City of Bothell

AGENDA

BOTHELL CITY COUNCIL MEETING

January 21, 2020

BOTHELL CITY HALL
18415 101st AVE NE
BOTHELL, WA 98011

MEMBERS OF THE CITY COUNCIL

Mayor Liam Olsen

Deputy Mayor Jeanne Zornes
Councilmember Davina Duerr
Councilmember James McNeal
Councilmember Tom Agnew
Councilmember Rosemary McAuliffe
Councilmember Mason Thompson

REGULAR SESSION – 6:00 PM

Call to Order

Pledge of Allegiance

1. **Meeting Agenda Approval**
   During this item, the City Council may identify agenda items to be continued, withdrawn, or added.

2. **Presentations, Reports, & Briefings**

   A. Special Presentation School Development Best Practices- Community Development Director Michael Kattermann and Northshore School District Capital Facilities Manager Joe Paperman
   B. City Manager Reports
   C. Council Committee Reports

3. **Visitor Comment**
   During this item, the Mayor will invite visitor comment. Each speaker will be granted 3 minutes. When appropriate, the Mayor may direct City Staff to respond with statements of factual information or existing city policy.

4. **Consent Agenda**
   All items under this section will be passed with a single motion and vote. These items are of a routine nature. Prior to approval, City Council may request items be withdrawn from the consent agenda for separate discussion. Approval of the consent agenda authorizes the City Manager to implement each item in accordance with the staff recommendation.

Pgs. 5-26

   A. Approval of City Council Meeting Minutes: November 12 & 19 and December 3, 10 & 17, 2019
   Recommended Action: Approve the meeting minutes as presented.

Pgs. 27-46

B. AB # 20-003 - Consideration of Supplemental Agreement No. 3 with Otak, Inc. for Construction Engineering for the NE 188th Non-Motorized Improvements, and Related Budget Amendment

Recommended Action: Authorize the City Manager to enter into Supplemental Agreement No. 3, in substantially the same form as presented, with Otak, Inc., in the amount of $54,485 for construction engineering services for the NE 188th Street Non-Motorized Improvements project and approve the Budget Amendment Ordinance.

5. Public Hearings

Pgs. 47-48

A. AB # 20-004 – Continuation of a Public Hearing on 2019 Plan and Code Amendments to the Capital Facilities Element and Establishing Minimum Density and Intensity with the Canyon Park and North Creek / NE 195th Street Activity Centers
Recommended Action: Move to continue the public hearing to February 18, 2020.

6. Executive/Closed Session

Pursuant to the Washington Open Public Meetings Act, Title 42, Chapter 30, Revised Code of Washington, Sec. 42.30.110 (1), Executive Sessions or Closed Sessions may be held, under certain exceptions, at any time during the meeting that a need arises for the City Council to seek advice from the City Attorney as to the posted subject matter of this City Council meeting.

A. Closed Session pursuant to RCW 42.30.140(4)(a) – Labor Negotiations (Action Expected)

7. Contracts and Agreements

Pgs. 49-90

A. AB # 20-005 – Consideration of Collective Bargaining Agreement (CBA) with AFSCME Council 2, Local 3845 for 2020-2022
Recommended Action: Allow the City Manager to execute the 2020-2022 Collective Bargaining Agreement with AFSCME Council 2, Local 3845.

8. Ordinances & Resolutions

Pgs. 91-142

A. AB # 20-006 - Consideration of an Ordinance Granting a Small Wireless Facilities Franchise Agreement to New Cingular Wireless, aka AT&T

Recommended Action: Adopt the proposed Ordinance granting a Small Wireless Facility Franchise to New Cingular Wireless PSC, LLC

Pgs. 143-194

B. AB # 20-007 – Consideration of an Ordinance Granting a Small Wireless Facilities Franchise Agreement to Seattle SMSA Limited Partnership, dba Verizon Wireless
Recommended Action: Adopt the proposed Ordinance granting a Small Wireless Facility Franchise to Seattle SMSA Limited Partnership, dba Verizon Wireless

Pgs. 195-202

C. AB # 20-008 – Consideration of an Ordinance to Amend Chapters 2.44 and 2.45 Expanding Membership of the Parks & Recreation Board and Bothell Arts Commission to Include Youth Members.
Recommended Action: Approve the Ordinance to amend Chapters 2.44 and 2.45, expanding membership of the Parks & Recreation Board and Bothell Arts commission to include youth members

Pgs. 203-230 D. AB # 20-009 – Consideration of a Resolution Approving Fall 2019 ARCH Housing Trust Fund Recommendations
Recommended Action: Adopt the proposed Resolution to approve the 2019 Fall Housing Trust Fund recommendations in the amount of $88,970 to be drawn from previously committed funds by the City of Bothell to the ARCH Housing Trust Fund.

Pgs. 231-258 E. AB # 20-010 – Consideration of a Resolution Approving 2020 ARCH Work Program and Funding
Recommended Action: Approve the proposed Resolution to adopt the ARCH 2020 Work Program and Budget, and authorizing payment of City funds for ARCH 2020 membership dues and a housing trust contribution in the amounts of $89,384 and $33,616, respectively.

9. Other Items

None at this time.

10. Study Session/Update/Discussion Items

Pgs. 259-270 A. AB # 20-011 – Consideration of Establishing a Multi-Family Tax Exemption Program
Recommended Action: No formal action is required at this time. Council is asked to provide policy direction to staff to inform further development of the MFTE program.

11. Council Conversations
During this item, Council members have the opportunity to informally discuss topics of city interest.

12. Adjourn

CERTIFICATE
I hereby certify that the above agenda was posted on this the 16th day of January, 2020, by 5:00 P.M., on the official website and bulletin board at Bothell City Hall, 18415 101st Avenue NE, Bothell, WA, 98011, in accordance with RCW 42.30.077, at least 24 hours in advance of the published start time of the meeting.

Laura Hathaway, City Clerk

SPECIAL ACCOMODATIONS: The City of Bothell strives to provide accessible meetings for people with disabilities. If special accommodations are required, please contact the ADA Coordinator at (425) 806-6151 at least one day prior to the meeting.

Copies of agenda bills and attachments listed in this agenda may be obtained from the City Clerk's Office the Friday before the meeting.

Bothell City Council meetings are aired live on Bothell Community Television (BCTV) Channel 21/26 (Comcast/Verizon) (available to Comcast and Verizon Cable customers within Bothell City limits). Meetings are generally replayed according to the following schedule (subject to change): Wednesday following the meeting at 10 a.m.; Friday, Saturday and Sunday following the meeting at 10 a.m. and 7 p.m. City Council and Planning Commission meetings and the BCTV schedule are viewable online at www.bothellwa.gov

City Council Regular Meeting Agenda
Tuesday, November 12, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance - Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance. All Councilmembers present.

2. Meeting Agenda Approval

Councilmember Zornes pulled Consent Item # 19-183.

3. Public Engagement Opportunities

Mayor Rheaume reviewed upcoming public engagement opportunities.

4. City Manager/Council Committee Reports

Councilmembers reported on internal and regional committees.

5. Visitor Comment

Bill Moritz – spoke regarding the bridge replacement and the detour of the trail at the Park of Bothell Landing. He submitted a map for the record.

John Sheller – spoke regarding the King County Library System joint venture with the Parks Dept. for Arts in the Parks.

6. Special Presentations

   a. Life Saving Award to Officer Louise Muro

Police Chief Ken Seuberlich presented this award to Officer Muro for her work in saving the life of a resident from a medical emergency.

7. Consent Agenda

   a. **Approval of the October 1, 2019 City Council Meeting Minutes**
   Recommended Action: Approve the October 1, 2019 Meeting Minutes as presented.

   b. **AB # 19-180 – Interagency Agreement with the State of Washington, Washington State Patrol for Wildland Deployment and Reimbursement**
   Recommended Action: Approve the renewal of the Interagency Agreement with the State of Washington, Washington State Patrol and direct the City Manager to execute the agreement as presented.

c. **AB # 19-181 – Cable Franchise Transfer of Frontier Northwest to Northwest Fiber**
Recommended Action: Because state law does not allow passage of a franchise agreement on its first reading, staff recommends that Council receive this information and set this matter to November 19th for approval.

d. **AB # 19-182 – Adoption of the 2019-2021 Legislative Agenda and Policy Manual**
Recommended Action: Adopt the Legislative Agenda and Policy Manual for 2019-2021 as revised.

~~e.~~ **PULLED ~~AB # 19-183 – Acceptance of King County Flood District Grant for 35th Ave Project~~**
~~Recommended Action: Authorize City Manager to enter into an Agreement, in substantially the same form, with the King County Flood District in the amount of $275,000.~~

f. **AB # 19-184 – Acceptance of WA State Department of Ecology Capacity Grant Funding**
Recommended Action: Authorize City Manager to enter into an Agreement, in substantially the same form, with the Washington State Department of Ecology in the amount of $50,000.

MOTION: Deputy Mayor Duerr moved approval of the balance of the Consent Agenda. Councilmembers Agnew second. The motion carried 7-0.

PULLED ITEM: AB # 19-183 – Acceptance of King County Flood District Grant for 35th Ave Project
Recommended Action: Authorize City Manager to enter into an Agreement, in substantially the same form, with the King County Flood District in the amount of $275,000.

Councilmember Zornes stated she pulled this item in order to highlight the good work of the department.

MOTION: Councilmember Zornes moved approval of AB 19-183 as presented. Mayor Rheaume second. The motion carried 7-0.

8. Contracts

a. **AB # 19-185 – Progressive Design-Build Agreement with BN Builders and Miller Hull Partnership for the Bothell Fire Station 42 and 45 Replacement Project**
Recommended Action: Authorize the City Manager to enter into Progressive Design Build Agreement with BN Builders/Miller Hull Partnership, in substantially the same form as attached, and in the amount not to exceed $1,532.065.

Fleet and Facilities Manager Jeff Sperry presented and along with Krista Lutz of OAC Services, entertained Council questions.

MOTION: Councilmember Agnew moved approval of the recommended action. Councilmember McNeal second.

Councilmember Agnew spoke to his motion.

VOTE: The motion carried 7-0.

City Manager Jennifer Phillips acknowledged the Public Works Department, especially Mr. Sperry, for their work on this item.

9. Study Sessions

a. **AB # 19-186 – Study Session - Canyon Park Subarea Plan**
Recommended Action: No action is requested this evening; this is a Council briefing.

Senior Planner Bruce Blackburn presented and entertained Council questions. He outlined the proposed timeline and asked for feedback from Council.

Community Development Director Michael Kattermann added that the state funding is through June 2020 which is why staff is pushing the timeline so hard; it is taking this subarea from a business park to mixed-use.

b. **AB # 19-187 – Study Session - 2019 Parks, Recreation and Open Space (PROS) Plan**
Recommended Action: No action is requested this evening; however, Council is asked to receive the report and provide direction to the staff on their goals for the update to the Parks, Recreation and Open Space (PROS) Plan.

Grants Manager Tracey Perkosky presented and entertained Council questions. She reviewed the existing program, community engagement results, and asked for Council direction in 2 specific areas: System Gaps and Capital Project Planning.

10. Council Conversations

Councilmember Olson brought up the 2020 planning session meeting and discussion ensued regarding the format. Mayor Rheaume stated the City of Brier as asked permission to be the representative member to the Snohomish County Board of Health for 2020. Councilmember McNeal stated that he plans to attend the Inglemoor High School class as requested in their letters. Deputy Mayor Duerr discussed her experience attending the class. Councilmember McNeal stated the Northshore Parks & Recreation Service Area Proposition 1 Levy has passed and a celebration will be held on November 20th.

Council adjourned to Closed Session at 8:33 PM expected to last 30 minutes with no action to discuss the following:

11. Closed Session

a. **Labor Negotiations pursuant to RCW 42.30.140 (4)**

At 9:00 PM council extended the closed session for an additional 10 minutes until 9:10 PM.

12. Adjourn – Council adjourned at 9:10 PM.

Submitted for Approval on January 14, 2020

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City Council Regular Meeting Agenda
Tuesday, November 19, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance. All Councilmembers present with the exception of Councilmember Zornes who was absent and excused.

2. Meeting Agenda Approval

Deputy Mayor Duerr pulled Consent AB #19-191.

Councilmember Olsen pulled Consent AB #19-193.

Mayor Rheaume took a moment of privilege to read a statement to Council regarding transparency, trust, inclusiveness, respect and service to the community.

3. Public Engagement Opportunities

Mayor Rheaume reviewed upcoming Public Engagement Opportunities

4. Staff Briefings

a. Safety Committee Update – Katy Thelan /Jesse Ott

Safety Manager Katy Thelan and Chair of the Safety Committee Jesse Ott presented an update on the program and activities.

b. Utility Billing Update

Information Services Analyst David Bickel presented an overview on the online Utility Billing system and entertained Council questions.

5. City Manager/Council Committee Reports

Deputy Mayor Duerr provided a Transportation Improvement Policy Board update stating they are focusing on how to handle the impacts of the passage of I-976. She stated that transportation options for special needs customers will be hit hard.

Councilmember McNeal provided a Sound Cities Association PIC update, stating that discussions were held regarding the King Conservation District rates and charges, the waste export feasibility study, and the ILA/PDA between King County & the City of Seattle which forms a governance regarding homelessness. He asked Council to think about supporting or not supporting. He stated

the Northshore Parks & Recreation Service Area (NPRSA) will be holding a celebration on November 20th.

Councilmember McAuliffe attended the Parks & Recreation Board meeting and reported their discussion regarding the outcomes of the Parks survey.

6. Visitor Comment

Kanal Sinha – spoke regarding the Plastic Bag Ordinance
Holly Chisa – spoke regarding the Plastic Bag ordinance
Catherine Holm – spoke regarding the Plastic Bag Ordinance
Courtney Kaylor – spoke regarding the Settlement Agreement with SCG (item 7)
William Root – spoke regarding the Book Sale at the Library
Heather Trim – spoke regarding the Plastic Bag Ordinance
Stephan Classen – spoke regarding the Plastic Bag Ordinance

7. Executive Session

Council adjourned to Executive Session at 6:48 PM to discuss the following for 15 minutes (7:10 PM) with action expected.

a. Litigation pursuant to RCW 42.30.110(1)(i) – Action Expected

b. **AB # 19-188 - Settlement Agreement, Access Easement Agreement, and Maintenance Covenant with SCG North Creek Place LLC (SCG) related to 120th Ave NE flooding and Parr Creek channel maintenance**
Recommended Action: Authorize the City Manager to enter into the above referenced agreements to conclude all outstanding litigation with SCG and move forward toward restoration of the channel to prevent future flooding of 120th Ave NE.

Council reconvened to regular session at 7:10 PM

City Attorney Paul Byrne presented the item.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember Agnew second.

Discussion: Deputy Mayor Duerr spoke to the motion.

VOTE: The motion carried 6-0; Councilmember Zornes absent and excused.

8. Consent Agenda

a. **AB # 19-189 – September 1-30, 2019 Payroll and Benefit Transactions**
Recommended Action: Approve payroll direct deposit transactions #2000126594 - #2000127337 in the amount of $2,011,494.75; payroll and benefit checks #38791 - #38849 plus wire benefit payments #637 - #645 in the amount of $2,395,680.66 for September 1, 2019 – September 30, 2019 payroll that were approved and paid by the City Auditor.

b. **AB # 19-190 – October 1-31, 2019 Vouchers**
Recommended Action: Approve the following October 1 – 31, 2019 vouchers totaling $4,695,473.01 that were approved and paid by the City Auditor.

- Wire No.423,424,246,427,and 637
- Check No 210046 - 210543

~~c. **PULLED - AB # 19-191 – Resolution Adopting 2020 User Fees**~~
~~Recommended Action: Approve the proposed Resolution adopting user fees for 2020.~~

~~d. **PULLED - AB # 19-192 – Construction Contract with Thomco Construction for NE 188th Street Non-motorized Improvement Project**~~
~~Recommended Action: Authorize the City Manager to enter into a construction contract with Thomco Construction, Inc., in substantially the same form as presented in the amount of $1,954,054, for construction of the NE 188th Street Non-Motorized Improvements project.~~

e. **AB # 19-193 – Supplement No. 5 for Construction Engineering Services – Non-motorized Bridge at Park at Bothell Landing**
Recommended Action: Authorize the City Manager to enter into Supplemental Agreement No. 5, in substantially the same form as presented, with Jacobs Engineering, Inc. in the amount of $50,481 for construction engineering services for the Non-Motorized Bridge at the Park at Bothell Landing project.

f. **AB #19-194 – Change Order No. 2 – 2018 Water Main Replacement**
Recommended Action: Authorize the City Manager to approve Contract Change Order No.2 with Shoreline Construction Inc., in the amount of $196,312.06 for the 2018 Water Main Replacement Project.

g. **AB #19-195 – Ordinance adopting Housekeeping Code Amendments**
Recommended Action**:** Adopt the recommended 2019 Housekeeping Code Amendment addendum in the proposed ordinance.

h. **AB # 19-196 – 3rd Quarter Update on Council Goals**
Recommended Action: No action is requested at this time.

i. **AB # 19-197 – Approval of Frontier Cable Franchise Agreement**
Recommended Action: Approve the Ordinance extending the franchise and consenting to the transfer.

MOTION: Deputy Mayor Duerr moved approval of the balance of the consent agenda. Councilmember Agnew second. The motion carried 6-0; Councilmember Zornes absent and excused.

PULLED - AB # 19-191 – Resolution Adopting 2020 User Fees
Recommended Action: Approve the proposed Resolution adopting user fees for 2020.

Deputy Mayor Duerr stated she pulled this item top goal sustainability and asked staff if they would consider waiving the Solar Photovoltaic Power Systems Fee. Discussion ensued.

MOTION: Deputy Mayor Duerr moved approval of the recommended action with the exception of waiving the Solar Photovoltaic Power Systems Fee. Councilmember Agnew second.

VOTE: The motion failed 3-2-1; Councilmember McAuliffe abstained and Councilmember Zornes absent and excused.

MOTION – Councilmember McNeal moved approval of the recommended action. Councilmember Agnew second. The motion passed 5-0-1; Councilmember McAuliffe abstained and Councilmember Zornes absent and excused.

PULLED - AB # 19-192 – Construction Contract with Thomco Construction for NE 188th Street Non-motorized Improvement Project
Recommended Action: Authorize the City Manager to enter into a construction contract with Thomco Construction, Inc., in substantially the same form as presented in the amount of $1,954,054, for construction of the NE 188th Street Non-Motorized Improvements project.

Councilmember Olsen pulled this item to recuse himself as he works for this company.

MOTION: Councilmember Agnew moved approval as of the recommended action.
Councilmember McNeal second. The motion passed 5-0; Councilmember Olsen recused and Councilmember Zornes absent and excused.

9. Public Hearings

a. **AB # 19-198 – School Impact Fees for Northshore School District**
Recommended Action: Continue the public hearing to the December 3, 2019 City Council meeting and defer consideration or adoption of the proposed ordinance (Attachment 2) until that time.

Mayor Rheaume opened the Public Hearing at 7:18 PM.

Mayor Rheaume staed the Northshore School Board Representative was unable to attend and asked Council to continue the item to 12/3/2019.

One person was signed up to speak but said they were fine coming back on December 3rd. No other public commend received.

MOTION: Moved by Councilmember Agnew to continue the Public Hearing to 12/3/2019. Councilmember McNeal second. The motion carried 6-0; Councilmember Zornes absent and excused.

b. **AB # 19-199 – King/Snohomish County Property Tax Levy Ordinance**
Recommended Action: Adopt the City's 2020 property tax levy as proposed, for King and Snohomish Counties.

Mayor Rheaume opened the Public Hearing at 7:21 PM.

Deputy Finance Director Maureen Schols presented and entertained Council questions.

No public comment received.
MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember

Agnew second. The motion carried 6-0; Councilmember Zornes absent and excused.

c. **AB # 19-200 – Ordinance Establishing the EMS Levy in the Snohomish County Portion of Bothell for 2020**
Recommended Action: Adopt the City's 2020 property tax levy as proposed for Snohomish County.

Council adjourned the Bothell City Council and convened the meeting of the Snohomish Emergency Medical Services (EMS) Board at 7:32 PM.

Board Chair Rheaume opened the Public Hearing at 7:33 PM

Deputy Finance Director Maureen Schols presented and entertained questions.

No public commend received.

MOTION: EMS Boardmember Agnew moved approval of the recommended action. EMS Boardmember McAuliffe second. The motion carried 6-0; EMS Boardmember Zornes absent and excused.

Council adjourned the EMS Board and reconvened to the Bothell City Council at 7:41 PM.

d. **AB # 19-201 – Public Hearing – Wireless Communications Code Amendments**
Recommended Action: Adopt the proposed ordinance (Attachment 1) amending BMC Title 11, Administration of Development Regulations; and amending BMC chapter 12.11, including regulations for small wireless facilities and wireless communications facilities.

Mayor Rheaume opened the Public Hearing at 7:42 PM.

Elana Zana, outside Counsel with Ogden Murphy Wallace, presented and entertained Council questions.

Public Comment received by:

Devendra Maharaj – Verizon Wireless
Greggory Bush – Wireless Policy Group

Discussion ensued.

MOTION: Deputy Mayor Duerr moved approval of the recommended action with the following amendments:

Section 12-11-220 (A)(8) amended to state drawings show all improvements within <u>150</u> feet of each pole.

Adding language in same section to state: Where another party is responsible for installing such electric and fiber utilities, conduits, cables and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber (if applicable) and electric service to the small wireless facility.
Section 12.11.070 (c) (4) amended to add language under setbacks. Section reads as follows:

Setbacks: Monopole support structures and equipment enclosures shall be constructed with a setback equal to the height of the tower, or the lowest engineered break point, if the tower is designed with break point engineering from any exclusively residentially zoned property, including the SSHO and MHP overlay zones.

Mayor Rheaume second. Discussion ensued. The motion carried 6-0; Councilmember Zornes absent and excused.

10. New Business

a. **AB # 19-202 – Single Use Plastic Carryout Bag Restriction Ordinance**
Recommended Action: Adopt the ordinance adopting a new chapter, Chapter 8.75, to the Bothell Municipal Code to restrict the use and sale of single-use plastic carryout bags.

Sustainability Coordinator Emily Warnick presented and entertained Council questions. She stated if approved, the ordinance would take effect on April 22, 2020 in order to coincide with Earth Day as well as give staff time to educate the public.

Ms. Warnick reviewed the types of bags that would be banned.

Deputy Mayor Duerr entered into the record 400 signatures approving of the ban.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember McNeal second. The motion carried 6-0; Councilmember Zornes absent and excused.

11. Council Conversations

Council conversed on various topics including a recent visit to City Hall by the Girl Scouts and the passage of the NPRSA Proposition 1 Levy.

12. Adjourn

Mayor Rheaume adjourned the meeting at 8:53 PM.

Submitted for approval on January 14, 2020.

City Council Regular Meeting Minutes
Tuesday, December 3, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance.

All Councilmembers were present.

2. Meeting Agenda Approval

The meeting agenda was approved as presented.

3. Public Engagement Opportunities

Mayor Rheaume reviewed upcoming public engagement opportunities.

4. Special Presentation

   a. Superior Court Judge George F. Appel performed the Ceremonial Swearing-In of Judge Mara J. Rozzano

5. Staff Briefing

   a. Parks and Recreation Department staff Scott Purdy, Jessie Ott, and Aaron Milner presented the Sustainable Practices in Parks Operations and entertained Council questions.

6. City Manager/Council Committee Reports

There were no reports.

7. Visitor Comment

Susan Gardner - spoke regarding the crosswalk on Main Street.

8. Consent Agenda

   a. **AB # 19-203 – October 1-31, 2019 Payroll & Benefit Transactions**
   Recommended Action: Approve payroll direct deposit transactions #2000127338 - #2000128086 in the amount of $2,126,047.10; payroll and benefit checks #38850 - #38897 plus wire benefit payments #646 - #654 in the amount of $2,207,770.56 for October 1, 2019 - October 31, 2019 payroll that were approved and paid by the City Auditor.

b. **AB # 19-204 – Updates to Personnel Policies and Procedures Manual**
Recommended Action: Adopt the updates to the Personnel Policies and Procedures Manual as proposed by staff.

c. **AB # 19-205 – Construction Contract for Waynita Way NE Bridge over Sammamish River Seismic Retrofit Project**
Recommended Action: Authorize City Manager to enter into a construction contract with Stellar J Corporation, in the amount of $678,000.01 and in substantially the same form as presented for construction of the Waynita Way NE Bridge over Sammamish River Seismic Retrofit Project.

d. **AB # 19-206 – Professional Services Supplement No. 1 with Parametrix Inc. for On-call Construction Management Services**
Recommended Action: Authorize the City Manager to enter into the Supplemental Agreement No. 1 with Parametrix, Inc., in the amount of $100,000 and in substantially the same form as presented, for On-Call Construction Management Services.

MOTION: Councilmember Agnew moved approval of the Consent Agenda as presented. Deputy Mayor Duerr second. The motion carried 7-0.

9. Public Hearings

a. **AB # 19-207 – 2019 Plan and Code amendments regarding the Capital Facilities Element and establishing Minimum Density and intensity within the Canyon Park and North Creek / NE 195 ST Activity Centers – 6:45 PM (30 minutes)**
Recommended Action: Adopt the proposed ordinance (Attachment 1) amending the Imagine Bothell… Comprehensive Plan, Land Use and Capital Facilities Elements and the Canyon Park and North Creek / NE 195 ST Subarea Plans; and amending BMC Title 11, Administration of Development Regulations; and BMC Title 12 Zoning including regulations for minimum densities and intensities within activity centers.

Mayor Rheaume opened the Public Hearing at 6:40 PM.

Community Development Director Mike Kattermann requested Council to continue the Public Hearing until December 17 after the presentation and public comment. This request was due to a SEPA Appeal.

Senior Planner Bruce Blackburn presented and entertained Council questions.

Public Comment received from the following:

Sarah Gustafson - spoke in support of the amendments
Amanda Olsen - spoke in support of the amendments
Andrea Tull - Bus based Project Manager for Sound Transit, outlined concerns regarding the amendments stating it will hinder the BRT projects.
Gary Yao, Senior Land Use Permitting Administrator for Sound Transit, outlined concerns in regarding the amendments in a letter sent to Council prior to the meeting (letter is part of Agenda Packet material)
Cary Westerbeck – spoke in support of the amendments

Deputy Mayor Duerr stated that she did not appreciate Sound Transit's comments and she took them as a threat and did not find them helpful to the situation. Council concurred and asked City Manager Jennifer Phillips to send Sound Transit a letter requesting them to review the meeting online.

Discussion ensued and Senior Planner Bruce Blackburn continued to entertain Council questions.

MOTION: Deputy Mayor Duerr moved to continue the Public Hearing to 12/17/2019. Councilmember McNeal second. The motion carried 7-0.

b. **AB # 19-208 – Public Hearing to Consider Adoption of Ordinance Approving the 2020 Transportation Impact Fee – 7:15 PM (20 minutes)**
Recommended Action: Adopt the proposed ordinance establishing the new Transportation Impact Fee Rate and amending Bothell Municipal Code 17.045.070 Impact Fee Schedule.

Mayor Rheaume opened the public hearing at 7:24 PM.

Utilities and Development Division Manager Boyd Benson presented, and along with Sarah Keenan, Transportation Engineer of Fehr and Peers, entertained Council questions. Don Samdahl of Fehr and Peers and Public Works Director Erin Leonhart also entertained Council questions.

Public Comment received from:

Cary Westerbeck – thought the ordinance seems auto-centric.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember Zornes second. The motion carried 7-0.

Council recessed at 8:18 PM and reconvened at 8:30 PM.

c. **AB # 19-209 – Continued Public Hearing for School Impact Fees: Northshore School District – 7:35 PM (15 minutes)**
Recommended Action: Adopt the proposed ordinance (Attachment 2) with fees at the level requested by Northshore School District; or
Adopt the proposed ordinance with revised fee amounts as determined by City Council.

Mayor Rheaume opened the public hearing at 8:30 PM.

Joe Paperman, Capital Facilities Manager for the Northshore School District, presented and entertained Council questions.

No public comment received.

MOTION: Councilmember McNeal moved to extend the meeting to 11:00 PM. Mayor Rheaume second. The motion carried 7-0.

MOTION: Deputy Mayor Duerr moved approval of the recommended action with fees at the level requested by Northshore School District. Council member McAuliffe second. The motion carried 7-0.

10. Council Conversations

Councilmember McAuliffe asked for a debrief regarding the tree lighting event for this year and each year going forward.

11. Executive Session

Council adjourned to executive session at 9:00 PM to discuss the following with no action expected:

a. Performance of a Public Employee pursuant to RCW 42.30.110 (1)(g)

12. Adjourn

Mayor Rheaume adjourned the meeting at 11:00 PM.

Submitted for approval on 1/14/2020

City Council Regular Meeting Minutes
Tuesday, December 10, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance.

All Councilmembers were present.

2. Meeting Agenda Approval

The agenda was approved as presented.

3. Special Presentation

   a. Oath of Office – Police Department Promotions

Police Chief Ken Seuberlich presented the Oaths of Office to promoted police staff Sergeant Dave Nelson and Captain Brian Keller.

4. Visitor Comment

There were no visitor comments.

5. Consent Agenda

   a. **AB # 19-210 - Ordinances Amending the Effective Dates for the Transportation Impact Fee Schedule and the Northshore School District Impact Fees adopted on December 3, 2019.**
   Recommended Action: Amend the effective date of Ordinance No. 2298 Transportation Impact Fee Schedule to January 1, 2020 and amend the effective date of Ordinance No. 2299 Northshore School District Impact Fees to January 1, 2020.

MOTION: Deputy Mayor Duerr moved approval of the consent agenda. Councilmember Agnew second. The motion carried 7-0.

6. Executive Session

Council adjourned to executive session at 6:06 PM to discuss the performance of a Public Employee pursuant to RCW 42.30.110 (1)(g), anticipated to last 2 hours with no action expected.

7. Adjourn

Mayor Rheaume adjourned the meeting at 8:06 PM.

Submitted for approval on 1/14/2020

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City Council Regular Meeting Minutes
Tuesday, December 17, 2019
6:00 PM

Members of the City Council: Mayor Andy Rheaume, Deputy Mayor Davina Duerr, Councilmember Tom Agnew, Councilmember Rosemary McAuliffe, Councilmember James McNeal, Councilmember Liam Olsen, Councilmember Jeanne Zornes

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1. Call to Order, Roll Call, Pledge of Allegiance

Mayor Rheaume called the meeting to order at 6:00 PM and led the Pledge of Allegiance.

All Councilmembers present with the exception of Councilmember McAuliffe who was absent and excused.

2. Meeting Agenda Approval

Mayor Rheaume requested the Executive Session be moved up on the agenda after the Visitor Comment.

Mayor Rheaume pulled item AB # 19-214.
Deputy Mayor Duerr pulled item AB #19-213.
Councilmember Zornes pulled item AB # 19-217.

Mayor Rheaume also requested the City Manager/Council Committee Reports be moved up on the agenda after the Visitor Comment.

3. Public Engagement Opportunities

None.

4. Special Presentation

a. Recognition of Andy Rheaume, outgoing Mayor and Councilmember

City Manager Jennifer Phillips presented Mayor Rheaume with a plaque recognizing his 8 years of service to the City of Bothell.

Eric Murray, President of Cascadia College and Kelly Snyder of UW Bothell also presented Mayor Rheaume with a plaque recognizing his contributions to both colleges.

Mayor Rheaume thanked his family for their support as well as City Staff and the Council.

Councilmembers went around the dais expressing their thanks and appreciation to the Mayor for his contributions to the City and community.

Council recessed from 6:26 to 6:50 PM for a brief reception honoring Mayor Rheaume.

5. Visitor Comment

Patrick Sheehan – spoke regarding a property easement, requesting for more time to work it.

6. City Manager/Council Committee Reports

a. Local Consent for Refugee Resettlement Efforts in Washington State

Assistant City Manager Kellye Mazzoli and City Manager Jennifer Phillips presented and entertained Council questions. They stated this was a last-minute request from the State with a deadline.

Council consensus was to send a letter back to the State stating the City needed more time and more information in order to make an informed decision.

7. Executive Session

Council adjourned to Executive Session at 7:01 PM to discuss the following: Potential Litigation pursuant to RCW 42.30.110(1)(i), anticipated to last 15 minutes with no action.

At 7:16 PM, Council extended to the Executive Session an additional 5 minutes to 7:21 PM.

Council reconvened to Regular Session at 7:21 PM.

8. Consent Agenda

a. **City Council Meeting Minutes for October 8 and 15, 2019**
Recommended Action: Approve the City Council meeting minutes for October 8 and 15, 2019, as presented.

b. **AB # 19-211 – November 1-30, 2019 Vouchers**
Recommended Action: Approve the following November 1 – 30, 2019 vouchers totaling $5,699,538.11 that were approved and paid by the City Auditor.

- Wire No. 428,434, and 647
- Check No. 210544 – 210976

c. **AB # 19-212 – November 1-30, 2019 Payroll and Benefit Transactions**
Recommended Action: Approve payroll direct deposit transactions #2000128087 - #2000128831 in the amount of $2,053,979.63; payroll and benefit checks #38898 - #38946 plus wire benefit payments #655 - #665 in the amount of $2,149,707.35 for November 1, 2019 - November 30, 2019 payroll that were approved and paid by the City Auditor.

~~d.~~ **PULLED ~~AB # 19-213 – Construction Contract with Wyser Construction, Inc. – Wexler Soil Remediation, Department of Commerce Grant Agreement and Relate Funding~~**
~~Recommended Action:~~

- ~~Authorize the City Manager to enter into a construction contract with Wyser Construction, Inc., in the amount of $823,955 for construction of the Wexler Soil Remediation project and in substantially the same form as that included with the bid documents.~~

- ~~Authorize the City Manager to enter into a grant agreement contract with the Department of Commerce, in the amount of $1,470,000.~~

- ~~Adopt the attached ordinance amending the 2019-2020 Capital Improvement Fund Budget by increasing expenditures by $2,635,000 and revenues by $2,549,000 and establishing a short-term line of credit of $1,115,000 to fund additional clean-up from the Stormwater Utility Fund.~~

~~e.~~ **PULLED ~~AB # 19-214 – Resolution Updating the City Council Protocol Manual~~**
~~Recommended Action: Approve the resolution adopting updates to the City Council Protocol Manual.~~

f. **AB # 19-215 – Ordinance Regarding a Small Wireless Facility Franchise Agreement with SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS**
Recommended Action: No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

g. **AB # 19-216 –Ordinance Regarding a Small Wireless Facility Franchise Agreement with New Cingular Wireless, aka AT&T**
Recommended Action: No action is requested this evening; however, this item is currently scheduled for Council action on January 21, 2020.

~~h.~~ **PULLED - ~~AB # 19-217 – Resolution Establishing Stay Out of Drug Areas, Repealing One Prohibited Area, And Renewing Existing Prohibited Areas.~~**
~~Recommended Action: Adopt the attached Resolution establishing and renewing prohibited areas related to areas of drug activity and repealing one SODA zone.~~

i. **AB # 19-218 – 2020 Addendum and Fourth Amendment to City Manager Employment Contract**
Recommended Action: Authorize the Mayor to sign the 2020 Addendum and Fourth Amendment to the Employment Contract with City Manager Phillips.

MOTION: Deputy Mayor Duerr moved approval of the balance of the Consent Agenda. Councilmember McNeal second. The motion carried 6-0; Councilmember McAuliffe absent and excused.

PULLED ITEMS:

AB # 19-213 – Construction Contract with Wyser Construction, Inc. – Wexler Soil Remediation, Department of Commerce Grant Agreement and Relate Funding
Recommended Action:

- Authorize the City Manager to enter into a construction contract with Wyser Construction, Inc., in the amount of $823,955 for construction of the Wexler Soil Remediation project and in substantially the same form as that included with the bid documents.

- Authorize the City Manager to enter into a grant agreement contract with the Department of Commerce, in the amount of $1,470,000.

- Adopt the attached ordinance amending the 2019-2020 Capital Improvement Fund Budget by increasing expenditures by $2,635,000 and revenues by $2,549,000 and establishing a short-term line of credit of $1,115,000 to fund additional clean-up from the Stormwater Utility Fund

This item was pulled to correct a scrivener's error on the ordinance.

MOTION: Deputy Mayor Duerr moved approval. Councilmember Agnew second. The motion carried 6-0; Councilmember McAuliffe absent and excused.

AB # 19-214 – Resolution Updating the City Council Protocol Manual
Recommended Action: Approve the resolution adopting updates to the City Council Protocol Manual.

City Attorney Paul Byrne and City Manager Jennifer Phillips entertained Council questions.

Councilmember Zornes requested to remove a line in 8.07(c) Order of Business, "Public comment will not be taken on items that the Council has previously considered in a public hearing."

Councilmember McAuliffe arrived at 7:26 PM.

Deputy Mayor Duerr requested to change to a line in 2.08 (F) Cause for Dismissal, from "using personal devices" to "using personal e-mail accounts".

Mayor Rheaume pulled the item to request that staff use a informed way to make edits and deletions to show the changes made in documents presented to Council.

MOTION: Deputy Mayor Duerr moved approval as amended with changes discussed. Councilmember Agnew second. The motion carried 7-0.

AB # 19-217 – Resolution Establishing Stay Out of Drug Areas, Repealing One Prohibited Area, And Renewing Existing Prohibited Areas
Recommended Action: Adopt the attached Resolution establishing and renewing prohibited areas related to areas of drug activity and repealing one SODA zone.

This item was pulled for clarifying questions, which were entertained by the City Attorney Paul Byrne.

MOTION: Councilmember Zornes moved approval as presented. Deputy Mayor Duerr second. The motion carried 7-0.

9. Public Hearings

a. **AB # 19-219 – Continuation of Public Hearing and Action on 2019 Plan and Code amendments (Capital Facilities Element and establishing Minimum Density and intensity within the Canyon Park and North Creek / NE 195 ST Activity Centers)**
Recommended Action: Adopt the proposed, revised ordinance (Attachment 1) amending the *Imagine Bothell*… Comprehensive Plan, Land Use and Capital Facilities Elements and the Canyon Park and North Creek / NE 195 ST Subarea Plans; and amending BMC Title 11, Administration of Development Regulations; and BMC Title 12 Zoning including regulations for minimum densities and intensities within activity centers.

Mayor Rheaume opened the Public Hearing at 7:35 PM. Staff asked that it be continued to January 21, 2020.

Public Comment received from:

Rey Liao, Attorney for the Canyon Park Business Center Association.

MOTION: Councilmember McNeal moved to continue the Public Hearing to January 21, 2020. Councilmember Agnew second. The motion carried 7-0.

10. Contracts

a. **AB # 19-220 - Amendment No. 1 to Interlocal Agreement between Snohomish County and the City of Bothell on an Excise Tax applied to Snohomish County hotels located in Bothell**
Recommended Action: Approve and authorize the City Manager to execute Amendment No. 1 of the Interlocal Agreement for Tourism Promotion Funded by Special Excise Tax on Lodging.

Tourism Manager DeNae McGee presented and entertained Council questions.

MOTION: Deputy Mayor Duerr moved approval of the recommended action. Councilmember Agnew second. The motion carried 7-0.

b. **AB # 19-221- Amendment No. 1 to the Interlocal Agreement Establishing a Tourism Promotion Area (TPA), increasing the assessment from one dollar ($1.00) per night visit at Snohomish County hotels to two dollars ($2.00) per night visit.**
Recommended Action: Approve and authorize the City Manager to execute Amendment No. 1 to the Interlocal Agreement establishing the Tourism Promotion Area (TPA) in Snohomish County.

Tourism Manager DeNae McGee, along with Rich Huebner, Regional Tourism Promotion Coordinator of Snohomish County Park, Recreation & Tourism, presented and entertained Council questions.

MOTION: Deputy Mayor Duerr moved approval as presented. Councilmember Agnew second. Discussion ensued. The motion carried 7-0.

11. New Business

a. **AB # 19-222 – Interlocal Agreement to create North King County Training Consortium with City of Bothell Fire Department, Woodinville Fire & Rescue, Northshore Fire Department and Shoreline Fire Department**
Recommended Action: Approve the Interlocal Agreement for the creation of the North King County Training Consortium with the City of Bothell Fire Department, Woodinville Fire & Rescue and Northshore and Shoreline Fire Departments and direct the City Manager to execute the agreement as presented.

Fire Chief Bruce Kroon presented and he, along with City Manager Jennifer Phillips, entertained Council questions.

MOTION: Councilmember Agnew moved approval as presented. Mayor Rheaume second. The motion carried 7-0.

b. **AB # 19-223 – Salary Commission Ordinance**
Recommended Action: Adopt the ordinance as presented.

Human Resources Director Mathew Pruitt presented and entertained Council questions.

MOTION: Deputy Mayor Duerr moved the recommended action. Councilmember McNeal second. The motion carried 7-0.

c. **AB # 19-224 – Amendment of BMC Table 20.02.155A Retroactive Fee Corrections for 2018-2019**
Recommended Action: There are two separate actions required:

- Adopt the attached ordinance ratifying collection of the plans review fees
- Adopt the attached ordinance revising BMC 20.02.155A

City Attorney Paul Byrne presented and along with Building Official David Swasey entertained Council questions.

MOTION: Deputy Mayor Duerr moved approval of both recommended actions. Mayor Rheaume second. The motion carried 7-0.

d. **AB # 19-225 – Quarterly Financial and Levy Update – 3rd Quarter 2019**
Recommended Action: No action is requested this evening; however, Council is asked to receive the reports.

Public Safety Levy Coordinator Carly Joerger presented an update on the Public Safety Levy projects to date and entertained Council questions.

Finance Director Chris Bothwell present the financial update and entertained Council questions.

12. Council Conversations

Councilmember McAuliffe gave an update on the PROS Plan discussed at the last Parks & Recreation Board meeting.

13. Adjourn

Mayor Rheaume adjourned the meeting at 8:40 PM

Submitted for approval on 1/14/2020

City of Bothell™

City Council
Agenda Bill
AB # 20-003

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Erin Leonhart, Public Works Director
Jason Torrie, Supervising Capital Projects Engineer/Public Works (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of Supplemental Agreement No. 3 with Otak, Inc. for Construction Engineering for the NE 188th Street Non-Motorized Improvements and Related Budget Amendment

POLICY CONSIDERATION: The City Council previously provided policy direction on this matter by adoption of the 2019-2025 Capital Facilities Plan and 2019-2020 Biennial Budget. If this item is approved, staff is implementing the direction given by the City Council.

HISTORY:

DATE	ACTION
NOVEMBER 2016	Bothell voters approved the Safe Streets & Sidewalks Levy
JUNE 2017	Washington State Safe Routes to School program awarded the project $672,600
FEBRUARY 20, 2018	Safe School Walk Routes Taskforce report presented to City Council
NOVEMBER 19, 2019	City Council awarded a construction contract with Thomco Construction, Inc., in the amount of $1,954,054 for this project

In 2016, Bothell voters approved the nine-year Safe Streets & Sidewalks Levy, a portion of which helps fund the City's Safe Streets and Sidewalks program. The City established a Safe School Walk Routes Taskforce comprised of volunteers from schools within the Bothell city limits and representatives from the Northshore School District. The Taskforce's primary objectives were:

1. Identifying school needs
2. Determining safe school walk routes criteria and prioritization process
3. Developing a list of prioritized projects using adopted criteria and prioritization process

The Taskforce met eight times in 2017 and its work culminated in a report, including priority projects associated with Bothell schools. The report and notes

from the meetings are available on the City's webpage: http://www.bothellwa.gov/992/Safe-School-Walk-Routes-Taskforce.

Bothell High School's representative to the City's Safe School Walk Routes Taskforce identified the sidewalk in the NE 188th Street Non-Motorized Improvements project as their top priority.

In April 2018, City Council approved a contract with Otak Engineering, Inc. to design this project. The City Manager approved two supplements to the original contract, Supplement #1, for a time extension, in January 2019 and Supplement #2, to add $41,703 for Final Design Services, in May 2019.

DISCUSSION: The NE 188th Street Non-Motorized Improvements project consists of construction of approximately 1,300 linear feet of non-motorized improvements between Pop Keeney Stadium and 92nd Avenue NE. The proposed improvements include:

1. A five-foot sidewalk, curb and gutter, curb ramps, and driveway approaches on the south side of the street;
2. A five-foot bicycle lane on both sides of the street;
3. Pedestrian crosswalks at two intersections, and one mid-block crossing; and,
4. Traffic-calming devices, such as rectangular rapid flashing beacons (RRFBs), and speed feedback signs.

This supplemental agreement provides for construction engineering services in the amount of $54,485 to assist the City with managing the project during construction. The agreement provides for assistance with contract document revisions, material submittal reviews, requests for information responses and contract clarifications and interpretations, change order assistance, and record drawing preparation. Staff determined these costs are fair and reasonable for the estimated scope of work.

Construction is anticipated to begin in winter 2020, and is to be completed within 100 working days.

FISCAL IMPACTS: This project is included in the Adopted 2019-2020 Budget; the City's financial contribution to the project is consistent with the value included in the Adopted Budget. The project does, however, require a budget amendment to recognize the following:

- $600,000 of increased revenue and expenditure associated with the Complete Streets grant from the Washington State Transportation Improvement Board to fund sidewalk and bike lanes improvements within the project;
- $280,000 in additional revenue and expenditures from the City's water utility for the replacement of a water main within the project area; and,
- The total project cost is now $3,351,000.

ATTACHMENTS:

Att-1. Vicinity Map
Att-2. Supplemental Agreement No. 3
Att-3. Budget Amendment

RECOMMENDED ACTIONS:

Authorize the City Manager to enter into Supplemental Agreement No. 3, in substantially the same form as presented, with Otak, Inc., in the amount of $54,485 for construction engineering services for the NE 188th Street Non-Motorized Improvements project and approve the Budget Amendment Ordinance.

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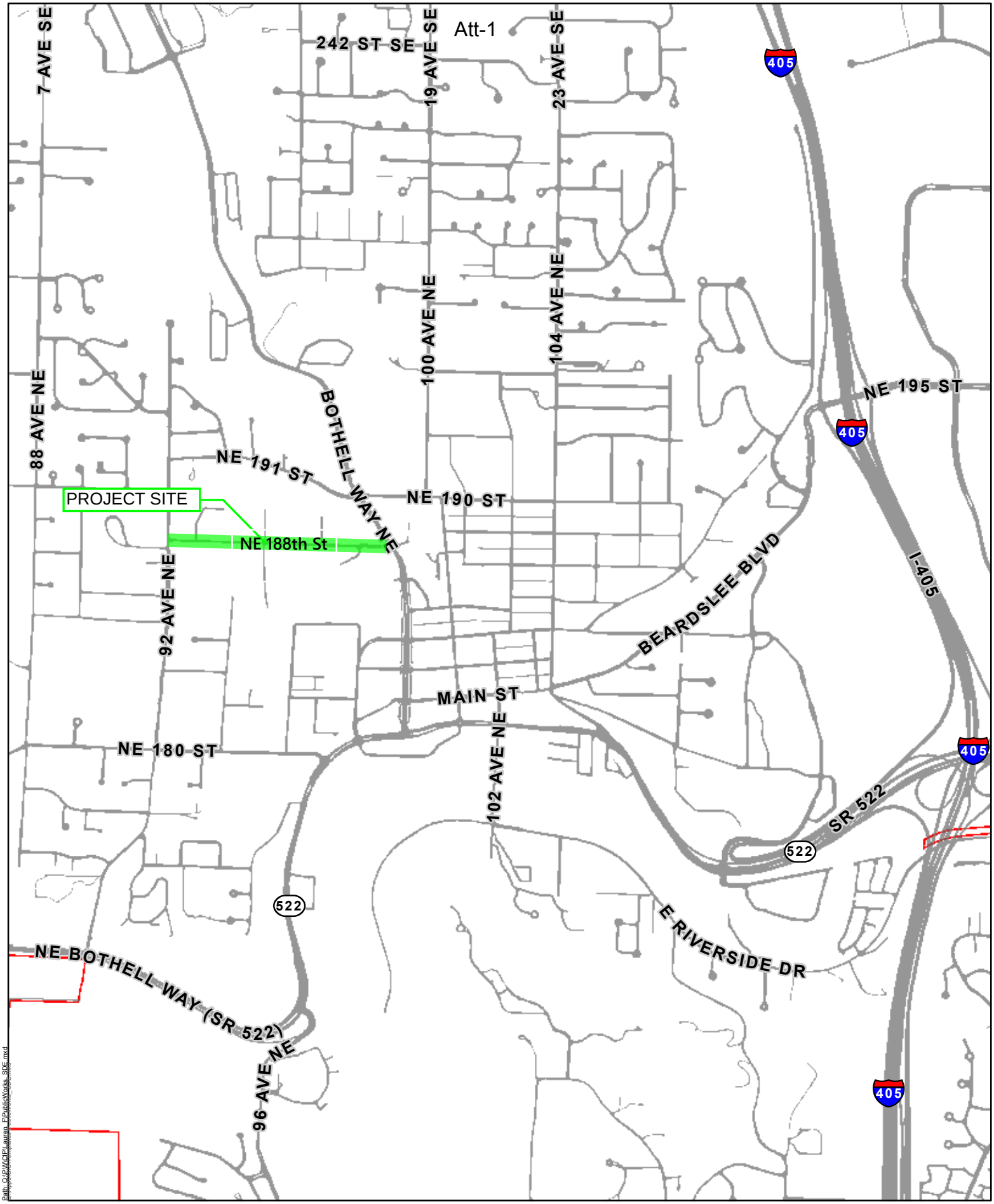

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Attachment #2
Vicinity Map

Legend
Bothell City Limit

0 300 600 900
Feet

The City of Bothell delivers this data (map) in an AS-IS condition. GIS data is compiled from various sources and is for general purposes. No representation or guarantee is made concerning the accuracy, currency, or completeness of the information provided.

Date: 2/23/2018

City of Bothell

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Washington State Department of Transportation

Supplement I Agreement Number 3	Organization and Address Otak, Inc. 11241 Willows Rd NE Redmond, WA 98275 Phone: 425-822-4446	
Original Agreement Number 1316		
Project Number Otak No. 32943, Fed No. SRTS-0110(015)	Execution Date Martch 12, 2018	Completion Date September 1, 2020
Project Title NE 188th Street Non-Motorized Improvements Project	New Maximum Amount Payable $345,383.	
Description of Work Supplement 3: Added engineering support services during construction. The work includes award services, providing revised drawings and estimates per field conditoin changes, providing clarifications of contract documents, responses to requests for informaiton, material reviews, and record drawings.		

The Local Agency of City of Bothell
desires to supplement the agreement entered in to with Otak, Inc.
and executed on Marrch 12, 2018 and identified as Agreement No. 1316
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:
See attached Scope of Work.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Extended completion date from July 31, 2019 to September 1, 2020

III

Section V, PAYMENT, shall be amended as follows:
Increase budget by $54,485 as indicated in the attached budget

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.
If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: _____ By: _____

Consultant Signature — Approving Authority Signature

Date

EXHIBIT A

SCOPE OF SERVICES
CONSTRUCTION ENGINEERING SERVICES
City of Bothell
NE 188th Street Non-Motorized Improvements
OTAK Project No. 32943.A
December 2019

The following scope of work describes the construction engineering services required to support construction of the non-motorized facility improvements along NE 188th Street between 92nd Avenue NE and Bothell Way. The project includes the installation of approximately 1,300 lf of curb and gutter, sidewalk, planter strip, storm drainage, retaining walls, and pedestrian railings between 92nd Avenue NE and Pop Keeney Stadium; and the installation of 5-ft bike lanes both directions between 92nd Avenue NE and Bothell Way. Improvements will also include installation of ADA compliant curb ramps and crossing enhancements at the intersections of NE 188th Street with 92nd Avenue NE and 95th Avenue NE, the installation of speed feedback signs, and a new mid-block crossing near Pop Keeney Stadium.

The City of Bothell is leading construction management/administration and inspection of the project. Otak's role will be to provide limited construction support as the Engineer of Record. This scope assumes that construction will begin in January 2020 with substantial completion in June 2020 and physical completion by July 2020.

Scope of services for this task order is described in more detail as follows:

1.0 Construction Engineering Support

1.1 Construction Submittals

The Otak team will review or assist with the review of select material and non-material related submittals, CPM schedules, shop drawings, and other items required from the Contractor. Submittals will be reviewed at the request of the City. Otak will attempt to provide a maximum one-week turnaround of all submittals being reviewed. The attached fee/hour estimate assumes processing of up to ten (10) Submittals with approximately 2 hours each of staff time. The time allocated for submittal review will be generally limited to the hours shown on the attached hour/fee estimate.

The City will log, distribute, and track submittals.

1.2 Construction Meetings

The Otak team will attend the pre-construction meeting and up to two (2) additional coordination meetings with the City and the Contractor. The City will facilitate meetings and prepare/issue meeting minutes.

1.3 Construction Engineering Support

The Otak team will coordinate with the City and other project team members throughout the construction duration to provide design support in a timely manner.

The Otak team will review and respond to contractor Requests for Information (RFI's) for compliance with the contract. Otak will coordinate reviews and technical response to RFI's with subconsultants as required. The City will log, distribute, and track RFI's. The attached fee/hour estimate assumes processing of up to ten (10) RFI's with approximately 2 hours each of staff time. The time allocated for submittal review will be generally limited to the hours shown on the attached hour/fee estimate.

The Otak team will provide Supplemental Information (SI's) as needed to maintain the progress of the work. The Otak team will review field changes and conflicts and recommend remedies, and review and recommend solutions to disputes and claims with the Contractor.

1.4 Field Visits

The Otak team will perform field visits and observations at the request of the City to review construction progress and to verify compliance with the project plans and specifications. It is anticipated up to five (5) site visits of approximately 4 hours each with some staff overlap will occur during construction. Most field visits are anticipated to occur during normal business hours; however, some field visits during night work may be required.

1.5 Water Main Replacement Coordination

The Otak team will provide technical support to the City related to the coordination of project improvements with the City-directed water main replacement along the eastern half of NE 188th Street. The time allocated for this task will be generally limited to the hours shown on the attached hour/fee estimate.

Task 1 Deliverables:

- Technical submittal and shop drawing review
- Reponses to RFIs and field questions
- Preparation of Supplemental Instructions (SIs)
- Miscellaneous correspondence/transmittals; 1 PDF copy and native file format (Word, Excel, etc.) ea.
- Site Visit Notes

2.0 Post Construction and Project Closeout

2.1 Final Inspection

The Otak team will participate in the final inspection with the City to establish final punch list. The City will prepare punch list, monitor and verify the completion of punch list items, and determine date of substantial completion and prepare letter of substantial completion.

2.2 As-built Record Drawings

The Otak team will prepare the final as-built plans to conform to construction record drawings. As-builts will be prepared based on the Contractor's as-built drawings. The City CM/Inspector will monitor and report on Contractor's maintenance of as-built documentation. The City CM/Inspector will review Contractor's as-built drawings, compare them to their own documents, and prepare transmission of as-built drawings into a single package for the Otak team. Level of effort does not include completing an as-built survey. If site surveying is required it would be performed under a separate/supplemental task order.

Task 2 Deliverables:

- As-built Record Drawings (one full-size and one half-size hard copies; one CD containing files in PDF and AutoCAD format)

3.0 Project Management and Subconsultant Administration

The Otak team will set up project and maintain the operation of the construction engineering support for the project. Consultant will direct/supervise internal staff team members and their activities to ensure successful completion of tasks provided by the Consultant.

The Otak team will perform quality control check and document reviews of Consultant's and subconsultant deliverables for consistency and compatibility between design disciplines and project elements.

The Otak team will prepare monthly progress reports and invoices with sufficient detail to demonstrate progress and budget status. The Consultant will monitor and track subconsultants' scope activities, budget expenditures, and review/process monthly invoices with sufficient detail to document progress. The Consultant will coordinate all requirements for UDBE reporting for subconsultants per LAG Manual requirements. Reporting will be complete through WSDOT's on-line reporting system.

Task 3 Deliverables:

- Progress Reports and Invoices: 1 paper copy, ea.
- Miscellaneous correspondence/transmittals; 1 PDF copy and native file format (Word, Excel, etc.) ea.

Subconsultants

100 Geotechnical Construction Support – HWA

The Consultant will provide geotechnical construction support for the project including:

- Response to Contractor's RFIs and Submittals (Assume 4 RFIs/Submittals)
- Attend Pre-Construction Meeting
- Consultation during Construction
- Geotechnical Inspection of Shoring and Walls

This effort will be provided by the subconsultant HWA GeoSciences. Refer to Exhibit A-1 for a detailed description of specific services and level of effort provided.

EXPENSES

Mileage and reproduction.

ASSUMPTIONS

- Project Management budget is based on seven (7) month duration for completing task services.
- Construction support will begin in January 2020 and be completed in July 2020.
- The City will be providing construction management, administration, and full-time inspection.
- Construction meetings will be held at the Bothell City Hall or at the project site. Meetings will be held during normal business hours.
- Contractor communications to the Otak team will be routed through the City.
- Construction surveying will be provided by the Contractor. Additional right-of-way staking, if required, would be completed under a separate/additional task.
- Material Testing and Inspection will be done by HWA through the City's On-Call Construction Management contract and is not included in this scope of work.
- The City will maintain contact with the utility companies that have relocations/adjustments in the project area. The City will take the lead in communicating with the Contractor to ensure all utility coordination requirements are met and utilities are communicated with.
- The City will transmit Construction agreements and landowner contact data to Contractor and provide construction notification letters to affected landowners.
- If any new right-of-way issues or additional rights-of-way needs arise during construction this work would be done by the City's On-Call Right-of-way consultant or would be completed under a separate/additional task. Right-of-way services are not included in this scope of work.
- Project is funded through a Federal Safe Route to School grant and local levy funds.
- The City will lead the preparation and approval of monthly progress payment requests and will lead change order negotiations and project documentation in accordance with contract and funding requirements.

NE 188th Street Non-Motorized Improvements - Construction Support
Hour/Fee Estimate
Otak, Inc.
Otak Project # 32943.A00
Date: Dec 2019

Task	***Description***	PIC/Sr. Project Manager Civil	Civil Engineer X	Civil Engineer IX	Civil Engineer VIII	Civil Engineer VI	Engineering Designer IV	Engineering Designer III	Engineering Designer II	Engineering Technician III	Landscape Architect III	Landscape Architect II	Scientist V	Project Administrative Assistant	***Total Hours***	***Total Budget by Task***
		Nico	Mark C.	Bob	Windi	Dave	Marina, Ellen	Chris	Janna	Ahmed	Tom	Ben	Jeff	Jen		
1.0	**Construction Engineering Support**															
1.1	Construction Submittals			6	4	6					2	2		2	22	$3,340
1.2	Construction Meetings			6	6	4					4				20	$3,262
1.3	Construction Engineering Support	2		14	12	12					8			4	52	$8,403
1.4	Field Visits			8	8	4					4		4		28	$4,644
1.5	Water Main Replacement Coordination	2	16		4		6								28	$4,747
2.0	**Post Construction and Project Closeout**															
2.1	Final Inspection			2	4	2					2				10	$1,622
2.2	As-built Record Drawings			2	2	2	6	4	4	16	2	2			40	$4,238
3.0	**Project Management and Subconsultant Adminstration**	2			14									8	24	$3,824
	Total Hours	6	16	38	54	30	12	4	4	16	22	4	4	14	224	
	Billing Rate	$286.27	$173.91	$191.20	$182.63	$144.18	$110.24	$99.44	$89.33	$85.12	$110.59	$101.11	$158.49	$86.89		
	Total Labor Cost	$1,718	$2,783	$7,266	$9,862	$4,325	$1,323	$398	$357	$1,362	$2,433	$404	$634	$1,216		***$34,081***
	Direct Expenses															*$200*
	Subconsultants															
100	*Geotechnical Construction Support - HWA*															*$20,204*
	Project Total															***$54,485***

EXHIBIT A-1

HWA GEOSCIENCES INC.
DBE/MWBE

October 24, 2019
HWA Project No. 2018-023-21

Otak, Inc.
11241 Willows Road NE, Suite 200
Redmond, WA 98052

Attention: Windi Shapley, P.E.

Subject: **PROPOSED SCOPE OF SERVICES**
GEOTECHNICAL SERVICES DURING CONSTRUCTION
NE 188th Street: Non-Motorized Improvements
Bothell, Washington

Dear: Ms. Shapley;

In accordance with your request, HWA GeoSciences Inc. (HWA) is pleased to present this scope of work to provide geotechnical services during construction for the non-motorized street improvements along the NE 188th Street corridor between 92nd Avenue NE and Bothell Way NE in Bothell, Washington. Thank you for the opportunity to present this proposal for HWA GeoSciences Inc. (HWA) consulting services. Below, we present our scope of work and project cost estimate.

PROJECT BACKGROUND

We understand that the City of Bothell is planning to construct non-motorized improvements with the intention to provide safer connections between adjacent neighborhoods, schools and the downtown area. These improvements include sidewalks, ADA curb ramps, retaining walls, and stormwater piping and an underground vault along the alignment. HWA proposes the following scope of work for this project in support of construction of geotechnical aspects of the project.

APPROACH AND SCOPE OF WORK

HWA will provide geotechnical services during construction of the proposed non-motorized improvements consisting of new sidewalks, ADA curb ramps, retaining walls, and stormwater improvements including an underground vault with temporary shoring. These services will consist of the following subtasks.

Geotechnical Support during Construction

- ***Review Contractors Submittals and RFIs:*** Provide services that including submittal review/approval, and RFI responses for up to 4 RFIs/Submittals.

- ***Pre-Construction Meeting:*** Prepare for and attend one pre-construction meeting.
- ***Consultation during Construction***: Provide consultation for geotechnical aspects of the project that arise during construction of the proposed improvements.
- ***Task management and QA/QC:*** Prepare monthly invoices, correspond with the design team on a regular basis, and provide internal QA/QC of reports prior to distribution to the design team or the City.

Geotechnical Inspection and Materials Testing

- ***Full-time Observation of Soldier Pile Excavations and Placement:*** Provide full-time observation of the excavation and emplacement of the 22 soldier piles to be installed for Wall 4. This will include observation of drilling methods, monitoring for caving and use of temporary shoring, if needed, verification that adequate depth is achieved, and placement of concrete backfill is completed. We anticipate this will take about 8 working days at 9 hours each. Time includes travel and writing of field reports.
- ***Periodic Site Visits for Observation of Temporary Shoring Installation for Stormwater Vault:*** Conduct up to three site visits to observe installation of temporary shoring for the proposed excavation for the stormwater vault. Site visits will be to address items regarding pile installation, dewatering for the proposed shoring method, and/or impacts to adjacent utilities.
- ***Periodic Site Visits for Subgrade Verification of Walls:*** Conduct ten half-day site visits to observe excavation to expose suitable bearing materials below the rockeries and the block walls. Time includes travel and writing of field reports.
- ***Final Inspection Report:*** Prepare a final inspection letter for submittal to the City stating that construction of walls has adequately met the recommendations in our geotechnical report.

ASSUMPTIONS/CONDITIONS

The following assumptions were made as part of the development of the proposal for this work:

- The construction services are provided based on an estimated rate of progress by the Contractor, which may require adjustment due to the Contractor's rate of construction, weather delays and/or other factors beyond our control.
- Our scope does not include identification nor evaluation of contaminants that may be present in the soil or ground water.

PROJECT BUDGET

We estimate that the scope of services proposed herein will require a budget of **$20,204** to accomplish, as detailed on the attached project cost estimate spreadsheet. We will perform these services on a time and expense basis against the attached budgets and will not exceed the total budget without your prior authorization.

The budget presented in this proposal reflects an estimate based on our current understanding of the project requirements for a scope of work developed from information provided. HWA reserve the right to transfer hours and budget dollars between tasks to satisfy project requirements. HWA may also transfer funds allocated for direct costs to professional/technical hours or vice versa, to satisfy project requirements.

Thank you again for the opportunity to provide this proposal for geotechnical support and inspection services during construction. Should you have any questions regarding this proposal, or require additional services, please contact us at your convenience.

HWA GeoSciences Inc.

JoLyn Gillie, P.E.
Geotechnical Engineer, Principal

Encl.: Project Estimate

188th Street Sidewalks Project
Geotechnical Support Services during Construction
Bothell, Washington
Prepared for Windi Shapely, Otak

HWA GEOSCIENCES INC.

HWA Ref: 2018-023-21
Date: 24-Oct-19
Prepared By: JLG

Scope of Work: See Letter dated October 24, 2019

ESTIMATED HWA LABOR:

WORK TASK DESCRIPTION	PERSONNEL & 2019 DIRECT HOURLY RATES				TOTAL HOURS	TOTAL AMOUNT
	Principal	Sen Engr	Proj Engr	Inspector		
	Boirum	Gillie	Khandaker	Krankurs		
	$84.62	$63.00	$34.50	$30.00		
Geotechnical Support during Construction						
-Response to Contractor's RFIs and Submittals (Assume 4 RFIs/Submittals)		4			4	$252
-Attend Pre-Construction Meeting		2			2	$126
-Consultation during Construction		6			6	$378
-Task Project Management and QA/QC	2	4			6	$421
Geotechnical Inspection and Materials Testing						
-Full-time Observation of Soldier Pile Excavations and Placement (Assume 8 days at 9 hrs per day)		4	72		76	$2,736
-Periodic Site Visits for Observation of Temporary Shoring (Assume 3 visits at 4 hrs each)		4	8		12	$528
-Periodic Site Visits for Subgrade Verification for Walls (Assume 10 visits at 4 hrs each)		2	40		42	$1,506
-Final Inspection Report		2	4		6	$264
TOTAL LABOR:	2	28	124	0	154	$6,211

LABORATORY TEST SUMMARY:

Test	Est. No. Tests	Unit Cost	Total Cost
Aggregate Acceptance (GS, SE, FF)	0	$305	$0
Modified Proctor	0	$250	$0
Bitumen Extraction	0	$180	$0
Rice Density	0	$125	$0
LABORATORY TOTAL:			**$0**

ESTIMATED DIRECT EXPENSES:

Mileage @ $0.58/mile	$50
TOTAL DIRECT EXPENSES:	**$50**

PROJECT TOTALS AND SUMMARY:

Direct Salary Costs (DSC)	$6,211
Overhead @ 194.47% of DSC	$12,079
Fixed Fee @30% of DSC	$1,863
Direct Expenses	$50
ESTIMATED PROJECT TOTAL:	**$20,204**

Assumed Conditions:

1. This estimate is based on assumed rates of progress by the Contractor. The actual cost of our work will depend on the Contractor's choice of equipment, the conditions encountered, the weather, and other factors beyond our control. In the event it seems necessary to exceed our authorized budget, we will notify you and seek additional authorization before proceeding.
2. All hours and items are estimated, and may be shifted between tasks within the limits of the total budget at the discretion of HWA's project manager.

ORDINANCE NO. _____(2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE 2019-2020 CAPITAL IMPROVEMENT FUND BUDGET.

WHEREAS, State law, Chapter 35A.34 RCW provides for the biennial adoption of the City's budget and provides procedures for filing of the proposed budget, deliberations, public hearings, final fixing, and any subsequent adjustments to the budget; and

WHEREAS, the 2019-2020 budget was adopted for all funds of the City, including the Capital Improvement Fund,

WHEREAS, budget development requires staff to make significant predictions about revenues and expenditures for the upcoming biennium and it is not uncommon for budget amendments to be subsequently required to align actual results with the predictions made during budget development,

WHEREAS, the NE 188th Street Non-Motorized Improvements project (the Project) was included in the Adopted 2019-2020 Budget and the revenues and expenditures associated with the project vary from the predicted value included in the Adopted 2019-2020 Budget; and

WHEREAS, a budget amendment is required for the Project to account for a $600,000 grant that was secured after budget adoption, plus $280,000 of revenue and expenditure for a water main replacement within the project area on behalf of the water utility.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The adopted budget for the 2019 - 2020 biennium is hereby amended as set forth in the table below, which is attached hereto and incorporated herein by this reference as set forth in full.

Fund No.	Fund Name	Adopted 19-20 Revenue	Adopted 19-20 Expenditure	Amended 19-20 Revenue	Amended 19-20 Expenditure
305	Capital Improvement Fund	69,557,124	75,965,623	70,437,124	76,845,623

Section 2. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid 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 ordinance.

Section 3. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 4. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

APPROVED:

_____
LIAM OLSEN
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

SUMMARY OF ORDINANCE NO. _____(2020)

City of Bothell, Washington

On the 21st day of January 2020, the City Council of the City of Bothell passed Ordinance No._____(2020). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, AMENDING THE 2019-2020 CAPITAL IMPROVEMENT FUND AND STORM AND SURFACE WATER BUDGETS.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

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City of Bothell™

City Council
Agenda Bill
AB # 20-004

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Michael Kattermann, Community Development Director
Bruce Blackburn, Senior Planner, Community Development (Presenter)

DATE: January 21, 2020

SUBJECT: Continuation of Public Hearing on 2019 Plan and Code Amendments to the Capital Facilities Element and Establishing Minimum Density and Intensity within the Canyon Park and North Creek / NE 195 ST Activity Centers

POLICY CONSIDERATION: This item asks the City Council to consider extending the public hearing regarding:

- Amending the Capital Facilities Element to reflect voter approved bonds to rebuild fire stations 42 and 45
- Establishing minimum residential densities and non-residential floor area ratios within the Canyon Park and North Creek/NE 195 ST Subarea activity centers.

HISTORY:

DATE	ACTION
JUNE 2002	City Council establishes Activity Centers (R-AC) zone
MARCH 2019	Council approves 2019 Planning Docket including CFE amendments and Canyon Park Update
NOVEMBER 2019	Planning Commission makes its Recommendation to City Council
DECEMBER 2, 2019	Canyon Park Business Center Owner's Association (CPBCOA) appeals the SEPA determination stopping consideration of these amendments
DECEMBER 3, 2019	Council continues public hearing to December 17, 2019 pending resolution of SEPA appeal
DECEMBER 17, 2019	Council continues public hearing to January 21, 2020 pending resolution of SEPA appeal

The two proposed amendments to the *Imagine Bothell…*Comprehensive Plan and the associated code amendments were processed in 2019 according to the city's annual amendment cycle and scheduled for adoption in December 2019.

However, due to an appeal of the environmental review conducted under the State Environmental Policy Act (SEPA), the Council cannot act on the proposed amendments until the appeal has been resolved.

DISCUSSION: CPBCOA and city staff continue to discuss issues pertaining to the SEPA appeal filed by CPBCOA. Both parties agree that progress has been made and that additional time is needed to attempt to resolve the issues. Staff believes enough progress has been made to justify one more continuance of the public hearing. Staff recommends the hearing be continued to February 18, 2020. All materials and attachments regarding the proposed amendments, draft ordinance, and Planning Commission recommendation were provided previously in the December 3, 2019 agenda packet.

FISCAL IMPACTS: Work on this item is included in the Adopted 2019-2020 Budget.

ATTACHMENTS: N/A

RECOMMENDED ACTION: Move to continue the public hearing to February 18, 2020.

City of Bothell™

City Council
Agenda Bill
AB # 20-005

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Mathew Pruitt, Human Resources Director

DATE: January 21, 2020

SUBJECT: Consideration of Collective Bargaining Agreement (CBA) with AFSCME Council 2, Local 3845 for 2020-2022

POLICY CONSIDERATION: The City Council previously provided policy direction on this matter. If this item is approved, staff is implementing the direction given by the City Council.

HISTORY:

DATE	ACTION
SEPTEMBER 13, 2017	City Manager signed previous CBA per council approval
NOVEMBER 12, 2019	Council provided policy direction in closed session

The AFSCME CBA expires every three years. The last agreement (2017-2019) was agreed to and signed in September 2017 due to prolonged negotiations between the City and the Union. On November 12, staff briefed the City Council in closed session. The Council provided staff cost parameters and policy direction for the 2020-2022 agreement.

DISCUSSION: The following changes to the CBA have been agreed to by both parties. All changes as outlined meet the cost parameters given by the City Council at the November 12 executive session staff briefing.

- Article 1, Section 3: There will be an annual bank of 800 hours that a temporary employee can work and not be considered a member of the bargaining unit. Both parties agreed to a bank of hours to make clear that that temporary employees could work multiple blocks of time throughout the year. For example, college students who work during the summer and then return for winter break. The number of hours was determined in order to comply with the Affordable Care Act.

- Article 2, Section 1(F): Both parties agreed to expand the management rights clause to include department level policies, procedures, and guidelines. This language change is mostly a clarification of past practice.

- Article 3: Both parties agreed to adopt a previously agreed upon memorandum of understanding in regards to union security. The purpose of this language change is to comply with the Janus Supreme Court Decision.

- Article 5, Section 1: Both parties agreed to add gender identity or expression into the non-discrimination clause.

- Article 7: Both parties agreed that deadlines to respond to one another during the grievance procedure would be based on calendar days as opposed to work days. This language change is mostly a clarification of past practice.

- Article 11, Section 2.4: Both parties agreed that job performance is a factor that can be used by management in order to determine out of class pay assignments. This section also clarifies a past practice on how out of class pay is paid.

- Article 12, Section 2: Currently management cannot change a work schedule without paying time and a half unless a notice of ten working days is provided. This causes some challenges specifically in the Public Works Capital Projects division. Both parties agreed to reduce this amount of time to seven calendar days.

- Article 12, Section 9: This language change clarifies a long standing past practice in regards to employees who are called back to work after their shift ends or before it begins.

- Article 12, Section 13: Both parties agreed to adopt a previously agreed upon memorandum of understanding that requires employees working in response to a phone call be paid from the time they get the call to include travel time to the job site. This memorandum of understanding was agreed upon after a court reviewing a similar issue ruled in favor of an employee who worked for Brinks Security.

- Article 14, Section 1(E): Both parties agreed to clarifying language regarding the boot allowance.

- Article 15, Section 1-3: Both parties agreed that for the next three years employees will receive a cost of living adjustment equal to the consumer

price index of the Seattle, Tacoma, and Bellevue area from the months of June to June.

- Article 15, Section 4: Both parties agreed that employees who receive a "meets expectations" on their performance appraisal will be eligible to receive a 2% match into their deferred compensation retirement account.

- Article 15, Section 5: Both parties agreed to eliminate the 40 hours of merit leave employees currently receive if they "exceed expectations" on their performance appraisal.

- Article 16, Section 1: Both parties agreed add a High Deductible Health Plan to the health plan designs that employees can choose from. Employees who enroll into a High Deductible Health Plan will receive $1500 annually for employees and $3000 annually for employees plus dependents that will be deposited into a Health Savings Account that can be saved for retirement or used to pay down the deductible of the new plan design. If employees enroll into this plan it will amount to significant cost savings for the City. The Union believes that 35% of their membership are interested in the plan given the flexibility that a Health Savings Account provides.

- Article 16, Section 4: To pay for the previously mentioned 2% deferred comp match, employees agreed to eliminate their short term disability plan and transfer their long term disability plan to the Association of Washington Cities.

- Article 18, Section 4: Both parties agreed to an annual accrual carry over amount of 240 hours of vacation. There was a desire by management to increase the carry over cap due to challenges with providing employees vacation in order to get under the cap due to workload. The 240 hours is an increase for employees and is in line with other CBAs in comparable organization cities.

- Article 19, Sections 1, 8, and 9: Both parties agreed to adopt a previously agreed to memorandum of understanding on sick leave. The memorandum of understanding was agreed to after voters approved the WA State Sick Leave Law by initiative.

- Article 19, Section 9: Both parties agreed that employees would pay their share of the Washington State Paid Family Medical Leave premiums in accordance with the law passed by the state legislature in 2017.

- Article 19, Section 10: Both parties agreed that employees would be entitled to two wellness days off if they met the requirements of the AWC Wellness Incentive. This agreement was made in part to soften the impact of employees losing 40 hours of merit leave as previously stated, but to also help the City obtain the annual AWC Well City Award which reduces the cost of our health plans by 2% (approximately $100,000 annually).

FISCAL IMPACTS: The costs associated with this item are included in the Adopted 2019-2020 Budget.

ATTACHMENTS: Att-1. Redline version of the proposed 2020-2022 AFSCME CBA

RECOMMENDED ACTION: Allow the City Manager to execute the 2020-2022 Collective Bargaining Agreement with AFSCME Council 2, Local 3845.

City of Bothell™

AGREEMENT

By and Between

CITY OF BOTHELL

and

THE WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES
AFSCME - AFL-CIO LOCAL #3845

January 1, ~~2017~~ 2020 - December 31, ~~2019~~2022

AFSCME AGREEMENT, LOCAL #3845
January 1, ~~2017~~ 2020 - December 31, ~~2019~~2022

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AFSCME AGREEMENT, LOCAL #3845
January 1, ~~2017~~ 2020 - December 31, ~~2019~~2022

This Agreement is by and between the City of Bothell (hereinafter referred to as the "City") and the Washington State Council of County and City Employees AFSCME - AFL-CIO Local #3845 (hereinafter referred to as the "Union"), for the purpose of setting forth the mutual understanding of the parties as to wages, hours and other conditions of employment of those employees for whom the City has recognized the Union as the exclusive collective bargaining representative.

PREAMBLE

The City and the Union agree that the efficient and uninterrupted performance of municipal functions is a primary purpose of this Agreement. Both parties further agree that in the interest of collective bargaining and harmonious relations, they will at all times abide by the terms and conditions as hereinafter set forth and agreed upon. The City and Union regard all personnel as public employees who merit the trust and confidence of the general public and fellow employees.

ARTICLE 1 - RECOGNITION AND BARGAINING UNIT

Section 1. According to the PERC definition as set forth in Case Number 4295-E-82-796, those included in this bargaining unit include all regular full-time and regular part-time and limited term City employees except uniformed Fire and Police Officers, Department Heads, confidential employees and supervisory personnel. The City recognizes the Union as the sole and exclusive representative of the bargaining unit for the purposes of collective bargaining with respect to wages, hours and other conditions of employment.

Section 2. Limited term employees.

A. Limited term employees are those who work 70 hours or more per month for 5 or more months out of any 12 months, and do bargaining unit work.

B. Said employees shall become members of the Union under the provisions of Article III - Union Security.

C. Limited term employees are hired to fill positions for a pre-determined time period or to complete a special project, but for no more than 24 months unless agreed to by the Union and the City.

D. Such employees shall be entitled to the full benefits and rights granted by this Agreement; provided, however, the Union agrees that such employees shall not have access to the grievance procedure for decisions related to tenure of employment.

E. Limited term employees serve a 12 month probationary period.

F. Limited term employees may compete for open, regular positions with the City, and if appointed, serve a new probationary period in the regular position, in accordance with Article 9, Section 2.

G. If appointed to a regular position with the City, time spent as a limited term employee shall count toward seniority for any of the purposes established by this contract; provided there was no break in employment with the City.

H. Limited term employees shall not replace or supplant regular employees' bargaining unit work.

Section 3. Temporary and/or seasonal employees are not covered by this Agreement. The term of employment of temporary employees will not exceed five (5) months (no more than 800 hours annually) without mutual written agreement between the City and the Union.

Section 4. Regular and limited term part-time employees employed a minimum of 30 or more hours a week or 1560 hours/year are considered "full time" employees and shall receive full health care benefits and pro-rated leave benefits provided herein; regular part-time employees who work 20 or more, but less than 30 hours a week are considered "part-time" employees and shall receive pro-rated benefits described herein, based on the number of hours in their regularly scheduled work period.

Section 5. Provisions specific to Police Department employees are contained in Addendum A.

ARTICLE 2 - MANAGEMENT RIGHTS

Section 1. It is understood and agreed that the City possesses the sole right and authority to manage and direct the employees of the City and its various departments in all aspects except as modified in this Agreement. These rights include, but are not limited to:

A. To determine its mission, policies that do not conflict with this Agreement, and to establish all standards of service offered to the public.

B. To determine the methods, means and number and kinds of personnel needed to perform departmental services.

C. To direct the working forces.

D. To hire and assign or to transfer employees consistent with the terms of this agreement to positions for which they are qualified within the City service.

E. To promote, suspend, discipline or discharge for just cause.

F. To prepare and/or revise, with employee participation, and Union participation when there is a conflict with this contract, the City of Bothell Employee Personnel Policies, and departmental policies, procedures, and guidelines. ~~.~~

G. To enforce said Personnel Policies, subject to the appeals procedure contained therein.

H. To introduce new or improved methods, equipment or facilities.

I. To contract out for goods and services, and to meet and confer with Union and employees regarding such action. Said meet and confer process may occur at the Labor Management Committee.

J. To supplement the workforce with volunteers and temporary employees, to (a) perform new duties or tasks and (b) to assist in duties performed by bargaining unit employees.

K. To take any and all actions necessary (including in times of emergency) in a manner consistent with the provisions of this Agreement.

Section 2. The City Council shall have the sole authority to determine the purpose and policies of the City and the amount of budget to be adopted thereto.

ARTICLE 3 - UNION SECURITY

~~Section 1. Employees covered by this Agreement shall be required as a condition of employment, not later than the 30th day following their employment, to become and remain members in good standing in the Union during the term of this Agreement, except as provided as follows:~~

~~1.1 If an employee for bona fide religious tenets, as per RCW 41.56.122(1), does not desire to be a member of the Union, one of the following shall apply:~~

~~A. Pay each month a service charge equivalent to regular union dues to the Union.~~

~~B. Pay each month an amount of money equivalent to regular union dues to a non-religious charity that is agreeable to the Union and the Employee.~~

~~1.2 If an employee declines to become a Union member, that employee waives all membership rights and must comply with Article III, Section 1.1A above.~~

~~Section 2. Upon receipt of written authorization of the employees for payroll deduction of Union dues, the City shall deduct all dues and fees uniformly levied against Union members, once each month, from all members and to transfer that amount to the Union Treasurer. The Union shall indemnify the City from any and all claims from any person arising out of this Article.~~

Section 1. The Employer recognizes the WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES/AFSCME Council 2 and its affiliated local (hereafter Union) as the

sole and exclusive bargaining representative in all matters concerning wages, hours, and other conditions of employment for all employees described in the recognition clause.

Section 2. The Employer shall remain neutral when communicating with employees about Union membership and direct the employee to discuss union membership with a union official or staff representative.

Section 3. For current Union members and those who choose to join the Union, the Employer shall deduct once each month all Union dues and fees uniformly levied and transfer that amount to the Union upon receipt of an Authorization for Payroll Deduction.

Section 4. The Employer shall honor the terms and conditions of each employee's Authorization for Payroll Deduction. Whether an employee is a union member or not, the Employer shall continue to deduct and remit dues and fees to the Union until such time as the Union notifies the Employer that the dues authorization has been properly terminated in compliance with the terms of the Authorization for Payroll Deduction executed by the employee.

Section 5. The Employer agrees to notify the Local Union President of any new positions and new employees. A Union official shall be granted time, as approved by his or her supervisor, to provide a basic overview of the employees' rights and responsibilities regarding Union membership, dues authorizations, and Union insurance.

Section 6. The Union shall indemnify and hold the City and its agents harmless from any and all claims from any person arising out of the administration of this Article.

ARTICLE 4 - LABOR-MANAGEMENT COMMITTEE

Section 1 - Intent. It is the intent of the City and the Union to meet from time to time to discuss, in a non-adversarial and collaborative forum, matters not specifically addressed in this Agreement.

Section 2 - Schedule and Composition.

A. The Labor Management Committee will meet quarterly, or more or less often as needed.

B. The Committee shall be comprised of three (3) management members and three (3) Union members. Both parties will attempt to select members from a broad spectrum of City departments. Names of the members shall be provided to each party by January 1 of each year.

C. The Committee may utilize outside resources as needed and appropriate. This may include an individual who is concerned about or directly affected by a specific issue or policy.

Section 3 - Purpose and Format.

A. An agenda shall be jointly developed by both parties one (1) week prior to the meeting date.

B. The meetings shall normally be held during regular working hours and at no loss of pay to the employees participating.

Section 4 - Limited Scope. No matters or conclusions discussed in the Labor-Management meeting shall contradict, add to, or delete from any provisions of this Agreement.

ARTICLE 5 - NON-DISCRIMINATION

Section 1 - Discrimination Prohibited. Neither the City nor the Union shall discriminate against any employee covered by this Agreement in a manner which would violate any applicable laws because of gender, gender identity or expression, sexual orientation, marital status, race, color, creed, national origin, age, or the presence of a sensory, physical or mental handicap.

Section 2. The City and the Union agree that the application of this Agreement and City Personnel Policies, Rules or Regulations will be administered in a uniform manner, considering all relevant circumstances.

ARTICLE 6 - DISCIPLINE

Section 1 - Employee Discipline. The City shall not discipline or discharge any post-probationary employee without just cause. Any employee may choose to have a Union representative or another Union member present at all meetings during pre-disciplinary or disciplinary proceedings. For the purposes of this section, verbal coaching/counseling sessions between a supervisor/manager and employee that are informal and intended to improve or modify work performance are not classified as pre-disciplinary or disciplinary proceedings.

Section 2 - Disciplinary Action. Disciplinary action or measures may include documented oral reprimand, written reprimand, suspension, reduction in step, demotion or discharge, according to the City of Bothell Personnel Policies. The City agrees that disciplinary action is intended to be progressive in nature; however, the City may advance to more serious disciplinary action if warranted by the violation.

ARTICLE 7 - GRIEVANCE PROCEDURE

Section 1 - Intent. It is the desire of the City, its management, Union and its members to resolve grievances that may arise during the term of this Agreement informally and at the lowest level possible. A "grievance" means a claim or dispute by an employee (or the Union in the case of Union rights) with respect to the interpretation or application of the provisions of this Agreement.

Section 2 - Procedure.

STEP 1: An employee must present a grievance in writing within fifteen (~~-~~15) calendar days of the date the employee knew or should have known of the occurrence to the employee's supervisor who shall attempt to resolve it and respond in writing within fifteen (15) calendar days after it is presented.

STEP 2: If the employee is not satisfied with the solution by the immediate supervisor, the grievance, in writing, may be presented within fifteen (15) calendar days of the supervisor's response to the Department Head by a Union representative. The written grievance shall include a statement of the issue, a chronological listing of the pertinent events that took place, the section of the Agreement violated and the remedy sought. Such information shall be submitted on an official Grievance Form, which shall be provided by the Union. The Department Head shall attempt to resolve the grievance and respond in writing within fifteen (15) calendar days after it has been presented.

Alternatively, by mutual agreement of the Union and the City, non-disciplinary grievances may be submitted to the Labor Management Committee for resolution. The Labor Management Committee will consider the statements of the employee and the City and attempt to resolve the matter within fifteen (15) calendar days of submittal. The Committee's role is limited to facilitating dispute resolution; it may not compel settlement and no record of the Committee is admissible in arbitration. If the employee is not satisfied with the solution of the Committee, the grievance may then be filed, in writing, within fifteen (15) calendar days, with the Department Head.

STEP 3: If the Union Board is not satisfied with the solution by the Department Head, the grievance may be presented within fifteen (~~-~~15) calendar days to the City Manager. The City Manager shall attempt to resolve and respond in writing to the grievance within fifteen (15) calendar days after it is presented.

STEP 4: If the grievance is not resolved by the City Manager within fifteen (15) calendar days, the grievance may be referred to a mediator. The City and the Union shall attempt to select a mediator by mutual agreement. In the event the parties are unable to agree upon a mediator, either party may forward a request to the Executive Director of the Public Employment Relations Commission (PERC) to assign a Mediator from his staff. Upon designation of the Mediator, the parties will make every attempt to schedule a date for mediation within fifteen ~~(~~15~~)~~ calendar days.

a) Proceedings before the Mediator shall be confidential and informal in nature. No transcript or other official record of the mediation conference shall be made.

b) The Mediator shall attempt to ensure that all necessary facts and considerations are revealed. The Mediator shall have the authority to meet jointly and/or separately with the parties and gather such evidence as deemed necessary.

c) The Mediator shall not have the authority to compel resolution of the grievance. If the Mediator is successful in obtaining agreement between the parties, he shall reduce the grievance settlement to writing. Said settlement shall not constitute a precedent unless both parties so agree.

d) If mediation fails to settle the dispute, the Mediator may not serve as an arbitrator in the same matter nor appear as a witness for either party. Nothing said or done in mediation may be referred to or introduced into evidence at any subsequent arbitration hearing.

STEP 5: Arbitration Procedure. If the grievance is not settled in accordance with the foregoing procedure, the Union or Employer may refer the grievance to arbitration within twenty (20) calendar days after the receipt of the answer in Step 4. If the request for arbitration is not filed by the Union Staff Representative or the Employer within twenty (20) calendar days, the Union or the Employer waives its right to pursue the grievance through the arbitration procedure. The City and the Union shall attempt to select a sole arbitrator by mutual agreement. In the event the parties are unable to agree upon an arbitrator, either party may request the Public Employment Relations Commission (PERC) to submit a panel of nine (9) arbitrators. Both the City representative and the Union representative shall have the right to strike four (4) names from the panel. The party striking the first two (2) names shall be determined by a flip of a coin. The other party shall then strike the next two (2) names and so on. The remaining person shall be the arbitrator. The arbitrator shall be notified of his selection by a joint letter from the Employer and the Union requesting that he/she set a time and a place subject to the availability of the City and the Union representatives. The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this Agreement. He/she shall consider and decide only the specific issue submitted to him/her in writing by the City and the Union, and shall have no authority to make a decision on any other issue not submitted to him/her. The arbitrator shall submit his/her decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon his/her interpretation of the meaning

or application of the express terms of this Agreement to the facts of the grievance presented. The decision of the arbitrator shall be final and binding, provided the decision does not involve action by the Employer which is beyond its jurisdiction.

Section 3 - Miscellaneous Provisions.

A. The cost of the arbitration shall be borne equally by the parties including the Arbitrator's fees and expenses, room rental and cost of record.

B. Each party shall bear the cost of the preparation and presentation of its own case and for compensating its own representatives and witnesses.

C. The term "employee" as used in this Article shall mean an individual employee, a group of employees, and/or their Union representative.

D. An aggrieved party shall be granted time off without loss of pay for the purpose of hearing on a grievance.

E. A grievance may be entertained in, or advanced to, any step in the grievance procedure if the parties so jointly agree.

F. The time limits within which action must be taken or a decision made as specified in this procedure may be extended by mutual written consent of the parties involved. A statement of the duration of such extension of time must be signed by both parties.

G. Any grievance shall be considered settled at the completion of any step if the employee is satisfied or deemed withdrawn if the matter is not appealed within the prescribed period of time.

ARTICLE 8 - NO STRIKES OR LOCK-OUTS

Section 1. The City and the Union recognize that the public interest requires the efficient and uninterrupted performance of all City services, and to this end pledge their best efforts to avoid or eliminate any conduct contrary to this objective. During the term of this Agreement, neither the Union nor the employees covered by this Agreement shall cause, engage in or sanction any work stoppage, strike, slowdown or interference with City functions. Employees who engage in any of the foregoing actions shall be subject to disciplinary action. The City shall not institute any lock-out of its employees during the life of this Agreement.

ARTICLE 9 - PROBATION

Section 1 - Probation Period, New Hires. A newly hired employee shall have a probationary status of twelve (12) months. A probationary employee will receive a performance appraisal

at six (6) months of employment. An employee may be terminated at any time during the probationary period without recourse to the grievance procedure (Ref. Article 6, Section 1).

Section 2 - Probationary Period - Promotions, Demotions and Transfers. All promotions, demotions and transfers shall be subject to a six (6) month probationary period. In the event a promoted or transferred employee is found to be unsatisfactory following a performance evaluation after six (6) months, the employee shall be restored to his/her previous position. If a demoted employee fails to pass the probationary period, and the demotion was voluntary, the employee will be restored to his/her previous position. For the purposes of this Section, a) promotions shall be defined as movement from one position covered by this Agreement to another position covered by this Agreement with a higher salary range; b) transfer shall be defined as movement from one position covered by this Agreement to another position covered by this Agreement in the same salary range; and demotion shall be defined as movement from one position covered by this Agreement to another position covered by this Agreement with a lower salary range.

ARTICLE 10 - LAYOFF AND RECALL

Section 1 - Layoff/Recall. If it becomes necessary to reduce the number of employees employed by the City at any time, the City Manager, after consultation with the Department Head, may abolish any position. Layoffs may result from lack of work, budgetary restrictions, or other changes that have taken place. The employee to be laid off shall be given fourteen (14) ~~days notice~~days' notice before such layoff is to take place. No regular employee shall be laid off while another person in the same classification is employed on a probationary or temporary basis in a position for which the regular employee is qualified. In determining who in any classification is to be laid off, consideration will be given to individual performance and seniority in the affected classification. In cases where qualifications are equal, seniority shall govern. The City Manager shall place the names of employees laid off on an eligibility list for recall. The list shall remain active for two years. Employees on this list shall receive the first offer of re-employment for vacancies in their previous job provided they return to work within 30-days.

Employees selected for layoff shall have the option of bumping employees in the next lower classification within their department. In determining who in any classification is to be bumped, consideration will be given to individual performance and seniority as defined by hire date with the City.

Section 2. Any notice of an offer of re-employment shall be sent by certified mail, return receipt requested, to the employee's last address of record. It is an employee's responsibility to keep the City advised of his or her whereabouts.

ARTICLE 11 – CLASSIFICATION CHANGES

Section 1 – Policy. It is the intent of the City to provide current and accurate classification (position) descriptions, and to insure that all employees are working within the classification for which they were hired. Department Heads are responsible for assuring that the employee's in their department is working within his/her proper classification. Employees are responsible for notifying their Department Head when they believe that they are working outside of their assigned job classification. The City Human Resources Department will insure that revisions of classification descriptions will be made as often as is necessary to maintain current and accurate position descriptions. Not all revisions to descriptions result in change of classification of employees. A change in classification is required when there are significant changes to the duties and responsibilities of a classification, and is not used to address an increase/decrease in volume of work, or for the exclusive purpose of providing a salary increase.

Section 2 – Procedure.

2.1. Procedure for Evaluating Classifications.

A. An employee may submit a written request on the forms provided by Human Resources to the Department Head and Human Resources for a reclassification of their position; or

B. The employee and Department Head, (or designee), will review the employee's job description as a part of the annual evaluation process. Any significant changes to the duties and responsibilities of the job will be addressed through a reclassification process; or

C. Prior to recruiting for any vacant position, the Department Head, (or designee), will review the job description and address any significant changes to the duties and responsibilities of the job through a reclassification process prior to advertising for the position; or

D. Periodically a Department Head may find the need to significantly change an employee's job duties and responsibilities. The Department head will submit a classification change request during the City budget process. Human Resources will evaluate the requests during the budget process and make recommendations to the City Manager. The City Manager will include any approved classification changes in the Budget Recommendation for consideration by the City Council.

The Department Head will conduct the review and provide a written response to the employee within 30 days and may initiate a request for an analysis of a classification change by submitting a written request to the Human Resources Department. A job analysis is conducted to determine whether the request is a significantly different level of duties and responsibilities from the original classification description. Human Resources then makes a recommendation to the Department Head, and

to the City Manager for approval. If approved, an incumbent employee will be moved to the changed classification. The City Manager's decision is final, pending Council approval of any reclassification.

2.2 Evaluation Criteria. The following criteria are examples used in evaluating reclassification requests:

A. Changed duties that may result from additions, expansions, or reductions of responsibilities.

B. Changed qualifications, required education and training, and/or required licenses or certifications for the position.

C. Consolidation or reassignment of duties which significantly change the position.

D. Significant change in knowledge/expertise to address technology that is required to perform the duties of the classification.

E. The Department's present and future organizational structure and service delivery needs.

2.3 Salary Change for Changed Classifications

A. Upon change of classification to a position at a higher salary range, the employee will be placed at a step which is at least one step (4 percent) higher than that which is currently paid the employee, but not less than Step 1 of the new range. If reclassification is concurrent with an employee's performance appraisal increase, then a salary increase for a performance related action would also be made.

B. In the event an evaluation shows that a classification needs to be placed at a lower salary range, the incumbent will be placed at a step that most closely matches his/her current salary rate. If the step in the new range is lower than the incumbent's current salary rate, the rate will be frozen (unaffected by cost-of-living increases or step increases) until the newly assigned rate moves up to the incumbent's range.

C. If the analysis finds that the reclassification is warranted, but the City does not approve the reclassification, the City may remove the duties of the higher classification in lieu of approving the reclassification. Provided that the employee will be compensated for the higher level work performed to date. If the reclassification request is approved, payment of any salary increase will be retroactive to the date the reclassification request was received by the Department Head.

2.4 Out-of-Classification Pay

Employees who substantially fulfill the scope of a higher classification on a temporary basis shall be compensated for such work. Out-of-classification assignments shall be offered to the most senior, qualified employee who is available and meets performance expectations in their current position. ~~. Management may fulfill the obligation of this section through the creation of a yearly eligibility list.~~ Management shall notify the employee of such assignment in writing. Included in this notification will be a clear description of the expectations and time frame of the assignment. The employee appointed to the higher classification shall be ~~paid at the rate of the step of~~placed in the new range that most closely matches their assigned responsibility during the period of assignment~~,~~. The employee shall receive at least 4% increase and be placed in the step closest to a 4% increase in the new range without going below 4%.~~but not less than a 4% increase from current salary, during the period of assignment.~~ Management may choose not to make temporary out-of-class assignments.

~~2.5 Classification and Compensation Study~~

~~A. Effective January 1, 2017 the City will implement the 2016 Classification and Compensation Study.~~

~~B. Employees will be placed on the Non-Represented salary schedule range and step as recommended by Public Sector Personnel Consultants (PSPC).~~

~~C. All employees shall achieve their prospective time in grade as they would have absent the City's implementation of the salary survey by January 1, 2019.~~

~~D. Implementation of accelerated step adjustments shall occur on employee's anniversary date, and in a manner that represents at least one half of the two year adjustment in the first year. Year one will be rounded up to the nearest whole step and year two will place the employee at time in grade.~~

ARTICLE 12 - HOURS OF WORK AND OVERTIME

Section 1 - Normal Work Week. Except as provided elsewhere in this Agreement, the normal work week shall consist of forty (40) hours worked per calendar week for all full-time employees and consist of twenty (20) or more hours per calendar week for all regular part-time employees.

Section 2 - Changes in Normal Work Week/Hours. Should it be necessary in the interest of efficient operations to establish schedules departing from the normal work week/hours, the City will give written notice of such change to the employee as far in advance as it is reasonably practical, but in no case less than ~~five~~ten~~seven~~ (~~5~~7~~10~~) ~~working~~ calendar days, unless agreed upon by both parties or in extended emergency situations declared by the City Manager. In all such cases, the City will make every effort to accommodate and/or

mitigate the potential impacts of the schedule change to the satisfaction of the employee and the City. This may include consideration of alternate scheduling, work assignments and/or time and a half compensation. If changes are made with less than ~~ten~~ seven (~~10~~7) calendar ~~working~~ days written notice to the employee, the hours worked up until the tenth day shall be considered as authorized unscheduled hours.

Section 3 - Rest Periods. Each full-time employee shall be allowed two (2) rest periods of fifteen (15) minutes each, one before lunch period and the second after lunch period. It is understood that the rest period is to be flexible so as to provide necessary service to the public.

Section 4 - Overtime Pay. FLSA non-exempt employees shall be paid one and one-half (1 1/2) times their regular straight time hourly rate of pay for all authorized hours of work in excess of the scheduled work periods set forth below. Authorized unscheduled hours of work as defined in Section 2 above shall also be paid at the overtime rate. The work periods shall include sick leave, holidays, vacations or other paid leaves as "time worked" in computing the forty (40) hour per week requirement. It is specifically understood by the parties that this overtime pay provision shall not apply to standby time or any unauthorized hours of work. Saturday or Sunday work shall not be considered overtime when it is a regularly scheduled work day for the employee.

Authorized hours worked in excess of forty (40) hours per week rounded to the nearest half hour, shall be considered as overtime hours worked, based on the formula of the employee's annual salary divided by 2080.

Section 5 - Compensatory Time. Compensatory time may be earned in-lieu of overtime pay, at the request of the employee and with the approval of the supervisor. Once an employee chooses the compensatory time option and it is approved, it cannot be changed to cash at a later date, except at termination of employment. Such accruals shall be on a basis of one and one-half (1 1/2) hours for each overtime hour worked. Employees may accumulate a maximum of 80 hours. Use of compensatory time should be scheduled as soon as possible after accrual with due regard for the wishes of the employee and after approval of the respective Department Head.

Section 6 - FLSA Exempt Status. Employees occupying FLSA exempt positions are not eligible for overtime compensation, but are eligible for Professional Leave. New positions added to the classification grid will be evaluated to determine the FLSA status.

Section 7 - Professional Leave. For those positions identified as being FLSA exempt, the incumbent employees will be eligible to earn up to 40 hours of professional leave each year based on Department Heads authorization.

Criteria for Granting Professional Leave: Professional leave may be authorized by the City Manager and Department Heads based on the following criteria: 1) extraordinary time and effort required of employees; 2) workload that prevents employees from flexing their schedule; and 3) unusual circumstances requiring unusual commitments of time.

In December of each year, the City Manager may approve a "buy-back" of accrued vacation leave of up to forty (40) hours for eligible FLSA exempt employees in cases where Professional Leave or Vacation leave was scheduled and could not be taken due to extraordinary circumstances (For example: the leave was denied or an unforeseen shortage of staff necessitated the employee stay to complete a time-sensitive project). Buy-back of vacation leave will not be granted if 1) the employee has ninety-six (96) hours or less of accrued vacation leave, or 2) if the requested amount for "buy back" results in the employee's accrued vacation leave bank totaling less than ninety-six (96) hours of leave.

Section 8 – Shift Differential

All regular full time and part time bargaining unit employees in Storm Operations and Parks Operations who are assigned to work between 5:00 p.m. and 8:00 a.m. on weekdays and any hours on weekends will be paid a shift differential of $1.50 per hour.

Exceptions to shift differential:

A. Shifts starting between 6:00 a.m. and 8:00 a.m. are not eligible for shift differential pay.

B. Work which is scheduled after 5:00 p.m. and before 8:00 a.m. on the basis of convenience to the employee, including alternative work schedules in accordance with Section 15, shall not be considered shift differential for the purpose of this provision.

C. Shift differential does not apply to call back nor overtime.

D. Shift differential does not apply to vacation, holiday pay, bereavement leave, or other paid leave benefit.

Shift differential shall be calculated as part of the hourly rate of pay when applying the provisions of this Agreement in other sections. Shift differential is to be paid only for the specified hours as stated above. When an employee who usually works a differential eligible shift is temporarily assigned to a non-differential eligible shift for a period of five (5) working days or less, the employee shall continue to receive their current hours of shift differential. A temporary change in shift assignment initiated by the employee is not covered by this provision.

Work schedules may be adjusted at the Employer's discretion in accordance with Article 12, Section 2.

Section 9 - Call Back. ~~The City and Union agree to utilize the Labor Management process to discuss the application of Article 12, Section 9 as it relates to Public Works employees.~~

A. Return to Job Site. Any employee called back when not scheduled to work shall be paid for the time so worked but shall be guaranteed a minimum of three (3) hours at time and one half. If the call-back time precedes and carries into a regularly scheduled period, the employee shall have the option of terminating the work day upon the completion of the number of hours in their normally scheduled work day~~of the scheduled work period~~, ~~which shall be paid at straight time,~~ or working to the end of their normal regularly scheduled shift~~if completing their regular shift~~ (unless safety considerations dictate otherwise)~~,~~ in which event they shall be paid overtime ~~for all time worked in excess of the scheduled shift~~ in accordance with this contract ~~Section 10~~. Determination of sufficient work force available to allow an early release will be made by the Department Head or his/her designee. Time worked shall be calculated from the time of arrival on the regular job site to the time of release by the Department Head or his/her designee.

B. Response from Home. Employees in Information Services, Facilities Maintenance, or Public Works who are not "On Call" and who are contacted outside their work hours to address and respond to City system malfunctions electronically from home or other off work site location shall receive one (1) hour overtime compensation. If the employee is contacted more than once between work days, they shall receive one (1) hour overtime compensation for calls received and responses made in the same hour. Calls and responses in separate hourly periods will be compensated at overtime rate for each separate hour.

C. Declared Emergencies Affecting Public Works Operations: The City and Union agree that events declared as emergencies by the Mayor, City Manager, or Department Director may require significant changes in departmental operations in order to maintain essential services to the citizens of Bothell. It is understood by the parties that the Emergency Coordination Center (ECC) may not necessarily be activated during the emergency.

During declared emergencies, employee compensation shall be according to the AFSCME collective bargaining agreement except as follows:

1. Employees called back from vacation to work or who already had scheduled vacation planned and approved by their supervisor, and whose vacation is cancelled because of an emergency:

   a) shall have the option of cashing out accrued vacation for each shift worked on the day which they were called back to work or on their cancelled vacation day subject to Section 2c below, OR the option of saving the unused vacation leave to be utilized per Article 18 of the AFSCME agreement. The employee may request cash out of the same number of hours

of accrued vacation leave as the number of hours worked on the shift, to a maximum of the number of hours they normally work under their regularly scheduled shift (for example: an employee working a regular Monday through Friday 8 hour a day schedule would be able to cash out a maximum of eight hours for the day; an employee working a 4/10 schedule would be able to cash out a maximum of ten hours for the day; and an employee working a 9/80 schedule would be able to cash out a maximum of nine or eight hours for the day based upon their normal week's schedule.)

2. Employees eligible for vacation cash-out under Item (1.a) of this section are limited to a maximum of eighty hours of vacation cash out in a calendar year.

~~1.~~3. Employees may cash out vacation per item (1.a) of this section by completing the appropriate form and submitting it with their regular time sheet for the pay period in which they were called in from vacation or their vacation was cancelled by the City.

Section 10 - Non-Pyramiding. Overtime pay, cost-of-living and step grade increases shall be based on straight time rate of pay only unless FLSA requires otherwise. Further compensation will not be paid (or compensatory time approved) more than once for the same hours worked.

Section 11 - Union Business. Recognizing that Labor/Management relations are of significant importance to the City and the Union, reasonable time off with pay from normal working hours shall be granted to official Union Representatives for handling grievances, attending meetings or other legitimate Union business subject to reasonable notice and the agreement of the supervisor.

Section 12. No more than three (3) employees from the bargaining group shall be granted leave from duty without loss of pay for meetings between the Union and the City for the purpose of negotiating the terms of a collective bargaining agreement.

Section 13 - On-Call. Employees may be required to carry a phone and respond ~~to a pager~~ as determined by the Department Head. Employees assigned City phones or radios that are taken home are not assumed to be on-call unless so designated by the Department Head. Employees will receive on-call pay at the rate of $45.00 per day when such duty is assigned and pay at their regular hourly rate for time worked in response to the call. Time worked shall begin at the time they are contacted and end when tasks related to the call are complete. On-call time shall count towards time worked in computing the forty (40) hour work week in accordance with Article 12, Section 4 of this contract. Employees on vacation or out on sick leave shall not receive on-call pay. They may be assigned a phone ~~pager~~ but not a City vehicle, unless determined to be necessary by the Department Head.

Section 14 - Reporting of Time Worked. Time worked shall be reported to the nearest one-half (1/2) hour (Example: 1-15 minutes = 0 hour; 16-45 minutes = 1/2 hour; 46-75 minutes = 1 hour).

Section 15 - Call-Back Meals. When employees are called back to work for unscheduled time, they shall be entitled to a meal payment in accordance with the Personnel Policies.

Section 16 - Flex Time. It is the intent of the City to offer Flex Time to its employees where such Flex Time does not disrupt services and to this end, the City shall make reasonable efforts to accommodate those employees who request an alternative work schedule. Employee requests to work a schedule different than the established schedule will be considered by the Department Head. Such work schedules shall be initiated and terminated at the discretion of the Department Head with the approval of the City Manager.

ARTICLE 13 - PROMOTION/VOLUNTARY DEMOTION/TRANSFER

Section 1. Employees shall be entitled to apply for available openings in positions within the bargaining unit. The City encourages employees to apply for promotions.

Section 2. Job announcements shall be approved by the City and posted within all City Departments for seven (7) calendar days. Requirements for the position must be met as described in the appropriate job announcement and description. Employees seeking a position shall complete an application listing his/her qualifications and other applicable information and present same to the City within the posting period.

Section 3. Qualified applicants shall be given a job related test that is reasonable and nondiscriminatory. The appointing authority will consider the applicants' qualifications, record of performance and seniority. The same test shall be given to all applicants for the same vacancy. All tests shall contain a numbered score. For the purpose of this section, tests may be written, oral, or a combination of both.

Section 4. An employee who is promoted shall be paid at the step in the new range which represents at least a one step increase over the rate of pay received immediately prior to the promotion or at the minimum step of the new pay range, whichever is greater.

Section 5. An employee who takes a voluntary demotion or transfer will be placed at a step in the new range that most closely matches his/her current salary.

ARTICLE 14 - CLOTHING/APPEARANCE

Section 1. Employees are expected to maintain a clean and professional appearance. Protective clothing required by the City will be provided by the City. The City may provide uniform pants, shirts, coats, or specialized safety clothing (boots, reflective coats) for AFSCME employees. Uniform pieces may be rented and cleaned by the City or purchased by the City and cleaned by the employee depending on the

department/division assigned. Administration of this Article is contingent upon the Labor/Management Committee policies governing uniforms/safety clothing for each department division effected.

A. Employees that are issued rental uniforms are expected to wear their complete uniforms during assigned work hours.

B. Employees that are provided with other uniform items (shirts, coats, etc.) shall wear them in accordance with city policies.

C. All uniform items shall be distributed through a quartermaster system to be developed by the City and reviewed by AFSCME through the Labor/Management Committee prior to implementation.

D. Employees shall be required to sign for all uniform pieces at time of issue and return all uniform pieces upon leaving employment with the city or with the department that issued the uniform. Failure to return all issued equipment may result in delay or reduction of final pay disbursement.

E. Employees required to wear safety boots will be reimbursed the cost of said boots~~follow the City "Quartermaster" system for purchasing said boots, paid for by the City~~ on an as-needed basis no more than once per calendar year; provided that boots may be purchased more often if the boots are deemed by their supervisor ~~Quartermaster~~ to be no longer serviceable. ~~Effective January 1, 2015, t~~The annual reimbursement for boot allowance ~~under the City's "Quartermaster" system is~~ shall be $250. In lieu of reimbursement and with supervisor approval an employee may charge safety boots on a mutually agreed vendor account set up by the City.

ARTICLE 15 - RATES OF PAY

Section 1. Effective January 1, 2020~~2017~~, the AFSCME salary schedule shall be increased by 100% of the CPI-W Seattle-Tacoma-~~Bremerton~~ Bellevue June 2018~~2015~~ to June ~~2016~~2019 Index, which is 1.7~~2.0~~ percent (1.7~~2.0~~%).

Section 2. Effective January 1, 2021~~2018~~, the AFSCME salary schedule shall be increased by 100% of the CPI-W Seattle-Tacoma-~~Bremerton~~ Bellevue June 2019~~2016~~ to June 2020~~2017~~ Index~~, which is 3.0 percent (3.0%).~~.

Section 3. Effective January 1, 2022~~2019~~, the AFSCME salary schedule shall be increased by 100% of the CPI-W Seattle-Tacoma-~~Bremerton~~ Bellevue June 2020~~2017~~ to June 2021~~2018~~ Index.

Section 4. Deferred Compensation. Employees are eligible to receive a 2% deferred compensation match of their base wage on an annual basis, upon enrollment, if they meet the following criteria:

1. The employee overall "meets expectations" as documented in their most recent performance review as of January 1, 2020, and;
2. The employee is at step 7 within the salary range for their position classification, or the employee has at least seven (7) years of service at the City. ~~.~~

Bargaining unit employees who are employed on the date this contract is signed and who meet requirement 2 above will be eligible for the deferred compensation match and will only be required to meet requirement 1 above upon the completion of their first performance review after January 1, 2020.

In the event that a performance review is not completed on or before the anniversary date, as defined by City policy as of the date this contract is signed, the employee will be eligible for the deferred comp match as outlined above until the next anniversary date.

The deferred comp match will be paid out every pay period.

Section 5 – Merit Hour: Employees eligible for merit hours on March 1, 2020 as outlined in the previous agreement will receive those hours in accordance with that agreement with confirmation from their supervisor that they have "exceeded expectations". ~~s: Employees who are compensated at Step 7 of the pay range and who receive an overall "exceeds job requirements" rating on their annual evaluation, shall be eligible to be awarded up to 42 merit hours. Merit hours eligible for award at the next annual review are based upon a percentage of annual hours worked and the month in which the employee was promoted to Step 7 according to the following schedule. Merit hours are pro-rated for part-time employees based upon the number of hours worked per year. Merit hours must be utilized within two years of being earned.~~

~~Annual Review Month in Which Step 7 is Attained~~	~~Merit Hours Employee is Eligible for on the Next Annual Review~~
~~January 1~~	~~42~~
~~February 1~~	~~39~~
~~March 1~~	~~35~~
~~April 1~~	~~32~~
~~May 1~~	~~28~~

~~June 1~~	~~25~~
~~July 1~~	~~21~~
~~August 1~~	~~18~~
~~September 1~~	~~14~~
~~October 1~~	~~11~~
~~November 1~~	~~7~~
~~December 1~~	4

ARTICLE 16 - HEALTH CARE

Section 1 - Medical Insurance. The City shall provide a medical insurance plan covering sickness and injuries for regular, full-time and regular part-time employees and their dependents. So long as the City is able to maintain group coverage under its existing providers, Regence/BlueShield, or a replacement thereof, the City will provide optional coverage with Kaiser Permanente; provided, however, that in the event the City group coverage plan is jeopardized as a result of payment to this optional carrier, the City may terminate this selection by notifying the employees in writing.

The City shall provide medical coverage to employees covered by this Agreement in the form of a choice between the following plans:

1. Association of Washington City's (AWC) Regence BlueShield HealthFirst – 250 Plan ~~or a materially similar plan~~, or; ~~,~~
2. AWC's Regence Blue Shield High Deductible Health Plan (HDHP), ~~and optional group coverage under~~or;
3. AWC's Kaiser Permanente $20 co-pay/$200 deductible Plan (HMO).

~~Section 2 – Voluntary Employees' Beneficiary Association (VEBA). The City agrees to provide a VEBA or something similar to AFSCME employees in recognition of the savings the City achieved by moving to the Regence BlueShield HealthFirst 250 Plan and Kaiser Permanente $20 co-pay/$200 Deductible Plan.~~

~~Regence BlueShield HealthFirst 250 Plan: Effective January 1, 2018 the City agrees to contribute a one-time lump sum into a VEBA in the amount of $250 for employee only, $500 for employee and one (1) dependent, $750 for employee and two (2) dependents and $1,000 for employee and three (3) or more dependents.~~

~~Kaiser Permanente $20 co-pay/$200 Deductible: Effective January 1, 2018 the City agrees to contribute a one-time lump sum into a~~

~~VEBA in the amount of $200 for employee only and $400 for employee and one (1) or more dependents.~~

Section 2 –Health Savings Account (HSA). Effective January 1, 2020 the City agrees to provide an HSA for employees who enroll into a HDHP as outlined in Section 1.

A. For the first year that an employee enrolls into a HDHP, the City agrees to contribute a one-time lump sum into a HSA in the amount of $2000 for an employee only or $4000 for an employee who has a spouse and/or dependent(s) enrolled on their plan. Employees are only eligible for the lump sum payment outlined in this section one time. ~~.~~

B. –For the second year an employee rolls into a HDHP and every year after, the City agrees to contribute a lump sum of $1500 for an employee only or $3000 for an employee who has a spouse and/or dependent(s) enrolled on their plan.

Section 3 - Dental and Vision Insurance. The City shall provide group dental and vision insurance programs for regular, full-time and regular part-time employees and their dependents. Beginning on the first of the month that follows the date of signing this agreement, the City will provide WDS Dental Plan F and Orthodontic Plan V, or a materially similar plan, for regular, full-time and regular part-time employees and their dependents.

Section 4 – Long-term Disability Insurance. The City shall provide an AWC group long-term disability insurance plan with a 90 day waiting period and a 60% benefit to regular and limited term, full-time and part-time employees.

Section ~~4~~ 5 - Life and Accidental Death & Dismemberment (AD&D) Insurance. The City shall provide group life and AD&D insurance coverage on regular, full-time and regular part-time employees in the face amount of $50,000. Each employee may designate the beneficiary on such coverage. The City shall pay the premiums for said life and AD&D insurance for regular full-time employees and shall pay a portion of the premiums for regular part-time employees, as indicated in Article I, Section 4.

Section ~~5~~ 6 - Health Care Benefits. All health care benefits shall remain in force during the entire term of this contract. This includes all leaves of absence; in cases of leave without pay, the employee shall pay the health insurance premiums, with the exception of that portion of leave without pay that qualifies as Family and Medical Leave and maternal disability.

Section ~~6~~ 7 - Flexible Spending Account (FSA). The City shall provide and administer a Flexible Spending Account (FSA) for Employees and their dependents under IRC Section 125. Employees may choose to participate in the Premium Only and/or Medical and Dependent Care Expense Accounts.

Section ~~7~~ 8 - Healthcare Premiums. The City and employees shall share the cost of healthcare premiums as outlined below:

A. The City shall pay 100% of the medical and dental insurance premiums for regular full time employees, and 90% of the medical and dental insurance premiums for eligible employee spouse/dependents. Employees shall pay 10% of the medical and dental insurance premiums for their eligible spouse/dependents. The City shall pay 100% of the vision insurance premiums for regular full time employees and their dependents.

The City shall pay a portion of the premiums for regular part-time employees pursuant to items A of this section and as indicated in Article 1, Section 4.

Health benefit eligible employees who share a dependent or dependents may only enroll the dependent or dependents under one of the employees' health plans. The City will not pay the employer portion for dependent coverage under both plans. Employees who receive health benefits as an employee of the City may also cover themselves or their separate dependents under the spouse's or domestic partner's City health plan, but entirely at their expense.

Section ~~8~~9. The City retains the right to change the carrier or funding mechanisms for any or all of the above insurance coverage, provided benefits are not materially reduced during the term of this contract. Should management wish to consider benefit trade-offs for an overall improvement to the health benefit plans, management will negotiate with Union regarding the trade-off provisions.

Section ~~9~~10. In order to be eligible for domestic partner benefits, the employee and his/her domestic partner must meet the qualifications under RCW 26.60 and be registered as domestic partners with the State of Washington. Proof of registration with the State must be on file with Human Resources to be eligible for benefits.

Section ~~10~~11. Healthcare "Opt Out" Option: Benefit eligible employees may choose to "opt out" of the City's medical insurance coverage and be eligible to receive a premium rebate as follows. (Note: for the employee to "opt out" they must provide annual proof of coverage for themselves under another group medical insurance plan. (Proof of coverage may also be requested by the City at any other time.) Monthly rebates shall be divided among pay periods (24 per year) and pro-rated for eligible part-time employees and period worked. New employees who opt out shall be eligible for a rebate the first pay period they are employed.

	Employee Opt Out	Spouse/Domestic Partner and Dependents Opt Out
Monthly Rebate	$110.00	$220.00
Requirement	Must provide annual proof of coverage and enrollment under	Employee declines coverage for eligible

	another group medical insurance plan.	spouse/domestic partner and dependents.

Section ~~11~~12. Healthcare Opener.
Both parties understand that there are potential cost savings to the City when employees choose to enroll into a HDHP. Both parties agree to re-open Article 16 from January 1, 2022 to March 31, 2022 to evaluate the cost savings of HDHP enrollment and discuss the overall benefits package provided to employees. During this time period both parties agree to discuss and negotiate in good faith changes to Article 16 and the overall benefits package within available budgeted funds as approved by the City Council. If agreement is reached to make changes they can be implemented in the form of a Memorandum of Understanding signed by the City Manager and the Union President.
~~The City and Union agree to re-open Article 16 - Healthcare in the 2nd year of the contract to evaluate the cost savings of employees moving to the HDHP.1st quarter of 2018 to examine health care costs and consider alternative health care plans. The terms of this Article may only be altered by mutual agreement, and both parties agree to negotiate in good faith.~~

ARTICLE 17 - HOLIDAYS

Section 1. The following holidays shall be recognized as follows:

Holiday	Date to be Observed
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25
Two Floating Holidays	At Employee's Choice with Department Head Approval

All regular full-time employees' holiday pay will be paid at 8 hours. If any holiday, with the exception of the non-cumulative personal holiday, falls on a Saturday, the preceding Friday shall be the observed holiday. If the holiday falls on a Sunday, the following Monday shall be the observed holiday.

Employees working other than five 8-hour days will be compensated for 8 hours of holiday and must either take accrued vacation or comp-time or~~able to~~ adjust their work schedule to accommodate the 8 hour holiday in a manner mutually agreed upon with their supervisor.

Whenever a holiday falls on an employee's regularly scheduled day off and the employee is not granted another day off during the work week in which the holiday was observed, a compensating day off with pay shall be added to the employee's holiday bank. Holidays banked under this section are not eligible for cash out and must be utilized in the year in which they are earned. All regular part-time employees' holiday pay shall be based on their regularly scheduled work hours during the month in which the holiday occurs. This compensation shall be rounded off to the nearest one-half hour. To be eligible for Holiday pay, an employee must be on paid status the work day immediately preceding and the work day immediately following a holiday.

Section 2. An employee required to work a holiday shall be paid at time and one-half of their regular rate of pay, plus eight hours of holiday pay at their regular rate of pay. Employees who are required to work 4 hours or more on Christmas Day, Thanksgiving Day, and New Year's Day, Labor Day, Independence Day or Memorial Day shall be entitled to a supplementary payment of $60.00. Police employees are subject to the provisions specified in addendum A.

Section 3. An employee shall be eligible for Floating Holidays upon completion of six (6) months continuous employment. The holiday shall be taken at a time approved by the employee's supervisor. The employee shall make a request to the supervisor five (5) days in advance unless waived by the supervisor. Upon separation an employee will be paid pro-rata accrual for floating holidays if not already taken for the year.

ARTICLE 18 - VACATIONS

Section 1. Annual paid vacation time shall be granted according to the following chart. All regular part-time employees' vacation accrual shall be pro-rated based on their regularly scheduled work hours. This compensation shall be rounded off to the nearest one-half hour. The accrual schedule is as follows:

Completed years of Continuous Full-Time Service from Date of Hire	Annual Vacation Hours Accrued
1 year	96 hours
4 years	120 hours
9 years	144 hours
14 years	160 hours
19 years	176 hours

Section 2. After six (6) months continuous service, an employee's vacation days accrued shall be vested as of the end of each full month's service from date of hire. No employee may take paid vacation time off during the first six months of employment.

Section 3. Vacations shall be taken at times approved by the Department Head, but with due regard for other desires of the employee. Employee vacation requests shall be

submitted normally within five (5) days advance notice unless waived by the employer and shall be responded to within five (5) working days of the request.

Section 4. Up to two-hundred and forty (240) hours of ~~one year's~~ accrual may be carried over to the following calendar year. ~~Accruals in excess of one year up to a maximum of two years require City Manager approval.~~ Upon separation of service employees will have all vacation accrual paid out at their base hourly rate.

ARTICLE 19 - OTHER LEAVES OF ABSENCE

~~Section 1 - Sick Leave. Sick leave shall be earned and utilized based on the accrual of eight (8) hours of sick leave for each month of continuous full-time employment, with a maximum accumulation of 960 hours. All regular part-time employees' sick leave shall be pro-rated based on their regularly scheduled work hours. This compensation shall be rounded off to the nearest one-half (½) hour. Sick leave may be used for the following purposes:~~

~~A. Personal illness or incapacity.~~

~~B. Medical or dental treatment of the employee or his/her dependents.~~

~~C. Illness necessitating the employee's absence from work to care for an immediate family member. Immediate family shall include:~~

~~1. Spouse/domestic partner of employee;~~
~~2. Child of employee, including stepchildren;~~
~~3. Parent, grandparent, sister or brother of employee;~~
~~4. Any relative living in employee's household; and~~
~~5. In relationships other than those set forth above where the employee is responsible for care, the use of sick leave may be granted by the City, upon request.~~

~~D. Family and Medical Leave as indicated by City Policy and applicable State and Federal Law.~~

~~E. To supplement a disability insurance or workers' compensation benefit, if allowed by the applicable policy or law, but only to a maximum of six consecutive months' absence from work unless otherwise indicated by the Americans with Disabilities Act.~~

~~Where practicable, notification of absence due to illness or injury shall be given to the relevant supervisor as soon as possible, but no later than one-half hour prior to the start of the work day. Failure to so notify may result in disciplinary action. The City may require a doctor's certificate to verify the use of sick leave. (See special provisions for Police department employees in Addendum A.)~~

Section 1 Sick Leave. Sick leave shall be earned and utilized based on the accrual of eight (8) hours of sick leave for each month of continuous full-time employment. All regular part-

time employees' sick leave shall be pro-rated based on their regularly scheduled work hours. This compensation shall be rounded off to the nearest one-half (½) hour. Any sick leave accrued which is unused and unconverted to vacation per the section 7 below shall be carried over from one calendar year to the next. Sick leave may be used for the following purposes:

A. The employee's own illness, injury or health condition; to accommodate the need for medical diagnosis, care or treatment of a health condition; or preventive medical care.

B. The employee's care for a family member with illness, injury or health condition; care for family member who needs medical diagnosis, care or treatment; care for family member who needs preventive medical care. Family members include an employee's child (whether biological, adoptive, foster, step-child, or child for whom employee stands in loco parentis, is a legal guardian for, or is a de facto parent and regardless of age or dependency status); parent (whether biological, adoptive, in-law, de facto, step-parent, legal guardian or person who stood in loco parentis to employee when employee was a child); spouse or registered domestic partner; grandparent; grandchild; sibling; any relative living in employee's household or in relationships other than those set forth above where the employee is responsible for care, the use of sick leave may be granted by the City, upon request.

C. Medical, dental or vision treatment of the employee or his/her family member.

D. An absence due to closure of the City's offices by order of public official for any health-related reason, or where the employee's child's school or day care is closed for such a reason.

E. Absences covered by the Domestic Violence/Sexual Assault leave policy.

F. Family and Medical Leave as indicated by City Policy and applicable State and Federal Law.

G. To supplement a disability insurance or workers' compensation benefit, if allowed by the applicable policy or law, but only to a maximum of six consecutive months' absence from work unless otherwise indicated by the Americans with Disabilities Act.

Where practicable, notification of absence due to illness or injury shall be given to the relevant supervisor as soon as possible, but no later than one-half hour prior to the start of the work day. Failure to so notify may result in disciplinary action. The City may require a doctor's certificate to verify the use of sick leave. (See special provisions for Police department employees in Addendum A.)

Section 2 - Bereavement Leave. A full-time employee may be granted up to three (3) days of leave without loss of pay because of death of a member in the immediate family. A part-time employee may be granted bereavement leave, pro-rated based on his/her regularly scheduled work hours. Bereavement leave may be utilized while an employee is on probation. Bereavement Leave over three days per death shall be charged to Sick Leave. For purposes of this section, immediate family shall be defined as ~~husband, wife, domestic,~~ spouse, domestic partner, children, stepchildren, mother, father, stepparents, in-laws, grandparents, grandchildren, brother or sister of the employee, and any individual as approved by the employee's Department Director.

Section 3 - Military Leave. Employees will be granted military leave in accordance with state and federal law. ~~In accordance with RCW 38.040.060, eligible employees shall receive employer pay up to fifteen (15) days during each calendar year.~~

Section 4 - Civil Leave. While on jury duty or while appearing as a legally required witness, an employee will receive full pay from the City. Court payments for travel are to be retained by the employee.

Section 5 - Leave Without Pay. The City Manager may grant leave of absence without pay in appropriate circumstances. In order to apply, employees must submit a written request to their Department Head, who shall forward the request with comments to the City Manager for a final decision. Vacation Leave and Compensatory Time shall be exhausted before the employee will be granted leave without pay. Said employee shall not accrue vacation or sick leave, nor shall he/she continue to receive health or life insurance benefits during said leave, except that the employee may pay the full premiums for said benefits one month in advance for the period of said leave. Employees taking leave without pay for family and medical leave will have their health benefits paid for up to 12 weeks of leave, according to City policy.

Section 6 - Shared Leave Program. The Shared Leave Program enables regular and limited term full-time and part-time employees to donate annual vacation and/or comp-time leave to fellow regular full-time and part-time employees who are faced with taking leave without pay or termination due to extraordinary personal illness or incapacity or other similar catastrophic events. The program also allows employees to accept donated annual vacation and/or comp time leave to care for immediate family members as defined in Section 1 of Article XVII of this Agreement, suffering from an extraordinary personal illness or incapacity if the duration of the illness will cause the employee to take leave without pay or to terminate his or her employment. Implementation of the program for any individual employee is subject to agreement by the City and the availability of shared leave from other employees. The City's decisions in implementing and administering the shared leave program shall be reasonable.

6.1 Donor Restrictions. An Employee may donate any amount of vacation and/or comp-time leave to which he/she is entitled provided the donation does not cause the employee's vacation leave and/or comp-time bank to fall below 40 hours. The

donation shall be accounted for in a dollar amount equal to the hours donated multiplied by the hourly pay of the donor.

6.2 Donee Restrictions. A post-probationary employee may receive shared leave provided he/she meets the following standards:

A. The employee has complied with the sick leave provisions of this Agreement insofar as they may be applicable.

B. The employee is not eligible for time-loss compensation under RCW 51.32 (Worker's Compensation) or disability benefit payments through the disability insurance plan, except as provided below.

C. The employee has submitted, if requested, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

D. All other forms of available paid leave in excess of 40 hours of sick leave and 40 hours of vacation leave shall be used before shared leave.

E. Leave shall be granted in an amount of hours equal to the donation dollar amount divided by the hourly pay of the donee.

F. If an employee is on leave without pay and receiving disability or workers' compensation benefits, shared leave may also be received in an amount sufficient to pay the employee's health care benefits while on leave without pay, for a maximum of six consecutive months.

~~Section 7. Sick Leave Incentive Program. Employees are eligible for an incentive for reduced use of sick leave for each calendar year. Incentive will be paid as follows:~~

~~A. Less than 11 hours of sick leave used in one calendar year - 16 hours of vacation added to vacation leave bank.~~

~~B. Between 11 and 20 hours of sick leave used in one calendar year - 8 hours of vacation added to vacation leave bank.~~

~~C. New employees eligible for sick leave incentive hours shall have the hours prorated based upon their month of hire.~~

~~Section 8. Sick Leave Incentive Bank: Once an employee has reached the sick leave cap identified in Section 1 of this article, a separate bank of additional sick leave hours will be established. This will be known as the "sick leave incentive bank", which will have a maximum accrual cap of 960 hours. Employees may only add to the sick leave incentive bank when they are at the maximum accruable hours of their regular sick leave bank. Sick~~

leave may not be drawn from the sick leave "incentive" bank unless the employee authorizes the use of sick leave "incentive" bank hours.

Upon separation from service in good standing, employees will be reimbursed a percentage of the cash value of the accrued leave at their current rate of pay for all hours in their sick leave "incentive" bank based upon the following schedule:

Voluntary termination	10%
Layoff or Retirement	20%

The employee may request the reimbursement be paid out to them in their final check, or contributed to the employee's City deferred compensation plan.

Retirement for the purposes of this policy refers to an employee who is eligible and has made application to begin collecting retirement benefits from Washington State Retirement Systems at the time of separation from service with the City.

Section 7. Sick Leave Conversion. Annually, rRegular eEmployees with more than 96 hours of accrued sick leave have the option of converting up to 24 hours of accrued sick leave to vacation leave. Employees electing to convert sick leave to vacation must notify Human Resources by November 1st and specify the number of hours to be converted, not to exceed 24. Human Resources will confirm the Regular Employee has at least 96 hours in their sick leave bank and will process the conversion to be effective the secondfirst pay period in DecemberJanuary.

Section 8. Pay Out of Sick Leave Upon SeparationCash Out: Upon separation from service in good standing, employees will be reimbursed a percentage of the cash value of the accrued leave at their current rate of pay for all hours in their sick leave bank over 960 based upon the following schedule:

Voluntary termination	10%
Layoff or Retirement	20%

The employee may request the reimbursement be paid out to them in their final check, or contributed to the employee's City deferred compensation plan.

Retirement for the purposes of this policy refers to an employee who is eligible and has made application to begin collecting retirement benefits from Washington State Retirement Systems at the time of separation from service with the City.

Except as stated in Section above, unused sick leave will not be cashed out upon separation from the City. However, if a separated employee is rehired by the City within 12 months, the accrued sick leave balance that existed as of the separation date will be reinstated (excluding any portion that was paid out).

Section 9. Washington State Paid Family and Medical Leave (PFML). Employees are entitled to PFML effective January 1, 2020 in accordance with Title 50A of the

Revised~~gistered~~ Code of Washington. The City shall deduct 63.333% of the PFML premium from employee's paychecks in accordance with state law.

Section 10. Wellness Days. Between January 1 and October 1 of every year, employees that provide evidence to the Human Resources Department that they have completed the annual AWC Well City incentive will receive two (2) wellness days off. The days off shall be used by December 31 of the same year as approved by their supervisor. The utilization of wellness days shall not be unreasonably denied by management. All aspects of this incentive must comply with the requirements of the Health Information Privacy Protection Act (HIPAA).

ARTICLE 20 - DRUG TESTING

Section 1. Omnibus Transportation Employees Test Act - Policy Statement. The provisions of this Section are intended to comply with the Omnibus Transportation Employees Testing Act of 1991 (the Act) and relevant Department of Transportation regulations. The parties agree that the workplace should be free from the risks posed by the use of alcohol and controlled substances in order to protect the safety of employees and the public. The unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the workplace. The parties further recognize that the abuse of alcohol and controlled substances is a treatable illness and the employer will make reasonable efforts to provide assistance to employees in need of help. An employee assistance program (EAP) is available to employees with personal problems, including those associated with alcohol or controlled substances use. The Employer and the Union will aid such employees who request assistance with such problems. The Employer and the Union will encourage the employee to seek professional assistance where necessary.

ARTICLE 21 - SAVINGS CLAUSE

Section 1. Should any Section of this Agreement or any addenda thereto be held invalid by operation of law or by any tribunal of competent jurisdiction, or should compliance with or enforcement of any provision be restrained by such tribunal, the remainder of this Agreement and addenda shall not be affected thereby. At the request of either Union or the City, both parties shall enter into negotiations within ten (10) working days after said request for the purpose of arriving at a satisfactory replacement for the invalidated language.

Section 2 - Supremacy of Agreement. This Agreement, when in conflict with any Personnel Policy, Civil Service Rule or Regulation, shall prevail over such policy, rule or regulation. In all other cases, the Personnel Policy, Civil Service Rule or Regulation shall apply to employees in the bargaining unit.

Section 3 - Changes in Personnel Policies. Any changes in Personnel Policy materially affecting mandatory subjects of bargaining may be addressed in Labor Management Committee. This will not be considered a waiver of the Union's right to bargain regarding changes, as may be required by RCW 41.56.

ARTICLE 22 - TERM OF AGREEMENT

Section 1. Unless otherwise specifically indicated in this Agreement, this Agreement shall be effective upon ratification by the Union and approval by the City Council and shall remain in effect through December 31, ~~2019~~2022.

RATIFIED BY THE UNION THIS _____ DAY OF _____, _____.

THE WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES AFSCME -
AFL-CIO LOCAL #3845

_____
~~Barry Tookey~~ Carrie Caffrey
President, Local #3845

_____
~~Aaron Milner~~Peter Pearson
Vice President, Local #3845

_____
~~Jeff Smith~~Robin Schaefer
Secretary/Treasurer, Local #3845

_____
~~Pat Thompson~~Josh Marburger
Washington State Council of County and City
Employees, AFSCME - AFL-CIO

APPROVED BY THE BOTHELL CITY COUNCIL THIS _____ DAY OF _____, ~~2017~~2020.

THE CITY OF BOTHELL

_____
Jennifer Phillips
City Manager

Attest:

_____
Laura Hathaway
City Clerk

Addendum A
to the Agreement between
the City of Bothell and AFSCME Local #3845
Regarding Civilian Police Department Employees

This Addendum is adopted as part of the agreement between the City of Bothell and AFSCME Local 3845. Where provisions of the contract conflict with this Addendum for employees of the Bothell Police Department who are represented by AFSCME, the following provisions shall supersede.

Section 1. Probationary Period. AFSCME Police Department employees, newly employed in Dispatch, Records, and Police Support Officer positions, have a 12 month probationary period.

Section 2. Working Hours & Shifts. All employees shall be employed on the basis of a work shift of between an eight (8) hour to a twelve (12) hour day. The specific hours and days worked shall be at the discretion of the Chief of Police or his/her designee.

1. Police Communications Center - This Addendum specifically recognizes the need for a flexible "relief" or "cover" shift in the Police Communications Center. Accordingly, as staffing levels permit, Police Dispatchers may be assigned to a relief shift at the discretion of the Police Chief or his or her designee. Such assignment shall be voluntary and will work a flexible 40-hour week, based on a four (4) ten (10) hour days shift. Such flexibility is necessary to meet staffing needs of the Communications Center and shall be approved by the Dispatch Supervisor.

2. Rotating Shifts - Employees who are required to work a rotating shift shall be assigned to a new shift at each scheduled rotation period. Rotation lengths are typically 3 or 4 months in length, and any substantive change is subject to written agreement of the Union and Management. Employees who are required to work longer than the scheduled rotation for a period greater than two weeks will be entitled to an increase in their base wage by three (3) percent for each week worked past the scheduled rotation. This premium will not apply if the employee voluntarily requests to remain on a shift (either through shift trading or by filling an available position). It will however apply in any other instance where an employee is required to remain on the shift by the Chief of Police or his/her designee.

Section 3. Changes in Normal Work Week/Hours. Should it be necessary in the interest of efficient operations, or in times of an emergency, to establish schedules departing from the normal work schedule, the City will give written notice of such change to the employee as far in advance as it is reasonably practical. Whenever possible, employees will be given at least ten days notice**,** unless agreed upon by both parties. In all such cases, the City will make every effort to accommodate and/or mitigate the potential impacts of the schedule change to the satisfaction of the employee and the City. This may include consideration of alternate scheduling, work assignments and/or time and a half compensation.

Section 4. Rest Periods and Lunch Periods. AFSCME Police employees who are required to remain in a status of continuous response shall be compensated for a shift that includes breaks and lunch periods. Other employees are governed by Article 12, Section 3 of the Agreement.

Section 5. Overtime. The hours worked in excess of a work shift day of between eight (8) hours and twelve (12) hours per shift day are designated as overtime. Employees shall work overtime only with the specific and prior approval of the Chief of Police or his/her designee. In circumstances where unscheduled overtime is required to meet minimum staffing levels, every attempt will be made to make required notifications, however overtime shall be assumed to be authorized unless specifically designated otherwise by the Chief of Police or his/her designee. In addition, all hours worked outside of an employee's regularly assigned shift (with the exception of non-mandatory training) will be considered overtime and will be paid at the overtime rate. This section replaces the current "short rollback" provision and short rollback will no longer be paid.

Section 6. FLSA Exempt Status: The Police Records Supervisor and Police Communications Supervisor positions will be treated as FLSA non-exempt and will be eligible to earn over-time and compensatory time.

Section 7. Callback. AFSCME Police personnel called back for training, mandatory meetings, or job related duties shall be paid at the overtime rate. AFSCME Police Employees who attend training, mandatory meeting, or job related duties on their regular days off shall be paid at the overtime rate for every hour of work, with a (3) three hour minimum. This requirement for overtime pay for training shall follow the provisions found in FLSA guidelines.

Section 8. Standby. AFSCME Police employees who are required, during an emergency or staffing shortage, to standby for callback at their residence during off duty hours shall receive standby pay at the rate of half (1/2) their hourly rate for every hour on standby. Such standby must be required by supervisory or command personnel.

Section 9. Call-Back Meals. AFSCME Police employees shall not be entitled to call-back meals.

Section 10. Clothing and Appearance. AFSCME Police personnel who are required to wear uniforms shall receive Department authorized uniforms and other clothing pursuant to the Police Department Quartermaster system in effect at the date of signing this agreement. The employer agrees to pay up to $30 per month towards cleaning services for Uniforms supplied by the Employer for each member of the bargaining unit who is required to wear uniforms.

Section 11. Holiday's and Vacation. AFSCME Police Employees shall receive the same number of vacation hours (outlined in Article 18) and holiday leave (96 hours) (outlined in Article 17) annually as non-police employees, (shift workers in Dispatch will receive an

additional 8 hours of holiday leave annually on January 1st), in lieu of regular holiday days off afforded to non-police AFSCME employees.

Effective January 1, 2012, the annual 96 hours of holiday leave will be added to each full-time employee's holiday leave bank on January 1st of each year (full-time shift workers in Dispatch will receive 104 hours of holiday leave). The 96 hours (or 104 hours for Dispatch) of holiday leave will be pro-rated for part-time employees. When an employee takes a paid day of Holiday leave, the number of hours taken will be deducted from their Holiday leave bank. Leave may be scheduled for use upon the agreement of the employee and their manager, consistent with Department Policy.

Holiday leave must be utilized in the year in which it is earned and is not eligible for cash out except as provided in this section. Upon separation from service, holiday leave not taken will be cashed out on a pro-rated basis in relation to the number of holidays that have occurred in the year at the time of separation less the number of hours of holiday leave already taken by the employee for the year. (For example, if the employee separates from service in March, three holidays have occurred. If the employee has only utilized holiday leave hours equivalent to two holidays, they would be eligible for one day of holiday leave cashed out upon separation. However, if the employee has utilized holiday leave hours equivalent to three holidays, they would not be eligible for any holiday leave cash out.) Conversely, upon separation from service if the employee has utilized more holiday hours than have occurred in the year at the time of separation, the employee shall reimburse the City from their final paycheck for the excess holiday hours taken. (For example, if three holidays have occurred at the time of separation and the employee has taken holiday leave equivalent to four holidays, the employee must reimburse the City for one day of holiday leave.)

An AFSCME Police Employee required to work any of the following holidays shall be paid at time and one-half of their regular rate of pay:

Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Easter Sunday	April
Memorial Day	Last Monday in May
Labor Day	First Monday in September
Veteran's Day	November 11
Day after Thanksgiving	Fourth Friday in November

AFSCME Police Employees required to work Christmas Day, Thanksgiving Day, July 4 or New Year's Day shall receive double time for all hours worked on the holiday.

Section 12. Vacation Scheduling. Vacation time for AFSCME Police Dispatch, Public Safety Officers and Records employees shall be granted using a priority system of primary and secondary requests.

In December of each year, employees will submit primary and secondary vacation requests for the following year. These requests must be submitted by December 31. Primary requests will be approved or denied not less than 60 days before the request is to take effect. Secondary requests will be approved or denied not less than 30 days before the request is to take effect. Every effort will be made by management to approve primary vacation requests.

When a conflict exists between requests, primary will be honored first, with seniority in position being the deciding factor between primary requests. Secondary requests will be honored second, again with seniority in position being the deciding factor. Additional vacation requests, or those submitted after the deadline, will be granted, as coverage is available.

~~Section 13. Sick Leave - Notification. Due to staffing requirements, notification of absence shall be given to the on-duty supervisor at the first indication that sick leave may be necessary, but no later than one and one-half hours prior to the start of the assigned shift. Failure to so notify may result in disciplinary action. The City may require a doctor's certificate to verify the use of sick leave.~~
Section 13. Sick Leave - Notification. Due to staffing requirements, notification of absence shall be given to the on-duty supervisor at the first indication that sick leave may be necessary, but no later than one and one-half hours prior to the start of the assigned shift. Failure to so notify may result in disciplinary action.

Section 14. Premium Pay.

1. Second Language Premium. Employees covered by this Addendum are required to speak and write fluently in English. Those who possess approved second language skills will receive 2% premium pay for the duration of their employment. Employees must be able to speak, understand, and clearly communicate in the second language to be eligible for the premium. Target languages include Spanish, Asian and Southeast Asian dialects, Japanese, and other languages as approved by the Chief of Police.

2. Training Premium. Police Dispatchers, Police Records Specialists, and Police Support Officers who are assigned to train new employees will receive a 4% premium pay while so engaged.

3. Master Public Safety Telecommunicator (MPST). Public Safety Telecommunicators who are assigned to the MPST shall receive a (six percent) 6% incentive premium based on the employee's monthly base salary.

   Public Safety Telecommunicators who have made application to serve as MPSTs may be assigned by the Police Chief to serve in that capacity. This special assignment is not a civil service rank and the Public Safety Telecommunicator shall serve in the position of MPST at the discretion of the Chief of Police.

One MPST will be assigned to each shift (day, swing, and night) and may not remain on the same shift for more than two consecutive rotations, unless the needs of the Division dictate otherwise.

Public Safety Telecommunicators may be assigned as both an MPST and as a Communications Training Officer (CTO). Compensation for simultaneous assignment to these two duties shall be no more than a combined total of six percent (6%) incentive premium based upon the Public Safety Telecommunicator's monthly base salary.

City of Bothell™

City Council
Agenda Bill
AB # 20-006

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Paul Byrne, City Attorney
Elana Zana, Attorney, Ogden Murphy Wallace (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of an Ordinance Granting a Small Wireless Facilities Franchise Agreement to New Cingular Wireless, aka AT&T

POLICY CONSIDERATION: This item asks the City Council to consider if the City should adopt an ordinance granting a small wireless facility franchise to New Cingular Wireless, aka AT&T.

If approved, it has the potential to impact community members by improving the quality of wireless communication. Further, the location of the small wireless facilities will typically occur in the rights-of-way.

HISTORY:

DATE	ACTION
NOVEMBER 19, 2019	Council adopted code amendments to Chapter 12.11 BMC pertaining to wireless communication facilities and small wireless facilities
DECEMBER 17, 2019	Council approved this item on the consent agenda and set the matter to January 21, 2020 for discussion.

DISCUSSION: In Washington, a telecommunications company or utility that wishes to locate its facilities within city rights-of-way generally obtains a franchise (similar to a master permit) from that city. The franchise sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. RCW 35A.47.040, contains state delegation of franchising authority to the City.

Currently, the City of Bothell has franchises with various telecommunications service providers. In this instance, New Cingular Wireless, aka AT&T is requesting a franchise to install, operate and maintain small wireless facilities in the City of

Bothell's rights of way. These installations may only be installed consistent with the City's new code requirements for small wireless facilities in Chapter 12.11 BMC.

This franchise does not permit AT&T to operate a broadcast cable system, macro wireless facilities or wireline facilities within the City's rights of way. AT&T is still required to apply for all appropriate permits prior to constructing its facilities within the rights of way and go through the applicable land use process.

FISCAL IMPACTS: There are no fiscal impacts associated with this item.

ATTACHMENTS:

Att-1. Proposed Ordinance Small Wireless Facility Franchise to New Cingular Wireless

RECOMMENDED ACTION: Adopt the proposed Ordinance granting a Small Wireless Facility Franchise to New Cingular Wireless PCS, LLC.

ORDINANCE NO. _____(2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO NEW CINGULAR WIRELESS PCS, LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, NEW CINGULAR WIRELESS PCS, LLC (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a wireless telecommunications network; and

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

WHEREAS, the Bothell Municipal Code requires persons who are seeking to operate and maintain wireless telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. NEW CINGULAR WIRELESS PCS, LLC is granted a non-exclusive franchise for the transmission of wireless telecommunications in, through, over, and under the rights-of-way of the City of Bothell, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law ("Effective Date").

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

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This Franchise is entered into in Bothell, Washington, by and between the City of Bothell, a Washington municipal corporation (hereinafter "the City"), and NEW CINGULAR WIRELESS PCS, LLC (the "Franchisee"). The City and Franchisee are sometimes referred to hereinafter collectively as the "parties."

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years, beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days' written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Wireless Facilities, as defined in Section 2.2, for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Bothell Zoning Code, the Comprehensive Plan, the Design and Construction Standards, and the Bothell Municipal Code (collectively, the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: Small Wireless network consisting of a collection of interrelated Small Wireless Facilities designed to deliver all services authorized by federal or state law, including personal wireless services, telecommunications services, and commercial mobile data services, as those terms are defined by federal law (the "Services").

Section 2.2 As used herein, "Small Wireless Facilities" or "Facilities" means a small wireless facility as defined in 47 CFR § 1.6002. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from "Small Wireless Facilities." Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e., macro facilities).

Section 2.3 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

Section 2.4 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.5 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the

City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Bothell Design and Construction Standards and applicable Code requirements in effect at the time of the specific Facility application. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 *Relocation Requirement*. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity; provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

Section 5.2 *Relocation – Third-Party Structures*. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

Section 5.3 *Relocation – Franchisee-Owned Structures.* The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 5.4 *Locate*. Upon request of the City or of a third-party performing work in the Right-of-Way and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.5 *Notice and Relocation Process*. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the

City's overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.

Section 5.6 *Alternative Arrangements*. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 *Contractor Delay Claims*. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, as defined in Section 38.8 below, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 *Indemnification*. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.9 *City's Costs.* If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.10 *Survival*. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Wireless Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

Section 6.2 Franchisee shall not be required to underground any portion of the Facility that must for technological reasons remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of

the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Wireless Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or

federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.5 Nothing in Section 7.3 or Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 8.5 If required by a permit, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above

ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such

condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 *Additional standards include*:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10.4 *Stop Work Order*. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee by overnight delivery;

(d) Indicate the nature of the alleged violation or unsafe condition; and

(e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Design and Construction Standards. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost

and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Franchisee shall further be subject to

all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may

also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 5.08 of the Bothell Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Chapter 5.08 of the Bothell Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Chapter 5.08 of the Bothell Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Bothell Municipal Code as may be permitted by law.

Section 15. Small Wireless Facilities.

Section 15.1 *City Retains Approval Authority*. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or

regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state, or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

Section 15.2 *City Approvals and Permits*. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

Section 15.3 *Preference for Existing Infrastructure; Site Specific Agreements*.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment, and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may

request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(c) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(d) This Section 15.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of wireless facilities.

Section 15.4 *Concealment*. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 *Eligible Facilities Requests*. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. The designs as illustrated in a Small Wireless Permit, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a

proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

Section 15.6 *Inventory*. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance and shall provide the City an updated copy of the inventory report within thirty (30) days of a request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation, and photographs taken before and after the installation of the Small Wireless Facility and taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 *Unauthorized Facilities*. Any Small Wireless Facilities installations in the Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Penalty"). The Unauthorized Facility Penalty shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Penalty shall be suspended upon the submission of a complete application to the

City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Penalty will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchisee an invoice detailing the total amount of the Unauthorized Facility Penalty, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Penalty pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Wireless Facilities but such Small Wireless Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

Section 15.8 *Graffiti Abatement*. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure or on the Small Wireless Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

Section 15.9 *Emissions Reports.*

(a) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable law.

(b) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities, which shall occur no more than once per year unless as otherwise required by a permit due to a modification of the Facility. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling 1-800-832-6662 and also by written notice pursuant to Section 31. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 14.3 and Section 14.4.

Section 15.10 *Interference with Public Facilities*. Franchisee's Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR § 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure) or with emergency communications operation or equipment. If the Small Wireless Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by the City consistent with Section 13. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more

immediate action consistent with Section 13 to protect the public health, safety, and welfare.

Section 15.11 *Interference with Other Facilities*. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 16. Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 16 and

any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance.

Section 17.1 Franchisee shall carry and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee, except for the Excess Umbrella coverage described in subsection (d) below. Franchisee shall carry insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and required additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of $5,000,000 combined single limit per accident for bodily injury and property damage.

(b) Commercial General Liability insurance as per ISO form CG 00 01 or its equivalent, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, contractual liability; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(d) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella excess liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

Section 17.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, employees and agents ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11. In addition, the required insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City a certificate of insurance and a blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 17 that is not replaced. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to obtain replacement insurance meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below.

Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 The City may review all insurance limits once every three (3) calendar years during the Term may make reasonable adjustments in the limits upon sixty (60) days' prior written notice to Franchisee. Franchisee shall then provide an updated certificate of insurance to the City showing compliance with these adjustments and shall furnish a blanket additional insurance endorsement.

Section 17.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) make available a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Telecommunications Network.

Section 18.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.6. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

Section 18.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

Section 18.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.4 Notwithstanding Section 18.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.5 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such

Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19. Bonds. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.1. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

Section 19.2 *Maintenance Bond*. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final

cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 19.3 *Franchise Bond*. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars ($50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20. Remedies to Enforce Compliance.

Section 20.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 20.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchise Bond set forth in Section 19.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 21. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Bothell City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Bothell City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City

Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 23. **City Ordinances and Regulations**. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 24. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 25. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 25, Section 27, and Section 38.2 of this Franchise shall be in addition to any and all other obligations and

liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 26. Assignment.

Section 26.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 26.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or

(iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 26.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 28. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 29. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 31. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF BOTHELL
Public Works Director
18415 101st Ave. N.E.
Bothell, WA 98011

Franchisee:
NEW CINGULAR WIRELESS PCS, LLC
Attn:
New Cingular Wireless PCS, LLC

Attn: Tower Asset Group – Lease Administration
Re: Wireless Installation on Public Structures
(City of Bothell) (WA)
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

With a Copy to:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept. - Network Operations
Re: Wireless Installation on Public Structures
(City of Bothell) (WA)
208 S. Akard Street
Dallas, TX 75202-4206

Section 32. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court ruling.

Section 33. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the

approval of this Franchise, the City may modify its Codes to address Small Wireless deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend,

indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 38. Miscellaneous.

Section 38.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 38.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington or King County Superior Court.

Section 38.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 38.6 This Franchise may be enforced at both law and equity.

Section 38.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 38.8Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 39. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the

Franchisee before a Notary Public. Acceptance must be filed with the City within thirty (30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 17; any Performance Bond, if applicable, pursuant to Section 19.1; and the Franchise Bond required pursuant to Section 19.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

_____
LIAM OLSEN
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

SUMMARY OF ORDINANCE NO. _____(2020)

City of Bothell, Washington

On the _____ day of _____, 2020, the City Council of the City of Bothell passed Ordinance No. _____(2020). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO NEW CINGULAR WIRELESS PCS, LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

EXHIBIT A

STATEMENT OF ACCEPTANCE

NEW CINGULAR WIRELESS PCS, LLC, for itself and its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____ Date: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 202_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

_____
Signature

_____
NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

City of Bothell™

City Council
Agenda Bill
AB # 20-007

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Paul Byrne, City Attorney
Elana Zana, Attorney, Ogden Murphy Wallace (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of an Ordinance Granting a Small Wireless Facilities Franchise Agreement to Seattle SMSA Limited Partnership dba Verizon Wireless

POLICY CONSIDERATION: This item asks the City Council to consider if the City should adopt an ordinance granting a small wireless facility franchise to Seattle SMSA Limited Partnership dba Verizon Wireless

If approved, it has the potential to impact community members by improving the quality of wireless communication. Further, the location of the small wireless facilities will typically occur in the rights-of-way.

HISTORY:

DATE	ACTION
NOVEMBER 19, 2019	Council adopted code amendments to Chapter 12.11 BMC pertaining to wireless communication facilities and small wireless facilities
DECEMBER 17, 2019	Council approved this item on the consent agenda and set the matter to January 21, 2020 for discussion.

DISCUSSION: In Washington, a telecommunications company or utility that wishes to locate its facilities within city rights-of-way generally obtains a franchise (similar to a master permit) from that city. The franchise sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. RCW 35A.47.040, contains state delegation of franchising authority to the City.

Currently, the City of Bothell has franchises with various telecommunications service providers including a macro wireless franchise with Seattle SMSA Limited

Partnership dba Verizon Wireless ("Verizon Wireless"), see Ordinance 2229. In this instance, Verizon Wireless is requesting a franchise to install, operate and maintain small wireless facilities in the City of Bothell's rights of way. These installations may only be installed consistent with the City's new code requirements for small wireless facilities in Chapter 12.11 BMC.

This franchise does not permit Verizon Wireless to operate a broadcast cable system, macro wireless facilities or wireline facilities within the City's rights of way. Verizon Wireless is still required to apply for all appropriate permits prior to constructing its facilities within the rights of way and go through the applicable land use process.

FISCAL IMPACTS: This item has no anticipated fiscal impacts.

ATTACHMENTS:

Att-1. Proposed Ordinance Small Wireless Facility Franchise to Seattle SMSA Limited Partnership dba Verizon Wireless

RECOMMENDED ACTION: Adopt the proposed Ordinance granting a Small Wireless Facility Franchise to Seattle SMSA Limited Partnership dba Verizon Wireless.

ORDINANCE NO. _____(2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, Seattle SMSA Limited Partnership d/b/a Verizon Wireless (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a wireless telecommunications network; and

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

WHEREAS, the Bothell Municipal Code requires persons who are seeking to operate and maintain wireless telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. Seattle SMSA Limited Partnership d/b/a Verizon Wireless is granted a non-exclusive franchise for the transmission of wireless telecommunications in, through, over, and under the rights-of-way of the City of Bothell, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law ("Effective Date").

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

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This Franchise is entered into in Bothell, Washington, by and between the City of Bothell, a Washington municipal corporation (hereinafter "the City"), and Seattle SMSA Limited Partnership d/b/a Verizon Wireless (the "Franchisee"). The City and Franchisee are sometimes referred to hereinafter collectively as the "parties."

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days' written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Wireless Facilities, as defined in Section 2.2, for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Bothell Zoning Code, the Comprehensive Plan, the Design and Construction Standards, and the Bothell Municipal Code (collectively, the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: Small Wireless network consisting of a collection of interrelated Small Wireless Facilities designed to deliver all services authorized by federal or state law, including personal wireless services, telecommunications services, and commercial mobile data services, as those terms are defined by federal law (the "Services").

Section 2.2 As used herein, "Small Wireless Facilities" or "Facilities" means a small wireless facility as defined in 47 CFR § 1.6002. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from "Small Wireless Facilities." Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e., macro facilities).

Section 2.3 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

Section 2.4 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.5 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the

City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Bothell Design and Construction Standards and applicable Code requirements in effect at the time of the specific Facility application. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 *Relocation Requirement*. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity; provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

Section 5.2 *Relocation – Third-Party Structures*. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

Section 5.3 *Relocation – Franchisee-Owned Structures.* The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 5.4 *Locate*. Upon request of the City or of a third-party performing work in the Right-of-Way and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.5 *Notice and Relocation Process*. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the

City's overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.

Section 5.6 *Alternative Arrangements*. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 *Contractor Delay Claims*. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, as defined in Section 38.8 below, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 *Indemnification*. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.9 *City's Costs.* If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.10 *Survival*. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Wireless Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

Section 6.2 Franchisee shall not be required to underground any portion of the Facility that must for technological reasons remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of

the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Wireless Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or

federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.5 Nothing in Section 7.3 or Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 8.5 Franchisee shall comply with all notice requirements of intended construction that the applicable permit may require that Franchisee provide to entities or persons adjacent to the affected area, and such notice shall contain the information required under the permit, which may include the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to

trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the

City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 *Additional standards include*:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 10.4 *Stop Work Order*. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

(a) Be in writing;

(b) Be given to the person doing the work or posted on the work site;

(c) Be sent to Franchisee by overnight delivery;

(d) Indicate the nature of the alleged violation or unsafe condition; and

(e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Design and Construction Standards. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may

determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise

pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized

so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 5.08 of the Bothell Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Chapter 5.08 of the Bothell Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Chapter 5.08 of the Bothell Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Bothell Municipal Code as may be permitted by law.

Section 15. Small Wireless Facilities.

Section 15.1 *City Retains Approval Authority*. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state, or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

Section 15.2 *City Approvals and Permits*. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

Section 15.3 *Preference for Existing Infrastructure; Site Specific Agreements*.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment, and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if the City prefers new

poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(c) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(d) This Section 15.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of wireless facilities.

Section 15.4 *Concealment*. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 *Eligible Facilities Requests*. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. The designs as illustrated in a Small Wireless Permit, including the dimensions and number of antennas and equipment boxes and the pole height are

intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

Section 15.6 *Inventory*. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance and shall provide the City an updated copy of the inventory report within thirty (30) days of a request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation, and photographs taken before and after the installation of the Small Wireless Facility and taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 *Unauthorized Facilities*. Any Small Wireless Facilities installations in the Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Penalty"). The Unauthorized Facility Penalty shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized

Facility Penalty shall be suspended upon the submission of a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Penalty will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchise an invoice detailing the total amount of the Unauthorized Facility Penalty, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Penalty pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Wireless Facilities but such Small Wireless Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

Section 15.8 *Graffiti Abatement*. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure or on the Small Wireless Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

Section 15.9 *Emissions Reports.*

(a) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable law.

(b) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities, which the City may request no more than once per year, unless as otherwise required by a permit due to a modification of the Facility. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling 1-800-264-6620 and also by written notice pursuant to Section 31. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 14.3 and Section 14.4.

Section 15.10 *Interference with Public Facilities*. Franchisee's Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR § 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure) or with emergency communications operation or equipment. If the Small Wireless Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by the City consistent with Section 13. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more

immediate action consistent with Section 13 to protect the public health, safety, and welfare.

Section 15.11 *Interference with Other Facilities*. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 16. Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 16 and

any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of $5,000,000 combined single limit each accident for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in the aggregate

(d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(e) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall be at least as broad as its primary coverage.

Section 17.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as an additional insureds as their interest may appear under this Agreement, with regard to activities performed by or on behalf of Franchisee, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 17. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the

City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 The City may review all insurance limits once every three (3) years during the Term, and upon prior written notice to and review by Franchise, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement.

Section 17.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Telecommunications Network.

Section 18.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.6. Deactivated Facilities, or

portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

Section 18.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

Section 18.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.4 Notwithstanding Section 18.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.5 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or

removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19. Bonds. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.1. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

Section 19.2 *Maintenance Bond*. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the

time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 19.3 *Franchise Bond*. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars ($50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20. Remedies to Enforce Compliance.

Section 20.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with

the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 20.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchise Bond set forth in Section 19.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 21. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Bothell City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Bothell City Council, on the basis of the record, will make the

determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 23. **City Ordinances and Regulations**. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 24. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 25. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 25, Section 27, and Section 38.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 26. Assignment.

Section 26.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 26.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 26.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee’s obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 28. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 29. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 31. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3)

days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF BOTHELL
Public Works Director
18415 101st Ave. N.E.
Bothell, WA 98011

Franchisee:
Seattle SMSA Limited Partnership d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a Copy to:
Seattle SMSA Limited Partnership d/b/a dba Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

Section 32. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court ruling.

Section 33. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address Small Wireless

deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and

representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 38. Miscellaneous.

Section 38.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 38.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington or King County Superior Court.

Section 38.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 38.6 This Franchise may be enforced at both law and equity.

Section 38.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 38.8 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 39. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the Franchisee before a Notary Public. Acceptance must be filed with the City within thirty

(30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 17; any Performance Bond, if applicable, pursuant to Section 19.1; and the Franchise Bond required pursuant to Section 19.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

_____
LIAM OLSEN
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____
PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

SUMMARY OF ORDINANCE NO. _____(2020)

City of Bothell, Washington

On the _____ day of _____, 2020, the City Council of the City of Bothell passed Ordinance No. _____(2020). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

EXHIBIT A

STATEMENT OF ACCEPTANCE

Seattle SMSA Limited Partnership d/b/a Verizon Wireless, for itself and its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

SEATTLE SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS

By: Cellco Partnership, its General Partner

By: _____ Date: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 202_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

_____
Signature

_____
NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

City of Bothell™

City Council
Agenda Bill
AB # 20-008

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Jennifer Phillips, City Manager
Kellye Mazzoli, Assistant City Manager (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of an Ordinance to Amend Chapters 2.44 and 2.45 Expanding Membership of the Parks and Recreation Board and Bothell Arts Commission to Include Youth Members

---

POLICY CONSIDERATION: This item asks the City Council to consider expanding the membership of the Parks & Recreation Board and Bothell Arts Commission to create two (2) new youth members on each. If approved, it has the potential to increase the ability of Bothell youth to advise the City Council on matters related to Parks, Recreation, Arts, and Culture for the City.

HISTORY:

DATE	ACTION
SEPTEMBER 10, 2019	Council Conversations on youth participation

During Council Conversations, City Council members discussed youth participation in local government. With the help a summer intern, staff was able to complete some research on establishing a Youth Commission and this was shared with the Council on September 9, 2019. The creation of a new Youth Commission was not included for implementation in the 2019-2020 Adopted Budget or 2019-2020 Adopted Council Goals.

DISCUSSION: Since creation of a new Youth Commission was not included in the 2019-2020 Adopted Budget or Council Goals, resources are not available to develop and implement this initiative. However, as part of a Community Engagement strategy, staff proposes a pilot program to incorporate voting youth members into two of the City Council's already established Boards and Commissions. This would allow for more youth engagement with minimal impact to City resources.

The staff liaisons of the Parks & Recreation Board and Bothell Arts Commission agree that youth membership could easily integrate into their respective Commissions. The processes and resources are in place to operate those

Commissions, and with a small amount of additional staff time from the Executive Office for marketing and onboarding, staff believes this could be implemented immediately.

The attached Ordinance outlines amendments to Chapters 2.44 and 2.45 which would allow for two (2) new youth voting members to each Board/Commission. Youth between the ages of 14-17 would be encouraged to apply for the positions and once selected, would serve a three (3) year term. Giving youth the opportunity to serve a multiple year term provides adequate time for their meaningful participation. Additionally, having two (2) youth members allows for additional support throughout their service.

Following successful implementation, additional youth opportunities could be added in the future. This might include adding youth to other Boards and Commissions, hosting a City Youth Forum, or establishing a Youth Commission. Further Council direction and input will be sought throughout the upcoming Community Engagement Strategy and Council Goal Setting processes.

FISCAL IMPACTS: The item has no financial implications, as proposed.

ATTACHMENTS: Att-1. Ordinance Adding Youth Membership

RECOMMENDED ACTION: Approve the Ordinance to amend Chapters 2.44 and 2.45, expanding membership of the Parks & Recreation Board and Bothell Arts Commission to include youth members.

ORDINANCE NO. _____(2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON AMENDING CHAPTERS 2.44 AND 2.45 OF THE BOTHELL MUNICIPAL CODE EXPANDING MEMBERSHIP OF THE PARKS AND RECREATION BOARD AND THE ARTS COMMISSION TO INCLUDE YOUTH MEMBERS

WHEREAS, the City is committed to engaging its community members; and

WHEREAS, the City desires to increase engagement with the youth of Bothell; and

WHEREAS, youth membership could easily integrate into the Parks and Recreation Board and the Arts Commission;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.44.010 of the Bothell Municipal Code is hereby amended as follows, with new text shown in underline and deleted text shown in strikethrough.

2.44.010 Creation – Members.

A. *Creation.* There is created a parks and recreation board, consisting of nine ~~seven~~ members - seven general members and two youth members, appointed by the city council, from persons of recognized fitness for such positions. No ~~person shall be ineligible as a member by reason of sex or age, and no~~ member shall receive any compensation. ~~A majority of the m~~Members shall be residents of the city or ~~All members shall be residents of~~ the city's urban growth area.

B. *Members.*

1. General Membership. ~~Except as provided in subsection (B)(2) of this section, t~~The parks and recreation board shall consist of seven general members whose term of office shall be three years, not more than three of which terms shall expire each year. All terms shall expire March 31st of the year of expiration for the individual term. Such parks and recreation board shall have only advisory powers and authority with respect to the management and supervision of the parks and recreational facilities and programs as are granted by this chapter and subsequent ordinances. General members shall be at least eighteen years of age at the time of application. Members of the board shall serve at the pleasure of the city council and may be removed at any time by a majority of the council. Vacancies for the remainder of unexpired terms shall be filled in the same manner in which the original appointments are made.

2. Youth Membership. ~~*Temporarily Expanded Members.* Membership of the parks and recreation board is expanded to add two positions which expire on July 1, 1994, at which time both terms and positions shall terminate.~~ The parks and recreation board shall contain two youth members whose term of office shall be three years. The youth members shall be fourteen, fifteen, sixteen, or seventeen years of age at the time of application. The youth members shall have the same rights and responsibilities as the general members.

Section 2. Section 2.45.010 of the Bothell Municipal Code is hereby amended as follows, with new text shown in underline and deleted text shown in strikethrough.

2.45.010 Creation – Members.

A. *Creation.* There is created an arts commission, consisting of nine ~~seven~~ members - seven general members and two youth members, appointed by the city council, from persons of recognized fitness for such positions. No ~~person shall be ineligible as a member by reason of sex or age, and no~~ member shall receive any compensation. ~~A majority of the m~~Members shall be residents of the city or~~. All members shall be residents of~~ the city's urban growth area.

B. *Members.*
1. General Membership. The commission shall consist of seven members whose term of office shall be three years, not more than three of which terms shall expire each year. All terms shall expire March 31st of the year of expiration for the individual term. Such arts commission shall have only advisory powers and authority with respect to the allocation of one percent for the arts funding, promotion of fundraising for the arts and culture and promotion of arts and culture in the community as granted by this chapter and subsequent ordinances. General members shall be at least eighteen years of age at the time of application. Members of the commission shall serve at the pleasure of the city council and may be removed at any time by a majority of the council. Vacancies for the remainder of unexpired terms shall be filled in the same manner in which the original appointments are made.

2. Youth Membership. The arts commission shall contain two youth members whose term of office shall be three years. The youth members shall be fourteen, fifteen, sixteen, or seventeen years of age at the time of application. The youth members shall have the same rights and responsibilities as the general members.

Section 3. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid 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 ordinance.

Section 4. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 5. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

APPROVED:

_____

XXXXXX
MAYOR

ATTEST/AUTHENTICATED:

_____

LAURA HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

_____

PAUL BYRNE
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

SUMMARY OF ORDINANCE NO. _____(2020)

City of Bothell, Washington

On the XX day of XX, 2020, the City Council of the City of Bothell passed Ordinance No. XX (2020). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

> AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON AMENDING CHAPTERS 2.44 AND 2.45 OF THE BOTHELL MUNICIPAL CODE EXPANDING MEMBERSHIP OF THE PARKS AND RECREATION BOARD AND THE ARTS COMMISSION TO INCLUDE YOUTH MEMBERS

The full text of this Ordinance will be mailed upon request.

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO.: _____(2020)

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City of Bothell™

City Council
Agenda Bill
AB # 20-009

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Jennifer Phillips, City Manager
Kellye Mazzoli, Assistant City Manager
Lindsay Masters, ARCH Executive Manager (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of a Resolution Approving Fall 2019 ARCH Housing Trust Fund Recommendations

POLICY CONSIDERATION: This item asks the City Council to consider if the City should approve the Fall 2019 ARCH Housing Trust Fund recommendations, utilizing funds the City has previously contributed to the ARCH Housing Trust Fund.

If approved as presented, this item will provide funding for six new affordable housing projects, including one proposed in Bothell, and one supplemental award to a previously funded project. If all participating agencies also approve the recommendations, a total of $5,001,000 will be leveraged toward affordable housing projects throughout the east King County area, with Bothell contributing its requested share of $88,970.

HISTORY:

DATE	ACTION
AUGUST 1995	City of Bothell became a member of ARCH
MARCH 16, 2010	City Council approved 2010 ARCH Amended and Restated Interlocal Agreement
NOVEMBER 27, 2018	City Council adopted the 2019-2020 City Budget, including funds for ARCH membership and trust fund
APRIL 2, 2019	City Council approved ARCH 2019 work program, budget, and trust fund contribution

A Regional Coalition for Housing (ARCH) is an interlocal agency established in 1993 by east King County communities to provide a framework for cities to cooperatively work on planning and providing housing in the region. Currently, there are 15 Eastside cities, including Bothell and King County, who are contributing members.

Bothell financially contributes to ARCH in two ways, first through annual membership dues and secondly through a housing trust fund contribution. Each

jurisdiction retains the ability to determine their actual contribution amount to the Housing trust fund as well as which projects will receive funding from the city's contribution.

On November 27, 2018, the 2019-2020 biennial budget approved by Council included funding for ARCH membership dues and an annual contribution to the housing trust fund.

DISCUSSION: For the Fall 2019 Housing Trust Fund round, ARCH received nine applications seeking funding to support affordable housing development in East King County. The ARCH Citizen Advisory Board forwarded project and funding recommendations to the ARCH Executive Board. After careful consideration, the ARCH Executive Board is forwarding the following for consideration by each member agency:

PROJECT	AMOUNT REQUESTED	AMOUNT RECOMMENDED
Imagine Housing Samma Senior Apartments	$2,413,853	$750,000
Congregations for the Homeless East King County Men's Permanent Shelter	$500,000	$500,000
Inland Polaris at Eastgate Apartments	$5,000,000	$575,000
Inland Group/ Horizon Housing Alliance Together Center Redevelopment	$6,000,000	$2,750,000
Community Homes Shared Living 1	$100,500	$100,500
Community Homes Adult Family Home 8	$100,500	$100,500
Catholic Community Services with Sophia Way, Women, and Family Shelter	$175,000 supplemental	Up to $175,000

See **Attachment 2** for detailed information about each project, funding request, recommendation, funding rationale, and specific project conditions.

Total recommended funding for this round is $5,001,000. Of that amount, $750,000 is from Community Development Block Grant (CDBG) funds and the rest from member city general funds. Bothell is requested to fund a portion to support the projects in the amount $88,970. For a detailed breakdown of sources and amounts per project, see **Attachment 3**.

FISCAL IMPACTS: If approved as presented, the six new projects will be funded by previous contributions made to the ARCH Housing Trust Fund. Currently, the City of Bothell has a balance of $132,641 and this item would allocate $88,970 of those dollars.

ATTACHMENTS:

Att-1. Resolution
Att-2. Exhibit A - Memo RE: 2019 Housing Trust Fund Recommendations
Att-3. Recommended Projects and Funding Sources

RECOMMENDED ACTION: Adopt the proposed Resolution to approve the 2019 Fall Housing Trust Fund recommendations in the amount of $88,970 to be drawn from previously committed funds by the City of Bothell to the ARCH Housing Trust Fund.

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CITY OF BOTHELL, WASHINGTON

RESOLUTION NO. _____(2020)

A RESOLUTION authorizing the duly-appointed Administering agency for ARCH to execute all documents necessary to enter into Agreements for the funding of affordable housing projects, as recommended by the ARCH Executive Board, utilizing funds from the City's Housing Trust Fund.

WHEREAS, A Regional Coalition for Housing (ARCH) was created by interlocal agreement to help coordinate the efforts of Eastside cities to provide affordable housing; and

WHEREAS, the ARCH Executive Board has recommended that the City of Bothell participate in the funding of certain affordable housing projects and programs hereinafter described; and

WHEREAS, the ARCH Executive Board has developed a number of recommended conditions to ensure that the City's affordable housing funds are used for their intended purpose and that projects maintain their affordability over time; and

WHEREAS, the City Council has approved per AB #10-55 on March 16, 2010, the Amended and Restated Interlocal Agreement for ARCH; and

WHEREAS, the City Council desires to use $88,970 from City funds as designated below to finance the projects recommended by the ARCH Executive Board; now, therefore,

THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council authorizes the duly-appointed administering agency of ARCH pursuant to the Amended and Restated Interlocal Agreement for ARCH to execute all documents and take all necessary actions to enter into Agreements on behalf of the City to fund Catholic Community Services/The Sophia Way's Kirkland Shelter (Kirkland Only), Congregations For the Homeless Men's Shelter, Community Homes Adult Family Home 8 and Shared Living 1, Horizon Housing/Inland Together Center Redevelopment, Imagine Housing's Samma Senior Apartments (Redmond and Kirkland only) and Inland Polaris at Eastgate in a combined total amount not to exceed $88,970.

Section 2. The Agreements entered into pursuant to Section 1 of this resolution shall include terms and conditions to ensure that the City's funds are used for their intended purpose and that the projects maintain affordability over time. In determining what conditions should be included in the Agreements, the duly-appointed administering agency of ARCH shall be guided by the recommendations set forth in the ARCH

Executive Board's memorandum of December 27, 2019, a copy of which is attached hereto as Exhibit A.

Section 3. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

PASSED this _____ day of _____, 2020.

APPROVED:

_____
LIAM OLSEN
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: _____(2020)

RESOLUTION NO. _____(2020)
Exhibit A

A Regional Coalition for Housing

Together Center Campus
16225 NE 87th Street, Suite A-3 ♦ Redmond, Washington 98052
(425) 861-3677 ♦Fax: (425) 861-4553 ♦ WEBSITE: www.archhousing.org

MEMORANDUM

TO: City of Bellevue Council Members
City of Bothell Council Members
City of Clyde Hill Council Members
Town of Hunts Point Council Members
City of Issaquah Council Members
City of Kenmore Council Members
City of Kirkland Council Members
City of Medina Council Members
City of Mercer Island Council Members
City of Newcastle Council Members
City of Redmond Council Members
City of Sammamish Council Members
City of Woodinville Council Members
Town of Yarrow Point Council Members

FROM: Kurt Triplett, ARCH Executive Board Chair

DATE: December 27, 2019

RE: Fall 2019 Housing Trust Fund (HTF) Recommendations

The 2019 ARCH Housing Trust Fund round demonstrated historic levels of demand for funding to support affordable housing development in East King County, with nine applications representing requests for nearly $20 million in local funds to develop close to 1,000 units or beds. After careful deliberation, the ARCH Executive Board concurred with the recommendations of the ARCH Citizen Advisory Board (CAB), and is recommending funding of $5,001,000 for six new projects and one supplemental award to a previously funded project as shown in **Attachment 1: Recommended Projects and Funding Sources**.

These recommendations advance a significant number of projects that meet urgent local priorities, including the expansion of year-round emergency shelter on the Eastside, construction of permanent housing with services for homeless families, workforce housing for low and moderate income wage earners, affordable senior housing and special needs housing. Supporting these projects will result in meaningful progress toward our collective housing goals. As members of ARCH, we continue to value the coordination of local resources to leverage other public and private funding and meet local needs.

Because no projects were recommended in the 2018 round, the funding recommended this year represents the allocation of both 2018 and 2019 Trust Fund contributions, CDBG funding, and interest and revenue accrued in cities' accounts. Even with higher than typical available funding, the Executive Board had to make some difficult choices as to which projects to fund and which to invite back in future rounds. In some cases, a partial award is recommended to demonstrate local support to a project to allow it to advance in a future funding round.

Following is a description of the applications received, the Executive Board recommendation and rationale, and proposed contract conditions for the six proposals recommended for funding at this time. Also enclosed is an evaluation matrix for each proposal, an economic summary for the six projects recommended for funding, leveraging charts, project summary table, and a summary of funded projects to date.

1. Imagine Housing Samma Senior Apartments

Funding Request:	$2,413,853 (Deferred, Contingent Loan) 54 affordable rental units
Exec Bd Recommendation:	$750,000 (Deferred, Contingent Loan – CDBG funds) for site acquisition

Project Summary:
Imagine Housing (IH), is proposing a 54-unit affordable senior rental project utilizing either 4% tax credits and tax-exempt bond financing or 9% tax credits. The project includes set asides of units for disabled persons and homeless veterans. Imagine hopes to secure Veterans Affairs Supportive Housing (VASH) rental vouchers to help pay down the rent for the Veteran units.

The project would be built on land to be acquired from the City of Bothell at a reduced price. The site is located on the Bus Rapid Transit corridor which is being expanded with ST3 funding. The City has indicated its strong support for the project.

The proposed affordable building is five levels of wood construction. Imagine is pursuing an Ultra High Energy Efficiency (UHEE) rating for this building. The design envisions around 40 surface parking spaces.

Funding Rationale:
The Executive Board sees merit in this application and recommends partially funding to allow acquisition of the site with conditions listed below for the following reasons:

- The City of Bothell is excited to support this affordable project through discounting land and working collaboratively to address land use issues.
- The project would increase affordability within the revitalized Bothell Landing.
- The project is sited at an excellent location for senior housing, with proximity to a major senior center, planned bus rapid transit, parks and trails, and shopping.
- The project aims to serve a range of lower income senior households including set asides for homeless and disabled, however the proposed services model relies on the creation or re-allocation of ongoing human services funding to support case management and resident services.
- The project is somewhat early in the development process; there appear to be opportunities for improving the design, and additional information about the environmental and geotechnical conditions of the site is needed to inform ultimate design and costs.
- The project as proposed exceeds cost limits set out by the Washington State Housing Finance Commission. There may be significant opportunities for reducing estimated project costs.
- CAB is interested in exploring other ways to layout the site.
- The project is competitive for King County funds but did not score as competitively for State Housing Trust Fund dollars this round.
- The scale of project fits developer's past track record and capabilities.

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special Conditions:

1. Funds shall be used by the Agency for acquisition of the site. Prior to accessing funds, the Agency must complete the following:
    - Conduct additional environmental, geotechnical and any other necessary investigation to determine that the project is developable on the property.
    - Provide an updated site plan maximizing the site, and schematic drawings showing unit reasonable layouts supportive of the needs of seniors.
    - Provide updated cost estimates demonstrating feasibility of proposed financing, taking into consideration Total Development Cost limits established by the Washington State Housing Finance Commission (WSHFC) cost limits.

2. Project must meet requirements associated with federal CDBG dollars. A purchase agreement cannot be entered into until the completion of the HUD required Environmental Assessment. The Agency may enter into an option agreement with language that addresses federal funds' "choice-limiting" restrictions. The portion of CDBG funds recommended from the 2020 HUD grant are estimated; funding is conditioned on a final grant agreement with HUD.

3. The Agency must re-submit a revised project proposal to ARCH and other funders in the 2020 funding round. Additional funding conditions will apply to any additional funds awarded.

4. ARCH's funding commitment shall continue for twelve (12) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. At that time, the applicant will provide a status report on progress to date. ARCH staff will consider up to a 12-month extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the applicant will demonstrate all capital funding is likely to be secured within a reasonable period of time.

3. Funds will be in the form of a deferred, contingent loan. Loan terms will account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by ARCH Staff. The terms are expected to include a provision for the Agency to defer payment if certain conditions are met (e.g., low cash flow due to unexpected costs).

4. The Agency must demonstrate the City of Bothell's approval and satisfaction of all zoning requirements including parking, setbacks, curb cuts, and view corridors.

5. A covenant is recorded ensuring affordability for at least 50 years, with affordability generally as shown in the following table. (Note that changes to the matrix may be considered based on additional site investigation and revised financing assumptions that are presented for review and approval in the 2020 funding round.)

Affordability	Studio	1 BR	2BR	Total
40%	4	4		8
50%	16	14		30
60%	9	6	1	16
Total	29	24	1	54

* The 60% AMI 2 BR unit is a manager's unit

2. Congregations for the Homeless East King County Men's Permanent Shelter

Funding Request: $500,000 additional (Secured Grant)
100 beds

Exec Bd Recommendation: $500,000 additional (Secured Grant)

Project Summary:
Congregations for the Homeless (CFH) is applying to ARCH for the acquisition and development of a permanent winter shelter and day center for men. The project was originally funded in the 2014 round as a 50-bed shelter proposal. Since then, the need has grown to 100 beds, and site selection activities have culminated in identifying a King County-owned site at Eastgate. CFH has operated the men's emergency winter shelter during that time at non-permanent locations, usually churches or civic buildings, in addition to their regular rotating men's shelter, drop in center, outreach and leased housing program. The permanent shelter is a low barrier shelter with few requirements on shelter guests other than to ensure they don't pose a danger to other guests. The objective of the permanent shelter is to get the homeless out from under the weather and connect them to services to start a pathway out of homelessness. The emergency shelter started out being open only on severe winter nights but moved to being open all nights and is currently located in a building scheduled for demolition in 2022.

The proposed shelter is now sized to provide sleeping accommodations for 100 men and serve 125 persons during the day. The proposed site is owned by King County Solid Waste, surplus from the creation of a waste transfer station off Eastgate Drive. The County is requiring fair market price for the property, with a final price to be determined based on necessary environmental remediation and other site constraints and requirements for the 10-acre site. Due to the size of the site and scope of predevelopment work needed, CFH has entered into a partnership with a development team that is proposing a larger residential development on the remainder of the site.

Funding Rationale:
The Executive Board recommends funding this application for the following reasons:

- The creation of a permanent men's shelter on the Eastside is a longstanding priority for ARCH and its member jurisdictions, particularly the City of Bellevue and King County.
- The project realizes a regional agreement to locate a men's shelter in Bellevue. It is the last of three planned Eastside shelter projects to get realized.
- The current location hosting the men's shelter must be vacated by 2022.
- CFH has successfully initiated outreach with nearby neighbors; no residential neighbors immediately abut the current site.
- Operating costs are known; cities are engaged in work to align human services funding.

The Executive Board does recognize the following weaknesses with the proposal and has addressed them in the funding conditions associated with the project:

- The site does not have an agreed upon purchase price and was last appraised at $28 million (not taking into account potential deductions for site conditions).
- King County requires the purchase of the site to transact by the end of 2020.
- The entire site must be purchased and other uses funded and developed concurrently, requiring CFH to rely on other entities to help realize the project.
- While the acquisition price will be reduced by estimated cost of remediation; the current agreement with King County does not provide relief if the actual costs of remediation exceed estimated costs.
- Large amounts of public capital and operating/services funding will be required; no revenue can ever be expected from shelter users.
- There is a possibility of neighborhood opposition, given opposition for siting up the street.
- The proposed entitlement timeline appears optimistic.
- Budgets are speculative, costs may vary significantly from pro forma provided.

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special Conditions: (Note these conditions replace those of the 2014 Funding Round award)

1. By March 31, 2020, a final purchase price for the property must be determined, with updated budgets provided demonstrating a reasonable financing proposal to acquire the site by the date required by King County. An extension may be approved if both CFH and King County indicate a strong commitment to resolving all outstanding issues toward completion of the acquisition.

2. The funding commitment shall last for twelve (12) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. ARCH staff will approve an extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion.

3. Funds shall be used by CFH toward design, developer fee and construction costs. Funds may not be used for any other purpose unless ARCH staff has given written authorization for the alternate use.

4. Funds will be in the form of a secured grant with no repayment, so long as affordability and target population is maintained, and the service funds necessary to provide services to this population are available.

5. A covenant is recorded ensuring affordability for one hundred (100) beds for at least fifty (50) years for homeless men without specificity to AMI.

6. CFH shall submit quarterly updates to ARCH on the progress of the Capital Campaign demonstrating active solicitation and amounts pledged and secured against campaign targets.

7. Prior to the execution of funding contract, an outreach plan will be submitted to ARCH staff for review and approval. The outreach plan will include provisions such as:

   - Provide written notification to neighbors upon identification of a suitable site to include description of the project, and information regarding CFH that will include the website and contact number;
   - Send out invitations and provide an opportunity for neighbors to individually and/or as a group to meet with CFH in an Open House or other format regarding the project. Provide contact information for Congregations and information about what to do in case something out of the ordinary occurs.

8. Prior to release of funds, CFH shall submit to ARCH staff for review and approval drafts of all documents related to the provision of services to residents and management of the property, including any licensing-related management and service provider plans. These documents shall at a minimum address: management procedures to address tenant needs; services provided for or required of tenants; management and operation of the premises; community and neighbor relations procedures; a summary of ARCH's affordability requirements as well as annual monitoring procedure requirements.

9. In the event that any operating support funding levels will be reduced, the Agency shall inform ARCH Staff about the impacts the proposed reduction will have on the budget and plan for services to clients, and what steps shall be taken to address the impacts. A new budget or services plan must be approved by the ARCH.

10. Because of interest in the sustainability of the project and shortfalls in public subsidies, agency shall provide ARCH Staff (to be shared with the Citizen Advisory Board) historic, current and projected operating cost shortfalls bridged through fundraising, fundraising goals for those periods and the results of those fundraising efforts.

3. Inland Group Polaris at Eastgate Apartments

Funding Request:	$5,000,000 (Deferred Loan) 298 affordable units; 2 unregulated units
Exec Bd Recommendation:	Partial funding of 575,000 (Deferred Loan)

Project Summary:
The Polaris at Eastgate project is a joint development between Inland Group and Congregations for the Homeless (CFH) to enable acquisition and development of a large 10-acre property with both a year-round shelter and rental housing. This partnership was created in order to accomplish the acquisition of the site in its entirety, which has both significant up-front predevelopment costs as well as an anticipated fair market purchase price that exceeds CFH's resources and capacity to carry.

Inland Group, along with another development partner, Horizon Housing Alliance, agreed to join the team and carry the costs of site investigation and entitlement process, provided a reasonable path to permanent financing of the residential component is defined in 2020. In addition to providing technical and financial support to carry the development of the shelter through initial phases, the project provides a benefit by creating a more comprehensive community surrounding the shelter. Absent full development of the site, the location of the shelter would be more isolated.

The Project is proposed to be new construction of a 300-unit workforce housing community for families earning up to 60% of AMI. The unit mix including studios, one-bedroom, two-bedrooms and three-bedroom units is planned, accommodating a variety of households from singles through large families. In addition to the 60% AMI income and rent set-aside, 20% of the units will also be set-aside for households where one or more members is also disabled. This unit mix will be provided in two 5-story, elevator-serviced buildings over a subterranean parking garage.

Unit amenities within each building include full size washer and dryer in every apartment, fully equipped kitchens including microwave hoods, shaker style cabinets & laminate countertops in kitchen and bath, vinyl plank faux wood flooring in entry, kitchen, bath and hallways and carpet in bedrooms and living rooms. Common area amenity spaces are planned with a diverse resident mix in mind, and will include a business center, tutoring center, fitness center, resident lounge, theater, and multi-purpose room with kitchen. An internal courtyard with outdoor amenity space will offer a BBQ area, seating and significant landscaping.

The site of this building is separated by a grade change from the shelter. A third pad site with housing for homeless households is anticipated to be proposed in a future funding round.

Funding Rationale:
The Executive Board supported this application and recommends partially funding with conditions listed below for the following reasons:

- The project is necessary to realize the shelter at this location.
- The project creates 298 units of needed affordable rental units within a high opportunity area.
- The project estimates a relatively low per unit development cost compared to other recent projects.
- The project provides significant financial leverage of local resources.
- The applicant is an experienced developer with a strong track record of developing comparably scaled projects with similar financing.
- Site has convenient access to transit, shopping, and services.
- While available resources are not sufficient to fully fund the project, an initial commitment provides funding for predevelopment activities and demonstrates local commitment that increases the chance of securing other public resources.

The Executive Board recognizes the following weaknesses with the proposal which are addressed in the funding conditions:

- The site does not have an agreed upon purchase price and was last appraised at $28 million (not taking into account potential deductions for site conditions).
- The proposed funding relies on an additional $4 million in capital funds from King County, however the proposal was not prepared in time to meet King County application deadlines for the 2019 funding round.
- King County has required the purchase of the site to transact by the end of 2020; absent this deadline, the project could benefit from additional time to conduct due diligence and submit full funding applications.
- While the acquisition price will be reduced by estimated cost of remediation; the current agreement with King County does not provide relief if the actual costs of remediation exceed estimated costs.
- The entitlement timeline appears optimistic

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special Conditions:

1. The funding commitment shall continue for eighteen (18) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. ARCH staff will grant up to a 12-month extension.

2. Funds may be used by the Agency towards construction or other eligible uses approved by ARCH staff. Funds will be released only after all proposed financing has been assembled for the Project. A waiver may be considered by ARCH to allow for earlier release of funds for acquisition if the Agency has demonstrated a clear plan for assembling all needed acquisition and permanent project financing.

3. Funds will be in the form of a deferred, contingent loan. Loan terms will account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by ARCH Staff. It is anticipated that loan payments will be based on a set repayment schedule and begin after repayment of deferred developer fee with 1% interest. The terms will also include a provision for the Agency to a deferment of a payment if certain conditions are met (e.g., low cash flow due to unexpected costs). Any requested deferment of loan payment is subject to approval by City or ARCH Staff, and any deferred payment would be repaid from future cash flow or at the end of the amortization period.

4. A covenant is recorded ensuring affordability for at least 50 years, with affordability as shown in the following table. Limited changes to the proposed unit mix may be made subject to ARCH approval.

Area Median Income/Unit Size	Studio	1BR	2BR	3BR	Total
60%	30	160	80	28	298
Unregulated					2
Total	30	160	80	30	300

5. The net developer fee shall be established at the time of finalizing the Contract Budget and will follow the ARCH Net Developer Fee Schedule.

6. If there is a charge for parking, then that amount shall be deducted from the maximum rents. A waiver of this requirement may be considered by ARCH staff if justified by requirements to achieve parking reductions.

4. Inland Group/Horizon Housing Alliance Together Center Redevelopment

Funding Request: $6,000,000 (Deferred, Contingent Loan)
80 affordable rental units in 9% deal and 204 affordable units in 4% deal

Exec Bd Recommendation: $2,750,000 (Deferred, Contingent Loan)

Project Summary:
The Together Center is a nonprofit that has operated around a model of providing affordable commercial space for human service-related nonprofit organizations since 1991. In early 2019, after a long process of planning and visioning, the Together Center released a Request for Interest to solicit development proposals that would re-imagine the existing Together Center and take advantage of the development capacity on the property to provide affordable housing. Horizon Housing Alliance, along with its development partner, Inland Group, were selected in the summer of 2019 and have since been working steadily through the pre-development process.

The proposed project is two buildings on a single site with two separate programs. The existing Building A will be 204 studio, one, two, and three bedroom units affordable at 60% AMI called Polaris at Together Center. The existing Building B, called Horizon Housing at Together Center, will be 80 units of studio, one, two, and three-bedroom units affordable to households at 30% and 50% AMI, with 60 of the units set aside for those exiting homelessness. The residential units will be on floors two through five in both buildings. The ground floor of the buildings will be a condo owned by Together Center, a nonprofit that operates affordable office space for human service nonprofit organizations. Parking will be below grade in a structured parking garage. The collective project is called the Together Center Redevelopment.

The project is built around the vision of co-location of housing along with various behavioral health, physical health, and other resources to create a vibrant community and help families break the cycle of intergenerational poverty. Residents of Horizon Housing at Together Center will have access to social and health services in the commercial space with providers including HealthPoint, Ikron, and Sound Health all operating as tenants. The proposed population is intended to include homeless residents be referred by rapid rehousing providers including Catholic Community Services, as well as other transitional housing and shelter programs, rather than the through Coordinated Entry system. This is intended to provide a better balance within the building, as well as allow for prioritization of homeless populations in East King County.

Horizon Housing at Together Center will partner with Hopelink to provide service coordination and case management services on site. The project cashflow will contribute $110,000 annually towards services. Hopelink and Horizon will apply for available service dollars to fund the remaining services for the families exiting homelessness. Horizon Housing at Together Center can refer tenants to the physical and behavioral health providers, including HealthPoint, who will be tenants in the ground floor commercial space on site. These “off-site” services will be paid through existing revenue streams with the providing agencies.

Funding Rationale:
The Executive Board recommends funding this application with partial funding at a minimum to advance the 9% portion of the project with conditions listed below for the following reasons:

- The project helps to realize the redevelopment of the Together Center, a valued community asset that provides critical social services for people across the EKC region.
- Services at the Together Center will provide ongoing benefits to residents of the housing.
- Project will ultimately create 284 units of affordable housing; 60 of which are set aside for households exiting homelessness
- The initial funding commitment allows the project to secure highly competitive 9% tax credit resources for East King County while securing funding for the remainder of the project.
- Project maximizes utilization of the site per zoning.

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special Conditions:

1. The funding commitment shall continue for eighteen (18) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. ARCH staff will grant up to a 12-month extension.

2. Funds shall be used by the Agency towards construction. Funds may not be used for any other purpose unless ARCH staff has given written authorization for the alternate use.

3. Funds will be in the form of a deferred, contingent loan. Loan terms will account for various factors, including loan terms from other fund sources and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by ARCH Staff. It is anticipated that loan payments will be based on a set repayment schedule and begin after repayment of deferred developer fee with 1% interest. The terms will also include a provision for the Agency to a deferment of a payment if certain conditions are met (e.g. low cash flow due to unexpected costs). Any requested deferment of loan payment is subject to approval by ARCH Staff, and any deferred payment would be repaid from future cash flow or at the end of the amortization period.

5. The net developer fee shall be established at the time of finalizing the Contract Budget, and will follow the ARCH Net Developer Fee Schedule.

6. A covenant is recorded ensuring affordability for at least 50 years, with affordability generally as shown in the following table. (Note that limited changes to the matrix may be considered based on reasonable justification as approved by ARCH staff.)

9% Project:

Affordability	Studio	1 BR	2BR	3BR	Total
30%		8	20	12	40
50%		8	20	12	40
Total		16	40	24	80

4% Project:

Affordability	Studio	1 BR	2BR	3BR	Total
60%	20	80	84	20	204
Total	20	80	84	20	204

7. Submit for City or ARCH staff approval a management and services plan which includes coordination of services with outside providers and parking management.

8. Agency shall submit a marketing plan for approval by ARCH staff. The plan should include how the Agency will do local targeted marketing outreach to local, media business and community organizations.

10. If there is a charge for parking, then that amount shall be deducted from the maximum rents. A waiver of this requirement may be considered by ARCH staff if justified by requirements to achieve parking reductions.

5. Community Homes Shared Living 1

Funding Request: $100,500 (Secured Grant)
3 Beds

Exec Bd Recommendation: $100,500 (Secured Grant)

Project Summary:
Community Homes, Inc. (CHI) is proposing to acquire a home that will serve three (3) low-income adults with developmental disabilities. The proposed setting accommodates both the DD residents and their care provider in a shared living arrangement. Each tenant will have their own bedroom. Residents will share living spaces with the care provider but will have a separate bathroom. CHI has a purchase and sales agreement on a suitable property in Newcastle.

Funding Rationale:
The Executive Board recommends funding this application for the following reasons:

- The project has site control and is able to move forward quickly.
- The project serves very low income developmentally disabled individuals.
- The project provides housing for a population (Special Needs housing) that currently is below long-term ARCH Trust goals.
- The residents will benefit from a live-in care provider who is directly funded by Development Disabilities Administration; the live-in care model provides greater stability of care and retention of staff compared to other models.
- Developer has a 24-year track record and good reputation with funders and the Department of Developmental Disabilities.
- The lower number of residents in the home allows the project to come online faster and avoid the lengthy licensing process for homes with more residents.
- The project qualifies for funding set-asides in the State Housing Trust Fund round.

- Based on the proposed funding sources, ARCH funds would be leveraged with significant resources from King County and the State.

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special / Revised Conditions:

1. The funding commitment shall continue for six (6) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. At that time, the applicant will provide a status report on progress to date and expected schedule for start of construction and project completion. ARCH staff will consider an extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the applicant will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time. ARCH staff will grant up to a 12-month extension. If necessary, a second extension of up to 6 months may be requested by following the same procedures as the first extension.

2. Funds shall be used by the Agency toward acquisition and related costs. Funds may not be used for any other purpose unless ARCH staff has given written authorization for the alternate use.

3. The Agency shall not proceed with searching for a home until all funding commitments have been received. The Agency shall only purchase unoccupied homes or owner-occupied homes in order to not trigger local and federal relocation regulations.

4. Prior to acquisition, the Agency shall submit an appraisal by a qualified appraiser. The appraisal shall be equal to or greater than the purchase price.

5. If federal sources are being provided by any funder, a purchase agreement cannot be entered into until the completion of the HUD required Environmental Assessment. The Agency may enter into an option agreement with language that addresses federal funds' "choice-limiting" restrictions.

6. Funds will be in the form of a secured grant with no repayment, so long as affordability and target population is maintained.

7. A covenant is recorded ensuring affordability for at least 50 years, with three beds for developmentally disabled individuals at or below 30% of area median income at move in.

8. Unless otherwise approved by ARCH staff, the development budget shall include:
    - Minimum of $17,000 of private sources provided by the applicant.
    - Up to $987,500 combined for acquisition and development. In the event total acquisition and development costs, including contingency, exceeds this amount, additional costs shall be covered by private sources from the applicant. If actual costs fall below this amount, the ARCH award may be adjusted downward accordingly.
    - Developer fee shall not exceed $25,000.

9. Reserves will be funded out of operations at $3,000 for the first year with an annual increase of 3.5% per year for replacement reserves and $1,000 for the first year with an annual increase of 3.5% per year for operating reserves.

10. All cash flow after payment of operating expenses (including respite care) shall be placed into a project reserve account that can be used by the applicant for project related operating, maintenance or services expenses. Any other use of these reserves must be approved by ARCH staff.

11. In the event that any operating support funding levels will be reduced, the Agency shall inform ARCH Staff about the impacts the proposed reduction will have on the budget and plan for services to the DD clients, and what steps shall be taken to address the impacts. A new budget or services plan must be approved by ARCH.

12. The Agency will notify ARCH when they enter into an option or purchase and sale agreement for any home, providing information on the location of the home and terms for acquiring the home. No home considered for acquisition will be within two blocks of another home owned by Agency unless otherwise approved by ARCH staff.

13. Prior to closing on the home, an individualized outreach plan will be submitted to ARCH staff for review and approval. The outreach plan will include provisions such as:
    - Provide written notification to neighbors upon mutual acceptance of the Purchase and Sales Agreement to include CHI's intention to purchase the house, description of the project, and information regarding CHI and the care provider that will include the website and contact number;
    - Provide an opportunity for neighbors to meet individually and/or as a group with CHI and the care provider regarding the project; such as having an Open House after the tenants move-in and include invitations to neighbors.

15. Once the home is selected the Agency shall include ARCH Staff in the inspection of the property and development of the final scope of work for the rehab. The final scope of work for the basic construction budget shall include, at a minimum, all work necessary for licensing of the home and correction of substandard health and safety conditions. Prior to start of construction, the Agency shall submit the final scope of work for ARCH Staff approval, along with evidence that construction costs have been confirmed by a qualified contractor and are within the basic construction budget. All uses of construction contingency funds must be approved by ARCH staff prior to authorization to proceed with such work.

6. Community Homes Adult Family Home 8

Funding Request: $150,500 (Secured Grant)
5 Beds

Exec Bd Recommendation: $150,500 (Secured Grant)

Project Summary:
Community Homes, Inc. (CHI) is proposing to acquire and remodel a home that will serve five (5) low-income adults with developmental disabilities. The community within the home allows them to live as

independently as possible. A specific home will be identified once funding is committed. Criteria for selecting the particular property includes a minimum size of 2,500 square feet, the physical layout and ease of renovation of the house as well as neighborhood amenities such as sidewalks, access to stores, public services, transportation and recreation.

The residents will live in a shared living arrangement, along with a live-in care provider. Each tenant will have their own bedroom. Residents will share two bathrooms and a resident community living area with kitchen. If necessary, as in the case of prior homes, the existing garage may be converted to living space.

Funding Rationale:
The Executive Board supports funding this project as described in the application and recommends funding this application for the following reasons:

- Serves very low income developmentally disabled individuals
- The project provides housing for a population (Special Needs housing) that currently is below long-term ARCH Trust goals
- Residents will benefit from a live-in care provider who is directly funded by Development Disabilities Administration; the live-in care model provides greater stability of care and retention of staff compared to other models
- Developer has a 24-year track record and good reputation with funders and the Department of Developmental Disabilities
- The project qualifies for funding set-asides in the State Housing Trust Fund round
- Based on the proposed funding sources, ARCH funds would be leveraged with significant resources from King County and the State

Proposed Conditions:

Standard Conditions: Refer to list of standard conditions found at end of this memo

Special / Revised Conditions:

1. The funding commitment shall continue for six (6) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to ARCH staff no later than sixty (60) days prior to the expiration date. At that time, the applicant will provide a status report on progress to date and expected schedule for start of construction and project completion. ARCH staff will consider an extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. At a minimum, the applicant will demonstrate that all capital funding has been secured or is likely to be secured within a reasonable period of time. ARCH staff will grant up to a 12-month extension. If necessary, a second extension of up to 6 months may be requested by following the same procedures as the first extension.

2. Funds shall be used by the Agency toward acquisition and construction costs. Funds may not be used for any other purpose unless ARCH staff has given written authorization for the alternate use.

3. The Agency shall not proceed with searching for a home until all funding commitments have been received. The Agency shall only purchase unoccupied homes or owner-occupied homes in order to not trigger local and federal relocation regulations.

4. Prior to acquisition, the Agency shall submit an appraisal by a qualified appraiser. The appraisal shall be equal to or greater than the purchase price.

5. If federal sources are being provided by any funder, a purchase agreement cannot be entered into until the completion of the HUD required Environmental Assessment. The Agency may enter into an option agreement with language that addresses federal funds' "choice-limiting" restrictions.

6. Funds will be in the form of a secured grant with no repayment, so long as affordability and target population is maintained, and the service/care providers have a contract with DDA for funds necessary to provide services to this population.

7. A covenant is recorded ensuring affordability for at least 50 years, with five beds for developmentally disabled individuals at or below 30% of area median income at move in.

8. Unless otherwise approved by ARCH staff, the development budget shall include:
    - Minimum of $26,500 of private sources provided by the applicant.
    - Up to $1,705,500 for combined cost of acquisition and development. In the event total acquisition and development costs, including contingency, exceeds this amount, additional costs shall be covered by private sources from the applicant. If actual costs fall below this amount, the ARCH award may be adjusted downward accordingly.
    - Developer fee shall not exceed $50,000.

9. Reserves will be funded out of operations at $4,000 for the first year with an annual increase of 3.5% per year for replacement reserves and $2,000 for the first year with an annual increase of 3.5% per year for operating reserves.

10. Residents referred from DDA will not receive Section 8 assistance.

11. All cash flow after payment of operating expenses (including respite care) shall be placed into a project reserve account that can be used by the applicant for project related operating, maintenance or services expenses. Any other use of these reserves must be approved by ARCH staff.

12. In the event that any operating support funding levels will be reduced, the Agency shall inform ARCH Staff about the impacts the proposed reduction will have on the budget and plan for services to the DD clients, and what steps shall be taken to address the impacts. A new budget or services plan must be approved by ARCH.

13. The Agency will notify ARCH when they enter into an option or purchase and sale agreement for any home, providing information on the location of the home and terms for acquiring the home. No home considered for acquisition will be within two blocks of another home owned by Agency unless otherwise approved by ARCH staff.

14. Prior to closing on the home, an individualized outreach plan will be submitted to ARCH staff for review and approval. The outreach plan will include provisions such as:

- Provide written notification to neighbors upon mutual acceptance of the Purchase and Sales Agreement to include CHI's intention to purchase the house, description of the project, and information regarding CHI and the care provider that will include the website and contact number;
- Provide an opportunity for neighbors to meet individually and/or as a group with CHI and the care provider regarding the project; such as having an Open House after the tenants move-in and include invitations to neighbors.

15. Once the home is selected the Agency shall include ARCH Staff in the inspection of the property and development of the final scope of work for the rehab. The final scope of work for the basic construction budget shall include, at a minimum, all work necessary for licensing of the home and correction of substandard health and safety conditions. Prior to start of construction, the Agency shall submit the final scope of work for ARCH Staff approval, along with evidence that construction costs have been confirmed by a qualified contractor and are within the basic construction budget. All uses of construction contingency funds must be approved by ARCH staff prior to authorization to proceed with such work.

7. Parkview Homes XV

Funding Request: $225,450 (Secured Grant)
10 Beds

Exec Bd Recommendation: $0

Project Summary:
Parkview Services, a Shoreline-based non-profit organization is proposing to develop three homes in East King County; one of those homes is in Kenmore, recently acquired by Parkview, the remainder are to yet be identified. The Kenmore Home is 4 beds and has short-term financing that must be taken out in the next year and a half. For the other two homes, they plan to acquire and remodel 1,600 square foot three-bedroom houses that will each serve three (3) low-income individuals with developmental disabilities referred by the Developmental Disabilities Administration. Specific homes will be identified once all funding is committed. Improvements will include remodeling to meet both Evergreen sustainability and ADA (Americans with Disabilities Act) accessibility standards.

Funding Rationale:
The Executive Board supports the concept of the Parkview proposal which serves the neediest of developmentally disabled persons but cannot recommend funding in the current round given the limited funding available. Parkview was awarded funding in 2014 for a similar project, whereas CHI has not received an award since 2012.

The current proposal's acquisition and development budget appears too low to be feasible given the targeted area. Given the amount of requested funds versus what was available, the Executive Board encourages a proposal from Parkview in the next funding round addressing this possible issue.

8. Parkview Homes 9 Down Payment Assistance (DPA)

Funding Request: $200,000 (Non-Recoverable Grant)
DPA for 6 Households

Executive Board Recommendation: $0

Project Summary:
Since 2006, Parkview Services has created 131 new homeowners, including 12 households that transitioned from subsidies to public housing rental to homeownership. This project proposes to create first-time homebuyers using deferred down-payment assistance (DPA) loans from a combination of public and private funds to achieve affordability for 10 households (6 in East King County). The homebuyers will purchase in either King, Skagit or Snohomish counties at sites to be determined (TBD). Eligibility for the down-payment assistance loans will require that the household income is 80% or less of the area median income (AMI) and that household has a member who is a person with Intellectual and Developmental Disabilities (IDDs). All homebuyers will receive homebuyer education, one-on-one pre-purchase financial counseling, and follow-up services subsequent to the purchase of their home.

The project includes a partnership with HomeSight, which has applied to King County for funds to make DP loans. Parkview homebuyers who purchase in King County will be eligible to use HomeSight's KC DPA loan together with other Parkview Services DP loans. In turn, HomeSight homebuyers who purchase in east King County will be eligible to use Parkview Services ARCH DP loans. Parkview believes this collaborative funding model is the most effective way to create affordable homeownership opportunities for their target population. The collective layers of DPA result in $150,000 in public assistance per household.

Funding Rationale:
The Executive Board potentially supports the concept of the Parkview proposal which serves households which have a disabled person in them, it does not recommend making a funding award at this time. ARCH has its own Down Payment Assistance program administered through the Washington State Housing Finance Commission which has had only limited activity in the past several years. Those DPA loans are available to all households, not just those with a disabled person. The Executive Board recommends that in the coming year it re-evaluate that program along with the Parkview proposal to determine why activity is limited, if changes to the ARCH program are warranted, and if a specialized program is more beneficial than ARCH's DPA program for the relative cost per household.

9. King County Housing Authority Preservation of Kirkland Heights and Juanita View

Funding Request: $2,500,000 (Deferred, Unsecured)
137 affordable units; 135 market-rate rental units

Exec Bd Recommendation: $0

Project Summary:
King County Housing Authority (KCHA) is proposing to refinance 272 units of Section 8 housing located in Kirkland which it acquired form the Machinists Union in July 2019. King County provided $10 million earlier this year to facilitate the purchase of the two Kirkland properties. This is part of a larger 5 site

acquisition. Rents would remain as they are currently. No renovations or modernization is contemplated with the funding. At about the same time as making their application to ARCH it was announced that Microsoft had made available $60 million to KCHA for this purpose. The Microsoft money comes in the form of a 15 year loan bearing interest.

Funding Rationale:
The Executive Board does not recommend funding for this project for the following reasons:

- There is a potential to increase rents on certain units without cost burdening residents. This would allow getting higher Section 8 subsidies and the ability to carry conventional debt
- No renovations are planned with this refinance.
- No additional affordability is created with ARCH funding.
- KCHA secured other sources to immediately acquire the property.
- KCHA does portfolio lending which precludes securing individual properties with Deeds of Trust.

The Executive Board sees opportunity in the proposal if re-envisioned to create greater affordability or significant improvements to the property. The Executive Board would welcome an application in the next round. In the event KCHA does provide an application to ARCH in the upcoming round, the application should address the following issues raised above.

Applicable to all funded projects:

Standard Conditions:

1. The Applicant shall provide revised development and operating budgets based upon actual funding commitments, which must be approved by ARCH staff. If the Applicant is unable to adhere to the budgets, City or Administering Agency must be immediately notified and (a) new budget(s) shall be submitted by the Applicant for the City's approval. The City shall not unreasonably withhold its approval to (a) revised budget(s), so long as such new budget(s) does not materially adversely change the Project. This shall be a continuing obligation of the Applicant. Failure to adhere to the budgets, either original or as amended may result in withdrawal of the City's commitment of funds.

2. The Applicant shall submit evidence of funding commitments from all proposed public sources. In the event commitment of funds identified in the application cannot be secured in the time frame identified in the application, the Applicant shall immediately notify City or Administering Agency, and describe the actions it will undertake to secure alternative funding and the timing of those actions subject to City or Administering Agency's review and approval.

3. In the event federal funds are used, and to the extent applicable, federal guidelines must be met, including but not limited to: contractor solicitation, bidding and selection; wage rates; and Endangered Species Act (ESA) requirements. CDBG funds may not be used to repay (bridge) acquisition finance costs.

4. The Applicant shall maintain documentation of any necessary land use approvals and permits required by the city where the projects are located.

5. Submit monitoring reports quarterly through completion of the project, and annually thereafter. Submit a final budget upon project completion. If applicable, submit initial tenant information as required by City or Administering Agency.

Supplemental Funding Request:

1. Catholic Community Services with Sophia Way, Women and Family Shelter

Funding Request:	$175,000 supplemental funding (Secured Grant) to the $3,397,000 award made in the 2017 round
	98 Beds (50 Family; 48 Unaccompanied Women)
Exec Bd Recommendation:	up to $175,000 (Secured Grant)

Project Summary:
The new development on the site required addressing storm water impact of the existing building which was constructed in 1952 with different requirements.

Funding Rationale:
The Executive Board supported the CAB recommendation for funding the additional request for the following reasons:

- Storm water detention was originally sized only for the new shelter building however regulations required the impact of the existing structure to also be addressed which was not budgeted for. Additionally, hazardous material was found on site and needed to be remediated.
- Agencies increased their capital campaign targets to match the public ask.
- The project is well underway and addresses an urgent public need.

Special / Revised Conditions:

1. Funds are an "up to" amount to be released only after ARCH staff review and approval of proposed construction change order.

Attachments

Attachment 1: Recommended 2019 Projects and Funding Sources
Attachment 2: Leveraging Table
Attachment 3: Economic Summaries of Recommended Projects
Attachment 4: List of Past Projects Funded through the Trust Fund

Attachment 3: Recommended Projects and Funding Sources

	Recommended Projects						Supplemental	
	Imagine Housing Samma Senior Apartments	Congregations for the Homeless East King County Men's Permanent Shelter	Inland Group Polaris at Eastgate Apartments	Inland Group/Horizon Housing Alliance Together Center Redevelopment	Community Homes Shared Living 1	Community Homes Adult Family Home 8	Catholic Community Services with Sophia Way, Women and Family Shelter	Total Recommended Funding
Total Recommended Funds	$ 750,000	$ 500,000	$ 575,000	$ 2,750,000	$ 100,500	$ 150,500	$ 175,000 ##	$ 5,001,000
General Funds	$ -	$ 500,000	$ 575,000	$ 2,750,000	$ 100,500	$ 150,500	$ 175,000	$ 4,251,000
CDBG	$ 750,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 750,000
Member City General Funds								
Bellevue	$ -	$ 228,920	$ 263,290	$ 1,259,060	$ 46,010	$ 68,910	$ -	$ 1,866,190
Bothell	$ -	$ 10,910	$ 12,550	$ 60,030	$ 2,190	$ 3,290	$ -	$ 88,970
Clyde Hill	$ -	$ 4,570	$ 5,250	$ 25,100	$ 920	$ 1,370	$ -	$ 37,210
Hunts Point	$ -	$ 470	$ 530	$ 2,580	$ 90	$ 140	$ -	$ 3,810
Issaquah	$ -	$ 24,430	$ 28,100	$ 134,380	$ 4,910	$ 7,350	$ -	$ 199,170
Kenmore	$ -	$ 7,980	$ 9,180	$ 43,890	$ 1,600	$ 2,400	$ -	$ 65,050
Kirkland	$ -	$ 118,840	$ 136,675	$ 653,600	$ 23,890	$ 35,770	$ 175,000	$ 1,143,775
Medina	$ -	$ 2,340	$ 2,680	$ 12,860	$ 470	$ 700	$ -	$ 19,050
Mercer Island	$ -	$ 13,120	$ 15,090	$ 72,150	$ 2,640	$ 3,950	$ -	$ 106,950
Newcastle	$ -	$ 4,570	$ 5,240	$ 25,130	$ 920	$ 1,380	$ -	$ 37,240
Redmond	$ -	$ 59,980	$ 68,980	$ 329,910	$ 12,060	$ 18,050	$ -	$ 488,980
Sammamish	$ -	$ 17,560	$ 20,200	$ 96,600	$ 3,530	$ 5,290	$ -	$ 143,180
Woodinville	$ -	$ 5,430	$ 6,235	$ 29,860	$ 1,090	$ 1,630	$ -	$ 44,245
Yarrow Point	$ -	$ 880	$ 1,000	$ 4,850	$ 180	$ 270	$ -	$ 7,180
Total General Funds	$ -	$ 500,000	$ 575,000	$ 2,750,000	$ 100,500	$ 150,500	$ 175,000	$ 4,251,000
Community Development Block Grant (CDBG) Funds								
N/E Subregion - ARCH Allocation	$ 240,252	$ -	$ -	$ -	$ -	$ -	$ -	$ 240,252
CDBG - Kirkland	$ 267,425	$ -	$ -	$ -	$ -	$ -	$ -	$ 267,425
CDBG - Redmond	$ 242,323	$ -	$ -	$ -	$ -	$ -	$ -	$ 242,323
Total CDBG Funds	$ 750,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 750,000

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City of Bothell™

City Council
Agenda Bill
AB # 20-010

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Jennifer Phillips, City Manager
Kellye Mazzoli, Assistant City Manager
Lindsay Masters, ARCH Executive Manager (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of a Resolution Approving 2020 ARCH Work Program and Funding

POLICY CONSIDERATION: This item asks the City Council to consider if the City should approve the ARCH work program and budget for 2020; and whether to adjust the proportions of the Council-approved city contribution to ARCH for 2020 by increasing the amount for membership dues, as requested by ARCH for new administrative costs, along with a commensurate decrease in the amount designated for the housing trust fund.

If approved as presented, this item will keep current total allocations to ARCH within budgeted amounts while meeting new administrative staffing needs to address program enforcement and compliance. However, this item will decrease the amount that Bothell contributes to the housing trust fund which could be used to fund future affordable housing projects.

HISTORY:

DATE	ACTION
AUGUST 1995	City of Bothell becomes a member of ARCH
ANNUALLY	Councils of each ARCH member city (15+ King County) consider budget/ work program
NOVEMBER 27, 2018	City Council adopted the 2019-2020 City Budget, including funds for ARCH membership and trust fund
APRIL 2, 2019	City Council approved ARCH 2019 work program, budget, and trust fund contribution

A Regional Coalition for Housing (ARCH) is an interlocal agency established in 1993 by east King County communities to provide a framework for cities to cooperatively work on planning and providing housing in the region. The interlocal agreement that created and governs ARCH requires an annual presentation of the work program and budget to the Council of every member

jurisdiction in order to receive funding. Currently, there are 15 Eastside cities, including Bothell and King County, who are contributing members.

Bothell contributes to ARCH in two ways, first through annual membership dues and secondly through a housing trust fund contribution. Membership dues are calculated on a per capita basis and support the operating expenses of the organization. Housing trust fund contributions are voluntary, with "parity goals" established for each member jurisdiction. Parity goals are based on a formula that considers inflation, population, and projected housing and employment growth to establish a range for suggested contributions to the housing trust fund. For Bothell, the 2020 established parity goal ranges from $173,394 to $314, 235. Each jurisdiction retains the ability to determine their actual contribution amount to the Housing trust fund and the source of those funds (e.g., general fund, CDBG, fee waivers, land donations) as well as which projects will receive funding from the city's contribution.

The 2019-2020 biennial budget approved by Council on November 27, 2018, included funding for ARCH membership dues and an annual contribution to the housing trust fund. At that time, Council raised questions about reports of violations of income eligibility and occupancy rules by homeowners of some units being monitored by ARCH. Council directed that the budgeted funds for ARCH not be allocated until ARCH could provide additional information about how the issue with the homeownership program was being addressed.

ARCH staff initiated a comprehensive audit of each unit in the homeownership program and have actively worked with individual homeowners to resolve compliance violations, including pursuing remedies that allow new income-eligible buyers to purchase the properties. ARCH staff worked closely with the ARCH Executive Board and a consultant to evaluate and strengthen the monitoring program going forward. The City of Bothell has a seat on ARCH's Executive Board and also actively participated in this work.

On April 2, 2019, Council received an update from Lindsay Masters, ARCH Executive Manager, as part of the annual reporting requirement. Ms. Masters presented the ARCH work program during that presentation and addressed the questions and concerns of Council about changes to the monitoring program. Based on the information from the briefing and overall comprehensive response of ARCH staff, City Council approved the ARCH work program and budget and released the City's 2019 budget allocation for membership and housing trust fund contributions.

DISCUSSION: Since City Council's last briefing in April 2019, ARCH received their complete Program Assessment Summary from Street Level Advisors, a third-party consultant hired to conduct a comprehensive review of policies and procedures of ARCH's Homeownership Program. (See **Attachment 2**)

Several key findings and recommendations were presented as part of the report. Those high-level key findings are as follows:

1. The program is serving households in the target income range.
2. A significant share of ARCH homes has not remained affordable to the same income levels over time.
3. The public share of equity in ARCH homes (Value in Trust) has grown substantially over time.
4. ARCH's Homeownership Program has provided meaningful opportunities for homeowners to build equity.
5. Compliance violations such as subleasing and unauthorized sales represent a small minority of the units in the program.
6. Foreclosures have created meaningful losses in the program, particularly following the economic recession, but have not been a frequent occurrence in recent years.
7. ARCH is implementing industry best practices in many areas, but in other areas falls short of the goal of preserving long term affordability. Staffing levels lag significantly behind other successful programs.

Recommended actions by Street Level Advisors to address identified areas of concern included:

- Expand staffing
- Strengthen enforcement
- Strengthen requirements
- Improve systems

A major takeaway from the consultant's report was that ARCH staffing has not kept pace with the growth in programs that it oversees. Since the early 2000's, ARCH staffing has been at approximately five (5) full-time employees (FTEs). However, ARCH programs grew substantially in the following ways:

- Homeownership Units monitored grew from 100 to about 700
- Rental Units grew from less than 300 to just over 1,000 (with 600 in the pipeline)
- Housing Trust Fund units increased by 1,800
- New housing incentive programs were added in three (3) cities in 2019 (including Bothell)

In the last decade, the value of ARCH units relative to the market also grew dramatically, and the need for more active monitoring has grown to ensure units are preserved and used for their intended purpose. On the whole, the Homeownership Program has achieved significant outcomes in providing affordable homeownership opportunities to income qualified households while preserving significant affordability relative to the broader housing market. However, without proper investment in staffing, it is expected that the program will continue to experience compliance violations and erosion of affordability.

Street Level Advisors noted that ARCH's staffing levels for the Homeownership Program fall well below peer programs and recommended best practices which is set at a ratio of no more than 350 units per FTE. Based on this analysis, the ARCH Executive Board took steps to hire two limited-term positions and to advance options for resale fees that could help to support the additional staffing over time. As part of this request, it is proposed that the limited-term positions become permanent.

<u>2020 Administrative Budget</u> (**Attachment 3**)
On September 12, 2019, ARCH's Executive Board approved the recommended ARCH Work Program and Administrative Budget to forward for consideration to each ARCH member city. The recommended budget incorporates ongoing support for the described increases in capacity amounting to a significant increase to the Administrative Budget. Important changes to highlight from the previous budget year include:

- Continuation of the two new staff positions (conversion from LTEs to permanent FTEs)
- Renewal of internship positions to provide continued administrative support
- Software licensing fees for a new database system
- Reduction in insurance premiums and increase in Bellevue in-kind insurance
- Modest consultant budget to support:
    - Database development
    - Website updates

The majority of the increase is due to the addition of the two (2) permanent positions. One new position will be dedicated entirely to administration of the Homeownership Program, bringing the overall program capacity up to 2.0 FTE. The second position will be responsible for compliance monitoring of rental housing covenants, providing additional capacity for contract and covenant development, and providing back-up support to the Homeownership Program.

2020 Work Program (**Attachment 4**)
In 2020, ARCH proposes elevating the following priorities in its general Work Program, to:

- Provide excellent stewardship of affordable housing assets
- Develop measurable goals for production and preservation of affordable housing in the ARCH region
- Advance an initiative with high potential for impact (i.e., Eastside Equitable TOD Plan)
- Continue to support proposals for dedicated revenue sources for affordable housing
- Evaluate options for expanding ARCH's capacity to accomplish its broader mission

In order to accomplish this, ARCH will first continue to promote investments in affordable housing through management of the ARCH Housing Trust Fund and other special projects. Second, they will support member jurisdictions with assistance in local housing policy and planning efforts, State legislative activities, interlocal/ Eastside planning activities, and regional/countywide planning activities. Third, ARCH will continue implementation of the established housing program by providing administration of incentive and inclusionary programs along with a renewed focus on the good stewardship of affordable housing with the aforementioned increase in monitoring and development of a needed program database. Education and outreach efforts will continue on housing needs and housing opportunities throughout the Eastside. Finally, ARCH staff will continue the day-to-day management and administrative activities needed to be a high functioning service provider for member jurisdictions.

Beyond the general workplan, City of Bothell specifically will receive assistance when needed:

- Implementing our Housing Strategy Plan
- Establishing an MFTE program
- Evaluating affordable housing provisions related to zoning and other code amendments and implementing those adopted
- Work related to affordable housing component of the city's LIFT program in our downtown areas. Includes assisting with any reporting requirements and potentially exploring additional opportunities for affordable housing on city owned properties in the downtown revitalization area

- Evaluating the updated State legislation regarding impact fee waivers for affordable housing and exploring potential revisions to local regulations related to impact fee waivers for affordable housing
- Evaluating and implementing affordable housing strategies in our Canyon Park plan.

2020 Housing Trust Fund Contribution (Parity Goal)

Housing trust fund contributions are voluntary, with "parity goals" established for each member jurisdiction. Parity goals are based on a formula that considers inflation, population, and projected housing and employment growth to establish a range for suggested contributions to the housing trust fund. For Bothell, the 2020 established parity goal ranges from $173,394 to $314,235. Each jurisdiction retains the ability to determine their actual contribution amount to the Housing trust fund and the source of those funds (e.g., general fund, CDBG, fee waivers, land donations) as well as, which projects will receive funding from the city's contribution. In other words, a contribution to the housing trust fund is only a set aside at this time. Projects that are recommended for funding by the Executive Board would still require separate City Council approval of the requested expenditure amounts.

City Funding Recommendations

In preparing the 2019-2020 biennial budget, staff estimated the membership fees to be $45,000 with a Housing Trust Fund contribution of $78,000 each year, totaling $123,000 from the General Fund. In 2019, actual membership fees were higher than estimated at $58,811. City Council elected to pay the increased membership fee and keep the Housing Trust Fund contribution at $78,000 by funding the remaining $13,811 from General Fund Reserve.

For the reasons outlined above, primarily due to the additional staff for an increased level of monitoring, 2020 membership fees have increased significantly to $89,384. At this time, staff recommends City Council stay within the previously budgeted amount of $123,000, authorizing membership dues at the requested $89,384 and allocating the remaining $33,616 to the Housing Trust Fund. Council may consider increasing the Housing Trust Fund contribution at a future date.

Council may recall that on September 3, 2019, the City Council adopted a Resolution of Intent to receive shared tax revenue from the State to support affordable housing. This was the first step of two steps to complete the process. Council will have to approve an Ordinance levying the tax credit no later than July 27, 2020 and identify how the proceeds of the program will be spent. Staff

is preparing a recommendation that the proceeds be spent in support of ARCH, including a partial restoration of the Housing Trust Fund contribution amount for 2020.

FISCAL IMPACTS: The item is included in the Adopted 2019-2020 Budget, the budgeted value of $123,000 is sufficient to fund this item from the General Fund with $89,384 for Membership Dues and $33,616 for Housing Trust Fund.

ATTACHMENTS:

Att-1. Proposed Resolution for ARCH 2020 Work Program and Funding
Att-2. Program Assessment Summary – Street Level Advisors
Att-3. ARCH 2020 Administrative Budget
Att-4. ARCH 2020 Work Program

RECOMMENDED ACTION: Approve the proposed Resolution to adopt the ARCH 2020 Work Program and Budget, and authorizing payment of City funds for ARCH 2020 membership dues and a housing trust fund contribution in the amounts of $89,384 and $33,616, respectively.

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RESOLUTION NO. _____(2020)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON AUTHORIZING CITY CONTRIBUTIONS TO THE ARCH ADMINISTRATIVE BUDGET AND HOUSING TRUST FUND UTILIZING FUNDS FROM THE CITY'S GENERAL FUND.

WHEREAS, A Regional Coalition for Housing (ARCH) was created by interlocal agreement to help coordinate the efforts of Eastside cities to provide affordable housing; and

WHEREAS, the City of Bothell desires to participate in the funding of affordable housing projects and programs administered by ARCH; and

WHEREAS, the ARCH Executive Board has developed a number of recommended conditions to ensure that the City's affordable housing funds are used for their intended purpose and that projects maintain their affordability over time; and

WHEREAS, the City Council has approved per AB #10-55 on March 16, 2010, the Amended and Restated Interlocal Agreement for ARCH, which contains provisions relating to the approval of the ARCH budget and work plan by individual member agencies and relating to the housing trust fund; and

WHEREAS, the City Council desires to use $89,384 from City funds as designated below for the ARCH administrative budget; and

WHEREAS, the City Council desires to use $33,616 from City funds as designated below for the housing trust fund administered by ARCH.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The 2020 A Regional Coalition for Housing (ARCH) Work Program and Administrative Budget are approved.

Section 2. The City Council authorizes the payment of $89,384 to the ARCH administrative budget in 2020 based on the formula approved by the ARCH Executive Board.

Section 3. The City Council authorizes the payment of $33,616 to the ARCH housing trust fund in 2020. Consistent with Section 12 of the Amended and Restated Interlocal Agreement for ARCH, the City's contributions to the housing trust fund may be released only upon, and in accordance with, the written direction of the City Council.

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Section 4. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

PASSED this _____ day of _____, 2020.

APPROVED:

_____
LIAM OLSEN
MAYOR

ATTEST/AUTHENTICATED:

_____
LAURA HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: _____(2020)

Program Assessment Summary

ARCH – A Regional Coalition for Housing

June 11, 2019

Introduction

ARCH engaged Street Level Advisors to assess the organization's ongoing stewardship of its Homeownership Program, which provides affordable ownership opportunities to people with low to moderate incomes while seeking to retain affordability by limiting resale prices for future buyers. This model is known as "shared equity homeownership." Shared Equity programs require a delicate balancing act between the dual goals of helping today's owners and preserving affordability for future buyers.

To conduct the assessment, Street Level Advisor worked with staff to identify problems including foreclosures, unauthorized rentals and unauthorized sales. We compiled data on the affordable pricing and current resale formula values for each home in ARCH's portfolio in order to understand the organization's performance in maintaining long-term affordability. We also administered a comprehensive assessment tool developed by Grounded Solutions Network based on identified best practices for affordable homeownership programs.

This report summarizes key findings and recommendations for specific changes in policies or administrative procedures which ARCH could make to strengthen the program.

A. Key Findings

1. The program is serving households in the target income range.

The roughly 700 units in the program were designed to target households at a range of incomes from 50% to 120% AMI, with the vast majority targeted at 80 to 120% AMI. For the sample of buyers we tested, the median household income was 70.9% of local AMI adjusted for household size.

In addition, buyer incomes are well below the income eligibility limits - 94% of buyers had incomes below the income limit for their unit, and the median buyer's income (as a percentage of local AMI, adjusted for household size) was 18.9 percentage points less than the limit. ARCH allows owners who are unable to sell their homes within 60 days to sell to households above the unit's income limit.

However, of the 29% of sales that occurred after the 60-day period, most homes were sold to buyers who were nonetheless income qualified. Overall, 7.2% of the resales we studied involved sales to 'over-income' buyers.

2. A significant share of ARCH homes have not remained affordable to the same income levels over time.

The program has utilized a variety of resale formulas over time and across different jurisdictions. These formulas have performed differently in preserving affordability, but a significant 67% are now affordable to a higher income group than they were at initial sale.

Overall, the typical home has lost 7.4 percentage points of affordability. Of the program's 3 most common resale formulas (REI, REI/HUD, and Flat Quarterly), the hybrid REI/HUD formula preserved affordability the best, and the REI formula performed the worst. Even so, the REI/HUD formula has still resulted in affordability losses in nearly all conditions other than the peak of the housing bubble.

We expect that this gradual erosion of affordability will lead to a steady increase in the number of homes that remain unsold after 60 days and ultimately sell to buyers who are above ARCH's income limits

3. The public share of equity in ARCH homes ("Value in Trust") has grown substantially over time

The typical ARCH home was initially sold at a restricted price approximately $130,000 less than market value, but now has a current formula price that is $330,000 less than market value. Taken together the difference between affordable prices and market values totals $274 million. This is the value that ARCH is entrusted to steward.

For most homes (74.2%), the discount relative to market value that the current formula price provides is now larger than it was at initial sale. This means that although the program's resale formulas are allowing a steady erosion of affordability overall, they have nonetheless consistently deepened the homes' market discounts – just not enough to preserve affordability perfectly.

4. ARCH's Homeownership Program has provided meaningful opportunities for homeowners to build equity.

The most common resale formulas found in the program have allowed homeowners to build significant wealth and benefit from a significant portion of their homes' market appreciation. The typical ARCH home's current maximum formula price is approximately $123,000 more than its initial affordable price.

In total, the program's restricted prices have appreciated by $94 million. We estimate that a for a typical unit, a homeowner who had owned since the unit was placed in ARCH's portfolio would have gained $65,000 at resale (appreciation minus closing costs and downpayment). This results in a typical rate of return on homeowner's investment of 13.86% annually – nearly double what owners would have earned by investing in the S&P 500.

5. Compliance violations such as subleasing and unauthorized sales represent a small minority of the units in the program.

As of May 2019, ARCH has identified 51 homes (7% of the portfolio) that merited further review for possible compliance violations, either due to mail being forwarded to a different address, an apparent change of ownership, or other reason. Of these, 24 were determined to be in violation (3.5%), 16 were determined to be in compliance, and 11 were still under review. Violations were

categorized as unauthorized sales (1.3%), non-owner occupancy (1.7%), and unauthorized quit claim deed transfers (0.4%).

6. Foreclosures have created meaningful losses in the program, particularly following the economic recession, but have not been a frequent occurrence in recent years.

A total of 43 ARCH properties have experienced a foreclosure (5.8% of the portfolio). Of these, 20 happened without any formal notification to ARCH, and in most cases where ARCH was notified, ARCH was unable to preserve the resale covenants on these homes. This was largely due to ARCH not having the resources readily available for the purpose of purchasing units at risk of foreclosure.

7. ARCH is implementing industry best practices in many areas, but in other areas falls short of the goal of preserving long term affordability. Staffing levels lag significantly behind other successful programs.

ARCH's covenant and other legal documents are state of the art, incorporating many thoughtful and strong protections for the public interest in ARCH homes. But ARCH has been operating with less staff than is necessary to successfully preserve affordability and monitor compliance for such a large portfolio of homes. ARCH has less than one full time staffer dedicated to the program . This means that ARCH has had to take a relatively "hands off" approach to stewardship. Based on a comprehensive review of current practices and procedures, ARCH is currently implementing just over half of the 70 industry best practices covered by the assessment tool.

B. Recommendations

We found many areas where ARCH is implementing proven best practices but we also identified additional steps which ARCH could take to strengthen the homeownership program and greatly improve the likelihood that units would remain affordable over the long term. We made 35 detailed recommendations covering topics including business planning, marketing and buyer selection, initial pricing, resale pricing, mortgage financing, monitoring and enforcement. We have highlighted below the recommendations that seem most impactful.

<u>Expand Staffing</u>

- Add two or three additional full time staff positions including at least one person focused exclusively on the homeownership program.
- In order to help cover the cost of new staffing, develop a plan for implementing new fees at the time of resale to be charged to selling homeowners and/or to new buyers.

<u>Strengthen Enforcement</u>

- Convene a working group of attorneys from partner cities to coordinate short-term enforcement actions and to plan for changes to the legal structure to enable more effective enforcement in the future.

- Adopt a monitoring schedule and an enforcement plan outlining the intended steps that staff should take in the event of each common type of violation.
- Develop a comprehensive program manual (including mission statement) and have it reviewed and approved by the ARCH Board of Directors. Update it periodically – at least every 5 years.

Strengthen Requirements:

- Consider adopting a new resale formula which will better maintain affordability of homes at resale. If possible, update existing homes to the new formula whenever they turnover.
- Develop a strategy for "rebalancing" the pricing limits for units with resale prices that have risen to the point where they are considerably out of reach for their targeted income group.
- Switch to imposing income limits based on applicant household size rather than the size of the unit. Review other buyer eligibility criteria and consider adopting an asset limit and first time buyer requirement.
- Adopt a policy limiting buyers to approved mortgage product types. Consider creating a list of approved or preferred lenders.
- Work with ARCH's attorneys to develop an approach that allows member cities to record new covenants at each resale, resetting the 30-year affordability period each time.
- Evaluate the feasibility of requiring buyers to participate in a program orientation session with ARCH staff.

Improve Systems

- Purchase HomeKeeper data management software (myHomeKeeper.org) to more efficiently manage program data and track outcomes.
- Create a standard application form for homebuyers in order to capture basic data about each applicant.

2020 ARCH Administrative Budget

Adopted by ARCH Executive Board
SEPTEMBER 12th, 2019

	Adopted 2019 Budget	2020 Recommended Budget	Difference	% Change
I. TOTAL EXPENSES	**$ 724,400**	**$ 1,110,097**	**$ 385,697**	**53%**
A. Personnel	**$ 655,417**	**$ 968,399**	**$ 312,981**	**48%**
Salaries	$ 478,222	$ 683,084	$ 204,862	43%
Current Staff (5.0 FTE)	$ 478,222	$ 511,084	$ 32,862	
(New) Program Administrator	*$ -*	*$ 86,000*	*$ 86,000*	
(New) Associate Planner	*$ -*	*$ 86,000*	*$ 86,000*	
Benefits	$ 177,196	$ 285,314	$ 108,118	61%
Current Staff (5.0 FTE)	$ 177,196	$ 193,314	$ 16,118	
(New) Program Administrator	*$ -*	*$ 46,000*	*$ 31,000*	
(New) Associate Planner	*$ -*	*$ 46,000*	*$ 31,000*	
B. Operating	**$ 54,368**	**$ 67,195**	**$ 12,827**	**24%**
Rent & Utilities	$ 24,294	$ 24,780	$ 486	
Telephone	$ 4,375	$ 4,586	$ 211	
Travel/Training	$ 2,000	$ 2,600	$ 600	
Auto Mileage	$ 3,342	$ 3,500	$ 158	
Copier Costs	$ 1,750	$ 1,803	$ 53	
Office Supplies	$ 2,800	$ 3,100	$ 300	
Office Equipment Service	$ 2,000	$ 2,215	$ 215	
Fax/Postage	$ 825	$ 1,500	$ 675	
Periodical/Membership	$ 3,992	$ 4,112	$ 120	
Misc. (events,etc.)	$ 1,680	$ 2,000	$ 320	
Insurance	$ 5,310	$ -	$ (5,310)	
Equipment Replacement	$ 2,000	$ 2,000	$ -	
Furnishings			$ -	
Database/software licensing		*$ 15,000*		
C. In-Kind Admin/Services	**$ 14,615**	**$ 19,503**	**$ 4,888**	33%
Insurance	$ 5,000	**$ 9,660**	$ 4,660	
IT Services	$ 9,615	$ 9,843	$ 228	
D. Grants and Consultant Contracts	$ -	**$ 55,000**	**$ 55,000**	**N/A**
Consultant Contracts / Interns	*$ -*	*$ 55,000*	*$ -*	
Special Grants	$ -	$ -	$ -	

	Adopted 2019 Budget	2020 Recommended Budget	Difference	% Change
II. TOTAL INCOME	**$ 724,221**	**$ 1,110,097**	**$ 385,876**	**53%**
A. Member Contributions	**$ 720,021**	**$ 1,103,897**	**$ 383,876**	**53%**
Beaux Arts Village	$ 1,750	$ 2,000	$ 250	14%
Bellevue	$ 185,905	$ 281,876	$ 95,971	52%
Bothell	$ 58,811	$ 89,384	$ 30,573	52%
Clyde Hill	$ 4,193	$ 6,551.43	$ 2,358	56%
Hunts Point	$ 1,750	$ 2,000	$ 250	14%
Issaquah	$ 45,217	$ 72,244	$ 27,027	60%
Kenmore	$ 29,793	$ 44,921	$ 15,128	51%
Kirkland	$ 115,019	$ 175,946	$ 60,927	53%
Medina	$ 4,221	$ 6,523	$ 2,302	55%
Mercer Island	$ 33,327	$ 50,222	$ 16,895	51%
Newcastle	$ 14,974	$ 23,006	$ 8,032	54%
Redmond	$ 78,584	$ 123,104	$ 44,520	57%
Sammamish	$ 80,784	$ 127,494	$ 46,710	58%
Woodinville	$ 15,466	$ 23,673	$ 8,207	53%
Yarrow Point	$ 1,750	$ 2,401	$ 651	37%
King County	$ 48,477	$ 75,000	$ 26,523	55%
Bellevue Detail	**$ 185,905**	**$ 281,876**	**$ 95,971**	
Cash Contributions	$ 8,085	$ 86,673	$ 78,588	
In-Kind Contributions	$ 177,820	$ 195,203	$ 17,383	
Personnel	$ 163,205	$ 175,700	$ 12,495	
Insurance	$ 5,000	$ 9,660	$ 4,660	
IT Services	$ 9,615	$ 9,843	$ 228	
B. Other Income	**$ 4,200**	**$ 6,200**	$ 2,000	
Administrative Fees	$ 4,200	$ 4,200	$ -	
Interest Earned	$ -	$ 2,000	$ 2,000	
III. USE OF RESERVES	**$ 179**	**$ -**	**$ (179)**	
IV. CONTINGENT INCOME AND EXPENSES				
Note: This section reflects potential opportunities for ARCH to provide additional services if new fee revenue is realize				
A. Contingent Expenses				
Staffing or Consultants	$ -	$ 150,000	$ 150,000	N/A
Additional Services	$ -	$ 150,000	$ 150,000	N/A
B. Contingent Revenue				
Resale/Monitoring Fees	$ -	$ 150,000	$ 150,000	N/A
Service Fees	$ -	$ 150,000	$ 150,000	N/A

ARCH WORK PROGRAM: 2020

2020 Priorities

In 2020, ARCH will elevate the following priorities in its Work Program:

- Provide excellent stewardship of affordable housing assets
- Develop measurable goals for production and preservation of affordable housing in the ARCH region
- Advance an initiative with high potential for impact (i.e., Eastside Equitable TOD Plan)
- Continue to support proposals for dedicated revenue sources for affordable housing
- Evaluate options for expanding ARCH's capacity to accomplish its broader mission

I. AFFORDABLE HOUSING INVESTMENT

A. ARCH Housing Trust Fund

Parity Goals. Develop updated goals for member investments through the ARCH HTF.

Annual Funding Round. Develop funding priorities and evaluation criteria for the annual funding round. Advertise available funds and manage a competitive process on behalf of member cities. Review funding applications and develop recommendations through the Citizen Advisory Board (CAB), with input from member staff. Develop final recommendations by the ARCH Executive Board and facilitate final funding allocations through member councils.

Public Funding Coordination. Work collaboratively with public funders at the State and local levels to promote shared affordable housing goals and equitable geographic distribution of resources. Review and provide input to other funders for Eastside projects that apply for County (HOF, RAHP, HOME, TOD etc.) and State (Tax Credit, State Housing Trust Fund) funds. Provide input to the King County Joint Recommendations Committee (JRC) on behalf of participating Eastside jurisdictions. Assist N/E consortium members with evaluating and making a recommendation to the County regarding CDBG allocations to affordable housing.

Private Funding Coordination. Work with private investors and lenders to maximize leverage of public investment into affordable housing. Negotiate maximum public benefits from investment of housing funds into private projects.

Project Pipeline Management. Work with member cities and project sponsors to develop a robust pipeline of projects to be funded over the next five years (see related work on Transit Center sites, below). Actively vet potential HTF projects, and lead funding policy and prioritization discussions with the ARCH Executive Board to facilitate planning and decision-making.

Contract Development and Monitoring. Prepare contract documents and distribute funds for awarded projects. Monitor funded projects including evaluating performance and tracking loan payments. Monitor for long term sustainability of previously funded projects.

Centralized Trust Fund Reporting. Work with Administering Agency (Bellevue) to maintain records and produce regular financial reports for the ARCH Trust Fund accounts.

B. Special Projects

Transit-Oriented Development Sites. Assist cities with advancing and coordinating affordable housing projects near transit. Partner with Sound Transit, King County Metro and other public agencies to maximize opportunities on public property. Current opportunities include sites in Bel-Red, Overlake, Downtown Redmond, Issaquah, Kirkland, Bothell, and Kenmore.

Surplus Property/Underdeveloped Property. Assist with evaluation of public surplus or underutilized private property (e.g. faith community properties) for suitability of affordable housing. Provide technical assistance to property owners interested in supporting affordable housing. Develop an inventory of promising public and nonprofit property and begin to engage owners to gauge interest in disposition for housing.

Eastside Shelter Capacity. Support efforts by Eastside shelter providers, Eastside Human Services Forum, and member cities to implement an East King County sub-regional strategic approach to shelter and related services for homeless adults and families. Support the completion of construction of a permanent women and family shelter, and continue supporting efforts to construct a permanent year-round men's shelter.

Preservation of At Risk Affordable Housing. As needed, assist with responding to notices of sale of HUD assisted properties received by member cities, or other information indicating an impending loss of existing affordable housing. Work with member cities to facilitate acquisitions or other strategies to preserve existing housing where affordability is at risk of being lost.

II. HOUSING POLICY AND PLANNING

A. Local Policy, Planning and Code Development

ARCH provides assistance directly to member cities on a range of local planning efforts. Local planning efforts with individual member cities may be found in *Attachment A*. These efforts may take different forms, such as:

- **Housing Element Updates**. Work with members to update comprehensive plan housing elements.
- **Housing Strategy Plans**. Assist members to prepare housing strategies to implement housing elements and create council work plans. Cities with recently completed strategy plans include Bellevue, Issaquah, Kenmore, Bothell, Kirkland, Redmond, and Sammamish.
- **Incentive Program Design.** Provide economic analysis and policy and program development support to design housing incentive programs, including land use, property tax, impact fee waivers and other incentives.
- **Land Use Code Amendments.** Assist city staff on land use and other code amendments in order to implement comprehensive plan policies.
- **Other Support.** Other areas in which ARCH could provide support to member cities include preservation of valuable community housing assets, assistance to households displaced by development activity, or negotiation of agreements for specific development proposals. ARCH views this as a valuable service to its members and will continue to accommodate such requests to the extent they do not jeopardize active work program items.

B. Inter-Local / Eastside Planning Activities

Interlocal planning activities are coordinated by ARCH for the benefit of multiple members.

ARCH Regional Affordable Housing Goals and Reporting. Work with member staff and the ARCH Executive Board to develop measurable goals for production and preservation of affordable housing across ARCH member communities. Explore working with King County to utilize dashboards created for the GMPC Affordable Housing Committee.

Eastside Equitable Transit-Oriented Development Plan. Partner with with transit agencies and other stakeholders to create a plan for implementation of equitable transit-oriented development on the Eastside. The plan will aim to define shared policy goals and strategies, establish numerical goals for affordable unit production, identify specific site opportunities/affordable housing pipeline, and include commitments by partner agencies to utilize available tools and resources.

Long-Term Funding/Dedicated Revenue Strategy. Continue work on a long-term funding strategy for the ARCH Trust Fund. Facilitate conversations with member cities on identifying and exploring dedicated sources of revenue for affordable housing at the local and regional level (e.g., REET, property tax levy, 0.1% sales tax, etc.). Provide relevant data and develop options for joint or individual revenue approaches across ARCH member cities and determine any shared state legislative priorities to authorize local options for funding.

Eastside Housing Data Analysis. On an annual basis, ARCH provides housing and demographic data as available. This information is available to members for planning efforts and will be incorporated into ARCH education fliers and an updated Housing 101 report.

Housing Diversity/Accessory Dwelling Units (ADUs). Continue to support a diversity of housing options among member cities:

- Accessory Dwelling Units (ADUs): Explore outreach and other ways to promote ADU development (e.g., improve online resources, provide connections to financing options). Explore partnership with eCityGov Alliance to increase accessibility of ADU permitting (e.g., update tip sheets and create streamlined portal through MyBuildingPermit.com).

C. State Legislative Activities

The ARCH Executive Board will discuss and explore shared legislative priorities for advancing affordable housing in the region. ARCH staff will track relevant state (and, where feasible, federal) legislation. As needed, staff will report to the Executive Board and members, and coordinate with relevant organizations (e.g. AWC, SCA, WLIHA, HDC) to advance shared legislative priorities.

D. Regional/Countywide Planning Activities

ARCH participates in regional planning efforts to advance Eastside priorities and ensure that perspectives of communities in East King County are voiced in regional housing and homelessness planning.

King County GMPC Affordable Housing Committee / Housing Inter-Jurisdictional Team (HIJT). Support efforts to advance the five-year action plan developed by the Regional Affordable Housing Task Force in 2018. ARCH will help staff the HIJT, which provides support to the Growth Management Planning Council's Affordable Housing Committee (AHC). In addition, ARCH will facilitate discussions as needed with members and the Executive Board to consider actions recommended in the five-year plan.

All Home/ Eastside Homeless Advisory Committee (EHAC). Collaborate with All Home, EHAC and other relevant organizations and initiatives to advance shared work on homelessness. Coordinate allocation of resources, and work on specific initiatives (e.g., coordinated entry and assessment for all populations).

Explore Collaboration with Cities in North and East King County. As requested, engage cities interested in supporting affordable housing in north and east King County that are not currently members of ARCH. Explore collaboration that provides benefits for additional cities and current ARCH member cities.

III. HOUSING PROGRAM IMPLEMENTATION

A. Administration of Housing Incentive and Inclusionary Programs

ARCH partners with member cities to administer local housing incentive and inclusionary programs, including mandatory inclusionary, voluntary density bonus, multifamily tax exemption (MFTE) and other programs. Specific programs administered by ARCH include:

Jurisdiction	Incentive/Inclusionary Programs
Bellevue	Voluntary density bonuses, MFTE, impact fee waivers.
Bothell	Inclusionary housing.
Issaquah	Development agreements, voluntary and inclusionary programs, impact and permit fee waivers.
Kenmore	Voluntary density bonuses, MFTE, impact fee waivers.
Kirkland	Inclusionary program, MFTE.
Mercer Island	Voluntary density bonus, MFTE.
Newcastle	Inclusionary program, impact fee waivers.
Redmond	Inclusionary program, MFTE.
Sammamish	Inclusionary and voluntary density bonuses, impact fee waivers.
Woodinville	MFTE.
King County	Development agreements.

ARCH roles and responsibilities will typically include:

- Communicate with developers/applicants and city staff to establish applicability of codes and policies to proposed developments
- Review and approve proposed affordable housing (unit count, location/distribution, bedroom mix, and quality)
- Review and recommend approval of MFTE applications.
- Review and recommend approval of alternative compliance proposals
    - For fee in lieu projects, provide invoices and receipts for developer payments
- Develop contracts and covenants containing affordable housing requirements
- Ensure implementation of affordable housing requirements during sale/lease-up
- Register MFTE certificates with County Assessor and file annual MFTE reports with state Commerce.
- On-going compliance monitoring (see Stewardship, below).

MyBuildingPermit.com. Explore feasibility of using MyBuildingPermit.com to take in, review, and process projects (covenants) using land use and/or MFTE programs.

B. Stewardship of Affordable Housing Assets

ARCH provides long-term oversight of affordable housing created through city policies and investment to ensure stewardship of these critical public assets for residents, owners and the broader community.

Monitoring Affordable Rental Housing. Enforce ongoing compliance with affordability requirements in rental housing projects created through direct assistance (e.g. Trust Fund allocation, land donations) from member jurisdictions, and through incentive and inclusionary programs. For Trust Fund projects, monitor project income and expenses to determine cash flow payments, and conduct long-term sustainability monitoring of projects and owners. Proactively problem-solve financial and/or organizational challenges in partnership with project owners and other funders.

Dedicate new staff to developing a more robust program of monitoring and enforcement, including developing procedures for on-site file audits, standard remedies for non-compliance, and training and technical assistance for property managers. In addition, work with cities to implement fee structures that build more sustainable monitoring efforts, and develop formal MOUs with other funders to govern shared monitoring responsibilities. To the extent feasible, establish working relationship with other public organizations that can help assess how well properties are maintained and operated (e.g. code compliance, police, and schools).

ARCH Homeownership Program. Provide effective administration to ensure ongoing compliance with affordability and other requirements in ARCH ownership housing, including enforcement of resale restrictions, buyer income requirements, and owner occupancy requirements. In addition, work with cities to address non-compliance.

Dedicate new staff to continue implementing changes to monitoring policies and procedures recommended in the 2019 Program Assessment from Street Level Advisors, including but not limited to:

- Convene member planning and legal staff to implement revisions to boilerplate legal documents, in consultation with key stakeholders.
- Institute regular monitoring schedule to verify owner occupancy
- Develop fee revenue policies to improve sustainability of program administration
- Develop strategies to preserve homes at risk of foreclosure
- Continue to evaluate staff capacity to maintain oversight as the number of ARCH homes continues to grow.

In addition, develop a strategic direction for the program that preserves long-term affordability and meets other important public policy objectives.

Program Database Development. Continue to transition ARCH to new database systems to better manage existing and to be collected program data and support other critical functions, including creation of program reports, project compliance monitoring, communication with program participants, and other functions.

IV. EDUCATION AND OUTREACH

A. Housing 101/Education Efforts

Housing 101. Develop educational tools and conduct or support events to inform councils, member staff and the broader community of current housing conditions, and of successful housing programs. Build connections with community groups, faith communities, developers, nonprofits and others interested in housing issues. Plan and conduct a Housing 101 event to occur no later than the end of 2020.

Private Sector Engagement. Support efforts by ARCH member cities to engage employers and private sector entities in discussions around the need for more affordable housing and identifying options for public-private partnerships.

Share media coverage on topics related to affordable housing in East King County, including work done by cities/ARCH.

B. Information for the Public

ARCH Website. Update on a regular basis information on the ARCH website, including information related to senior housing opportunities. Maintain the ARCH web site and update the community outreach portion by incorporating information from Housing 101 East King County, as well as updated annual information, and links to other sites with relevant housing information (e.g. All Home, HDC). Add information to the website on ARCH member affordable incentive programs and fair housing.

Assist Community Members Seeking Affordable Housing. Maintain lists of affordable housing in East King County (rental and ownership) and make that information available to people looking for affordable housing. Continue to maintain a list of households interested in affordable ownership and rental housing and advertise newly available housing opportunities.

Work with other community organizations and public agencies to develop appropriate referrals for different types of inquiries received by ARCH (e.g., rapid re-housing, eviction prevention, landlord tenant issues, building code violations, fair housing complaints, etc.).

C. Equitable Access to Affordable Housing in East King County

Collect data on existing programs to determine potential gaps in access by different populations, such as communities of color, immigrant and refugee communities, homeless individuals and families, and workers in EKC commuting from other communities. Pursue strategies to increase access to affordable housing in EKC by underserved communities. Develop outreach and marketing efforts to maximize awareness of affordable housing opportunities in East King County, and build partnerships with diverse community organizations.

V. ADMINISTRATION

A. Administrative Procedures

Maintain administrative procedures that efficiently and transparently provide services to both members of ARCH and community organizations utilizing programs administered through ARCH. Activities include:

- Prepare the Annual Budget and Work Program and ensure equitable allocation of administrative costs among ARCH members.
- Prepare quarterly budget performance and work program progress reports, Trust Fund monitoring reports, and monitor expenses to stay within budget.
- Manage the ARCH Citizen Advisory Board, including recruiting and maintaining membership that includes broad geographic representation and a wide range of housing and community perspectives.
- Staff the Executive Board.
- Work with Administering Agency to streamline financial systems.
- Renew the ARCH Interlocal Agreement.

B. Organizational Assessment and Planning

The ARCH Executive Board will continue to evaluate ARCH's organizational capacity to accomplish its Work Program and broader mission. The Board will review ARCH's organizational structure, staffing resources, capital resources and other foundational aspects of the organization to determine any gaps, and assess options for expanding organizational capacity. The assessment will result in recommendations for the following year's work program and budget, and a decision to renew or recommend revisions to the ARCH Interlocal Agreement.

Attachment A
Local Planning Efforts by City

ARCH staff plan to assist members' staff, planning commissions, and elected councils in the following areas:

Bellevue

Implementing Bellevue's Affordable Housing Strategy, including:

- Increasing development potential on suitable land owned by public agencies, faith-based groups, and non-profits housing entities.
- Reviewing parking requirements and other code changes to encourage micro-apartments around light rail stations.
- Updating Wilburton and East Main neighborhood plans, including affordable housing density incentives.
- Developing funding strategy for affordable housing on suitable public lands in proximity to transit hubs including 130th TOD parcels and TOD parcels at the OMFE.

Bothell

Implementing its Housing Strategy Plan.

Establishing an MFTE program.

Evaluating affordable housing provisions related to zoning and other code amendments and implementing those adopted.

Work related to affordable housing component of the city's LIFT program in their downtown areas. Includes assisting with any reporting requirements and potentially exploring additional opportunities for affordable housing on city owned properties in the downtown revitalization area.

Evaluating the updated state legislation regarding impact fee waivers for affordable housing and explore potential revisions to local regulations related to impact fee waivers for affordable housing.

Evaluating and implementing affordable housing strategies in its Canyon Park plan.

Issaquah

Preparing the annual Affordable Housing Report Card/Analysis.

Updating and consolidating Title 18 and Central Issaquah Development and Design Standards.

Evaluating and, as needed, implementing development standards and regulations related to the housing policies adopted in the Central Issaquah Plan and Central Issaquah Standards, including inclusionary zoning.

Evaluating and strategizing sequencing potential projects/opportunities such as those near transit facilities, including coordination with potentially utilizing the King County TOD funds.

Initial work on high priority strategies identified in the Housing Strategy Work Plan including:

- Improving marketing and the understanding of ADUs and the development process.
- Facilitating development of a TOD.
- Amending codes to increase allowed diverse housing types such as SROs and cottage housing.
- Supporting housing options and services to assist people experiencing housing insecurity and those with barriers to independent living.

Marketing and maximizing awareness of affordable housing opportunities in Issaquah.

Kenmore

Implementing a high priority item identified in the Housing Strategy Plan.

Completing the Preservation of Affordable Housing/Mobile Home Park project started in 2018, including assistance with developing regulations to implement Council's policy direction on land use and other strategies.

Reviewing current code provisions and permitting process for Accessory Dwelling Units (ADUs).

Assisting with technical questions and negotiating agreements where affordable housing is proposed including the Transit Oriented District (TOD) overlay.

Reviewing and developing options and opportunities for partnerships to incorporate affordable housing into transit projects including the siting of parking structures in Kenmore for the Sound Transit ST3 proposal.

Kirkland

Implementing programs to encourage construction of more ADUs.

Housing-related issues in on-going neighborhood plan updates.

Developing regulations to promote transit-oriented development (TOD) at the Kingsgate Park and Ride, including affordable housing.

Housing issues that come before Council Planning and Economic Development Committee and resulting initiatives.

Housing issues related to Station Area Plan (I-405/NE 85th Street).

Affordable housing preservation efforts and initiatives.

Mercer Island

Reviewing the City's MFTE program and evaluating options for a fee-in-lieu alternative to land use requirements.

Updating the Housing Strategy Plan.

Reviewing components of residential development standards that are associated with housing stock diversity.

Newcastle

Updating the Housing Strategy Plan.

Outreach efforts related to ADUs.

Redmond

Implementing strategies to increase the level of affordability for new housing in Overlake and Southeast Redmond as part of the development of master plans and development agreements, including exploring ways to leverage other resources.

Promoting affordable housing and other programs available to Redmond residents and developers, e.g., Accessory Dwelling Units (ADUs).

Implementing other high priority items identified in the City Council's 2019 Strategic Plan.

Updating the Strategic Housing Plan and the Affordable Housing Strategies Work Plan of June 2016, such as encouraging public/private partnerships to promote the development of affordable housing in urban centers.

Sammamish

Implementing the Housing Strategy Plan.

Finalizing resale requirements and other tasks related to the affordability provisions for site donated to Habitat.

Exploring impacts to and solutions for affordable housing related to code and policy updates during legislative review.

Promoting available housing assistance and affordable housing programs to Sammamish's workforce and residents.

Woodinville

Updating the Housing Strategy Plan.

Reviewing and updating affordable housing and accessory dwelling unit programs and regulations.

Evaluating and developing incentives for affordable housing as provided for in the Downtown/Little Bear Creek Master Plan area.

Reviewing components of residential development standards that are associated with housing stock diversity.

King County

Monitoring affordable housing in the Northridge/Blakely Ridge and Redmond Ridge Phase II affordable housing development agreements.

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City of Bothell™

City Council
Agenda Bill
AB # 20-011

TO: Mayor Olsen and Members of the Bothell City Council

FROM: Michael Kattermann, Community Development Director
Dave Boyd, Senior Planner (Presenter)
Mike Stanger, ARCH (Presenter)

DATE: January 21, 2020

SUBJECT: Consideration of Establishing a Multi-Family Tax Exemption Program

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POLICY CONSIDERATION:

This item asks the City Council to consider and provide direction on the following policy questions regarding development of a Multi-Family Tax Exemption (MFTE) program:

1. Where should the program be applied? **Attachment 1** shows Planning Commission suggestions based on the existing Regional and Community activity centers and adjacent multifamily areas.
2. Should the exemption period be eight-years or 12-years? The longer period requires at least 20% of units be affordable. Jurisdictions may apply affordability requirements to eight-year exemptions as well.
3. Should income levels below 80% of area median income be targeted? The 12-year exemptions require at least 20% of units to be affordable at 80% of area median income or below.
4. Should the affordability requirement extend beyond the exemption period? Staff would like to explore the feasibility of requiring retention of some affordable units for the life of the project.
5. Should affordable units created through the MFTE program be treated independently from those required through land use regulations **or** used in combination to potentially achieve deeper affordability?

The program would assist people making 80% or less of area median income (AMI) by creating affordable housing through a temporary tax incentive for new residential development.

The program could provide a positive benefit by providing more affordable housing units in Bothell for up to 12 years.

HISTORY:

DATE	ACTION
MAY 1, 2018	Council adopted Housing Strategy Update, including establishing an MFTE program as a Tier 1 strategy.
FEBRUARY 19, 2019	City Council included developing an MFTE program in 2019 Planning Docket.
NOVEMBER 11, 2019	Planning Commission study session on MFTE target areas.

Adopted in 2018, Bothell's Housing Strategy, identifies a Multi-Family Tax Exemption (MFTE) program as a high priority strategy for creating more affordable housing in Bothell. City Council included the strategy in the 2019 Planning Docket. At the direction of the City Manager, city staff have been coordinating with ARCH staff and initiated the work in the latter part of 2019.

DISCUSSION:

MFTE is a property tax exemption program that allows eligible cities to target specific areas for multifamily housing development. State law allows for eight- or 12-year property tax exemptions for building or rehabilitating multifamily housing. The 12-year exemption requires owners to offer at least 20% of their units as affordable, as defined by statute. Some cities have also established eight-year exemptions with affordability requirements. Overall, cities have the authority to establish an MFTE program, designate eligible areas, and approve / reject individual projects from participating in the program.

The program must balance the income level and percentage of unit requirements with what is financially workable and appealing to potential participants in the program. For context, the recently adopted affordable housing requirements in Bothell where zoning capacity was increased target units affordable to households earning 60-80% of area median income for the life of the project but for only five- to ten-percent of the units. Typically, a deeper target income level (i.e. 70% or 60%) translates into a lower percentage of the units being set aside.

MFTE programs provide a tax incentive for affordable housing in targeted areas. If approved, tax exemption provisions will be included in Title 3, Revenue and Finance, of the Bothell Municipal Code. Additionally, tax exemptions need to be targeted to specific areas of the city. Recently, staff held a study session with the Planning Commission to review potential target areas. A map of the proposed target areas is included in **Attachment 1**, showing the designated regional and community activity centers and adjacent multifamily zoning. One optional area is the multifamily zoning to the south of the Downtown Subarea, which is adjacent to the activity center, but separated by the park lands along the Sammamish River. **Attachment 2** provides a comparison of ARCH jurisdictions, including both land-use based (e.g. mandatory set asides or density incentives)

and MFTE affordable housing provisions and the number of units provided to date under each program.

Based on the direction provided by Council staff will work with ARCH to develop a proposed program for MFTE for Council consideration and possible action. There is already interest in the program being expressed by some developers. Due to the complexities of the requirements, the economics of development and the fluidity of the housing market, it is important and prudent to reassess how well the MFTE program is working. The proposed program will include a recommendation by staff to assess how the program is working after an initial period of three to five years. A regular reassessment will keep the program aligned with Council goals and the city's housing needs. The assessment will also consider whether to adjust any of the requirements or limit the program in any way.

FISCAL IMPACTS: The staff time associated with this item is included in the Adopted 2019-2020 Budget. The potential financial impact of implementing an MFTE program is within the project scope.

ATTACHMENTS:

Att-1. Map of potential target areas suggest by Planning Commission
Att-2. Affordable Housing Programs in ARCH member cities

RECOMMENDED ACTION: No formal action is required at this time. Council is asked to provide policy direction to staff to inform further development of the MFTE program.

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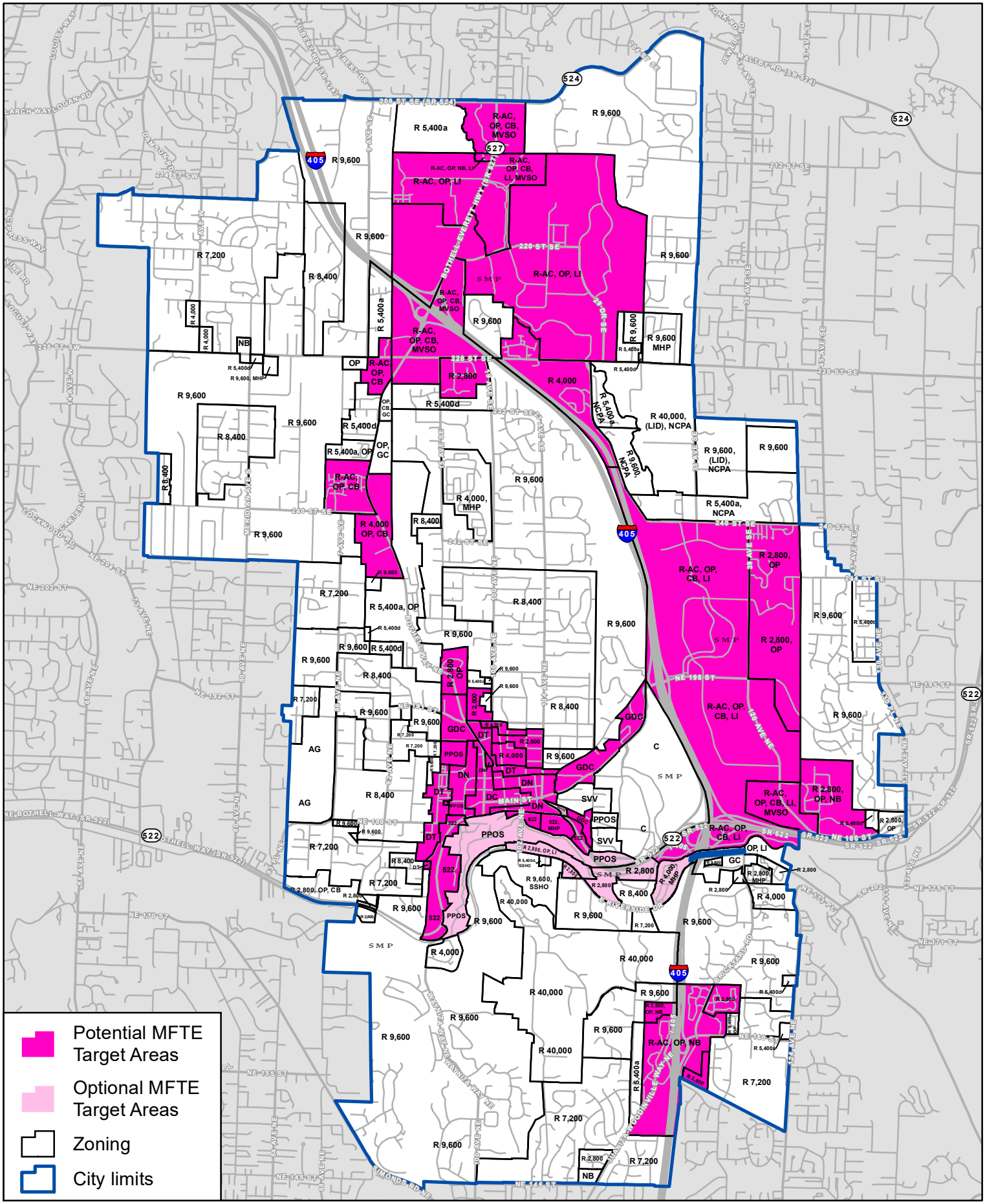

Potential Multi Family Tax Exemption (MFTE) Target Areas

N
W E
S

0 1,500 3,000 4,500
Feet

The City of Bothell delivers this data (map) in an AS-IS condition. GIS data (maps) are produced by the City of Bothell for internal purposes. No representation or guarantee is made concerning the accuracy, currency, or completeness of the information depicted.
Date: 10/18/2019

City of Bothell

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Comparison of Affordable Housing Programs
ARCH-member cities

1/21/2020

Location	Land Use Program	MFTE
BELLEVUE	**337 units**	**63 units**
Downtown	Rental & Ownership—Voluntary 2.5 units (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI for life of the project.	Rental only— 12-year tax exemption: 20% units affordable @ 70% AMI for 12 years.
Bel-Red	Rental—Voluntary 4.6 sq ft bonus: 1 sq ft affordable @ 80% AMI for life of the project.	Rental— 12-year tax exemption: 10% units affordable @ 50% AMI and 10% @ 70% AMI for 12 years.
	Ownership—Voluntary 7.2 sq ft bonus: 1 sq ft affordable @ 100% AMI for life of the project.	Ownership—n/a
Eastgate	Rental & Ownership—Voluntary 2.5 units (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI for life of the project.	Rental only— 12-year tax exemption: 10% units affordable @ 60% AMI and 10% @ 70% AMI for 12 years.
Crossroads Village and Wilburton Commercial	Rental & Ownership—Voluntary 1 unit (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI for life of the project.	Rental only— 12-year tax exemption: 10% units affordable @ 60% AMI and 10% @ 70% AMI for 12 years.
BOTHELL		
Downtown Transition Overlay[i]	Rental—Mandatory 10% units affordable @ 60% AMI for life of project.	n/a
	Ownership—Mandatory 10% units affordable @ 80% AMI for 50 years.	n/a
SR 522 Overlay[ii]	Rental—Mandatory 5% units affordable @ 60% AMI for life of project.	n/a
	Ownership—Mandatory 5% units affordable @ 80% AMI for 50 years.	n/a
ISSAQUAH	**427 units**	
Central Issaquah, Mixed-Use[iii]	Rental & Ownership—Mandatory 7.5% units in base density affordable @ 70% AMI (or 5% @ 50% AMI) for life of the project.	n/a
	Ownership—Mandatory 7.5% units in base density affordable @ 80% AMI (or 5% @ 60% AMI) for 50 years.	n/a

Location	Land Use Program	MFTE
Central Issaquah, Vertical Mixed-Use Overlay[iv]	Rental—Mandatory 10% units in base density affordable @ 70% AMI and 5% @ 50% AMI (or 10% @ 50% AMI) for life of the project.	n/a
	Ownership—Mandatory 10% units in base density affordable @ 80% AMI and 5% @ 60% AMI (or 10% @ 60% AMI) for 50 years.	n/a
Central Issaquah, remaining Urban Core[v]	Rental—Mandatory 12.5% units in base density affordable @ 60% AMI (or 10% @ 50% AMI) for life of the project.	n/a
	Ownership—Mandatory 12.5% units in base density affordable @ 70% AMI (or 10% @ 60% AMI) for 50 years.	n/a
KENMORE	**0 units**	**56 units**
TOD	Rental—Voluntary 3 units bonus: 1 unit affordable @ 70% AMI, not to exceed 10% of all units in a project. Change 1 affordable unit to 50% AMI, not to exceed 33% of the affordable units, for every 4 bonus units in excess of 30% of the total project. If project exceeds 120 units/acre, add affordable units @ 35% AMI to maintain 10% affordable. All affordable units for life of the project.	Rental— 12-year tax exemption: 25% units affordable @ 60% AMI for life of the project.
	Ownership—Voluntary Same as above, except affordability @ 80% AMI, 65% AMI, and 50% AMI, respectively.	n/a
CB zone, Juanita[vi]	Rental—Voluntary 4 bonus units: 1 unit affordable @ 70% AMI for life of the project, with a maximum density of 36 units per acre.	n/a
R-4 – R-24, downtown residential zones, DC, UC, WC, and RB zones.[vii]	Rental—Voluntary 2 bonus units: 1 unit affordable @ 50% AMI, (or 1:1 @ 70% AMI) for life of the project with a maximum density 1.5 times the Base Density of the underlying zone.	n/a
	Ownership—Voluntary 2 bonus units: 1 unit affordable @ 50% AMI (or 1:1 @ 80% AMI) for 30 years with a maximum density 1.5 times the Base Density of the underlying zone.	n/a

Location	Land Use Program	MFTE
NB zones[viii]	Rental—Voluntary 2 bonus units: 1 unit affordable @ 50% AMI (or 1:1 @ 70% AMI) for life of the project with a maximum density of 24 units per acre.	n/a
	Ownership—Voluntary 2 bonus units: 1 unit affordable @ 50% AMI (or 1:1 @ 80% AMI) for 30 years with a maximum density of 24 units per acre.	n/a
KIRKLAND	**45 units**	**155 units**
Height-limited zones (Totem Lake, North Rose Hill, CBD 5)	Rental—Mandatory 10% units affordable @ 50% AMI for life of project.	Rental—Voluntary 8-year tax exemption: 10% units affordable @ 50% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 50% AMI and 10% @ 80% AMI for life of the project.
	Ownership—Mandatory 10% units affordable @ 80% AMI for 50 years.	Ownership—Voluntary 8-year tax exemption: 10% units affordable @ 80% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 80% AMI and 10% @ 110% AMI for life of the project.
Density-limited zones	Rental—Mandatory 2 units bonus: 1 unit affordable @ 50% AMI for life of project, and at least 10% units affordable.	Rental—Voluntary 8-year tax exemption: 10% units affordable @ 50% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 50% AMI and 10% @ 80% AMI for life of the project.
	Ownership—Mandatory 2 units bonus: 1 unit affordable @ 100% AMI for 50 years, and at least 10% units affordable.	Ownership—Voluntary 8-year tax exemption: 10% units affordable @ 100% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 100% AMI and 10% @ 130% AMI for life of the project.
Zones where affordable housing isn't required	n/a	Rental & Ownership—Voluntary 8-year tax exemption: 10% units affordable @ 80% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 50% AMI and 10% @ 80% AMI for life of the project.

Location	Land Use Program	MFTE
MERCER ISLAND	**13 units**	**0 units**
Town Center	Rental—Voluntary 3rd floor bonus: 10% of all units affordable @ 70% AMI for life of the project. 4th or 5th floor bonus: 10% of all units affordable @ 60% AMI for life of the project.	Rental & Ownership—Voluntary 8-year tax exemption: 10% units affordable @ 60% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 60% AMI and 10% @ 80% AMI for life of the project.
	Ownership—Voluntary Same as above, except affordability @ 90% AMI for all bonus floors for 30 years.	
Multifamily Area	n/a	Rental & Ownership—Voluntary 8-year tax exemption: 5% units affordable @ 60% AMI for life of the project. 12-year tax exemption: 5% units affordable @ 60% AMI and 15% @ 80% AMI for life of the project.
NEWCASTLE	**52 units**	
Commercial Business Center	Rental—Mandatory 2 sq ft bonus: 1 sq ft affordable @ 70% AMI, and 10% units affordable, for life of the project.	n/a
	Ownership—Mandatory 2 sq ft bonus: 1 sq ft affordable @ 80% AMI, and 10% units affordable, for 50 years.	n/a
REDMOND	**614 units**	**71 units**
Outside Marymoor & Overlake urban center (incl Downtown)	Rental—Mandatory 1 unit (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI, and 10% units affordable, for life of the project.	8-year tax exemption: 10% units affordable @ 60% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 65% AMI and 10% @ 85% AMI for life of the project.
	Ownership—Mandatory 1 unit (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI, and 10% units affordable, for 50 years.	n/a
Overlake urban center	Rental—Mandatory 2 units (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI, and 10% units affordable, for life of the project.	8-year tax exemption: 10% units affordable @ 60% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 65% AMI and 10% @ 85% AMI for life of the project.

Location	Land Use Program	MFTE
	Ownership—Mandatory 2 units (or sq ft) bonus: 1 unit (or sq ft) affordable @ 80% AMI, and 10% units affordable, for 50 years.	n/a
MDD3 zone	Rental—Mandatory 0.09 FAR bonus: 10% units affordable @ 80% AMI for life of the project.	n/a
	Ownership—Mandatory 0.09 FAR bonus: 10% units affordable @ 80% AMI for 50 years.	n/a
Other MDD zones	Rental—Mandatory 10% units affordable @ 50% AMI for life of the project.	8-year tax exemption: 10% units affordable @ 50% AMI for life of the project. 12-year tax exemption: 10% units affordable @ 60% AMI <u>and</u> 10% @ 80% AMI for life of the project.
	Ownership—Mandatory 10% units affordable @ 70% AMI for 50 years.	n/a
SAMMAMISH	**55 units**	
Town Center	Rental & Ownership—Mandatory 10% units in base density affordable @ 80% AMI for 50 years.	n/a
	Rental & Ownership—Voluntary 3 units bonus: 1 unit affordable @ 80% AMI for 50 years.	n/a
WOODINVILLE		
Residential Targeted Areas A, B, and C	n/a	8-year tax exemption: Renovate and preserve facilities listed on the National Register of Historic Places, <u>and/or</u> Owner-occupied: 8% units affordable @ 50% AMI <u>or</u> 20% units affordable @ 80% AMI, for 50 years. Renter-occupied: 12% units affordable @ 50% AMI <u>or</u> 20% units affordable @ 70% AMI, for life of the project.

[i] Chapter 12.07 BMC and BMC 12.64.103(B)(3).
[ii] Chapter 12.07 BMC and BMC 12.64.104(B)(4).
[iii] IMC 18.21.070.C.
[iv] IMC 18.21.070.B.
[v] IMC 18.21.070.A.

[vi] Chapters 18.77 and 18.80 KMC, and KMC 18.23.040.
[vii] Chapters 18.77 and 18.80 KMC, and KMC 18.21.050, 18.24.040, 18.25.040, 18.25A.060, 18.25B.040, and 18.26.070.
[viii] Chapters 18.77 and 18.80 KMC, and KMC 18.22.020.