.

Continued project management services will be required as the project moves through the environmental review, site evaluation, project development, and design stages in 2023 and 2024. Upcoming project management services will certainly exceed \$50,000 through 2024. Accordingly, in accordance with Procurement Policy, City staff is bringing forward to City Council a new professional services agreement for \$344,400.

Recommendation (exact action requested of Council):

Authorize the Mayor to Sign the Professional Services Agreement with Shiels Obletz Johnsen, Inc. in the amount of \$344,400 in substantially the form provided.



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is effective as of the date of last signature below and is between the City of Everett, a Washington municipal corporation (*the “City”*), and the person identified as the Service Provider in the Basic Provisions below (“**Service Provider**”). This Agreement includes the Basic Provisions, the attached General Provisions, the attached scope of Work (Exhibit A), and the attached method of compensation (Exhibit B).

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 Service Provider agree as follows:

BASIC PROVISIONS	
Service Provider	Shiels Oblatz Johnsen, Inc.
	1109 First Avenue, Suite 330 Seattle, WA 98101
	ben@sojsea.com
City Project Manager	Dan Eernissee
	2930 Wetmore Avenue Everett, WA 98201
	DEernissee@everettwa.gov
Brief Summary of Scope of Work	Project management for the Everett stadium project
Completion Date	December 31, 2024
Maximum Compensation Amount	\$344,400

BASIC PROVISIONS	
Service Provider Insurance Contact Information	USI Insurance Services NW
	610-362-8130
	Dawna.brosius@usi.com
State Retirement Systems (must answer both questions)	<p>Does Service Provider have 25 or more employees?</p> <p style="padding-left: 40px;">Answer: Yes</p> <p>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?</p> <p style="padding-left: 40px;">Answer: N/A - Service Provider has 25 or more employees</p> <p>“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).</p> <p>“Service Provider Personnel” includes Service Provider employees and owners (such as shareholders, partners or members). If the Service Provider is a sole proprietor, then “Service Provider Personnel” refers to the sole proprietor.</p>
Prior Agreement	City and Service Provider are parties to the prior Professional Services Agreement dated 7.14.2023. That prior agreement is terminated and superseded by this Agreement as of the date of the Mayor’s signature below.

END OF BASIC PROVISIONS

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date of last signature below.

**CITY OF EVERETT
WASHINGTON**

SHIELS OBLETZ JOHNSEN, INC.

Cassie Franklin, Mayor

Signature: _____

Name of Signer: Brad Tong

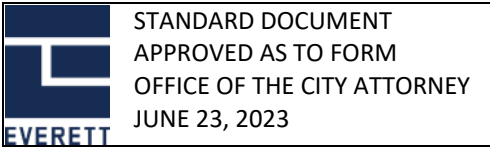
Signer's Email Address: bradt@sojsea.com

Title of Signer: Managing Partner

Date

ATTEST

Office of the City Clerk



ATTACHMENT
PROFESSIONAL SERVICES AGREEMENT
(GENERAL PROVISIONS)

1. **Engagement of Service Provider.** The City hereby agrees to engage the Service Provider, and the Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the Scope of Work. The Scope of Work so identified is hereafter referred to as “Work”. Without a written directive of an authorized representative of the City, the Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Service Provider’s proposal or other document generated by Service Provider is attached or part of any attachment to this Agreement, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of the General Provisions of this Agreement, then the Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and 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 of Everett, belong to the City of Everett. 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 shall be completed by Completion Date stated in the Basic Provisions.
4. **Compensation.**
 - A. The City shall pay the 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. The 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 the 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 the 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, the 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.
6. **Submission of Reports and Other Documents.** The 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") at least fourteen (14) days after the date the Notice is issued. 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, the 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. Notices under this Section 7 shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as email. The City does not by this Section 7 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 the 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 the 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.** To the extent of Service Provider's negligence, breach of this Agreement, or violation of law, or willful misconduct, and except as otherwise provided in this Section 10, the 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. The Service Provider is obligated to defend and indemnify and save harmless the City pursuant to this Section 10 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. The Service Provider's duty to defend and indemnify and save harmless pursuant to this Section 10 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Service Provider. The Service Provider's obligations under this Section 10 shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then the Service Provider's liability under this Section 10 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, the Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The 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 10: (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 the Service Provider pursuant to this Section 10. The provisions of this Section 10 shall survive the expiration or 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 Section 11.A above 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, the Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the 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 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 the 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 the 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 the Service Provider's obligations to fulfill the requirements.
 - F. If the policy listed in Section 11.B.4. 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 11, 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 the 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 the Service Provider, while engaged in the performance of any Work, shall be considered employees of only the Service Provider and not employees of the City. The 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 the 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 the Service Provider and as to all duties, activities and requirements by the 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.** The Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the 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 the 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, the Service Provider shall make available to the City for the City's examination all of the Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, the 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 the 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 ¶18, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the 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 of Everett shall be sent to the City Project Manager address in the Basic Provisions.
 - B. Notices to the 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.** The 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. **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. 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.
32. **Standard Documents.** The Basic Provisions and General Provisions are standard City form documents. No changes by Service Provider are authorized to the Basic Provisions or General Provisions. Notwithstanding anything to the contrary in this Agreement, in the event that the Service Provider makes unauthorized changes to the Basic Provisions or 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 Basic Provisions and General Provisions, regardless of whether the City signs this Agreement in a form that may contain the unauthorized changes.

END OF GENERAL PROVISIONS

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
(SCOPE OF WORK)

The City of Everett requires an outside firm to provide project management, site evaluation, and other services for the proposed development and construction of a multi-purpose park, amphitheater, and minor league baseball stadium within the City of Everett (the “Project”).

The City of Everett has secured state capital funds to conduct the initial feasibility analysis, economic impact, and further due diligence analysis to evaluate alternative locations for the Project. The Project is anticipated to include:

- A park that will provide a wide range of recreational, event, and entertainment options for the Everett community. The vision is of an urban park that complements the existing park system and recreational options, anticipates growth projections in the city, and allows the use of the field except during ticketed events as well as areas of exclusive park use.
- A facility that should be able to be relatively easily converted into an amphitheater seating at concerts, graduations, and events. The vision is for an open-air venue that complements the Angel of the Winds Arena and provides accessible, affordable, and safe outdoor events.
- The stadium will be used by the Everett AquaSox, a professional High A Minor League baseball team currently playing in the Northwest League championship sanctioned by USA Baseball. The vision for the project is an unpretentious 2,800 – 3,200 seat multi-purpose stadium designed for professional baseball. The Stadium will comply with MiLB standards for player development and multi-use activities that may include emergency management, youth sports, concerts, and other events.

So far, two prospective sites have been identified by the City; however, the Project Manager may be asked to expand the analysis to other potential sites.

The City of Everett sees the Project progressing in three phases:

- Phase One (2023-2024):
 - Evaluation of site alternatives, including State Environmental Policy Act (SEPA) review
 - Site evaluation and due diligence, and study of economic impact and market feasibility for site alternatives
 - Determination of Project scope and financial viability for both initial construction and operation and maintenance; development of pro forma sources and uses budgets for both
 - Site selection
 - Confirm necessary funding for site assembly and construction and identify sources of funding for operation and maintenance
 - Preparation for Phases Two and Three
- Phase Two (2024-2025)

- Real Property Acquisition
- Selection of and contract negotiations with the designer, developer/contractor to construct the Project
- Negotiation of AquaSox lease
- Negotiation of legally binding commitments with other public and private parties necessary to fully fund construction and operation, and maintenance (sponsors, naming rights, etc.)
- Design and Permitting of Project
 - Phase Three (2025-early 2027)
 - Project Construction
 - Project ready for AquaSox baseball for the 2027 season.

SCOPE OF WORK: PHASE ONE

This scope of work is for project management, site alternative evaluation, and other services for Phase One of the Project (2023-2024). It is possible that the Project Manager’s contract will be extended to include later phase work.

A. Project Management

The Project Manager will be charged with providing Project leadership. The Project Manager will be the central organizing and driving brain of all parts of the Project. The Project Manager must “own” the Project, understand the critical path(s), and push the Project through Phase One. The Project Manager should not expect to receive detailed direction from the City of Everett. It will be the Project Manager’s responsibility to be the initiator and assign responsibilities to the Project team.

B. Phase One Work

1. Project Team – Early Analysis Support

Provide recommendations for additional areas of expertise and team composition to support the successful implementation of Phase 1. This could include preliminary/conceptual design studies, early environmental work, community outreach, real estate finance, and land use consultation, third-party cost review/estimator, and Sports Market and/or Performance Venue Market Feasibility analysis. Support and manage solicitation, selection, and management of additional consultants as requested.

2. State Environmental Policy Act (SEPA) Process

Shortly after the Project Manager is under contract, the City intends to engage a consultant for the SEPA and EIS processes. The Project Manager will be charged with coordinating and assisting with the selection of the SEPA consultant. The Project Manager will manage the SEPA consultant and will closely coordinate with the City’s SEPA legal counsel.

3. Site Alternative Analysis/Feasibility

The City anticipates that site analysis will require the tasks described below. The Project Manager will be charged with managing the Project so that site analysis is completed. The City expects that most of the tasks will be completed by other consultants, such as the SEPA consultant, whom the Project Manager will manage. The City expects that the Project Manager will identify when additional consultants are necessary to complete the tasks. The tasks below should not be taken as

final, but instead should be taken only as illustrative of the City's general intent. The Project Manager will be expected to revise and reformulate the tasks as necessary to achieve Project goals and timelines and, in close collaboration with the SEPA consultant and SEPA legal counsel, achieve completion of Phase One.

Task I – Site Evaluation and Preliminary Economic Feasibility

1. Size – determine the site size needed to accommodate the facility, which is expected to be approximately 6 – 12 acres. City and Project Manager will initially discuss the project and confirm the acreage necessary for the project.
2. Orientation – determine whether the alternative sites will accommodate the orientation required to meet recommended MiLB specifications along with other multi-purpose stadium functions.
3. Constructability – top-level opinion of site alternatives feasibility to construct the project as envisioned, such as topography, reasonable utility proximity, demolition requirements, parking, transit connections, land acquisition, and public entitlements.
4. Location – are the site alternatives reasonably located relative to the project purpose?
5. Preliminary zoning review – are the sites currently zoned to allow the project?
6. Project Economic Impact – initial direct and indirect economic impacts of project construction and operations with a strong emphasis on long-term placemaking impact on downtown Everett, given the critical and unique role downtown will play in helping the city achieve its long-term growth and sustainability targets.
7. Project Market Feasibility – initial project market analysis to quantify demand, market capacity, and other factors relative to the project's economic feasibility.
8. Other – The City and Project Manager may add/modify the scope and tasks included in Task I.

Task II – Site Due Diligence/Concept Design/Overall Project Feasibility

1. Program Development – with City input, develop a rough design program for the project for each site alternatives in order to provide adequate information to due diligence contractors.
2. Preliminary sources and uses budgets for both construction and operation and maintenance – Develop preliminary total project budget in alignment with proposed funding sources and project schedule.
3. Collaborate with City and Team to partner with other organizations to develop a complete project funding strategy (construction and operation and maintenance).
4. Confirm necessary funding for site assembly and construction and identify viable sources of funding for operation and maintenance.
5. Preliminary schedule development – develop project schedule incorporating City decision-making processes, funding source approval, land acquisition, procurement plan, design, permitting, and construction for each site alternative.
6. Develop stakeholder engagement plan including but not limited to a project charter.
7. Develop procurement plan for designer and developer/contractor for Project.

8. Concept Design – develop draft conceptual project design for each site alternative to depict facility orientation, adjacent development potential, basic facility materiality, operational perspectives, neighborhood connectivity, connectivity to parking facilities and public transportation, and other factors which will be determined in order to depict the project.
9. Other – The City and Project Manager may add/modify the scope and tasks included in Task II.

Task III – Site Feasibility and Economic Impact

1. Parking – provide an initial assessment of parking needs, potential parking inventory development within the site alternatives, and parking assets within a 20-minute walking distance to the site, identifying specific parking types (private, public, garage, surface, etc.), owners, total capacities, other uses that could impact facility event availability (net available) and pricing.
2. Traffic – provide an initial opinion of ingress/egress circumstances, challenges, and likely modifications that could/should be considered for facility operations.
3. Acquisition – provide an initial assessment of land assembly feasibility, including the number of parcels required, owner, historical title transfer/price information, and a rough estimate of land acquisition costs. This task must be done in close cooperation with the City site acquisition legal counsel.
4. Commercial Development – provide an initial opinion of commercial development opportunities within the sites and/or adjacent to the sites.
5. Neighborhood Assessment – provide a description of any adjacent, abutting, or otherwise impacted neighborhoods, communities, districts, or enterprises with an opinion of benefits and/or challenges to the project.
6. Economic Impact – extension of the project’s economic impacts which should be site specific, such as adjacent, ancillary commercial development opportunities and catalytic influence for community redevelopment.
7. Other – The City and Project Manager may add/modify scope and tasks included in Task III.

**EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT
(METHOD OF COMPENSATION)**

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
Ethan Bernau	Partner/Senior Project Manager	\$232/hr
Ben Franz-Knight	Partner/Senior Project Manager	\$252/hr
Julie DeDonato	Project Manager	\$200/hr
Matt Strutynski	Project Controls	\$105/hr
Ken Johnsen	Strategic Advisor	\$300/hr
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.