

**Memorandum of Agreement #15-188-A**  
**Between**  
**The City of Seattle,**  
**The City of Tacoma,**  
**And**  
**The City of Everett**  
**For**  
**Water Shortage Campaign**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Seattle ("Seattle"), acting through its Seattle Public Utilities Department ("SPU"), The City of Tacoma (Tacoma) and The City of Everett ("Everett"), all a municipal corporation of the State of Washington. Seattle, SPU, Tacoma, and Everett may also be referred to in this Agreement as "Party" or, collectively, as "Parties."

**1. RECITALS.**

WHEREAS, SPU has activated its Water Shortage Contingency Plan which calls for public education messaging to reduce water usage among customers; and

WHEREAS, SPU, Tacoma, and Everett have agreed to co-sponsor a water shortage campaign with public service announcements for public education messaging to reduce water usage among customers during activation of their Water Shortage Contingency Plans; and

WHEREAS, this campaign may have multiple segments as the messages become more specific and the demand for decreased water use increases; and

WHEREAS, this Agreement will provide for cost reimbursement to SPU for shared services rendered on behalf of this campaign; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, the PARTIES agree as follows:

**2. TERM OF AGREEMENT.**

The work contemplated by this Agreement began on August 1, 2015. The Parties intend that the commencement date of this Agreement shall be retroactively applied back to that date. This Agreement shall end on March 31, 2016, unless amended by written agreement or terminated earlier pursuant to the provisions hereof.

**3. STATEMENT OF WORK.**

SPU has hired Rich Marketing ("Consultant") to plan, develop, negotiate and finalize ad placements for each TV and Radio station.

SPU shall coordinate these efforts with Tacoma and Everett as it pertains to their ongoing participation in these outreach efforts.

Tacoma and Everett shall be allowed to review and approve all joint messages, strategies and agreed to media buys.

**4. BILLING AND PAYMENT.**

Tacoma and Everett agree to reimburse SPU for a portion of the Water Shortage Campaign including Ad Buys and Consultant costs. The estimated total cost is (\$282,224).

Tacoma and Everett will each reimburse SPU up to the total not to exceed amounts listed below per ad buy.

Agency	1 <sup>st</sup> Ad Buy	2 <sup>nd</sup> Ad Buy	Total
Tacoma	\$13,526	\$28,516	\$42,042
Everett	\$13,526	\$28,516	\$42,042

SPU will invoice at the completion of each ad run. The Parties will make payment within 30 days of receipt of the invoice.

<b>SPU Invoices shall include:</b>	<ul style="list-style-type: none"><li>○ Invoice Date and Invoice Number</li><li>○ The SPU Agreement Manager: Cornell Amaya</li><li>○ Agreement #15-188-A</li><li>○ Agreement Title: Water Shortage Campaign</li><li>○ Period covered by the invoice</li><li>○ Copies of Vendor invoices and/or applicable reports</li></ul>
------------------------------------	---

<b>Tacoma Invoices will be submitted to:</b>	Heather Dewey 3628 S. 35 <sup>th</sup> St. Tacoma, WA 98409
<b>Everett Invoices will be submitted to:</b>	Marla Carter Everett Public Works 3200 Cedar Street Everett, WA 98201

**5. COORDINATION AND REPORTING.**

The principal points of contact for the Agreement are as follows:

Agency	Contact Name	Title	Email
Seattle	Cornell Amaya	Contract Manager & Marketing / Customer Service Liaison	<a href="mailto:Cornell.amaya@seattle.gov">Cornell.amaya@seattle.gov</a>
Tacoma	Nora Doyle	Community Relations Specialist	<a href="mailto:ndoyle@ci.tacoma.wa.us">ndoyle@ci.tacoma.wa.us</a>
Everett	Marla Carter	Public Works Public Information & Education Manager	<a href="mailto:mcarter@everettwa.gov">mcarter@everettwa.gov</a>

**6. NO JOINT UNDERTAKING.**

Nothing in this Agreement shall be construed to make or render the Parties hereto partners, joint ventures or participants in any joint undertaking whatsoever.

**7. SCHEDULE.**

The Parties shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to agree upon an amended schedule if necessary or appropriate, to be effective upon execution of an amendment to this Agreement.

**8. NO THIRD-PARTY BENEFICIARIES.**

This Agreement is entered into solely for the mutual benefit of the Parties hereto. This Agreement is not entered into with the intent that it shall benefit the Parties' agents, assigns, consultants or contractors, and no such other person or entity shall be a third-party beneficiary of this Agreement.

**9. PUBLICATION.**

Each Party may publish the results of the Project, and may acknowledge its respective role in and support of the Project.

**10. INDEMNIFICATION.**

To the extent permitted by applicable law, the Parties mutually release, indemnify, hold harmless and shall defend each other, its officers, employees and agents from and against any and all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Parties' performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the Parties. In furtherance of these obligations, the Parties mutually waives any immunity they may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Parties acknowledge that the foregoing waiver of immunity was mutually negotiated.

**11. ASSIGNMENT.**

This Agreement shall not be assigned in whole or in part by any of the Parties without the prior written approval of the other Parties. The Parties agree that such approval will not be unreasonably withheld.

**12. COMPLIANCE WITH LAW.**

The Parties to this Agreement shall comply with all Federal, State, and local laws and ordinances.

**13. DEFAULT AND TERMINATION.**

Failure to keep or perform any term or condition of this Agreement shall be a default hereunder ("Default"). Upon a Default, the aggrieved Party shall provide written notice to the defaulting Party, specifying the nature of the Default, and the aggrieved Party's intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice. If the defaulting Party fails to cure within the stated period, the aggrieved Party may thereafter terminate this Agreement without any further proceedings. The aggrieved Party will have available to it all remedies provided at law and equity.

**TERMINATION FOR CONVENIENCE**

Each Party may terminate this Agreement upon ten (10) days' prior written notification to the other Party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**14. PARTIES' ABILITY TO TERMINATE DUE TO LACK OF APPROPRIATIONS.**

It is understood that funds for the payment of the services to be provided under this Agreement are allocated out of monies received by the Parties from tax sources and/or other governmental entities, and that funding for the services to be provided under this Agreement may be decreased or eliminated by executive or legislative action. Therefore, the Parties agree that notwithstanding any other provision of this Agreement, if funding for services and/or work provided pursuant to this Agreement is decreased or eliminated, or if in the judgment of the executive or legislative authority of the Parties, continuation of this Agreement would be an unnecessary expenditure of public funds, then the Parties may terminate this Agreement without further obligation to each other after providing written notice of such termination at least thirty (30) days prior to the effective date of termination and documentation of such executive or legislative action.

**15. SEVERABILITY.**

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

**16. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any action brought pursuant to this Agreement shall be in the Superior Court of King County.

**17. AUDIT.**

During the progress of the Project and for a period of no less than three (3) years from the Completion Date, each Party will keep and make available for each other's inspection and audit all records pertaining to the Project, including accounting records. The Parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.

**18. AMENDMENT.**

This Agreement shall not be amended or modified except in writing and signed by all Parties.

**19. ENTIRE AGREEMENT.**

This Agreement and any written Exhibits, Attachments or Amendments thereto, constitutes the complete contractual agreement of the Parties and any oral representations or understandings not incorporated herein are excluded.

**20. WAIVER.**

A failure by Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the Party and attached to the original Agreement.

**21. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their representatives affix their signatures below.

**CITY OF TACOMA**

**THE CITY OF SEATTLE  
SEATTLE PUBLIC UTILITIES**

By Linda McCrea 11/10/15  
Signature Date

By \_\_\_\_\_  
Signature Date

Linda McCrea, Water Superintendent

Karen Reed, Deputy Director  
Corporate Communications

**Approved as to Form:**

By W Fosbre 11-9-15  
Signature Date

**THE CITY OF EVERETT**

William C. Fosbre, Chief Deputy City Attorney

By \_\_\_\_\_  
Signature Date

By [Signature] 11-13-2015  
Signature Date  
Finance Director 

Ray Stephanson, Mayor

**21. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having they representatives affix their signatures below.

**CITY OF TACOMA**

**THE CITY OF SEATTLE  
SEATTLE PUBLIC UTILITIES**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

Linda McCrea, Water Superintendent

Karen Reed, Deputy Director  
Corporate Communications

**Approved as to Form:**

**THE CITY OF EVERETT**

By \_\_\_\_\_  
Signature Date

William C. Fosbre, Chief Deputy City Attorney

By Ray Stephanson 12/2/2015  
Signature Date

Ray Stephanson, Mayor

By \_\_\_\_\_  
Signature Date

Finance Director

APPROVED AS TO FORM

James D. Lee  
JAMES D. LEE, City Attorney

**ATTEST:**

Sharon Cole  
City Clerk

**21. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having they representatives affix their signatures below.

**CITY OF TACOMA**

**THE CITY OF SEATTLE  
SEATTLE PUBLIC UTILITIES**

By \_\_\_\_\_  
Signature Date

By Karen Reed 12-29-15  
Signature Date

Linda McCrea, Water Superintendent

Karen Reed, Deputy Director  
Corporate Communications

**Approved as to Form:**

**THE CITY OF EVERETT**

By \_\_\_\_\_  
Signature Date

William C. Fosbre, Chief Deputy City Attorney

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

Ray Stephanson, Mayor

Finance Director

*Memorandum  
of Agreement*

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

# 15

**PROJECT TITLE:**

Memorandum of Agreement  
#15-188-A between the City  
of Seattle, The City of  
Tacoma and the City of  
Everett for Water Shortage  
Campaign

- \_\_\_\_\_ Briefing
- \_\_\_\_\_ Proposed Action
- \_\_\_\_\_ Consent
- \_\_\_\_\_ Action
- \_\_\_\_\_ First Reading
- \_\_\_\_\_ Second Reading
- \_\_\_\_\_ Third Reading
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Budget Advisory

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Public Works

Marla Carter

425-257-8875

November 25, 2015

Initialed by:

Department Head

CAA

Council President

*db*  
*pr*

Location

Preceding Action

Attachments

Department(s) Approval

Legal, Public Works

Amount Budgeted	\$51,500	
Expenditure Required	\$42,042	Account Number(s):401 5 400 121 907 494
Budget Remaining	\$9,458	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The City of Everett coordinated activation of our Drought Response Plan with the cities of Seattle and Tacoma on July 7, 2015. Public education messaging is an important component of getting the plan information to our customers. Regional coordination of messaging is the most cost effective method. Seattle, Everett and Tacoma agreed to co-sponsor a water shortage campaign with public service announcements for public education to reduce water usage throughout the Puget Sound region. The City's share of the regional campaign is \$42,042.

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

Authorize the Mayor to sign Memorandum of Agreement #15-188-A between the City of Seattle, The City of Tacoma and the City of Everett for a Water Shortage Campaign in the amount of \$42,042.

*Council approved  
11-25-15  
A.P.*