



## LAKWOOD CITY COUNCIL STUDY SESSION AGENDA

Monday, July 10, 2017

7:00 P.M.

City of Lakewood  
City Council Chambers  
6000 Main Street SW  
Lakewood, WA 98499

Page No.

### CALL TO ORDER

### ITEMS FOR DISCUSSION:

- ( 3) 1. Joint Lodging Tax Advisory Committee meeting. – (Work Plan)
- ( 7) 2. Review of purchasing policy amendments. – (Memorandum)
- (22) 3. Review of BERK Consulting agreement to prepare the Central Business District Subarea Plan. – (Memorandum)
- (46) 4. Review of the City of Tacoma Department of Public Utilities 20 year electric utility system franchise. - (Memorandum)

### REPORTS BY THE CITY MANAGER

### ITEMS TENTATIVELY SCHEDULED FOR THE JULY 17, 2017 REGULAR CITY COUNCIL MEETING:

1. Business showcase. - The Fairy Store – *Ms. Shirley Ritter, owner*
2. Larry Saunders Service Award update. – *Mr. Bob Warfield, Lakewood Community Foundation Fund*
3. Proclamation recognizing Lakewood is a Pierce County Trail city. – *Mr. Chris Beale, President, Forever Green Trails*
4. Authorizing the execution of an interlocal agreement with the Washington State Department of Social and Health Services, in the amount of \$621,000 for the Western State Hospital Community Partnership program from July 1, 2017 through June 30, 2019. – (Motion – Consent Agenda)

*The Council Chambers is accessible to persons with disabilities. Equipment is available for the hearing impaired. Persons requesting special accommodations or language interpreters should contact the City Clerk's Office, 589-2489, as soon as possible in advance of the Council meeting so that an attempt to provide the special accommodations can be made.*

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City Hall will be closed 15 minutes after adjournment of the meeting.

5. Authorizing the execution of an interlocal agreement with the Washington State Department of Social and Health Services, in the amount of \$90,000 for the Western State Hospital Police Protection program from July 1, 2017 through June 30, 2019. – (Motion – Consent Agenda)
6. Authorizing the execution of an interlocal agreement with the City of Puyallup for jail services. – (Motion – Consent Agenda)
7. Granting the City of Tacoma Department of Public Utilities a 20 year electric utility system franchise. – (Ordinance – Regular Agenda)
8. Amending the purchasing policy. – (Resolution – Regular Agenda)
9. Authorizing the execution of an agreement with BERK Consulting, in the amount of \$257,290, to prepare a Central Business District subarea plan through August 31, 2018. – (Motion – Regular Agenda)

#### **COUNCIL COMMENTS**

#### **ADJOURNMENT**

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**LODGING TAX ADVISORY COMMITTEE  
WORK PLAN AND SIGNIFICANT ACCOMPLISHMENTS**

**Members:**

Mayor Don Anderson, Chair

Represent Business Authorized to Collect

Jackeline Juy, Best Western Lakewood Motor Inn  
Asuka Ludden, Best Western Lakewood Motor Inn  
Brandi Lynn Hesson-Bullard, Candlewood Suites

Represent Business Authorized to Receive

Rebecca Huber, Lakewood Historical Society  
Phil Raschke, Lakewood Playhouse  
Linda K. Smith, Lakewood Chamber of Commerce

**Council Liaison:**

Mayor Don Anderson

**City Staff Support:**

Tho Kraus, Assistant City Manager/Administrative Services  
Dana Kapla, Finance Supervisor  
Carolyn Whipple, Finance Analyst

**Meeting Schedule:**

July, September and November (see below for details).

**2017 Work Plan:**

1.	<p>July</p> <ul style="list-style-type: none"> <li>• Joint Lodging Tax Advisory Committee Meeting to review guidelines, past grants awarded and potential funding available for 2018 grants.</li> <li>• Coordinate date of September retreat.</li> </ul>
2.	<p>September (<i>currently scheduled for September 22, 2017</i>)</p> <ul style="list-style-type: none"> <li>• Review lodging tax grant applications in advance of day-long retreat.</li> <li>• Listen to presentations from potential lodging tax grant recipients. Review, rate and make funding recommendations that are forwarded to the City Council for their consideration and deliberation.</li> <li>• Meet on an as needed basis to review lodging tax grant applications for the next year and provide funding recommendations to the City Council for their consideration and deliberation.</li> </ul>
3.	<p>November</p> <ul style="list-style-type: none"> <li>• Present recommendations to the City Council (<i>November 13, 2017 Study Session</i>)</li> <li>• Follow up with further review and recommendations as requested by the City Council.</li> <li>• City Council adopts lodging tax funding allocations (<i>November 20, 2017 Council Meeting</i>)</li> </ul>

**Accomplishments:**

Date	Topic(s)
May 16, 2016	Reviewed 2016 Lakewood Playhouse Supplemental Request. ( <i>City Council approved supplemental request on July 5, 2016</i> )
July 11, 2016	Held Joint Lodging Tax Advisory Committee Meeting to review guidelines, past grants awarded and potential funding available for 2017 grants.
Sept 30, 2016	Held day-long retreat to listen to presentations, evaluate applications and made funding recommendations.
Nov 14, 2016	City Council reviewed of 2017 lodging tax funding allocations.
Nov 21, 2016	City Council approved 2017 lodging tax funding allocations totaling \$969,291.



To: Mayor and City Councilmembers

From: Tho Kraus, Assistant City Manager/Administrative Services

Through: John J. Caulfield, City Manager *John J. Caulfield*

Date: July 10, 2017

Subject: Joint Lodging Tax Advisory Committee Meeting

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The purpose of this memo is to discuss the City’s Lodging Tax Advisory Committee (LTAC) in general, review guidelines, past grants awarded, and potential funding available for 2018 grant awards.

The LTAC is currently scheduled to meet on Friday, September 22 to review applications for 2018 lodging tax funds. Applications period begins on August 1 and ends August 21.

The current LTAC Guidelines and 5-Year Financial History are included as attachments to this memo.

The City estimates the 2017 projected revenue amount to be \$700,000 and the estimated ending fund balance to be \$881,840 on December 31, 2017. The amount available for 2018 allocation is \$779,990.

	Restrictions on Use		Total Estimated Funding Available for 2018 Grant Awards
	4%	3%	
	Reserved for tourism, promotion, acquisition of tourism related facilities, or operation of tourism related facilities.	Reserved for acquisition, construction, expansion, marketing, and management of convention facilities.	
Estimating Ending Balance, 12/31/2017	\$527,685	\$354,155	\$881,840
Less 2017 CPTC McGavick Center	\$0	(\$101,850)	(\$101,850)
<b>Available Balance for 2018 Allocation</b>	<b>\$527,685</b>	<b>\$252,305</b>	<b>\$779,990</b>

**Fund 104 - Hotel/Motel Lodging Tax**  
**5-Year History of Financials**

Year	2012 Actual	2013 Actual	2014 Actual	2015 Actual	2016 Actual	2017 Est
<b>Revenues</b>						
<b>4% Revenue:</b>						
Special Hotel/Motel Tax (2%)	\$ 136,462	\$ 153,431	\$ 159,962	\$ 197,657	\$ 216,390	\$ 200,000
Transient Rental Income Tax (2%)	145,555	153,431	159,962	197,657	216,390	200,000
	<b>282,016</b>	<b>306,862</b>	<b>319,924</b>	<b>395,314</b>	<b>432,780</b>	<b>400,000</b>
<b>3% Revenue:</b>						
Special Hotel/Motel Tax (3%)	204,692	230,147	239,942	296,485	324,584	300,000
	<b>204,692</b>	<b>230,147</b>	<b>239,942</b>	<b>296,485</b>	<b>324,584</b>	<b>300,000</b>
Interest Income	1,074	1,093	1,255	2,920	4,900	-
<b>Total Revenue</b>	<b>\$ 487,782</b>	<b>\$ 538,102</b>	<b>\$ 561,121</b>	<b>\$ 694,719</b>	<b>\$ 762,264</b>	<b>\$ 700,000</b>
<b>Expenditures:</b>						
CoL Economic Dev-Program & Personnel	35,877	34,359	13,190	-	-	-
CoL Economic Dev-Reprinting of Two Brochures	-	-	-	4,480	-	-
Asia Pacific Cultural Center (APCC)	10,000	-	-	2,500	10,000	10,000
Audubon Washington - Birding Map	5,000	-	-	-	-	-
Daffodil Festival dba Daffodilians	4,000	4,000	-	-	-	-
Grave Concerns - Ft Steilacoom Historic Cemetery Brochure/Genealogy	2,943	-	-	-	-	-
Historic Fort Steilacoom Assoc.	6,998	8,000	8,000	6,500	10,000	10,000
Lakewold Gardens	45,266	44,195	44,912	40,000	40,000	40,000
Lakewood Chamber of Commerce	80,000	80,000	80,000	78,500	80,000	80,000
CoL Communications - Media Promotion	-	-	-	-	-	18,000
CoL Economic Dev-Internat'l District Cultural Banners + Road	-	12,931	-	-	-	-
CoL Economic Dev-Have You Seen Lakewood Lately>	-	-	-	-	6,488	-
Lakewood Historical Society & Museum	39,500	39,500	39,500	33,000	39,500	35,000
Lakewood Landmarks & Heritage Advisory Board-Historical Driving Tour Brochure	-	9,968	-	-	-	-
CoL PRCS-Asian Film Fest	-	-	-	-	-	7,500
CoL PRCS-Farmers Market	5,000	9,957	11,440	10,000	20,000	20,000
CoL PRCS-SummerFEST/Triathlon	17,000	17,000	15,275	18,000	29,000	40,000
Lakewood Playhouse (2 Capital Impr. in 2013 \$20,178.44 & \$8,403.86)	24,976	25,000	22,368	21,601	49,000	21,000
Lakewood Sister Cities Assn (LSCA) - International Festival (2012 grant was extended to 2013)	-	6,000	12,404	9,076	8,437	8,000
Dean Paulson Photography - Tourism Photos	909	-	-	-	-	-
Freelance Graphics - Tourism Photos	1,366	-	-	-	-	-
South Sound User's Guide	547	200	-	-	-	-
Tacoma Regional Convention+Visitor Bureau	39,997	45,000	45,000	40,000	50,000	35,000
Tacoma South Sound Sports Commission	35,000	50,000	50,000	40,000	40,000	50,000
City of Lakewood Econ Dev-Promo/Outreach	24,000	24,000	24,000	9,628	-	-
Today in America - Promotional Video	19,800	-	-	-	-	-
Lakewood Playhouse	12,500	28,582	-	-	-	-
				<b>313,285</b>	<b>382,425</b>	<b>374,500</b>
CoL PRCS-Gateways	-	-	-	10,000	-	92,941
CoL PRCS-Waughop Lake Trail	-	-	-	25,000	100,000	-
CoL PRCS-Fort Steilacoom Park Pavilion	-	-	-	-	-	450,000
CoL-PRCS Fort Steilacoom Park Sports Field Improvements	-	-	-	-	3,921	246,078
Clover Park Tech College-McGavick Ctr	101,850	101,850	101,850	101,850	101,850	101,850
				<b>136,850</b>	<b>205,771</b>	<b>890,869</b>
<b>Total Expenditures</b>	<b>\$ 512,530</b>	<b>\$ 540,542</b>	<b>\$ 467,939</b>	<b>\$ 450,135</b>	<b>\$ 588,196</b>	<b>\$ 1,265,369</b>
<b>Beginning Balance</b>	<b>\$ 962,564</b>	<b>\$ 937,817</b>	<b>\$ 935,374</b>	<b>\$ 1,028,557</b>	<b>\$ 1,273,141</b>	<b>\$ 1,447,209</b>
<b>Ending Balance</b>	<b>\$ 937,817</b>	<b>\$ 935,374</b>	<b>\$ 1,028,557</b>	<b>\$ 1,273,141</b>	<b>\$ 1,447,209</b>	<b>\$ 881,840</b>
						Estimated Ending Fund Balance from the 4% Revenue => \$ 527,685
						Estimated Ending Fund Balance from the 3% Revenue => \$ 354,155

**City of Lakewood**  
**Lodging Tax Funding Guideline**  
*As Amended by the City Council on September 21, 2015*

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**Background**

The objective of the City of Lakewood Lodging Tax Advisory Committee process is to support projects, which encourage eligible tourism and cultural activities and support tourism facilities in Lakewood. The process is reviewed annually and the guidelines are updated in accordance with reported success of existing programs, potential for new programs and changes in state law. A calendar for the application process will be established but will allow for emerging opportunities as they arise.

**Objectives for Hotel/Motel Tax Funds:**

- Generate increased tourism in Lakewood resulting in over-night stays at local hotels.
- Generate maximum economic benefit through overnight lodging, sale of meals and goods, and construction of tourism-related facilities.
- Increase recognition of Lakewood throughout the region as a destination for tourism.
- Increase opportunities for tourism by developing new visitor activities.

**Allocation Guidelines:**

- The City shall seek proposals for funding on an annual basis from organizations seeking to use Hotel/Motel Tax funds for promoting tourism or for acquisition, construction or operation of tourism related facilities.
- Organizations seeking funding must complete an application form.
- The Lodging Tax Advisory Committee shall review the proposals and make recommendations to City Council as to which applications should receive funding.
- The final funding decision will be made by City Council in the form of approval or denial of the recommendation as recommended – no amendments to recommendations will be made by the City Council.
- Once approved for funding an organization must enter into a contract and funding will be provided in quarterly installments or on a reimbursable basis.
- Organizations receiving funding must submit a report at the end of the calendar year.
- \$101,850 will be paid annually to the Sharon McGavick Student Center through 2027 pursuant to the City's agreement with Clover Park Technical College.
- 4% - Can be used for tourism promotion, or the acquisition of tourism-related facilities, or operation of tourism-related facilities.
- 3%- Can only be used for the acquisition, construction, expansion, marketing, management, and financing of convention facilities, and facilities necessary to support major tourism destination attractions that serve a minimum of one million visitors per year.



To: Mayor and City Councilmembers  
From: Tho Kraus, Assistant City Manager/Administrative Services  
Through: John J. Caulfield, City Manager *John J. Caulfield*  
Date: July 10, 2017  
Subject: Purchasing Policy Update

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### **Background**

In February 2017, the City Council adopted Resolution No. 2017-07, which replaced the previously approved purchasing policies from November 1999.

The February 2017 purchasing policies:

- Referenced applicable state law and that the City's policy is in accordance with the RCW, including all future amendments, additions and deletions;
- Modernized and clarify language;
- Logically arranged of subject matter; and
- Eliminated definitions sections (many are defined in state law or policy, and some are more policy related than definitions);
- Updated vendor list to reflect the use of MRSC rosters; and
- Separated and/or eliminated procedures from policy.

### **Proposed Update**

The proposed update is to add item D in Section 19 Other exemptions as follows:

- D . Electronic Data Processing & Telecommunications Systems. The purchase of electronic data processing and telecommunications systems is called out specifically in RCW 39.04.270. In that section, cities are authorized to use a "competitive negotiation" process as an alternative to the competitive bid process or other allowable processes when purchasing telecommunications and data processing (computer) equipment or software because of the unique aspects. This alternative process requires a request for proposals (RFP) that identifies significant evaluation factors, including price, and their relative importance and provides reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.

City Council's approval of the proposed update would retroactively cover all previous actions.

**Next Steps**

- Adopt Updated Purchasing Policy at the July 17, 2017 City Council Meeting – **CONSENT** Agenda Item
- Resolution for Travel and Reimbursement Policy – Date To be Determined
- Contracts, Purchasing and Related Procedures (Internal Manual) – Date to be Determined

**Attachments**

- Exhibit A - Proposed Purchasing Policies



**EXHIBIT A  
CITY OF LAKEWOOD  
PURCHASING POLICIES**

**GENERAL PROVISIONS**

- Section 1. Purpose.
- Section 2. Application.
- Section 3. Federal funds.
- Section 4. Grants.
- Section 5. Professional service contracts.
- Section 6. Responsibility for purchasing.
- Section 7. Authority to execute.
- Section 8. Routine expenses.
- Section 9. Recycling procurement policy.

**COMPETITIVE BIDDING PROCESS**

- Section 10. Bid limits.
- Section 11. Competitive bidding.
- Section 12. General standards for determining lowest responsible bidder.
- Section 13. Cancellation of requests for bids or requests for proposals.
- Section 14. Specifications.
- Section 15. City procurement records.
- Section 16. Unauthorized purchases.

**EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENT**

- Section 17. Cooperative purchasing.
- Section 18. Emergency procurement.
- Section 19. Other exemptions.

**MATERIALS, SUPPLIES AND EQUIPMENT**

- Section 20. Small purchases.
- Section 21. Inspection and testing.
- Section 22. Purchases for special events.

**PUBLIC WORKS OR IMPROVEMENTS**

- Section 23. Definition of public works.
- Section 24. Plans and specifications – Estimates – Publication – Emergencies.
- Section 25. Small works roster.
- Section 26. Bonds and bid security - Noncollusion affidavit — Insurance.
- Section 27. Administrative procedures.

## **GENERAL PROVISIONS**

### **Section 1. Purpose.**

The purpose of the City of Lakewood Purchasing Policies (“Policies”) is to protect and advance the public interest by providing for the fair and equitable treatment of all persons involved in the purchasing process, by maximizing the purchasing value of public funds, by providing safeguards for maintaining a purchasing system of quality and integrity, and by following state law.

### **Section 2. Application.**

These Policies apply to the award of contracts by the City for:

- (1) purchases of materials, supplies, and equipment;
- (2) public works and improvements;
- (3) maintenance; and
- (4) other goods and services.

These Policies do not apply to:

- (1) the reimbursement of business expenses incurred by employees
- (2) purchase and/or lease of real estate;
- (3) lease agreements for materials, supplies and equipment unless the agreement is in excess of fifty thousand dollars (\$50,000); and
- (4) professional and non-professional service contracts as defined in Section 5.

### **Section 3. Federal Funds.**

When a purchase involves the expenditure of federal funds, purchasing shall be conducted in accordance with any applicable federal law or regulation.

### **Section 4. Grants.**

Nothing in this chapter shall prevent the City from complying with the terms and conditions of any grant, gift or bequest which is otherwise consistent with law.

### **Section 5. Professional service contracts.**

- A. General. Professional services, including but not limited to contracts for architectural, engineering, legal and consulting services, are not subject to the requirements of these Purchasing Policies. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 39.80 RCW. For purposes of this section, “professional services” are those services involving labor, skill, education and special knowledge and where the labor and skill involved is predominately mental or intellectual, rather than physical or manual.
- B. Publication. At least once a year, on behalf of the City, Municipal Research and Services Center of Washington (“MRSC”) shall publish in a newspaper of general circulation within the City a notice of the existence of the consulting services roster or rosters and solicit statements of qualifications from firms providing consulting services. Such advertisements will include information on how to find the address and telephone number of a representative of the City who can provide further details as to the City’s projected needs for consulting services. Firms or persons providing consulting services shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records.

- C. Professional Architectural and Engineering Services. The MRSC Rosters will distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services and will announce generally to the public the City's projected requirements for any category or type of professional or other consulting services. The City reserves the right to publish an announcement on each occasion when professional services or other consulting services are required by the agency and to use paper and/or other electronic rosters that may be kept on file by appropriate City departments.

#### **Section 6. Responsibility for purchasing.**

- A. General. The City Manager or designee shall be responsible for all City purchasing under these Policies except where otherwise provided. The Assistant City Manager/Administrative Services or designee shall administer these Policies.
- B. Duties. In accordance with the Purchasing Policies, the Assistant City Manager/Administrative Services or designee shall:
1. Purchase or supervise the purchase of all materials, supplies, equipment and nonprofessional services and award of all public works and improvement contracts by the City;
  2. Sell, trade or otherwise dispose of surplus personal property belonging to the City. The City Manager shall be responsible for the disposal of real property;
  3. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with City departments using the items purchased;
  4. Propose operational procedures consistent with these Policies relating to the execution of his or her duties. Such procedures shall be followed by all City departments. These operational procedures are subject to prior approval of the City Manager; and
  5. Determine liability and property damage insurance requirements, including but not limited to coverage requirements, limits of liability, necessary endorsements and other matters relating to insurance, for any contract entered into by the City under these Policies.

#### **Section 7. Authority to execute.**

Every contract under these Policies where the annual cost to the City for such contracts is:

- A. Fifty thousand dollars (\$50,000) or less including addenda the City Manager or designee is authorized to sign such contracts on behalf of the City;
- B. More than fifty thousand dollars (\$50,000), approval of the City Council is required for such contracts.

#### **Section 8. Routine expenses.**

Routine expenses such as utilities charges, claims and judgments, witness fees, governmental taxes and governmental fees for licenses and permits may be acquired, ordered or paid in the best interests of the City within budget appropriations or other City Council authorization therefor.

## **Section 9. Recycling procurement policy.**

- A. Intent. In accordance with RCW 35A.40.210, 35.22.620(10) and 39.30.040 including all future amendments, additions and deletion, the City of Lakewood finds it desirable to adopt a procurement policy promoting the use of recycled products and recyclable products by the City of Lakewood departments, thereby stimulating the demand for these products and helping to develop markets for materials that have been diverted from the solid waste stream.
- B. Use of recycled Materials. All City of Lakewood departments shall use recycled products and recyclable products whenever practicable and reasonable.

## **COMPETITIVE BIDDING PROCESS**

### **Section 10. Bid Limits.**

The competitive bidding process outlined in Section 20 is required whenever the estimated cost of a tangible personal property (materials, supplies and equipment not in connection with public works projects) is between \$9,999 and \$25,000.

The competitive bidding process outlined in Section 11 is required whenever the estimated cost of a tangible personal property (materials, supplies and equipment not in connection with public works projects) is greater than \$25,000.

The competitive bidding process outlined in Section 11 is required whenever the estimated cost of a purchase of materials, supplies and equipment, or a contract for public work or improvement (including the cost of materials, supplies, equipment and labor), will exceed the sums as set forth in RCW 35A.40.210 and 35.22.620(3) including all future amendments, additions and deletions.

Whenever the estimated cost of the public work or improvement is less than the bid limit as stated above a contract for the public work or improvement may be awarded in the manner authorized by Section 21 (small works roster). The public work or improvement may be performed by City employees within the limits and to the extent authorized by state law.

### **Section 11. Competitive bidding.**

- A. General. Any purchase of material, supplies, and equipment, or any contract for public works or improvements where the cost thereof exceeds the bid limit in Section 10 shall be by competitive bidding in accordance with RCW 35A.40.210 and 35.22.620(6) including all future amendments, additions and deletions, except for purchases and contracts made pursuant to Sections 17 (cooperative purchasing), 18 (emergency) and 19 (sole source).
- B. Request for Bids. Request for bids issued which shall include the specifications and the contractual terms and conditions applicable to the procurement. The request for bid may be changed or amended by the City provided the change is issued in writing at least three (3) business days prior to the bid opening date. Such changes will be furnished to all interest vendors in the form of an addendum. Any material information provided to a prospective bidder with regard to a request for bid shall be furnished to all bidders on the vendor list receiving a copy of the original request for bid. Oral interpretations of contract terms and conditions shall not be binding on the City unless confirmed in writing by the City and provided to all bidders at least three (3) business days before bid opening. The City will not be responsible for oral

interpretations not confirmed in writing by the City giving the interpretation at least twenty-four (24) hours before bid opening.

- C. Public Notice. Public notice of the request for bids shall be given not less than fourteen (14) calendar days prior to the date set forth therein for the opening of bids unless another timeline is deemed necessary by the City Manager or designee. Such notice shall be published, at least once in a newspaper of general circulation. The public notice shall state the date and time of bid opening. Bids not received by the date and time stated for bid opening will not be accepted or considered.
- D. Bid Opening. Sealed bids shall be received by the City Clerk or designee, at any time within regular business hours and shall be identified as bids on the envelope. Bids shall be date and time stamped when received by the City. Bids shall be opened in public by the City Clerk or designee at the time and place stated in the request for bids. The amount of each bid, and such other relevant information as the City Manager or designee deems appropriate, together with the name of each bidder, shall be announced and recorded. The record and each bid shall be open to public inspection. The City Clerk or designee shall tabulate the bids and submit them to the concerned department, which will make appropriate recommendations to the City Manager. Bids which are received, but which do not identify the request to bid or the time for bid opening may be opened, but solely for identification purposes. All late bids or late withdrawal request will be date and time recorded.
- E. Bid Evaluation. Bids shall be evaluated based on the specifications and other relevant evaluation criteria set forth in the bid specifications. The evaluation criteria shall be objectively measurable whenever possible, and may include such factors as discounts, transportation costs, and total or life cycle costs, inspection or testing which has been done of the product bid, quality, workmanship, delivery time, and suitability for a particular purpose.
- F. Bid Irregularities. Except where otherwise provided in these Policies, bids containing irregularities may be accepted by the City for consideration. Any action concerning the bid(s) containing irregularities shall be at the discretion of the City Manager and/or City Council in accordance with the provisions of law. The call for bids for all bids shall state the reserved right of the City to reject any and all bids and to waive irregularities in any provided that no bidder shall be permitted to gain unfair advantage over other bidders by action of the City Council pertaining to this section.
- G. Correction or withdrawal of errors; Cancellation of Awards. Correction or withdrawal of inadvertent errors in bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted by the City to the extent allowed by law.
  - (1) Mistakes discovered before bid opening may be corrected by bidder withdrawing the original bid and submitting a corrected bid to the City before the bid opening. If there is not sufficient time prior to bid opening to withdraw the original bid and submit a corrected bid, the bidder, or an authorized representative, may correct the mistake on the face of the original bid; provided the official opening time has not yet been reached. A corrected bid must be stamped upon resubmission.
  - (2) Mistakes discovered during or after bid opening may not be corrected. If the bidder submits evidence in writing satisfactory to the City Manager and City Attorney that a mistake has been made by the bidder in the calculation of its bid, the City Manager may

allow the bid to be withdrawn; provided, that the claim of mistake and the evidence in support thereof must be made and provided within 3 business days after the bid has been opened. Compliance with this section within the specified time limit shall relieve the bidder of forfeiture of its bid bond if the City Manager and City Attorney approve the bid withdrawal.

- H. Award or rejection of bids. The recommended bids over fifty thousand dollars (\$50,000) shall be submitted to the City Council by the City Manager. The City Council may award the bid to the lowest responsive, responsible bidder in accordance with Section 12, or may reject all bids in its sole discretion. The contract shall be considered and/or awarded to the lowest responsible bidder whose bid meets the specifications and evaluation criteria set forth in the request for bids.
- I. Recalling for bids. The City Council may reject any or all bids and/or call for further bids. If no responsive, responsible bid is received on the first call, the City may readvertise and make a second call, or may enter into a contract without any further call.

### **Section 12. General standards for determining lowest responsible bidder.**

In accordance with RCW 39.04.350 including all future amendments, additions and deletions to determine the lowest responsive, responsible bidder, in addition to price, the following may be considered:

- A. The ability, capacity and skill of the bidder to perform the contract;
- B. Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;
- C. The reputation, experience and efficiency of the bidder;
- D. The quality of performance of previous contracts by the bidder;
- E. The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services;
- F. The sufficiency of the financial resources and ability of the bidder to perform the contract;
- G. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- H. The number and scope of conditions attached to the bid.

### **Section 13. Cancellation of requests for bids or requests for proposals.**

In accordance with processes set forth in RCW 39.26.160 including all future amendments, additions and deletions, a request for bids may be canceled at the discretion of the City Manager or Designee. The reasons therefor shall be made part of the contract file. Each request for bids issued by the City shall state that the request may be canceled. Notice of cancellation shall be sent to all parties that have been provided with a copy of the request. The notice shall identify the request for bids and state briefly the reasons for cancellation.

## **Section 14. Specifications.**

- A. Maximum Practicable Competition. All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the City's needs. The policy enunciated in this section applies to all specifications including but not limited to those prepared for the City by architects, engineers, designers, and drafters.
- B. "Brand Name or Equivalent" Specification. Brand name or equivalent specifications may be used when the City Manager or designee determines that use of a brand name or equivalent specification is in the City's best interest.
- C. Brand Name Specification. Because use of a brand name specification is often restrictive of competition, it may be used only when the City Manager or designee makes a written determination that only the identified brand name item or items will satisfy the City's needs.
- D. Experience Clause Restrictions. Experience clauses requiring prospective bidders to have a record of satisfactory operation or performance may only be used if such requirements have been adequately justified in writing and approved by the City Manager or designee.

## **Section 15. City procurement records.**

- A. Procurement File. All determinations and other written records pertaining to the request to bid, award, or performance of a contract shall be maintained for the City in a contract file by the City Department.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with state law and city ordinances, regulations and guidelines. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to that contract shall be maintained in accordance with any applicable requirements of federal law.

## **Section 16. Unauthorized purchases.**

Any purchase or contract made contrary to the provisions hereof and except as authorized by the City's operational procedures shall not be approved by any city officer and the City shall not be bound thereby, except as may be required or provided by law.

## **EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENTS**

### **Section 17. Cooperative purchasing.**

The City Manager or designee is authorized to recommend to the City Council that it join in cooperative purchasing arrangements with other public agencies similarly authorized. Any cooperative purchasing agreement shall comply with RCW 39.34.030(3) including all future amendments, addition and deletions and set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties. Any cooperative purchasing agreement shall be governed by the requirements of state law in regard to competitive bidding when applicable. In addition, City Manager or designee may utilize existing contracts or proposed solicitations of other local, state, or federal agencies to procure



materials, supplies, and equipment for the City consistent with legal requirements if such methods of procurement would foster economy and efficiency.

### **Section 18. Emergency procurement.**

Notwithstanding any other provisions of these Policies, the City Manager or designee may, in accordance with RCW 35A.40.210, 35.22.620(6), and 39.04.280 including all future amendments, additions and deletions, make or authorize others to make emergency procurement of materials, supplies, equipment, or construct public works projects without complying with the competitive requirements of these Purchasing Policies when there exists a threat to public health, welfare, or safety or where the City may suffer a substantial monetary loss by reason of the time required to follow regular purchasing procedures; provided, that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract, which shall be reported to the City Council.

### **Section 19. Other exemptions.**

- A. The City Manager or designee is authorized to make open market purchases without obtaining competitive bids or quotations therefor in accordance with RCW 35A.40.210, 35.22.620(6), and 39.04.280 including all future amendments, additions and deletions under the following conditions:
  - 1. Items of Special Design. When an item required is of special design, shape or manufacture to match or fit in with an existing installation and competitive bidding is impracticable;
  - 2. Surplus or Distress Sales. When it is possible to procure obvious bargains in surplus or distress material, supplies or equipment.
  - 3. Items for Quick Delivery. When the obtaining of competitive bids or quotations will cause delay resulting in an appreciable loss to the City.
- B. Small Items Not Stocked, Blanket Purchase Orders. The Assistant City Manager/Administrative Services or designee is authorized to establish blanket purchase orders with local vendors for the purchase of items which are not stocked by the departments of the City and are available at usual market prices. Such local vendors shall be selected based on best overall price policies, breadth and depth of stocks and delivery service.
- C. Sole Source Procurement. A contract for the purchase of materials, supplies or equipment may be awarded without complying with the bidding requirements of this chapter when the City Manager or designee determines in writing, after conducting a good faith review of available sources, that there is only one source for the required materials, supplies or equipment. A record of sole source procurement shall be maintained that lists each contractor's name, the amount and type of each contract, and a listing of the items(s) procured under each contract.
- D. Electronic Data Processing & Telecommunications Systems. The purchase of electronic data processing and telecommunications systems is called out specifically in RCW 39.04.270. In that section, cities are authorized to use a "competitive negotiation" process as an alternative to the competitive bid process or other allowable processes when purchasing telecommunications and



data processing (computer) equipment or software because of the unique aspects. This alternative process requires a request for proposals (RFP) that identifies significant evaluation factors, including price, and their relative importance and provides reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.

## **MATERIALS, SUPPLIES AND EQUIPMENT**

### **Section 20. Small purchases.**

- A. General. Any purchase of materials, supplies or equipment not exceeding the bid limit specified in Section 10 shall be considered a “small purchase” and shall be made in accordance with RCW 39.04.190 including all future amendments, additions or deletions. The City Manager or designee shall adopt purchase procedures whereby the requirements of Section 11 shall not apply. Insofar as it is practical, three businesses shall be solicited to submit quotations. The Assistant City Manager/Administrative Services or designee shall keep a record of all small purchases and quotations submitted in competition thereon and such records shall be open for public inspection during regular office hours. The City Manager or designee shall consider and/or award the purchase order on small purchases to such vendor as the City Manager or designee determines to have submitted the lowest responsive, responsible quotation, in accordance with the provisions of this chapter.
- B. Filing of statements on awards to other than vendor submitting lowest quotation. When the award for a small purchase is not given to the vendor submitting the lowest quotation, a statement of the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction.
- C. Rejection of quotations. The City Manager or designee shall have the authority to reject all quotations or parts thereof, with regard to a small purchase of any materials, supplies, or equipment when he/she determines the public interest will be served thereby, and upon consultation with the appropriate department director. The rejection of such quotations shall include the reason therefor in the records of the transaction.

### **Section 21. Inspection and testing.**

The City Manager or designee shall inspect or supervise the inspection of all deliveries materials, supplies, or equipment to determine their conformance with the specifications set forth in the request to bid.

- A. Inspection by Using Department. The City Manager or designee may authorize a using department having the staff and facilities for adequate inspection to inspect all deliveries made to such using departments, under operational procedures.
- B. Tests. The City Manager or designee may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, he/she shall have the authority to make use of laboratory facilities of any outside laboratory.

## **Section 22. Purchases for special events.**

The City Manager may promulgate procedures to govern the purchase of supplies, such as food, beverages, decorations and awards, for public events and employee activities, including employee of the year recognition, volunteer recognition and ceremonial openings of public facilities.

## **PUBLIC WORKS OR IMPROVEMENTS**

### **Section 23. Definition of public works.**

RCW 39.04.010 including all future amendments, additions and deletions is incorporated by reference.

### **Section 24. Plans and specifications - Estimates–Publication - Emergencies.**

Plans and/or specifications, and an estimate of the cost of such work must be filed with the City Manager or designee when a public work or improvement is necessary. The City Manager or designee shall approve the plans, specifications and estimates of cost and the original draft or a certified copy filed with the City Clerk or designee before further action is taken.

If it is determined that it is necessary or advisable to execute such public work or improvement by any means, e.g., force account, or method other than by contract, and it appears that the estimated probable cost of executing the work will exceed the amount as set forth in RCW 39.04.020 including all future amendments, additions and deletions, then, at least fifteen days before the work is begun, the City Clerk or designee shall cause such estimate, together with a description of the work, to be published at least once in a newspaper of general circulation within the City; except that when any emergency requires the immediate execution of such public work or improvement, upon finding of the existence of an emergency by the authority having power to direct such public work or improvement to be done, duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.

### **Section 25. Small works roster.**

As an alternative to general competitive bidding requirements set out in Section 11, the following small works roster procedures are established for use by the City pursuant to RCW 39.04.155 including all future amendments, additions and deletions.

- A. Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the City may use the Small Public Works Roster procedures for public works projects as set forth within this Section. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.
- B. Publication. At least once a year, on behalf of the City, Municipal Research and Services Center of Washington (“MRSC”) shall publish in a newspaper of general circulation within the City a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to appropriate MRSC Roster(s) at any time that

they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster.

- C. Telephone or Written Quotations. The City shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to a contractor who meets the mandatory bidder responsibility criteria in RCW 39.04.350(1) and may establish supplementary bidder criteria under RCW 39.04.350(2).
- (1) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation.
  - (2) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. "Equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

If the estimated cost of the work is from one hundred and fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must notify the remaining contractors on the appropriate small works roster that **quotations** on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

- (a) publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
  - (b) mailing a notice to these contractors; or
  - (c) sending a notice to these contractors by facsimile or email.
- (3) At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;
  - (4) A written record shall be made by the City representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

- D. Limited Public Works Process. If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the City may award such a contract using the limited public works process provided under RCW 39.04.155 (3). For a limited public works project, the City will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the City may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The City shall maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

- E. Determining Lowest Responsible Bidder. The City Council shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City Council may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by RCW 39.04.350 and who meets any supplementary bidder responsibility criteria established by the City.
- F. Award. All of the telephone bids or quotations shall be collected and presented at the same time to the City Council for consideration, determination of the lowest responsible bidder, and award of the contract.

#### **Section 26. Bonds and bid security-Noncollusion affidavit-Insurance.**

- A. Requirement for Bid Security. Bid security shall be required for all competitive bidding for public work or improvement contracts in accordance with RCW 39.08.010 and 39.08.030 including all future amendments, additions and deletions. Bid security shall be of a type and in a form established by the City Manager or designee and approved by the city attorney or designee, which may include a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, cashier's or certified check and shall be included in the bid package. Bid security shall be required on bids for materials, supplies and equipment only if determined necessary by the City Manager or designee.
- B. Amount of Bid Security. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid or in another amount as determined by the Assistant City Manager/Administrative Services.
- C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the request for bid requires submittal of bid security, noncompliance will result in rejection of the bid.
- D. Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 11(G), the bidder's bid security shall be returned.
- E. Contract Performance and Payment Bonds. When required — Amounts. When a public works or improvement contract is awarded as a result of a call for bids under Section 11(H) of these Purchasing Policies, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of this contract:

- (1) A performance bond satisfactory to the City Attorney or designee, executed by a surety company authorized to do business in this state or otherwise secured in manner satisfactory to the City for an amount equal to one hundred percent of the price specified in the contract.
  - (2) A payment bond satisfactory to the City Attorney or designee, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the City for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the price specified in the contract.
- F. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the City to require a performance bond or other security in addition to the bonds specified herein.
- G. Noncollusion Affidavit. As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid and that he or she has not entered into collusion with any other bidder or any other person by submitting with his or her bid an executed and notarized noncollusion affidavit on a form approved by the City Attorney.
- H. Insurance. Contracts for public works and improvements shall contain such requirements for the provision of insurance by the contractor as are determined by the Assistant City Manager/Administrative Services or designee.

#### **Section 27. Administrative procedures.**

The City Manager may promulgate procedures for the purpose of administering public works improvement contracts. Such procedures may define the levels of authority pertaining to review and approval of contract change orders.



TO: Mayor and City Councilmembers

FROM: David Bugher, Assistant City Manager, Development Services

THROUGH: John J. Caulfield, City Manager *John J. Caulfield*

DATE: July 10, 2017 (Study Session)

SUBJECT: Approval of Consultant Personal services Contract with BERK Consulting for the Central Business District Subarea Plan

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**Recommended Action:** On July 17, 2017, that the Mayor and City Council, by minute motion, authorize the City Manager to enter into a contract for services with BERK Consulting in the amount of \$257,290. The purpose of the contract would be to prepare a subarea plan for the City's (CBD) Central Business District.

**Background Information:** One of the projects contained within the community and economic development (CED) department's approved work plan is the promulgation of a CBD subarea plan. Subarea planning has been a topic of discussion since 2013, when the City Council was considering a visioning process for the community. Over the past three plus years, the City Council minutes shows that the Council discussed subarea planning on at least nine different occasions. As part of the current biennial budget, the City Council set aside \$260,000 to prepare a CBD subarea plan.

In 2016, as a precursor to the release of a CBD Subarea Plan Request for Proposal (RFP), the City Council reviewed a proposed subarea plan task list, and a draft RFP. It also received a report from the legal department on the Towne Center covenants, conditions and restrictions and easements. In the last quarter of 2016, the City completed the CBD Assessment Report.

CED released the RFP on April 10, 2017. RFP responses were due by May 15, 2017. Five responses were received: BERK Consulting; the Beckwith Group; SCJ Alliance; Placemakers; and Crandall/Arambula. During the week of June 12 – 16, three firms were invited to interviews: BERK Consulting; SCJ Alliance; and Crandall/Arambula. On June 26, the interview panel selected BERK Consulting. Since then, BERK Consulting has refined their scope of work, timeline, and budget.

## **Subarea plan content/tasks:**

Project kick-off and project management

Existing conditions and public outreach

- Public participation plan

  - Conduct community workshops and “pop-up” events

  - Perform targeted outreach

  - Stakeholder interviews, focus groups, and online survey

  - Public participation summary report

- Draft and final existing conditions report

- Project branding and outreach materials

Subarea plan

- Vision and guiding principles

- Plan alternatives

- Goals and policies

- Zoning and design standards

- Public investment strategy (includes opportunity sites)

- Placemaking strategy

- Capital plan

- Draft plan

- Final plan

- Implementation and marketing strategy

- Conduct legislative meetings

Environmental analysis via SEPA approach memorandum

Very recent state legislation (SB 5254) has “moved the cheese” regarding the SEPA process for subarea plans. Currently (July 3, 2017), the legislation has been delivered to the governor. If adopted, it eliminates a requirement that all planned actions designated by counties, cities, and towns planning under the GMA undergo an EIS. The legislation authorizes a threshold determination of environmental impacts under SEPA for planned actions that contain mixed-use or residential development and encompass an area located near certain types of transit stops. If adopted, the effect of this possible tool on the SEPA process will be considered in the SEPA approach memorandum. If lesser environmental review needs to occur, a contract amendment is likely.

Planned action ordinance (and possible SEPA exemption)

**Timeline:** If the City Council approves the proposed contract, work begins in August, 2017. Subarea plan would be completed by June, 2018.

**Alternatives:** Request additional information or input from staff on recommended consultant scope of work, time schedules, and/or funding costs and sources.

**Funding Amount and Source:** The budgeted amount for this task is \$260,000. The proposed fee is again, \$257,290. The source of funds is through the City's General Fund.

Attachments:

- Map of subarea boundaries
- City standard contract for consulting services
- Exhibit "A" - Scope of Services
- Exhibit "B" - Project Schedule
- Exhibit "C" - Budget



# PROPOSED CBD SUBAREA PLAN PLAN BOUNDARY



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
City of Lakewood Employment Capacity Update**

This Professional Services Agreement ("Agreement"), made and entered into this 17<sup>th</sup> day of July, 2017, by and between the City of Lakewood, a Washington municipal corporation ("City"), and BERK Consulting, ("Contractor"). The City and Contractor (together "Parties") are located and do business at the below addresses which shall be valid for any notice required under this Agreement:

<p><b>CONTRACTOR:</b> BERK Consulting 2025 1st Avenue, Suite 800 Seattle, WA 98122</p>	<p><b>CITY:</b> City of Lakewood 6000 Main Street SW Lakewood, WA 98499-5027</p>
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The Parties agree as follows:

**1. TERM.** The term of this Agreement shall commence upon the effective date of this Agreement, which shall be the date of mutual execution, and shall continue until the completion of the Work, but in any event no later than **August 31, 2018** ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

**2. SERVICES.** The Contractor shall perform the services more specifically described in **Exhibit "A" (Scope of Work)** and **Exhibit "B" (Project Schedule)**, attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted professional practices for other similar services within the Puget Sound region in effect at the time those services are performed, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to obtaining any applicable City of Lakewood business license. Services shall begin immediately upon the effective date of this Agreement. Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery.

**3. TERMINATION.** Either party may terminate this Agreement, with or without cause, upon providing the other party **thirty (30) days** written notice at its address set forth above. The City may terminate this Agreement immediately if the Contractor fails to maintain required insurance policies, breaches confidentiality, or materially violates Section 12; and such may result in ineligibility for further City agreements.

**4. COMPENSATION.**

4.1 Amount. In return for the Services, the City shall pay the Contractor an amount not to exceed a maximum amount and according to a rate or method as delineated in **Exhibit "C"**, attached hereto and incorporated by this reference. The Contractor agrees that any hourly or flat rate charged by it for its services contracted for herein shall remain locked at the negotiated rate(s) for the Term. Except as otherwise provided in **Exhibit "C"**, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

4.2 Method of Payment. On a monthly basis, the Contractor shall submit a voucher or invoice in the form specified by the City, including a description of what Services have been performed, the name of the personnel performing such Services, and any hourly labor charge rate for such personnel. The Contractor shall also submit a final bill upon completion of all Services. Payment shall be made on a monthly basis by the City only after the Services have been performed and within thirty (30) days after receipt and approval by the appropriate City representative of the voucher or invoice. If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

4.3 Non-Appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

## **5. INDEMNIFICATION.**

5.1 Contractor Indemnification. Contractor shall defend, indemnify and hold the Public Entity, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Public Entity.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the Public Entity, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

5.2 Industrial Insurance Act Waiver. It is specifically and expressly understood that the

Contractor waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. The Parties acknowledge that they have mutually negotiated this waiver.

5.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**6. INSURANCE.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

6.1. No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

6.2. Minimum Scope of Insurance. Contractor shall obtain insurance of the types and coverage described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 0001 or a substitute form providing equivalent liability coverage.
- b. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Public Entity using an additional insured endorsement at least as broad as ISO CG 20 26.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Professional Liability insurance appropriate to the Contractor's profession.

6.3. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

- b. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- c. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

6.4 Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any Insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Contractor's insurance and shall not contribute with it.

6.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

6.6 Verification of Coverage. Contractor shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

6.7 Notice of Cancellation. The Contractor shall provide the Public Entity with written notice of any policy cancellation within two business days of their receipt of such notice.

6.8 Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Public Entity may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Contractor from the Public Entity.

6.9 Public Entity Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

6.10 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement.

**7. WORK PRODUCT.** All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Work shall belong to the City upon delivery. The Contractor shall make such data, documents, and files available to the City and shall deliver all needed or contracted for work product upon the City's

request. At the expiration or termination of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

**8. BOOKS AND RECORDS.** The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Work and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

**9. INDEPENDENT CONTRACTOR.** The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. The Contractor shall pay all income and other taxes due except as specifically provided in Section 4. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

**10. CONFLICT OF INTEREST.** It is recognized that Contractor may or will be performing professional services during the Term for other parties; however, such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City. Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor's selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

**11. EQUAL OPPORTUNITY EMPLOYER.** In all services, programs, activities, hiring, and employment made possible by or resulting from this Agreement or any subcontract, there shall be no discrimination by Contractor or its subcontractors of any level, or any of those entities' employees, agents, subcontractors, or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and

employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall comply with and shall not violate any of the terms of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, 49 CFR Part 21, 21.5 and 26, or any other applicable federal, state, or local law or regulation regarding non-discrimination.

## **12. GENERAL PROVISIONS.**

12.1 Interpretation and Modification. This Agreement, together with any attached Exhibits, contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior statements or agreements, whether oral or written, shall be effective for any purpose. Should any language in any Exhibits to this Agreement conflict with any language in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Any act done by either Party prior to the effective date of the Agreement that is consistent with the authority of the Agreement and compliant with the terms of the Agreement, is hereby ratified as having been performed under the Agreement. No provision of this Agreement, including this provision, may be amended, waived, or modified except by written agreement signed by duly authorized representatives of the Parties.

12.2 Assignment and Beneficiaries. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

12.3 Compliance with Laws. The Contractor shall comply with and perform the Services in accordance with all applicable federal, state, local, and city laws including, without limitation, all City codes, ordinances, resolutions, regulations, rules, standards and policies, as now existing or hereafter amended, adopted, or made effective.

12.4 Contractor's Employees – Employment Eligibility Requirements. The Contractor and any subcontractors shall comply with E-Verify as set forth in Lakewood Municipal Code Chapter 1.42. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of

their Social Security numbers. The Contractor shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation in E-Verify throughout the course of the Contractor's contractual relationship with the City. If the Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. The Contractor shall show proof of compliance with this section, and/or proof of subcontractor compliance with this section, within three (3) working days of the date of the City's request for such proof.

12.5 Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any notices required to be given by the Parties shall be delivered at the addresses set forth at the beginning of this Agreement. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. This Agreement shall be made in, governed by, and interpreted in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from this Agreement, the exclusive means of resolving that dispute, difference, or claim, shall be by filing suit under the venue, rules and jurisdiction of the Pierce County Superior Court, Pierce County, Washington, unless the parties agree in writing to an alternative process. If the Pierce County Superior Court does not have jurisdiction over such a suit, then suit may be filed in any other appropriate court in Pierce County, Washington. Each party consents to the personal jurisdiction of the state and federal courts in Pierce County, Washington and waives any objection that such courts are an inconvenient forum. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, however nothing in this paragraph shall be construed to limit the Parties' rights to indemnification under Section 5 of this Agreement.

12.6 Execution. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individual is duly authorized to execute and deliver this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and with the same effect as if all Parties hereto had signed the same document.



All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this Agreement and a complete set of all signature and acknowledgment pages. The date upon which the last of all of the Parties have executed a counterpart of this Agreement shall be the “date of mutual execution” hereof.

[Signature page follows]

IN WITNESS, the Parties hereto have caused this agreement to be executed the day and year first above written.

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

CITY OF LAKEWOOD

BERK, INCORPORATED

\_\_\_\_\_  
John J. Caulfield, City Manager

ATTEST:

\_\_\_\_\_  
Alice M. Bush, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Heidi Ann Wachter, City Attorney

# EXHIBIT “A”

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## Lakewood Central Business District Subarea Plan

**Project Understanding and Scope | June 28, 2017**

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### Project Understanding

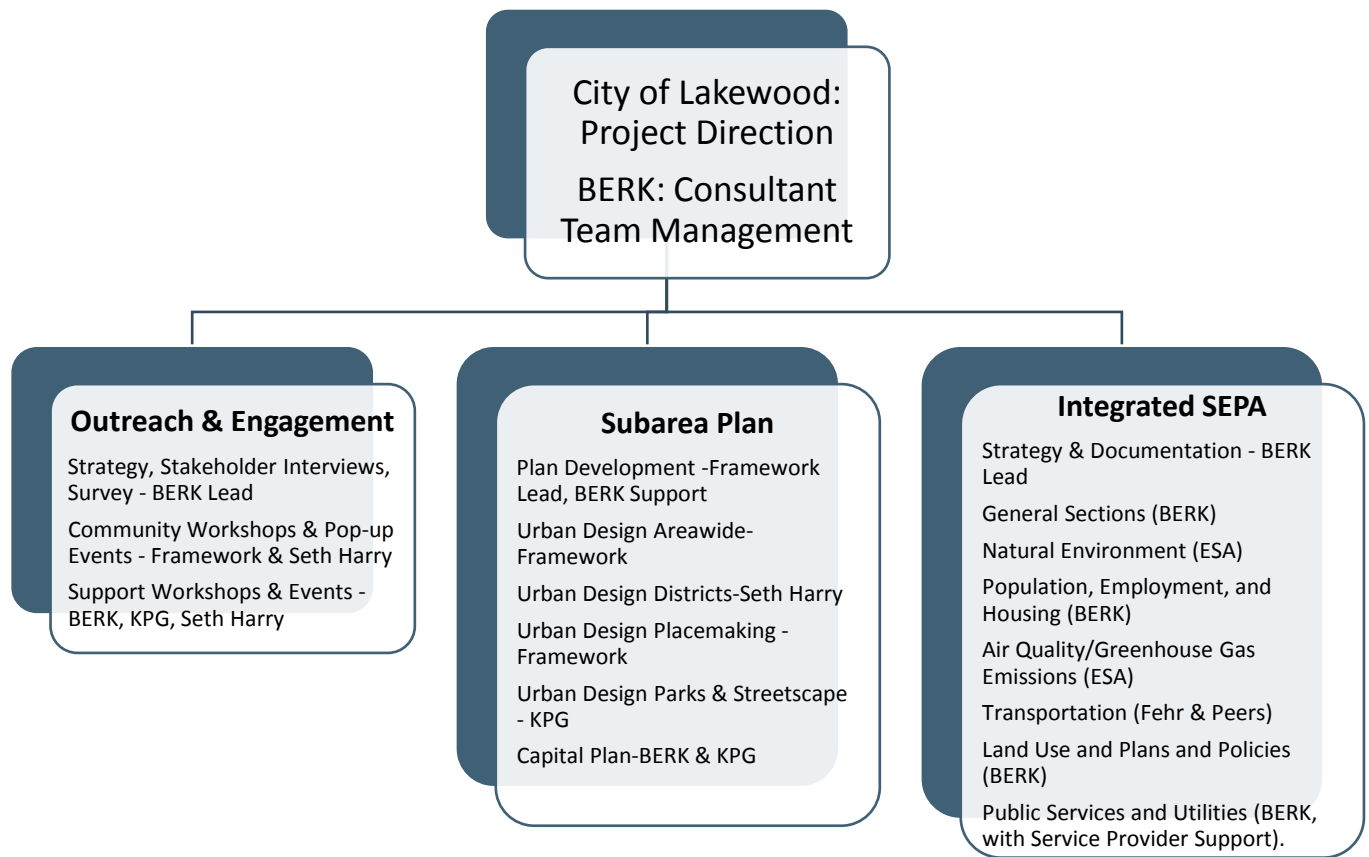
The City of Lakewood has been building towards the development of a Downtown plan since its incorporation in 1996. The community identified early on the desire to improve urban design in Lakewood, and while the City has taken steps in that direction the Downtown Lakewood Plan will represent the most significant effort to date. The Downtown Lakewood Plan will allow the City and community to develop an aspirational yet realistic vision for the Downtown that builds upon past efforts. Many early concepts have been identified, such as improved circulation and streetscapes, public space improvements and placemaking, improved zoning, development and design standards, and more park space in Downtown.

This scope of work includes the following tasks:

1. Project Kick-off and Project Management
2. Existing Conditions and Public Outreach
3. Subarea Plan
4. State Environmental Policy Act (SEPA) Documentation and Facilitation

The scope is designed to deliver three key components: meaningful community engagement and outreach, a visionary and realistic subarea plan, and an integrated SEPA process that facilitates future development. The scope is based on a communicative model that integrates extensive public outreach with technical expertise in planning and design as the basis for creating the plan.

The scope will be carried out collectively by the Consultant Team based on the following roles:



## Scope of Work

### TASK 1 – PROJECT KICK-OFF AND PROJECT MANAGEMENT

#### Task 1.1 Kick-off Meeting

The Consultant team will hold a project kick-off meeting with City staff to review the scope of work, the project schedule, development of the public outreach plan, and brainstorming on key ideas and concepts to consider during the planning process. The Consultant team will work with the City in a collaborative approach based on the City’s preferences for lines of communication and frequency of project team calls and meetings.

#### Task 1.2 Project Management

Lisa Grueter, BERK Consulting, will serve as Project Manager and will provide regular updates to City staff, and boards and commission, as requested by the City and based on project budget resources.

### TASK 2 – EXISTING CONDITIONS AND PUBLIC OUTREACH

#### Task 2.1 Public Participation Plan

The public participation plan is one of the first project deliverables and will identify who should be engaged in the process, how best to reach them, and how the input will be used during development of

the plan. The Consultant team has a variety of public outreach and engagement methods that can be tailored to the needs of the project including social media, public workshops, stakeholder interviews and focus groups, a project website, an online survey, attending City events such as the farmer's market, and targeted outreach and engagement for hard to reach groups within the community.

## Task 2.2 Draft and Final Existing Conditions Report

The existing conditions report provides the foundation for plan development and a common level of understanding between the consultant team, the City, and the community. The Consultant team will build from the prior work on the CBD assessment to expand the scope of information on existing conditions to address relevant planning topics as outlined by the City and the BERK team. This report will help inform the EIS affected environment.

## Task 2.3 Project Branding and Outreach Materials

Project branding concepts will be developed to create a strong project identity to increase project awareness and participation in the planning process. The Consultant will work with the City to refine project branding concepts developed in the proposal as part of the public engagement plan.

## Task 2.4 Community Workshops and Pop-Up Events

### 2.4.1 Community Workshops

Community workshops should be fun, engaging, and productive. The Consultant team proposes two workshops, with the first occurring over a three-day period. By spending time in the community over a multi-day period, the Consultant team will build stronger relationships in the community, better understand the community and key issues, and collaborate with the public on plan goals, ideas, and concepts.

For the first workshop the Consultant team plans to conduct a 3-day workshop in Lakewood focused on the community vision and development of plan alternatives. This workshop will include an evening event on opening night, a Downtown walking tour with the public, small group workshop exercises, open studio hours for the consultant team to work and the public is invited to stop by and provide input, and presentation by the consultant team on the outcomes of the workshop.

The second workshop will focus on public input on the plan alternatives. This workshop will be a single event in the evening including a presentation on the alternatives and opportunities for public input with a mixture of an open-house and small group discussions.

### 2.4.2 Pop-up Events

The Consultant team, led by Framework, will conduct four pop-up events. Two events are anticipated to be conducted at the time of the Community Workshops and two would be held separately. The four events are preliminarily anticipated to include the following locations:

- Pierce Transit Station
- Farmers' Market
- Park Lodge Elementary
- Lakeview Hope Academy

## Task 2.5 Targeted Outreach

The city and the CBD reflect a diverse community with businesses and residents that reflect different ethnicities and primary languages (e.g. Spanish, Korean, etc.). Traditional outreach efforts do not typically engage such groups. Businesses often have different needs and preferences for time and type of participation. The Consultant team will conduct outreach activities to “hard to reach” groups identified in the Public Participation Plan. This could include methods such as phone calls, attendance at community events or meetings, or canvassing, up to the hours specified in the budget. This targeted outreach will help identify key contacts for follow up in interviews, surveys, or focus groups, or workshop participation. Engagement activities for these groups will be included in Task 2.6. For example, efforts could involve calling Korean churches, to find one that has a pastor that takes an interest in the plan and will help recruit people for a focus group, or to distribute postcards to take the online survey; or doing a business district canvas.

## Task 2.6 Stakeholder Interviews, Focus Groups, Online Survey

The Consultant team will conduct stakeholder interviews, focus groups, and conduct an online survey to get input from key stakeholder groups including residents, business and property owners, developers, and community organizations.

## Task 2.7 Public Participation Summary

The public participation summary will include the community kick-off event, workshops, stakeholder interviews and focus groups, and the online survey.

# TASK 3 – SUBAREA PLAN

## Task 3.1 Vision and Guiding Principles

Based on public input the Consultant will develop an illustrated vision statement and guiding principles. The illustrated vision statement will include a vision statement that is aspirational, but also realistic and achievable based in part on the findings of the CBD Assessment. The vision statement will be supported by illustrations and/or photos that articulate the image and identity desired by the community.

## Task 3.2 Plan Alternatives

Based on the vision, guiding principles, and the first community workshop, the Consultant team will develop three plan alternatives for consideration by the City and the community. The alternatives will include distinct options for addressing land use, urban design, investments in public space and infrastructure, the transportation and street network, and implementation strategy. The Consultant team will prepare a detailed alternatives summary that will be available to the public and presented to City boards and commissions. These alternatives will be analyzed in the Draft EIS.

## Task 3.3 Goals and Policies

The project goals and policies will begin to put more detail behind the community vision and how it will be implemented based on the preferred alternative. Goals and policies will address the major plan components and support development of the implementation plan.

### Task 3.4 Zoning and Design Standards

Based on the preferred alternative, the Consultant team will develop a new zoning plan and development standards. The zoning plan will address land use, development densities and intensities, future circulation improvements, the desired relationships between public space and private development, mixed-use development, low-impact development, and urban design. The Consultant team has the capability to draft and implement a form-based code or a hybrid form-based code that emphasizes site planning and building forms over land use as the primary means of regulation. The development standards will also address the compatibility between higher density development and lower-density residential areas based on the Consultant team's past work and expertise on this topic. The design standards will be visually oriented and user friendly for the public.

### Task 3.5 Public Investment Strategy + Opportunity Sites

The public investment strategy and identification of opportunity sites will be focused on the best opportunities for improving Downtown and options for public/private partnerships. The Consultant team will build off the information in the CBD Assessment report for guidance.

### Task 3.6 Placemaking Strategy

The placemaking strategy will explore additional opportunities to program public and private space to become a community asset. Placemaking concepts were explored as part of the Motor Avenue Urban Design Project, and additional opportunities such as near City Hall or underutilized properties such as the former QFC site will be addressed in the placemaking strategy. Festivals, concerts, food festivals, and recreation are all potential placemaking strategies that could have an immediate impact on the success of Downtown Lakewood.

### Task 3.7 Capital Plan

The capital plan will identify priorities for public investments based on infrastructure needs and deficiencies, strategic investments to implement the plan alternative, and available funding sources including local, state, and federal funds in addition to grant opportunities. The Consultant team will work in collaboration with other City and regional agencies and review adopted budgets and capital facility plans to define projects and revenue sources. The capital plan will include financial analysis of City resources to be included in the funding strategy.

### Task 3.8 Draft Plan

The draft subarea plan will be graphically-oriented and user friendly for the public and those participating in implementing the plan. The plan will include the project branding elements for continuity between the planning process, plan development, and implementation. The Consultant team will present the draft plan to the Planning Commission, City Council, and other boards or commissions upon request as well as make the plan available for public comment.

### Task 3.9 Final Plan

The final plan will reflect input from City staff, elected and appointed officials, and the public. The final plan will go through the legislative approval process with support from the consultant team.

### Task 3.10 Implementation and Marketing Strategy

The implementation and marketing strategy will promote the City's vision for Downtown, identify public and private investment opportunities, highlight planned City investments in the Downtown, and include market and demographic information for the Downtown. The Consultant team will develop a brochure or other communication materials to support the subarea plan strategies that are well designed and adaptable to print and online media.

### Task 3.11 Legislative Meetings

The Consultant team will support the legislative review process with the Planning Commission and City Council including public hearings, drafting the adopting resolution or ordinance, and providing supporting materials on the planning process and public outreach during plan development. Two meetings are planned with two staff members, and four meetings are planned with one staff member, for a total of six meetings. Attendance will be based on the topics and issues to be discussed.

## TASK 4 – SEPA DOCUMENTATION AND FACILITATION

### Task 4.1. EIS Approach

In a draft and final memo, to be discussed at the kick-off meeting in Task 1, the Consultant team will advise the City on the advantages and disadvantages of a Planned Action EIS, integrated SEPA/GMA EIS, and an EIS establishing an infill exemption. Additionally, if SB 5254 passes it could eliminate a requirement that all planned actions designated by counties, cities, and towns planning under the GMA undergo an EIS, and instead authorizes a threshold determination of environmental impacts under SEPA for planned actions that contain mixed-use or residential development and encompass an area located near certain transit stops. If adopted, the effect of this possible tool on the SEPA process will be considered in the SEPA approach memo. If lesser environmental review needs to occur, it may allow greater opportunities for Plan outreach or technical elements such as review of opportunity sites and implementation strategies.

### Task 4.2. EIS Scoping and Alternatives

Assuming an EIS is pursued, the Consultant will assist with the public scoping process including:

- Providing guidance on EIS alternatives to analyze.
- Preparing a SEPA checklist and scoping notice, addressing all topics not expected to be addressed in the EIS to a sufficient level of detail to support the type of EIS selected.
- Preparing a determination of significance and scoping notice.
- Preparing handout materials for a public scoping meeting, which can be combined with a subarea plan workshop.
- Preparing a summary of the scoping process, selection of alternatives, and comments received during scoping to include as an appendix to the Draft EIS.

### Task 4.3 Preliminary Draft EIS

The Consultant will prepare a preliminary draft EIS for City review and comment. The intent is to integrate the EIS analysis with the Draft Subarea Plan to the extent feasible to streamline the document



and to effectively use project resources including the existing conditions report and plan alternatives. Plan alternatives will include a no action and two action alternatives that may vary growth amounts, locations, and patterns. For the purposes of transportation modeling, a bookend approach of the low and high growth estimates will be developed, and the mid-range alternative addressed qualitatively.

Although the scope of the EIS has not yet been determined, likely EIS elements will include the following topics: General Sections (BERK); Natural Environment (ESA); Population, Employment, and Housing (BERK); Air Quality/Greenhouse Gas Emissions (ESA); Transportation (Fehr & Peers); Land Use and Plans and Policies (BERK); and Public Services and Utilities (BERK). The Consultant will prepare the notice of availability for City publication.

**General Sections:** The Consultant will prepare a fact sheet, table of contents, distribution list, alternatives description, appendices, and other necessary supporting documentation for City review.

**Natural Environment:** The Consultant will collect readily available critical area mapping and review City stormwater management efforts. A programmatic discussion of potential direct and indirect effects on critical areas (e.g. wetlands, stream water quality) and the ability of the subarea plan and existing critical area and stormwater regulations to mitigate them will be described. No field verification of existing conditions is proposed.

**Air Quality/Greenhouse Gas (GHG):** The Consultant will prepare a summary of current air quality conditions per Puget Sound Clean Air Agency and Puget Sound Regional Council information. The level of growth or trips planned will be compared to regional air quality management plan estimates (e.g. PSRC air quality conformity analysis). The analysis will review transportation model vehicle miles travelled data. The analysis will consider per capita estimates of GHG emissions based on alternative growth patterns, and describe the ability of the alternatives to provide mixed use development patterns that can reduce standard GHG emissions. This analysis will focus solely on air quality and GHG emissions from vehicles, and will not include air or GHG emissions associated with construction or operation of buildings. (At the time of scoping if it is deemed by the City and Consultant that the Air Quality/GHG analysis can be addressed in the checklist instead of the EIS, this may free up resources to address natural environment topics above to a greater degree if needed.)

**Population, Employment, and Housing:** The Consultant will describe current demographic conditions based on the CBD assessment. The Consultant will compare the alternatives' effects on population, employment, and housing mix and capacity including relationship to growth targets (per Buildable Lands Report update).

**Land Use and Plans and Policies:** The Consultant will compare and evaluate the proposed amount, types, scale, and pattern of uses in comparison with the existing land use pattern and adjacent development. The Consultant will also describe the overall aesthetic character of the study area in terms of the quality of the urban environment, the design and character of existing buildings, and building height, bulk, and scale. The Consultant's evaluation will consider the nature and magnitude of change envisioned by the subarea plan. The visual character analysis will rely primarily on narrative description, photographs of existing conditions, a map identifying areas where height is likely to change in comparison to adopted regulations, and the renderings and materials developed for the subarea plan. The Consultant will analyze the consistency of the subarea plan with the Comprehensive Plan and regional plans and indicate the potential for policy amendments.

**Transportation:** The Consultant will work with the City to identify available sources of data to establish

existing conditions of the transportation network, supplemented by field observations by Consultant. This will include conditions for autos/freight, transit, walking, bicycling, parking, and safety. Level of service will be analyzed for the PM peak hour at up to 12 study facilities (intersections or segments) to be defined in consultation with City staff. For intersection analysis, this scope assumes the City will provide Consultant with an existing Synchro network including all study facilities and signal timings. The Consultant will quantitatively evaluate the low and high growth alternatives for the EIS. The mid-growth alternative will be discussed qualitatively. Travel demand forecasts will be developed using a combination of the City's most recently developed travel demand model and Consultant's MainStreet trip generation tool. Quantitative level of service results will be prepared for the 12 study facilities. For all alternatives, walking, bicycling, parking, and safety will be addressed qualitatively. Consultant will suggest potential mitigation measures for any identified transportation impacts. This scope and fee includes turning movement data collection at up to 12 intersections. It is assumed the City will provide current GIS data related to the transportation network, including sidewalk presence, bicycle facilities, truck routes, transit stops/routes etc.

**Public Services & Utilities:** The Consultant will review existing levels of service, estimated needs and demand for service, and projected levels of service under each alternative for police and fire protection, parks and recreation, schools, water, and wastewater, as determined through the scoping process. The Consultant will coordinate with appropriate service provider staff and integrate system plan levels of service and capital plans. The Consultant will base the analysis to the extent feasible on available plans and population-based estimates of demand and reflect the Subarea Plan capital facility plan.

#### Task 4.4 Draft EIS

Based on City comments on the preliminary draft EIS, the Consultant will prepare a draft EIS for public review. One round of comments is anticipated in the project budget. The Consultant will prepare the notice of availability for City publication.

#### Task 4.5 Final EIS

The final EIS will consist of a fact sheet, table of contents, draft EIS analysis corrections as needed, description of the preferred alternative if needed, and responses to comments. The Consultant will prepare a preliminary final EIS for City review and comment. Based on City comments, the Consultant will prepare a final EIS for public issuance. One round of comments is anticipated in the project budget. The Consultant will prepare the notice of availability for City publication.

#### Task 4.6 Implementing SEPA Ordinances

If the City elects to prepare a Planned Action EIS or a programmatic EIS with a SEPA infill exemption, additional ordinances would be required. The Consultant will prepare one of the following types of ordinances in collaboration with the City Attorney and City staff:

**Planned Action Ordinance.** The Consultant will work with the City to prepare the ordinance that designates the Planned Action. The ordinance will address all legal requirements as outlined in WAC 197-11-168.

**SEPA Infill Exemption.** If an EIS with the SEPA infill exemption is selected as the approach, the Consultant will draft a proposed categorical exemption for inclusion in the City's SEPA rules. The exemption will indicate:

- The level of residential or mixed-use development that will be exempt
- The area where the exemption will apply
- How the exemption will be applied to a proposed project
- Whether other exemption “exceptions” (e.g., “lands covered by water” or “critical areas”) apply

## ASSUMPTIONS

- Time may be transferred from one task to another due to greater or lesser level of effort, provided that each task shall be completed and the total budget shall not be exceeded.
- The City will provide available necessary government documents, studies, site plans, GIS data layers and mapping and other technical information pertaining to the study area, including any appropriate system plans, electronic GIS data, aerial photos, and drawings of areas within the project study area.
- Research and data collection will be based on readily available secondary sources of information, including reports, inventories, maps and other similar literature from local government and other sources.
- The Consultant will provide entire document(s), where applicable, in the native compatible formats used to create the document (i.e., MS Word, Excel, InDesign, etc.).
- The City is responsible for public document reproduction and distribution of all public review and final drafts.
- The City is responsible for meeting advertisements, room reservations, and other similar logistics.

# EXHIBIT B REVISED PROJECT SCHEDULE

June 30, 2017

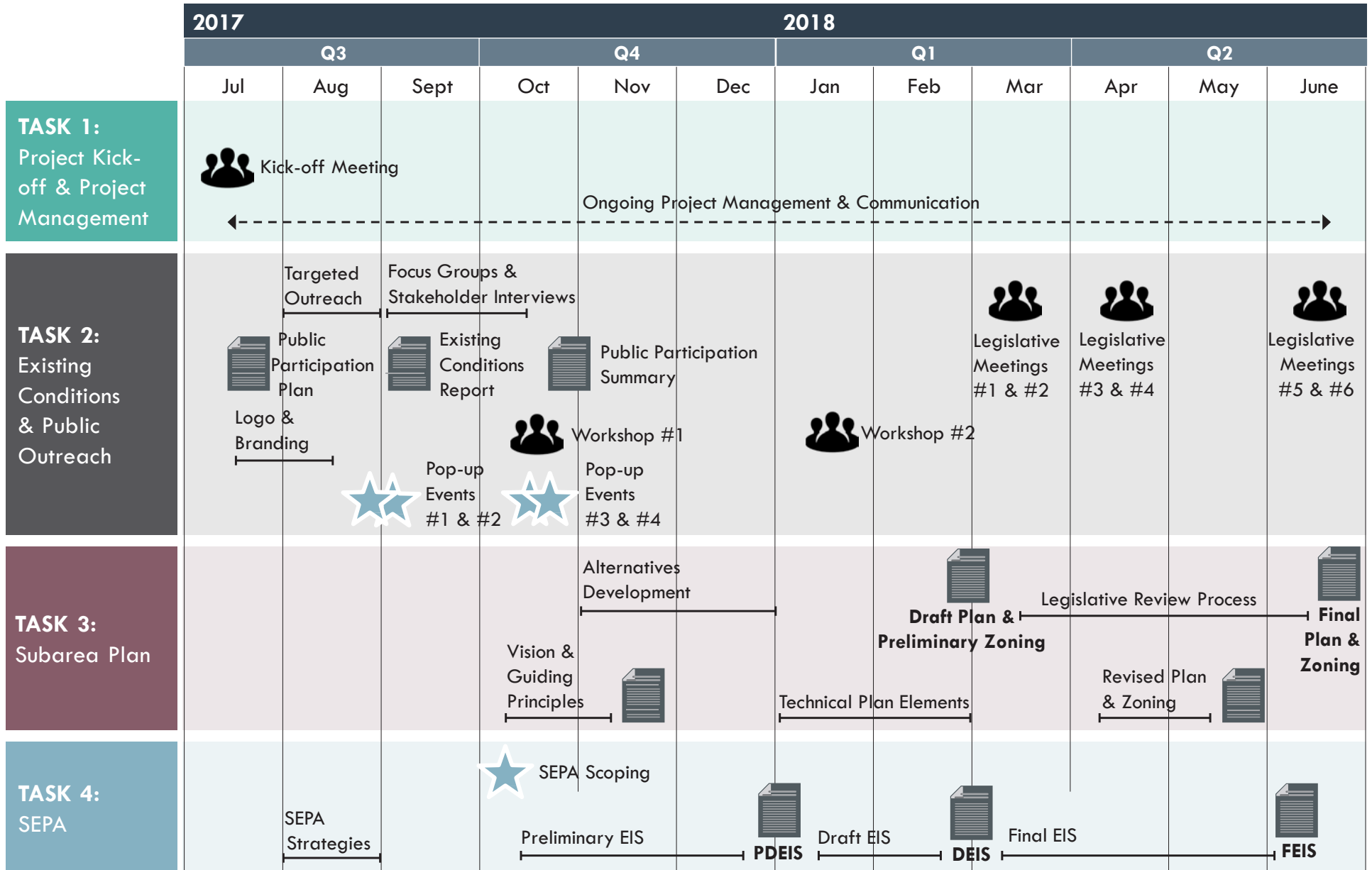



EXHIBIT C	BERK Consulting				Seth Harry	Framework		FP	ESA	ESA	KPG	Total Hours and Estimated Cost by Task	
	Lisa Grueter, Project Manager, SEPA Lead	Brian Murphy, Economic Development	Erika Rhett, Planning & Outreach	Project Support	Seth Harry, Urban Design	Lesley Bain, Placemaking	Jeff Arango, Subarea Plan Lead	Ariel Davis, Transportation Planner	Claire Hoffman, Environmental Scientist	Chris Sanchez, Air Quality	John Davies, Transportation Planner		Paul Fuesel, Landscape Architect
2017 Hourly Rate	\$200	\$250	\$150	\$90	\$180	\$150	\$150	\$170	\$150	\$180	\$125	\$170	
<b>Task 1: Project Kick-off and Project Management</b>													
Task 1.1 Kick-off Meeting	6		4		4		4	4	4			4	30
Task 2.2 Project Management	12												12
<b>Subtotal</b>	<b>18</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>42</b>
<b>Task 2: Existing Conditions and Public Outreach</b>													
Task 2.1 Public Participation Plan	2		6				2						10
Task 2.2 Draft and Final Existing Conditions Report	8	4	4	16	6	4	8	12			10	6	78
Task 2.3 Project Branding and Outreach Materials			4	8			2						14
Task 2.4 Community Workshops (2) and Pop-Up Events (4)	10		20	10	30	24	40				12	14	160
Task 2.5 Targeted Outreach			10	10			2						22
Task 2.6 Stakeholder Interviews, Focus Groups, Online Survey	2		20	20									42
Task 2.7 Public Participation Summary	2		6	8			2						18
<b>Subtotal</b>	<b>24</b>	<b>4</b>	<b>70</b>	<b>72</b>	<b>36</b>	<b>28</b>	<b>56</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>20</b>	<b>344</b>
<b>Task 3: Subarea Plan</b>													
Task 3.1 Vision and Guiding Principles	2		2		6		10					6	26
Task 3.2 Plan Alternatives	8			6	18	6	22				30	18	108
Task 3.3 Goals and Policies	4		10				6				6		26
Task 3.4 Transportation and Circulation Plan							6				26	14	46
Task 3.5 Zoning and Design Standards			20		18		18					6	62
Task 3.6 Public Investment Strategy + Opportunity Sites	4	12		6			12						34
Task 3.7 Placemaking Strategy						18	4						22
Task 3.6 Parks, Recreation, Trails Concepts	4						6					12	22
Task 3.7 Capital Plan	8	4		14			2				8	14	50
Task 3.8 Draft Plan	2		20	12	20	8	20	10			10	18	120
Task 3.9 Final Plan	2		8				6						16
Task 3.10 Implementation and Marketing Strategy	2	16		12			6						36
Task 3.11 Legislative Meetings	20						20						40
<b>Subtotal</b>	<b>56</b>	<b>32</b>	<b>60</b>	<b>50</b>	<b>62</b>	<b>32</b>	<b>138</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>80</b>	<b>88</b>	<b>608</b>
<b>Task 4: SEPA</b>													
Task 4.1. EIS Approach	4												4
Task 4.2. EIS Scoping and Alternatives	8		6										14
Task 4.3. Preliminary Draft EIS	36		30	40				128	37	25			296
Task 4.4. Draft EIS	12		20	24				70	30	8			164
Task 4.5 Final EIS	24		20	28				50	8	2			132
Task 4.6 Implementing SEPA Ordinances	8							35					43
<b>Subtotal</b>	<b>92</b>	<b>0</b>	<b>76</b>	<b>92</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>283</b>	<b>75</b>	<b>35</b>	<b>0</b>	<b>0</b>	<b>653</b>
<b>Total Estimated Hours</b>	<b>190</b>	<b>36</b>	<b>210</b>	<b>214</b>	<b>102</b>	<b>60</b>	<b>198</b>	<b>309</b>	<b>79</b>	<b>35</b>	<b>102</b>	<b>112</b>	<b>1647</b>
<b>Cost (Hours*Rate)</b>	<b>\$38,000</b>	<b>\$9,000</b>	<b>\$31,500</b>	<b>\$19,260</b>	<b>\$18,360</b>	<b>\$9,000</b>	<b>\$29,700</b>	<b>\$52,530</b>	<b>\$11,850</b>	<b>\$6,300</b>	<b>\$12,750</b>	<b>\$19,040</b>	<b>\$257,290</b>
<b>Subtotal Consultant Cost</b>	<b>\$257,290</b>												
<b>Project Expenses @ ~1% of project budget</b>	<b>\$2,702</b>												
<b>Estimated Project Total</b>	<b>\$259,992</b>												



TO: Mayor and City Councilmembers

FROM: Torie Brazitis, Assistant to the City Manager

THROUGH: John J. Caulfield, City Manager 

DATE: July 10, 2017

SUBJECT: New Franchise Agreement with City of Tacoma, Department of Public Utilities, Light Division (TPU Light) to Provide Electrical Light and Power Services from 2017-2037

This memo requests that the City Council approve the renewal of a franchise with the City of Tacoma, Department of Public Utilities (Tacoma Public Utilities), Light Division to provide electrical light and power service to the City of Lakewood. This franchise was originally approved from 1997 through 2017 through Ordinance 139.

Background Information:

This franchise gives Tacoma Public Utilities (TPU) the ability to use the City's public rights-of-way for the 20 years to build and operate an electrical light and power system. In exchange, TPU will pay the City an annual 6% franchise fee.

There are three changes to the text from the previous TPU Light franchise renewal:

1. **Returns 1.5% Utility Earnings Tax Revenue to Lakewood:** In 2015, Tacoma residents approved a Proposition 3, which -- among other items -- created a new utility company earning tax of 1.5% on TPU customers to fund street improvements in the City of Tacoma for 10 years (2016-2026). Because Proposition 3 would apply to Lakewood residents served by TPU, the City of Lakewood Council approved Resolution 2015-28 opposing the measure on October 5, 2015.

New text in Section 18 of this franchise renewal enables funds from the Proposition 3 tax or other "Utility Tax[es] for retail electrical service" in the future to be returned to the City of Lakewood. This section was taken from similar language in the approved City of Fircrest franchise agreement with Tacoma Public Utilities. For the remaining years of Proposition 3, for example, the change will result in the City collecting approximately \$206,250 in additional funds annually.

2. **Extended Notification for Large Projects:** TPU requested extended notification time from 90 to of 120 days of City projects requiring relocation of major utility infrastructure (Section 3-1) to give them extra time to order specialized parts and equipment. This change was amenable to the City Public Works Department.
3. **Removed Amendment of Click Franchise to Flett Creek:** Finally, this franchise previously included a 2003 amendment to allow TPU to extend Click into the Flett Creek area of Lakewood. Staff removed that language from this renewal, since it is now included in the 2004 TPU Click franchise (Ordinance 343) and no longer necessary.

Aside from those exceptions above, this franchise language for 2017-2037 is similar to that of the last franchise for 1997-2017.

The current franchise expires in this fall. To secure its approval through all Boards before that date, it is scheduled to proceed through Lakewood City Council and Tacoma Public Utilities Board for approval, and then the City of Tacoma City Council for a concurring resolution on the following timeframes:

- City of Lakewood (for approval):
  - Study session – Monday, July 10<sup>th</sup>
  - Regular meeting – Monday, July 17<sup>th</sup>
- TPU Board (for approval):
  - Study session – Wednesday, July 12<sup>th</sup> or Wednesday, July 26<sup>th</sup>
  - Regular meeting – Wednesday, August 9<sup>th</sup>
- Tacoma City Council (for a concurring resolution):
  - Study session – Tuesday, August 15<sup>th</sup>
  - Regular meeting – Tuesday, August 22<sup>nd</sup>

#### Fiscal Impact:

With the approval of pass-through funds back to the City from the 1.5% utility earning tax, the City of Lakewood will receive an estimated \$137,500 per 1%, or \$206,250 additional for each remaining year of Proposition 3. This will be on top of the existing revenue received from TPU currently, which is approximately \$825,000 annually.

#### Alternatives:

As per the existing franchise, the City Council could direct staff to extend the current agreement for up to two extensions of five years per extension.

#### Recommendation:

It is recommended that the City Council approve a new twenty-year extension of the TPU Light franchise.

Attachments:

- Draft Franchise Agreement with City of Tacoma, Department of Public Utilities, Light Division



**ORDINANCE NO. XXX**

AN ORDINANCE OF THE CITY OF LAKEWOOD, WASHINGTON, GRANTING UNTO THE CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWENTY YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR AN ELECTRICAL LIGHT AND POWER SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF LAKEWOOD, WASHINGTON.

WHEREAS, the City of Tacoma Department of Public Utilities, Light Division has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

**Section 1. Franchise Granted.** Pursuant to RCW 35A.47.040, the City of Lakewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation organized under the laws of the State of Washington (hereinafter "Grantee"), its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of 20 years, beginning on the effective date of this ordinance.

Grantee and City may agree to extend the term of this franchise on substantially the same terms and conditions as set forth herein for up to two extensions of five years per extension.

This franchise grants the Grantee the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities including communication infrastructure therefor for an electric utility system, in, under, on, across, over, through, along or below the public right-of-ways and public places located in the City of Lakewood, as approved under City permits issued pursuant to this franchise.

For the purposes of the franchise the following words and phrases shall have the following meaning:

(1) "electric utility system" means all plant, facilities, equipment, wires, conduit, meters, communication infrastructure, generation equipment, transmission and distribution poles as may be necessary to provide electric utility service for customers. It does not include accessory or energy services, including but not limited to technical energy usage assistance, and (non-traditional) business activities such as telecommunications including cable television, or other

business activities.

(2) “electric utility service” means all actions directly related to providing electric power and energy to customers for lighting, appliances, fixtures, space heating and cooling, water heating and other energy uses. It does not include accessory or energy services, including but not limited to technical energy usage assistance, and (non-traditional) business activities such as information services, appliances, and telecommunications including cable television, or other business activities.

(3) “gross revenue” means money or funds received by reason of transaction of electric utility service business including sales of electric power and energy to customers. Gross revenue does not include: (a) uncollected amounts; (b) amounts received from condemnation award or condemnation settlement; (c) amounts received as compensation or reimbursement of damages to or protection of any property of Grantee; (d) amounts received as compensation for or in aid to construction; (e) discounts, returns, allowances and repossessions; and (f) amounts received for street light maintenance and operation.

**Section 2. Non-Exclusive Franchise Grant.** This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said right-of-ways, streets, avenues or all other public lands and properties of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description. It is provided, however, City agrees not to compete with Grantee as an electric utility system or provider of electric utility service in the current service area of the Grantee during the period of this franchise.

**Section 3. Relocation of Electrical Transmission Facilities.** The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street, any component of its electric utility system when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by the City, provided that the Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of electrical line or facility required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if the relocation need results from a private development, use or activity.

If the City determines that the project necessitates the relocation of the Grantee's then existing facilities, the City shall:

(1) At least one hundred twenty (120) days prior to commencement of construction of improvement projects that require relocation of major infrastructure, provide the Grantee with written notice and plans requiring such relocation, unless another time period for the notice is agreed to by the parties for a particular project.

(2) Provide the Grantee with copies of pertinent portions of the plans and

specifications for such improvement project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City right-of-way in order to accommodate such improvement project. After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities at no charge or expense to the City (except as hereinafter provided) so as to accommodate the improvement project construction schedule.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this Section. Provided, however, the parties agree to exercise good faith, reasonable and timely decision making especially when issues arise in the field pertaining to relocations. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project. The City on occasion will be constructing, reconstructing and/or relocating roads, streets, public ways, areas or facilities within the right-of-way or property which will require Grantee to install and/or relocate part of its electric utility system. Grantee will be relying on the alignment, lines and grades as set forth in City's approval plans wherein Grantee thereafter constructs or reconstructs its electric utility system in accordance with City's requirements and City standards. Therefore, if City thereafter again adjusts and/or revises the alignment, line or grade for a road, street, public way or area, before this part of the Grantee's electric utility system has been in place for fifteen (15) years (commencing with the initial City revision), then City agrees to reimburse Grantee a pro rata share of the total relocation costs based on fifteen (15) year life expectancy for the portion of Grantees electric utility system that is affected by the City revision unless differently agreed to in writing by City and Grantee at the time of the installation or relocation.

City recognizes and acknowledges that Grantee owns utility poles and other parts of its electric utility system that may on occasion be of special benefit to certain customers. City also recognizes that Grantee has the right to require an additional charge for the privilege and special use of its electric utility system including its poles. Grantee agrees to allow the City to apply temporary banners and decorations to Grantee's poles at no charge so long as it does not impede use of Grantee=s poles by Grantee, and is consistent with all appropriate safety regulations.

**Section 4. Consideration For Agreement.** (1) The consideration for this agreement includes, but is not limited to, the mutual and individual benefits of this agreement that allow each of the parties the ability to make long term planning decisions in light of the provisions set forth herein, the waiver of permit fees the non-competition provisions as provided in Section 18 of this agreement, and any fees that may be charged pursuant to RCW 35.21.860(b).

(2) If the City grants to any other energy provider a franchise or allows any other energy provider to operate under terms that are over-all more favorable to the other energy provider than

those set forth herein, Grantee shall have the right to renegotiate the provisions of this franchise that Grantee believes are over-all less favorable to it than those authorized or allowed to said energy provider. Provided, however, Grantee may not exercise this above re-negotiation right for a period of two years from the effective date of this franchise. Grantee shall also have the right to renegotiate the provisions of this franchise that are affected by a substantial change in state or federal law that would allow the City the opportunity to tax and assess additional revenue from the Grantee's operations within the corporate boundaries of the City.

In the case where the parties do not agree on the renegotiation or identification of affected provisions of this franchise, the parties agree to a binding arbitration process as follows: Each of the parties shall select an arbitrator, and the two arbitrators shall select a third arbitrator. If the two arbitrators are unable to select a third arbitrator, the third arbitrator shall be selected by the presiding judge of the Pierce County Superior Court. In accordance with the procedures of Chapter 7.04 of the Revised Code of Washington, the panel of three arbitrators shall review the evidence and authorities presented by the parties and hear the argument of the parties, and thereafter decide the issue(s) presented for arbitration. The arbitrators shall be authorized to require each party to provide to the other reasonable discovery. The arbitrators shall render their decision based upon their interpretation of the provisions of this franchise agreement. The arbitrators are not empowered to modify or amend the text of this franchise agreement. The parties agree to be bound by the decisions of the panel of arbitrators as to the identification of affected provisions of this franchise and/or the re-negotiation thereof.

If there is a substantial change in the law or circumstances beyond the control of a party hereto that substantially adversely affects said party, then said party may re-open this agreement to address the terms affected by the change in the law or circumstances, and the parties agree to negotiate in good faith to address said concerns and to accomplish the original intent of both parties.

**Section 5. Undergrounding of Facilities.** In any area of the City in which there are no aerial facilities, or in any area in which telephone, electric power wires and cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Provided that except for high voltage lines, the electric service and distribution lines to new construction in areas that are to be served by the Grantee and that were not previously served by the Grantee shall be undergrounded.

(1) Whenever the City may desire the undergrounding of the aerial utilities in an area of the City, the Grantee agrees to cooperate with the City in City's proposal to create a Local Improvement District (L.I.D.) as follows:

(a) Seventy percent (70%) of the total actual cost of converting the existing overhead primary electrical distribution system (i.e. 15 KV and less) to underground shall be provided from assessments against the property owners within the L.I.D. Assessments will be in accordance with applicable law;

(b) Thirty percent (30%) of the total actual cost of converting the existing overhead primary electrical distribution system to underground shall be provided for by the Grantee;

(c) Any charges made against the L.I.D. for undergrounding other than the electrical distribution system covered under this franchise (i.e. secondary services, telephone, fire alarm, cable TV, and street lighting circuits) will not be included when determining the amount to be paid by the Grantee;

(d) Conversion of the secondary electrical service on private property is not to be included in the computation of the allocation of payments to be made by the Grantee in the L.I.D. The customer must supply and install the secondary conductor and conduit from the meter to the secondary service box located near the property line;

(e) For the purposes hereof, L.I.D. includes other mutually agreed to methods to finance undergrounding of aerial facilities, in addition to local improvement district financing pursuant to RCW 35.43 et. seq.

(2) Whenever the City may desire the undergrounding of the aerial utilities in an area of the City in conjunction with a Public Works Improvement Project (street widening, sewer installation, curb and sidewalk installation, street lighting, traffic signal, etc.) and more than 50% of these aerial facilities are in conflict with the Public Works Improvement Project, the Grantee agrees to cooperate with the City with City's proposal to underground the aerial facilities as follows:

(a) Fifty percent (50%) of the total actual cost of converting the existing overhead primary electrical distribution system to underground shall be provided by the City. (Total actual cost shall include trenching, vaults, conduit, cable, switch gears, transformers, restoration, etc.)

(b) Fifty percent (50%) of the total actual cost of converting the existing overhead electrical distribution system covered under this franchise to underground shall be provided by the Grantee. (Total actual cost shall include trenching, vaults, conduit, cable, switch gears, transformers, restoration, etc.)

(c) Any charges made against the project for undergrounding the secondary services, telephone, fire alarm, cable TV, and street lighting circuits will not be included when determining the amount to be paid by the Grantee.

(d) Conversion of the secondary electrical service on private property is not included in the project. The customer must supply and install the secondary conductor and conduit from the meter to the secondary service box.

If in the event that insufficient right-of-way is available to allow relocation of the Grantee's existing aerial system due to the requirements for a City Public Works Project, and undergrounding is therefore required, all of the above provisions (Subsection (2)(a) - (d)) shall apply.

Notwithstanding anything to the contrary in this section, this Section 5 shall not apply to high voltage lines of greater than 15 KV.

**Section 6. The Grantee's Maps, Records and Plans.** After construction is complete, and at a reasonable time thereafter, the Grantee shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records.

**Section 7. Excavations.** During any period of relocation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as practicable with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington.

Whenever the Grantee shall excavate in any public right-of-way or other public property

for the purpose of installation, construction, repair, maintenance or relocation of its cable or equipment, it shall apply to the City for a permit to do so and upon obtaining a permit shall give the City at least twenty-four (24) hours notice during the normal work week of the Grantee's intent to commence work in the public right-of-way. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this franchise ordinance. During the progress of the work, the Grantee shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file as-built plans or maps with the City showing the proposed and final location of its facilities.

If either the City or the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(1) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(3) Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

**Section 8. Restoration after Construction.** The Grantee shall, after abandonment approved under Section 15 herein, or installation, construction, relocation, maintenance, or repair of electrical facilities within the franchise area, restore the surface of the right-of-way or public property to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the franchise area or other affected area at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

**Section 9. Emergency Work -- Permit Waiver.** In the event of any emergency in which any of the Grantee's facilities located in or under any street, breaks, are damaged, or if the Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Grantee from the requirement of obtaining any permits necessary for this purpose, and the Grantee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business.

**Section 10. Dangerous Conditions, Authority for City to Abate.** Whenever construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining

street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct the Grantee, at the Grantee's own expense, to take actions to protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

In the event that the Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this franchise. Grantee shall relocate, at its cost, poles or other structures that the City Engineer objectively determines are located in a place or in a way so as to constitute a danger to the public.

#### **Section 11. Permits and Fees.**

Grantee shall be required to obtain all permits from the City necessary for work in the City and/or in the City's rights-of-way. Provided that, in consideration of this agreement, including the factors set forth in Section 4, and the non-competition fees provided in Section 18 hereof, Grantee shall not be subject to any permit fees associated with Grantee's activities (except those undertaken for a private development customer) through the authority granted in this franchise ordinance or under the laws of the City.

In addition to the above, the Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency caused by the negligence of the Grantee. City agrees to process Grantee's and Grantee's contractors permits in the same expeditious manner as other permit applicants' permits are processed. Permits may be processed by facsimile or electronic mail.

**Section 12. City's Reservation of Rights.** Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on an electrical energy business, except for administrative expenses directly related to receiving and approving a permit, and to inspecting plans and construction.

The City hereby reserves its right to impose a franchise fee on the Grantee for purposes other than to recover its administrative expenses, if the Grantee's operations as authorized by this franchise change so that not all uses of the franchise are those of an electrical energy business or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that the Grantee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate the Grantee's operations, as allowed under applicable law.

**Section 13. Indemnification.** The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the Grantee, its agents, servants, officers or employees in

performing this franchise caused or contributed thereto, including claims arising against the City by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Grantee's exercise of the rights granted herein, including payment of any monies to the City, or by virtue of the City's permitting the Grantee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Grantee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence unless otherwise provided by law. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this franchise agreement.

**Section 14. Insurance.** Grantee is currently self insured and has excess insurance coverage for potential liability in excess of its self insured retention amounts. To the extent that Grantee is legally obligated by this franchise, Grantee's self insurance fund and/or insurance policies shall provide adequate protection to City in amounts equivalent to the levels set forth hereinbelow. Grantee's general comprehensive liability policy which includes automobile liability coverage (if such a policy continues to be obtained), shall have an endorsement naming City and its officers and employees as additional insureds for their actions pursuant to this franchise.

The amounts of insurance coverage that the grantee shall maintain, whether by self insurance or insurance policies shall not be the equivalent of less than the following:

A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion,



collapse and underground (XCU); and employer's liability.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of the Grantee.

Any insurance policy(ies) obtained by the Grantee to comply herewith shall name the City (its officers, employees and volunteers,) as an additional insured with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance policy or policies obtained by the Grantee to comply with this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any failure to comply with the insurance reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

**Section 15. Abandonment of the Grantee's Facilities.** Except for underground conduit or wires, no electrical system facility located within the public right-of-way by the Grantee may be abandoned by the Grantee without the express written consent of the City. Any plan for abandonment or removal of the Grantee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise agreement. Underground conduit or wires may be left in place and abandoned by Grantee.

**Section 16. Street Vacations.** City may have occasion to vacate certain streets, public ways or areas that have Grantee's lines and facilities located thereon. City agrees to exert reasonable good faith efforts to reserve an easement for Grantee's lines and facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's line(s) and facilities, the proponents of the vacation shall be required (by City) as part of land use or other permitting approvals, to reimburse Grantee all costs to relocate said line(s) and facilities.

**Section 17. Modification.** The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

**Section 18. Exercise of City Authority.** The parties acknowledge that the City has authority to operate its own electric utility and also has authority to contract with other public or private entities for the purchase of electrical energy. Grantee's long range planning would be improved, and its rate structure stabilized if the City did not elect to exercise its authority in the service area of the Grantee. The City also has the authority to levy a utility tax upon electrical utility businesses operating in the City. Therefore, Grantee agrees that for and in consideration of the City not exercising its authority to operate its own electric utility in the service area served

by Grantee, not contracting with other public or private entities for the purchase of electrical energy in said service area, declining to impose a utility tax upon Grantee and the other factors of consideration set forth in Section 4 of this agreement, Grantee shall pay to the City as follows: Grantee shall pay to the City an amount equal to six percent (6%) of the total gross revenue, as defined in section 1 of this agreement, Grantee receives from Grantee's electrical utility service customers served from Grantee's electrical utility system located within the City. In addition, whenever during the term of this franchise the Grantee imposes a Utility Tax for retail electrical service in excess of the previously specified six percent (6%), the percentage of gross revenue paid by the Grantee to the City pursuant to this Section 18 shall be increased to equal the percentage Utility Tax imposed by the Grantee on such service.

The payments to the City shall be made quarterly, in four equal payments each year, on or before March 31, June 30, September 30, and December 31 of each year during the term hereof. It is provided, however, that absent any federal, state or other governmental laws or regulations to the contrary, such payments made by the Grantee to the City shall not result in a surcharge to customers in the City of Lakewood. It is further provided that nothing herein shall be deemed to impair the authority of the City to exercise its governmental powers.

**Section 19. Forfeiture and Revocation.** If the Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the Lakewood City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to the Grantee. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply.

**Section 20. Remedies to Enforce Compliance.** In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

**Section 21. City Ordinances and Regulations.** Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any facilities by the Grantee, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

**Section 22. Cost of Publication.** The cost of the publication of this Ordinance shall be borne by the Grantee.

**Section 23. Acceptance.** Within sixty days after the passage and approval of this Ordinance, this franchise may be accepted by the Grantee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Grantee to so accept this franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

**Section 24. Survival.** All of the provisions, conditions and requirements of [Sections 3, Relocation of Electrical Transmission Facilities; 10, Dangerous Conditions; 13, Indemnification; and 15, Abandonment of the Grantee's Facilities, of this franchise shall be in addition to any and all other obligations and liabilities the Grantee may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof (however, such survival period extends only through the applicable statute of limitations period). All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

**Section 25. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise Ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

**Section 26. Assignment.** This agreement may not be assigned or transferred without the written approval of the City, except the Grantee may freely assign this Agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing and provided that the City's approval shall not be unreasonably withheld. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the City of any such assignment.

**Section 27. Notice.** Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

To City:  
City of Lakewood  
6000 Main Street  
Lakewood, WA 98499-5013

To Grantee:  
Tacoma Public Utilities  
3628 South 35th Street  
Tacoma, WA 98409-3115

**Section 28. Effective Date.** This Ordinance has first been submitted to the Lakewood City Attorney; granted an approving vote of at least a majority of the City Council at a regular meeting after initial introduction on July , 2017, and been published in summary at least once in a newspaper of general circulation in the City of Lakewood prior to its adoption.

This franchise ordinance shall be effective thirty (30) days after execution and upon publication of the Ordinance Summary, and pursuant to RCW 80.32.040 is subject to referendum under the general laws of this state.

ADOPTED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF LAKEWOOD

CITY OF TACOMA, DEPARTMENT OF  
PUBLIC UTILITIES

\_\_\_\_\_  
John J. Caulfield, City Manager

Attest:

\_\_\_\_\_  
Alice M. Bush, City Clerk

Approved as to Form:

\_\_\_\_\_  
Heidi Ann Wachter, City Attorney