



City of Bothell™

**BOTHELL CITY COUNCIL MEETING**

February 18, 2020

BOTHELL CITY HALL  
18415 101<sup>st</sup> 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**

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During this item, the City Council may identify agenda items to be continued, withdrawn, or added.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. Public Engagement Opportunities
- B. Proclamations
  - Black History Month
- C. Special Presentations
  - none
- D. Staff Briefing
  - Bothell Municipal Code – Robin Schaefer
  - Communications Program – Becky Range
- E. City Manager Reports
- F. Council Committee Reports
- G. Council Committee Assignments

**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 Prior to approval, City Council may request items be withdrawn from the consent agenda for separate discussion.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. 5-10      A. AB # 20-019 – Consideration of an Ordinance for the Acceptance of a Donation from an Anonymous Donor  
Recommended Action: Approve the Ordinance for the acceptance of a donation from an anonymous donor.
- Pgs. 11-24    B. AB # 20-020 – Consideration of Right of Way Plan Approval for the North Creek Trail Section 4 Project  
Recommended Action: Approve the Right of Way Plan for the North Creek Trail Section 4 project, and authorize the City Manager to acquire the necessary right-of-way for the project, subject to future Council approval of deeds and easements documenting the acquisitions.
- Pgs. 25-102   C. AB # 20-021 – Consideration of Radio End User Service Level Agreement with the King County for Radio Equipment Management and Participation in Puget Sound Emergency Radio Network (PSERN)  
Recommended Action: Approve a Service Level Agreement with King County for radio equipment management and in accordance with our participation in the Puget Sound Emergency Radio Network.

#### 5. Public Hearings

- Pgs. 103-104   A. AB # 20-022 – Close the Public Hearing and defer a decision on the 2019 Plan and Code Amendments  
Recommended Action: Move to close the public hearing on the proposed 2019 Plan and Code amendments and defer Council action on the proposed 2019 Plan and Code amendments until the SEPA appeal has been resolved.

#### 6. Ordinances & Resolutions

None.

#### 7. Contracts and Agreements

- Pgs. 105-158   A. AB # 20-023 – Consideration of an Ordinance Regarding a Wireline and Small Wireless Facility Franchise Agreement with Crown Castle Fiber LLC, c/o Crown Castle  
Recommended Action: No action is requested at this time; however, this item is currently scheduled for Council action on the March 3, 2020 consent agenda.

#### 8. Other Items

- Pgs. 159-170   A. AB # 20-024 – Consideration of Adopting the City of Bothell Strategic Cultural Plan  
Recommended Action: Approve the City of Bothell Strategic Cultural Plan as recommended by the City of Bothell Arts Commission.

- Pgs. 171-176 B. AB # 20-025 – Consideration of Responding to the Northshore Parks and Open Space Agency’s Letter of Interest for Administrative Services  
Recommended Action: Provide direction to the City Manager on whether or not to respond to the NPRSA Letter of Interest.
- Pgs. 177-192 C. AB # 20-026 - Consideration of Adopting Comprehensive Financial Management Policies  
Recommended Action: Approve an Ordinance adopting the Comprehensive Financial Management Policies as presented.
- Pgs. 193-194 D. AB # 20-027 – Consideration of Amending City Council Protocol Manual Section 7.14 Attendance via Speakerphone (AVS)  
Recommended Action: None.

## 9. Study Session/Update/Discussion Items

- Pgs. 195-198 A. AB # 20-028 – Business Licensing Program Update  
Recommended Action: Receive the briefing and discuss as appropriate.

## 10. Council Conversations

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

## 11. Executive Session/Closed Session

None at this time.

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.

## 12. Adjourn

---

### CERTIFICATE

I hereby certify that the above agenda was posted on this the 13<sup>th</sup> day of February, 2020, by 6:00 P.M., on the official website and bulletin board at Bothell City Hall, 18415 101<sup>st</sup> 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](http://www.bothellwa.gov)



# City of Bothell™

**City Council**  
**Agenda Bill**  
AB # 20-019

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Nik Stroup, Director of Parks & Recreation  
Tracey Perkosky, Parks & Recreation (Presenter)

**DATE:** February 18, 2020

**SUBJECT:** Consideration of an Ordinance for the Acceptance of a Donation from an Anonymous Donor

---

**POLICY CONSIDERATION:** This item asks the City Council to consider if the City should adopt an ordinance to accept a stock donation with an approximate value of \$68,000 for parks purposes. If approved, this will positively impact the community and the park system. If not approved, the City will not receive these stocks/funds.

**HISTORY:** This donation is a new item for Council to consider.

**DISCUSSION:** In early 2020, the Parks and Recreation Department was contacted by a donor, who wishes to remain anonymous, about a donation of stock.

The City can accept the donation pursuant to the Revised Code of Washington (RCW) 35.21.100 which recognizes that local governments may from time-to-time receive donations of money and other property, including investments, from parties that wish to make a special contribution to the city.

The donor makes the donation in honor of Cathy Farley and requests that any funds resulting from the disposition of the stock be used solely for parks purposes. The donor is imposing few restrictions on the funds. All funds must be used to support the Park System which is managed by the Parks and Recreation Department, including the Hannan House which is used by the Bothell Historical Society, and that no funds may be used for the construction or maintenance of a dog park. The donor has requested that a portion of the funds specifically be used to help offset the roof replacement costs for the Hannan House at the Park at Bothell Landing. The donor wishes that all remaining funds be used for purposes that support families and children in the community.

The City will receive a designated number of stock shares from the donor. The approximate market value of the stocks is \$68,000. The City will receive a stock

donation and immediately liquidate it into cash. This is because per RCW 39.59.040 local governments are only authorized to hold certain investments and this stock donation is not a permitted holding. Therefore, it must be liquidated immediately. The City will pay the brokerage fees for the transfer and liquidation, which will be a minimal amount.

Specific projects have not yet been identified for this donation.

**FISCAL IMPACTS:** This donation will provide approximately \$68,000, based on the final stock sales price, to use towards Parks purposes. The donation income and expenditure authority are currently unbudgeted. Staff will evaluate whether a budget amendment is required once projects to be funded by this donation have been identified.

**ATTACHMENTS:** Att-1. Ordinance for Acceptance of Donation from an Anonymous Donor

**RECOMMENDED ACTION:** Approve the Ordinance for the acceptance of a donation from an anonymous donor.

ORDINANCE NO. \_\_\_\_\_ (2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, FOR THE  
ACCEPTANCE OF A DONATION FROM AN ANONYMOUS DONOR.

---

WHEREAS, Section 35.21.100 of the Revised Code of Washington recognizes that local governments may from time-to-time receive donations of money and other property, including investments, from parties that wish to make a special contribution to the community; and

WHEREAS, Section 39.59.040 of the Revised Code of Washington authorizes local governments to invest in certain types of investments; any other investment types (hereafter, “excluded investments”) cannot be held by local government irrespective of how the local government acquired them, and

WHEREAS, if a local government acquires excluded investments by donation it must immediately liquidate them, the proceeds of which can be held or used by the local government; State law does not impose any additional restrictions on the liquidated donation, but does recognize that donors often impose restrictions on a donation; and

WHEREAS, a Bothell community member wishes to make a donation of excluded investments to the City to be used to support the City’s Parks and Recreation Department, specifically the donor would like the donation to be used for parks purposes that support families and kids in the community, and

WHEREAS, the donor is imposing only minimal restrictions on the use of the donation, the restrictions are as follows: the donation must be used to support the Park System which is part of the Parks and Recreation Department of the City, including replacement of the Hannan House roof which currently houses the Bothell Historical Museum, and the donation shall not be used to construct or operate a dog park, and

WHEREAS, the exact value of the donation is subject to market conditions and will become known only when the donated investments are liquidated. The approximate value of the donation is currently \$68,000, and

WHEREAS, the donor wishes to remain anonymous, but is making the donation in the name of Cathy Farley. While the donor has communicated his/her wishes for how the donation is used as described above, the donor is not requesting any subsequent reporting of the specific uses of the donation.

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

Section 1. DONATION ACCEPTANCE. The City accepts the donation of investments in the name of Cathy Farley to be immediately liquidated and used for parks expenditures and projects that benefit families and kids, including the Hannan House, and excluding dog park construction and operation.

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 \_\_\_\_ 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,  
ACCEPTING A DONATION FROM AN ANONYMOUS DONOR.

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)



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Erin Leonhart, Public Works Director  
Ndata Mbuthia, Capital Projects Engineer/Public Works (Presenter)

**DATE:** February 18, 2020

**SUBJECT:** Consideration of Right of Way Plan Approval for the North Creek Trail Section 4 Project

**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   |
|----------------------|--|
| <b>DECEMBER 2015</b> | City entered into a Local Agency Agreement for Design Phase federal grant funding in the amount of \$735,000   |
| <b>APRIL 2016</b>    | Council approved a professional services agreement, with Parametrix Inc., for design and Right of Way (ROW) engineering services for North Creek Trail Section 4 |
| <b>FEBRUARY 2019</b> | City Council approved Supplemental Agreement No. 3 in the amount of \$95,283.23 for continued engineering services for North Creek Trail section 4               |
| <b>JULY 2019</b>     | City entered into a Local Agency Agreement for Right of Way federal grant funding in the amount of \$1,015,800   |

This project is a continuation of the City’s efforts over the past decade to complete the North Creek Trail between the University of Washington Bothell/Cascadia College and the portion of the trail that will be constructed by Snohomish County. When complete, this trail will connect the Snohomish County Regional Interurban Trail at McCollum Park in Everett with the King County Regional Sammamish River Trail/Burke-Gilman Trail in Bothell. In 2015, the City was awarded a federal grant that allocated up to \$735,000 towards the design phase of this project.

In April 2016, City Council approved a professional services agreement, with Parametrix Inc., in the amount of \$536,146.74, for design and Right of Way (ROW) engineering services for North Creek Trail Section 4. The City Manager approved two supplements to the original contract, Supplement #1, for a time extension, in October 2017 and

Supplement #2, to add \$36,650.48 for right of way and engineering services, in March 2018.

In 2017, staff held a public open house specific to this project at the Bothell Operations Center. Approximately 20 people attended the open house. There were some comments and questions that came up but these did not result in any design changes. Questions such as:

- Would the City consider replacing existing wood fence with concrete sound walls?
- Can the City move the proposed trail alignment toward the roadway?
- How much compensation can I get if my property is affected by the trail?

In 2018, the City was awarded a federal grant that allocated up to \$1,015,800 towards the completion of the right of way (ROW) acquisitions for this project.

**DISCUSSION:** North Creek Trail Section 4 is the most northerly segment of the North Creek Trail within the Bothell city limits. It will connect to the planned Snohomish County North Creek Trail north of SR 524 and the completed North Creek Trail Section 3 project in Bothell. The trail will be part of a coordinated regional system that will eventually connect the King County Sammamish River/Burke-Gillman regional trail with the Snohomish County Regional Interurban Trail in Everett. Completion of the North Creek Trail will improve safety for pedestrians and bicyclists as well as encourage non-motorized travel between business/employment centers, transit stops, parks, and residential areas.

The City's consultant on this project, Parametrix, Inc., has completed 100 percent design and determined the right-of-way needed for the project. Construction is planned to start in early 2021, and be completed by 2023. In order to maintain the schedule and secure federal construction funds, staff must acquire right-of-way by the end of this year.

In order to build the ten (10) foot wide trail with two (2) foot shoulder, and maintain a five (5) foot buffer (planter strip) between the travel lanes and the trail, several strip takes and temporary construction easements are needed from private properties abutting the trail. It is anticipated that partial takes and temporary construction easements will be needed from seven (7) residential properties along the trail alignment.

Per WSDOT design manual, a 12-foot paved trail width is desirable and a 10-foot is minimum standard. During the alternative analysis phase, one option that was considered was 5-foot buffer, 12-foot paved trail with 2-foot shoulder. The paved trail width has been reduced to the minimum 10-foot wide to minimize the ROW take across these properties. Staff recommends Council approve the Right-of-Way (ROW) Plan to allow the acquisition of the easements to proceed.

Because this project contains federal funding, right-of-way acquisition is very prescriptive, and must comply with requirements as outlined in the Washington State Department of Transportation's Local Agency Manual.

**FISCAL IMPACTS:** This project is included in the Adopted 2019-2020 Budget. For the Right of Way Phase the City's financial contribution of \$230,200 to the project is consistent with the value included in the Adopted Budget and sufficient to fund this agenda item.

**ATTACHMENTS:** Att-1. Vicinity Map  
Att-2. Right of Way Plan

**RECOMMENDED ACTIONS:** Approve the Right of Way Plan for the North Creek Trail Section 4 project, and authorize the City Manager to acquire the necessary right-of-way for the project, subject to future Council approval of deeds and easements documenting the acquisitions.

**(This page intentionally left blank)**



**Project Map - North Creek Trail Section 4**

(From the north terminus of North Creek Trail Section 3 behind the Walgreen Development to Filbert Drive)

**(This page intentionally left blank)**

# NORTH CREEK TRAIL SECTION 4

## FILBERT DRIVE TO NORTH CREEK TRAIL SECTION 3 TERMINUS RIGHT OF WAY PLANS FEDERAL AID # 0110(014)

**EXISTING ZONE CLASSIFICATION:**

| PARCEL DESIGNATION | USE CODE | DESCRIPTION                        |
|--------------------|----------|------------------------------------|
| 100-106            | 111      | SINGLE FAMILY RESIDENCE (DETACHED) |

**CONTACT INFORMATION:**

APPLICANT:  
CITY OF BOTHELL  
PUBLIC WORKS DEPARTMENT  
18415 101 AVE NE  
BOTHELL, WA 98011  
(425) 806-6829  
CONTACT: NUDTA MBUTHIA  
OWNER:  
KING COUNTY PARKS AND RECREATION DIVISION

ENGINEER:  
PARAMETRIX  
719 2ND AVENUE  
SUITE 200  
SEATTLE, WA 98104  
(206) 394-3700  
CONTACT: YAMMIE HO, P.E.

SURVEYOR:  
PARAMETRIX  
719 2ND AVENUE  
SUITE 200  
SEATTLE, WA 98104  
(206) 394-3700  
CONTACT: DANIEL THIBODEAU, PLS

**PARCEL INFORMATION:**

| PLAN DESIGNATION | ASSESSOR PARCEL # |
|------------------|-------------------|
| 101              | 0110090000-1900   |
| 102              | 0110090000-1800   |
| 103              | 0110090000-1300   |
| 104              | 0110090000-1200   |
| 105              | 0110090000-1100   |
| 106              | 0110090000-1000   |
| 107              | 2705190040-3300   |

**RIGHT OF WAY REFERENCES**

- (RR1) WSDOT RIGHT OF WAY PLAN  
SR 524 JCT. SR 5 TO JCT. SR 527  
OCTOBER 27, 1995
- (RR2) WSDOT RIGHT OF WAY PLAN  
SR 527 MP 2.91 TO MP 3.99  
JCT. SR 405 TO 208TH ST. S.E. VIC.  
NOVEMBER 21, 1988
- (RR3) WSDOT MONUMENTATION MAP  
SR 524 - 196TH STREET VICINITY  
UNDATED
- (RR4) SNOHOMISH COUNTY RIGHT OF WAY PLAN  
196TH ST. S.W. (S.R. 524)  
I-405 TO S.R. 527  
SEPTEMBER 21, 1999

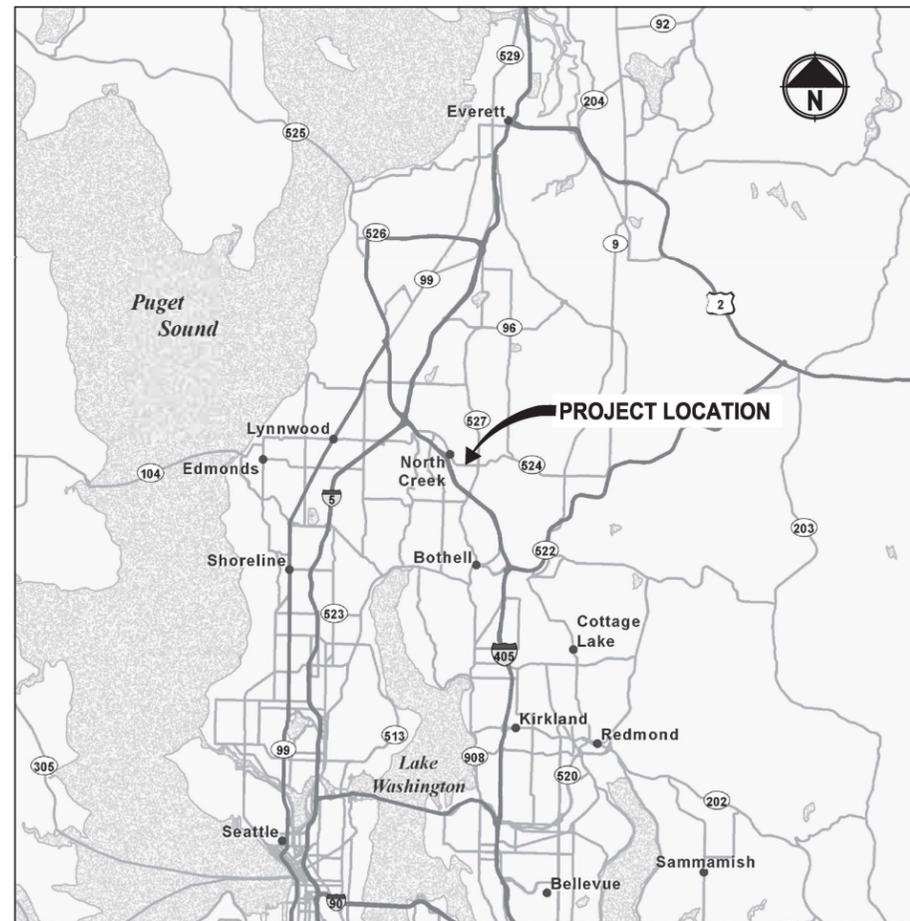
**RIGHT OF WAY NOTES**

RIGHT OF WAY DETERMINATIONS FOR THIS PLAN SET, WERE MADE BY ANALYZING A COMBINATION OF EXISTING RIGHT OF WAY PLANS LISTED HEREON IN THE RIGHT OF WAY REFERENCES, TOGETHER WITH RECORDED SURVEYS, SUBDIVISION PLATS, TITLE REPORTS, DEEDS & DEDICATIONS, AND FOUND MONUMENTS.

\*NOTE SEVERAL CASED MONUMENTS FOUND SOUTH OF THE CENTERLINE OF 208TH ST SE, WERE INSTALLED BY WSDOT AS CONSTRUCTION MONUMENTS PER (RR3), THESE WERE NOT INTENDED TO BE HELD FOR RIGHT OF WAY DETERMINATIONS.



**LOCATION MAP**  
NOT TO SCALE



**VICINITY MAP**  
NOT TO SCALE

**WRITTEN DESCRIPTION OF THE PROJECT:**

THE CITY OF BOTHELL PROPOSES TO DEVELOP SECTION 4 OF NORTH CREEK TRAIL-A TRAIL SEGMENT THAT REPRESENTS 0.6 MILES OF MISSING LINK OF NORTH CREEK TRAIL SYSTEM WITHIN THE CITY OF BOTHELL, LOCATED BETWEEN FILBERT DRIVE AND NORTH CREEK TRAIL SECTION 3 TERMINUS.

LAYOUT: COWE  
 PATH: U:\PSO\Projects\Clients\1647-CityOfBothell\554-1647-030-NCT-SEG 4\985Secs\Survey\00Current\0.dwg  
 PLOTTED BY: thibodeau DATE: Monday, March 18, 2019 6:38:45 PM

| REVISIONS | DATE | BY | DESIGNED |
|-----------|------|----|----------|
|           |      |    |          |

|  |
|--|
| <p><b>ONE INCH AT FULL SCALE, IF NOT, SCALE ACCORDINGLY</b></p> <p>FILE NAME:<br/>554-1647-030-RW-PLANS</p> <p>JOB No:<br/>554-1647-030</p> <p>DATE:<br/>3-18-2019</p> |
|--|



3 - 18 - 2019

**Parametrix**  
ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
P 206.394.3700  
WWW.PARAMETRIX.COM

PROJECT NAME

**NORTH CREEK TRAIL SECTION 4  
FROM FILBERT DR TO NCT SECTION 3**

BOTHELL, WA

**RIGHT OF WAY PLAN  
COVER SHEET**

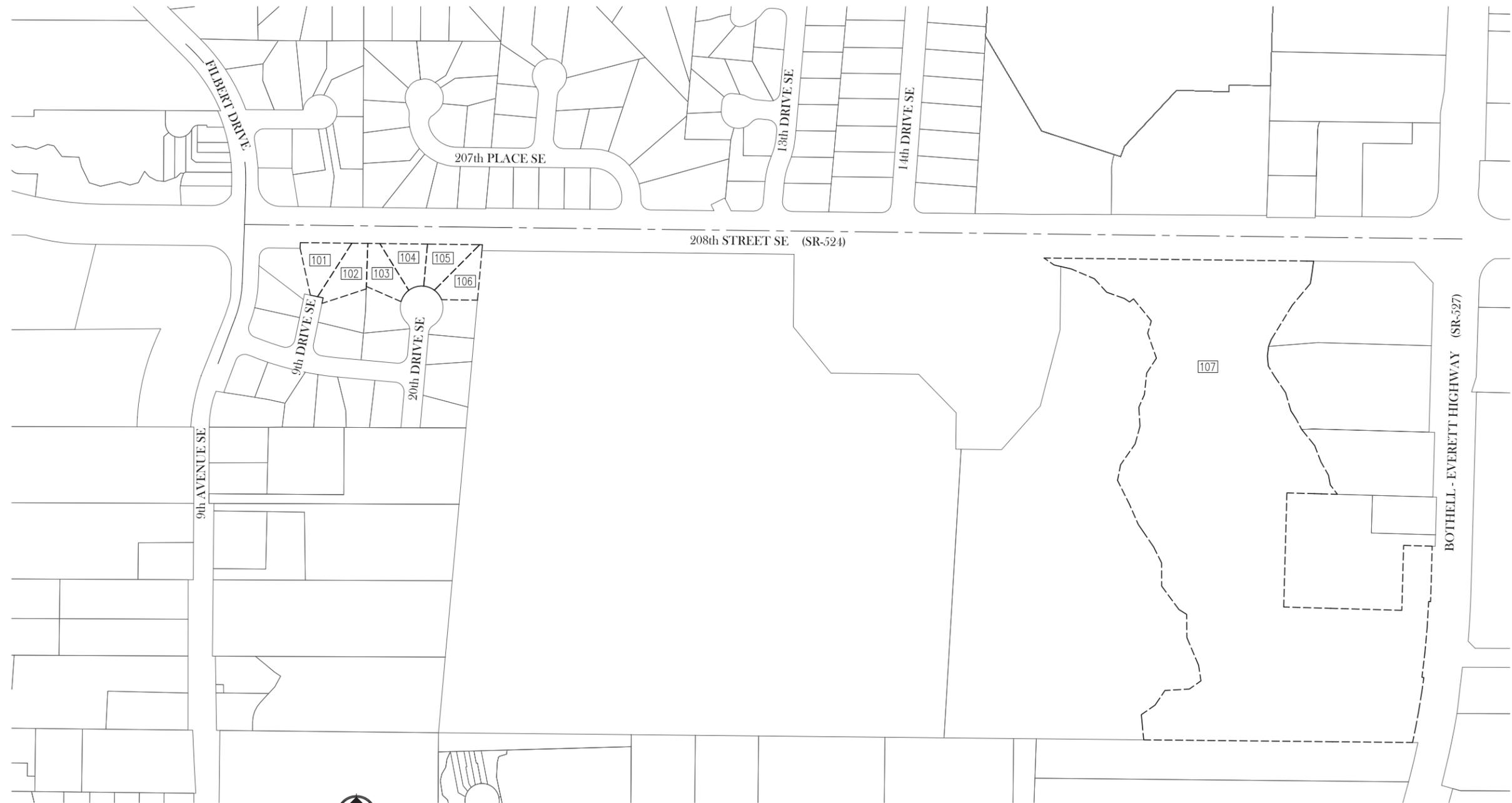
February 18, 2020 Agenda Packet Page 17 of 198

DRAWING NO.  
49 OF 55

**RW1**

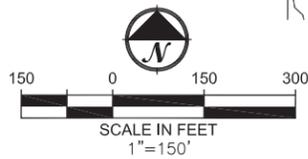
# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

TOTAL PARCEL DETAIL  
 SNOHOMISH COUNTY, WASHINGTON  
 SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
 SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.



**LEGEND**

- 100 IMPACTED PARCEL IDENTIFIER
- IMPACTED PARCEL BOUNDARY LINE
- GIS PARCEL LINES
- STREET CENTERLINE



**BASIS OF BEARING**  
 GRID NORTH BASED ON THE WASHINGTON STATE PLANE  
 COORDINATE SYSTEM NORTH ZONE (NAD 83/2011).



3 - 18 - 2019

**ONE INCH AT FULL SCALE.  
 IF NOT, SCALE ACCORDINGLY.**  
 FILE NAME  
 554-1647-030-RW-PLANS  
 JOB No.  
 554-1647-030  
 DATE  
 3-18-2019

| REVISIONS | DATE | BY | DESIGNED                |
|-----------|------|----|-------------------------|
|           |      |    | DRAWN<br>S. THOMAS      |
|           |      |    | CHECKED<br>D. THIBODEAU |
|           |      |    | APPROVED<br>Y. HO       |

**Parametrix**  
 ENGINEERING · PLANNING · ENVIRONMENTAL SCIENCES  
 719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
 P 206.394.3700  
 WWW.PARAMETRIX.COM

PROJECT NAME  
**NORTH CREEK TRAIL SECTION 4  
 FROM FILBERT DR TO NCT SECTION 3**  
 BOTHELL, WA

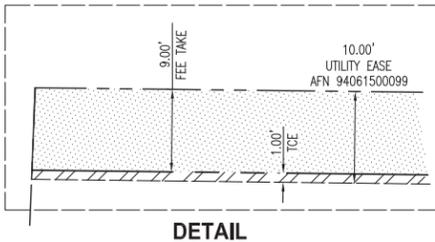
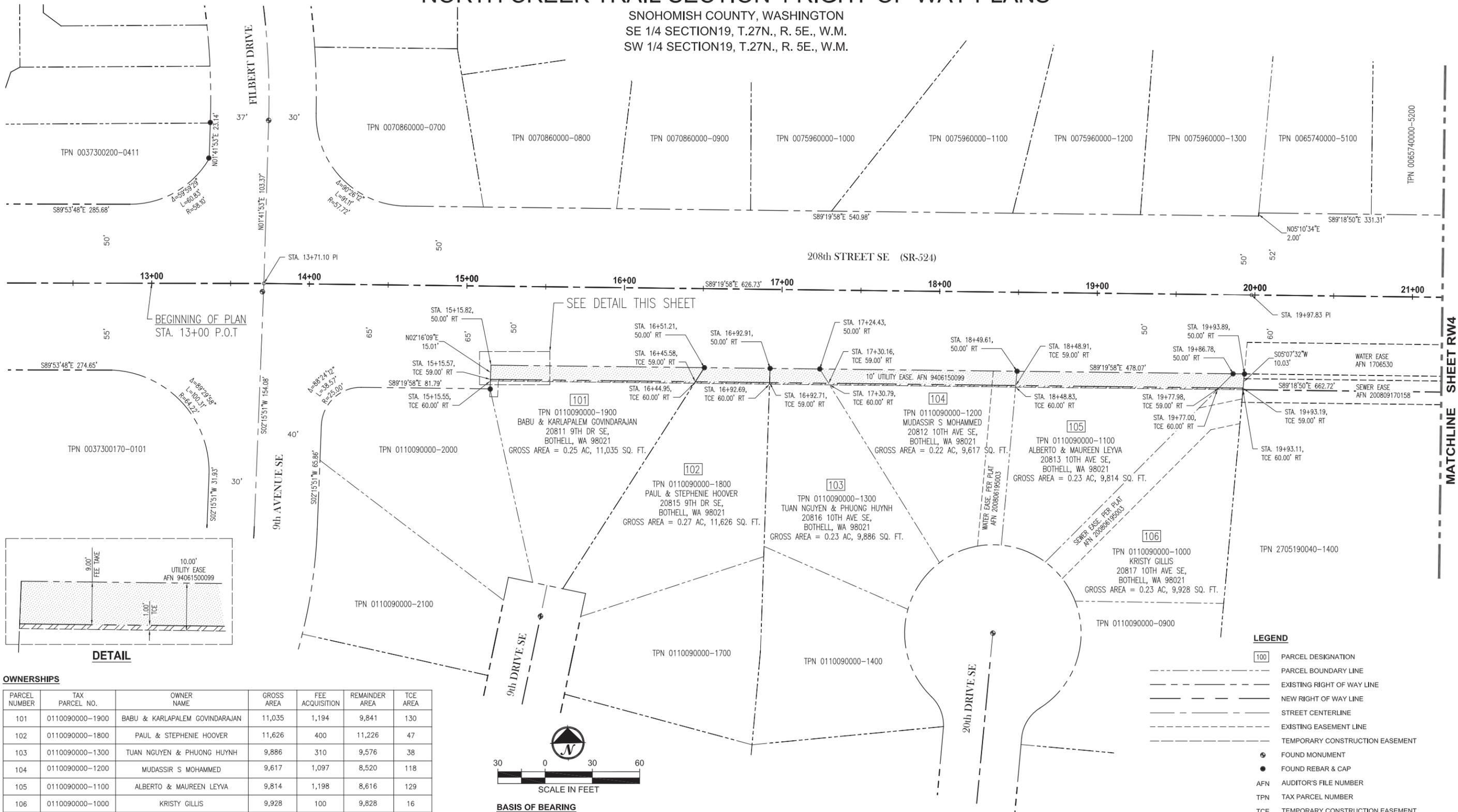
**TOTAL PARCEL DETAIL**  
 February 18, 2020 Agenda Packet Page 18 of 198

DRAWING NO.  
 50 OF 55  
**RW2**

LAYOUT: TPD    PATH: U:\FSO\Projects\Clients\1647-City\Bothell\554-1647-030 NCT\_Seg 4\985\Src\Draws\00current\Draw    PLOTTED BY: ihbodem    DATE: Monday, March 18, 2019 6:44:06 PM

# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

SNOHOMISH COUNTY, WASHINGTON  
SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.

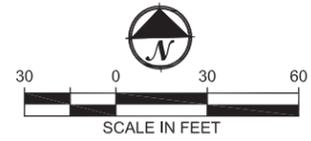


**OWNERSHIPS**

| PARCEL NUMBER | TAX PARCEL NO.  | OWNER NAME                   | GROSS AREA | FEE ACQUISITION | REMAINDER AREA | TCE AREA |
|---------------|-----------------|------------------------------|------------|-----------------|----------------|----------|
| 101           | 0110090000-1900 | BABU & KARLAPEM GOVINDARAJAN | 11,035     | 1,194           | 9,841          | 130      |
| 102           | 0110090000-1800 | PAUL & STEPHENIE HOOVER      | 11,626     | 400             | 11,226         | 47       |
| 103           | 0110090000-1300 | TUAN NGUYEN & PHUONG HUYNH   | 9,886      | 310             | 9,576          | 38       |
| 104           | 0110090000-1200 | MUDASSIR S MOHAMMED          | 9,617      | 1,097           | 8,520          | 118      |
| 105           | 0110090000-1100 | ALBERTO & MAUREEN LEYVA      | 9,814      | 1,198           | 8,616          | 129      |
| 106           | 0110090000-1000 | KRISTY GILLIS                | 9,928      | 100             | 9,828          | 16       |
| 107           | 2705190040-3300 | MR. KITTY ENTERPRISES LLC    | 586,750    | 327             | 586,423        | 6,766    |

PARCEL TOTAL AREAS WERE DERIVED FROM SNOHOMISH COUNTY ASSESSOR REPORTS AND DOES NOT REFLECT A BOUNDARY CALCULATION BY PARAMETRIX

ALL AREAS SHOWN IN SQUARE FEET



**BASIS OF BEARING**  
GRID NORTH BASED ON THE WASHINGTON STATE PLANE COORDINATE SYSTEM NORTH ZONE (NAD 83/2011).



**Parametrix**  
ENGINEERING · PLANNING · ENVIRONMENTAL SCIENCES

719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
P. 206.394.3700  
WWW.PARAMETRIX.COM

PROJECT NAME  
**NORTH CREEK TRAIL SECTION 4  
FROM FILBERT DR TO NCT SECTION 3**  
BOTHELL, WA

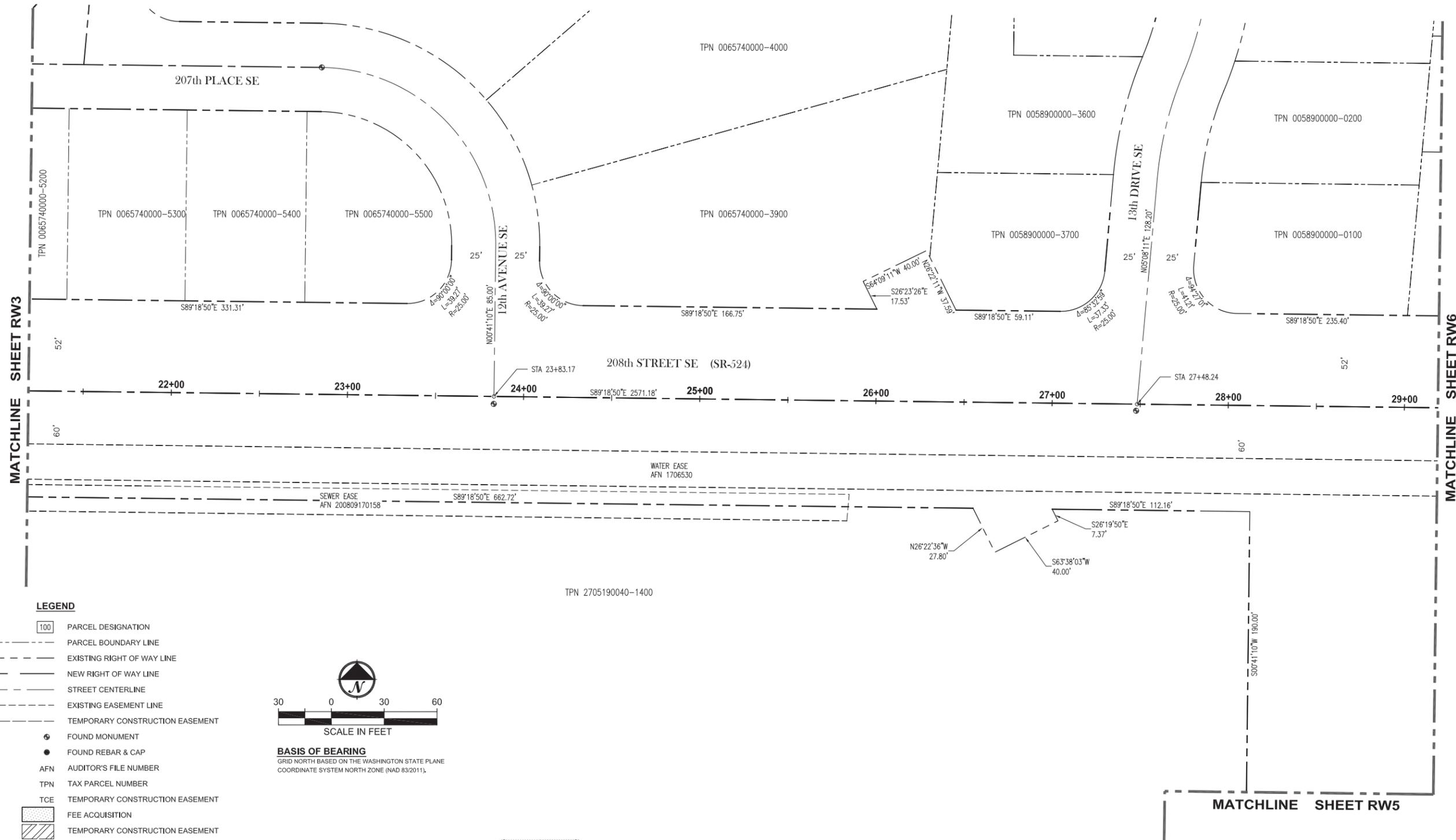
**208TH STREET SE  
STA. 13+00 TO 21+20**  
February 18, 2020 Agenda Packet Page 19 of 198

DRAWING NO.  
51 OF 55  
**RW3**

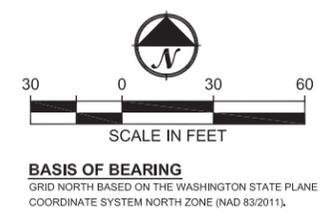
LAYOUT: Sheet 3 PATH: U:\PSO\Projects\Clients\1647-Bothell\554-1647-030 NCT Seg 4\99Secs\Survey\00Current\DWG PLOTTED BY: thibodeau DATE: Monday, March 18, 2019 7:04:35 PM

# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

SNOHOMISH COUNTY, WASHINGTON  
SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.



- LEGEND**
- 100 PARCEL DESIGNATION
  - PARCEL BOUNDARY LINE
  - - - EXISTING RIGHT OF WAY LINE
  - NEW RIGHT OF WAY LINE
  - STREET CENTERLINE
  - - - EXISTING EASEMENT LINE
  - - - TEMPORARY CONSTRUCTION EASEMENT
  - ⊕ FOUND MONUMENT
  - FOUND REBAR & CAP
  - AFN AUDITOR'S FILE NUMBER
  - TPN TAX PARCEL NUMBER
  - TCE TEMPORARY CONSTRUCTION EASEMENT
  - ▨ FEE ACQUISITION
  - ▨ TEMPORARY CONSTRUCTION EASEMENT



LAYOUT: Sheet 4 PATH: U:\PSO\Projects\Clients\1647-City\Boothell\554-1647-030 NCT Seg 4\99Secs\Survey\00Current\DWg PLOTTED BY: thibodeau DATE: Monday, March 18, 2019 6:52:42 PM

| REVISIONS | DATE | BY | DESIGNED |
|-----------|------|----|----------|
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |

|  |
|--|
|  |
| <p style="text-align: center;"><b>ONE INCH AT FULL SCALE.<br/>IF NOT, SCALE ACCORDINGLY</b></p> <p>FILE NAME<br/>554-1647-030-RW-PLANS</p> <p>JOB No.<br/>554-1647-030</p> <p>DATE<br/>3-18-2019</p> |



**Parametrix**  
ENGINEERING · PLANNING · ENVIRONMENTAL SCIENCES

719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
P 206.394.3700  
WWW.PARAMETRIX.COM

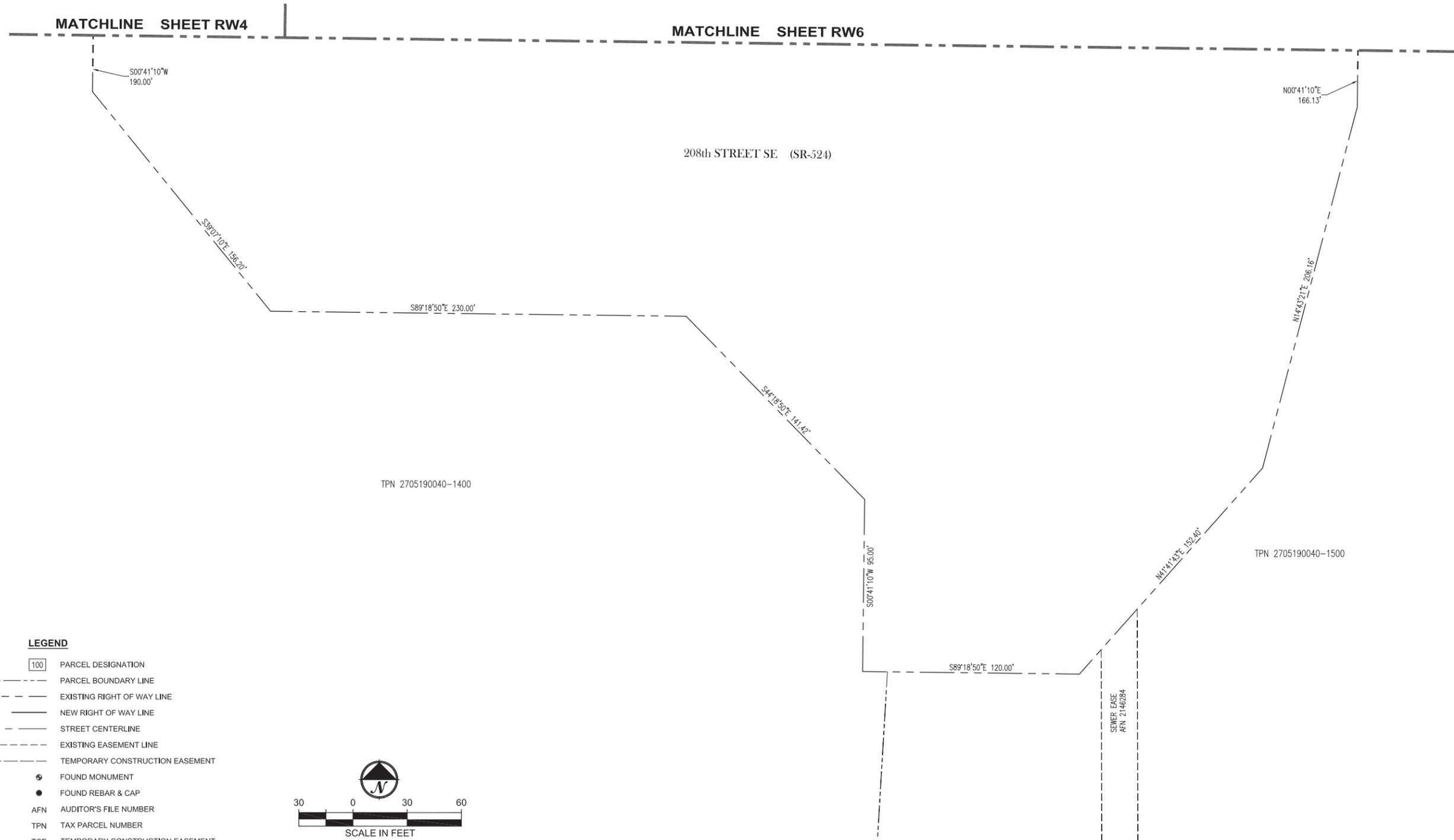
PROJECT NAME  
**NORTH CREEK TRAIL SECTION 4  
FROM FILBERT DR TO NCT SECTION 3**  
BOTHELL, WA

**208TH STREET SE  
STA. 21+20 TO 29+20**  
February 18, 2020 Agenda Packet Page 20 of 198

DRAWING NO.  
52 OF 55  
**RW4**

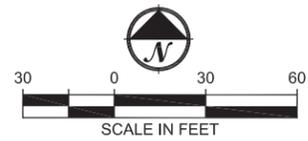
# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

SNOHOMISH COUNTY, WASHINGTON  
SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.

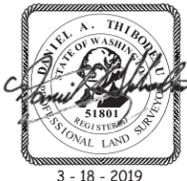


**LEGEND**

- 100 PARCEL DESIGNATION
- PARCEL BOUNDARY LINE
- - - EXISTING RIGHT OF WAY LINE
- NEW RIGHT OF WAY LINE
- - - STREET CENTERLINE
- - - EXISTING EASEMENT LINE
- - - TEMPORARY CONSTRUCTION EASEMENT
- FOUND MONUMENT
- FOUND REBAR & CAP
- AFN AUDITOR'S FILE NUMBER
- TPN TAX PARCEL NUMBER
- TCE TEMPORARY CONSTRUCTION EASEMENT
- FEE ACQUISITION
- TEMPORARY CONSTRUCTION EASEMENT



**BASIS OF BEARING**  
GRID NORTH BASED ON THE WASHINGTON STATE PLANE  
COORDINATE SYSTEM NORTH ZONE (NAD 83/2011).



**Parametrix**  
ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
P 206.394.3700  
WWW.PARAMETRIX.COM

PROJECT NAME

**NORTH CREEK TRAIL SECTION 4  
FROM FILBERT DR TO NCT SECTION 3**

BOTHELL, WA

**208TH STREET SE  
SOUTH RIGHT OF WAY AREA**

February 18, 2020 Agenda Packet Page 21 of 198

DRAWING NO.  
53 OF 55

**RW5**

| REVISIONS | DATE | BY | DESIGNED |
|-----------|------|----|----------|
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |

**ONE INCH AT FULL SCALE.  
IF NOT, SCALE ACCORDINGLY**

FILE NAME  
554-1647-030-RW-PLANS

CHECKED  
D. THIBODEAU

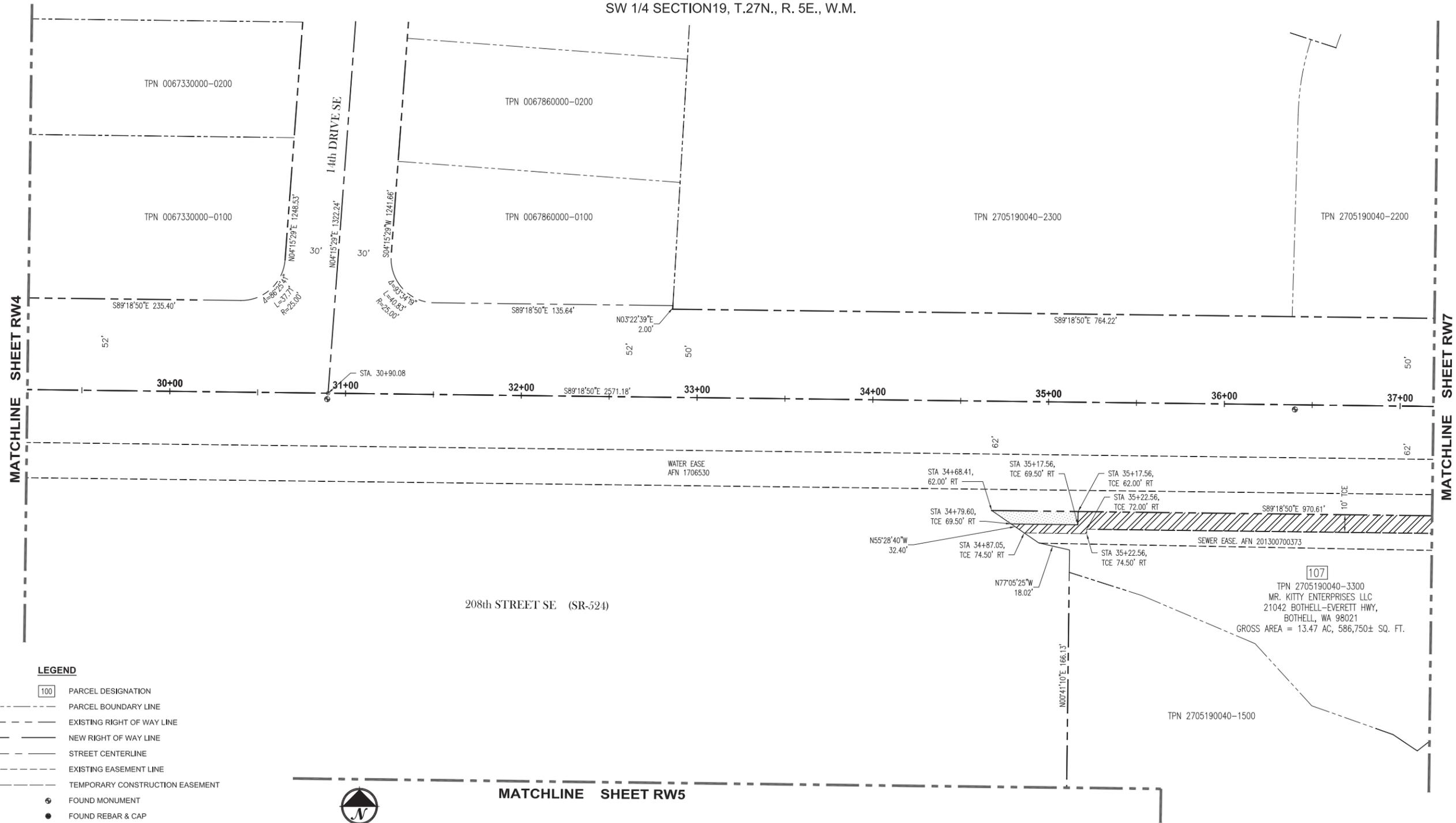
JOB No.  
554-1647-030

DATE  
3-18-2019

LAYOUT: Sheet 5      PATH: U:\PSO\Projects\Clients\1647-City\06\Boothell\554-1647-030 NCT Seg 4\99Secs\Survey\00Current\DWg      PLOTTED BY: thibodeau      DATE: Monday, March 18, 2019 6:55:21 PM

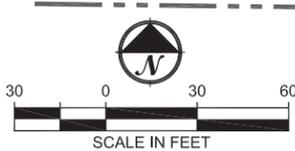
# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

SNOHOMISH COUNTY, WASHINGTON  
 SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
 SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.



**LEGEND**

- 100 PARCEL DESIGNATION
- PARCEL BOUNDARY LINE
- EXISTING RIGHT OF WAY LINE
- NEW RIGHT OF WAY LINE
- STREET CENTERLINE
- EXISTING EASEMENT LINE
- TEMPORARY CONSTRUCTION EASEMENT
- FOUND MONUMENT
- FOUND REBAR & CAP
- AFN AUDITOR'S FILE NUMBER
- TPN TAX PARCEL NUMBER
- TCE TEMPORARY CONSTRUCTION EASEMENT
- FEE ACQUISITION
- TEMPORARY CONSTRUCTION EASEMENT



**BASIS OF BEARING**  
 GRID NORTH BASED ON THE WASHINGTON STATE PLANE  
 COORDINATE SYSTEM NORTH ZONE (NAD 83/2011).

MATCHLINE SHEET RW5



3 - 18 - 2019

**Parametrix**  
 ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES  
 719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
 P 206.394.3700  
 WWW.PARAMETRIX.COM

PROJECT NAME  
**NORTH CREEK TRAIL SECTION 4  
 FROM FILBERT DR TO NCT SECTION 3**  
 BOTHELL, WA

**208TH STREET SE  
 STA 29+20 TO 37+20**  
 February 18, 2020 Agenda Packet Page 22 of 198

DRAWING NO.  
 54 OF 55  
**RW6**

LAYOUT: Sheet 6  
 PATH: U:\P50\Projects\Clients\1647-CityOfBothell\554-1647-030 NCT Seg 4\99Secs\Survey\00Current\DWG  
 PLOTTED BY: thibodeau DATE: Monday, March 18, 2019 7:01:53 PM

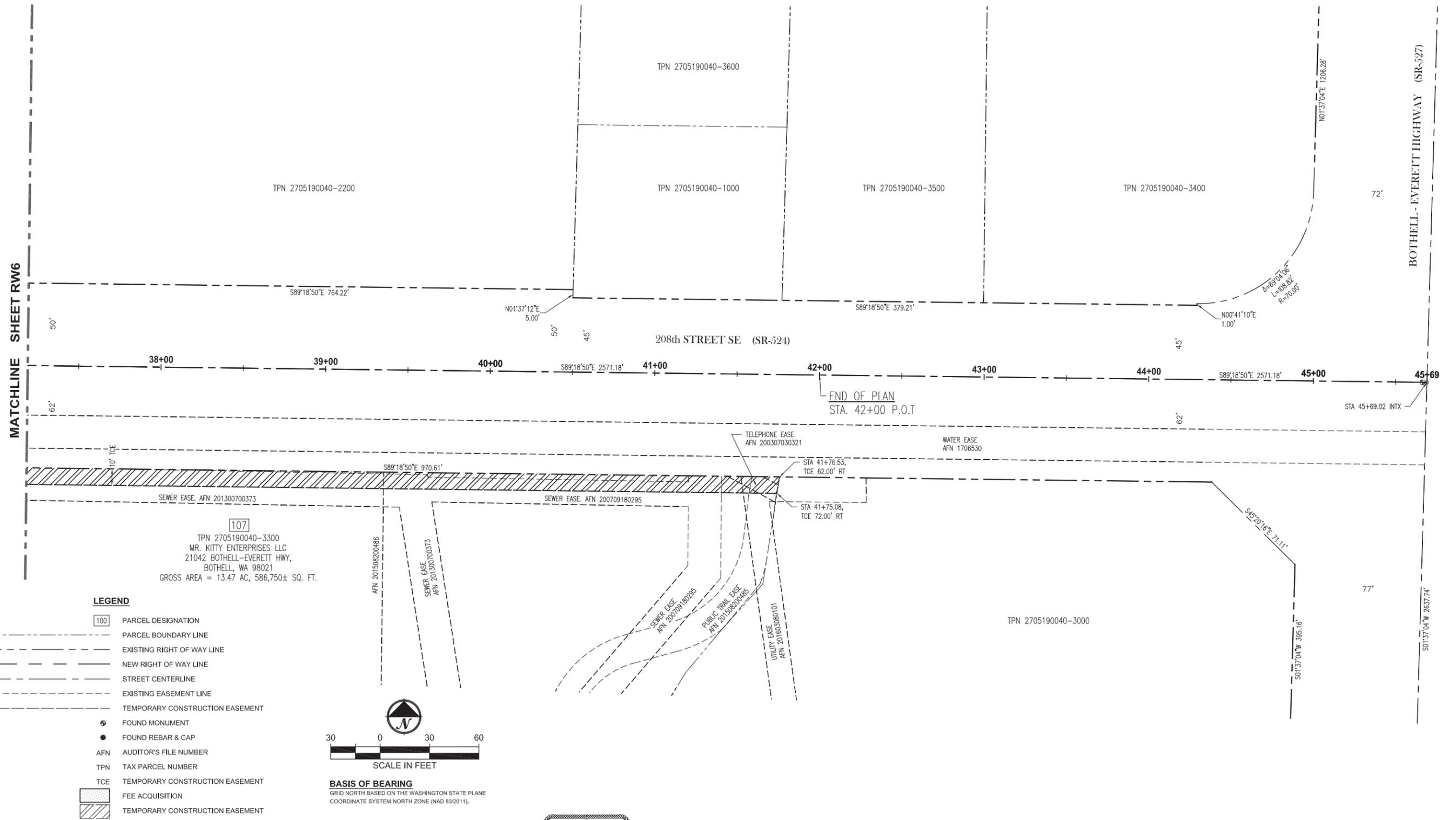
| REVISIONS | DATE | BY | DESIGNED |
|-----------|------|----|----------|
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |

|  |                       |
|--|-----------------------|
| <b>ONE INCH AT FULL SCALE.<br/>IF NOT, SCALE ACCORDINGLY</b> |                       |
| FILE NAME  | 554-1647-030-RW-PLANS |
| JOB No.  | 554-1647-030          |
| DATE   | 3-18-2019             |

|          |              |
|----------|--------------|
| DRAWN    | S. THOMAS    |
| CHECKED  | D. THIBODEAU |
| APPROVED | Y. HO        |

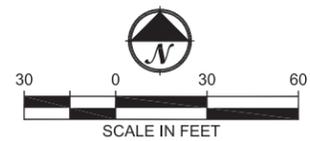
# NORTH CREEK TRAIL SECTION 4 RIGHT-OF-WAY PLANS

SNOHOMISH COUNTY, WASHINGTON  
SE 1/4 SECTION 19, T. 27N., R. 5E., W.M.  
SW 1/4 SECTION 19, T. 27N., R. 5E., W.M.



**LEGEND**

- 107 PARCEL DESIGNATION
- PARCEL BOUNDARY LINE
- - - EXISTING RIGHT OF WAY LINE
- NEW RIGHT OF WAY LINE
- STREET CENTERLINE
- - - EXISTING EASEMENT LINE
- - - TEMPORARY CONSTRUCTION EASEMENT
- FOUND MONUMENT
- FOUND REBAR & CAP
- AFN AUDITOR'S FILE NUMBER
- TPN TAX PARCEL NUMBER
- TCE TEMPORARY CONSTRUCTION EASEMENT
- FEE ACQUISITION
- TEMPORARY CONSTRUCTION EASEMENT



**BASIS OF BEARING**  
GRID NORTH BASED ON THE WASHINGTON STATE PLANE  
COORDINATE SYSTEM NORTH ZONE (NAD 83/2011).

LAYOUT: Sheet 7 PATH: U:\P50\Projects\Clients\1647-Bothell\554-1647-030 NCT Seg 4\99Secs\Survey\00Current\DWG PLOTTED BY: thibodeau DATE: Monday, March 18, 2019 6:59:57 PM

| REVISIONS | DATE | BY | DESIGNED |
|-----------|------|----|----------|
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |
|           |      |    |          |

|  |                       |
|--|-----------------------|
| <b>ONE INCH AT FULL SCALE. IF NOT, SCALE ACCORDINGLY</b> |                       |
| FILE NAME  | 554-1647-030-RW-PLANS |
| JOB No.  | 554-1647-030          |
| DATE   | 3-18-2019             |



**Parametrix**  
ENGINEERING · PLANNING · ENVIRONMENTAL SCIENCES

719 2ND AVENUE, SUITE 200 | SEATTLE, WA 98104  
P 206.394.3700  
WWW.PARAMETRIX.COM

PROJECT NAME  
**NORTH CREEK TRAIL SECTION 4  
FROM FILBERT DR TO NCT SECTION 3**  
BOTHELL, WA

**208TH STREET SE  
STA. 37+20 TO 45+70**  
February 18, 2020 Agenda Packet Page 23 of 198

DRAWING NO.  
55 OF 55  
**RW7**

**(This page intentionally left blank)**



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Ken Seuberlich, Police Chief  
Clint Beck, Deputy Police Chief  
David Schlaegel, Police Support Services Manager

**DATE:** February 18, 2020

**SUBJECT:** Consideration of a Radio End User Service Level Agreement with King County for Radio Equipment Management and Participation in Accordance with the Puget Sound Emergency Radio Network (PSERN) Implementation Period Interlocal Agreement of 2015.

**POLICY CONSIDERATION:** This item asks the City Council to consider if the City of Bothell should enter into a service level agreement (SLA) with the Public Safety Emergency Radio Network (PSERN) for radio equipment management and participation in their radio network. This participation applies to the configuration, programming, installation, deployment, testing, and software upgrades of all replacement radio equipment provided by PSERN.

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.

| <b>HISTORY:</b> | <b>DATE</b>           | <b>ACTION</b>  |
|-----------------|-----------------------|--|
|                 | <b>MAY 17, 2005</b>   | Council approved ILA 05-135 establishing Regional Public Safety Communications Consortium, predecessor of Eastside Public Safety Communications Agency (EPSCA) |
|                 | <b>JUNE 26, 2006</b>  | Council approved contract with EPSCA   |
|                 | <b>APRIL 28, 2015</b> | King County voters approved property tax levy to fund Puget Sound Emergency Radio Network (PSERN)  |
|                 | <b>JULY 17, 2018</b>  | Council approved PSERN Dispatch Center SLA 18-119  |

On August 3, 2018, the City of Bothell signed an SLA with King County authorizing participation in the PSERN radio network beginning in May 2021. That date has since been extended to July 2022. This authorization was approved by the City Council on July 17, 2018.

The City currently participates as a “User Agency” in the EPSCA radio network. Prior to joining EPSCA, the City maintained its own independent emergency public safety radio system.

EPSCA is connected to the King County Regional 800 MHz Emergency Radio Network, which consists of four radio systems in King County: EPSCA, King County, City of Seattle, and Valley Communications. PSERN replaces these existing King County radio systems with a single new system.

PSERN radio equipment has already been installed at the communications center inside the Bothell Police Department. Use of this radio equipment is scheduled to begin in April 2020.

Replacement of all EPSCA-connected mobile and portable radios throughout King County will begin in April 2021 and is expected to be completed by February 2022.

Approval of the SLA with King County in 2018 allowed formal implementation of the PSERN Project to begin at our communications center. Approval of the additional SLA now before the City Council will allow this process to continue throughout the City.

**DISCUSSION:** The purpose of this SLA is to provide a legal mechanism for the City of Bothell to continue providing emergency police, fire, and EMS services to its residents and visitors using the regional public safety radio system that serves all of King County (and the Snohomish County portion of the City of Bothell).

If this SLA is not approved, the City will have no practical means of communicating via public safety radio beyond July 2022 because the (EPSCA) radio network will be disbanded when PSERN’s radio network begins operation at that time.

**FISCAL IMPACTS:** Currently, EPSCA operating revenues are derived from access fees charged to the City of Bothell. PSERN will drive operating revenues in this same manner.

EPSCA charges monthly access fees for each mobile and portable radio the City uses. These costs were included in the Adopted 2019-2020 budget and the budgeted value of \$138,356 is sufficient to fund this item. These costs should remain stable through a majority of the 2021-2022 budget cycle.

PSERN monthly access fees, as outlined on pages 14 and 15 of the SLA (Section 8 MONTHLY FEE AND PAYMENT), are yet to be determined. However, access fees for mobile and portable radios are expected to increase approximately 50 percent from current costs when PSERN begins operating in July of 2022. PSERN is also expected to charge a monthly access fee of approximately \$5,000 for radio consoles used in the communications center, a fee that EPSCA does not currently charge, when PSERN begins operating in July 2022.

**ATTACHMENTS:**      Att-1.      PSERN Radio End User SLA  
                                 Att-2.      Agenda Bill 18-119 (including PSERN Dispatch Center SLA)

**RECOMMENDED ACTION:**      Approve a Service Level Agreement with King County for radio equipment management and in accordance with our participation in the Puget Sound Emergency Radio Network.

**(This page intentionally left blank)**

**ATT-1**  
**RADIO END USER SERVICE LEVEL AGREEMENT**

This agreement between agency radio users and King County is intended to ensure that expectations and requirements for equipment management and participation in the radio network are clear, and that agency radio users meet necessary maintenance and network participation standards that will support the successful functioning of the Puget Sound Emergency Radio network, avoiding unnecessary costs and disruptions for the many network participants. This agreement is in accordance with the Puget Sound Emergency Radio Network Implementation Period Interlocal Agreement of 2015.

City of Bothell Police Department ("End User Agency") and King County ("County") (individually, a "Party" and collectively, the "Parties") enter this Radio End User Service Level Agreement ("Agreement") on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. In consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS**

1.1 Words and terms shall be given their ordinary and usual meanings except as provided in this section or in parentheses following the definition of a particular term.

- 1.1.1 **Accessory** means all materials, special tools and any other items necessary to secure, install, operate and maintain Subscriber Equipment including: device cradles; mounting and installation hardware; power, Ethernet and any other wiring or cables and connectors; strain-relief materials; wire ties; cable labels; pre-assembled wiring harnesses of prescribed length for each vehicle type; fuses and circuit breakers; seals; adhesives; screws, bolts, washers, nuts and grommets; special tools; power supply and power conditioning devices; antennas; microphones; speakers; chargers; and holsters that are purchased by the PSERN Project for the End User Agency. [this is opposed to an accessory (lower case) that is something not provided by PSERN and which is an optional addition purchased at the expense of the End User Agency]
- 1.1.2 **Advanced System Key** means hardware attached to a computer to enable critical parameters to be programmed in subscriber equipment.
- 1.1.3 **Confidential Information** means any information in written, graphic, verbal, or machine-recognizable form that is: (a) related to the PSERN System; (b) provided to the End User Agency by the Contractor, the Service Provider, or the Service Provider's contractor; and (c) marked or identified as "confidential," "proprietary," "trade secret" or similar designation.
- 1.1.4 **Contract (or Vendor Contract)** means the County's contract with Motorola Solutions, Inc., King County Contract Number 5729347.
- 1.1.5 **Control Station** means all Equipment and Software provided under the Contract that is required to meet the Contract requirements for control stations.

- 1.1.6 **Contractor** means Motorola Solutions, Inc. the company hired by King County to provide services for the construction, operation, maintenance or other support of PSERN.
- 1.1.7 **Emergency** means an unforeseen circumstance that causes or may reasonably be expected to cause a decrease or loss in network clarity, capacity, coverage, reliability, security, features, or functions.
- 1.1.8 **End User Agency** in the singular means the entity that is a party to this Agreement with the County. In the plural, **End User Agencies** means all entities that are parties to agreements with the County with terms substantially similar to terms in this Agreement.
- 1.1.9 **Equipment** means all components of the radio system infrastructure including the land mobile radio equipment and software, DC power equipment and software, site video and alarming equipment and software, backhaul equipment and software, and console system equipment and software owned by the County or PSERN Operator and used by the End User Agency pursuant to this Agreement. The term does not include Subscriber Radios. [NOTE: When the lower case word, "equipment," is used in this Agreement, that use is not intended to be the defined use of the term "Equipment."]
- 1.1.10 **Field Servicer (Servicer)** means a PSERN Operator employee, contractor, or subcontractor whose job duties include traveling to sites to repair site electronics that cannot be repaired remotely.
- 1.1.11 **Full System Acceptance (FSA)** means the determination issued to the Contractor upon satisfactorily completing the final system acceptance phase milestone.
- 1.1.12 **Government Approvals** means all necessary federal, state and local licenses, permits, and approvals for the improvements needed for the construction, Equipment installation, and operation of PSERN.
- 1.1.13 **Implementation Period** means the period of time defined as such in the Implementation Period ILA.
- 1.1.14 **Implementation Period ILA** means the Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement.
- 1.1.15 **Joint Board** means the PSERN Project governing board formed under the Implementation Period ILA.
- 1.1.16 **KCERCS** means the County-wide Emergency land mobile radio system established under the King County Emergency Radio Communication System Interlocal Agreement.
- 1.1.17 **Master Advanced System Key** means a device used to create and configure an Advanced System Key.

- 1.1.18 **Mobile Radio** means all Equipment and Software provided under the Contract that is required to meet the Contract requirements for the mobile radios.
- 1.1.19 **Monitoring** means real-time fault checking on a continuous basis using tools for remote checking and event characterization.
- 1.1.20 **Monthly Fee** (or Fee) means the monthly charge paid by the End User Agency to the Service Provider after FSA for the Service Provider's operation and maintenance of PSERN and for the End User Agency's use of PSERN.
- 1.1.21 **Mutual Aid Radios** means an end user radio from a foreign system ID which may include a Mobile, Portable or Control Station radio which has been authorized and programmed to operate on the PSERN System in only a mutual aid capacity.
- 1.1.22 **Operations Period** means the period of time as defined as such in the Operations Period ILA.
- 1.1.23 **Operations Period ILA** means the Puget Sound Emergency Radio Network Operations Period Interlocal Cooperation Agreement as executed and amended.
- 1.1.24 **Part 90** means Part 90 of Title 47 of the Code of Federal Regulations (CFR).
- 1.1.25 **Portable Radio** means all Equipment and Software provided under the Contract that is required to meet the Contract specifications for the portable radios.
- 1.1.26 **Premises** means the areas near and in the End User Agency's location: the area used for staging and construction; the area Equipment will be installed and occupy inside the End User Agency's location; the area between the right-of-way and Equipment the Service Provider will use for access to the Equipment; and the area between the right-of-way and Equipment to be used for the installation and maintenance of utilities, if any.
- 1.1.27 **PSERN Board** means initially the Joint Board formed under the Implementation Period ILA, and later the board of directors for the PSERN Operator when it is formed and assumes the ownership, operations, and governance of PSERN.
- 1.1.28 **PSERN Project** means all authorized activities relating to the planning, analysis, design, development, acquisition, site development, installation, testing, training, and operation of the PSERN until FSA, starting-up a new Service Provider, transferring the PSERN to same, and any decommissioning, contract close-out and other project completion activities.
- 1.1.29 **PSERN Operator** means the agency that will be established by the parties to the Implementation Period ILA under chapter 39.34 RCW to take over PSERN's ownership, operation, and governance after FSA.

- 1.1.30 **Radio Shop** means a facility that is authorized by Contractor to perform installation, maintenance, programming and repair work on Subscriber Radios.
- 1.1.31 **Rate Stabilization Allocation** means those funds in the PSERN Project budget totaling \$2,619,406 earmarked to offset rate increases for End User Agencies and to be distributed via a formula determined by the PSERN Board.
- 1.1.32 **Resolution Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives the repair request and the time the Service Provider deems that it has fixed the problem and notified the End User Agency of the resolution.
- 1.1.33 **Response Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives a repair request for a problem, and the time the Service Provider has begun actively working on the service request.
- 1.1.34 **Service Provider (or Operator)** means the County during the Implementation Period and up until the transfer of ownership, operation, and governance of PSERN to the PSERN Operator. After the transfer, Service Provider means the PSERN Operator who is responsible for the day-to-day operation and maintenance of PSERN. Service Provider also includes the Service Provider's employees, agents, consultants, contractors, subcontractors, permittees, successors and assigns.
- 1.1.35 **Subscriber Radios** means paying End User Agency radios whose home system is PSERN and includes Mobile (vehicular), Portable (handheld), Control Station or consolette radios which have been authorized and programmed to operate on the System and are owned by the End User Agencies.
- 1.1.36 **Update** means revisions as required for the continued operation and maintenance of the Equipment software including error corrections, bug fixes, work-arounds, patches, anti-virus definitions, intrusion detection sensor signatures, changes in third party software or changes to software and Equipment required to accommodate such third party software changes and any other fixes and changes not constituting an Upgrade.
- 1.1.37 **Upgrade** means migrating to a new platform or adding features through changes to equipment and/or software.
- 1.1.38 **User** means an employee, agent, or volunteer of an organization authorized to use PSERN.
- 1.1.39 **Warranty Period** means the period beginning when the Equipment is made operational by the Contractor and extending for two (2) years after Full System Acceptance, as defined in the Contract.
- 1.1.40 **Template** means a master codeplug for a specific set of radios that is used to create an Equipment codeplug with the specific radio information required for the configuration of a Portable, Mobile or Control Station Radio. The Template includes ergonomic settings,

PSERN radio system information, and Mutual Aid Radio systems information that is programmed into the radio to allow operations on PSERN, KCERCS or other radio systems.

## **2. INITIAL EQUIPMENT REPLACEMENT**

- 2.1 By and through the Contractor, the County will replace the End User Agency's existing radios with Subscriber Radios in the numbers and of the types specified in Exhibit 1.
- 2.2 Subscriber Radios will be standardized with features, functions and Accessories chosen to make them suitable for use by End User Agencies. The End User Agencies may purchase additional Subscriber Radios, features, and accessories. The method and timing of payment for additional equipment will be established by the Joint Board.
- 2.3 Subscriber Radios will be issued according to the policies of the Joint Board as listed below, and as amended by the Joint Board:

Only For KCERCS Customers:

- 2.3.1 The PSERN Project will replace governmental agency and hospital agency active radios that were activated, into KCERCS zone controllers as active radios and assigned IDs 120 days prior to the first End User Agency's Subscriber Radio planned deployment and/or installation dates;
- 2.3.2 Non-hospital private agencies that are on the KCERCS will have their radios replaced on a 1 for 1 basis according to the agency inventory records as of April 25, 2019;
- 2.3.3 All End User Agency must turn an existing working radio in to the PSERN Project for each Subscriber Radio provided by the Project to the End User Agency;
- 2.3.4 End User Agency may keep old radios not needed for Subscriber Radio exchange to use on PSERN if they are approved by the Service Provider as meeting minimum PSERN software configurations and manufacturers specifications; and
- 2.3.5 End User Agency will pay Monthly Fees for each of its Subscriber Radios unless exempted otherwise by the policies of the Service Provider.

For all other agencies:

- 2.3.6 Agencies wanting to be on PSERN but not already on KCERCS may be issued Subscriber Radios pursuant to policies and terms and conditions adopted by the PSERN Board, but only if they commit to remaining as an End User Agency for a minimum of 10 years.
- 2.4 By and through the Contractor, the County initially will configure, program, install and or deploy the Subscriber Radios using the previous template and perform like for like programming. After the initial templates are created and programmed, the PSERN Operator will be responsible for archiving and centrally storing templates as well as infrastructure configuration changes within

the templates. The Radio Shops will be responsible for End User Agency configuration settings only. The Master Advanced System Key shall be maintained by the PSERN Operator. The PSERN Operator shall establish policies to determine which Subscriber Radio maintenance shops will be eligible to receive a system key.

- 2.5 The PSERN Operator will maintain a list of radios approved for use on the PSERN system. The End User Agency agrees to use only approved radios on PSERN and to not program or cause radios to be programmed in a way that they would operate in the P 25 Phase 1 mode of operation while operating on PSERN.
- 2.6 The County will own the Equipment provided by the PSERN Project. After the new PSERN Operator is formed, ownership of this Equipment shall be transferred to the PSERN Operator at no cost to the End User Agency or to the PSERN Operator.
- 2.7 Ownership of County-purchased Subscriber Radios will be transferred to the End User Agency within the same fiscal year that the Subscriber Radios are put into service provided that the Subscriber Radios are put into service at least ninety (90) days prior to the end of the fiscal year. If the Subscriber Radios are put into service less than ninety (90) days prior to the end of the fiscal year, then ownership will be transferred within ninety (90) days from the date they are put into service.
- 2.8 The Train-the-Trainer model will be used to train End User Agency staff to use the Subscriber Radios. Each End User Agency shall designate staff to be trained, and supply that (those) name(s) to the Service Provider. The trainers will receive detailed training on use of the Subscriber Radios from the Contractor.

### **3 TRANSITION PLAN**

- 3.1 The Service Provider and End User Agency will work with the Contractor to develop a mutually agreeable written transition plan. The transition plan will be approved by the PSERN Joint Board.
- 3.2 The transition plan will include:
  - 3.2.1 A list of equipment that the End User Agency shall receive as part of the PSERN Project;
  - 3.2.2 An installation plan for all vehicles receiving equipment;
  - 3.2.3 A plan describing how End User Agencies will migrate from analog to digital operations;  
and
  - 3.2.4 A plan describing the training plan for each End User Agency.

### **4 INSTALLATION AND TESTING**

- 4.1 If the End User Agency has any special requirements pertaining to the disposition of its existing radios it shall notify the Service Provider as soon as practicable, but no less than within five (5) business days of receiving notification of installation and transition.

- 4.2 The Service Provider shall secure all Government Approvals required for the installation and operation of the Subscriber Radios.
- 4.3 All Subscriber Radios will be programmed and tested prior to deployment and/or installation by the Contractor to determine if they are operating in accordance with manufacturer's specifications.
- 4.4 The Service Provider will coordinate with the End User Agency regarding the installation schedule as far in advance as possible, but no less than at least fifteen (15) business days in advance.

## 5 OPERATIONS

- 5.1 In implementing and managing PSERN, the Service Provider shall:
  - 5.1.1 Be responsible for, or during the Warranty Period ensure the Contractor is responsible for, the repair of defective Equipment, and for programming and installing Equipment purchased and installed during the Implementation Period;
  - 5.1.2 Monitor PSERN for proper operations in accordance with the standards specified herein and monitor for any failure symptoms;
  - 5.1.3 Maintain, operate, repair, Update, Upgrade and test PSERN in accordance with the Equipment manufacturer's recommendations for routine maintenance;
  - 5.1.4 Provide the End User Agency with a phone number and email address to report system problems. The phone number shall be reachable and Monitored 24 hour X 7 day X 365 days per year;
  - 5.1.5 Respond to network and Equipment problems in accordance with Response and Resolution Tables contained in **Exhibit 2**;
  - 5.1.6 Purchase the Contractor's Radio Service Advantage (RSA) product offering which will provide 7 years of support for Subscriber Radios after the conclusion of the two-year warranty period. During the 7 years of RSA support, End User Agencies will be able to receive repairs to Subscriber radios without incurring Contractor's depot level repair costs. However, any Subscriber Radio needing repair or replacement due to the intentional or negligent act of the End User Agency, its agents, employees, or invitees, will be repaired or replaced by the Radio Shop at the Radio End User Agency's cost. Such cost is in addition to the Monthly Fee. Disputes regarding the responsibility for repair or replacement cost will be resolved pursuant to Section 23;
  - 5.1.7 Have factory-trained subject matter experts (Duty Technician(s)) on staff who specialize in the diagnosis, troubleshooting and resolution of network performance and Equipment problems;
  - 5.1.8 Have a Duty Technician to act as liaison between itself and the Contractor;

- 5.1.9 Resolve Equipment warranty claims with the Contractor;
  - 5.1.10 Manage talkgroup site access profiles;
  - 5.1.11 Give the End User Agency at least thirty (30) days' notice before undertaking scheduled activities that will interrupt or reduce service capacity by twenty-five percent (25%) or more;
  - 5.1.12 Centrally manage the distribution and archiving of regional encryption keys;
  - 5.1.13 Centrally manage the creation of new talkgroups (however, per Section 5.3, End User Agencies will own their own existing talkgroups);
  - 5.1.14 Centrally archive templates for radio programming of End User Agency radios;
  - 5.1.15 Centrally manage the use of integrated voice and data applications such as over-the-air rekeying, over the air programming, outdoor location (GPS information) and radio management;
  - 5.1.16 Ensure public safety agencies have priority of service on the PSERN system; and
  - 5.1.17 Maintain the PSERN system to the following standards as specified in the Contract and as implemented by the Contractor prior to FSA:
    - 5.1.17.1 Delivered Audio Quality 3.4;
    - 5.1.17.2 97% reliability;
    - 5.1.17.3 97% portable on-street coverage in the Primary Bounded Area;
    - 5.1.17.4 95% portable on-street coverage in the Highway Buffer Covered Areas;
    - 5.1.17.5 Grade of Service of 1.0;
    - 5.1.17.6 99.999% availability of backhaul;
    - 5.1.17.7 at least 17db added signal above the baseline PSERN design within the designated in-building coverage areas (downtown Seattle, downtown Bellevue, and north central Renton); and
    - 5.1.17.8 Provide 97% portable on-street coverage in the in-building coverage areas. The Contractor shall provide a System that achieves 97% SAR (service area reliability).
- 5.2 Following execution of the Operations Period ILA and formation of the PSERN Operator, the PSERN Operator shall:
- 5.2.1 Develop and adopt a maintenance & operations plan that includes:

- 5.2.1.1 Talkgroup prioritization levels and site authorizations;
- 5.2.1.2 Authorized template configuration changes by Radio Shops;
- 5.2.1.3 System maintenance standards;
- 5.2.1.4 Technician/System manager administrative rights;
- 5.2.1.5 Training requirements for technical staff;
- 5.2.1.6 Distribution, management, and archiving of regional and End User Agency encryption keys;
- 5.2.1.7 System key management and distribution;
- 5.2.1.8 OTAP/OTAR roles and responsibilities;
- 5.2.1.9 Issue resolution reporting procedures including system status, repairs made, impacted area, etc.;
- 5.2.1.10 Continuity of operations procedures;
- 5.2.1.11 Procedures for End User agencies to add radios to their inventory at their own cost;
- 5.2.1.12 Talkgroup sharing agreement requirements; and
- 5.2.1.13 Conventional channel sharing agreements.
- 5.2.2. Adopt policies governing the replacement, removal, and addition of Equipment under its control;
- 5.2.3. Adopt policies related to the access of PSERN for mutual aid and/or interoperability purposes;
- 5.2.4. Adopt policies defining the approved Equipment and Subscriber Radios authorized for use in PSERN;
- 5.2.5. Adopt policies defining mandatory configuration settings that must be set into each authorized Subscriber Radio;
- 5.2.6. Adopt and implement information assurance controls, policies, procedures and processes;
- 5.2.7. Adopt policies governing the change management program;

5.2.8. Work in partnership with the End User Agencies to develop and regularly report on performance and operating metrics indicating system performance as well as the PSERN Operator's ability to meet the End User Agencies service requirements; and

5.2.9. Upon request by End User Agencies, provide reports of system usage and equipment inventories.

5.3 In using the Equipment and PSERN, the End User Agency agrees to:

5.3.1 Be responsible for replacement at its cost of any Subscriber Radios that are stolen, damaged, lost or which are determined by the End User Agency to be beyond their expected life if not covered by the radio repair procedures as described in Section 5.4 ;

5.3.2 Use only radio codeplugs that have been configured by the PSERN Operator;

5.3.3 Create and distribute End User Agency encryption keys;

5.3.4 Own and control their own talkgroups;

5.3.5 Ensure all trunked radios are capable of being configured for P25 Phase II operation;

5.3.6 Prevent unauthorized and untrained personnel from accessing Subscriber Radios;

5.3.7 Promptly report Equipment and network problems to the Service Provider and indicate the impact of the problem on the End User Agency (e.g., if a channel is garbled, features are not working correctly, or if coverage conditions in a known area have changed);

5.3.8 Comply with all applicable information assurance controls, policies, procedures, and processes developed and implemented by the PSERN Operator;

5.3.9 Maintain an accurate system for tracking all Subscriber Radio purchased by the PSERN Project or acquired by the End User Agency and immediately notify the System Provider if the End User Agency knows or suspects that a Subscriber Radio has been lost, stolen, or damaged so that the System Provider can take any necessary actions which may include disabling the Subscriber Radio;

5.3.10 Not permanently transfer, dispose of, or allow an entity or individual outside the User Agency to use Subscriber Radios without the PSERN Board's prior written approval for a period of 7 years after Full System Acceptance (Any radios disposed of under this subsection shall be deprogrammed by a Radio Shop prior to disposal);

5.3.11 Assist the Service Provider in responding to any correspondence, complaint, information request, or claim it receives that pertains to End User Agency operations;

5.3.12 Use a Radio Shop of its choice to perform all installation, maintenance, programming and repair work on Subscriber radios;

- 5.3.13 Perform, or have performed, preventative maintenance of its Subscriber Radios in accordance with manufacturer's recommendations and schedules;
- 5.3.14 Perform, or have performed, periodic Updates of subscriber operating system as determined by the Service Provider;
- 5.3.15 Allow Service Provider the right to inspect applicable Equipment which the End User Agency controls access to in order to verify operations of the Equipment are within the manufacturer's specifications and Federal Communications Commission rules; and
- 5.3.16 Not modify Subscriber Radio hardware or software operating characteristics, such as modifying the transmit power levels of mobile radios or replacing the antennas with higher gain antennas on mobile or portable radios without the approval of the PSERN Operator.

5.4 Radio Repair Procedures:

5.4.1 After initial Contractor installation and up to and during the Warranty Period, the End User agency will use a Radio Shop of its choice to perform all installation, maintenance, programming, and repair work on Subscriber Radios and ensure that during the two year warranty period the Radio Shop will:

5.4.1.1 Initiate a service request with Contractor by requesting a Return Merchandise Authorization (RMA); and

5.4.1.2 The Radio shop shall remove failed units from the vehicles and reinstall new units and ship the units to Contractor.

5.4.2 Contractor will:

5.4.2.1 Provide the Radio Shop with an RMA, provide a new Subscriber Radio replacement unit with the latest firmware release, and reimburse the Radio Shop and End User Agency for their costs (including troubleshooting time, owner travel time, removal and installation of the radio, reprogramming, and inventory actions).

5.4.3 Upon completion of the warranty period:

5.4.3.1 The Radio Shop will initiate a service request via Motorola Online (MOL) and reference the Contract Number (#5729347) for repair;

5.4.3.2 Contractor is responsible for inbound and outbound shipping and tracking of each shipment; and

5.4.3.3 End User Agency may have to pay fees for the removal/installation of Mobile Radios or Control Stations per any applicable Radio Shop service agreements and rates.

5.5 The Change management program to be adopted pursuant to Section 5.2 shall be mutually agreed to by the Parties and shall include:

5.5.1 Request for change (RFC) documentation;

5.5.2 Classification of the RFC quantifying the risk/impact and the category;

5.5.2.1 Risk/Impact may be: low, medium, high; and

5.5.2.2 Category may be: standard or Emergency.

5.5.3 Assessment and Authorization of the RFC;

5.5.4 Communication with dispatch centers of the RFC's implications;

5.5.5 Implementation of the change;

5.5.6 Assessment of the quality of the implementation; and

5.5.7 Closure of the RFC record.

## **6. RESPONSE AND RESOLUTION TIMES TO INFRASTRUCTURE IMPAIRMENTS**

6.1 During the Warranty Period when a User reports or the Monitoring equipment detects a problem and reports it to the Service Provider, a trained technologist will acknowledge and attempt to remotely diagnose the problem. Appropriate responses could include continuously Monitoring the event for further development, attempting remote remediation, or dispatching a Field Servicer (Servicer) for onsite remediation.

6.2. The table in Exhibit 2 lists Response Times for three levels of severity and the correlating Resolution Time for each.

6.3. The Service Provider shall repair or replace a defective piece of Equipment at no cost above the Monthly Fee.

6.4. The Service Provider will keep or have access to sufficient spare parts and pieces of Equipment so that defective, broken, or wrongly programmed Equipment can be promptly replaced or repaired.

## **7. EQUIPMENT UPDATES AND UPGRADES**

7.1 Equipment Updates

- 7.1.1 During the Warranty Period, the Contractor shall provide and install Equipment Updates. Thereafter, the Contractor shall provide Updates that shall be installed by the Service Provider. The cost of Updates shall be included in the Monthly Fee.
- 7.1.2 Regular Updates shall include:
  - 7.1.2.1 Contractor's most current software enhancement release Update which includes defect corrections, bug fixes, patches, and service packs.
  - 7.1.2.2 Patch releases, service packs and other non-security-related Updates released by Contractor, its subcontractors if applicable, and other providers of Equipment operating and application software including Microsoft, Red Hat Linux, Sun Solaris, and other third parties.
  - 7.1.2.3 Contractor's regular security-related Updates, referred to by Contractor as "Security Update Service" (SUS) that include operating system patches and service packs, anti-virus engines and definitions, intrusion detection systems and signatures, and firewall setting and other security-related Updates.
- 7.1.3 Updates to software necessary as a result of a failure will be provided based on the severity level of the failure as follows:
  - 7.1.3.1 For failures that affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall commence corrective action immediately and exercise its best efforts to work with the Contractor to develop, test, and install a fix in the shortest time possible.
  - 7.1.3.2 For failures that do not affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall work with the Contractor to develop, test, and install the fix as part of an Update to be otherwise provided in this Section.
- 7.1.4 Prior to installation of an Update, the Service Provider shall confirm that the Update has been successfully tested to ensure the Update is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Updates may be loaded remotely or locally as determined by the Service Provider.
- 7.1.5 The Service Provider will routinely install Updates, but may defer or decline to install an Update or roll back one or more Updates if the Service Provider in its sole discretion determines that the Update would be detrimental to PSERN's functionality.
- 7.1.6 The Service Provider will notify End User Agencies in accordance with the change management program as detailed in Section 5.5 in advance of routine Updates and will provide applicable release notes with each Update. In the case of Updates installed

under Section 7.1.3, notice will be provided to the Users with as much lead time as practicable.

## 7.2 Equipment Upgrades

- 7.2.1 During the Warranty Period, the Contractor shall provide and install Equipment Upgrades. Thereafter, the Contractor will provide Upgrades that will be installed by the Service Provider. The cost of Upgrades shall be included in the Monthly Fee.
- 7.2.2 The most recent available Upgrades of the Equipment software and hardware shall be provided at the following points in time: (1) no more than ninety (90) days prior to the start of the FSA testing period; (2) no more than ninety (90) days prior to the end of the Warranty Period; (3) after the Warranty Period, every other year beginning with 2023 subject to availability from the Contractor. The Service Provider may defer or suspend an Upgrade if it determines in its sole discretion that the Upgrade would be detrimental to PSERN's functionality.
- 7.2.3 Each Upgrade will include the latest versions of Contractor software and the latest versions of third party software certified for the system and shall include all Updates available at the time of the Upgrade if not already installed under Section 7.1.
- 7.2.4 Prior to installation of an Upgrade, the Service Provider shall confirm that the Upgrade has been successfully tested to ensure the Upgrade is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Upgrades may be loaded remotely or locally as determined by the Service Provider.
- 7.2.5 If an Upgrade requires additional or different Equipment, the Service Provider (by and through the Contractor during the Warranty Period) shall provide and install the necessary Equipment. The cost of the software and Equipment required for the Upgrade, if any, shall be included in the Monthly Fee.
- 7.2.6 The Service Provider will notify End User Agencies in accordance with the change management program as detailed in Section 5.5

## 8 MONTHLY FEE AND PAYMENT

- 8.1 The End User Agency agrees to pay the PSERN Operator a Monthly Fee for the End User Agency's use of PSERN and the PSERN Operator's operation and maintenance of the Equipment and network. The Monthly Fee shall be calculated using a formula determined by the PSERN Board.
- 8.2 The Monthly Fee will be assessed beginning immediately after FSA for each End User Agency radio with an active ID in the radio system core. In the first month, the Monthly Fee shall be assessed on a prorated basis based on the number of days the radio is in service and will apply to Subscriber Radios used in the field, dispatch center back up radios and recording radios. The

PSERN Operator shall provide an invoice to the End User Agency. The first payment will be due on the first day of the first full month after FSA, and shall equal the amount due for that month and any pro-rated amount for the first month of service

- 8.3 Monthly Fee payments will be due on the first day of each month, except that at the End User Agency's sole option it may make annual advance payments in lieu of monthly installments. Payments made will be applied first to charges that are in arrears and then to the payment due for that coming month.
- 8.4 The first payments after FSA may be reduced based on the PSERN Board's disbursement of the Rate Stabilization Allocation for those End User Agencies that will see a rate increase as a result of PSERN operations.
- 8.5 The PSERN Operator shall provide the End User Agency with the address for payment of Fees not less than sixty (60) days prior to the date the first payment is due. All payments shall be accompanied by a reference to this Agreement, or an invoice number.
- 8.6 If the End User Agency does not pay its Fee or pays only a part of the Fee more than twice in any single calendar year, the PSERN Operator may charge the End User Agency a reasonable late or special handling charge.
- 8.7 The PSERN Operator's acceptance of any payment or partial payment after the date it is due shall not be deemed a waiver regarding the End User Agency's obligations to make future payments on time. And no partial payment shall act as an accord and satisfaction unless approved by the PSERN Board.
- 8.8 OTHER FEES: The Service Provider may maintain and publish fees for services in support of End User Agency's operations unrelated to the PSERN Equipment. Such fees may include activation and deactivation fees and time and materials rates for non-PSERN equipment servicing. End User Agencies may use these ad hoc services, if offered, which may consist of:
  - 8.8.1 Time and materials fees in support of UHF systems and equipment, VHF systems and equipment, non-PSERN Microwave equipment and fiber optic networking
  - 8.8.2 Consultation service fees for communication equipment or systems
  - 8.8.3 Consultation service fees for in-building coverage equipment such as bi-directional amplifiers or distributed antenna systems

## **9. TERM**

- 9.1 This Agreement shall take effect when executed by authorized representatives of the Parties, and shall remain in effect unless one of the following events occurs:
  - 9.1.1 The Parties execute a superseding agreement;

9.1.2 The End User Agency withdraws from the Agreement as provided in Section 16.1; or

9.1.3 The PSERN Board terminates the Agreement as provided in Section 16.2.

**10. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AGREEMENTS, POLICIES, PROCEDURES, AND PERMITS**

The Parties acknowledge: 1) that they are required to comply with various laws, regulations, agreements, policies, procedures, and permits, including those contained in 47 CFR §90, those developed by the PSERN Board and the Service Provider, and those contained in the Implementation Period ILA and the Operations Period ILA, if the End User Agency is a party to those agreements; and 2) that the County is subject to the Vendor Contract's terms and conditions in the performance of this Agreement. The Parties agree to comply with the applicable laws, regulations, agreements, policies, procedures, and permits.

**11. REPRESENTATIONS AND WARRANTIES**

11.1 The End User Agency represents, warrants, and agrees that:

11.1.1 It will work cooperatively, fully, and promptly with the Service Provider;

11.1.2 It has the full right, power, and authority to enter into this Agreement; and

11.1.3 It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants, or the provisions of any mortgage, lease or other binding agreement.

11.2 The Service Provider represents, warrants, and agrees that:

11.2.1 It will work cooperatively, fully, and promptly with the End User Agency;

11.2.2 It has the full right, power and authority to enter into this Agreement;

11.2.3 It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants or the provisions of any mortgage, lease or other binding agreement.

**12. END USER AGENCY PERMISSIONS FOR THE SERVICE PROVIDER TO ENTER AND USE END USER AGENCY PROPERTY**

As part of the consideration for benefits to the End User agency provided through this Agreement, the End User Agency hereby grants the Service Provider the following as required:

12.1 Permission for ingress and egress between the public right of way and the Premises adequate to install, operate, maintain, and remove the Equipment. This grant shall not include matters covered

in leases between the End User Agency and the PSERN Project for the Backhaul equipment, and any agreement for tenant improvements at the End User Agency.

12.1.1 Any person accessing the Premises on behalf of Service Provider (and prior to such access) may be required to (a) pass a Washington State Patrol, or substantially similar, background check, (b) comply with the End User Agency's security and background check procedures, including, but not limited to, the procedures set forth in Exhibit 3.

12.1.2 The End User Agency may change the routes from time-to-time at its sole discretion. The End User Agency shall provide the Service Provider with an amended Site Plan at least ten (10) business days prior to the change going into effect or if they are changed on an Emergency basis, as soon as practicable thereafter.

12.2 In addition, as part of the consideration for this Agreement, the End User Agency shall allow the Service Provider the following:

12.2.1 Use of the End User Agency's commercial electrical service necessary for the Service Provider to fulfill its responsibilities under this agreement;

12.2.2 Use of the End User Agency's emergency backup generator necessary for the Service Provider to fulfill its responsibilities under this agreement; and

12.3 Unless otherwise provided, the grants in this Section 12.0 shall remain in force until thirty (30) days after the term of this Agreement unless by extended by the mutual agreement of the Parties.

### **13 INDEPENDENT CONTRACTORS AND NO THIRD PARTY BENEFICIARIES**

13.1 Each Party is an independent contractor with respect to this Agreement. No joint venture or partnership is formed as a result of this Agreement.

13.2 This Agreement is solely for the benefit of the Parties, and gives no right or remedy to any other person or entity.

### **14 ASSIGNMENTS**

14.1 By Service Provider

The County may assign this Agreement and all of the County's rights, duties, and obligations set forth herein, to the PSERN Operator without the End User Agency's approval. However, such assignment shall require approval by the PSERN Board.

14.2 By the End User Agency:

The End User Agency may not assign any of its rights, duties, or obligations set forth in this Agreement except as approved in writing by the PSERN Board and the Service Provider.

## **15 RECORDS**

Each Party shall keep records as required by state law. To the extent permitted by law, all records, accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by the Washington State Auditor or any Party. Upon reasonable notice, during normal working hours, each Party shall provide auditors from the Washington State Auditor or the other Party with access to its facilities for copying said records at their expense. If a Party receives a request for records under the Washington State Public Records Act for records that meet the definition of Confidential Information, and if the Party determines such record is or may be subject to disclosure, the Party's sole obligation to protect the confidentiality shall be to notify the entity or individual claiming confidentiality of the request and the date that such Confidential Information will be released. Such individual or entity, shall have the option of obtaining a court order to enjoin disclosure pursuant to RCW 42.56.540.

## **16. ENDING SERVICE**

- 16.1 End User Agency may apply for withdrawal from this Agreement with at least one year's written notice of its intent to withdraw. Such applications shall be handled in accordance with the PSERN Board's rules.
- 16.2 After giving the End User Agency a reasonable period of time to cure, the PSERN Board may terminate this Agreement for the End User Agency's repeated violations of the Agreement terms. The PSERN Board may immediately terminate this Agreement where an action or inaction of the End User Agency significantly diminishes or threatens to significantly diminish the operations of PSERN or results in the loss of or threatened loss of PSERN's spectrum licenses. Termination actions shall be handled in accordance with the PSERN Board's rules.

## **17. INDEMNIFICATION**

Each Party shall save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

## **18. INSURANCE**

### **18.1 King County Insurance**

The County maintains a self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. The End User Agency acknowledges, agrees

and understands that the County is self-funded for all of its liability exposures for this Agreement.

#### 18.2 The PSERN Operator

Upon the transfer of PSERN to the PSERN Operator, the PSERN Operator shall either maintain a fully funded self-insurance program in accordance with applicable law or acquire and maintain commercial general liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent.

#### 18.3 Contractors and Subcontractors Insurance

The County and PSERN Operator shall require their contractors and subcontractors to maintain general liability insurance for all activities related to installation and servicing of the equipment at the Centers.

#### 18.4 End User Agency's Insurance

The End User Agency agrees to maintain a self-insurance program or to procure and maintain the following minimum insurance coverage areas and limits, or comparable program(s) of self-insurance, responsive to its liability and property exposures under this Agreement:

18.4.1 General Liability: Insurance Services "occurrence" form CG 00 01 (current edition), or its substantive equivalent. Commercial General Liability coverage shall be no less than ONE MILLION DOLLARS (\$1,000,000) per combined single limit per occurrence, and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for bodily injury and property damage.

18.4.2 Workers' Compensation/Stop Gap/Employers Liability: Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.

### 19. NOTICES

Written notice for purposes of Sections 16, 18 and 23 must be either delivered by courier or sent by certified mail, return receipt requested, to the address listed below. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon signature on the return receipt. A Party may change the address for notices from time to time by providing the other Party(ies) the replacement name and contact information. Notice shall not be effective unless and until the other Party(ies) has (have) received this information.

To the End User Agency:

To the County or PSERN Operator:  
Hai Phung, Project Manager  
King County Department of Information Technology  
401 5<sup>th</sup> Avenue  
Seattle, WA 98104

**20. AMENDMENT**

This Agreement may be amended only upon mutual written agreement of the Parties and approval of the PSERN Board.

**21 FORCE MAJEURE**

Acts of nature, acts of civil or military authorities, acts of war, terrorism, fire, accidents, shutdowns for purpose of Emergency repairs, strikes and other labor disruptions, and other industrial, civil or public disturbances that are not reasonably within the control of a Party causing the Party's inability to perform an obligation under this Agreement are "Force Majeure Events." If any Party is rendered unable, wholly or in part, by a Force Majeure Event, to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended for the time and to the extent reasonably necessary to allow for performance and compliance and restoration of normal operations.

**22 CONFLICT WITH OTHER AGREEMENTS**

If any provision of this Agreement conflicts with a provision of the Implementation Period ILA, the Operations Period ILA, or the lease between the End User Agency and King County (or Service Provider as applicable), if any, such that the provisions cannot be harmonized, then the provisions of the applicable ILA or lease shall control over this Agreement.

**23 DISPUTE RESOLUTION**

If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to resolve the dispute through direct negotiations between them. If the Parties are unable to resolve the dispute within sixty (60) days of its occurrence, either Party may refer the dispute to the PSERN Board for resolution and shall provide the other Party with notice of such referral. If the dispute is not resolved by the PSERN Board within sixty (60) days of referral to it, either Party may refer the dispute to the executive officers of the Parties. If the dispute is not resolved by the executives within 60 days of referral, either Party may refer the dispute to non-binding mediation. The parties to the dispute shall share the costs of mediation equally. Referral of the dispute to the PSERN Board, the executives, and mediation shall be a condition precedent to a Party's pursuit of other available legal remedies.

**24 CHOICE OF LAW AND VENUE**

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington. The Parties agree that the King County Superior Court, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

**25 NO WAIVER**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default or breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of the Parties.

**26 EXECUTION AND COUNTERPARTS**

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

**27 SURVIVAL PROVISIONS**

The following provisions shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding a Party's withdrawal from this Agreement.

Section 15 Records

Section 17 Indemnification

Section 19 Notices

Section 24 Choice of Law and Venue

**28 SEVERABILITY**

The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the space provided below.

King County

City of Bothell Police Department

\_\_\_\_\_  
David Mendel, Director, King County  
Emergency Radio Communications

\_\_\_\_\_  
[Name, Title]

**Exhibit 1**

List of equipment for End User Agency

The quantities of equipment listed here will be based on the preliminary radio inventory. The parties agree that prior to radio replacement final inventory numbers will be mutually agreed to, subject to the replacement policies adopted by the PSERN Joint Board.

## Bothell City

| Portable    | Radio Location Capable | Encryption with Over The Air Re-keying | Portable Radio quantity with microphone 2 batteries, case | Individual Charger | 6 Pocket Charger |
|-------------|------------------------|--|---|--------------------|------------------|
| Other Gov't | No                     | No                                     | 0   | 0                  | 0                |
| Police      | Yes                    | Yes                                    | 71  | 71                 | 0                |
| Fire/EMS    | Yes                    | Yes                                    | 82  | 82                 | 0                |

| Mobile          | Radio Location Capable | Encryption with Over The Air Re-keying | Dash mount radio | Trunk mount radio | Dual head radio | Quad head radio | Motorcycle radio |
|-----------------|------------------------|--|------------------|-------------------|-----------------|-----------------|------------------|
| Other Gov't     | No                     | No                                     | 0                | 0                 | 0               | 0               | 0                |
| Police/Fire/EMS | Yes                    | Yes                                    | 0                | 78                | 3               | 0               | 0                |

| Base            | Radio Location Capable | Encryption with Over The Air Re-keying | Console radio | Desktop radio |
|-----------------|------------------------|--|---------------|---------------|
| Other Gov't     | No                     | No                                     | 0             | 0             |
| Police/Fire/EMS | Yes                    | Yes                                    | 0             | 8             |

Total Radios 242

**All radios come with 700/800 MHz Trunked/Conventional P25 & Smartzone Trunking, Over the Air Programming, Radio Authentication, Integrated Voice and Data, Advanced System Key**

**Exhibit 2**  
Response and Resolution Tables

| Severity Level | En-Route Response Time  | Restoration and Replacement Times  | Examples  |
|----------------|---|--|---|
| Severity 1     | Field Servicer shall be en-route within thirty (30) minutes after Contractor or Service Provider detects or is notified of the failure, whichever occurs first. | <p><b>Within four (4) hours of detection or report of failure, whichever occurs first, restore full functionality to land mobile radio equipment and software, microwave system equipment and software and MPLS equipment and software and if equipment is malfunctioning, install FRU.</b></p> <p><b>Concerning equipment and software not listed above, Service Provider's goal is to resolve all Severity 1 failures within two hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Failure of any system control equipment element. (e.g. equipment at a master site or prime site).</p> <p>Any failure which results in the loss of wide area operation of one or more simulcast radio sub-system.</p> <p>Failure of operation of 25% or more of the operator stations in a dispatch center.</p> <p>This level represents the most critical issues affecting significant portions of the System and its users.</p> |

|            |   |   |   |
|------------|---|---|---|
| Severity 2 | Field Servicer shall be en-route within thirty (30) minutes after Contractor or Service Provider detects or is notified of the failure, whichever occurs first. | <p><b>Within twenty-four (24) hours of detection or report of failure, whichever occurs first, restore full functionality to land mobile radio equipment and software microwave system equipment and software and MPLS equipment and software and if equipment is malfunctioning, install FRU.</b></p> <p><b>Concerning equipment and software not listed above Service Provider's goal is to resolve all Severity 2 failures within twelve hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Loss of 20% or more voice talk-path capacity at a site.</p> <p>Failure of operation of any individual site that comprises a part of a simulcast subsystem or multicast site.</p> <p>Any Backhaul failure which causes either a loss of traffic through a path or loss of node redundancy.</p> <p>Network Management System (NMS) failure</p> <p>dispatch center failure impacting operations.</p> <p>Loss of connectivity of any dispatch or RF site to the core network.</p> <p>Environmental alarms, such as DC plant and backup power.</p> <p>This level represents major issues that results in an impaired or unusable sub-system, or loss of critical features from the End User Agency's perspective.</p> |
|------------|---|---|---|

|            |  |  |  |
|------------|--|--|--|
| Severity 3 | Field Servicer shall be en-route as soon as possible after Contractor or Service Provider detects or is notified of the failure, whichever occurs first. | <p><b>Within twenty-four (24) hours of detection or report of failure, whichever occurs first, restore full functionality to land mobile radio equipment, microwave system equipment and software and MPLS equipment and software and, if equipment is malfunctioning, install new equipment.</b></p> <p><b>Concerning equipment and software not listed above, Service Provider's goal is to resolve all Severity 3 failures within twenty-four hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Loss of less than 20% of voice talk-path capacity at any site.</p> <p>Any Backhaul failure or alarm which does not result in loss of traffic or redundancy.</p> <p>No more than 1 console out-of-service at any dispatch location.</p> <p>Loss of any NMS workstation.</p> <p>This level represents moderate issues that limit End User Agency's normal use of the system, sub-system, product, or major non-critical features from an End User Agency's perspective.</p> |
|------------|--|--|--|

Exhibit 3

End User Agency Background Check and Security Procedures

**BACKGROUND INVESTIGATION CHECKLIST**

**VENDOR**

Candidate's Name: \_\_\_\_\_ Date initiated: \_\_\_\_\_

Company Name: \_\_\_\_\_ Date Work Begins: \_\_\_\_\_

Department/City Contact \_\_\_\_\_

**COMPLETED BY RISK MANAGEMENT ADMINISTRATIVE ASSISTANT**

- SIGNED, NOTARIZED LIMITED WAIVER \_\_\_\_\_
- TAKE PHOTO \_\_\_\_\_
- COPY DRIVER'S LICENSE \_\_\_\_\_
- FINGERPRINTS \_\_\_\_\_ DATE RETURNS RECEIVED \_\_\_\_\_
- WACIC \_\_\_\_\_
- DOL \_\_\_\_\_
- NCIC / NCIC III \_\_\_\_\_
- ADR \_\_\_\_\_

- FORS \_\_\_\_\_
- LEADSONLINE \_\_\_\_\_
- VENDOR CODE OF CONDUCT \_\_\_\_\_
- TO SERGEANT\FOR APPROVAL \_\_\_\_\_
- MEMO APPROVED BY RISK MGMT CAPTAIN \_\_\_\_\_

**WHEN FINAL DETERMINATION MADE**

- PICS/FLYER OUT TO DEPT (If approved) \_\_\_\_\_
- NOTIFY VENDOR OF RESULTS \_\_\_\_\_
- NOTIFY TRACY FOR CJIS DETERMINATION/KEYCARD ACCESS (If approved) (Tracy makes contact if needed).  
\_\_\_\_\_
- NOTIFY RECORDS \_\_\_\_\_



Bothell City Council  
**AGENDA BILL SUMMARY**

---

Meeting Date: July 17, 2018

Action  No Action

AB #: 18-119

Subject: Puget Sound Emergency Radio Network (“PSERN”) Service Level Agreement

Budget Impact/Source of Funds: There is a net-zero fiscal impact related to the agency change.

Staff Presenter/Department: Dave Schlaegel, Support Services Manager

---

**Executive Summary:**

Repair costs for aging emergency public safety radio systems throughout King County, including the Eastside Public Safety Communications Agency (EPSCA), are increasing, and the radio systems are in danger of failing if they are not soon replaced. King County officials, anticipating the need for replacement of these radio systems, authorized a property tax levy in April of 2015 that was approved by voters to create a new agency, the Puget Sound Emergency Radio Network (PSERN), and fund its capital, transition, and financing costs.

PSERN will replace and expand all current radio systems in King County, including the addition of new radio towers and upgrades for existing radio towers; new electronic equipment at radio sites; new equipment for users of the system; and improved coverage, capacity, capability, and connectivity throughout King County. The transition to PSERN, including replacement of the City’s mobile and portable radios that are part of the current EPSCA radio system, is expected to be completed County-wide by May of 2021.

---

**Category:** Consent

---

**History:**

- 4/2015 – King County voters approve a property tax levy to fund the PSERN project
  - 05/17/2005 - Council approved ILA 05-135 establishing Regional Public Safety Communications Consortium, the predecessor of ESPCA
  - 06/26/2006 - Council approved initial contract with Eastside Public Safety Communications Agency
- 

**Recommended Action:**

Approve and authorize the City Manager to sign the proposed Service Level Agreement with King County.

---

**Attachments:**

1. Staff Report
  2. Dispatch Service Level Agreement
- 

City Manager Approval: Victoria Brazitis, Assistant City Manager    Date: 07/11/2018

Att-1  
Bothell City Council  
AGENDA STAFF REPORT

Subject: Consider Approval of a Service Level Agreement (SLA) with the Puget Sound Emergency Radio Network (PSERN) for the operation of emergency public safety radio services

Meeting Date: July 17, 2018

Staff Presenter: Dave Schlaegel, Bothell Police Support Services Manager

---

#### History of Public Safety Radio Communications

The Eastside Public Safety Communications Agency (EPSCA), a regional radio access service provider operation, was established on May 26, 1992, by an Interlocal Agreement among the cities of Bellevue, Redmond, Kirkland, and Mercer Island. These Cities established themselves as Principal Members (principals) of EPSCA. In 1993, the City of Issaquah joined EPSCA as the final principal member. All future members of EPSCA were added as "User Agencies." EPSCA began full operations of its 800 MHz radio system in December of 1995.

The purpose of EPSCA is to coordinate on a sub-regional basis the operation of the radio communications infrastructure serving East King County. EPSCA is connected to the King County Regional 800 MHz Emergency Radio Network. The Network was originally funded by a voter-approved levy, and is overseen by a "Regional Communications Board" (RCB) consisting of representatives from the four radio systems in King County: EPSCA, King County, City of Seattle, and Valley Communications. The Network consists of 27 transmitter sites, multiple interconnecting microwave and fiber systems, and multiple public safety dispatch centers.

EPSCA operating revenues derive from access fees charged to Principal and User members.

EPSCA is governed by an Executive Board (Board) composed of each principal City's Chief Executive Officer. The Executive Board is responsible for review and approval of all budgetary, financial and contractual matters. EPSCA also has an Operations Committee that reports to and provides recommendations to the Board on operational issues that include budget preparation, rates, revenues, expenditures, and policies. Operations Committee members include the Police Chief and Fire Chief of each principal and user agency.

In 1996, the City of Bothell joined EPSCA as a user agency to improve its ability to communicate and interact with East King County jurisdictions. Prior to joining EPSCA, the City of Bothell maintained its own independent emergency public safety radio system. Bothell participates on the Operations Committee.

#### The Need to Transition to PSERN from EPSCA

The four regional emergency public safety radio systems in King County serve an increasing population base who often live in areas not previously occupied. This has created coverage challenges for current systems. In addition, these systems are more than 20 years old and facing the end of vendor support. This leads to steadily increasing repair costs and danger of failing if they are not soon replaced.

King County officials, anticipating the need for replacement of their own radio system, authorized a property tax levy in April of 2015 that was approved by voters for the capital, transition, and financing costs of the Puget Sound Emergency Radio Network (PSERN) Project. The budget for this project is approximately \$273 million dollars.

PSERN replaces the existing King County radio systems, including neighboring communications centers (e.g. NORCOM, Redmond, University of Washington, etc.), with a single new system.

The PSERN Project began construction in the summer of 2016, and includes the addition of 20 new radio towers and upgrades for 26 existing radio towers, new electronic equipment at radio sites, new equipment for users of the system, and improved coverage, capacity, capability, and connectivity throughout the County.

PSERN is governed by a Joint Board composed of a non-voting chair (Deputy County Executive), one voting board member from each of the four radio systems (EPSCA, City of Seattle, King County, and Valley Communications), one non-voting board member representing all police departments, and one non-voting board member representing all fire departments. There are also two sub-committees: the PSERN Technical Committee – which is responsible for communicating recommendations on technical issues, and the PSERN Operations Board, which advises the Joint Board on operational matters.

#### Progress to Date

The Bothell Police Department has been working with PSERN representatives since late 2017 to prepare its communications center for installation of PSERN equipment, to schedule replacement of aging equipment, to schedule installation of new equipment, and to train its employees how to use the new equipment. The transition to PSERN, including replacement of the City's mobile and portable radios using the current EPSCA radio system, will begin in 2019 and is expected to be completed by May of 2021.

#### Approval of Service Level Agreements Needed

Individual service level agreements (SLAs) have been prepared for all 12 communications centers in King County and will need to be signed before formal implementation of the project at each of these locations can begin. The SLAs, which have no expiration date, provide for use of PSERN radio equipment in the communications centers, upgrades and updates to existing radio equipment, maintenance and configuration of new radio equipment, and cost outlines for the PSERN model. Precise financial impact information is not yet available. Bothell is limited in alternatives to this change in the system, as it is part of the regional network and no longer operates its own independent radio system.

#### Recommendation

Police Chief Carol Cummings, City Manager Jennifer Phillips, and City Attorney Paul Byrne have all reviewed PSERN's proposed SLA for the City of Bothell and recommend that the City Council consent to its approval and authorize the City Manager to sign.

**Version 4.1 DISPATCH CENTER SERVICE LEVEL AGREEMENT**

This Dispatch Center Service Level Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between City of Bothell Police Department (“Dispatch Center”) and King County (“County”) (individually, a “Party” and collectively, the “Parties”).

WHEREAS, the Dispatch Center is located in King County and utilizes the King County Emergency Radio System (KCERCS) to dispatch resources; and

WHEREAS, KCERCS is nearing the end of its useful life and is being replaced with a new system, the Puget Sound Emergency Radio Network (“PSERN”); and

WHEREAS, the PSERN Project is a capital project funded by a voter-approved levy; and

WHEREAS, eleven King County cities and the County adopted the Implementation Period ILA to establish the terms under which they will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement PSERN; and

WHEREAS, the Implementation Period ILA provides that County will be the lead agency for implementing PSERN and initially “serve as the PSERN System manager”; and

WHEREAS, the Implementation Period ILA provides that a new organization referred to as the “PSERN Operator” will be formed to own, operate, maintain, manage and upgrade/replace PSERN following Full System Acceptance; and

WHEREAS, the Implementation Period ILA provides that the PSERN Project will fund the purchase of certain dispatch equipment in a like-for-like exchange to be installed at all dispatch centers that enter into Dispatch Center Service Level Agreements; and

WHEREAS, the Implementation Period ILA provides that the County shall be the owner of such dispatch equipment until ownership is transferred to the PSERN Operator; and

WHEREAS, the Parties want the PSERN Project to fund, supply, maintain, repair, Update, Upgrade, and replace dispatch equipment for the Dispatch Center as provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS**

1.1 Words and terms shall be given their ordinary and usual meanings except as provided in this section or in parentheticals following the definition of a particular term.

- 1.1.1 **Backhaul** means the connections designed to carry data between PSERN sites.
- 1.1.2 **Dispatch Center** means the organization that runs the Dispatch Center's day-to-day operations. When the Dispatch Center is owned or controlled by another organization or is a department of another organization, the Dispatch Center should be read to include both the Dispatch Center and that other organization. Note: The upper case use of "Dispatch Center" refers to the Dispatch Center who is party to this Agreement. When used in lower case it either refers to generic dispatch centers or centers that are not party to this specific agreement.
- 1.1.3 **Confidential Information** means any information in written, graphic, verbal, or machine recognizable form that is: (a) related to the PSERN System; (b) provided to the Dispatch Center by the Contractor, the Service Provider, or the Service Provider's contractor; and (c) marked or identified as "confidential," "proprietary," "trade secret" or similar designation.
- 1.1.4 **Contract (or Vendor Contract)** means the County's contract with Motorola Solutions, Inc., King County Contract Number 5729347.
- 1.1.5 **Contractor** means Motorola Solutions, Inc. the company hired by the King County to provide services for the construction, operation, maintenance or other support of PSERN.
- 1.1.6 **Emergency** means unforeseen circumstance that causes or may reasonably be expected to cause a decrease or loss in network clarity, capacity, coverage, reliability, security, features, or functions.
- 1.1.7 **Equipment** means all components of the console system, including software and hardware owned by the County or PSERN Operator and provided to the Dispatch Center pursuant to this Agreement in the types and quantities listed in Exhibit 1. [NOTE: When the lower case word, "equipment," is used in this Agreement, that use is not intended to be the defined use of the term "Equipment."]
- 1.1.8 **Field Servicer (Servicer)** means a PSERN Operator employee, contractor, or subcontractor whose job duties include traveling to sites to repair site electronics that cannot be repaired remotely.
- 1.1.9 **Full System Acceptance (FSA)** means the determination issued to the Contractor upon satisfactorily completing the final system acceptance phase milestone.
- 1.1.10 **Government Approvals** means all necessary federal, state and local licenses, permits, and approvals for the improvements needed for the construction, Equipment installation, and operation of PSERN.

- 1.1.11 **Governing Body** means initially the Joint Board formed under the Implementation Period ILA, and later the board of directors for the PSERN Operator when it is formed and assumes the ownership, operations, and governance of PSERN.
- 1.1.12 **Implementation Period** means that period of time as defined in the Implementation Period ILA.
- 1.1.13 **Implementation Period ILA** means the Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement.
- 1.1.14 **Joint Board** means the PSERN Project governing board formed under the Implementation Period ILA.
- 1.1.15 **KCERCS** means the County-wide Emergency land mobile radio system established under the King County Emergency Radio Communication System Interlocal Agreement.
- 1.1.16 **Major Violation** means an action that significantly diminishes the operations of PSERN or could result in the loss of PSERN's spectrum licenses, or repeated defaults under the Agreement.
- 1.1.17 **Monitoring** means real-time fault checking on a continuous basis using sophisticated tools for remote checking and event characterization.
- 1.1.18 **Monthly Fee** (or Fee) means the monthly charge paid by the Dispatch Center to the Service Provider after FSA for the Service Provider's operation and maintenance of PSERN and for the Dispatch Center's use of PSERN.
- 1.1.19 **Operations Period** means the period that commences with the first full month after FSA.
- 1.1.20 **Operations Period ILA** means the Puget Sound Emergency Radio Network Operations Period Interlocal Cooperation Agreement as adopted, amended, modified, or superseded.
- 1.1.21 **Part 90** means Part 90 of Title 47 of the Code of Federal Regulations (CFR).
- 1.1.22 **Premises** means the areas near and in the Dispatch Center: the Temporary Use Area used for staging and construction; the area where Equipment will be installed and occupy inside the Dispatch Center; the area between the right-of-way and Equipment the Service Provider will use for access to the Equipment; and the area between the right-of-way and Equipment to be used for the installation and maintenance of utilities, if any.

- 1.1.23 **PSERN Project** means all authorized activities relating to the planning, analysis, design, development, acquisition, site development, installation, testing, training, and operation of the PSERN until FSA, starting-up a new Service Provider, transferring the PSERN to same, and any decommissioning, contract close-out and other project completion activities.
- 1.1.24 **PSERN Operator** means the agency that will be established to take over PSERN's ownership, operation, and governance after FSA.
- 1.1.25 **Rate Stabilization Allocation** means those funds in the PSERN Project budget totaling \$2,619,406 earmarked to offset rate increases for PSERN Users and to be distributed via a formula determined by the Governing Body.
- 1.1.26 **Resolution Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives the repair request and the time the Service Provider deems that it has fixed the problem and notified the Dispatch Center of the resolution. The Service Provider will not deem the problem fixed until after consulting with the Dispatch Center and receiving concurrence the problem has been resolved.
- 1.1.27 **Resources** means the number of voice or data sources that can be assigned, Monitored, and controlled by an individual console at any one time.
- 1.1.28 **Response Time** means the period measured between the earlier of the time when the Service Provider learns of a problem or receives a repair request for a problem, and the time the Service Provider has engaged on the service request and has notified the Dispatch Center that repair has started.
- 1.1.29 **Service Provider (or Operator)** means the County during the Implementation Period and up until the transfer of ownership, operation, and governance of PSERN to the PSERN Operator. After the transfer, Service Provider means the PSERN Operator who is responsible for the day-to-day operation and maintenance of PSERN. Service Provider also includes the Service Provider's employees, agents, consultants, contractors, subcontractors, permittees, successors and assigns.
- 1.1.30 **Site Plan** means a drawing of the Dispatch Center Premises indicating 1) the route the Dispatch Center wants the Service Provider to use between the building and the right-of-way, 2) the door the Dispatch Center wants the Service Provider to use in accessing the building, 3) the places within the building where Equipment will be stored, when delivered, and 4) the places within the building where Equipment will be installed. The Site Plan does not need to be based on a survey and locations are intended to be approximate.
- 1.1.31 **Temporary Use Area** means the area of the Dispatch Center's property that Service Provider is authorized to use for the storage, staging, and installation of the Dispatch Center's Equipment.

1.1.32 **Update** means revisions as required for the continued operation and maintenance of the Equipment software including error corrections, bug fixes, work-arounds, patches, antivirus definitions, intrusion detection sensor signatures, changes in third party software or changes to software and Equipment required to accommodate such third party software changes and any other fixes and changes not constituting an Upgrade.

1.1.33 **Upgrade** means migrating to a new platform or adding features through changes to equipment and/or software.

1.1.34 **User** means an employee, agent, or volunteer of an organization authorized to use PSERN.

1.1.35 **Warranty Period** means the period beginning when the Equipment is made operational by the Contractor and extending for two (2) years after Full System Acceptance, as defined in King County Contract Number 5729347.

1.1.36 **Work** means all of the tasks the Service Provider is obligated to perform under this Agreement, including: maintaining, repairing, Updating, Upgrading, and replacing Equipment, including amendments, revisions, and modifications effective at the time.

## 2. EQUIPMENT REPLACEMENT

- 2.1 By and through the Contractor, the County will replace the Dispatch Center's existing equipment and install and commission Equipment for the Dispatch Center in the numbers and of the types specified in Exhibit 1.
- 2.2 Equipment will be standardized with features chosen to make it useable by the majority of Dispatch Centers. The Dispatch Center may purchase optional accessory equipment directly from the Contractor Examples of accessory equipment are listed in Exhibit 6.
- 2.3 By and through the Contractor, the County will configure and install the Equipment. The Dispatch Center shall not perform this work or hire an outside agency to perform the work on its behalf.
- 2.4 The console Equipment points of demarcation will be the headset jacks and the AC Power strips. Everything between these two points will be the responsibility of the Service Provider. Anything that is plugged into the headset jack will be the responsibility of the Dispatch Center.
- 2.5 Only Equipment installed by the Contractor prior to FSA and approved by the PSERN Operator after FSA shall be installed in or made for use on PSERN. The Dispatch Center agrees to not use or purchase P 25 Phase 1 radios for use on PSERN.

- 2.6 The County will own the Equipment provided by the PSERN Project. When the new PSERN Operator is formed, ownership of this Equipment shall be transferred to the PSERN Operator at no cost to the Dispatch Center or to the PSERN Operator when it assumes operation, ownership, and governance of PSERN.
- 2.7 The Train-the-Trainer model will be used to train Dispatch Center staff to use the Equipment. Each Dispatch Center shall designate staff to be trained, and supply that (those) name(s) to the Service Provider. The trainers will receive detailed training on use of the Equipment from the Contractor.

### **3. TRANSITION PLAN**

- 3.1 The Service Provider, Dispatch Center, and Contractor will work together to develop a mutually agreeable written transition plan.
- 3.2 The Transition Plan will include:
- The Site Plan and the approximate dates the Equipment will be delivered and installed;
  - Diagrams for configuring the Equipment;
  - Plans for storing the Equipment if there is a gap between when it will be delivered and installed;

- The approximate dates and plan for removal of existing equipment by the Contractor. Such equipment cannot be retained or repurposed by the Dispatch Center;
- The plan for training the Dispatch Center’s staff to use the Equipment;
- Description of the steps that will be taken by the Contractor to minimize the interruptions and decreases in service; and
- Description of the steps that will be taken to lessen the impacts of interruptions and decreases in service, including by performing installations and testing at the times of day the Dispatch Center determines it has the lowest average number of calls.

**4. INSTALLATION AND TESTING**

- 4.1 If the Dispatch Center has any special requirements pertaining to the disposition of its existing equipment it shall notify the Service Provider within five (5) days of receiving notification of installation and testing.
- 4.2 The Service Provider shall secure all Government Approvals required for the installation and operation of the Equipment. The Dispatch Center agrees to reasonably assist the Service Provider with applications for such approvals and with any steps necessary to obtain and maintain the approvals.
- 4.3 All Equipment will be tested by the Contractor to determine if is are operating in accordance with manufacturer’s specifications. Any improperly installed or configured Equipment will be reinstalled or reconfigured, and then retested by the Contractor until it is properly installed and configured.
- 4.4 The Service Provider will notify the Dispatch Center of installation and testing at least fifteen (15) business days in advance. Dispatch Center staff may attend the installation and testing.
- 4.5 The Dispatch Center shall be entitled to have the Service Provider reconfigure the Equipment once in every twelve (12) consecutive month period as part of its Monthly Fee. The Service Provider shall also reconfigure Equipment at no charge if the reconfiguration is required because of maintenance or an Update or Upgrade.
- 4.6 If the Dispatch Center wants to have a piece of Equipment reconfigured more than as provided in Section 4.5, the Service Provider will accommodate this on a best efforts basis.

**5. OPERATIONS**

- 5.1 In implementing and managing PSERN, the Service Provider shall:
  - Be responsible for, or during the Warranty Period ensure the Contractor is responsible for, the repair of defective Equipment, and for programming and installing Equipment purchased and installed during the Implementation Period;

- 
- Monitor PSERN;
- Maintain, operate, repair, Update, Upgrade and test PSERN in accordance with the Equipment manufacturer’s recommendations for routine maintenance;
- Provide the Dispatch Center with a phone number and email address to report system problems. The phone number shall be reachable and Monitored 24 hour X 7 day X 365 day per year;  
Respond to network and Equipment problems in accordance with Response and Resolution Tables contained in Exhibit 2;
- Have on staff factory trained subject matter experts (Duty Technician(s)) who specialize in the diagnosis, troubleshooting and resolution of network performance and Equipment problems;
- Have a Duty Technician to act as liaison between itself and the Contractor;
- Resolve warranty claims with the Contractor;
- Manage talk-groups; and
- Give the Dispatch Center at least thirty (30) days’ notice before undertaking scheduled activities that will interrupt or reduce Dispatch Center service by twenty-five percent (25%) or more.

5.2 Upon execution of the Operations Period ILA and formation of the PSERN Operator, whichever is later, the PSERN Operator shall:

- Adopt policies governing the replacement, removal, and addition of Equipment under its control;
- Adopt policies defining the approved Equipment authorized for use in PSERN;
- Adopt and implement information assurance controls, policies, procedures and processes.
- Adopt policies governing the change management program; and
- Work in partnership with the dispatch centers to develop and regularly report on performance and operating metrics indicating system performance as well as the PSERN Operator’s ability to meet dispatch centers’ service requirements.
- Upon request of the Dispatch Center, provide monthly reports in a mutually agreeable format on system usage statistics including:
  - Push to talk statistics
  - Talk time statistics
  - Radio emergency button activations
  - Active radio reports

5.3 In using the Equipment and PSERN, the Dispatch Center agrees to:

- Prevent unauthorized and untrained personnel from accessing consoles;

- 
- Promptly report Equipment and network problems to the Service Provider and indicate the impact of the problem on the Dispatch Center (e.g., if a console goes down does the Dispatch Center have a spare it can use?);
- Comply with all information assurance controls, policies, procedures, and processes developed and implemented by the PSERN Operator;
- Notify the System Provider immediately if the Dispatch Center knows or suspects that an asset purchased by the PSERN Project has been lost, stolen, or damaged so that the System Provider can: 1) comply with the reporting requirements for loss of public assets set forth in RCW 43.09.185; and 2) disable the asset, if necessary;
- Not transfer, give away, or dispose of Equipment without the Governing Body’s prior written approval; and
- Assist the Service Provider in responding to any correspondence, complaint, information request, or claim it receives that pertains to Dispatch Center operations.

5.4 The Change management program to be adopted pursuant to Section 5.2 shall be mutually agreed to by the Parties and shall include:

- Request for change (RFC) documentation.  
Classification of the RFC quantifying the risk/impact and the category.
  - Risk/Impact may be: low, medium, high ○

Category may be: standard or emergency ▪

Assessment and Authorization of the RFC.

- Communication with Dispatch Centers of the RFC’s implications.
- Implementation of the change.
- Assessment of the quality of the implementation.
- Closure of the RFC record.

## 6. RESPONSE AND RESOLUTION TIMES

6.1 During the Warranty Period when a User reports or the Monitoring equipment detects a problem and reports it to the Service Provider, a trained technologist will acknowledge and attempt to remotely diagnose the problem. Appropriate responses could include continuing Monitoring the event for further development, attempting remote remediation, or dispatching a Field Servicer (Servicer) for onsite remediation.

6.2 The table in Exhibit 2 lists Response Times for three levels of severity and the correlating Resolution Time for each.

6.3 The Service Provider shall repair or replace a defective piece of Equipment at no cost above the monthly fee to the Dispatch Center. However, any piece of Equipment needing repair or replacement due to the intentional or negligent act of the Dispatch Center, its agents,

- employees, or invitees, will be repaired or replaced by the Service Provider at the Dispatch Center's cost. Such cost is in addition to the Monthly Fee. Disputes regarding the responsibility for repair or replacement cost will be resolved pursuant to Section 23.

**6.4** The Service Provider will keep or have access to sufficient spare parts and pieces of Equipment so that defective, broken, or wrongly programmed Equipment can be promptly replaced or repaired.

## **7. UPDATES AND UPGRADES**

### **7.1 Updates**

7.1.1 During the Warranty Period, The Contractor shall provide and install Updates. Thereafter, the Contractor shall provide Updates that shall be installed by the Service Provider. The cost of Updates shall be included in the Monthly Fee.

7.1.2 Regular Updates shall include:

7.1.2.1 Contractor's most current software enhancement release Update which includes defect corrections, bug fixes, patches, and service packs.

7.1.2.2 Patch releases, service packs and other non-security-related Updates released by Contractor, its subcontractors if applicable, and other providers of Equipment

operating and application software including Microsoft, Red Hat Linux, Sun Solaris, and other third parties.

7.1.2.3 Contractor's regular security-related Updates, referred to by Contractor as "Security Update Service" (SUS) that include operating system patches and service packs, anti-virus engines and definitions, intrusion detection systems and signatures, and firewall setting and other security-related Updates.

7.1.3 Updates to software necessary as a result of a failure will be provided based on the severity level of the failure as follows:

7.1.3.1 For failures that affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall commence corrective action immediately and exercise its best efforts to work with the Contractor to develop, test, and install a fix in the shortest time possible.

7.1.3.2 For cosmetic or minor failures that do not affect PSERN service, traffic/capacity, operations, material functions, maintenance capabilities or system administration, the Service Provider shall work with the Contractor to develop, test, and install the fix as part of an Update to be otherwise provided in this Section.

7.1.4 Prior to installation of an Update, the Service Provider shall confirm that the Update has been successfully tested to ensure the Update is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Updates that impact the ability of the Dispatch Center to deliver dispatching services shall be loaded locally at the Dispatch Center. Other non-service impacting Updates may be loaded remotely or locally as determined by the Service Provider.

7.1.5 The Service Provider will routinely install Updates, but may defer or decline to install an Update or roll back one or more Updates if the Service Provider in its sole discretion determines that the Update would be detrimental to the Dispatch Center.

7.1.6 The Service Provider will notify Dispatch Centers in accordance with the change management program as detailed in Section 5.4 in advance of routine Updates and will provide applicable release notes with each Update. In the case of Updates installed under Section 7.1.3, notice will be provided to the Dispatch Center with as much lead time as practicable.

## 7.2 Upgrades

7.2.1 During the Warranty Period, the Contractor shall provide and install Updates. Thereafter, the Contractor will provide Upgrades that will be installed by the Service Provider. The cost of Upgrades shall be included in the Monthly Fee.

- 7.2.2 The most recent available Upgrades of the Equipment software and hardware shall be provided at the following points in time: (1) no more than ninety (90) days prior to the start of the FSA testing period; (2) no more than ninety (90) days prior to the end of the Warranty Period; (3) after the Warranty Period, every other year beginning with 2023 subject to availability from the Contractor. The Service Provider may defer or suspend an Upgrade if it determines in its sole discretion that the Upgrade would be detrimental to the Dispatch Center.
- 7.2.3 Each Upgrade will include the latest versions of Contractor software and the latest versions of third party software certified for the system and shall include all Updates available at the time of the Upgrade if not already installed under Section 7.1. The Service Provider shall provide training to the Dispatch Center for all Upgrades that result in operational changes for Dispatch Center personnel.
- 7.2.4 Prior to installation of an Upgrade, the Service Provider shall confirm that the Upgrade has been successfully tested to ensure the Upgrade is compatible and that it will not degrade, interfere with, or otherwise compromise PSERN's functionality. Upgrades that impact the ability of the Dispatch Center to deliver dispatching services shall be loaded locally. Other non-service impacting Upgrades may be loaded remotely or locally as determined by the Service Provider.
- 7.2.5 If an Upgrade requires additional or different Equipment, the Service Provider (by and through the Contractor during the Warranty Period) shall provide and install the necessary Equipment. The cost of the software and Equipment required for the Upgrade, if any, shall be included in the Monthly Fee.
- 7.2.6 The Service Provider will notify Dispatch Centers in accordance with the change management program as detailed in Section 5.4

## **8. MONTHLY FEE AND PAYMENT**

- 8.1 The Dispatch Center agrees to pay the PSERN Operator a Monthly Fee for the Dispatch Center's use of PSERN and the PSERN Operator's operation and maintenance of the Equipment and network. The Monthly Fee shall be calculated using a formula determined by the Governing Body.
- 8.2 The Monthly Fee will be assessed beginning immediately after FSA. The PSERN Operator shall provide an invoice the Dispatch Center. The first payment will be due on the first day of the first full month after FSA, and shall equal the amount due for that month and any pro-rated amount for the first month of service
- 8.3 Monthly Fee payments will be due on the first day of each month, except that at the Dispatch Center's sole option it may make annual advance payments in lieu of monthly installments. Payments made will be applied first to charges that are in arrears and then to the payment due for that coming month.

- 8.4 The first payments after FSA may be reduced based on the Governing Body's disbursement of the Rate Stabilization Allocation for those PSERN Users that will see a rate increase as a result of PSERN operations.
- 8.5 The PSERN Operator shall provide the Dispatch Center with the address for payment of Fees not less than sixty (60) days prior to when the first payment is due. All payments shall be accompanied by a reference to this Agreement, or an invoice number.
- 8.6 If the Dispatch Center does not pay its Fee or pays only a part of the Fee more than twice in any single calendar year, the PSERN Operator may charge the Dispatch Center a reasonable late or special handling charge.
- 8.7 Acceptance of any payment or partial payment after the date it is due shall not be deemed a waiver regarding the obligations to make future payments on time. And no partial payment shall act as an accord and satisfaction unless approved by the Governing Body.

## **9. TERM**

This Agreement shall take effect when executed by an authorized representatives of the Parties, and shall remain in effect unless one of the following events occurs:

- The Governing Body adopts a superseding agreement;
- The Dispatch Center withdraws from the Agreement as provided in Section 16.1; or
- The Governing Body terminates the Agreement as provided in Section 16.2.

## **10. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AGREEMENTS, POLICIES, PROCEDURES, AND PERMITS**

The Parties acknowledge: 1) that they are required to comply with various laws, regulations, agreements, policies, procedures, and permits, including those contained in 47 CFR §90, the Implementation Period ILA, Operations Period ILA, and those developed by the Governing Body and the Service Provider; and 2) that the County is subject to a Vendor Contract's terms and conditions in the performance of this Agreement. The Parties agree to comply with the applicable laws, regulations, agreements, policies, procedures, and permits.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1 The Dispatch Center represents, warrants, and agrees that:

- It will work cooperatively, fully, and promptly with the Service Provider;
- It solely owns the Premises as a legal lot in fee simple, or controls the Premises by lease or license;
- It has the full right, power, and authority to enter into this Agreement; and
- It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants, or the provisions of any mortgage, lease or other binding agreement.

11.2 The Service Provider represents, warrants, and agrees that:

- It will work cooperatively, fully, and promptly with the Dispatch Center;
- It has the full right, power and authority to enter into this Agreement;
- It will not encumber the Premises by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or other agreements of record or not of record, which would adversely affect the Dispatch Center's title; and
- It does not know any reason why its execution and performance of this Agreement would violate any laws, covenants or the provisions of any mortgage, lease or other binding agreement.

## **12. DISPATCH CENTER PERMISSIONS FOR THE SERVICE PROVIDER TO ENTER AND USE DISPATCH CENTER PROPERTY**

As part of the consideration for benefits to the Dispatch Center provided through this Agreement, the Dispatch Center hereby grants the Service Provider the following:

12.1 A license for ingress and egress between the public right of way and the Premises adequate to install, operate, maintain, and remove the Equipment. This grant shall not include matters covered in the lease between the Dispatch Center and the PSERN Project for the Backhaul equipment, and any agreement for tenant improvements at the Dispatch Center.

12.1.1 The Service Provider shall have the right to access the Premises, 24-hours a day, 7 days a week, 365 days a year via the route shown on the Site Plan in Exhibit 3. The Service Provider need not give the Dispatch Center advanced notice in an Emergency, but shall endeavor to notify the Dispatch Center at least ten (10) business days in advance to perform routine Work, such as routine maintenance, Updates, and Upgrades.

12.1.2 Any person accessing the Premises on behalf of Service Provider (and prior to such access) shall be required to (a) pass a Washington State Patrol, or substantially similar, background check, (b) comply with the Dispatch Center's security vetting procedures, including, but not limited to, the procedures set forth in Exhibit 4, and (c) execute and comply with the "Consent for Criminal Background Check, CJIS On-line Security Awareness Training and Fingerprinting Authorization/Waiver" attached hereto at Exhibit 5.

12.1.3 The Dispatch Center may change the routes from time-to-time at its sole discretion. The Dispatch Center shall provide the Service Provider with an amended Site Plan at least ten (10) business days prior to the change going into effect or if they are changed on an Emergency basis, as soon as practicable thereafter.

12.2 A license to deliver and temporarily store Equipment in and near the Dispatch Center for staging purposes during the construction, installation, and testing activities in the locations shown on Exhibit 3, and as may be changed from time-to-time at the mutual agreement of the Parties. This license shall expire thirty (30) days after all Equipment is installed, and when all Equipment and Network testing and tuning is complete.

12.3 A permit to house PSERN's Equipment, other than Backhaul equipment, in the Dispatch Center in the locations shown on Exhibit 3, and as may be changed from time-to-time by the mutual agreement of the Parties.

12.4 In addition, as part of the consideration for this Agreement, the Dispatch Center hereby grants the Service Provider the following rights at no charge and without limitation:

- Use of the Dispatch Center's commercial electrical service necessary for the Service Provider to fulfill its responsibilities under this agreement ;
- Use of the Dispatch Center's emergency backup generator necessary for the Service Provider to fulfill its responsibilities under this agreement; and

12.5 In addition the Dispatch Center shall complete the work shown in Exhibit 7 prior to Contractor's delivery of Equipment.

12.6 Unless otherwise provided, the grants in this Section 12.0 shall remain in force until thirty (30) days after the term of this Agreement unless by extended by the mutual agreement of the Parties.

### **13 INDEPENDENT CONTRACTORS AND NO THIRD PARTY BENEFICIARIES**

13.1 Each Party is an independent contractor with respect to this Agreement. No joint venture or partnership is formed as a result of this Agreement.

13.2 Nothing in this Agreement shall make any employee of one Party an employee of another Party. Neither Party assumes any responsibility for the payment of any compensation, fees, wages, benefits, or taxes to or on behalf of any other Party's employees, except as contained in the Implementation Period ILA. No employee of one Party shall be deemed, or represent themselves to be, employees of another Party.

13.3 This Agreement is solely for the benefit of the Parties, and gives no right or remedy to any other person or entity.

### **14 ASSIGNMENTS**

14.1 By Service Provider

The County may assign this Agreement and all of the County's rights, duties, and obligations set forth herein, to the PSERN Operator without the Dispatch Center's approval. However, such assignment shall require approval by the Governing Body.

14.2 By the Dispatch Center

14.2.1 The Dispatch Center may assign this Agreement to any other dispatch center already using PSERN, pursuant to appropriate ILAs and an existing Dispatch Center Service Level Agreement, without the Service Provider's approval, if the assignee dispatch center is not in default on any of the conditions of its agreement with the Service Provider and if the assignee agrees in writing to be bound by all the terms of this Agreement, including all obligations of the Dispatch Center not fully performed at the time of assignment. If the Dispatch Center makes such an assignment, it shall provide the Service Provider and the Governing Body with written notice of the assignment and with a copy of all assignment-related documents within fifteen (15) days of the assignment.

14.2.2 The Dispatch Center may assign or transfer this Agreement to a dispatch center not already using PSERN with the Governing Body's prior written approval. The Governing Body may establish reasonable conditions for its approval.

14.2.3 Any transfer and installation of Equipment necessary for an assignment under Section 14.2.1 or 14.2.2 above shall be performed by the Service Provider. The cost of such transfer and installation shall be paid by the assignee dispatch center unless otherwise agreed to by the Dispatch Center and the Service Provider.

## **15 INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND RECORDS**

### 15.1 Intellectual Property

The Parties may be provided with products, documents or other deliverables that are subject of copyright, trade secret and other intellectual property rights of, or claims of such rights. Each Party agrees it will exercise any intellectual property license rights in accordance with applicable law and with the license provisions of the Contract, any other applicable licenses, so long as the Dispatch Center has prior notice of the license requirements.

### 15.2 Confidential Information

Each Party agrees that it will: (a) limit the distribution of Confidential Information to those employees, contractors or other persons who have a reasonable business need to know such information; and (b) take all reasonable care, and not less than the care the Party applies to its own confidential information, to prevent unauthorized use or disclosure of Confidential Information. Each Party agrees that it will not use, copy, convey or disclose any Confidential Information to any other person or entity unless expressly authorized in writing by the person that provided the Confidential Information or as may be required by law.

Such care may include: (a) requiring such employees, contractors or other persons to sign a nondisclosure agreement; (b) requiring any contractors to also undertake reasonable protection measures; and (c) promptly enforcing any violations of such agreements.

### 15.3 Records.

Each Party shall keep records as required by state law. To the extent permitted by law, all records, accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by the Washington State Auditor or any Party. Upon reasonable notice, during normal working hours, each Party shall provide auditors from the Washington State Auditor or the other Party with access to its facilities for copying said records at their expense. Each Party shall be responsible for responding to public disclosure requests addressed to in accordance with the Washington Public Records Act, Chapter 42.56 RCW. If the requested records include any Confidential Information, the Party receiving the request shall promptly notify the Party or other person or entity that designated the information as Confidential Information. Any Party receiving a public records request that includes Confidential Information shall not disclose the Confidential Information for ten (10) business days in order to give the affected Party or third party the opportunity to take whatever action it deems necessary to protect its interests before disclosure of the Confidential Information. A Party receiving a public disclosure request shall not be required to take any legal action in order to prevent disclosure of Confidential Information, nor shall a Party incur any liability to the other Party for disclosing Confidential Information in response to a public disclosure request so long as the disclosing Party has complied with the provisions of this Section 15.

## **16. ENDING SERVICE**

- 16.1 Dispatch Center may apply for withdrawal from this Agreement with at least one year's written notice of its intent to withdraw. Such applications shall be handled in accordance with the Governing Body's rules.
- 16.2 The Governing Body may terminate this Agreement only for a Major Violation of the Agreement. The Dispatch Center shall ordinarily have the right and a reasonable period of time to cure any other default. Such actions shall be handled in accordance with the Governing Body's rules.

## **17. INDEMNIFICATION**

Each Party shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

## 18. INSURANCE

### 18.1 King County Insurance

The County maintains a self-insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. The Dispatch Center acknowledges, agrees and understand that the County is self-funded for all of its liability exposures for this Agreement. The County agrees to provide the Dispatch Center with at least thirty (30) days prior written notice of any material change in the County's self-funded insurance program and will provide the Dispatch Center with a letter of self-insurance as adequate proof of coverage, if the Dispatch Center so requests. The Dispatch Center further acknowledges, agrees and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the County does not have the ability to name the Dispatch Center as an additional insured.

### 18.2 The PSERN Operator

Upon the transfer of PSERN to the PSERN Operator, the PSERN Operator shall either maintain a fully funded self-insurance program in accordance with applicable law or acquire and maintain commercial general liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include the Dispatch Center as an additional insured with respect to claims arising out of or related to this Agreement.

#### a. Contractors and Subcontractors Insurance

The County and PSERN Operator shall require their contractors and subcontractors to maintain general liability insurance for all activities related to installation and servicing of the equipment at the Centers, and to require that contractors name the Center as an additional insured on that CGL policy.

### 18.4 Dispatch Center's Insurance

The Dispatch Center agrees to maintain a self-insurance program or to procure and maintain the following minimum insurance coverage areas and limits, or comparable program(s) of selfinsurance, responsive to its liability and property exposures under this Agreement:

#### 18.4.1 General Liability: Insurance Services "occurrence" form CG 00 01 (current edition).

Commercial General Liability coverage shall be no less than ONE MILLION DOLLARS (\$1,000,000) per combined single limit per occurrence, and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for bodily injury and property damage. King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Dispatch Center in connection with this Agreement. Upon transfer of County's obligations under this Agreement to the PSERN Operator, the PSERN Operator shall be covered as additional

insured as respects liability arising out of activities performed by or on behalf of Dispatch Center in connection with this Agreement.

18.4.2 Workers' Compensation/Stop Gap/Employers Liability: Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.

18.4.3 All Risk Property insurance coverage: Dispatch Center shall maintain "All Risk" property insurance in an amount equal to the full replacement value of the Dispatch Center and all of its improvements and personal property located therein or shall self-insure the Dispatch Center and its improvements and personal property located therein. Dispatch Center shall also maintain "All Risk" property insurance, or a comparable program of self-insurance, covering Equipment owned by the County (or PSERN Operator, as applicable) located in the Dispatch Center, and shall name the County (or PSERN Operator, as applicable) as additional loss payee on such insurance.

18.4.4 Waiver of Subrogation: Notwithstanding any language to the contrary contained in this Agreement, Dispatch Center agrees that it shall not make a claim against or seek recovery from County or the PSERN Project for any loss or damage to property, resulting from fire or other hazards covered by fire insurance or required to be covered under this Agreement, and Dispatch Center hereby releases County and the PSERN Project from any such claim or liability regardless of the cause of such loss.

All Policies: Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the County (or PSERN Operator, as applicable).

## 19 NOTICES

Except as otherwise specified in this Agreement, all formal written notices must be either delivered by courier or sent by certified mail, return receipt requested, to the address listed below. Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon signature on the return receipt. A Party may change the address for notices from time to time by providing the other Party(ies) the replacement name and contact information. Notice shall not be effective unless and until the other Party(ies) has (have) received this information.

To the Dispatch Center:  
Dave Schlaegel, Support Services Manager  
Bothell Police Department  
18410 101<sup>st</sup> Ave NE  
Bothell WA 98011

To the County or PSERN Operator:  
Hai Phung, Project Manager  
King County Department of Information Technology  
401 5<sup>th</sup> Avenue  
Seattle, WA 98104

**20 AMENDMENT**

This Agreement may be amended upon mutual agreement of the Parties and approval of the Governing Body.

**21 FORCE MAJEURE**

Acts of nature, acts of civil or military authorities, acts of war, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, strikes and other labor disruptions, and other industrial, civil or public disturbances that are not reasonably within the control of a Party causing the Party's inability to perform an obligation under this Agreement are "Force Majeure Events." If any Party is rendered unable, wholly or in part, by a Force Majeure Event, to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended for the time and to the extent reasonably necessary to allow for performance and compliance and restoration of normal operations.

**22 CONFLICT WITH OTHER AGREEMENTS**

If any provision of this Agreement conflicts with a provision of the Implementation Period ILA, the Operations Period ILA, or the lease between the Dispatch Center and King County (or Service Provider as applicable), if any, such that the provisions cannot be harmonized, then the provisions of the applicable ILA or lease shall control.

**23 DISPUTE RESOLUTION**

If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to resolve the dispute through direct negotiations between them. If the Parties are unable to resolve the dispute within sixty (60) days of its occurrence, either Party may refer the dispute to the Governing Body for resolution and shall provide the other Party with notice of such referral. If the dispute is not resolved by the Governing Body within sixty (60) days of referral to it, either Party may refer the dispute to the executive officers of the Parties and the Dispatch Center with notice to the other Party. If the dispute is not resolved by the executives within 60 days of referral, either Party may refer the dispute to non-binding meditation. Referral of the dispute to the Governing Body, the executives, and mediation shall be a condition precedent to a Party's pursuit of other available legal remedies.

**24 CHOICE OF LAW AND VENUE**

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington. The Parties agree that the King County Superior Court, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

**25 NO WAIVER**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default or breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of the Parties.

**26 EXECUTION AND COUNTERPARTS**

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

**27 SURVIVAL PROVISIONS**

The following provisions shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding a Party's withdrawal from this Agreement.

Section 15 Intellectual Property, Confidential Information and Records

Section 17 Indemnification

Section 19 Notices

Section 24 Choice of Law and Venue

**28 SEVERABILITY**

The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the space provided below.

King County

City of Bothell Police Department

---

---

[Name, Title]

Jennifer Phillips, City Manager

## Exhibit 1

### List of Equipment for Center

Exhibit 1 will be provided by the PSERN Project with a complete list of equipment to be installed in each Center.

Back office Equipment could include:

1 Each - 19" Standard equipment rack housing:

- 2 Each - site routers
- 2 Each – network switches
- 1 Each – MPLS router
- Aux I/O interfaces
- Audio Interfaces
- Power Strips
- Control Station Combiner

Wall mounted punch blocks as needed

Standard Equipment comprising a dispatch center console:

1 Each - Processor

1 Each - 22-Inch Wide Format Touch Screen LCD Monitor

2 Each - MCC Series Desktop Speakers

2 Each - Single Muff Headsets

1 Each - Dual Pedal Footswitch

This Center will be issued 3 consoles

Exhibit 2  
Response and Resolution Tables

| Severity Level | En-Route Response Time   | Restoration and Replacement Times  | Examples  |
|----------------|--|--|---|
| Severity 1     | Technician shall be enroute within thirty (30) minutes after Contractor or Service Provider detects or is notified of the failure, whichever occurs first. | <p><b>Within four (4) hours of detection or report of failure, whichever occurs first, restore full functionality to LMR Equipment and Software, Microwave System Equipment and Software and MPLS Equipment and Software and if Equipment is malfunctioning, install FRU.</b></p> <p><b>Concerning Equipment and Software not listed above, Service Provider’s goal is to resolve all Severity 1 failures within two hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Failure of any system control Equipment element. (e.g. Equipment at a master site or prime site).</p> <p>Any failure which results in the loss of wide area operation of one or more simulcast radio sub-system.</p> <p>Failure of operation of 25% or more of the operator stations in a dispatch center.</p> <p>This level represents the most critical issues affecting significant portions of the System and its users.</p> |

|                   |   |   |  |
|-------------------|---|---|--|
| <p>Severity 2</p> | <p>Technician shall be enroute within thirty (30) minutes after Contractor or Service Provider detects or is notified of the failure, whichever occurs first.</p> | <p><b>Within twenty-four (24) hours of detection or report of failure, whichever occurs first, restore full functionality to LMR Equipment and Software Microwave System Equipment and Software and MPLS Equipment and Software and if Equipment is malfunctioning, install FRU.</b></p> <p><b>Concerning Equipment and Software not listed above Service Provider's goal is to resolve all Severity 2 failures within twelve hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Loss of 20% or more voice talk-path capacity at a site.</p> <p>Failure of operation of any individual site that comprises a part of a simulcast subsystem or multicast site.</p> <p>Any Backhaul failure which causes either a loss of traffic through a path or loss of node redundancy.</p> <p>Network Management System (NMS) failure</p> <p>Dispatch center failure impacting operations.</p> <p>Loss of connectivity of any dispatch or RF site to the core network.</p> <p>Environmental alarms, such as DC plant and backup power.</p> <p>This level represents major issues that results in an impaired or unusable sub-system, or loss of critical features from the Center's perspective.</p> |
|-------------------|---|---|--|

|            |   |   |   |
|------------|---|---|---|
| Severity 3 | Technician shall be enroute as soon as possible after Contractor or Service Provider detects or is notified of the failure, whichever occurs first. | <p><b>Within twenty-four (24) hours of detection or report of failure, whichever occurs first, restore full functionality to LMR Equipment, Microwave System Equipment and Software and MPLS Equipment and Software and, if Equipment is malfunctioning, install new Equipment.</b></p> <p><b>Concerning Equipment and Software not listed above, Service Provider's goal is to resolve all Severity 3 failures within twentyfour hours of arrival. However, it is possible that some resolutions could require additional time and effort due to multiple item failure, antenna system failure, etc. In any event, Service Provider is committed to failure resolution as rapidly as possible, utilizing all available resources to resolve the failure as soon as possible.</b></p> | <p>Loss of less than 20% of voice talkpath capacity at any site.</p> <p>Any Backhaul failure or alarm which does not result in loss of traffic or redundancy.</p> <p>No more than 1 console out-ofservice at any dispatch location.</p> <p>Loss of any NMS workstation.</p> <p>This level represents moderate issues that limit Center's normal use of the system, sub-system, product, or major non-critical features from Center's perspective.</p> |
|------------|---|---|---|

### Exhibit 3

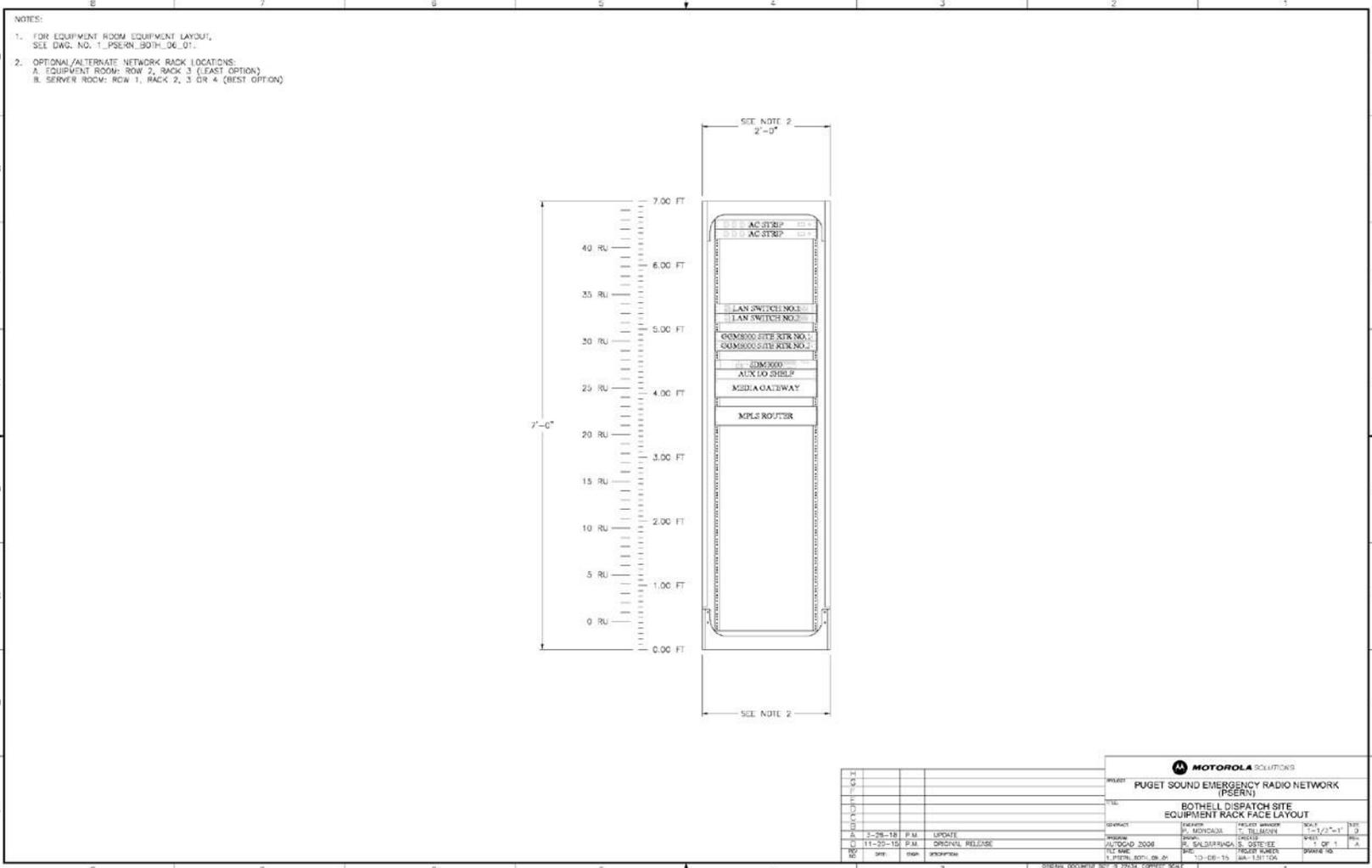
#### Center's Site Plan

Exhibit 3 will be negotiated between the PSERN Project and the Center and depict the areas of the Center where the Service Provider will be allowed access, ingress and egress, where equipment will be stored temporarily and where it will be installed. It will also include drawings of equipment locations.

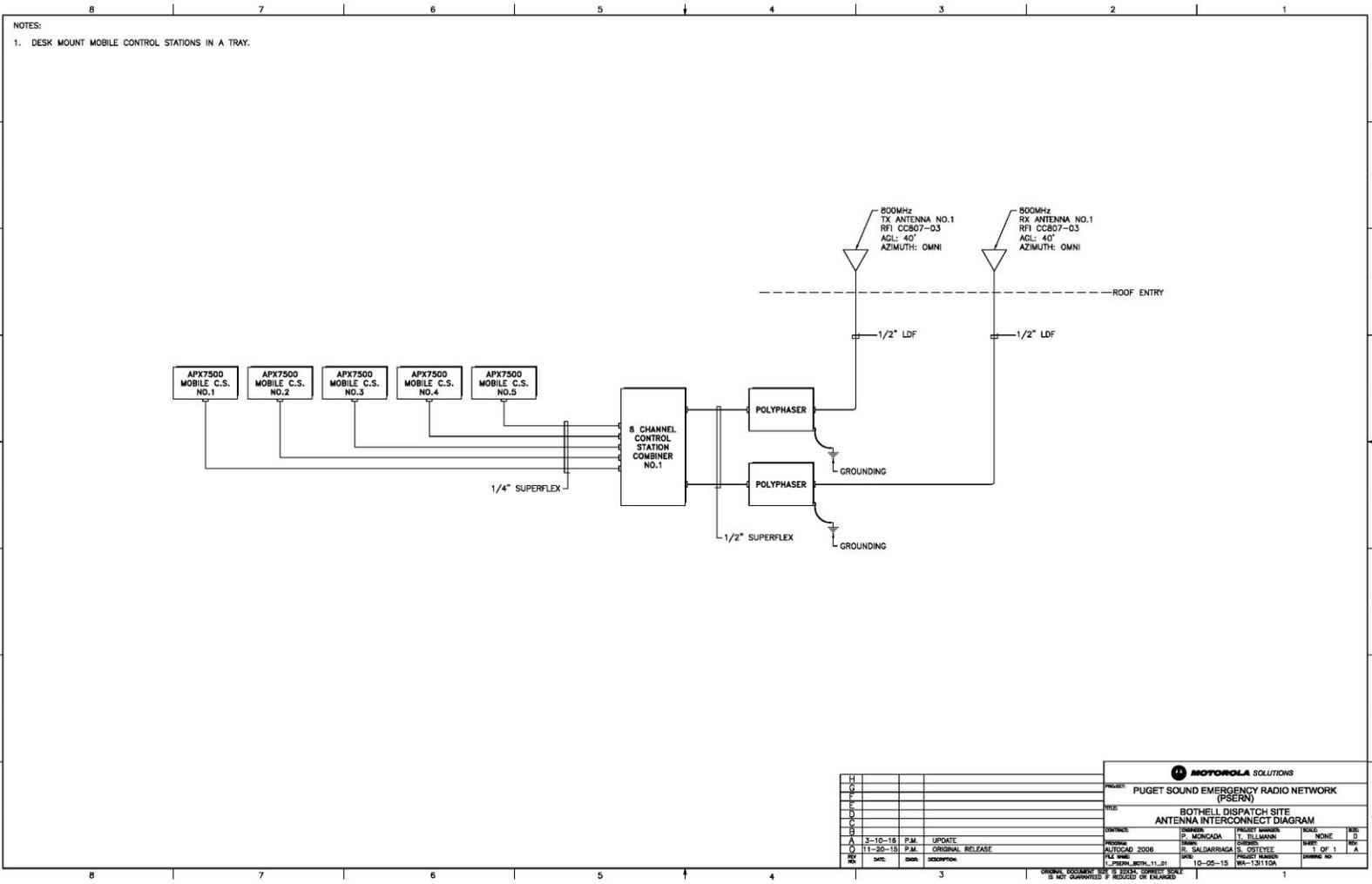


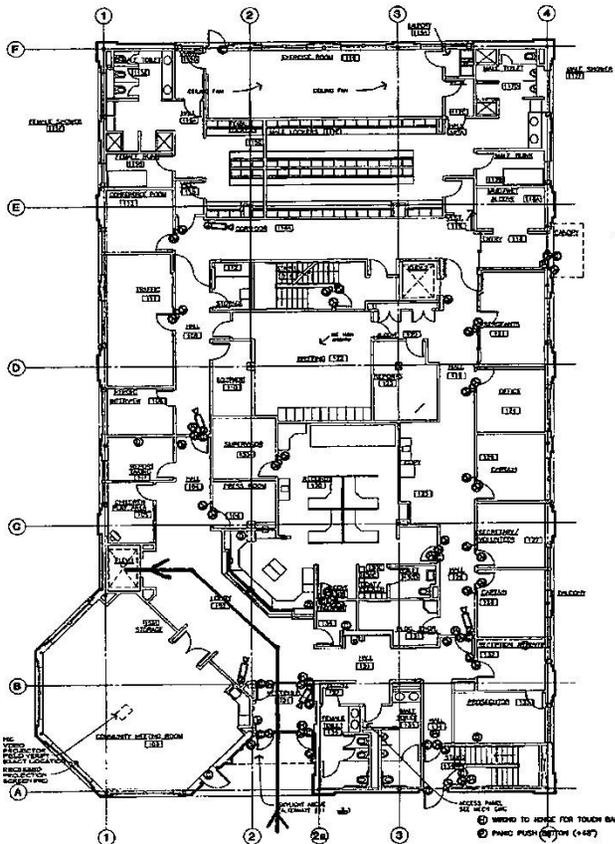






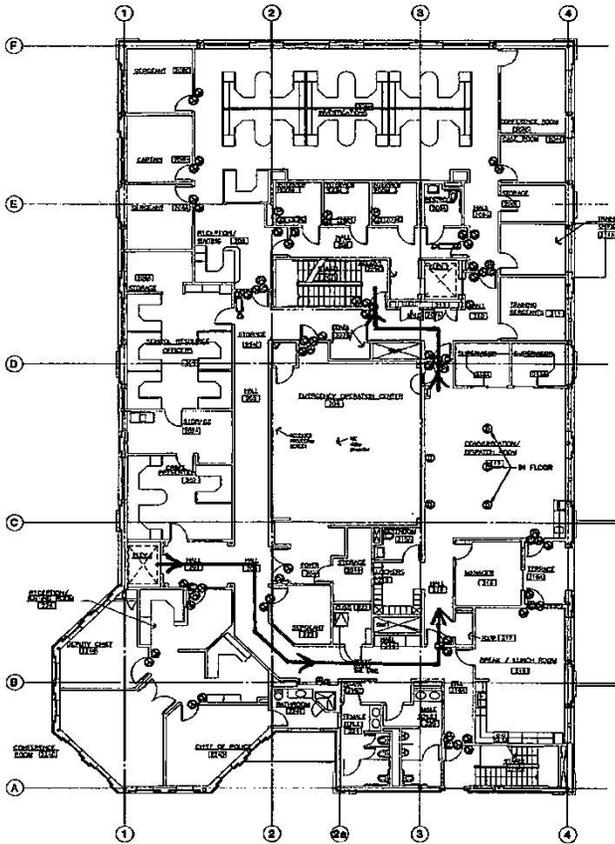






**POLICE BUILDING - FIRST FLOOR PLAN**

1/8"=1'-0"



**POLICE BUILDING - SECOND FLOOR PLAN**

1/8"=1'-0"



**BOTHELL PUBLIC SAFETY CENTER  
POLICE DEPARTMENT & MUNICIPAL COURT**

CITY OF BOTHELL  
BOTHELL, WASHINGTON

| REVISIONS |        |             |    |
|-----------|--------|-------------|----|
| NO.       | DATE   | DESCRIPTION | BY |
| Δ         | 7/1/01 | AS BUILT    | SP |



PROJECT NO. 47208     DATE: APRIL 11, 1999  
 DRAWN: L.A.     CHECKED: L.M.     DATE: FEB. 4, 2000  
 APPROVED: B.D. & CONSTRUCTION

DRAWING TITLE  
**POLICE BUILDING  
 FIRST AND SECOND FLOORS -  
 SECURITY**

**E5.2**



#### Exhibit 4

#### Center's Security Vetting Procedures

Exhibit 4 will be provided by the Center and will describe the procedures for the Service Provider to observe to get background checks to allow for access (may be combined with Exhibit 5 at Center's discretion).

Exhibit 5

Consent for Criminal Background Check, CJIS On-line Security Awareness Training and Fingerprinting  
Authorization/Waiver

Exhibit 5 will be provided by the Center and will be the form the Service Provider will fill out allowing authorized access to the Center (may be combined with Exhibit 4 at Center's discretion).



**WAIVER AND AUTHORIZATION TO RELEASE INFORMATION – EXHIBIT 4/5**

This document affects your legal rights.

You are requested to participate in a limited background check.

By signing below, you are authorizing the Bothell Police Department to run a criminal history check on your background. We will be conducting checks through NCIC/III (National Crime Information Center/Interstate Identification Index), WACIC (Washington Crime Information Center), DOL (Department of Licensing) and other databases. Please read the following below and acknowledge by signing where indicated.

I understand my right to request access to any records related to me pursuant to 5 U.S. Code 522 et seq. and RCW 42.56 et seq. and specifically waive those rights, understanding that the information furnished will be used by the Bothell Police. I will make no attempt to gain access to the information provided by you to the Bothell Police and/or one of its departments or agencies.

Further, I do hereby release you, your organization, your agents, and others from any liability or damage which may result from furnishing information to the Bothell Police Department pursuant to this waiver and authorization to release information.

\_\_\_\_\_  
Applicant's Name (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of \_\_\_\_\_, residing at  
\_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTE: A photocopy reproduction of this request shall be for all intents and purposes as valid as the original. You may retain this form in your files.

## BACKGROUND INVESTIGATION CHECKLIST – EXHIBIT 4/5 VENDOR

Candidate's Name: \_\_\_\_\_ Date initiated: \_\_\_\_\_

Company Name: \_\_\_\_\_ Date Work Begins: \_\_\_\_\_

Department/City Contact \_\_\_\_\_

### COMPLETED BY RISK MANAGEMENT ADMINISTRATIVE ASSISTANT

SIGNED, NOTARIZED LIMITED WAIVER \_\_\_\_\_

TAKE PHOTO \_\_\_\_\_

COPY DRIVER'S LICENSE \_\_\_\_\_

FINGERPRINTS \_\_\_\_\_ DATE RETURNS RECEIVED \_\_\_\_\_

WACIC \_\_\_\_\_

DOL \_\_\_\_\_

NCIC / NCIC III \_\_\_\_\_

ADR \_\_\_\_\_

- FORS \_\_\_\_\_
- LEADSONLINE \_\_\_\_\_
- VENDOR CODE OF CONDUCT \_\_\_\_\_
- TO SERGEANT\FOR APPROVAL \_\_\_\_\_
- MEMO APPROVED BY RISK MGMT CAPTAIN \_\_\_\_\_

**WHEN FINAL DETERMINATION MADE**

- PICS/FLYER OUT TO DEPT (If approved) \_\_\_\_\_
- NOTIFY VENDOR OF RESULTS \_\_\_\_\_
- NOTIFY TRACY FOR CJIS DETERMINATION/KEYCARD ACCESS (If approved) (Tracy makes contact if needed).  
\_\_\_\_\_
- NOTIFY RECORDS \_\_\_\_\_

Exhibit 6

Accessory equipment

This list of equipment is not meant to be an exhaustive list of approved equipment but can be used as a guide for Center’s to make decisions from. Center’s should check with the PSERN Operator regularly to ensure they have the latest information on accessory devices that are approved for use with consoles. The below list are items that are available from Motorola at the time the SLA was developed. Other third party accessories (e.g. boat lights, paging interfaces) may also be available.

Headsets:

| Motorola Part Number: | Plantronics Model | Plantronics Part Number |
|-----------------------|-------------------|-------------------------|
| RMN4077B              | HW251             | 64336-31                |
| RMN5078B              | HW251N            | 64338-31                |
| RMN4079B              | HW261             | 64337-31                |
| RMN5080B              | HW261N            | 64339-31                |
| RLN6098A              | SHS1890-15/DH     | 72949-15                |
| RLN6099A              | SHS1890-25/DH     | 72949-25                |
|                       |                   |                         |

Other Accessory Items:

- Rugged dual Foot Pedal – Motorola P/N - BLN6732
- Headset with PTT Switch – Motorola P/N – CDN6281
- Single speaker headband style headset with User selectable tone control – Motorola P/N – CDN6286,
- Dual Button Microphone with Flexible Shaft – Motorola P/N – B1914
- Headset module base without PTT Switch – Motorola P/N – CDN6282
- Starset Noise Cancelling Headset (ear bud style) – Motorola P/N – CDN6288
- Encore Monaural Noise Cancelling Headset (headband style) – Motorola P/N – CDN6293
- Tristar Noise Canceling Headset (ear bud style) – Motorola P/N – CDN6292 Basic USB
- Headset Jackbox – Motorola P/N – DDN9492
- Enhanced USB Headset Jackbox – Motorola P/N – DDN9493

## Exhibit 7

### Site Make Ready Work

This list of Center's improvements that need to be made to a site in order for the new equipment to work.

#### A. Bothell:

1. **Due Date May 1** - Confirm the conduit pathway and cable length requirements for two (2) ½" Superflex cable runs from the proposed RF combiner location in future Operator Position No.6 in the dispatch room to new RF surge protectors location on the 3<sup>rd</sup> floor.
2. **Due Date May 1** - Confirm that UPS-backed AC power inside the existing server room cabinet (for the network equipment) can be fed from two independent 15A minimum breakers... to preserve network dual power b/u capability. If dual fed power to network equipment is not a customer/system requirement, then single source AC power distribution should suffice.
3. **Due Date May 1** - Provide ground wire from VPM in each console to Ground Bus Bar in 3rd floor server room
4. **Due Date February 15** - Provide a Point of Contact for Training issues
5. **Due Date February 15** - Provide a Point of Contact for Operational Issues
6. **Due Date February 15** - Provide a Point of Contact for Technical issues
7. **Due Date February 15** - Provide the Quantity of Dispatch Trainers to be Trained
8. **Due Date May 1** - Approve Service Level Agreement
9. **Due Date May 1** – Determine staging area for new consoles

**(This page intentionally left blank)**



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

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

**DATE:** February 18, 2020

**SUBJECT:** Close the Public Hearing and defer a decision on the 2019 Plan and Code Amendments

**POLICY  
CONSIDERATION:**

This item asks the City Council to close 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.

The Council is also being asked to defer a decision on the proposed amendments pending resolution of the appeal of the SEPA determination.

**HISTORY:**

| <b>DATE</b>              | <b>ACTION</b>  |
|--------------------------|--|
| <b>JUNE 2002</b>         | City Council establishes Activity Centers (R-AC) zone  |
| <b>MARCH 2019</b>        | Council approves 2019 Planning Docket including CFE amendments and Canyon Park Update  |
| <b>NOVEMBER 2019</b>     | Planning Commission makes its Recommendation to City Council   |
| <b>DECEMBER 2, 2019</b>  | Canyon Park Business Center Owner’s Association (CPBCOA) appeals the SEPA determination stopping consideration of these amendments |
| <b>DECEMBER 3, 2019</b>  | Council continues public hearing to December 17, 2019 pending resolution of SEPA appeal  |
| <b>DECEMBER 17, 2019</b> | Council continues public hearing to January 21, 2020 pending resolution of SEPA appeal   |
| <b>JANUARY 21, 2020</b>  | Council continues public hearing to February 18, 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:** The Canyon Park Business Center Owners' Association (CPBCOA) and city staff continue to discuss issues pertaining to the SEPA appeal filed by CPBCOA. Both parties agree that progress is being made and that additional time is needed to attempt to resolve the issues. Staff will continue to work with CPBCOA to resolve the SEPA appeal either through negotiation or through the appeal process up to and including a formal hearing before the Hearing Examiner. A hearing date has not yet been established.

At this time, staff recommends two separate actions by the Council: 1) a motion to close the public hearing; and 2) a motion to formally defer action on the proposed amendments pending resolution of the SEPA appeal.

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

**ATTACHMENTS:** None

**RECOMMENDED ACTIONS:** Move to close the public hearing on the proposed 2019 Plan and Code amendments.

And move to defer Council action on the proposed 2019 Plan and Code amendments until the SEPA appeal has been resolved.



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Paul Byrne, City Attorney (Presenter)

**DATE:** February 18, 2020

**SUBJECT:** Consideration of an Ordinance Regarding a Wireline and Small Wireless Facility Franchise Agreement with Crown Castle Fiber LLC, c/o Crown Castle

**POLICY CONSIDERATION:** This item asks the City Council to consider if the City should adopt an ordinance regarding a wireline and small wireless facility Franchise Agreement with Crown Castle Fiber LLC, c/o Crown Castle.

If approved, it has the potential to impact community members by improving the quality of wireless communication.

**HISTORY:**

| DATE                     | ACTION   |
|--------------------------|--|
| <b>NOVEMBER 19, 2019</b> | Council adopted code amendments to Chapter 12.11 BMC pertaining to wireless communication facilities and small wireless facilities |

**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. Crown Castle provides infrastructure to wireless facilities and businesses, including both the wireline backhaul to connect these facilities and physical build-out of small wireless facilities. In this instance, Crown Castle is requesting a franchise to install, operate and maintain small wireless facilities and wireline telecommunications 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 BMC Chapter 12.11.

This franchise does not permit Crown Castle to operate a broadcast cable system or macro wireless facilities within the rights of way of the City. Crown Castle 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 Crown Castle Fiber LLC, c/o Crown Castle

**RECOMMENDED ACTION:** | No action is requested at this time; however, this item is currently scheduled for Council action on the March 3, 2020 consent agenda.

**ORDINANCE NO. \_\_\_\_\_ (2020)**

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO CROWN CASTLE FIBER LLC C/O CROWN CASTLE 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, Crown Castle Fiber LLC c/o Crown Castle (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”) for purposes of operating and maintaining a 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 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. Crown Castle Fiber LLC c/o Crown Castle is granted a non-exclusive franchise for the transmission of wireline and 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:

## Table of Contents

|   | <u>Page</u> |
|---|-------------|
| Section 1 . Franchise Granted.....  | 3           |
| Section 2 . Authority Limited to Occupation of Public Rights-of-Way for Services..... | 3           |
| Section 3 . Non-Exclusive Franchise Grant.....  | 5           |
| Section 4 . Location of Telecommunications Network Facilities.....                    | 6           |
| Section 5 . Relocation of Telecommunications Network Facilities.....                  | 6           |
| Section 6 . Undergrounding of Facilities.....   | 11          |
| Section 7 . Maps and Records.....   | 13          |
| Section 8 . Work in the Rights-of-Way.....  | 15          |
| Section 9 . One Call Locator Service.....   | 18          |
| Section 10 . Safety Requirements.....   | 19          |
| Section 11 . Work of Contractors and Subcontractors.....                              | 20          |
| Section 12 . Restoration after Construction.....                                      | 21          |
| Section 13 . Emergency Work/Dangerous Conditions.....                                 | 22          |
| Section 14 . Recovery of Costs, Taxes, and Fees.....                                  | 23          |
| Section 15 . Small Wireless Facilities.....   | 25          |
| Section 16 . Indemnification.....   | 31          |
| Section 17 . Insurance.....   | 33          |
| Section 18 . Abandonment of Franchisee’s Telecommunications Network.....              | 36          |
| Section 19 . Bonds.....   | 38          |
| Section 20 . Remedies to Enforce Compliance.....                                      | 39          |
| Section 21 . Forfeiture and Revocation.....   | 40          |
| Section 22 . Non-Waiver.....  | 41          |
| Section 23 . City Ordinances and Regulations.....                                     | 41          |

Section 24 . Cost of Publication..... 41

Section 25 . Survival..... 41

Section 26 . Assignment..... 42

Section 27 . Extension..... 43

Section 28 . Entire Agreement..... 43

Section 29 . Eminent Domain..... 44

Section 30 . Vacation..... 44

Section 31 . Notice..... 44

Section 32 . Severability..... 45

Section 33 . Compliance with All Applicable Laws..... 45

Section 34 . Amendment..... 46

Section 35 . Attorney Fees..... 46

Section 36 . Hazardous Substances..... 46

Section 37 . Licenses, Fees, and Taxes..... 47

Section 38 . Miscellaneous..... 47

Section 39 . Acceptance..... 48

This Franchise is entered into in Bothell, Washington, by and between the City of Bothell, a Washington municipal corporation (hereinafter “the City”), and Crown Castle Fiber LLC c/o Crown Castle (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. The following “Services” are permitted under this Franchise: (i) high speed data and fiber optic services, internet protocol-based services, internet access services, conduit and dark fiber leasing, telephone, and data transport services conveyed using both wireline and wireless facilities and (ii) the infrastructure development to be used for Small Wireless Facilities. Services do not include the deployment of macro facilities.

Section 2.2 As used herein, “Small Wireless 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.” Unless otherwise specifically stated in a section, “Facilities” shall encompass both Small Wireless Facilities and wireline or wireless services used to provide the Services.

Section 2.3 This Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

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 as soon as practicable 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 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 Building Moving. Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty (30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.10 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 5.11 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 Small Wireless Facilities.

(a) As it pertains to Franchisee's Small Wireless Facilities, Franchisee shall not be permitted to erect poles, unless permitted by the City for Small Wireless Facilities 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 Small Wireless Facilities.

(b) Franchisee shall not be required to underground any portion of the Small Wireless 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 Small Wireless Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Small Wireless Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example, placement of electrical and fiber lines) or

otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

Section 6.2 Wireline Facilities.

(a) As it pertains to Franchisee's wireline Facilities, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City, unless otherwise specifically allowed pursuant to a permit. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its wireline Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial wireline Facilities to underground installation at Franchisee's expense, except as otherwise provided in RCW 35.99.060(4). Unless otherwise permitted by the City, Franchisee shall underground its wireline Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

(b) Whenever the City may require the undergrounding of the aerial utilities (not including Small Wireless Facilities) in any area of the City, Franchisee shall underground its wireline Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own wireline Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's wireline Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.3 To the extent Franchisee is providing wireline Facilities to Small Wireless Facilities either owned by Franchisee or a third party, Franchisee shall adhere to the design standards for such Small Wireless Facilities, and shall underground its wireline Facilities and/or place its wireline Facilities within the pole as may be required by

such design standards. For the purposes of clarity, this Section 6.4 does not require undergrounding or interior placement of wireline Facilities within the pole to the extent that the Small Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.3.

Section 6.4 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. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. 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 6.5 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 New wireline Facilities shall not be installed on existing metal street light standards or traffic signal standards, however this restriction shall not apply to Small Wireless Facilities installed pursuant to a separate lease agreement with the City and the associated wireline facilities installed within the poles.

Section 8.5 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;
- (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; and
- (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 8.6 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 8.7 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 8.7 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 8.8 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 8.9 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 8.10 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

**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 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, representatives, 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, representatives, elected or appointed officials, or contractors. In no event shall the City 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, representatives, 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 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 maintain 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 (except for workers compensation) 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 no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

- (b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than \$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 no less than \$5,000,000 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 provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying 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, agents, and representatives ("Additional Insureds"), as an additional insured with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee. 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 commercial 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, except for non-payment, in which case a ten (10) day notice will be provided, 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. If Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

Section 17.6 The City may review all insurance limits once every three years during the Term may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to and review by Franchisee. Franchisee shall then issue or provide a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

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.**

Section 19.1 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. 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. 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 101<sup>st</sup> Ave. N.E.  
Bothell, WA 98011

Franchisee:  
Crown Castle Fiber LLC  
c/o Crown Castle  
2000 Corporate Drive  
Canonsburg, PA 15317  
Attn: Ken Simon, General  
Counsel

With a copy to:

Crown Castle Fiber LLC  
c/o Crown Castle  
2000 Corporate Drive  
Canonsburg, PA 15317  
Attn: SCN Contracts  
Management

**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; 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 CROWN CASTLE FIBER LLC C/O CROWN CASTLE 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

Crown Castle Fiber LLC c/o Crown Castle, 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.

CROWN CASTLE FIBER LLC C/O CROWN CASTLE

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, 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™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Kellye Mazzoli, Assistant City Manager  
DeNae McGee, Executive Department (Presenter)

**DATE:** February 18, 2020

**SUBJECT:** Consideration of Adopting the City of Bothell Strategic Cultural Plan

---

**POLICY CONSIDERATION:** This item asks the City Council to consider adopting the recently completed Strategic Cultural Plan, developed through a public process and in conjunction with the City of Bothell Arts Commission. If approved, this plan will be a roadmap for providing ongoing continuity and alignment of arts and cultural programming for years to come. This plan has the potential to positively impact the quality of life for Bothell residents by focusing efforts on providing access and developing community pride in arts and cultural offerings.

**HISTORY:**

| DATE                     | ACTION  |
|--------------------------|---|
| <b>MARCH 3, 2009</b>     | Council passes Ordinance No. 2013 establishing a One Percent for Public Art Fund                        |
| <b>JANUARY 10, 2017</b>  | Council adopts Ordinance No. 2216 establishing the City of Bothell Arts and Festivals Commission (BAFC) |
| <b>MAY 4, 2018</b>       | Council adopts Ordinance No. 2251 changing the name of BAFC to Bothell Arts Commission (BAC)            |
| <b>NOVEMBER 27, 2018</b> | Council adopts BAC 2019/2020 programmatic budget using general fund dollars                             |
| <b>APRIL 16, 2019</b>    | City Council adopts BAC 2019 work plan  |

On March 3, 2003, the City Council adopted Ordinance No. 2013 establishing a one-percent for funding of public art through city-owned capital improvement projects. The goal of the fund is to incorporate visual art in publicly utilized spaces such as the Georgia Gerber sculptures located in the plaza of city hall.

To further solidify a commitment to arts and cultural access and programming, on January 10, 2017, Council established the Bothell Arts and Festivals Commission. This commission, similar to others in the city, is where residents of Bothell are selected by Council to serve three-year terms and act as advisors to the Council on the promotion of arts and culture citywide.

On April 16, 2019, the Council adopted the Bothell Arts Commission work plan, which set a goal to accomplish nine tasks divided into categories such as staffing support for the City Hall Gallery program; researching potential programming opportunities by partnering with art organizations or institutions like UW Bothell/Cascadia College; leveraging general fund dollars through grant requests; and, administering a grant received from 4Culture to develop a community based Strategic Cultural Plan by the end of 2019.

With City Council's adoption of the 2019 work plan on April 16 and funding guaranteed from 4Culture that same month, Una McAlinden, a certified facilitator, began work in implementing Phases 1 and 2 of a four part plan.

**Phase 1: Discovery & Community Engagement: Creating a Collective Vision**  
**Timeframe: October 2019**

Community voices are key to developing a vision and plan that is right for Bothell. Prior to the sessions, in May, Una worked with BAC on Circles of Influence (**Attachment 1**) to identify key community leaders to personally invite to the sessions. Flyers announcing the dates were also distributed widely and announcements broadcast via the city's website and social media platforms occurred June through October.

Four large format community meetings were convened to enlist a broad cross-section of Bothell community members in answering the question: "How do we envision arts and culture impacting the quality of life and economic health of our community?" The first meeting convened on July 19 for Council, city boards/commissions, and key staff.

Three community publicized sessions on various days and times to ensure flexibility of schedules then convened on Saturday, October 12; Friday, October 18; and Monday, October 28. Each session lasted three hours, and by the end of each session a long-range vision was created in response to the question asked.

An average of 20-30 participants attended each session representing city civic leadership, educators, youth, seniors, artists and arts professionals, and business leaders (**Attachment 2**).

**Phase 2: Applying our Learnings: Developing a Strategic Cultural Plan**  
**Timeframe: November 2019**

Guided by the community visions of Phase 1, the Arts Leadership Team (ALT) met three times in November (one full-day; two half-days) to begin developing the Strategic Cultural Plan. In addition to the Arts Commission members, the ALT is comprised of established city leadership, other leaders in the community,

committed residents, business owners, and arts supporters (reflective of the city's diverse demographics). With a view to departmental collaboration, other city staff was also enlisted. The draft Strategic Cultural Plan was completed in December 2019.

On January 9, 2020, the Bothell Arts Commission unanimously recommended forwarding the draft Strategic Cultural plan to the City Council for adoption.

**DISCUSSION:** The proposed Strategic Cultural Plan is a document that the Council, staff, Commissioners, and the community can use as its roadmap for ongoing arts and cultural programming.

City Council charged the Bothell Arts Commission with the following:

- leveraging the arts to improve the quality of life in the city,
- providing arts access to all individuals, and
- developing community pride in arts offerings that are woven into the fabric of the city.

These responsibilities imply that the whole community should benefit and that there is consideration given to the needs and wishes of the residents in the municipality. Typically, arts programs can encounter a range of challenges, such as:

- Not effectively seeking community input;
- Defaulting into the role of program provider which can lead to fluctuations in direction and focus; and
- No intentional alignment with the city's overall goals.

To avoid these pitfalls from the outset, the Bothell Arts Commission committed to an authentic, community-involved strategic planning effort. The result is a plan that can truly guide efforts of the program while providing continuity and alignment for future civic leaders and staff.

### **The Process**

During Phase 1, a rhythm of individual thinking and brainstorming was then followed by small group dialogue culminating in large group processing of the ideas into large "strands" or "clusters." The groups then worked together to mine these ideas for the collective wisdom, capturing the diverse ideas, experiences, and perspectives of all the participants for the collective vision created by each group.

Survey responses showed that participants felt invigorated by the high level of participation and involvement Una's facilitative approach provided, with 90% of respondents rating the session as either valuable or highly valuable.

Following the completion of the four community sessions of Phase 1, a group of key leaders was built to guide the work during Phase 2. Called the Arts Leadership Team (ALT), this team built the Cultural Strategic Plan by taking the visions from the four community sessions and working in small teams to group the vision elements into clusters of similar impact. Summary charts were then created by the entire ALT where seven areas of impacts articulated by the community were formed and then aligned with City Council goals.

This alignment demonstrates that the arts can be an effective strategy to achieve citywide goals and Council priorities. Clearly understanding the value of the arts is key to advancing cross-departmental partnerships and implementation of the plan.

Trends that impact Bothell were then generated to help think more broadly and increase awareness of trends that could impact the work ahead. Once the trends were identified, the group discussed the implications. Concrete accomplishments that would be in place three years from now were then identified representing one-third of the way to the community's ten-year vision.

Identifying and acknowledging the underlying blocks impeding the vision were then documented. This gives confidence to participants that issues and challenges are addressed when developing the strategic direction.

ALT then took the seven visions, three-year concrete accomplishments and underlying blocks impeding success to form four strategic directions that are creative, engaging, and innovative to finalize the City of Bothell's Strategic Cultural Plan (**Attachment 3**).

#### **Future Phases**

BAC and those involved in the ALT work were delighted and proud to develop the Strategic Cultural Plan before the Council tonight; however, the team is also deeply aware that the best plan is of little value if it doesn't move into action. Staff is currently applying for funding from 4Culture to bring in Una McAlinden to lead the group through developing an implementation plan, Phases 3 and 4 of her approach to long-range planning.

Phases 3 moves the work from analysis of possibilities into decisions about what will be done in the year ahead. Phase 4 reconvenes BAC and other key participants of Phase 4 six months after implementation occurs to discuss accomplishments, analyze obstacles encountered along the way, and research fresh ideas moving forward.

**FISCAL IMPACTS:** There is no fiscal impact to Council by adopting the Strategic Cultural Plan. The Plan can be used to guide future decision-making about resource allocation toward the City's art and cultural program.

The plan was funded by a 4Culture grant in the amount of \$15,000 and the City matched the grant using 2019 general fund dollars and additional grant funding.

**ATTACHMENTS:**

- Att-1. Circle of Influence
- Att-2. Photo of Participants at Community Stakeholder Meeting
- Att-3. Strategic Cultural Plan

**RECOMMENDED ACTION:** Approve the City of Bothell Strategic Cultural Plan as recommended by the City of Bothell Arts Commission.

**(This page intentionally left blank)**



**(This page intentionally left blank)**

## Phase 1 - Community Stakeholder Meeting



**(This page intentionally left blank)**



**How will we ensure that arts & culture positively impact quality of life and economic vitality in City of Bothell?**

**Community Vision:**  
By 2029, as a result of arts & culture...

Bothell residents are inspired to regularly engage in creative endeavors

Bothell has a diverse artist community; living, working & thriving throughout the city

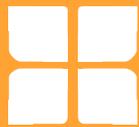
Bothell is a community where people want to live because of the creative & engaging quality of life

Bothell communities are connected with each other

Bothell is known regionally as a premier artistic/cultural destination

Bothell blends arts & business as an economic driver to attract business

Bothell has a strong identity reflecting its history, diversity & inclusivity



Process designed & facilitated by  
**Una McAlinden**  
November 2019

**Practical Framework:** Three years from now, we see in place:

Central & integrated platform for arts & cultural communication & marketing-SD #1/3

A supportive & effective regulatory environment for process, policies, personnel-SD#2/3

Increased, visible public art in key locations throughout the city-Strategic Direction #4

Dynamic annual art/cultural event that attracts tourist-SD #4

New, creative locally focused programming & events-SD #3/4

Enhanced visibility of the arts in existing community events-SD #1/4

A city-led artist recognition program-SD #2/4

An established network of local artists and innovators-SD #2

Expanded multi-strand revenue streams for the arts-SD #3

Underutilized spaces providing a venue for the arts-SD #2/3

**Underlying Contradictions:** Patterns that Impede our vision:

Conflicting perceptions of the value of arts leads to fragmented support-SD #1/4

Undefined ownership & responsibilities to drive the implementation plan-SD #3

Our perception that the pace of government inhibits progress-SDirection #1/2/3

Limited awareness & disjointed communications curtail participation-SD #1

Incomplete understanding of what community wants limits ability to attract them#1

Our inability to be creative about funding options is hampering development of new programs-Strategic Direction #3

Insufficient affordable space discourages /prevents establishment of an artist community-Strategic Direction #2

Concerns about liability exposure limits innovative programs & opportunities-SD#2/3

Competing priorities are causing limited capacity & resources-SD#3

**Strategic Directions:**

**We will address our contradictions & advance our community's vision by:**

1. Publicly Demonstrating the Importance of Art

2. Nurturing & Promoting our Artist Community

3. Regularly Engaging & Responding to our Community

4. Developing a Sustainable Arts Infrastructure

**(This page intentionally left blank)**



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Jennifer Phillips, City Manager

**DATE:** February 18, 2020

**SUBJECT:** Consideration of Responding to the Northshore Parks and Open Space Agency's Letter of Interest for Administrative Services

---

**POLICY CONSIDERATION:** This item asks the City Council to consider if the City should respond to the Northshore Parks and Open Space Agency's (NPRSA) Letter of Interest expressing an interest in initiating negotiations regarding employing staff and providing administrative services fully funded by NPRSA.

**HISTORY:** In November 2019, voters passed a levy lid lift to provide funding for the next six years for the operation of NPRSA and facility improvements for the Northshore Senior Center which is owned by NPRSA.

**DISCUSSION:** At the January 22, 2020 NPRSA Board meeting, the Board voted to send Member Agencies a Letter of Interest regarding the administrative service functions for NPRSA. The letter is attached to this AB and details the recent activities and options contemplated by the NPRSA.

If the City Council is interested in responding to NPRSA's Letter of Interest, staff would respond with a letter of interest and initiate negotiations of an Interlocal Agreement whereby the City would employ staff and provide support and administrative services to NPRSA. NPRSA would be billed in full for all staff, support, and services provided.

**FISCAL IMPACTS:** None at this time

**ATTACHMENTS:** Att-1. NPRSA Letter of Interest

**RECOMMENDED ACTION:** Provide direction to the City Manager on whether or not to respond to the NPRSA Letter of Interest.

**(This page intentionally left blank)**



10201 E. Riverside Drive  
Bothell, Washington 98011-3708

February 4, 2020

Jennifer Phillips, City Manager  
City of Bothell  
[jennifer.phillips@bothellwa.gov](mailto:jennifer.phillips@bothellwa.gov)

Rob Karlinsey, City Manager  
City of Kenmore  
[rkarlinsey@kenmorewa.gov](mailto:rkarlinsey@kenmorewa.gov)

Brandon Buchanan, City Manager  
City of Woodinville,  
[brandonb@ci.woodinville.wa.us](mailto:brandonb@ci.woodinville.wa.us)

Dow Constantine, Executive  
King County  
[dow.constantine@kingcounty.gov](mailto:dow.constantine@kingcounty.gov)

Dave Somers, Executive  
Snohomish County  
[dave.somers@snoco.org](mailto:dave.somers@snoco.org)

Dear NPRSA Board Members:

At the Northshore Parks and Recreation Service Area (NPRSA) Board meeting on January 22, 2020, the Board voted to reach out to all Member Agencies to seek their potential interest in contracting the staffing services necessary to facilitate the renovation and repair of the Northshore Senior Center. This letter is seeking an Expression of Interest by Member Agencies in fulfilling these contract functions on behalf of the Board of NPRSA on a cost re-imbusement basis.

NPRSA is a special tax district that was established in 1988 for the sole purpose of developing and constructing facilities to provide support services for the area's senior community. NPRSA owns the real property located at 10201 and 10212 E. Riverside Drive in the City of Bothell, commonly known as the Northshore Senior Center and Adult Center. The Northshore Senior Center leases the entire facility from NPRSA to provide leisure time activities and promote the health and wellness of community members. The Senior Center is responsible for all operations, programming and maintenance of the facility. NPRSA is responsible for making annual bond payments and any capital improvements to the facilities.

NPRSA is governed by a seven-member Board composed of representatives from the City of Bothell, City of Kenmore, City of Woodinville, King County and Snohomish county ("Member Agencies"). The Senior Center was constructed in 1992 and the Adult Center was constructed in 2002, both of which were financed with Bond Financing approved through ballot initiatives. Over the past 28 years, NPRSA has made no significant investments in either facility. The only financial resources available to NPRSA have been annual contributions approved under the Interlocal Agreement between NPRSA and the Member Agencies, which in 2020 is budgeted for a total amount of \$15,100.00.

In 2018, the NPRSA Board began discussing the current condition of the facilities and what capital improvements were necessary to sustain the on-going operation of the Northshore

Senior Center. In February 2019, the Northshore Senior Center applied to the Department of Commerce ("DOC") for a capital improvement grant. The grant was appropriated in June 2019 in the amount of \$500,000 (net after DOC administrative fee is \$490,000.00). The Grant was subsequently transferred to NPRSA since it is the owner of the property which is required under the DOC guidelines. A facility assessment was completed in 2019 indicating significant capital improvements are required. The Board voted to place a levy lid lift on the November 2019 ballot. The levy was passed in November 2019 which authorized NPRSA to impose a regular property levy of four cents (\$.04) per thousand dollars of assessed valuation in the service area for each of the six (6) consecutive years in order to fund necessary repairs and operate the facilities owned by NPRSA. It is estimated this levy will generate \$1.2 million per year in revenue for the next six years. The revenue may be used for both administrative costs as well as capital improvements and renovations.

Following passage of the levy, at the November 20, 2019 Board meeting, the Board appointed an Interim Executive Director to develop a strategy for NPRSA to facilitate the administration of funding the renovations to the Northshore Senior Center. The individual serving in this capacity is Wesley Phillips, and he is working on a pro bono basis.

After assessing the possible options and clearly identifying the scope of work to be delivered, the NPRSA Board was presented with three options. It is important to understand that NPRSA provides no services or programming. The purpose of the levy funding is improving the two buildings currently owned by NPRSA.

1. Create an entire NPRSA local government organization.
2. Request King County expand its role from being only a fiduciary agent to providing all administrative support services and serve as the hiring authority. NPRSA would hire an executive director and additional staff to handle all remaining administrative processes

including facility management, records management, grant administration, and procurement.

3. Emulate a model, similar to ARCH, in which a Member Agency agrees to employ staff and provide all support and administrative services, designate a staff member to serve in a limited capacity executive director role, and hire necessary staff to properly improve and maintain the facilities.

#### Option 1

NPRSA as an entity has the legal authority to employ staff, but does not have the infrastructure to do so without making significant financial commitments to create the organization necessary to effectively manage the planned renovations to the Northshore Senior Center. This option would require hiring an executive director and staff to deliver human resources (and all related benefits), financial management, legal, information technology, records management, procurement, and project management. Establishing this organization would take a significant amount of time and resources and would also require office space rental.

The Board does not believe it would be cost effective to hire an entire staff to support the necessary functions to facilitate the improvements to the Northshore Senior Center.

#### Option 2

King County nor the NPRSA Board expressed interest in this option.

#### Option 3

ARCH, A Regional Coalition for Housing, is an organization established over 25 years ago to address affordable housing on the eastside. ARCH employees are employed by the City of Bellevue but are ARCH staff that report to an Executive Board comprised of member agencies. All human resources, finance, technology, legal, records management and other administrative support services are provided by Bellevue. This model has worked effectively under an Interlocal Agreement between Bellevue and the member agencies for many years.

It was determined at the NPRSA Board meeting on January 22, 2020, that the most cost-effective way to meet the current staffing requirements was to reach out to the Member Agencies to determine their individual interest in providing the necessary staffing on a contract basis to facilitate these renovations which will be completed over the next six years to correspond to the term of the tax levy. Cost efficiencies and economies of scale can be realized by using the Member Agency staffing resources and governmental process knowledge that is imbedded in their existing governmental structures. The planned renovations of the two buildings are too small to support building an entire staff and management structure without overburdening the NPRSA with significant overhead, which would only deplete the amount of resources available to make the renovations. However, in order to complete the required renovations, it will be necessary to have a management infrastructure to complete the required

renovations, which will require a multitude of disciplines from procurement, human resources, information technology, records management, leased space, management oversight (Executive Director) – all of which can be outsourced by the NPRSA Board.

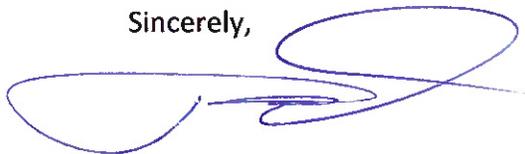
The actual costs of these services would be contracted with the Member Agency and would be billed to NPRSA based on the actual costs incurred by the Member Agency in performing these duties. It is anticipated that there would be baseline costs upfront for expected overhead management, and incremental costs would be billed separately (i.e. potential of public records requests, bidding complaints, etc.).

At this juncture, we are asking each Member Agency of their potential interest in providing these services to NPRSA on a contract basis. This would require that all of these services are performed by one Member Agency but would not preclude the Member Agency from outsourcing some of the responsibilities where it is more cost efficient or does not have adequate internal staffing to complete.

To the extent a Member Agency is interested in providing these contract services, please provide a written confirmation of this interest by or before February 19, 2020.

Following an expression of interest, the NPRSA will review and invite one or more Member Agencies to do in-depth analysis and submit an outline of a proposed structure with anticipated costs to best deliver these contract services.

Sincerely,



James McNeal  
NPRSA, Chair



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Chris Bothwell, Finance Director

**DATE:** February 18, 2020

**SUBJECT:** Consideration of Adopting Comprehensive Financial Management Policies

|                              |   |
|------------------------------|---|
| <b>POLICY CONSIDERATION:</b> | This item asks the City Council to consider the adoption of comprehensive financial management policies establishing a framework for financial management, aligning policies with best practices, formalizing current practices, and setting new policy direction on four matters that will impact the upcoming 2021-2022 budget development. |
|------------------------------|---|

| <b>HISTORY:</b>          | <table border="1"> <thead> <tr> <th style="text-align: center;">DATE</th> <th style="text-align: center;">ACTION</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><b>NOVEMBER 27, 2018</b></td> <td>City Council approved an ordinance adopting the 2019-2020 Budget which included reference to the budget book which included a description of some financial policies.</td> </tr> </tbody> </table> <p>The City's past practice has been to publish financial policies as part of its biennial budget document. The policies were presented in a narrative format. It is unknown whether the policies were discussed with the City Council or whether the policies were ever explicitly adopted by the City Council.</p> | DATE | ACTION | <b>NOVEMBER 27, 2018</b> | City Council approved an ordinance adopting the 2019-2020 Budget which included reference to the budget book which included a description of some financial policies. |
|--------------------------|---|------|--------|--------------------------|---|
| DATE                     | ACTION  |      |        |                          |   |
| <b>NOVEMBER 27, 2018</b> | City Council approved an ordinance adopting the 2019-2020 Budget which included reference to the budget book which included a description of some financial policies.   |      |        |                          |   |

|                    |  |
|--------------------|--|
| <b>DISCUSSION:</b> | <p style="text-align: center;">Financial Policies, Generally</p> <p>Financial policies provide a framework for consistent, careful, and strategic financial management. From an operational perspective financial policies set direction, define boundaries, and provide an opportunity to align with best practices. Financial policies are not prescriptive in the implementation of the policy direction.</p> <p style="text-align: center;">The Draft Policies</p> <p>The Government Finance Officers Association (GFOA) recognizes fifteen financial policy categories that an organization should consider in the development of its policies. The draft policies attached to this agenda item include fourteen of the fifteen categories. The only category excluded from the draft is economic development. Bothell's economic development efforts are significant and</p> |
|--------------------|--|

evolving; as such, economic development has been excluded from this draft, but may be proposed as part of a future update.

It should also be noted that the draft policies are aligned with best practices published by the GFOA and/or guidance issued by the State Auditor's Office, when appropriate. While most policy categories simply formalize past practices, a few are noteworthy for one or more reasons. The following is a list of noteworthy items.

#### Fund Balance and Reserves

This section updates the minimum fund balance targets to align the targets with Bothell's unique set of circumstances and best practices. The most notable result of the realignment is an increase in the minimum fund balance target for the General Fund.

The past policy established a target of sixteen percent of operating expenditures; the updated policy establishes a target of twenty-four percent. Staff believes that the increase is prudent due to the City's lack of other flexible resources to address emergent financial needs. Common examples of flexible resources include: rainy day funds, budget stabilization funds, and strategic opportunity funds; Bothell does not currently have any additional funds of this nature.

The draft policy also notes that if the target is not likely to be met at the end of a calendar year or budget cycle, then staff will propose a plan to replenish the balance within four years. Adoption of this policy will cause the City to increase its General Fund ending fund balance by approximately \$5 million over the next four years. The most obvious plan to accomplish this is to set aside a significant portion of the proceeds of the sale of city owned properties. If the policy is approved, staff is prepared to advance a proposal to increase the fund balance during development of the 2021-2022 budget.

#### Budget and Financial Planning - Order of Funding, Restricted First

This section directs staff to allocate restricted resources to qualifying expenditures before authorizing the use of General Fund resources. The purpose of this item is to maintain maximum flexibility of resources. It should be noted that this item also recognizes that restricted resources should not be exhausted below minimum fund balance targets established by policy.

#### Budget and Financial Planning - Long Range Financial Planning

This section directs staff to prepare a six-year financial forecast for the General Fund during budget development to serve as a multi-year financial planning tool.

The section also directs staff to publish the six-year financial forecast with the budget document.

User Fees and Cost Recovery

This section provides staff with the authority to update user fees consistent with the adopted budget administratively in the second year of the biennial budget. This item eliminates the requirement to bring routine user fee updates that are consistent with the adopted budget to the City Council for approval increasing the efficiency of meetings.

It should be noted that user fees with statutory requirements for public hearings, non-routine fee updates, and updates that go beyond what was included in the adopted budget will continue to require City Council approval.

Updates

The Policies create a requirement for staff to review the policies at least biennially, during budget development, to ensure that the policies continue to align with best practices and the needs of the local government.

**FISCAL IMPACTS:** Adoption of the Policies as proposed established a framework for financial management and decision making, but do not have a direct cost to the organization. The change in minimum fund balance targets will, however, cause the City to hold more of its financial resources in fund balance. Strict adherence to that policy would make those resources unavailable for spending.

**ATTACHMENTS:** Att-1. Ordinance Adopting the Comprehensive Financial Management Policies  
Att-2. Comprehensive Financial Management Policies (Draft)

**RECOMMENDED ACTION:** Approve an Ordinance adopting the Comprehensive Financial Management Policies as presented.

**(This page intentionally left blank)**

ORDINANCE NO. \_\_\_\_\_ (2020)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON,  
ADOPTING COMPREHENSIVE FINANCIAL MANAGEMENT POLICIES.

---

WHEREAS, financial policies provide a framework for consistent, careful, and strategic financial management. Additionally, policies set direction, define boundaries, and provide an opportunity to align best practices, and

WHEREAS, staff has drafted a document titled the Comprehensive Financial Management Policies that contains financial policies that are appropriate for the City of Bothell and are aligned with best practices; and

WHEREAS, the adoption of financial policies by the governing body is considered a best practice.

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

Section 1. COMPREHENSIVE FINANCIAL MANAGEMENT POLICIES ADOPTED. The City adopts the comprehensive financial management policies attached hereto as Attachment 1 to provide a framework for the consistent, careful, and strategic financial management of the City's resources.

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 XXth day of XX 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,  
ADOPTING COMPREHENSIVE FINANCIAL MANAGEMENT POLICIES.

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)

**(This page intentionally left blank)**



City of Bothell™

---

# COMPREHENSIVE FINANCIAL MANAGEMENT POLICIES

---

- Section
1. Purpose
  2. Accounting System and General Matters
  3. Fund Balances and Reserves
  4. Budget and Financial Planning
  5. User Fees and Cost Recovery
  6. Shared Services
  7. Cash Handling
  8. Investments
  9. Debt
  10. Credit Card Usage
  11. Capital Assets
  12. Small and Attractive Assets

REVISION DATE

## 1. Purpose

The City's Comprehensive Financial Management Policies (the Policies) serves as a framework for the financial planning, budgeting, accounting, reporting, and other financial management practices. The purpose of the Policies is to ensure that the appropriate safeguards are in place for the safekeeping of the City's assets and to ensure that the City's financial operations are prudent and aligned with best practices, where applicable.

The Policies will be reviewed biennially, and updates will be considered, in conjunction with budget development. Additional updates can be considered at that time to address emergent issues or concerns.

## 2. Accounting System and General Matters

### A. Basis of Budgeting and Accounting

"Basis of Accounting" refers to the point at which revenues or expenditures/expenses are recognized in the accounts and reported in the financial statements.

#### i. Full Accrual

Both governmental and business-type activities in the government-wide financial statements, and the proprietary and fiduciary fund financial statements, are presented on the accrual basis of accounting. Revenues are recognized when earned, and expenses are recognized when incurred.

#### ii. Modified Accrual

The governmental funds financial statements are presented on the modified accrual basis of accounting. Revenues are recorded when susceptible to accrual: i.e., both measurable and available. "Available" means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period.

The City considers all revenue reported in the governmental funds to be available if the revenues are collected within sixty days after year-end. Expenditures are generally recognized under the modified accrual basis of accounting when the related liability is incurred. The exception to this general rule is that principal and interest on general obligation long-term debt, if any, is recognized when due.

The City of Bothell's budget is prepared on a modified accrual basis.

The Comprehensive Annual Financial Report (CAFR) presents the City's financial position on the full accrual basis of accounting, consistent with Generally Accepted Accounting Principles (GAAP).

### B. Internal Controls

Financial procedures shall be maintained to assure appropriate internal controls are in place to protect city assets. Internal control processes should be designed to nearly eliminate the risk of a loss to the City. Internal control processes should include monitoring; evidence that the monitoring activities were performed should be maintained for inspection during the annual audit.

### C. Annual Financial Report

The City shall prepare and submit in a timely manner an annual financial report to the Washington State Auditor's Office in accordance with the standards established for such reports. The draft report shall be published on the City's website.

#### D. Cash Management

The City deposits funds within 24 hours of receipt. The Policy recognizes that in rare cases the 24 hour deposit policy is not administratively feasible. Management approval is required for any deposit held longer than 24 hours.

### 3. Fund Balances and Reserves

Operating funds of the city have a minimum fund balance target equal to 30 days operating expense or eight percent (8%) except as noted below.<sup>1</sup>

- General Fund, 90 days, or 24 percent (24%), of annual budgeted operating expenditures.
- Public Safety Levy Fund, 90 days, or 24 percent (24%), of annual budgeted operating expenditures.
- Surface Water Utility Fund, 120 days, or 32 percent (32%), of annual budgeted operating expenditures.
- Water Utility Fund, 60 days, or 16 percent (16%), of budgeted operating expenditures.
- Sewer Utility Fund, 60 days, or 16 percent (16%), of budgeted operating expenditures.

Budgeted operating expenditures is defined as total budgeted expenditures less budgeted one-time expenditures, including capital. This policy recognizes that utilities will maintain a separate reserve for emergency repairs and unexpected increases in the cost of planned capital projects. The value of that reserve is subject to the discretion of staff and shall be disclosed in the published Capital Facilities Plan.

Projected variances from the minimum fund targets shall be disclosed during the biennial budget process or during the current year if unanticipated circumstances occur that negatively impact current year revenue and/or expenditure projections. If the fund balance target is not met, or is budgeted to not be met, at the end of a calendar year, then staff shall propose a four year plan to replenish the shortfall. Fund balance targets may be modified by Council action.

### 4. Budget and Financial Planning

The City budget will implement City Council adopted goals and policies, long-range plans, the service choices for the community and revenue allocation policies of the Council.

The City shall prepare and adopt its budget on a biennial basis and shall comply with the provisions of state law with respect to the biennial budget process. The biennial budget will be adopted at the fund level meaning that the adopted budget will include one revenue and one expenditure amount for each of the City's funds. The City Manager is authorized to transfer budgeted amounts within any fund. Budget appropriations unspent in the first year of the biennium will automatically carry over to the second year of the budget unless adjusted by an ordinance adopted by the City Council.

When budgeting for the General Fund, the Recommended Biennial Budget proposed by the City Manager shall be a two-year balanced budget. For the purposes of this policy, a balanced budget is defined as total biennial resources (fund balance, plus projected revenue) that is greater than or equal to approved biennial expenditures, plus the calculated minimum fund balance, if applicable, for each fund. The published budget overview will identify whether the adopted budget is balanced.

---

<sup>1</sup> Operating funds, for the purpose of the minimum fund balance target, is any fund with payroll expense coded directly to the fund in the year that the target is calculated.

The Capital Facilities Plan (CFP) budgets will be incorporated into the financial forecasts and the biennial budget. Maintenance and operating costs associated with new CFP projects shall be estimated and included for each project within the CFP. Such costs should be included in the operating budgets when the projects are complete.

Other budget related matters are to be handled as follows:

A. One-Time Resources

One-time resources shall be identified and should be used to support one-time expenditures. Ongoing expenditures should be supported by ongoing resources.

B. Position Budgeting

Budgeted staff positions (part-time, full-time, and temporary) will be included in the biennial budget. The City Manager may authorize limited-term positions within a biennium in response to emergent needs, provided budget authority exists to support the position.

C. Budget Calendar

The Finance Department shall work with the City Manager and stakeholders to establish a budget calendar that satisfies all budget milestones, timelines, and regulatory requirements. The budget calendar shall be published for stakeholders to begin budget development.

D. Budget Revenues

The City will strive to maintain a diversified mix of revenues to provide for continuity and predictability of resources and to minimize the impacts of periodic economic cycles. Staff will use conservative and prudent assumptions in the forecasting of revenues.

E. Grant Revenue

Grant revenue shall be included in the financial forecasts and biennial budgets when it is deemed likely by staff that the City will receive the grant award. Should planned or budgeted grant revenue not be received, offsetting expenditure reductions shall be implemented or alternative revenue sources shall be identified.

F. Order of Funding, Restricted First

The City shall exhaust restricted funds to finance uses authorized by State or local law before General Fund resources are used to finance those activities. Restricted fund balance reserves should not be exhausted below the minimum fund balance reserve required by this policy.

G. Budget Expenditures

Expenditures shall be budgeted to support existing levels of service, except where the City Manager has determined that a change in the level of service is required to respond to an emergent need or lost revenue. Staff will use conservative and prudent assumptions in the development of the expenditures budget.

H. Mid-Biennial Review

A review of actual revenue results compared to budgeted amounts shall be performed near the midpoint of the biennial budget. The results of the review shall be communicated to the City Manager and the City Council timely. If significant variances exist, then an adjustment to budgeted expenditures shall be considered.

I. Budget Amendments

The adopted budget can be amended at any time with the adoption of a budget amendment ordinance by the City Council. An evaluation of the long term effects on the financial health of the City should be performed.

J. Long Range Financial Planning

A six-year financial forecast shall be prepared and updated on a biennial basis for the City's General Fund as a multi-year financial planning tool. The financial forecast shall be integrated into the City's biennial budgeting process and shall be used to communicate the long term effects of budget choices and the long term financial health of the City's General Fund. The six-year financial forecast shall be published as a part of the budget document.

The City will use prudent and conservative revenue and expenditure assumptions in the development of the six-year financial forecast and budgets.

The Finance Department shall update the six-year financial forecast to adopt the City's biennial budget and Capital Improvement Plan. The six-year forecast will also be updated during the mid-biennial budget review and adjustment.

K. Budget Monitoring

The Finance Department shall provide timely and accurate budget monitoring reports (or access to the accounting system, in lieu of) to departments on a regular basis and quarterly budget monitoring reports to the City Council.

Department directors have primary responsibility for the development, implementation, management, and monitoring of their respective budgets in accordance with direction from the City Manager. Any significant variances from the adopted budget shall be reported by department directors to the City Manager in a timely manner.

**5. User Fees and Cost Recovery**

The City shall develop and maintain a comprehensive schedule of fees and charges. The fees and charges should be reviewed and updated in connection with each biennial budget. User fees, except those of enterprise funds, shall be administratively updated in the second year of the biennium consistent with the adopted budget. Significant variances between second year updates and the adopted budget shall be reported to the City Council prior to implementation.

Fees shall be reviewed by general type as described below:

A. Development Related Fees

Development related fees (land use, building and property, fire marshal's office and engineering fees) shall be established by ordinance; adjusted for inflation and periodically subjected to a comprehensive rate analysis. Development-related fees should be based on full cost recovery of permitting and inspection services.

B. Regulatory Fees

Regulatory fees shall be established by ordinance. As may be permitted by law, these fees may be used for generating city revenues in addition to recovering costs of the regulatory services.

C. Parks and Recreation Fees

Parks and recreation fees shall be set by the Director of Parks and Recreation within ranges established by ordinance.

D. Other Fees

General fees (such as rental rates, copy charges, and other miscellaneous fees) shall be established by ordinance. These services should charge fees to assist in making these services self-supporting.

E. Rates

Enterprise fund rates and fees shall be set by ordinance, and set at a level necessary to support the costs of services in the fund and to maintain long-term financial stability. To ensure that the enterprise funds remain self-supporting, fee and rate structures shall fully fund the direct and indirect costs of operations, capital maintenance and replacement, debt service, and depreciation.

## **6. Shared Services**

It is the policy of the City to recover the costs incurred by the General Fund for providing accounting and finance, information technology, human resources, City Clerk, and legal services (hereinafter referred to as Shared Services) from all funds that benefit from the services provided. A charge for providing shared services shall be calculated pursuant to an administrative policy that equitably calculates the actual cost of providing shared services and recovers the costs through charges from the General Fund to the benefitting funds.

## **7. Cash Handling**

Cash handling shall be governed by administrative policies and procedures that are aligned with best practices with a focus on strong internal controls to minimize the risk of loss. Employees with cash handling responsibilities must attend training on the City's cash handling policies and procedures prior to being issued change funds. Employees must also attend refresher training every three years. Cash handlers are expected to strictly adhere to cash handling policies and procedures at all times. If an employee witnesses a violation of cash handling policies and procedures; the employee shall immediately report the event to their immediate supervisor.

## **8. Investments**

It is the policy of the City to invest public funds in a manner which will provide maximum security, while meeting daily cash flow demands, conforming to all state and local statutes governing the investment of public funds, while providing a market rate of return through budgetary and economic cycles. The primary objectives, in priority order, of the City's investment activities shall be: Safety, Liquidity, Return on Investment.

Interest income and investment gains and losses from all idle funds shall be credited to the General Fund to the greatest extent allowable under State law. The Finance Department shall create administrative policies and procedures to implement this policy.

## **9. Debt**

Long term debt shall be used solely for the purpose of financing or refinancing the cost of projects identified in the adopted Capital Facilities Plan. Lines of credit, and other short term debt instruments, may be used to fund temporary operating shortfalls. Prior to the issuance of any debt, whether short or long term, a repayment source must be identified. The source of repayment must not be speculative.

Any issuance of debt must comply with all local, state, and federal laws, rules, and regulations including debt limits.

The Finance Department is responsible for all post issuance compliance and shall undertake all activities required to maintain the tax status of the debt, when applicable. The Finance Department shall create administrative policies and procedures to implement this policy.

#### **10. Credit Card Usage**

Staff and elected officials are allowed to use credit cards and purchase cards (Cards) for city business, including travel. Purchases made with cards shall be subject to the same payment and approval process as purchases made by other means. Cash advances and purchases of alcohol by card are strictly prohibited. The Finance Department shall implement administrative policies and procedures to: minimize risk associated with card use; align processes and uses with best practices; and, maximize the convenience and other benefits that inure to the City from card use.

#### **11. Capital Assets**

Capital assets are defined as assets with a value greater than \$5,000 when acquired. All fixed assets should be recorded in the capital asset inventory system at the time of purchase. Capital assets shall be accounted for according to uniform guidance issued by the Governmental Accounting Standards Board (GASB) consistent with Generally Accepted Accounting Principles.

Physical controls shall be established, implemented, monitored, and periodically updated to ensure the safekeeping of capital assets. A physical inventory of capital assets should be performed annually; sampling of fixed asset inventory, for physical inventory purposes, is acceptable.

The Finance Department shall develop administrative policies and procedures to implement this policy.

#### **12. Small and Attractive Assets**

Small and attractive assets are defined as assets with a value greater than \$1,000, but less than \$5,000, with a useful life greater than one year that have an above average risk of loss due to their portability and attractiveness. Examples include tablet computers and smart phones. The Finance Department shall develop administrative policies and procedures to protect these assets from loss.

**(This page intentionally left blank)**



# City of Bothell™

**City Council**  
**Agenda Bill**  
AB # 20-027

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Jennifer Phillips, City Manager

**DATE:** February 18, 2020

**SUBJECT:** Consideration of Amending City Council Protocol Manual Section 7.14  
Attendance via Speakerphone (AVS)

**DISCUSSION/  
BACKGROUND:**

The City Council initially adopted the City Council Protocol Manual in June 2000. The Manual has been revised 11 times, with the last revision adopted on December 17, 2019. At the request of Mayor Olsen, this item has been placed on the City Council Agenda for discussion and consideration of amendment of Section 7.14 Attendance via Speakerphone.

**7.14 Attendance via Speakerphone (AVS)**

From time to time, a Councilmember will not be able to be physically present at a Council meeting, but will want to be involved in the discussion and/or decision on a particular agenda item. The procedure and guidelines for permitting a Councilmember to attend a Council meeting via speakerphone are as follows:

**A. The Rare Occasion**

Attendance via speakerphone should be the rare exception, not the rule, and AVS is limited twice a year per Councilmember. Examples of situations where AVS would be appropriate include, but are not limited to:

- An agenda item is time sensitive, and AVS is needed for a quorum;
- An agenda item is of very high importance to the Councilmember that cannot be physically present;
- It is important for all Councilmembers to be involved in a decision, but one Councilmember is unable to be physically present.
- AVS shall be limited to one agenda item, not the entire Council meeting.

**B. Notification**

If a Councilmember wishes to attend a Council meeting via speakerphone for an agenda item, the Councilmember should notify Council of his or her

intent at the Council meeting prior to the meeting for which they wish to attend via speakerphone.

If that is not possible, the Councilmember should notify the City Manager of his or her wish to attend a Council meeting via speakerphone for an agenda item not later than the business day prior to the Council meeting for which he or she wishes to attend via speakerphone. With less notice, it may not be possible to make the necessary arrangements to allow attendance via speakerphone. Attendance via AVS will be reflected in the minutes

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

**ATTACHMENTS:** None

**RECOMMENDED ACTION:** None



# City of Bothell™

**TO:** Mayor Olsen and Members of the Bothell City Council

**FROM:** Chris Bothwell, Finance Director

**DATE:** February 18, 2020

**SUBJECT:** Business Licensing Program Update

**POLICY CONSIDERATION:** This is a staff briefing only; policy considerations are forthcoming.

| <b>HISTORY:</b> | <b>DATE</b>          | <b>ACTION</b>  |
|-----------------|----------------------|--|
|                 | <b>JULY 23, 2017</b> | HB 2005 “Improving the business climate in the state by simplifying the administration of municipal general business licenses” become effective. |

**DISCUSSION:** Bothell has a long-standing business license program. Bothell’s business licensing program offers several benefits to the community: the ability to track businesses operating in the city; consumer protection as a result of due diligence performed during the initial application process; and, revenue generated by the Program to support general government operations and the Program.

Bothell’s current business license fee structure is relatively complicated and contains three distinct elements:

1. Business classification;
2. Number of employees; and
3. Size of in-city facility.

The business licensing program generates approximately \$1 million annually of General Fund revenue to support the Program and general government operations.

230 Washington cities have a business license requirement. Local governments have historically maintained local control over their respective business license requirements, including how business licensing fees are calculated (hereinafter referred to as the business license structure). Cities employ various methods to

calculate business licensing fees, most are substantially similar. However, the method currently employed by Bothell is unique.

In the 2017 session, State lawmakers passed HB 2005 (the Law) requiring all cities with a business license to administer their business license programs through one of two web based systems: the State's Business Licensing System or FileLocal. The Law was aimed at simplifying doing business in Washington State.

#### The Business Licensing System (the BLS)

The BLS is a system that is operated by the Washington State Department of Revenue and is used by the Department of Revenue to administer the State's business licensing program. Cities can join the BLS at no cost. The BLS is, however, a self-sustaining system that is funded by user fees that are charged to businesses. The deadline established by the Law for cities to join the BLS is December 31, 2022.

#### FileLocal

FileLocal is a system that was established by an interlocal agreement between several Washington cities desiring to provide a web based local business licensing and tax filing system. Participating cities include Seattle, Tacoma, Bellevue, Everett, Lake Forest Park, Shoreline, Renton, and Bremerton. FileLocal is supported by dues paid by participating cities and smaller user fees. The deadline established by the Law for cities to join FileLocal is June 30, 2020.

#### **Analysis**

As was mentioned earlier, Bothell's business licensing system is unique and relatively complicated. Neither of the two systems recognized by the Law are immediately viable options for Bothell's current licensing system for two distinct reasons; however, one system is viable if the City implements a change to its business licensing structure. The following is a brief explanation of the challenges associated with each system.

First, while FileLocal may be able to accommodate Bothell's current licensing structure, the costs associated with the custom programming is prohibitively expensive. Also, cities have a shorter timeline to join FileLocal and, due to the complexity of the required custom programming, the FileLocal team does not believe that they could onboard the City by the deadline in the Law. As such, FileLocal is not a viable option for Bothell.

The challenge with the BLS is not related to time or money. The BLS is free to join for cities (the costs are ultimately paid by users of the system) and the Law

gives cities a longer timeline to join the BLS compared to FileLocal. The Law, however, requires the BLS to make only unspecified limited accommodations for unique local business licensing systems. Staff engaged BLS staff in a lengthy conversation about moving the City's existing business licensing system to the BLS. The conversation concluded with the acknowledgement that the BLS could not accommodate the current fee structure. As a result, the City would be required to change its business licensing structure in order to partner with the BLS.

Based on the preceding, staff has concluded that changing Bothell's business license structure to a structure that the BLS can accommodate is Bothell's only option to comply with the Law. Staff is proposing to begin a process to research changes to the City's business licensing structure immediately, the following is a description of the objective and the proposed plan.

#### **The Objective and The Plan**

The objective is to develop a recommendation for City Council consideration that simplifies the City's business license structure, fits within the BLS system, meets the requirements of the Law, is acceptable to stakeholders, and meets the revenue objective of the business licensing program.

Staff will engage stakeholders in the development of the aforementioned recommendation. Staff has identified the following stakeholder groups: The Bothell Kenmore Chamber of Commerce, the business community at large, the City Council, and city staff.

Outreach to stakeholders will include opportunities for in-person and remote engagement. Additionally, staff will utilize e-news, social media, and targeted outreach to ensure that stakeholders are kept abreast of developments and opportunities to engage in the process. The following is a sample timeline with the draft outreach plan.

#### **Timeline**

|                   |   |
|-------------------|---|
| <b>March 2020</b> | Presentation to the Bothell Kenmore Chamber of Commerce<br>Web Based Survey, Part 1 |
| <b>April 2020</b> | Open House Workshop for Business Community (optional)                               |

**May 2020**

Web Based Survey, Part 2

**June 2020**

Draft Recommendation and Present to the City Council for Adoption

**FISCAL IMPACTS:** The initial stage of developing a recommendation for the City does not have a fiscal impact to the City; the implementation of a change, however, may have a fiscal impact. Staff will perform analysis of proposed changes in the development of a recommendation and staff will present the fiscal impact with their recommendation. It should be noted that changing the City's licensing structure does present an opportunity to generate additional revenue for the General Fund.

**ATTACHMENTS:** None

**RECOMMENDED ACTION:** Receive the briefing and discuss as appropriate.