CITY

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (the "***Agreement***") dated and effective as of June 1, 2016, is by and between the CITY OF EVERETT, a Washington municipal corporation (the "***City***") and ARCHDIOCESAN HOUSING AUTHORITY, a Washington non-profit corporation d/b/a Catholic Housing Services of Western Washington ("***Low Barrier Service Provider***").

RECITALS

A. As part of the City's Safe Streets initiative, the City intends to facilitate the construction of a supportive low-barrier housing facility to house chronically homeless individuals (the "***Housing Facility***"). The preferred location is on property currently owned by the City near Reservoir 3, located near the intersection of Pecks Drive and Evergreen Way (the "***Property***"), subject to completion of environmental review required by state and federal law. The Property is approximately shown in the attached Exhibit A.

B. The Housing Facility is intended to include approximately 60 to 70 residential units, office space for on-site support services for the residents (for example, case management, chemical dependency counseling, mental health treatment, and medical care), and front-desk staff to provide 24 hour, seven-days-per-week secure access. A portion of the units will be reserved for individuals identified through the City's CHART (chronic utilizer alternative response team) program.

C. On May 11, 2016, the City Council directed the City to issue a Request for Qualifications (the "***RFQ***"), for the purpose of selecting a provider with experience developing and operating such facilities and for purpose of entering into contract negotiations with the selected provider.

D. The RFQ submittals were due no later than May 31, 2016. Based on the submissions, City staff has recommended that City Council select Low Barrier Service Provider and that the City begin contract negotiations with Low Barrier Service Provider.

E. The purpose of the Agreement is to confirm Low Barrier Service Provider's selection and to create a framework for upcoming contract negotiations, which are anticipated to require no more than nine months, beginning on June 1, 2016 and ending on February 28, 2017 (the "***Negotiation Period***").

AGREEMENT

The parties agree as follows:

A. Contract Negotiations

The City and Low Barrier Service Provider agree for the Negotiation Period to negotiate diligently and in good faith to negotiate the following agreements (the "***Negotiated Agreements***"):

1. Property Land Transfer or Lease Agreement. The City and Low Barrier Service Provider will negotiate a land transfer or lease agreement, under which the City will transfer the Property to Low Barrier Service Provider, by deed or ground lease or other mechanism. The agreement will include the design of the Housing Facility or specific design parameters, so that the City and Low Barrier Service Provider clearly understand what will be built.

a) Low Barrier Service Provider acknowledges that, if the Property is transferred to the Low Barrier Service Provider in fee, the City will require that the Property be subject to covenants perpetually binding the property to be exclusively used for low-barrier supportive housing and activities in support of low-barrier supportive housing, and the City will require that any deed of trust or other lien be expressly subordinated to those covenants.

b) Low Barrier Service Provider acknowledges that, if the Property is transferred to the Low Barrier Service Provider in a ground lease, the City will require that the ground lease restrict the use of Property to exclusive use for low-barrier supportive housing and activities in support of low-barrier supportive housing, and the City will require that any deed of trust or other lien be expressly subordinated to those ground lease provisions.

2. Housing Facility Operation Agreement. The City and Low Barrier Service Provider will negotiate an agreement for the operation of the Housing Facility. This agreement will include, among other things, the scope of services to be provided, the population to be served, and related matters. In addition, the City anticipates that the operation agreement will include a certain number of guaranteed beds in the facility for persons designated by the City. The goal will be to negotiate an agreement that allows the City to get the needed services from the Project, while at the same time preserving the Housing Facility's long-term financial feasibility for the Low Barrier Service Provider.

B. Exclusive Negotiation / Duration of Agreement

1. Exclusive. The City agrees for the Negotiation Period not to negotiate with any other person or entity regarding the sale, lease or development of the Property (or any portion the Property) for the Housing Facility. Nothing in this Agreement shall prevent or constrain the City from continuing the City's current use of the Property and

its currently existing improvements.

2. Termination of Agreement. This Agreement automatically terminates upon expiration of the Negotiation Period.

C. Limitations / No Liability if Negotiated Agreements Are Not Executed

By its execution of this Agreement, the City is not committing itself to or agreeing to undertake the transfer of the Property to Low Barrier Service Provider. This Agreement does not constitute a transfer or other disposition of the Property. Execution of this Agreement by the City is only an agreement to enter into a period of exclusive negotiation according to the terms of this Agreement, reserving final and complete discretion to the City Council as to the final approval of the Negotiated Agreements.

Neither party to this Agreement has any claim against the other party in the event that the Negotiated Agreements are never executed. For example, this means that any funds spent by either party in anticipation the execution of the Negotiated Agreements are spent at the sole risk of the spending party.

D. Notices

All notices under this agreement shall be delivered to the following addresses, which may be changed upon written notice:

City:

Rebecca Abelman McCrary
City of Everett Planning Department
Housing and Community Development Program Manager
2930 Wetmore Avenue, Suite 8A
Everett, WA 98201

Low Barrier Service Provider:

John R. Hickman
Director of Finance and Operations
Catholic Housing Services of Western Washington
100 23rd Avenue S
Seattle, WA 98144

E. Real Estate Commissions

The City warrants that it has not engaged any broker, agent or finder in connection with this transaction, and the City will indemnity, defend and hold harmless Low Barrier Service Provider from any claim by a broker, agent or finder alleging to be retained by the City relating to the Property. The Low Barrier Service Provider warrants that it has not engaged any broker, agent or finder in connection with this transaction, and

the Low Barrier Service Provider will indemnity, defend and hold harmless City from any claim by a broker, agent or finder alleging to be retained by the Low Barrier Service Provider relating to the Property.

F. General Provisions

This Agreement is not assignable by either party. This Agreement is governed by the law of State of Washington. Exclusive venue for disputes is Snohomish County Superior Court. No provision of this Agreement shall be construed against any party by reason of such party's drafted the provision. Except for the RFQ issued by the City, this Agreement constitutes the entire understanding and agreement of the parties and supersedes any prior negotiations, discussions and previous agreements between City and Low Barrier Service Provider concerning the subject matter of this Agreement. No modification to this Agreement shall be made except by a written agreement executed by the Mayor of the City and by an authorized signer for Low Barrier Service Provider. This Agreement may be executed in counterparts, and a fax or pdf signature is deemed the same as an ink signature.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, to be effective as of the date entered first above, regardless of the date of signatures.

CITY:

CITY OF EVERETT,
a Washington municipal corporation

By: _____
Name: Ray Stephanson
Title: Mayor

Approved as to form:

_____
City Attorney

Attest:

_____
City Clerk

LOW BARRIER SERVICE PROVIDER:

ARCHDIOCESAN HOUSING AUTHORITY, a Washington non-profit corporation d/b/a Catholic Housing Services of Western Washington

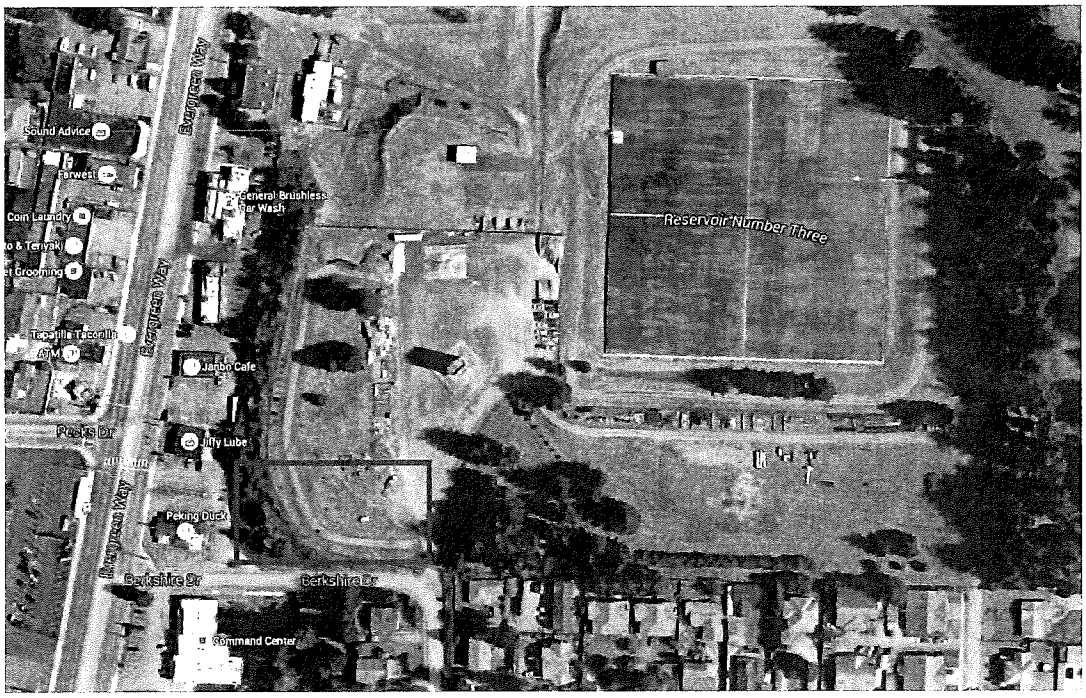
By: _____

Name: Robert Van Tassell

Title: VP

EXHIBIT A

THE PROPERTY



The Property is approximately bounded by the red box. The parties acknowledge that the final size and orientation of the Property may be different than as shown.

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Select Low Barrier Supportive Housing Service Provider and Authorize Mayor to Sign Exclusive Negotiating Agreement

	Consent	COUNCIL BILL #	
6/1/16	Action	Originating Department	Planning/Legal/Purchasing
	First Reading	Contact Person	Becky Abelman McCrary David Hall Clark Langstraat
	Second Reading	Phone Number	425-257-7113 425-257-8624 425-257-8901
	Third Reading	FOR AGENDA OF	June 1, 2016
	Briefing		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
Near Pecks Drive & Evergreen Way	Streets Initiative, Request for Qualifications May 11, 2016	Draft Exclusive Negotiating Agreement	Planning, Legal, Administration, Purchasing

Amount Budgeted	TBD	
Expenditure Required	TBD	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
As part of the City's Safe Streets initiative, the City intends to facilitate the construction of a supportive low-barrier housing facility to house chronically homeless individuals. The preferred location is on property currently owned by the City near Reservoir 3, located near the intersection of Pecks Drive and Evergreen Way, subject to completion of environmental review required by state and federal law.

On May 11, 2016 the City Council authorized the issuance of a Request for Qualifications (RFQ) for the purpose of selecting a provider with experience developing and operating such facilities. Submittals were due no later than May 31, 2016. At the Council meeting on June 1, 2016, City staff will discuss the results of the submittals and will make a selection recommendation. As part of the selection recommendation, City staff will recommend that the City enter into an exclusive negotiating agreement with the selected provider. Attached is the draft agreement, which sets up a nine month period for City staff and the selected provider to negotiate the agreements necessary to transfer (or lease) property and to operate the facility. After the negotiations are completed, the agreements will be brought to Council for approval. It should be emphasized that the exclusive negotiating agreement does not obligate the City to transfer the property. It only obligates the City to talk exclusively with the selected provider for nine months, after which the City is free to do whatever it wants.

The reason for the accelerated pace of this RFQ selection is to coordinate this action with the Everett Housing Authority's Request for Proposals currently on the street for Section 8 Vouchers. The proposal deadline for that competition is mid-June 2016, and it would be very beneficial for the financing of the City project if the City-selected provider could succeed in that competition. Accordingly, it makes sense for the City to select a provider now, so that the selected provider can represent in its proposal for Section 8 Vouchers that it is the City's selected provider and has secured exclusive negotiating rights for the property.

RECOMMENDATION:
Select Low Barrier Supportive Housing Provider and Authorize the Mayor to Sign an Exclusive Negotiating Agreement with the Selected Provider in Substantially the Form Provided.

Council Approved on 6-1-16