

**FIRCREST CITY COUNCIL
REGULAR MEETING AGENDA**

**TUESDAY, DECEMBER 13, 2016
7:00 P.M.**

**COUNCIL CHAMBERS, FIRCREST CITY HALL
115 RAMSDALL STREET, FIRCREST, WA 98466**

1. **CALL TO ORDER BY PRESIDING OFFICER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PRESIDING OFFICER'S REPORT**
 - A. [Liquor License Renewal – Regents Café LLC \(Spring Lake Café\)](#)
5. **CITIZEN COMMENTS FOR ITEMS NOT ON THE AGENDA**

(Please sign the **Public Attendance Roster/Public Hearing Sign-Up Sheet** if you wish to speak during the meeting.)
6. **COMMITTEE, COMMISSION & LIAISON REPORTS**
 - A. Parks & Recreation
 - B. Environment, Planning, Building
 - C. Finance, IT
 - D. Administration
7. **CONSENT CALENDAR**
 - A. Approval of Vouchers/Payroll Checks
 - B. [Approval of Minutes:](#) November 22, 2016 Regular City Council meeting
 - C. Setting a public hearing on January 10, 2017 at 7:15 pm to receive comments on a proposed solid waste rate adjustment
8. **PUBLIC HEARING 7:15 P.M.**
9. **UNFINISHED BUSINESS**
10. **NEW BUSINESS**
 - A. [Ordinance amending Fircrest Municipal Code Title 22 prohibiting marijuana retailers, producers, processors, and researchers in all zoning districts](#) – Planning and Building Administrator Stahlnecker
 - B. [Resolution authorizing the City Manager to execute an agreement with the Pierce County Department of Assigned Counsel to provide legal representation to indigent defendants](#) – Court Administrator Olsen
 - C. [Introduction of an ordinance authorizing emergency expenditure of funds for matters not foreseen at the time of filing the Preliminary Budget for 2016 and not provided for in the Annual Budget for 2016](#) – Acting Finance Director Thomas
 - D. [Resolution authorizing the City Manager to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index to provide official City legal publishing services](#) – City Manager Rosenblatt
 - E. [Resolution authorizing the City Manager to execute Amendment #10 to the agreement with Summit Law Group to provide personnel services in 2017](#) - City Manager Rosenblatt

- F.** Resolution authorizing the City Manager to execute an agreement with Columbia Bank for the Time & Temperature Sign - City Manager Rosenblatt
- G.** Resolution authorizing the City Manager to execute an agreement with KPG, P.S. to extend the agreement for the Emerson Street, Alameda Avenue to Orchard Street Sidewalk Project - Public Works Director Wakefield
- H.** Resolution authorizing the City Manager to execute an agreement with the Humane Society for Tacoma and Pierce County for animal sheltering services for 2017 – Police Chief Cheesman
- I.** Resolution authorizing the City Manager to execute an agreement with Pierce County for a Communications Maintenance Program - Police Chief Cheesman
- 11. CITY MANAGER COMMENTS**
- 12. DEPARTMENT HEAD COMMENTS**
- 13. COUNCILMEMBER COMMENTS**
- 14. EXECUTIVE SESSION**
 - A.** To discuss City Manager performance evaluation (Not subject to Open Meetings Act)
- 15. ADJOURNMENT**

COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON AGENDA

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Liquor License Renewal for Regents Cafe LLC (Spring Lake Cafe)

FROM: Rick Rosenblatt, City Manager

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: I move to register no objections to the renewal of the liquor license for Regents Cafe LLC (Spring Lake Cafe).

PROPOSAL: Council is being asked to approve a motion to register no objections to the renewal of the liquor license for Regents Cafe LLC (Spring Lake Cafe). The restaurant is selling beer and wine with meals.

FISCAL IMPACT: None to approve the license renewal.

ADVANTAGES: Allows Council input on the license renewal.

DISADVANTAGES: None.

ALTERNATIVES: Council could recommend not approving the license renewal but would need a reason to deny the renewal.

HISTORY: The Washington State Liquor Control Board sent notification of the liquor license application. This allows the City the opportunity to make comments and recommendations regarding approval or disapproval to the Board. Finance, Planning and Building and Police have expressed no concerns regarding issuing the license. Unless Council has objections the license will be renewed.

Attachment(s): Liquor License renewal documents from the Washington State Liquor Control Board
Staff comment forms



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Applicant Information

Liquor License Renewal

Applicant Name	Regents Café LLC		
Establishment Name	Spring Lake Cafe		
Address	616 Regents Blvd		
Comments			
<p>Zoned Neighborhood Commercial (NC). This is a permitted use subject to the performance standards listed in FMC 22.58.029. Planning and Building has no objections to the license.</p>			
Director Signature			
Date	11/23/16	Department	Planning/Building

NOV 21 2016

RECEIVED



Washington State
Liquor and Cannabis Board
PO Box 43098, 3000 Pacific Ave. SE, Olympia WA 98504-3098, (360) 664-1600
www.lhq.wa.gov Fax #: (360) 753-2710

November 06, 2016

Dear Local Authority:

RE: Liquor License Renewal Applications in Your Jurisdiction - Your Objection Opportunity

Enclosed please find a list of liquor-licensed premises in your jurisdiction whose liquor licenses will expire in about 90 days. This is your opportunity to object to these license renewal requests as authorized by RCW 66.24.010 (8).

1) Objection to License Renewal

To object to a liquor license renewal: fax or mail a letter to the Washington State Liquor and Cannabis Board (WS-LCB) Licensing Division. This letter must:

- o Detail the reason(s) for your objection, including a statement of all the facts upon which your objection or objections are based. You may include attachments and supporting documents which contain or confirm the facts upon which your objections are based.

- o Please note that whether a hearing will be granted or not is within the Board's discretion per RCW 66.24.010 (8)(d).

Your letter or fax of objection must be received by the Board's Licensing Division at least 30 days prior to the license expiration date. If you need additional time you must request that in writing. Please be aware, however, that it is within the Board's discretion to grant or deny any requests for extension of time to submit objections. Your request for extension will be granted or denied in writing. If objections are not timely received, they will not be considered as part of the renewal process.

A copy of your objection and any attachments and supporting materials will be made available to the licensee, therefore, it is the Local Authority's responsibility to redact any confidential or non-disclosable information (see RCW 42.56) prior to submission to the WSLCB.

2) Status of License While Objection Pending

During the time an objection to a renewal is pending, the permanent liquor license is placed on hold. However, temporary licenses are regularly issued to the licensee until a final decision is made by the Board.

3) Procedure Following Licensing Division Receipt of Objection

After we receive your objection, our licensing staff will prepare a report for review by the Licensing Director. The report will include your letter of objection, as well as any attachments and supporting documents you send. The Licensing Director will then decide to renew the liquor license, or to proceed with non-renewal.

4) Procedure if Board Does Not Renew License

If the Board decides not to renew a license, we will notify the licensee in writing, stating the reason for this decision. The licensee also has the right to request a hearing to contest non-renewal of their liquor license. RCW 66.24.010 (8)(d). If the licensee makes a timely request for a hearing, we will notify you.

The Board's Licensing Division will be required to present evidence at the hearing before an administrative law judge to support the non-renewal recommendation. You may present evidence in support of your objection or objections. The administrative law judge will consider all of the evidence and issue an initial order for the Board's review. The Board members have final authority to renew the liquor license and will enter a final order announcing their decision.

CITY OF FIRCREST

NOV 21 2016

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5) Procedure if Board Renews License Over Your Objection

If the Board decides to renew the license over your objection, you will be notified in writing. At that time, you may be given an opportunity to request a hearing. An opportunity for a hearing is offered at the Board's discretion. If a hearing is held, you will be responsible for presenting evidence before an Administrative Law Judge in support of your objection to license renewal. The Board's Licensing Division will present evidence in support of license renewal. The Licensee may also participate and present evidence if the licensee desires. The administrative law judge will consider all of the evidence, and issue an initial order for the Board's review. The Board members have final authority to renew the liquor license and will enter a final order announcing their decision.

For questions about this process, contact the WSLCB Licensing Division at (360) 664-1600 or email us at wsicbeliq.wa.gov.

Sincerely,

Rebecca Smith

Rebecca Smith, Director,
Licensing and Regulation Division

LIQ 864 07/10

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C091080-2 WASHINGTON STATE LIQUOR AND CANNABIS BOARD DATE: 11/06/2016
LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF FIRCREST
(BY ZIP CODE) FOR EXPIRATION DATE OF 20170228

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. REGENTS CAFE LLC	SPRING LAKE CAFE 616 REGENTS BLVD FIRCREST	421622	BEER/WINE REST - BEER/WINE
	WA 98466 7043		



THE CITY OF FIRCREST

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Applicant Information

Liquor License Renewal

Applicant Name	Scott Clements		
Establishment Name	Spring Lake Cafe		
Address			
Comments			
Finance! No concerns			
Director Signature	Y. Thomas		
Date	11/28/16	Department	Finance



THE CITY OF FIRCREST

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Applicant Information

Liquor License Renewal

Applicant Name	Regents Café LLC		
Establishment Name	Spring Lake Cafe		
Address	616 Regents Blvd		
Comments			
<p>Zoned Neighborhood Commercial (NC). This is a permitted use subject to the performance standards listed in FMC 22.58.029. Planning and Building has no objections to the license.</p>			
Director Signature			
Date	11/23/16	Department	Planning/Building



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Applicant Information

Liquor License Renewal

Applicant Name	Spring Lake Cafe
Establishment Name	Spring Lake Cafe
Address	616 Regents Blvd
Comments	
We have had no problems with the service of alcohol at this establishment.	
Director Signature	<i>John Chismore</i>
Date	12/2/2016
Department	Police

CITY OF FIRCREST
REGULAR CITY COUNCIL MEETING MINUTES
TUESDAY, NOVEMBER 22, 2016 **COUNCIL CHAMBERS**
7:00 P.M. **FIRCREST CITY HALL, 115 RAMSDELL STREET**

CALL TO ORDER, PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Pro Tempore Hunter T. George called the regular meeting to order at 7:00 P.M. and led the Pledge of Allegiance. Councilmembers Blake Surina, Shannon Reynolds, Brett Wittner and Denny Waltier were present. Mayor Matthew Jolibois and Councilmember Jason Medley were excused.

PRESIDING OFFICER'S REPORT

George welcomed Mike Fitzgerald, Tacoma Fire Department Assistant to the Chief of Budget and Finance, who provided an update on the Tacoma Fire budget for 2017 and 2018.

COMMITTEE, COMMISSION & LIAISON REPORTS

Water, Sewer and Storm

Wittner reported on a meeting he had with Public Works Director Wakefield after receiving complaints from residents about the taste and the smell of the water due to the addition of chlorine. Wittner stated he had encouraged those with complaints, questions and concerns to contact Public Works.

CONSENT CALENDAR

George requested the City Clerk read the consent calendar as follows: approval of Voucher No. 208505 through Voucher No. 208575 in the amount of \$308,017.14; approval of Payroll Check No. 12465 through Payroll Check No. 12471 in the amount of \$89,257.74; approval of the October 10, 2016 Special meeting; approval of the October 11, 2016 Regular meeting; and approval of the October 17, 2016 Special meeting.

MOTION

Moved by Wittner, seconded by Waltier, to approve the consent calendar as read. Upon vote, motion carried unanimously.

NEW BUSINESS

Ordinance amending Fircrest Municipal Code Title 17 regarding utility billing

Wakefield stated the ordinance addresses administrative changes to the billing process that are necessary due to the recently adopted rate increases.

ORDINANCE NO. 1591

Moved by Wittner, seconded by Waltier, to adopt Ordinance No. 1591 amending FMC Title 17 relating to the Uniform Utility Billing and Collection System.

George invited public comment. None was provided.

VOTE

Upon vote, motion carried unanimously.

Resolution authorizing the City Manager to execute an amendment 1 to the Professional Services Agreement with KPG, P.S. for providing on call engineering services for transportation type projects as needed

Wakefield stated that Council is being asked to authorize the City Manager to execute an amendment 1 to the Professional Services Agreement with KPG, P.S. to provide on call engineering services for transportation type projects as needed. He noted that amendment 1 is a continuation of on-call engineering services with KPG to extend for an additional year and without an increase in their rates.

RESOLUTION NO. 1455

Moved by Wittner, seconded by Waltier, to adopt Resolution No. 1455 authorizing the City Manager to execute amendment 1 to the Professional Services Agreement with KPG, P.S. to provide on call engineering services for transportation type projects as needed.

Staff responded to Council inquiries.

George invited public comment. None was provided.

VOTE

Upon vote, motion carried unanimously.

Resolution authorizing the City Manager to execute an amendment 1 to the Professional Services Agreement with Murray Smith and Associates for providing on call engineering services for water and sewer type projects as needed

Wakefield stated that Murray Smith and Associates has provided excellent on-call engineering services for water and sewer type projects. He reported that the agreement would extend the term for an additional year as well as a 4% rate increase.

RESOLUTION NO. 1456

Moved by Wittner, seconded by Waltier, to adopt Resolution No. 1456 authorizing the City Manager to execute amendment 1 to the Professional Services Agreement with Murray Smith and Associates to provide on call engineering services for water and sewer type projects as needed.

George invited public comment. None was provided.

VOTE

Upon vote, motion carried unanimously.

Resolution authorizing the City Manager to execute the City of Fircrest/IBEW Local 483 Collective Bargaining Agreement for the period January 1, 2017 through December 31, 2019

City Manager Rosenblatt stated that the negotiations didn't involve attorneys or union representatives and were successfully completed with the crew and staff (Wakefield, Rosenblatt and City Clerk Keely). He highlighted modifications to the agreement and reported that it includes a minimum COLA of 1% and a signing bonus of \$3,200, which was the amount budgeted for professional services to negotiate the contract divided by the five current crew members. Rosenblatt concluded by stating that the Mayor is a strong supporter of the agreement and recommended approval of the agreement.

RESOLUTION NO. 1457

Moved by Wittner, seconded by Waltier, to adopt Resolution No. 1457 authorizing the City Manager to execute the City of Fircrest/IBEW Local 483 Collective Bargaining Agreement for the period January 1, 2017 through December 31, 2019.

Staff responded to Council inquiries.

George invited public comment. None was provided.

VOTE

Upon vote, motion carried unanimously.

Motion authorizing the Finance Director to reallocate \$16,000 from Professional Services in Street, Storm, Water and Sewer to Salaries and Wages in Street, Storm, Water and Sewer to cover the cost of signing bonuses per the IBEW contract

Rosenblatt stated that the 2016 Budget allowed for Professional Services in the amount of \$16,000.00 for negotiations for the new IBEW contract. He reported that the agreement was negotiated and includes a signing bonus for employees in the bargaining unit as of the date of ratification by the association. Rosenblatt concluded by reporting that this proposal will provide the necessary funds to cover the signing bonuses.

MOTION

Moved by Wittner, seconded by Reynolds, to authorize the Finance Director to reallocate \$16,000 from Professional Services lines in Street, Storm, Water and Sewer to Salaries and Wages in Street, Storm, Water and Sewer to cover the cost of signing bonuses per the IBEW contract.

George invited public comment. None was provided.

VOTE

Upon vote, motion carried unanimously.

CITY MANAGER COMMENTS

Rosenblatt stated there would not be a packet distributed tomorrow due to the short week. He reminded Council of the upcoming tree lighting ceremony on Sunday, December 4th at 7:00 P.M. Rosenblatt inquired if there was interest to cancel the December 27th regular Council meeting and to move business items to the meeting of December 19th. Following discussion, there was consensus to hold the regular meeting of December 27, 2016.

DEPARTMENT HEAD COMMENTS

Wakefield reported that the City was not successful in obtaining the state-wide Transportation Improvement Board grant for the next phase of the Emerson Street sidewalk project (from Alameda to 67th), noting there were 28 applicants from the Puget Sound region, eight were funded, and no awards were given in Pierce County. Wakefield stated the trend seems to be to put in more match money to get a higher ranking. Wakefield stated they would be working on getting the Emerson Sidewalk Project (Orchard to Alameda) ready to go out to bid in the next couple of weeks, noting this was the project that had been bid previously but the bids came in too high. He noted they were hopeful for a better bidding climate when it is bid in January and also that the project gets started between April and June. Wakefield reported they had been successful in receiving grant funding for this project. Wakefield concluded by providing an update on the timing of the distribution of the calendars that were produced as part of the NPDES outreach portion of the stormwater grant and outlined the awards presentation for the kids. George inquired if the tree lighting ceremony could start earlier than 7:00 P.M. and Rosenblatt responded that he would work on making that happen for the ceremony in December of 2018.

Planning and Building Administrator Stahlnecker called attention to the survey that was forwarded to Council from SiteCrafting, the website designer that will be designing the new Fircrest website. She noted that the deadline has been extended to Monday, November 28th, and stated that SiteCrafting was hopeful that feedback could be provided to them regarding issues desired for the website.

Police Chief Cheesman stated they were all set for the tree lighting ceremony and had made arrangements with Steilacoom to pick up the sleigh.

COUNCIL COMMENTS

Surina reported on the passing of Florence "Rorie" March, noting that she was past president on the Wainwright PTA and active in the Fircrest community.

Reynolds inquired about the status of the credit card points of sale services, the possible rates, and whether the City was interested in pursuing it. Acting Finance Director Thomas stated she had been working with someone regarding the costs and was hopeful to have a final proposal in next week's Council packet. She further noted the goal was to coincide implementation of credit card purchasing with the new City website in order to provide online registration for programs.

Wittner thanked everybody for coming and wished everyone a safe and happy Thanksgiving.

Waltier noted that his longtime friend, Darth Swanson, recently passed.

George inquired about agenda items for the December study session and asked if there was interest to discuss marijuana at that meeting. Discussion continued and there was Council consensus to bring the Planning Commission's recommendation forward in the form of an ordinance for discussion and action on December 13th.

ADJOURNMENT

Moved by Reynolds, seconded by Wittner, to adjourn the meeting at 7:53 P.M. Upon vote, motion carried unanimously.

Hunter T. George, Mayor Pro Tempore

Lisa Keely, City Clerk

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Title 22 Land Development Amendments – Proposed Regulations Governing Marijuana Uses

FROM: Angelie Stahlnecker, Planning/Building Administrator

Reviewed by: _____ City Manager _____ Finance Director _____ City Attorney

RECOMMENDED MOTION: I move to adopt Ordinance No. _____ amending Ordinance 1246 section 9 and FMC 22.46.007, Ordinance 1311 section 17 and FMC 22.50.007, and adding new section FMC 22.58.030 prohibiting marijuana uses in all zoning districts.

PROPOSAL:

The City of Fircrest proposes to amend zoning regulations contained in Title 22 to provide regulations for marijuana uses, including producers, processors, researchers, retailers and cooperatives. The Planning Commission Resolution No. 16-05 recommends prohibiting marijuana uses in all zoning designations. See attachment 1.

PROCEDURAL COMPLIANCE:

The proposed zoning text amendments are classified as a Type 5 legislative proposal, which is subject to public hearing, review and recommendation by the Planning Commission and a final decision by Council -- subsequent to completion of a Council public hearing.

The City published public notices in the Tacoma Daily Index for the August 16, 2016 Planning Commission public hearing and for the September 27, 2016 City Council public hearing. In addition, the City mailed notices to all owners of property in the city prior to the September 27th hearing.

The City prepared an *Environmental Checklist* and issued a *Determination of Nonsignificance* on August 3, 2016. The environmental determination was issued with a 14-day comment/appeal period ending on August 16, 2016. The City did not receive any comments or notice of appeal.

The City submitted a *Notice of Proposed Amendment* with a request of expedited review to the Washington State Department of Commerce on August 11, 2016, which was issued to state agencies for a 10 business day comment period as required pursuant to RCW 36A.70A. The state agency comment period ended on August 25, 2016 and no comments were received.

HISTORY:

In November of 2012, the voters of Washington approved Initiative 502, which allowed the possession of certain amounts of marijuana and set up a system for the State to license and regulate the production, growth, processing, and sales of marijuana. The Citizens of Fircrest approved the initiative by a vote of 1980-1733. The Washington State Liquor and Cannabis Board (LCB) was given the authority to regulate and license potential marijuana businesses. Attorney General Opinion 2014 No. 2 maintained that local governments retain the right to regulate marijuana uses within their jurisdictions. As the City has not enacted any additional regulations, marijuana uses are currently allowed in commercial and residential zones subject to the State regulations.

In April 2015, the Washington State Legislature enacted the Cannabis Patient Protection Act which established regulations for the previously unregulated medical marijuana system, including creation of marijuana cooperatives.

On June 20, 2016, the City Council held a study session on the sale of marijuana in the City of Fircrest. On August 9, 2016, the City Council voted 5-2 on a motion requesting the Planning Commission set a public hearing and make recommendations on marijuana regulations including considering reduction of marijuana buffers from sensitive sites, evaluating which zoning districts would be most appropriate for the sale of marijuana, and considering setbacks of retail marijuana from residential areas.

The Planning Commission held a study session on July 11, 2016 and a public hearing on August 16, 2016. After closing the public hearing, directed staff by a vote of 3-2 to prepare a draft resolution prohibiting marijuana uses in all zoning districts. On September 6, 2016, the Planning Commission approved the recommendation to Council by a vote of 4-0 (one member absent).

FISCAL IMPACT:

Under the proposed ordinance, the City would no longer be eligible for revenue sharing of the Marijuana Excise Tax. The City would also lose the potential to expand the sales tax base and receive additional shared revenue available if a licensed store locates in the jurisdiction.

	Marijuana Excise Tax Revenue	Sales and Tax Use Revenue
Prohibit all marijuana uses	0	0
Retail Allowed without store	Yes	No
Retail Allowed with store	Yes	Yes

ADVANTAGES:

Currently, marijuana retail and cooperatives are allowed subject only to State regulations. The proposed amendments would prevent any potential negatives impacts.

DISADVANTAGES:

As the citizens of Fircrest approved Initiative 502, the amendments could be perceived as in opposition. The amendments would limit potential economic development and make the City ineligible for the Marijuana Excise Tax.

ALTERNATIVES:

The City Council could consider amending the Planning Commission Resolution. Amendments could include:

- allowing retail marijuana in the Commercial Mixed Use Zone and/or the Neighborhood Commercial District
- if allowed, establishing performance standards
- if allowed, modifying buffers
- if allowed, requiring an increase level of review (i.e. Administrative Use Permit)

Since the last City Council meeting, staff has researched some of the concerns raised.

- *Odors:* Staff visited several retail stores and no adverse odors were observed. Performance standards could be adopted to require this.
- *Police Response:* A recent report by the Tacoma Police Department provided to the City of Tacoma Council related to calls for service and reported crimes to the existing 9 marijuana retailers and surrounding areas did not demonstrate any clear or consistent trend. The area the store was located in seemed a better contributor to the calls received.

If Council wishes to consider allowing retail marijuana and any of the above amendments, the August 16th draft amendments could be used as a starting point for discussion. See attachment 2.

Attachments:

1. Planning Commission Resolution 16-10
2. August 16th draft amendments
3. Ordinance (redline)
4. Ordinance

**CITY OF FIRCREST PLANNING COMMISSION
RESOLUTION NO. 16-05
CASE NO. 16-10**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
FIRCREST, WASHINGTON, RECOMMENDING ADOPTION OF
AMENDMENTS TO TITLE 22 LAND DEVELOPMENT PROHIBITING
MARIJUANA USES IN ALL ZONING DISTRICTS.**

WHEREAS, in November 2012, Initiative 502 regarding marijuana was approved by the voters of Washington State, legalized the licensing and regulating of recreational marijuana; and

WHEREAS, the Washington State Attorney General issued an opinion, AGO 2014 No. 2, which opined that I-502 did not preempt local jurisdictions from regulating and/or prohibiting marijuana uses consist with state statutes and to protect the public health, welfare, and safety; and

WHEREAS, in April 2015, the Washington State Legislature enacted the Cannabis Patient Protection Act, establishing new regulations for medical marijuana; and

WHEREAS, on August 9, 2016, the Fircrest City Council approved by motion to direct the Planning Commission and staff to develop recommendations through a public review process; and

WHEREAS, the City issued a Determination of Nonsignificance on August 3, 2016 with a 14-day comment period, and no adverse comments were received; and

WHEREAS, The City submitted a *Notice of Proposed Amendment* with a request of expedited review to the Washington State Department of Commerce on August 11, 2016, which was issued to state agencies for a 10 business day comment period as required pursuant to RCW 36A.70A and no comments were received; and

WHEREAS, unless the City acts to address marijuana uses, such uses will be able to located in the City of Fircrest, subject to the LCB regulations; and

WHEREAS, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity; and

WHEREAS, a public hearing was conducted by the Planning Commission on August 16, 2016 to consider public testimony and comment on proposed amended regulations; and

WHEREAS, after consideration of public testimony, the Planning Commission by a vote of 3-2 directed staff to prepare a resolution recommending amendments that would prohibit marijuana uses in all zoning districts, and determined the prohibition is justified and in the best interests of the City; and

WHEREAS, the Planning Commission has adopted the following findings in support of approval of the proposed development regulation amendments in consideration of the factors listed in Section 22.78.004 FMC, prior to final action:

1. The proposed code amendments will be consistent with the goals, objectives and policies of the comprehensive plan in that they will support the City's goal to ensure that development is compatible with the existing community fabric.
2. The proposed amendments will promote, rather than detract from, the public health, safety, morals and general welfare in that they will deter negative impacts associated with marijuana production, processing and sales.

THEREFORE BE IT RESOLVED that the Planning Commission of the City of Fircrest hereby recommends to the City Council that it:

1. Amend FMC 22.46.007 to read as follows:

22.46.007 Prohibited uses.

The following uses are prohibited:

- (a) Drive-up or drive-through facility.
- (b) Off-street parking facility which provides greater than 120 percent of the minimum required number of parking stalls specified in FMC 22.60.003.
- (c) Tavern, night club, or sports entertainment facility as defined by the Washington State Liquor and Cannabis Board.
- (d) Adult entertainment establishment.
- (e) Second-hand store, other than antique store.
- (f) Delivery service, unless the place of business is located abutting a street classified as a principal arterial in the Fircrest comprehensive plan.

(g) Marijuana uses, including producers, processors, researchers, and retailers.

2. Amend FMC 22.50.007 to read as follows:

22.50.007 Prohibited uses.

The following uses are prohibited:

- (a) Automobile wrecking yard.
- (b) Impound yard.
- (c) Junk or salvage yard.
- (d) Mini-storage or mini-warehouse (outdoor).

(e) Marijuana uses, including producers, processors, researchers, and retailers.

3. Amend FMC 22.58 by adding a new section to read as follows:

FMC 22.58.030 Marijuana Uses

- (a) Marijuana producers, marijuana processors, and marijuana researchers, as defined in RCW 69.50 and WAC 314-55, are prohibited in all zoning districts.
- (b) Marijuana cooperatives, as defined in RCW 69.51A.250 and WAC 314-55-410, are prohibited in all zoning districts.
- (c) Marijuana uses are not allowed as an accessory use or as a home occupation.

MOVED AND ADOPTED by the Planning Commission of the City of Fircrest on the 6th day of September 2016, by the following vote:

YES: (4) McVay, Foss, Halgren, Michaelsen

NOES: ()

ABSENT: (1) Patjens

ABSTAIN: ()

APPROVED:

Jerry Foss
Vice - Chair, Fircrest Planning Commission

ATTEST:

Angelie Stahlnecker

Planning/Building Administrator

Date

**Amendments to Zoning Code
Regulations for Marijuana Uses
August 16, 2016**

- **Prohibit marijuana uses in the Neighborhood Commercial (NC) zone**

22.46.007 Prohibited uses.

The following uses are prohibited:

- (a) Drive-up or drive-through facility.
- (b) Off-street parking facility which provides greater than 120 percent of the minimum required number of parking stalls specified in FMC 22.60.003.
- (c) Tavern, night club, or sports entertainment facility as defined by the Washington State Liquor and Cannabis Board.
- (d) Adult entertainment establishment.
- (e) Second-hand store, other than antique store.
- (f) Delivery service, unless the place of business is located abutting a street classified as a principal arterial in the Fircrest comprehensive plan.
- (g) Marijuana uses, including producers, processors, researchers, and retailers.

- **Allow retail marijuana in the Commercial Mixed Use (CMU) zone**

22.50.002 Permitted uses.

Uses permitted subject to site plan approval in accordance with Chapter 22.72 FMC and administrative design review approval in accordance with Chapter 22.66 FMC:

- (a) Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances (new), art and art supplies, bicycles, books, building materials, clothing, fabrics, floor coverings, flowers, food, gifts, groceries, hardware, hobby and craft supplies, home furnishings, jewelry, lawn and garden equipment and supplies, newspapers, office equipment and supplies, paint, music, pets and pet supplies, pharmaceuticals, photography supplies and processing, sporting goods, stationery, toys, vehicle parts (new/remanufactured), videos and wallpaper.
- (b) Commercial service including, but not limited to: beauty and hair care, consulting, copying, dry cleaning, fitness/health studios, funeral services, laundry and cleaning (self-service), locksmithing, optical, pet grooming, post office or substation, printing, studio photography, real estate sales, repair of products listed in subsection (a) of this section, security, signs, tailoring, telecommunication sales, title, travel agency service, upholstery and vehicle detailing.
- (c) Food-serving establishment including, but not limited to, bakery, cafeteria, coffee shop, confectionery, delicatessen, espresso stand, ice cream or yogurt shop, restaurant and other sit-down, self-service, or take-out establishments.

(d) Commercial office including, but not limited to: medical, dental, optometric, business and professional offices.

(e) Culturally enriching use including, but not limited to: art gallery, dance studio, library, museum, live theater venue and senior center.

(f) Laboratory, including but not limited to: medical, dental and optical.

(g) Civic, labor, social and fraternal organization.

(h) Veterinary clinic, with treatment and storage of animals within an enclosed building.

(i) Entertainment facility, including but not limited to: arcade, bowling alley, indoor miniature golf course, indoor movie theater, indoor skating rink, racquetball court and tennis court.

(j) Hotel and motel.

(k) Financial institution, including but not limited to: bank, savings and loan, and credit union.

(l) Religious institution.

(m) Family group home, including adult family home.

(n) Multifamily dwelling.

(o) Marijuana retailers licensed by the Washington State Liquor and cannabis Board (subject to compliance with FMC 22.58.030).

~~(p)~~ Necessary public or quasi-public utility building, structure or equipment, unstaffed and less than or equal to 500 square feet in gross floor area (subject to compliance with landscape standards in Chapter 22.62 FMC). Excludes substation. (Ord. 1562 § 28, 2015; Ord. 1325 § 2, 2003; Ord. 1311 § 12, 2002; Ord. 1246 § 11, 2000).

- **Establish regulations and standards for marijuana uses by adding a new section to FMC 22.58 Specific Use and Structure Regulations.**

FMC 22.58.030 Marijuana Uses

(a) Establishments licensed by the State of Washington Liquor and Cannabis Board as marijuana retailers are permitted only in specified zoning districts.

(b) Marijuana retail uses are not allowed as an accessory use or as a home occupation.

(c) Marijuana producers, marijuana processors, and marijuana researchers, as defined in RCW 69.50 and WAC 314-55, are prohibited in all zoning districts.

(d) Marijuana cooperatives, as defined in RCW 69.51A.250 and WAC 314-55-410, are prohibited in all zoning districts.

(e) Marijuana retail uses shall be designed to include controls and features to prevent odors from travelling off-site and being detected from a public place, public right-of-way, or properties owned or leased by another person or entity.

(f) Marijuana retail uses shall not include drive-through, exterior, or off-site sales.

(g) Marijuana products and/or marijuana paraphernalia shall not be visible from outside the building in which the marijuana retail use is located.

(h) All marijuana retail uses must have a State license and medical endorsement in accordance with RCW 69.50 and WAC 314-55 in order to obtain a City business license.

(i) As provided in RCW 69.50.331 and WAC 314-55.050, marijuana retail uses shall not be allowed to locate within 1,000 feet of an elementary school, secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade (where admission is not restricted to persons age twenty-one or older). For purposes of this standard, these uses are defined in WAC 314-55.

(j) Marijuana retail uses shall not be permitted within 1,000 feet of any other recreational marijuana facility.

(k) The methodology for measuring the distances shall be the shortest straight line from the closest parcel line in which the state licensed marijuana retail use is located to the closest parcel line of the uses in this subsection.

(l) Allow inspection of the site and facilities by City personnel including law enforcement for compliance with all applicable permits and licenses at any time during regular business hours.

**CITY OF FIRCREST
ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF FIRCREST, WASHINGTON,
AMENDING ORDINANCE 1246 SECTION 9 AND FMC 22.46.007,
ORDINANCE 1311 SECTION 17 AND FMC 22.50.007, AND ADDING
NEW SECTION FMC 22.58.030 PROHIBITING MARIJUANA USES IN
ALL ZONING DISTRICTS.**

WHEREAS, in November 2012, Initiative 502 regarding marijuana was approved by the voters of Washington State, legalized the licensing and regulating of recreational marijuana; and

WHEREAS, the Washington State Attorney General issued an opinion, AGO 2014 No. 2, which opined that I-502 did not preempt local jurisdictions from regulating and/or prohibiting marijuana uses consist with state statutes and to protect the public health, welfare, and safety; and

WHEREAS, in April 2015, the Washington State Legislature enacted the Cannabis Patient Protection Act, establishing new regulations for medical marijuana; and

WHEREAS, on August 9, 2016, the Fircrest City Council approved by motion to direct the Planning Commission and staff to develop recommendations through a public review process; and

WHEREAS, the City issued a Determination of Nonsignificance on August 3, 2016 with a 14-day comment period, and no adverse comments were received; and

WHEREAS, The City submitted a *Notice of Proposed Amendment* with a request of expedited review to the Washington State Department of Commerce on August 11, 2016, which was issued to state agencies for a 10 business day comment period as required pursuant to RCW 36A.70A and no comments were received; and

WHEREAS, unless the City acts to address marijuana uses, such uses will be able to located in the City of Fircrest, subject to the LCB regulations; and

WHEREAS, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity; and

WHEREAS, a public hearing was conducted by the Planning Commission on August 16, 2016 to consider public testimony and comment on proposed amended regulations; and

WHEREAS, after consideration of public testimony, the Planning Commission by a vote of 3-2 directed staff to prepare a resolution recommending amendments that would prohibit marijuana uses in all zoning districts, and determined the prohibition is justified and in the best interests of the City; and

WHEREAS, the Planning Commission has adopted the following findings in support of approval of the proposed development regulation amendments in consideration of the factors listed in Section 22.78.004 FMC, prior to final action:

3. The proposed code amendments will be consistent with the goals, objectives and policies of the comprehensive plan in that they will support the City's goal to ensure that development is compatible with the existing community fabric.
4. The proposed amendments will promote, rather than detract from, the public health, safety, morals and general welfare in that they will deter negative impacts associated with marijuana production, processing and sales.

WHEREAS, the City Council conducted a public hearing on September 27, 2016, to accept public testimony and comment on the proposed amendments; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF FIRCREST DO ORDAIN AS FOLLOWS:

Section 1. Ordinance 1246 §9 and FMC 22.46.007 are hereby amended to read as follows:

22.46.007 Prohibited uses.

The following uses are prohibited:

- (a) Drive-up or drive-through facility.
- (b) Off-street parking facility which provides greater than 120 percent of the minimum required number of parking stalls specified in FMC 22.60.003.
- (c) Tavern, night club, or sports entertainment facility as defined by the Washington State Liquor and Cannabis Board.
- (d) Adult entertainment establishment.
- (e) Second-hand store, other than antique store.
- (f) Delivery service, unless the place of business is located abutting a street classified as a principal arterial in the Fircrest comprehensive plan.
- (g) Marijuana uses, including producers, processors, researchers, and retailers.

Section 2. Ordinance 1311 §17 and FMC 22.50.007 are hereby amended to read as follows:

22.50.007 Prohibited uses.

The following uses are prohibited:

- (a) Automobile wrecking yard.

- (b) Impound yard.
- (c) Junk or salvage yard.
- (d) Mini-storage or mini-warehouse (outdoor).

(e) Marijuana uses, including producers, processors, researchers, and retailers.

Section 3. A new section FMC 22.58.030 is hereby adopted to read as follows:

FMC 22.58.030 Marijuana Uses

- (d) Marijuana producers, marijuana processors, and marijuana researchers, as defined in RCW 69.50 and WAC 314-55, are prohibited in all zoning districts.
- (e) Marijuana cooperatives, as defined in RCW 69.51A.250 and WAC 314-55-410, are prohibited in all zoning districts.
- (f) Marijuana uses are not allowed as an accessory use or as a home occupation.

Section 4. Severability. If any section, sentence, clause or phrase of this title shall 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 title.

Section 5. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the city. This ordinance shall be effective five (5) days after such publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON,
at a regular meeting thereof this day of 2016.

APPROVED:

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

Publication Date:

Effective Date:

**CITY OF FIRCREST
ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF FIRCREST, WASHINGTON,
AMENDING ORDINANCE 1246 SECTION 9 AND FMC 22.46.007,
ORDINANCE 1311 SECTION 17 AND FMC 22.50.007, AND ADDING
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WHEREAS, after consideration of public testimony, the Planning Commission by a vote of 3-2 directed staff to prepare a resolution recommending amendments that would prohibit marijuana uses in all zoning districts, and determined the prohibition is justified and in the

best interests of the City; and

WHEREAS, the Planning Commission has adopted the following findings in support of approval of the proposed development regulation amendments in consideration of the factors listed in Section 22.78.004 FMC, prior to final action:

5. The proposed code amendments will be consistent with the goals, objectives and policies of the comprehensive plan in that they will support the City's goal to ensure that development is compatible with the existing community fabric.
6. The proposed amendments will promote, rather than detract from, the public health, safety, morals and general welfare in that they will deter negative impacts associated with marijuana production, processing and sales.

WHEREAS, the City Council conducted a public hearing on September 27, 2016, to accept public testimony and comment on the proposed amendments; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF FIRCREST DO ORDAIN AS FOLLOWS:

Section 1. Ordinance 1246 §9 and FMC 22.46.007 are hereby amended to read as follows:

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Section 4. Severability. If any section, sentence, clause or phrase of this title shall 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 title.

Section 5. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the city. This ordinance shall be effective five (5) days after such publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON,
at a regular meeting thereof this day of 2016.

APPROVED:

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

Publication Date:

Effective Date:

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Proposed Resolution Authorizing the City Manager to execute an Agreement for Public Defense Services with the Department of Assigned Counsel

FROM: Court Administrator Olsen

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. ____ authorizing the City Manager to execute an Agreement for Public Defense Services with Pierce County for indigent legal defense services.

PROPOSAL: Council is being asked to adopt a resolution authorizing the City Manager to execute the Agreement for Public Defense Services with Pierce County through the Department of Assigned Counsel.

FISCAL IMPACT: The contract submitted for 2017 is \$33,000.00. There is \$33,000.00 allocated in the 2017 Legal Services Budget for indigent defense representation. The contract for 2016 was \$31,000.00.

ADVANTAGE: The contract allows continuation of public defense services with the Pierce County Department of Assigned Counsel.

DISADVANTAGE: None.

ALTERNATIVES: Look for another source for indigent defense representation.

HISTORY: We have entered into a contract with the Pierce County Department of Assigned Counsel for a number of years for indigent defense representation. The Court is required to provide this service to all defendants that are indigent per RCW 10.101.030.

Attachment(s): Resolution
Agreement for Public Defense Services
RCW 10.101.030

**CITY OF FIRCREST
RESOLUTION NO.____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AGREEMENT FOR PUBLIC
DEFENSE SERVICES WITH PIERCE COUNTY DEPARTMENT
OF ASSIGNED COUNSEL TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT DEFENDANTS**

WHEREAS, for the past several years, the Fircrest Municipal Court has had a contract with the Pierce County Department of Assigned Counsel to provide legal representation to indigent defendants, and wishes to continue this service; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized and directed to execute an Agreement for Public Defense Services with the Department of Assigned Counsel for indigent defense, from January 1, 2017 through December 31, 2017, to perform legal representation to defendants in the City of Fircrest. The cost for 2017 is \$33,000.00.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON**, at a regular meeting thereof this 13th day of December 2016.

APPROVED

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

AGREEMENT
FOR
PUBLIC DEFENSE SERVICES

1. Date and Parties.

This agreement, for reference purposes only, is dated the 1st day of January, 2017, and is entered into between the City of Fircrest, Washington, a municipal corporation, herein referred to as the "City," and Pierce County, herein referred to as the "County."

2. General Recitals.

a. The City is required by Court Rule and state law to provide legal representation to indigent defendants charged in Fircrest Municipal court with violations of city ordinances punishable by loss of liberty. The City does not have the personnel to provide said services.

b. The County, through its Department of Assigned Counsel (herein referred to as Department), has the capability to provide the City with mandated indigent legal defense services.

c. The County agrees to provide the City legal services for indigent defendants upon the terms and conditions set forth herein.

3. Scope of Services.

a. All indigent defendants charged in the Fircrest Municipal Court with Ordinance violations punishable by loss of liberty and who qualify for appointed counsel shall be referred to the Department. The Department shall be provided with the name, address, and telephone number, if available, for each person referred to the Department. The Department shall provide legal representation for each of those defendants from arraignment through trial, sentencing, post trial review and any appeals. This shall include interviewing defendants in custody as needed, and providing 24 hour telephone access to an attorney for those seeking "critical stage" advice during the course of police investigation.

- b. The scope of services shall also include the representation of indigent defendants assigned to appointed counsel prior to the effective date of this agreement and for whom the previously assigned counsel has withdrawn as counsel of record.
- c. The scope of services shall also include standby representation to all in-custody defendants.

4. Conflict

All indigent defendants determined to have a conflict of interest by the Department of Assigned Counsel will be represented by conflict counsel. The County will be responsible for securing counsel for conflict defendants but will not bear the costs for furnishing conflict counsel. In addition to the sum of \$33,000 to be paid to the Department of Assigned Counsel, the sum of \$1,000 shall be provided to the County to be used for expert services, investigations, and for retaining conflict counsel.

In the event that the retention of above services requires any additional funds for conflict counsel, the City shall provide all additional funds for those services, so that all payments for those services remain separate from the contract compensation to the Department of Assigned Counsel.

5. Applicant Screening.

Determination of indigence for eligibility for appointed counsel under this agreement shall be determined by an independent screening process established by the City. Should the Department determine a defendant is not eligible for assigned counsel during the course of representation, the Department shall advise the Court pursuant to RCW 10.101.020(3).

6. Associated Counsel.

Any counsel associated with or employed by the Department shall have the authority to perform the services called for herein, and the Department may employ associate counsel to assist it, at its expense. The Department and all associate counsel or attorneys hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. No legal intern shall perform the services called for herein without the prior approval of the Court.

7. Indemnification:

The County shall indemnify and hold the City, its elected officials, officers, employees, and agents harmless from any and all claims whatsoever arising out of the Department's performance of obligations pursuant to the agreement, including claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Department, its agents, associates or employees, and occurring without the fault or neglect of the City.

8. Compensation.

- a. The City shall pay to the County for services rendered under this agreement the maximum annual amount of \$33,000; payments shall be due as follows: June 30, 2017--\$16,500 and December 31, 2017--\$16,500.
- b. This agreement may be reviewed quarterly to determine if the rate of compensation is adequate to cover the costs incurred in providing the necessary level of service. If at any such review it is

determined that the rate of compensation is inadequate the parties shall attempt to negotiate a reasonable compensation rate. The parties further agree that should another source of funding become available to meet the costs contemplated herein, the total cost of any applicable portion thereof may be revised downward accordingly or may be eliminated entirely pursuant to mutual agreement of the parties.

9. Discovery Period.

The City shall provide to the Department one copy of all discoverable material concerning such assigned case except in matters related to sentencing. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.

10. Costs.

a. If, in the opinion of the Department, an expert witness is needed in order to adequately prepare a defense for an indigent person, or to adequately represent that defendant at trial, the Department shall petition the Court for the appointment of said expert. The Court shall then determine the need for the expert, the rate of compensation to be paid, and the amount that shall be paid by the City. The rate of compensation paid to the Department does not include an amount for experts or investigation.

In the event that the retention of above services requires any additional funds for investigation or expert services, the City shall provide all additional funds for those services, so that all payments for those services remain separate from the contract compensation to the Department of Assigned Counsel.

b. If the Department appeals a case, the costs of the transcript shall be borne by the City.

11. Defense Standards Compliance.

This contract complies with all standards for indigent defense as listed under CrRLJ 3.1 and CrR 3.1, Washington State Bar Association Standards for Indigent Defense and the Rules of Professional Conduct.

12. No Assignments.

No assignment or transfer neither of this agreement, nor of any interest in this agreement shall be made by either of the parties, without prior written consent.

13. Term of Agreement.

a. This agreement shall commence on the 1st day of January 2017, and shall be in force and effect through December 31, 2017, said date being the termination date unless the agreement is terminated earlier pursuant to provisions hereof.

b. This agreement may be extended for additional terms upon the mutual agreement of the parties, and the termination date shall also be extended pursuant to said extension agreement.

14. Termination.

a. For Cause: Either party may terminate this agreement in the event the other fails to perform its obligations as described in this agreement, and if such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

b. Without Cause: If the parties are unable to negotiate a new rate of compensation pursuant to paragraph 8(b) above, then either party may terminate this agreement without cause by giving the other party 60 days written notice prior to the date of proposed termination.

15. Amendments.

No modification or amendment of the provisions of this agreement shall be in effect unless in writing and signed by authorized representatives of the parties hereto.

16. Entire Agreement.

This instrument contains the entire agreement between the parties and may not be enlarged, modified, or altered except in writing signed by both parties.

CITY OF FIRCREST

PIERCE COUNTY

FIRCREST CITY MANAGER

DIRECTOR OF ASSIGNED COUNSEL

ATTEST:

FIRCREST CITY CLERK

BUDGET AND FINANCE

APPROVED AS TO FORM:

FIRCREST CITY ATTORNEY

DEPUTY PROSECUTING ATTORNEY

Determination of indigency—Provisional appointment—Promissory note.

(1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of public defense, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter.

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: **December 13, 2016**

SUBJECT: **Budget Amendment**

FROM: **Michelle Thomas, Acting Finance Director**

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: **None. Introduction of Proposed Ordinance Only.**

PROPOSAL: This is a request for additional appropriations for anticipated revenues and expenditures not foreseen at the time of filing the 2016 Preliminary Budget and not provided for in the Adopted 2016 Budget.

FISCAL IMPACT: The fiscal impact of this proposal would be increases in expenditures with corresponding increases in revenue or corresponding decreases in undesignated fund balances as follows:

<u>General Fund</u>	<u>Increase/ (Decrease)</u>
Revenues	
Plan Checking	\$9,000
(001.345.83.00.00)	
Expenditures	
Bldg Insp/Plan Review	\$9,000
(001.524.20.41.01)	
Dues, Membership – Non-Dept	\$1,200
(001.518.10.49.00)	
Rep & Maint - Pool	\$2,450
(001.576.20.48.00)	
Community Events	\$400
(001.573.90.49.01)	
Casual/Seasonal – Pool	\$1,800
(001.576.20.12.00)	
Overtime – Pool	\$800
(001.576.20.11.00)	
Personnel Benefits – Pool	\$1,130
(001.576.20.20.00)	
Police O & M	\$7,000
(548.65.48.08)	
Undesignated Ending Fund Balance	(\$14,780)

ERR Fund

Revenues

Transfer In from General Fund for O & M (501.348.30.08.00)	\$7,000
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Expenditures

ERR O & M - Police (501.548.65.48.08)	\$7,000
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The City of Fircrest adopts an annual budget at the fund level. The above adjustments will result in an Amended 2016 Budget by fund as follows:

2016 REVENUES, EXPENDITURES & BALANCES BY FUND				
<u>FUND</u>	<u>ORIGINAL</u>	<u>MAR ADJ</u>	<u>DEC ADJ</u>	<u>AMENDED</u>
General	7,719,513	116,578	(14,780)	7,821,311
Street	783,124	724,237	0	1,507,361
Storm Drain	1,091,300	15,896	0	1,107,196
Water	1,777,870	-2,189	0	1,775,681
Sewer	3,457,800	48,109	0	3,505,909
BYSM	1,562,114	-9,675	0	1,552,439
ERR	1,882,970	37,215	7,000	1,927,185
Police Investigation	11,470		0	11,470
REET	1,311,800	-32,514	0	1,279,286
Cumulative Reserve	3,530,763		0	3,530,763
Total	23,128,724	897,657	(7,780)	24,018,601

ADVANTAGE: This proposal will provide necessary funds for expenditures.

DISADVANTAGES: A decrease in Ending Fund Balances in the General fund.

ALTERNATIVES: Deny some or all of the expenditures.

HISTORY: The following is an explanation for each of the above budget adjustments:

1. Increase of \$9,000 to Plan Checking revenues from increase fees on the Whittier School project
2. Increase of \$9,000 in Building Insp/Plan Review for school inspections.
3. Increase of \$1,200 in Dues, Membership – Non-Dept for eCivis software service.
4. Increase of \$2,450 in Repair/Maint Pool for the pool leak detection.

5. Increase of \$400 in Community Events due to higher than expected costs.
6. Increase in Pool Casual/Seasonal, Overtime and Benefits due to additional staff time needed for lifeguard coverage.
7. Increase of \$7,000 in Police O & M and ERR due to repairs to a police vehicle.
8. Decrease of \$14,780 to the Ending Fund Balance due to unforeseen expenditures.

Attachment(s): Ordinance

**CITY OF FIRCREST
ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF FIRCREST, WASHINGTON,
AUTHORIZING EMERGENCY EXPENDITURES OF FUNDS FOR
MATTERS NOT FORESEEN AT THE TIME OF FILING THE
PRELIMINARY BUDGET FOR 2016 AND NOT PROVIDED FOR IN
THE ANNUAL BUDGET FOR 2016.**

WHEREAS, the City anticipates certain revenues and expenditures not foreseen at the time of filing the Annual Budget for 2016; and;

WHEREAS, the City of Fircrest adopts an annual budget at the fund level and;

WHEREAS, it is necessary to amend the adopted 2016 budget to defray the anticipated expenditures; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF FIRCREST DO ORDAIN AS FOLLOWS:

Section 1. These revenues and expenditures are not one of the emergencies specifically enumerated in RCW 35A.33.080.

Section 2. The anticipated revenues and expenditures are as follows:

Increase/ (Decrease)

General Fund

Revenues

Plan Checking	\$9,000
(001.345.83.00.00)	

Expenditures

Bldg Insp/Plan Review	\$9,000
(001.524.20.41.01)	
Dues, Membership – Non-Dept	\$1,200
(001.518.10.49.00)	
Rep & Maint - Pool	\$2,450
(001.576.20.48.00)	
Community Events	\$400
(001.573.90.49.01)	
Casual/Seasonal – Pool	\$1,800
(001.576.20.12.00)	
Overtime – Pool	\$800
(001.576.20.11.00)	
Personnel Benefits – Pool	\$1,130
(001.576.20.20.00)	
Police O & M	\$7,000

(548.65.48.08)
Undesignated Ending Fund Balance (\$14,780)
(001.508.80.00.01)

ERR Fund

Revenues

Transfer In from General Fund for O & M \$7,000
(501.348.30.08.00)

Expenditures

ERR O & M - Police \$7,000
(501.548.65.48.08)

The City of Fircrest adopts an annual budget at the fund level. The above adjustments will result in an Amended 2016 Budget by fund as follows:

2016 REVENUES, EXPENDITURES & BALANCES BY FUND				
<u>FUND</u>	<u>ORIGINAL</u>	<u>MAR ADJ</u>	<u>DEC ADJ</u>	<u>AMENDED</u>
General	7,719,513	116,578	(14,780)	7,821,311
Street	783,124	724,237	0	1,507,361
Storm Drain	1,091,300	15,896	0	1,107,196
Water	1,777,870	-2,189	0	1,775,681
Sewer	3,457,800	48,109	0	3,505,909
BYSM	1,562,114	-9,675	0	1,552,439
ERR	1,882,970	37,215	7,000	1,927,185
Police Investigation	11,470		0	11,470
REET	1,311,800	-32,514	0	1,279,286
Cumulative Reserve	3,530,763		0	3,530,763
Total	23,128,724	897,657	(7,780)	24,018,601

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON,
at a regular meeting thereof this 27th day of December 2016.

APPROVED:

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

Publication Date:

Effective Date:

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution authorizing the City Manager to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index for services as the official newspaper of the City of Fircrest.

FROM: City Manager Rosenblatt

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. _____ authorizing the City Manager to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index for official City legal newspaper services for the City of Fircrest.

PROPOSAL: Council is being asked to authorize the execution of a professional services agreement with Sound Publishing Inc., dba Tacoma Daily Index (TDI) to provide publication of notices, call for bids, ordinance titles and other legally required publications. The City of Tacoma has competitively bid for official legal publishing. In accordance with RCW 39.34, the City of Fircrest and the City of Tacoma have agreed to a cooperative governmental purchasing agreement using City of Tacoma's competitively awarded contracts. This agreement with the Tacoma Daily Index will use the competitive bid done by the City of Tacoma.

FISCAL IMPACT: There are funds available for legal publishing in the Legislative, Public Works, Planning and Growth Management advertising line items. TDI has not increased their prices in 12 years. There is a 10% increase in this contract; however, TDI will agree to a six-year contract with no increases.

ADVANTAGES: This agreement with the Tacoma Daily Index will provide for required City legal publishing.

DISADVANTAGES: None of significance.

ALTERNATIVES: None that are feasible.

HISTORY: The Tacoma Daily Index has provided legal publishing services for the City of Fircrest since May 2011 and has provided excellent service.

Attachments: Resolution
Professional Services Agreement

**CITY OF FIRCREST
RESOLUTION NO. ____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIRCREST,
WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH SOUND PUBLISHING INC., DBA TACOMA
DAILY INDEX TO PROVIDE OFFICIAL CITY LEGAL PUBLISHING
SERVICES.**

WHEREAS, the City has an agreement for official City legal publishing services with Sound Publishing Inc., dba Tacoma Daily Index; and

WHEREAS, that agreement expires on December 31, 2016; and

WHEREAS, in accordance with state law, bids were called for the City of Tacoma's official newspaper, the bids were reviewed and the Tacoma Daily Index was found to be the lowest responsible bidder; and

WHEREAS, in accordance with RCW 39.34, the City of Fircrest and the City of Tacoma have agreed to a cooperative governmental purchasing agreement using City of Tacoma's competitively awarded contracts; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index to provide official City legal publishing services.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a regular meeting thereof this 13th of December 2016.

APPROVED

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS CONTRACT, made and entered into this _____ day of _____, 2016, by and between the **CITY OF FIRCREST**, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and **SOUND PUBLISHING, INC**, dba Tacoma Daily Index, a Washington State Corporation (hereinafter referred to as "CONTRACTOR");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Scope of Services/Work

- A.** The CONTRACTOR agrees to diligently and completely perform the following services and deliverables: provide Official City Legal Publishing for the period of January 1, 2017 through December 31, 2022, consistent with the requirements contained in Exhibit A and in the form specified in the CONTRACTOR's response to CITY's Request for Quotation, which is attached hereto and incorporated herein as Exhibit B.
- B.** To the extent there is any discrepancy or conflict between and/or amongst the terms of this document titled "Professional Services Contract" and Exhibits A and B, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first number being the most controlling, and the last number being the least controlling:
 - 1. this Contract
 - 2. Exhibits A, Scope of Work
 - 3. Exhibit B, Request for Quotation and Response
- C.** The CONTRACTOR certifies that its publication is a legal newspaper, qualified as such, pursuant to Chapter 65.16 of the Revised Code of Washington. If the Contractor's publication should, for any reason, fail or cease to conform with the requirements set forth in Chapter 65.16 RCW, then the Contractor shall take whatever steps are necessary to have the City's documents subject to this Agreement published in a legal newspaper in Tacoma that does comply with Chapter 65.16 RCW.

2. Term

- A.** All services shall be satisfactorily completed on or before December 31, 2022 and this Contract shall expire on said date unless mutually extended in writing by the Parties.

- B.** Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof.

3. Compensation and Payment

- A.** The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract as follows:

Check ONLY one:

- ☐ On the basis of Time and Materials according to the rates and charges set forth in Exhibit .
- ☒ In accordance with Exhibit B.
- ☐ At the rate of \$ per hour.
- B.** Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.
- C.** The CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D.** Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E.** The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F.** All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G.** In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such

excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

- A.** The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B.** The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Standard of Performance Warranty

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Services/Work (Exhibit A).

6. Contract Administration and Right to Audit

- A.** The City Clerk's Office for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B.** The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- C.** Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as

reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

7. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

8. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
City Clerk's Office, City of Fircrest 115 Ramsdell Street Fircrest, WA 98466	Tacoma Daily Index 1712 6 th Ave, Suite 300 Tacoma WA 98405
Phone 253 564-8901	Phone 253 627 4853
Facsimile 253 566-0762	Facsimile 253 627 2253

9. Termination and Suspension

- A.** The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- B.** The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.

- C. Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

10. Taxes, Licenses and Permits

- A. The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.
- B. In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- C. The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Fircrest Municipal Code.

11. Indemnification

- A. The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.
- B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

- C. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.
- D. The Contractor agrees to indemnify the City for all City staff time required to be incurred through the tracking documents, identification of omissions or errors which are found missing or are found within the document as published by the Contractor when such published document does not comply with the City's Technical Requirements pursuant to Attachment Number 1. The City shall deduct from any amounts owed the Contractor under the terms of this Contract the costs incurred by the City for its staff time caused by the Contractor's failure to comply with the Technical Requirements.

12. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

- A. Workers' Compensation and employer's liability --statutory limits.
- B. Commercial General Liability --\$1,000,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
- C. Automobile public liability and property damage--\$1,000,000 single limit combined for bodily injury and property damage.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

13. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

14. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed.

15. Public Disclosure

- A.** This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.
- B.** If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

16. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

17. Miscellaneous Provisions

- A. Governing Law and Venue.** Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment.** The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- C. No Third Party Beneficiaries.** This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver.** A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival.** If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement.** This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

- G. Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract.** The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the day and year first written above.

CITY OF FIRCREST

**SOUND PUBLISHING, INC.
1712 6th AVE., SUITE 300
TACOMA, WA 98405**

By _____
City Manager

By _____

Approved as to Form:

By _____
City Attorney

EXHIBIT "A"

SCOPE OF WORK

1. Legal notices shall be sent in any of the following formats: E-mail, FAX or hardcopy. Ads will be published regardless of the format received, as long as they are received by the minimum lead time for publication.
2. The Contractor will print in said newspaper upon request and after requested copy has been provided, all ordinances, resolutions, and legal and official notices for and on behalf of the City, such number of times as may be required, without mistake or variance from the copy furnished. The City will consider the Contractor in noncompliance with the contract should this not occur. Such printing is to be set in solid or with typeset quality, or equivalent; or photographically reduced for publication; or optically scanned.
3. All legal publishing shall be placed together under a block title of "City of Fircrest Legal Notices" in the legal notice section of said newspaper.
4. Ordinances and Resolutions submitted by the City may be photographically reduced for publication in the Official newspaper by the Contractor as long as the requirements are met, which will result in the City paying no more for photographically reduced copy than if the copy had been typeset: maps, photos, graphs, mathematical formulae, graphic designs, etc. which are photographically reduced for printing shall be measured for payment purposes based on the actual number of column inches of the copy as printed.
5. The Contractor will furnish and deliver to the City, at the Fircrest City Hall in the City of Fircrest, twenty (20) copies of each day's issues of said newspaper, distributed free of additional cost. The twenty (20) copies of each day's issues to be provided to the City will be delivered to the City Clerk's Office by the day following the publication.
6. After the last publication date of an advertisement, the Contractor shall furnish at no additional charge to the City department or agency that submitted the advertisement, the required number of "Affidavit of Publication(s)" certifying the specific date(s) the advertisement was published.
7. The Contractor shall maintain service to the Fircrest City Hall to collect advertising copy. The pick-up of copy to be published shall be consistent and be scheduled to ensure next day publication of selected items.
8. The Contractor must be in compliance with all state statutes pertinent to a legal newspaper.

9. The Contractor must obtain an Order of Approval of the Superior Court in accordance with Chapter 65.16 of the Revised Code of Washington prior to award of the contract.
10. The City reserves the right to terminate the contract for the convenience of the City, at the sole discretion of the City, with a 30-day written notice. The Contractor shall not be entitled to damages for lost profits in the event of such termination for convenience.
11. The City reserves the right to terminate the contract with five (5) calendar days' written notice of termination for cause shown. The Contractor's failure to publish as specified in said Advertisement, Information for Bidders, Instructions to Bidders, Specifications, Plans, Proposal and Contractor's Specifications (if any); or the Contractor's failure to qualify as a legal newspaper pursuant to Chapter 65.16 of the Revised Code of Washington shall constitute cause for termination, together with such other cause as may be sufficient under the common law. If a notice of termination for cause is issued by the City and it is later determined for any reason that the Contractor was not in default, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the City.
12. The City will not pay for any ad which is improperly run. The Contractor will re-run an improperly run ad at its expense. Any additional costs incurred by the City from an improperly run ad will be passed on to the Contractor.
13. The Contractor shall provide a subscription to any person or organization that requests it in a reasonable time frame, but in any event, it shall not exceed three weeks from the date of the request. If the City receives five written complaints from potential subscribers in a one-month period who are unable to obtain a subscription to the Contractor's paper, which complaints are verified, the Contractor shall be deemed to be in material default of the contract.
14. The Contractor shall furnish all affidavits with a copy of each particular published item cut and affixed to the front of each affidavit. Stapling a tear sheet to the back of the affidavit will not be sufficient. Affidavits must be signed and notarized. If the Contractor fails to provide accurate affidavits and accurate publication dates, the Contractor shall be deemed to be in material default of the contract.
15. Accurate date(s) of when the item was actually published will be printed at the end of the published document.
16. Every month the Contractor shall furnish an itemized statement of each account listing the invoice number, item published, and the total amount of each invoice.
17. Documents for publication which are received in the Contractor's Office or Fircrest City Hall, 115 Ramsdell Street, Fircrest, Washington by noon from the day before

the requested day of publication shall be ensured of next day publication. Variations from this time frame may be approved by the City Clerk's Office or the affected department submitting the publication request.

18. The Contractor shall maintain an office located in the City of Fircrest for purposes of pickup and delivery of documents, affidavits, etc. If the Contractor does not maintain an office within the corporate boundaries of the City of Fircrest, the Contractor shall, at no extra cost to the City, pick up documents, affidavits, etc., the same day such items were received at the above listed locations and ensure next day publication.
19. The Contractor must have and maintain an operating facsimile machine available on a 24-hour basis to accommodate the City and/or other agencies delivery of documents. If the fax becomes inoperable, it shall be the responsibility of the Contractor to notify the City (253) 564-8901 of the interruption of service.

EXHIBIT "B"

REQUEST FOR QUOTATION AND RESPONSE

CT16-0485N Official Legal Publishing for City of Tacoma

QUANTITY		VENDOR: LOCATION: TERMS SBE:	Tacoma Daily Index Tacoma, WA 0% No	The New Tribune Tacoma, WA 0% did not answer*
ALL PRICES QUOTED F.O.B. DESTINATION, FREIGHT ALLOWED				
1	Price per single column inch insertion		\$ 16.50	\$ 78.26
2	Sample: first single column inch		\$110.00	\$398.97
3	Sample: each single column subsequent insertion		\$110.00	\$468.65
SUBTOTAL THIS PAGE:			\$0.00	\$0.00
SUBTOTAL PRIOR PAGES:			\$0.00	\$0.00
SUBTOTAL:			\$0.00	\$0.00
TERMS:			0.0%	0.0%
SUBTOTAL:			\$0.00	\$0.00
TAX:			0.00%	0.00%
ACTUAL NET PRICE:			\$0.00	\$0.00

Cost to publish provided sample legal notice:

\$220

Publication days: M-F, excl holidays

Typeset specification/parameters: NewsGothic Standard

Guaranteed Circulation: 218

Lead Time: 2PM prior business day

Escalation for renewal terms: 0%

Accept Visa: Yes. Level 2

Accept ACH/EFT: No

Type size: 7 pt, leading 7.5

Column size:

1 column= 1.56 inches

2 columns= 3.315 inches

3 columns= 5.07 inches

Max characters per line: 140

\$867.62

Daily

IFC Franklin Gothic Book

M-Sat 60,794; Sun 85,143

Sat-Mon = Friday by 2PM; T-Th = day before by 2PM

+2% for years 5-6

Did not answer*

Did not answer*

7 pt, leading point 6.2

1.562 inches

3.25 inches

4.938 inches

32

Notes

*Submittal is missing pages 25 and 26

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution authorizing the City Manager to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index for services as the official newspaper of the City of Fircrest.

FROM: City Manager Rosenblatt

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. _____ authorizing the City Manager to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index for official City legal newspaper services for the City of Fircrest.

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ADVANTAGES: This agreement with the Tacoma Daily Index will provide for required City legal publishing.

DISADVANTAGES: None of significance.

ALTERNATIVES: None that are feasible.

HISTORY: The Tacoma Daily Index has provided legal publishing services for the City of Fircrest since May 2011 and has provided excellent service.

Attachments: Resolution
Professional Services Agreement

CITY OF FIRCREST

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIRCREST,
WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH SOUND PUBLISHING INC., DBA TACOMA
DAILY INDEX TO PROVIDE OFFICIAL CITY LEGAL PUBLISHING
SERVICES.**

WHEREAS, the City has an agreement for official City legal publishing services with Sound Publishing Inc., dba Tacoma Daily Index; and

WHEREAS, that agreement expires on December 31, 2016; and

WHEREAS, in accordance with state law, bids were called for the City of Tacoma's official newspaper, the bids were reviewed and the Tacoma Daily Index was found to be the lowest responsible bidder; and

WHEREAS, in accordance with RCW 39.34, the City of Fircrest and the City of Tacoma have agreed to a cooperative governmental purchasing agreement using City of Tacoma's competitively awarded contracts; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized to execute an agreement with Sound Publishing Inc., dba Tacoma Daily Index to provide official City legal publishing services.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON**, at a regular meeting thereof this 13th of December 2016.

APPROVED

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS CONTRACT, made and entered into this _____ day of _____, 2016, by and between the **CITY OF FIRCREST**, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and **SOUND PUBLISHING, INC**, dba Tacoma Daily Index, a Washington State Corporation (hereinafter referred to as "CONTRACTOR");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

18. Scope of Services/Work

- D.** The CONTRACTOR agrees to diligently and completely perform the following services and deliverables: provide Official City Legal Publishing for the period of January 1, 2017 through December 31, 2022, consistent with the requirements contained in Exhibit A and in the form specified in the CONTRACTOR's response to CITY's Request for Quotation, which is attached hereto and incorporated herein as Exhibit B.
- E.** To the extent there is any discrepancy or conflict between and/or amongst the terms of this document titled "Professional Services Contract" and Exhibits A and B, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first number being the most controlling, and the last number being the least controlling:
 - 4. this Contract
 - 5. Exhibits A, Scope of Work
 - 6. Exhibit B, Request for Quotation and Response
- F.** The CONTRACTOR certifies that its publication is a legal newspaper, qualified as such, pursuant to Chapter 65.16 of the Revised Code of Washington. If the Contractor's publication should, for any reason, fail or cease to conform with the requirements set forth in Chapter 65.16 RCW, then the Contractor shall take whatever steps are necessary to have the City's documents subject to this Agreement published in a legal newspaper in Tacoma that does comply with Chapter 65.16 RCW.

19. Term

- C.** All services shall be satisfactorily completed on or before December 31, 2022 and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- D.** Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any

cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof.

20. Compensation and Payment

- H.** The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract as follows:

Check ONLY one:

☐ On the basis of Time and Materials according to the rates and charges set forth in Exhibit .

☒ In accordance with Exhibit B.

☐ At the rate of \$ per hour.

- I.** Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.
- J.** The CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- K.** Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- L.** The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- M.** All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- N.** In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

21. Independent Contractor Status

- A.** The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B.** The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

22. Standard of Performance Warranty

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Services/Work (Exhibit A).

23. Contract Administration and Right to Audit

- D.** The City Clerk's Office for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- E.** The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- F.** Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

24. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

25. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
City Clerk's Office, City of Fircrest 115 Ramsdell Street Fircrest, WA 98466	Tacoma Daily Index 1712 6 th Ave, Suite 300 Tacoma WA 98405
Phone 253 564-8901	Phone 253 627 4853
Facsimile 253 566-0762	Facsimile 253 627 2253

26. Termination and Suspension

- D.** The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- E.** The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.
- F.** Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

27. Taxes, Licenses and Permits

- D.** The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.
- E.** In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- F.** The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Fircrest Municipal Code.

28. Indemnification

- E.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.
- F.** The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.
- G.** This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.
- H.** The Contractor agrees to indemnify the City for all City staff time required to be incurred through the tracking documents, identification of omissions or errors which are found missing or are found within the document as published by the Contractor when such published document does not comply with the

City's Technical Requirements pursuant to Attachment Number 1. The City shall deduct from any amounts owed the Contractor under the terms of this Contract the costs incurred by the City for its staff time caused by the Contractor's failure to comply with the Technical Requirements.

29. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

- D.** Workers' Compensation and employer's liability --statutory limits.
- E.** Commercial General Liability --\$1,000,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
- F.** Automobile public liability and property damage--\$1,000,000 single limit combined for bodily injury and property damage.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

30. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

31. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents

that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed.

32. Public Disclosure

- C.** This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.
- D.** If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

33. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to

terminate authorized by this Contract.

34. Miscellaneous Provisions

- F. Governing Law and Venue.** Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- G. Assignment.** The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- H. No Third Party Beneficiaries.** This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- I. Waiver.** A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- J. Severability and Survival.** If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement.** This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract.** The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the day and year first written above.

CITY OF FIRCREST

**SOUND PUBLISHING, INC.
1712 6th AVE., SUITE 300
TACOMA, WA 98405**

By _____
City Manager

By _____

Approved as to Form:

By _____
City Attorney

EXHIBIT "A"

SCOPE OF WORK

20. Legal notices shall be sent in any of the following formats: E-mail, FAX or hardcopy. Ads will be published regardless of the format received, as long as they are received by the minimum lead time for publication.
21. The Contractor will print in said newspaper upon request and after requested copy has been provided, all ordinances, resolutions, and legal and official notices for and on behalf of the City, such number of times as may be required, without mistake or variance from the copy furnished. The City will consider the Contractor in noncompliance with the contract should this not occur. Such printing is to be set in solid or with typeset quality, or equivalent; or photographically reduced for publication; or optically scanned.
22. All legal publishing shall be placed together under a block title of "City of Fircrest Legal Notices" in the legal notice section of said newspaper.
23. Ordinances and Resolutions submitted by the City may be photographically reduced for publication in the Official newspaper by the Contractor as long as the requirements are met, which will result in the City paying no more for photographically reduced copy than if the copy had been typeset: maps, photos, graphs, mathematical formulae, graphic designs, etc. which are photographically reduced for printing shall be measured for payment purposes based on the actual number of column inches of the copy as printed.
24. The Contractor will furnish and deliver to the City, at the Fircrest City Hall in the City of Fircrest, twenty (20) copies of each day's issues of said newspaper, distributed free of additional cost. The twenty (20) copies of each day's issues to be provided to the City will be delivered to the City Clerk's Office by the day following the publication.
25. After the last publication date of an advertisement, the Contractor shall furnish at no additional charge to the City department or agency that submitted the advertisement, the required number of "Affidavit of Publication(s)" certifying the specific date(s) the advertisement was published.
26. The Contractor shall maintain service to the Fircrest City Hall to collect advertising copy. The pick-up of copy to be published shall be consistent and be scheduled to ensure next day publication of selected items.
27. The Contractor must be in compliance with all state statutes pertinent to a legal newspaper.

28. The Contractor must obtain an Order of Approval of the Superior Court in accordance with Chapter 65.16 of the Revised Code of Washington prior to award of the contract.
29. The City reserves the right to terminate the contract for the convenience of the City, at the sole discretion of the City, with a 30-day written notice. The Contractor shall not be entitled to damages for lost profits in the event of such termination for convenience.
30. The City reserves the right to terminate the contract with five (5) calendar days' written notice of termination for cause shown. The Contractor's failure to publish as specified in said Advertisement, Information for Bidders, Instructions to Bidders, Specifications, Plans, Proposal and Contractor's Specifications (if any); or the Contractor's failure to qualify as a legal newspaper pursuant to Chapter 65.16 of the Revised Code of Washington shall constitute cause for termination, together with such other cause as may be sufficient under the common law. If a notice of termination for cause is issued by the City and it is later determined for any reason that the Contractor was not in default, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the City.
31. The City will not pay for any ad which is improperly run. The Contractor will re-run an improperly run ad at its expense. Any additional costs incurred by the City from an improperly run ad will be passed on to the Contractor.
32. The Contractor shall provide a subscription to any person or organization that requests it in a reasonable time frame, but in any event, it shall not exceed three weeks from the date of the request. If the City receives five written complaints from potential subscribers in a one-month period who are unable to obtain a subscription to the Contractor's paper, which complaints are verified, the Contractor shall be deemed to be in material default of the contract.
33. The Contractor shall furnish all affidavits with a copy of each particular published item cut and affixed to the front of each affidavit. Stapling a tear sheet to the back of the affidavit will not be sufficient. Affidavits must be signed and notarized. If the Contractor fails to provide accurate affidavits and accurate publication dates, the Contractor shall be deemed to be in material default of the contract.
34. Accurate date(s) of when the item was actually published will be printed at the end of the published document.
35. Every month the Contractor shall furnish an itemized statement of each account listing the invoice number, item published, and the total amount of each invoice.
36. Documents for publication which are received in the Contractor's Office or Fircrest City Hall, 115 Ramsdell Street, Fircrest, Washington by noon from the day before

the requested day of publication shall be ensured of next day publication. Variations from this time frame may be approved by the City Clerk's Office or the affected department submitting the publication request.

37. The Contractor shall maintain an office located in the City of Fircrest for purposes of pickup and delivery of documents, affidavits, etc. If the Contractor does not maintain an office within the corporate boundaries of the City of Fircrest, the Contractor shall, at no extra cost to the City, pick up documents, affidavits, etc., the same day such items were received at the above listed locations and ensure next day publication.
38. The Contractor must have and maintain an operating facsimile machine available on a 24-hour basis to accommodate the City and/or other agencies delivery of documents. If the fax becomes inoperable, it shall be the responsibility of the Contractor to notify the City (253) 564-8901 of the interruption of service.

EXHIBIT "B"

REQUEST FOR QUOTATION AND RESPONSE

CT16-0485N Official Legal Publishing for City of Tacoma

VENDOR:		Tacoma Daily Index		The New Tribune	
LOCATION:		Tacoma, WA		Tacoma, WA	
TERMS SBE:		0% No		0% did not answer*	
QUANTITY	ALL PRICES QUOTED F.O.B. DESTINATION, FREIGHT ALLOWED				
1	Price per single column inch insertion	\$	16.50	\$	78.26
2	Sample: first single column inch		\$110.00		\$398.97
3	Sample: each single column subsequent insertion		\$110.00		\$468.65
	SUBTOTAL THIS PAGE:				\$0.00
	SUBTOTAL PRIOR PAGES:				\$0.00
	SUBTOTAL:				\$0.00
	TERMS:		0.0%		0.0%
	SUBTOTAL:				\$0.00
	TAX:		0.00%		0.00%
	ACTUAL NET PRICE:				\$0.00

Cost to publish provided sample legal notice: \$220

Publication days: M-F, excl holidays

Typeset specification/parameters: NewsGothic Standard

Guaranteed Circulation: 218

Lead Time: 2PM prior business day

Escalation for renewal terms: 0%

Accept Visa: Yes. Level 2

Accept ACH/EFT: No

Type size: 7 pt, leading 7.5

Column size:

1 column= 1.56 inches

2 columns= 3.315 inches

3 columns= 5.07 inches

Max characters per line: 140

\$867.62

Daily

IFC Franklin Gothic Book

M-Sat 60,794; Sun 85,143

Sat-Mon = Friday by 2PM; T-Th = day before by 2PM

+2% for years 5-6

Did not answer*

Did not answer*

7 pt, leading point 6.2

1.562 inches

3.25 inches

4.938 inches

32

Notes

*Submittal is missing pages 25 and 26

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution authorizing Amendment #10 to the Agreement with Summit Law Group to provide personnel services

FROM: City Manager Rosenblatt

Reviewed by: _____ City Manager _____ Finance Director _____ City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. _____ authorizing the City Manager to execute Amendment #10 to the agreement with Summit Law Group to provide personnel services.

PROPOSAL: Council is being asked to authorize an amendment to the professional services agreement with Summit Law Group to extend the date of the agreement to December 31, 2017 and authorize an increase in rates. Summit Law can provide personnel services to Fircrest should the need arise.

FISCAL IMPACT: The attorney rates will increase in 2017. The rates are listed in the attachment to the agreement. Funds are available in the Personnel Professional Services and Special Legal Counsel line items for any expenditure.

ADVANTAGES: Extending this agreement will provide continuity of service for any needs in 2017. Summit Law attorneys have worked with Fircrest in the past and have provided excellent service.

DISADVANTAGES: Cost.

ALTERNATIVES: None that is feasible.

HISTORY: Summit Law Group has provided Fircrest with legal services since December 2007. Their attorneys have worked with Fircrest on personnel matters, labor negotiations and arbitration services.

Attachments: Resolution
Professional Services Agreement Amendment #10

**CITY OF FIRCREST
RESOLUTION NO.____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON, AUTHORIZING THE CITY
MANAGER TO EXECUTE AMENDMENT #10 TO THE
AGREEMENT WITH SUMMIT LAW GROUP TO PROVIDE
PERSONNEL SERVICES**

WHEREAS, the City has contracted with Summit Law Group for specialized personnel services; and

WHEREAS, the firm of Summit Law Group has provided such services; and

WHEREAS, the City desires to maintain continuity in the personnel process; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized and directed to execute the tenth amendment to the agreement with Summit Law Group to extend the term of the December 11, 2007 agreement through December 31, 2017 and to increase the schedule of rates.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a regular meeting thereof this 13th day of December 2016.

APPROVED

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

**TENTH AMENDMENT
TO THE CITY OF FIRCREST
PROFESSIONAL SERVICES AGREEMENT
FOR PERSONNEL SERVICES**

This tenth amendment is hereby made and entered into this 13th day of December 2016, by and between the City of Fircrest, a political subdivision of the State of Washington, hereinafter referred to as the "City" and Summit Law Group, hereinafter referred to as "Consultant", to be effective January 1, 2017.

WITNESSETH:

1. **Purpose**

The purpose of this tenth amendment is to amend the December 11, 2007 agreement. This amendment is limited to the amendments as set forth herein. All of the remaining terms and conditions of the December 11, 2007 agreement as amended by the first amendment dated March 25, 2008, second amendment dated November 25, 2008, third amendment dated December 8, 2009, fourth amendment dated December 14, 2010, fifth amendment dated December 13, 2011, sixth amendment dated December 11, 2012, seventh amendment dated November 26, 2013, eighth amendment dated December 9, 2014, and the ninth amendment dated November 24, 2015 shall remain in full force and effect. The amendments are as follows:

2. **Term** is hereby amended to read as follows:

This Agreement is from January 1, 2017 through December 31, 2017. It may be terminated by either party upon 30-day written notice to the other party without any liability therefore, save and except that each party shall be required to make payments for work actually accomplished prior to the giving of said notice, it being the intent of the parties hereto that each party shall receive any and all consideration due under the terms and provisions hereof up to the date of the actual cessation of said agreement. If the City terminates the Agreement, the Consultant shall only be paid for work completed up to the time he receives the written notice of termination.

3. **Fee Schedule** is amended per the attached 2017 Schedule of Current Rates.

4. All remaining provisions of the December 11, 2007 agreement and the first amendment dated March 25, 2008, second amendment dated November 25, 2008, third amendment dated December 8, 2009, fourth amendment dated December 14, 2010, fifth amendment dated December 13, 2011, sixth amendment dated December 11, 2012, seventh amendment dated November 26, 2013 eighth amendment dated December 9, 2014, and the ninth amendment dated November 24, 2015 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in three counterparts, each of which shall be deemed as originals, in the year and day first above mentioned.

CITY OF FIRCREST

**Summit Law Group
315 Fifth Ave. So., Suite 1000
Seattle, WA 98104**

By _____
City Manager

Approved as to Form:

By _____
City Attorney

By _____

**SUMMIT LAW GROUP
LABOR/EMPLOYMENT
2017 Fee Schedule**

NAME	PUBLIC RATE
Peter Altman	\$255
Kristin D. Anger	\$295
Michael C. Bolasina	\$295
Sarah Hale	\$250
Beth Kennar	\$295
Otto G. Klein	\$320
Sofia D. Mabee	\$295
M. Quinn Oppenheim	\$275
Shannon E. Phillips	\$295
Bruce L. Schroeder	\$320
Dan Swedlow	\$290
Rodney B. Younker	\$315
Donna Murbach	\$150
Linda Swanson	\$150

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution Authorizing a Time & Temperature Sign Sponsorship Agreement with Columbia Bank

FROM: Rick Rosenblatt, City Manager

Reviewed by: _____ City Manager _____ Finance Director _____ City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. _____ authorizing the City Manager to execute a Time and Temperature Sign Agreement with Columbia Bank.

PROPOSAL: Council is being asked to adopt a resolution approving a three year agreement from January 1, 2017 through December 31, 2019 with Columbia Bank for sponsorship of the Time & Temperature Sign. Columbia bank will pay \$220/month for advertising, maintenance and future sign replacement.

FISCAL IMPACT: Columbia Bank will pay \$220/month to the City per the agreement. There is a cost for electrical power for the Time and Temperature Sign of \$278.89 for 2014, \$280.44 for 2015 and \$339.83 for 2016. Repairs and maintenance are done on an as needed basis. In 2014 the City spent \$672.82 to install a new motor for the rotating sign, in 2015 spent \$246.80 to relamp the sign and replace ballasts and in 2016 spent \$1,554.14 to repair rotor bushings and a new rotator and other repairs.

ADVANTAGES: This agreement provides for the continuing operation of the Time & Temperature Sign and provides revenue to the City.

DISADVANTAGES: None of significance.

ALTERNATIVES: Seek another sponsor and incur the cost of changing out the signage.

HISTORY: On October 14, 2003, Council adopted Resolution No. 784, which authorized an agreement with Columbia Bank for the Time & Temperature Sign. The agreement included repair and refurbishing costs and also provided the City with revenue for advertising costs. This agreement expired on December 31, 2010. On November 23, 2010, Council adopted Resolution No. 1154, which was for an agreement with Columbia Bank from January 1, 2011 through December 31, 2015. On December 28, 2015 Council adopted Resolution No. 1412 which extended the agreement through June 30, 2016. Columbia Bank is interested in a long term agreement.

Attachments: Resolution Agreement

**CITY OF FIRCREST
RESOLUTION NO.____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON, APPROVING A SPONSORSHIP
AGREEMENT WITH COLUMBIA BANK FOR THE CITY'S TIME
AND TEMPERATURE SIGN AND AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AGREEMENT FOR SUCH
SPONSORSHIP.**

WHEREAS, a time and temperature sign has been located within the City of Fircrest on the traffic island at the intersection of Regents Boulevard and Alameda Avenue since 1991; and

WHEREAS, Columbia Bank has had an agreement with the City for sponsorship of the time and temperature sign since November 1, 2003; and

WHEREAS, the current agreement with Columbia Bank expired on June 30, 2016; and

WHEREAS, Columbia Bank has indicated an interest in continuing to provide sponsorship for the sign; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized and directed to execute an agreement by and between the City of Fircrest and Columbia Bank through December 31, 2019 for the City's Time and Temperature Sign located at the intersection of Regents Boulevard and Alameda Avenue.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON**, at a regular meeting thereof this 13th day of December 2016.

APPROVED

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Fircrest, a Washington Municipality, hereinafter referred to as "City", and Columbia Bank, this 13th day of December 2016.

W I T N E S S E T H:

WHEREAS, a time and temperature sign has been located within the City of Fircrest on the traffic island at the intersection of Regents Boulevard and Alameda Avenue since 1991; and

WHEREAS, Columbia Bank has indicated interest in continuing to provide sponsorship for the sign; and

WHEREAS, the parties have agreed that the sign will remain at its present location and wish to reduce such agreement to a formal writing.

NOW, THEREFORE, for and in consideration of mutual promises hereinafter set forth, it is agreed as follows:

1. The City will continue to maintain the time and temperature sign at its present location and in its present configuration and form until December 31, 2019, the termination date for this agreement.
2. Columbia Bank will pay the City of Fircrest on or before the first day of each month, the sum of \$220 per month until the termination of this agreement.
3. The parties acknowledge that the sign is the property of the City. The City reserves the right to remove or relocate the sign to accommodate any traffic redesign required by the City. With the exception of required traffic redesign, the parties agree that the sign will remain at its present location without alteration except upon the mutual agreement of the City and Columbia Bank during the term of this agreement.
4. The parties acknowledge the sign is expected to be operational for the term of this agreement; however, should parts become unavailable or the sign becomes damaged beyond repair, the parties agree to discuss options for replacing the sign.
5. This agreement will begin on January 1, 2017 and will expire on December 31, 2019, at which time Columbia Bank will be released from any further responsibility or obligation to pay any sum to the City of Fircrest for advertising and maintenance of

such sign. The parties agree that the sign is, and shall remain at all times, the sole property of the City.

EXECUTED at Fircrest, Washington, the day and year first above written.

CITY OF FIRCREST

By: _____
City Manager

COLUMBIA BANK

By: _____
Senior Vice President

Approved as to form:

City Attorney for the City of Fircrest

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: **December 13, 2016**

SUBJECT: **Resolution authorizing the City Manager to execute Amendment 1 to the Professional Services Agreement with KPG, P.S. for the Emerson Sidewalk Project.**

FROM: **Jerry Wakefield, Public Works Director**

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: **I move to adopt Resolution No. _____ authorizing the City Manager to execute Amendment 1 to the Professional Services Agreement with KPG, P.S. for the Emerson Sidewalk Project.**

PROPOSAL:

Council is being asked to authorize the City Manager to execute Amendment 1 to the Professional Services Agreement with KPG, P.S. for the Emerson Sidewalk Project.

FISCAL IMPACT:

The agreement has been funded partially by a grant from TIB and City match monies that were budgeted in 2016. These funds will be rolled over to 2017 with no increase in funds, only an extension of time.

ADVANTAGES:

KPG has provided the design phase of this contract and a continuation of this contract would allow them to complete the scope of services outlined in their agreement.

DISADVANTAGES:

By not amending this contract, the City would be required to delay the work for the selection process and also provide a professional services agreement for the next phase of this project.

ALTERNATIVES:

Not to have KPG provide the services and solicit new proposals for this work.

HISTORY:

Previously, the City selected and contracted with KPG for the Emerson Sidewalk Project. This amendment allows KPG to continue to provide the needed engineering services to complete this project. The City and KPG wishes to continue this project through completion.

Attachment: Resolution
Amendment 1

**CITY OF FIRCREST
RESOLUTION NO.____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIRCREST,
WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE
AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT
WITH KPG, P.S. FOR ENGINEERING SERVICES FOR THE EMERSON
SIDEWALK PROJECT**

WHEREAS, the City of Fircrest had conducted a selection process and selected KPG, P.S. to prepare the design of the Emerson Sidewalk Project; and

WHEREAS, the City of Fircrest has contracted with KPG, P.S. to provide the engineering services for the Emerson Sidewalk Project; and

WHEREAS, the City wishes to continue this contract with KPG, P.S., to complete this work; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST THAT:

Section 1. The City Manager is hereby authorized and directed to execute Amendment 1 to the professional services agreement with KPG, P.S., for the Emerson Sidewalk Project.

APPROVED AND ADOPTED this 13th day of December 2016 at a regular meeting of the City Council of the City of Fircrest.

APPROVED:

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

**FIRST AMENDMENT
TO THE CITY OF FIRCREST
CONSULTING SERVICES AGREEMENT**

FOR EMERSON SIDEWALK PROJECT ENGINEERING SERVICES

This first amendment is hereby made and entered into this 13th day of December 2016, by and between the City of Fircrest, a political subdivision of the State of Washington, hereinafter referred to as the "City" and KPG, P.S., hereinafter referred to as "Consultant", to be effective January 1, 2017.

WITNESSETH:

1. **Purpose**

The purpose of this first amendment is to amend the March 8, 2016 agreement. This amendment is limited to the amendments as set forth herein. All of the remaining terms and conditions of the March 8, 2016 agreement shall remain in full force and effect. The amendments are as follows:

2. **Term** is hereby amended to read as follows:

The term of this Agreement shall be from March 8, 2016, until December 31, 2017, and may be extended or modified by mutual consent of the parties.

3. All remaining provisions of the March 8, 2016 agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in three counterparts, each of which shall be deemed as originals, in the year and day first above mentioned.

CITY OF FIRCREST

KPG, P.S.

By _____
City Manager

By _____

Approved as to Form:

By _____
City Attorney

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution to Enter Into an Agreement with the Humane Society for Tacoma and Pierce County to Provide Animal Sheltering Services for 2017

FROM: John Cheesman, Police Chief

Reviewed by: _____City Manager _____Finance Director _____City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No. _____, a resolution authorizing the City Manager to execute the Agreement between The Humane Society for Tacoma and Pierce County and the City of Fircrest for Animal Sheltering Services for 2017.

PROPOSAL: Staff feels that it is in the best interest of our citizens that the City of Fircrest contract for animal sheltering services with the Humane Society for Tacoma and Pierce County. The contract has a termination clause allowing either party to terminate the contract with 90 days notice.

The Humane Society promises to furnish and maintain a suitable shelter for the handling of stray, impounded and unwanted domestic animals turned over to the Humane Society by Fircrest residents. Such facility shall include cat kennels and dog kennels, as well as facilities for the humane disposal of sick and injured domestic animals. Rendering of domestic animals deceased upon arrival or during time of sheltering is included.

You will note that the proposed contract requires that Fircrest Animal Control Officers perform certain functions, and comply with certain policies, and receive specified training. In 2017 we will once again be contracting with Tacoma for Animal Control and we are assured that their Animal Control Officers will be in compliance with the Human Societies requirements. Tacoma will also have a contract with the Humane Society for Tacoma and Pierce County for sheltering services.

FISCAL IMPACT: The cost to the City for these services in 2017 will be \$ 7,932.00 which is \$141.60 increase over what we paid this year. This cost will be paid in monthly payments of \$661.00 which is an \$11.80 a month increase over what we paid in 2016 but is still a reduction of over \$2,000 from what we paid in 2010. Historically our City has approximately 90 animals turned into the Humane Society each year. The rate next year is based on the assumption of 90 animals being received by the Humane Society from the City of Fircrest. I spoke with the Humane Society Finance Director Frank Strueby and noted the decline in the number of animals they received from the City of Fircrest through September of 2016. If that rate continues, our costs may drop next year. Mr. Strueby has agreed to meet with me and we will carefully go over the numbers this

coming year. The Humane Society will also retain all adoption, impound, board, fines, and other fees collected from the public.

The contract allows impounded animals awaiting disposition by the courts to be held at no charge for 15 days. After 15 days board will be charged to Fircrest in the amount of \$10 per day per companion animal.

ADVANTAGE: We feel this contract is in the best interest of our City. The shelter will be staffed and open for the purpose of receiving companion animals and allowing such animals to be redeemed during regular business hours. The Humane Society will also provide a location within the shelter and the protocols for Municipal Animal Control Officers to drop off animals after hours. This is actually the only reasonable option we have at this time as there are no other animal shelters in a reasonably close proximity to our City.

DISADVANTAGES: None noted

ALTERNATIVES: None noted.

HISTORY: We have had a contract with the Humane Society for Tacoma and Pierce County for many years and up until 2006 the Humane Society had always provided animal control services for our City. We have always had a good working relationship with The Humane Society and they have always been very responsive to our needs.

Attachment(s): Resolution
Contract for Sheltering services – 2017
Humane Society Report – 2017

**CITY OF FIRCREST
RESOLUTION NO.____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON, AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AGREEMENT WITH THE
HUMANE SOCIETY FOR TACOMA AND PIERCE COUNTY TO
PROVIDE ANIMAL SHELTERING SERVICES**

WHEREAS, the City of Fircrest believes it to be in the best interest of our citizens to continue to contract with the Humane Society for Tacoma and Pierce County for animal sheltering; and

WHEREAS, the Humane Society for Tacoma and Pierce County offers the residents of Fircrest a full time staff for receiving domestic animals, business hours allowing residents to redeem their animals, and they provide veterinary staff to treat animals once they are admitted to the shelter; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized and directed to execute an agreement with the Humane Society for Tacoma and Pierce County to provide animal sheltering from January 1, 2017 through December 31, 2017.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON**, at a regular meeting thereof this 13th day of December 2016.

APPROVED

Mathew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

2017 CONTRACT FOR SHELTERING SERVICES

The parties to this contract are the City of Fircrest, a political subdivision of the State of Washington, hereinafter referred to as "Fircrest" and THE HUMANE SOCIETY FOR TACOMA AND PIERCE COUNTY, a non-profit corporation formed and operating pursuant to RCW 16.52.020, hereinafter referred to as the "Society." The terms of this contract shall cover the period from January 1, 2017 through December 31, 2017.

WHEREAS, the Society presently offers to residents of Fircrest a full time staff which provides, animal care, administrative services and veterinary services.

WHEREAS, Fircrest wishes to contract with the Society for sheltering services, and the Society has agreed to provide those services under the terms of this agreement.

NOW, THEREFORE, the Society, in consideration of Fircrest's promises, AGREES AND PROMISES AS FOLLOWS:

(1) To furnish and maintain a suitable shelter for the handling of stray, impounded and unwanted companion animals turned over to the Society by the City of Fircrest or its residents. Companion animals are specifically defined as dogs, cats, domestic birds, domestic rabbits and small domestic rodents. Companion animals specifically exclude feral cats, livestock (horses, cows, pigs, sheep, goats, fowl, etc.) venomous or dangerous reptiles and wild or exotic animals. Such facility shall include cat kennels and dog kennels, as well as facilities for the humane disposal of sick and injured domestic animals. Rendering of domestic animals deceased upon arrival or during time of sheltering is included. Impounded animals, awaiting disposition by the courts will be held for up to 15 days without additional charge. After 15 days, board will be charged to Fircrest at the rate of \$10 per day per companion animal.

(2) To keep the shelter staffed and open for the purposes of receiving

domestic animals and allowing such animals to be redeemed during regular business hours. The Society will provide a location within the shelter and the protocols for Municipal Animal Control officers to drop off animals after hours.

(3) To maintain complete records of animals received and animals disposed of, and to furnish reports of the Society's activities to Fircrest.

(4) To procure and maintain comprehensive general liability insurance, comprehensive automobile liability insurance, and professional liability insurance, with limits not less than \$1,000,000.00 (\$500,000.00 bodily and personal injury and property damage insurance.) Fircrest is to be named as an additional insured as respects this contract and such insurance as is carried by the Society is primary over any insurance carried by Fircrest. In the event of a non-renewal, cancellation or material change in the coverage provided, 30 days' written notice will be furnished to Fircrest prior to the date of non-renewal, cancellation or change. Such notice shall be sent to the City of Fircrest, Attention Chief J. Cheesman, 302 Regents Blvd., City of Fircrest, WA 98466. Fircrest has no obligation to report occurrences unless a claim is filed with Fircrest, and Fircrest has no obligations to pay premiums on such insurance.

(5) To furnish equipment and supplies used in the performance of the Society's obligations arising from this contract, except equipment and supplies which Fircrest expressly promises to furnish.

(6) To hold harmless, indemnify and defend Fircrest and its officers, officials and employees from any claim, liability, lawsuit or legal judgment arising from or out of the negligent or tortious actions or inactions of the Society in its performance of the activities and services set forth herein in this Agreement to be performed by the Society. The Agreement to indemnify, defend and hold harmless Fircrest by the Society shall not apply to any loss, claim, liability, lawsuit or legal judgment arising from the sole

negligence of Fircrest.

**THE CITY OF FIRCREST, in consideration of the Society's promises,
AGREES AND PROMISES AS FOLLOWS:**

(1) To pay to the Society \$7,932.00 for the year 2017, payable in monthly payments of \$661.00 starting as of January 1, 2017 due on or before the 10th of each month, with the final payment due December 10, 2017. Any payment over 30 days late may cause a suspension of service and will automatically be charged a 1% penalty.

(2) To permit the Society to retain all adoption, impound, board, fines and other fees collected from the public in accordance with the Municipal Code of Fircrest.

(3) To provide public disclosure of the level of services provided, services not covered by the contract and to refer citizen inquiries to the appropriate City department at (253) 565-1198.

(4) Fircrest will provide its own Potentially Dangerous Dog (PDD) and Dangerous Dog (DD) hearings and services. Any euthanasia required by the PDD and DD programs will be paid for by the dog owner.

(5) The Society will employ veterinary staff to treat animals once they are admitted to the shelter. Until the Society accepts the animal, Fircrest is responsible for all veterinarian care including after hours and emergency care through the Animal Emergency Clinic or any other emergency veterinarian. Fircrest will be responsible for contracting with Animal Emergency Clinics for payment of care for stray animals taken to the clinics by its Animal Control officers or good Samaritans. The Society does not provide emergency veterinary care and animals needing such care should go directly to an emergency veterinary clinic. Fircrest is responsible for transporting the animals from the Animal Emergency Clinic to the Society once the animal is stabilized.

(6) Fircrest Animal Control officers or their contracted agents must completely

and accurately perform the data input required for shelter admission as well as scan each animal for microchips. Officers must also administer vaccines provided by the Society to animals dropped off at the shelter as required by shelter admissions policy. The Society will provide the necessary training for the vaccinations and computer intake requirements. The Society will create and provide the shelter admissions policy. As data accuracy and proper immunization are integral to the shelter intake procedures, Officers will be required to proficiently comply with the shelter admission policy. It will be Fircrest's responsibility to provide ongoing routine training and quality review. However, if upon quality review by the Society it is shown that an officer is less than 95% in compliance they will be suspended from being allowed to admit to the shelter. Their access to the shelter can be reinstated 1 time after additional training by the Society.

(7) To defend the Society, and to otherwise hold the Society harmless from any damages or attorneys' fees incurred by the Society, as a result of any litigation which names the Society and relates to the validity of any municipal ordinance or State statute. It is agreed that Fircrest will defend the Society from the portion of litigation that concerns that validity of Fircrest ordinance or State statute.

MUTUAL COVENANTS & UNDERSTANDINGS – both parties hereto agree to the following conditions:

- (1) All persons employed by the Society to perform its obligations under this contract shall be employees of the Society and not Fircrest.
- (2) Either party can terminate this contract upon 90 days written notice.

DATED this _____ day of _____, _____

**THE HUMANE SOCIETY
FOR TACOMA AND PIERCE COUNTY**

CITY OF FIRCREST

**Kathleen Olson
EXECUTIVE DIRECTOR**

FIRCREST CITY MANAGER

Approved as to form

CITY ATTORNEY

Attest

CITY CLERK

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Total YTD
Animals Received													
<i>Dogs and Puppies</i>	2	3	0	2	0	3	1	4	4	0	0	0	19
<i>Owner Surrendered</i>	2	1	0	1	0	1	0	1	1				7
<i>Stray</i>	0	2	0	1	0	2	1	3	3				12
<i>Cats and Kittens</i>	2	0	0	0	1	2	4	2	3	0	0	0	14
<i>Owner Surrendered</i>	0	0	0	0	1	2	3	2	1				9
<i>Stray</i>	2	0	0	0	0	0	1	0	0				5
<i>Other Animals</i>	0	0	0	0	0	0	1	0	0				3
<i>Disposal Requests</i>	0	0	0	0	0	0	0	0	1				1
<i>Owner Requested Euthanasia</i>	2	0	1	1	0	1	1	0	2				8
Total Animals Received	6	3	1	3	1	9	6	6	10	0	0	0	45

Animals Placed													
<i>Dogs and Puppies</i>	2	1	1	2	2	3	0	3	0				14
<i>Cats and Kittens</i>	5	2	1	2	1	7	11	8	2				39
<i>Other Animals</i>	0	0	0	0	0	0	0	1	1				2
Total Adoptions	7	3	2	4	3	10	11	12	3	0	0	0	55

Strays United with Owners													
<i>Dogs and Puppies</i>	0	1	0	0	0	1	1	2	2				7
<i>Cats and Kittens</i>	0	0	0	0	0	0	1	0	0				1
<i>Others Animals</i>	0	0	0	0	0	0	0	0	0				0
Total Animals Reunited	0	1	0	0	0	1	2	2	2	0	0	0	8

Animals Euthanized													
<i>Dogs and Puppies</i>	2	0	1	1	0	1	0	0	3	0	0	0	8
<i>Medical or Behavioral</i>	2	0	1	1	0	1	0	0	3				8
<i>Cats and Kittens</i>	0	0	0	0	1	1	1	0	0	0	0	0	3
<i>Medical or Behavioral</i>	0	0	0	0	1	1	1	0	0				3
<i>Other Animals</i>	0	0	0	0	0	1	0	0	0				1
Total Animals Euthanized	2	0	1	1	1	3	1	0	3	0	0	0	12

Deceased Animals													
<i>Disposal</i>	0	0	0	0	0	0	0	0	3				3
<i>Died</i>	1	0	0	0	0	0	0	1	0				2
Total Deceased Animals	1	0	0	0	0	0	0	1	3	0	0	0	5

Total Income of Animals	6	3	1	3	1	9	6	6	10	0	0	0	45
Total Outcome of Animals	10	4	3	5	4	14	14	15	11	0	0	0	80

Foster Animals													
<i>Animals Out to Foster</i>	0	0	0	1	3	0	0	1	0				5
<i>Animals Back from Foster</i>	4	3	1	3	5	11	4	8	3				42

FIRCREST CITY COUNCIL AGENDA SUMMARY

COUNCIL MEETING DATE: December 13, 2016

SUBJECT: Resolution To Execute An Agreement For A
Communications Maintenance Program

FROM: John Cheesman, Police Chief

Review by: _____ City Manager _____ Finance Director _____ City Attorney

RECOMMENDED MOTION: I move to adopt Resolution No.____, authorizing the City Manager to execute an agreement with Pierce County for a communications maintenance program for the years 2017-2021.

PROPOSAL: Council is being asked to adopt a resolution allowing the City Manager to execute an agreement with the Pierce County Communications Division for communications maintenance. We feel it is in the best interest of our community to enter into this agreement.

FISCAL IMPACT: The County Communications rate has not increased this year. The City of Fircrest will reimburse the County for its services at the rate of \$125.00 an hour again this year. The Police Repair and maintenance line item budget includes \$2,500 for maintaining police radios, computers, calibrating our radars, and other equipment repairs not in ERR. This agreement will commence as of January 1, 2017 and terminate on December 31, 2021. Either party may terminate this agreement upon thirty (30) days written notice. In case of a fee increase, written notice will be given sixty (60) days prior to the increase.

ADVANTAGE: We have a very good working relationship with the Pierce County Communications Shop. They have always treated us fairly.

DISADVANTAGES: None noted.

HISTORY: We have entered into an agreement for communication maintenance with Pierce County Communications for several years.

The contract work performed by Pierce County includes all maintenance, repair, installation, and the upgrading of radio communications and it sometimes includes work performed on our vehicles. This also encompasses the work performed on our radars including their yearly calibration.

Attachments: Resolution
Communications Contract

**CITY OF FIRCREST
RESOLUTION NO. ____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AGREEMENT WITH PIERCE
COUNTY FOR A COMMUNICATIONS MAINTENANCE
PROGRAM**

WHEREAS, for the past several years, the Fircrest Police Department has had an agreement with Pierce County Communications to perform all maintenance, repair, installation and upgrading radio communications; and

WHEREAS, the Fircrest Police Department has also used Pierce County Communications for maintenance of radar units and yearly calibration and wishes to continue the radio and radar maintenance program; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST:

Section 1. The City Manager is hereby authorized and directed to execute a Communications Maintenance Program Agreement with Pierce County for Pierce County Communications from January 1, 2017 through December 31, 2021, to perform maintenance, repair, installation, and upgrading of radio communications and radar maintenance and yearly calibration at a rate of \$125.00 an hour.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON**, at a regular meeting thereof this 13th day of December 2016.

APPROVED:

Matthew Jolibois, Mayor

ATTEST:

Lisa Keely, City Clerk

APPROVED AS TO FORM:

Michael B. Smith, City Attorney

AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM

AGREEMENT made January 1, 2017, between PIERCE COUNTY, herein referred to as "County," and CITY OF FIRCREST referred to as "City".

SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between City and County.

SECTION II. TERM OF AGREEMENT – TERMINATION

This agreement shall commence as of January 1, 2017 and terminate on December 31, 2021. Either party may terminate this agreement upon thirty (30) days written notice.

SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of City's radio communications system previously agreed to by City and County shall be carried out by County, according to time schedules and location of work arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from City, County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County Radio Shop, which shall include installation of radio equipment in all City's vehicles.

SECTION IV. FEES

City shall reimburse the County for its services described above, at the rate of One Hundred Twenty Five (\$125.00) Dollars per hour from 7:30 a.m. through 4:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by City. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County; except that prior written authorization by City shall be required for materials or parts in excess of Five Hundred (\$500.00) dollars. Payment shall be made by City within thirty (30) days of presentation of invoice listing time, parts and materials by the County. In the event of a fee increase, written notice will be given Sixty (60) days prior to the increase.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, City shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify City against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused by any negligence in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of City. The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of City. If this agreement is assigned without City's written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions herein before set forth.

SECTION VII. GOVERNING LAW

This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20____.

CITY OF FIRCREST:

City Signature Date

Title of Signatory Authorized by Firm Bylaws

Name: _____

UBI No. _____

Address: _____

Mailing
Address: _____

Contact Name: _____

Phone: _____

Fax: _____

PIERCE COUNTY:

Approved As to Legal Form Only:

Prosecuting Attorney Date

Recommended:

Budget and Finance Date

Approved:

Department Director Date