



City Council Regular Meeting Agenda

Please note: Due to the restrictions related to public gatherings and the Open Public Meetings Act during the COVID-19 pandemic, the council meeting will occur remotely via Zoom and phone access. The meeting can be watched via live streaming on the city website, www.cityofpuyallup.org (Agendas-Minutes-and-Videos page), and listened to via phone. The number to call is: 253-215-8782; Webinar ID: 990 1015 8599; Password 237610.

Citizen comments will be accepted via email at info@ci.puyallup.wa.us until 5:30 p.m. These comments will be distributed to City Council prior to the meeting. Verbal comments can be made during the Citizen Comments portion via Zoom, from both computer and phone.

Tuesday, July 21, 2020

6:30 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

1. APPROVAL OF AGENDA

- Consider amending Puyallup Municipal Code Chapter 20.60 (signs) to prohibit all signs on planter circles that are adjacent to intersections in the CBD-Core (Palmer/Door)

CITIZEN COMMENTS

2. ORDINANCES

- 2.a Second reading of an ordinance to extend a franchise with Unite Private Network, LLC for an additional five year period
[Extension Ordinance](#)
[Ordinance #2949](#)
[MAP Puyallup School District](#)
- 2.b Second reading of an ordinance for a proposed right-of-way vacation along 3rd Ave NW
[Ordinance](#)
[Petition](#)
[Vicinity Map](#)
[Staff Report](#)
[Staff Report Exhibits](#)

3. RESOLUTIONS

- 3.a Adopt a resolution approving the final plat of Christen Estates
[Resolution](#)

4. CONSIDERATIONS AND REQUESTS

- 4.a Authorize the City Manager to sign an agreement with Pierce Conservation District providing rights to forest credits for a city-owned parcel
[Memo](#)
[Agreement](#)
- 4.b Approve a contract between the City of Puyallup and The Salvation Army for emergency shelter services
[Salvation Army Contract](#)
- 4.c Update on the 2021-22 biennial budget regarding initial General Fund revenue projections

5. OTHER BUSINESS

CITY MANAGER'S REPORT

COUNCIL REPORTS

MAYOR'S REPORT

EXECUTIVE SESSION -- Collective Bargaining

ADJOURNMENT

The City Council Chambers is wheelchair accessible. Those needing assistance with hearing devices should contact the City Clerk's Office (253-841-5480) the Friday preceding the meeting.



City Council Agenda Item Report

Submitted by: Joe Beck

Submitting Department: Legal

Meeting Date: 7/21/2020

Subject:

Second reading of an ordinance to extend a franchise with Unite Private Network, LLC for an additional five year period

Presenter:

Joseph Beck, City Attorney

Recommendation:

Conduct second reading and adopt an ordinance that extends a non-exclusive franchise to Unite Private Network, LLC (UPN) for the continued right to install, operate, and maintain a telecommunications network in City right-of-way.

Background:

UPN currently operates installed telecommunications facilities in City right-of-way which serve Puyallup School District No. 3 and also provides wireline backhaul to three other telecommunications companies: WaveDivision Holdings, Zayo Group, and Rainier Connect. Attached is a map of UPN's existing buildout in the City.

Previous Actions:

Council granted a ten-year non-exclusive telecommunications franchise to UPN on January 14, 2010. See Ordinance No. 2949. This franchise expired on February 12, 2020.

Summary of Proposal:

Generally, in order for a telecommunications company to use a city's right-of-way to install telecommunications lines and related facilities, it must obtain a franchise or master permit from the relevant jurisdiction. Such franchises or master permits contain provisions which address construction, maintenance, emergency work, location of facilities, relocation of facilities, undergrounding, insurance, indemnification and additional requirements governing the franchisee's usage of the City's rights-of-way.

This Franchise allows UPN to continue its current operations within the City's rights-of-way for an additional 5 years. This franchise also contains a minor amendment to Section 7.8.8 of the franchise, to clarify reimbursement costs in the event UPN needs to relocate their facilities, but otherwise extends all the same terms and conditions as the prior franchise.

Council Direction:

The City can approve or deny a request for a franchise. If the City denies the request, the denial must be supported by substantial evidence contained in the City's written record. Alternatively, the City may obtain further information before deciding whether to grant or deny any franchise request.

Fiscal Impacts:

There is no detrimental fiscal impact associated with the approval of this Franchise. UPN currently pays property and excise taxes. Additionally, UPN is obligated to pay actual costs associated with the negotiation of this franchise extension.

ATTACHMENTS

- [Extension Ordinance](#)
- [Ordinance #2949](#)
- [MAP Puyallup School District](#)

ORDINANCE NO. _____ (2020)

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, RATIFYING AND EXTENDING A TELECOMMUNICATIONS FRANCHISE TO UNITE PRIVATE NETWORKS, LLC; AMENDING THE SAME; AND FIXING AN EFFECTIVE DATE.

WHEREAS, the City of Puyallup (the "City") granted a telecommunications franchise to Unite Private Networks, LLC ("UPN") dated January 14, 2010, by Ordinance No. 2065, (the "Franchise"); and

WHEREAS, the Franchise expired on February 12, 2020; and

WHEREAS, UPN and the City find it mutually beneficial to amend the Franchise as identified below, and ratify and extend the Franchise as amended, from the date of expiration, for an additional five (5) years.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. FRANCHISE AMENDMENT. Section 7.8.8 of the Franchise is hereby replaced in its entirety as follows:

7.8.8 Reimbursement for Costs. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 7 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

Section 2. FRANCHISE EXTENSION. The term of the Franchise is hereby extended up to and through February 12, 2025. This extension is expressly conditioned upon the City's receipt of UPN's written acceptance as described in Section 5 below.

Section 3. COMPLIANCE WITH FRANCHISE TERMS. As a condition of the extension granted by this Ordinance, both parties warrant that they have abided by the terms of the expired franchise, and agree to the ratification of the Franchise in order that its provisions shall be deemed to have continuous application under the terms of the Franchise as amended. Subject to applicable law, all provisions in the Franchise, including Section 7.8.8 as amended, shall remain in effect from the expiration of the

initial Franchise, throughout the duration of the Franchise extension, except that the provision for the duration of the Franchise is extended for five (5) years.

Section 4. INSURANCE. The insurance policies maintained by UPN pursuant to the Franchise shall remain in effect during the extension period.

Section 5. ACCEPTANCE. The rights and privileges granted pursuant to this Ordinance shall be deemed effective when its terms and conditions are accepted by UPN and are thereby ratified to the date of expiration of the prior franchise between the parties. Acceptance shall be accomplished by the submission of a written instrument executed and sworn to by a corporate officer of UPN before a Notary Public and filed with the City within sixty (60) days after the effective date of this Ordinance, in a form substantially attached as Exhibit A hereto.

Section 6. 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 7. 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 8. 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:

Julie Door, MAYOR

ATTEST/AUTHENTICATED:

Mary Winter, CITY CLERK

APPROVED AS TO FORM:

Joe Beck, 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 Puyallup, Washington

On the _____ day of _____, 2020, the City Council of the City of Puyallup 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 PUYALLUP, WASHINGTON, RATIFYING AND EXTENDING A TELECOMMUNICATIONS FRANCHISE TO UNITE PRIVATE NETWORKS, LLC; AMENDING THE SAME; AND FIXING AN EFFECTIVE DATE.

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

Mary Winter, City Clerk

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

EXHIBIT A
ACCEPTANCE OF EXTENSION OF FRANCHISE

This Acceptance of Extension of Franchise is made this _____ day of _____, _____, by and between Unite Private Networks, LLC (“UPN”) and the City of Puyallup, Washington (the “City”).

WHEREAS, the City conferred a franchise on UPN (the “Franchise”) and recently adopted Ordinance No. ____ extending the term of the Franchise; and

WHEREAS, the City and UPN wish to agree to and acknowledge the continued effect of the Franchise until February 12, 2025.

Now, therefore, UPN and the City acknowledge and agree as follows:

1. Term. The Franchise is hereby acknowledged and agreed to be extended until February 12, 2025.
2. Ratification. All terms and conditions of the Franchise are hereby ratified, accepted and confirmed, including the amendment to Section 7.8.8 and the extension of the term of the Franchise. The duration of the Franchise is hereby extended to February 12, 2025. UPN confirms hereby that it will maintain during this extended term insurance policies as described in the Franchise.

CITY OF PUYALLUP

By: _____
Julie, Door MAYOR

Dated: _____

Unite Private Networks

By: _____

Its: _____

Dated: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this ____ day of _____, 2020, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires: _____

CITY OF PUYALLUP, WASHINGTON

ORDINANCE NO. 2949

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO CONSTRUCT AND OPERATE A TELECOMMUNICATIONS SYSTEM; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS the Public Rights-of-Way within the City belong to the public and are built and maintained at public expense for the use of the general public, the primary purpose of which is public travel, and must be managed and controlled consistent with that intent, and

WHEREAS Unite Private Networks, LLC has made application to the City of Puyallup for a telecommunications franchise to construct, install, maintain, repair and operate a Telecommunications System to provide telecommunications (data transport services) using the Public Rights-of-Way, and

WHEREAS, Unite Private Networks, LLC represents that it is a telecommunications company within the meaning of Title 80 RCW and that it may provide competitive telecommunications services within the meaning of Title 80 RCW, and

WHEREAS, based on representations and information provided by Unite Private Networks, LLC, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchises within the boundaries of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, DO ORDAIN AS FOLLOWS:

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- C. Environmental Indemnity
- D. Insurance Requirements
- E. Financial Security
- F. Parental Guarantee
- G. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS

Except as provided at Section 3.7 herein (order of precedence), for the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in Title 11 of the Puyallup Municipal Code. Words not defined herein or in Title 11 of the Puyallup Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

“Affiliate” when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

“Breach” shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

“City” shall mean the City of Puyallup, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Construct” shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

“Corrective Action” shall mean a Party undertaking action as provided in this Franchise to perform a duty or obligation that the other Party is obligated to but has failed to perform.

“Design Document(s)” shall mean the plans and specifications for the Construction of the Facilities illustrating and describing the refinement of the design of the Utility System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and

systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“100% Design Submittal” means a Design Document upon which Franchisee’s contractors will rely in constructing the Utility System Facilities.

“Direct Costs” shall mean and include all costs and expenses to the City directly related to a particular activity or activities, including by way of example:

i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City’s ordinary governmental accounting procedures; and,

iii. All costs and expenses to the city for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.

“Development Permit” shall mean and refer to a project permit as that term is defined at RCW 36.70B.020.

“Dispute” shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

“Effective Date” shall mean and refer to that term as it is defined at Section 4.3 herein.

“Emergency” shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee’s ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

“Environmental Law(s)” means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Facility” means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Right-of-Way as part of the Franchisee’s Utility System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and signage.

“Franchise” shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way, as authorized pursuant to the Site Specific Permit, and to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions of the Franchise Ordinance. This Franchise shall constitute a Master Permit as that term is defined in (*the City Municipal Code*)(*RCW 35.99.010*).

“Franchisee” shall mean Unite Private Networks, LLC and any of its Affiliates.

“Franchise Ordinance” shall mean this Ordinance setting forth the terms and conditions upon which the Franchisee shall be granted a Franchise.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the area described in each Site Specific Permit issued pursuant to this Franchise.

"Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and any element, compound, mixture, solution, particle, or substance, which presents danger or potential danger for damage or injury to health, welfare, or to the environment, including, but not limited to: those substances which are inherently or potentially radioactive, explosive, ignitable, corrosive, reactive, carcinogenic, or toxic; those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or have its a component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, Franchises, authorizations, environmental standards, orders, decrees and requirements of all federal, state, City and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Facilities, including the City acting in its governmental capacity, or other requirements. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Legal action” shall mean filing a lawsuit or invoking the right to Arbitration.

“Material Breach” shall mean any of the following circumstances:

- Breach of a Party’s obligation to defend or indemnify the other Party;
- If a Party attempts to evade any material provision of this Franchise or engages in any fraud or deceit upon the other Party;
- If Franchisee becomes insolvent, or if there is an assignment for the benefit of Franchisee’s creditors;
- If Franchisee fails to provide or maintain the insurance, bonds, cash deposit or other security required by this Franchise;
- A bad faith Breach;
- A Transfer in violation of Section 2.7 (Transfer);
- Breach of Section 3.5 (Subsequent Action);
- Breach of Section 6.1 (Dispute Avoidance);
- Breach of Section 7.14 (Abandonment);
- Any Breach that cannot practicably be cured; or
- Any non-material breach that is not cured as required pursuant to Section 6.3 herein.

“Non-Material Breach” means any breach that does not constitute a Material Breach.

“Noticed Party” shall mean the Party in receipt of notice that it is in Breach. “Person” means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Party(ies)” shall mean either the City or the Franchisee or both.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

“Public Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

“Public Works Director” means and refers to the Public Works Director for the City or his or her designee or such officer or person who has been assigned the duties of public works director or his or her designee.

“Regulatory Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a construction permit, building permit, street cut permit, and clearing and grading permit.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Telecommunications” is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

“Transfer” shall mean any transaction in which all or a portion of the Utility System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Utility System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control.

“Utility System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide a service or services whether or not such service is provided to the public.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

ARTICLE 2. FRANCHISE GRANT

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area and authorized pursuant to a Site Specific Permit.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to construct, install, maintain, repair and operate a

Telecommunications System to provide telecommunications. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide Services not specifically authorized therein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein.

2.3 No rights shall pass to Franchisee by implication. No rights shall pass to the Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be awfully required by the Laws of the City;

2.3.2 Any agreement or authorization required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, a utility permit; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such Public Right-of-Way, is sufficient to grant its use for such purposes. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee.

Franchisee acknowledges that, where City has an ownership interest in a Franchise Area, that ownership interest may be a determinable fee, a public right of way dedication, or a right of way easement, which may terminate when City either: (i) ceases to use that Public Right-of-Way for Public Right-of-Way purposes; or (ii) uses such

Public Right-of-Way for purposes found to be inconsistent with use of the Public Right-of-Way for Public Right-of-Way purposes, and that in such circumstances, City's right to franchise or grant the use of any such public right-of-way, or rights under any franchise of any such Public Right-of-Way, may be subject to termination as of the date the circumstances set forth in either (i) or (ii) above, first arise (unless Franchisee improves the quality of title to the applicable Franchise Area, or acquiring additional property interests from other Persons).

Franchisee also acknowledges that, where City has ownership rights, those ownership rights may terminate for other reasons, such as a street vacation. Franchisee further acknowledges that Franchisee's rights under this Franchise as to any Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on City's Public Rights-of-Way, and any easements, other Franchise Agreements, licenses, permits or agreements in effect on or before the Effective Date; City therefore grants to Franchisee no more right, title and interest in any Public Right-of-Way than the City holds in such Public Rights-of-Way at the time of grant, and Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's Contractors for any costs, losses or damages of any Party.

CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

2.5 Condition of Franchise Area. Franchisee has inspected or will inspect Franchise Area, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. FRANCHISEE ACCEPTS THE FRANCHISE AREA IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE FRANCHISE AREA, including, but not limited to the physical condition of the Franchise Area; zoning status; presence and location of existing utilities; operating history; compliance by the Franchise Area with Environmental Laws or other Laws and other requirements applicable to the Franchise Area; the presence of any Hazardous Substances or wetlands, asbestos, or other environmental conditions in, on, under, or in proximity to the Franchise Area; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Franchise Area; the condition of title to the Franchise Area, and the leases, easements, Franchises, orders, licensees, or other agreements, affecting the Franchise Area (collectively, the "**Condition of the Franchise Area**").

Franchisee represents and warrants to the City that neither the Franchisee nor its contractors or subcontractors have relied and will not rely on, and the City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Condition of the Franchise Area or relating thereto made or furnished by the City, or any agent representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose.

2.7 Transfer. Franchisee may Transfer this Franchise after prior written notice to the City and Transferee's written commitment, in substantially the form of the agreement attached hereto as Exhibit "A", delivered to the City, that transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that transferees will be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be Transferred without filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this franchise and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to the City: (i) lease the Utility System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Utility System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Utility System to another Person; provided that, Franchisee at all times retains exclusive control over its Utility System and remains

responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-Party beneficiary hereunder; and, no such Person may use the Utility System for any purpose not authorized herein.

2.8 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue its Facilities in the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City.

2.9 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

3.1 Compliance with Laws. Except as provided herein pursuant to Section 3.3, the Franchisee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way.

3.2 Police Powers. Franchisee acknowledges that its rights hereunder are subject to those powers expressly reserved by the City and further are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public. Franchisee agrees to comply with all lawful and applicable general ordinances now or hereafter enacted by the City pursuant to such power. Such powers include but are not limited to, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations governing work performed in the Public Right-of-Way. However, this Section 3.2 shall not be read or interpreted as a waiver of any vested rights Franchisee may have or a waiver of any rights Franchisee may have for a Facility that qualifies as a nonconforming use.

3.3 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City's police power.

3.4 Reservation of Rights/Wavier. The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and

requirements of applicable Law, or to delegate that power and right, or any part thereof, to the extent permitted under Law, to any agent in the sole discretion of the City. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee. Nothing in this Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding Franchises, fees to be paid or manner of Construction. Nothing in this Franchise shall be deemed to waive and Franchisee specifically reserves the right to challenge any City ordinance, regulation or resolution that conflicts with its rights under this Franchise.

3.5 Subsequent Action. In the event that after this Franchise becomes effective, (a) there is a change in or clarification of the Law which changes, broadens or clarifies the authority or obligations of the City or the Franchisee with respect to any act permitted or authorized under this Franchise, or (b) the State of Washington or any agency thereof or any agency of the Federal government require Franchisee or the City to act in a manner which is inconsistent with any provisions of this Franchise, or (c) any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Franchise, or its application to any person or circumstance, shall be held to be illegal, invalid or unconstitutional for any reason by any court or agency of competent jurisdiction, or (d) because of a change in circumstances, the City or the Franchisee believe that amendments to this Franchise are necessary or appropriate, then the City and the Franchisee agree to enter into good faith negotiations to amend this Franchise so as to enable the City and Franchisee to address, in a manner reasonably acceptable to the City and Franchisee, such change or other development which formed the basis for the negotiations. The City and Franchisee recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with Law, the intent, scope and purpose of this Franchise.

If the terms of this Franchise are materially altered due to changes in or clarifications governing Law or due to agency rule making or other action, then the Parties shall negotiate in good faith to reconstitute this Franchise in a way consistent with then-applicable Law in a form that, to the maximum extent possible, is consistent with the original scope, intent and purpose of the City and Franchisee and preserves the benefits bargained for by each Party.

3.6 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinance in effect upon the Effective Date and a

provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement Municipal Code or City ordinance shall control to the extent of such conflict.

3.7.2 In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinance enacted subsequent to the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the Municipal Code or City ordinance shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise.

ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or such other person as may be designated by the City, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "B", together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.8 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.4 herein.

4.1.3 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Sections 5.8 and 8.18 herein.

4.1.4 Parental Guarantee, if required, in conformance with the requirements of Section 5.5 herein.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. Except as provided in this Section 4.2 below, the failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void. In the event that Franchisee timely files its written acceptance but fails to timely comply with the applicable requirements of sections 4.1.1 through 4.1.4, this Franchise shall be voidable in the sole discretion of the City (*Manager*)(*Administrator*)(*Mayor*) without further action required by the City Council or the consent of the Franchisee. The Franchise shall be voidable until such time as Franchisee complies with all of the applicable requirements of sections 4.1.1 through 4.1.4. No opportunity to cure or public hearing is required to void the Franchise pursuant to this Section 4.2 by giving written notice of the Same to Franchisee.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and franchise shall be 12:01 a.m. on the 31st day following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the term hereof.

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless sooner terminated, revoked or rendered void. No more than 180 days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional _____ year term upon the same terms and conditions as provided herein. The City Manager is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and accepts the City's legal right to grant this Franchise;

4.4.3 Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable Law and that it will not raise any claim to the contrary.

4.4.4 Agrees that it enters into this Franchise freely and voluntarily, without any duress or coercion, after free and full negotiations, after carefully reviewing all of the provisions, conditions and terms of this Franchise Agreement, and after consulting with counsel;

4.4.5 Acknowledges and agrees that; it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it has had the assistance of counsel; it was not induced to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City.

4.4.6 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject.

4.4.7 Warrants that acceptance of this Franchise by Franchisee has been duly authorized by all requisite Board action, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any

other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its structures or property from the Public Rights-of-Ways and restore the Public Right-of-Way to such condition as the City may reasonably require all at Franchisee's expense; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) upon City approval, to the extent the City may lawfully require its approval; or (3) abandon any Facilities in place in the Public Rights-of-Way upon written notice to the City of Franchisee's intent to so do. If, within ninety (90) days of the City's receipt of Franchisee's notice of abandonment, the City determines that the safety, appearance, or use of the Public Rights-of-Way would be adversely affected, the Facilities must be removed by the Franchisee by a date reasonably specified by the City in light of the amount of work to be performed. In the event of failure by Franchisee properly to perform such work, then the City may, after thirty (30) days written notice to Franchisee, perform the work and collect the actual and reasonable costs thereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

5.1 Limitation of Liability

5.1.1 INDEMNITY/RELEASE/DEFENSE. EXCEPT AS MAY BE OTHERWISE PROVIDED PURSUANT TO SECTION 5.2 OF THIS FRANCHISE WITH RESPECT TO ENVIRONMENTAL LIABILITY, TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM, AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND, OR DESCRIPTION, OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY, ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 THIS FRANCHISE;

5.1.1.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS FRANCHISE;

5.1.1.3 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHT-OF-WAY;

5.1.1.4 FRANCHISEE'S OPERATION OF THE UTILITY SYSTEM;

5.1.1.5 THE PRESENCE OF THE UTILITY SYSTEM WITHIN THE PUBLIC RIGHT-OF-WAY;

5.1.1.6 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PUBLIC RIGHT-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS;

5.1.1.7 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHT OF WAY; OR

5.1.1.8 THE CITY'S PERMITTING FRANCHISEE'S USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY OR OTHER PUBLIC PROPERTY,

(EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.)

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, (1) as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Right-of-Way or other public place in performance of work or services Permitted under this authorization or lease; (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties; and (3) solely by virtue of the City's inspection or lack of inspection of Work in the Public Right-of-Way.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against

any Indemnitee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation assume liability for and/or save and hold harmless any Indemnitee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. 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, Franchisee shall select additional counsel with no conflict with the City.

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

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. 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 of any of these covenants of indemnification.

5.2 Environmental Liability. See attached Exhibit "C".

5.3 Insurance Requirements. See Attached Exhibit "D".

5.4 Financial Security. See Attached Exhibit "E".

5.5 Parental Guarantee. If the Franchise is wholly owned or is controlled by another Person, the City may require Franchisee to cause such Person to provide, upon acceptance of this Franchise, a guarantee by such Person of performance by the Franchisee of Franchisee's rights, duties and obligations herein, in substantially the form of the parental guarantee attached hereto as Exhibit "F". "Control" shall mean de jure or de facto control over the Franchisee and does not necessarily imply a majority ownership of Franchisee by such Person. If Franchisee is a partnership or limited liability company or similar entity, the City may require a guarantee from the principal partners/members of the partnership, limited liability company or similar entity.

5.6 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "G".

5.7 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.8 Financial Conditions.

5.8.1 Franchise Fees. During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by Franchisee from any Services provided by Franchisee using the Franchise Area to be subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and Franchisee shall negotiate a reasonable Franchise fee or other fee in lieu of a Franchise fee, consistent with federal and/or state Law. The fee shall be comparable to fees received by the City for other similar uses of the Public Rights of Way.

5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall reimburse the City for the City's Direct Costs relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise.

5.8.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the road Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with the Regulatory Permit.

Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with Standards and 100% Design Submittal.

5.8.4 Reimbursement of Direct Costs of altering Public Rights-of-Way. Franchisee shall reimburse the City for the Direct Costs incurred by the City in planning, designing, constructing, installing, repairing or altering any City infrastructure, structure, or facility as the result of the actual or proposed presence in the Public Right-of-Way of Franchisee's Facilities. Such costs and expenses shall include, but not be limited to, the Direct Costs of City personnel and contractors utilized to oversee or engage in any work in the Public Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way, and any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any public utilities or Public Rights-of-Way so as not to interfere with Franchisee's Facilities. Upon request as a condition of payment by Franchisee, all billing will be itemized so as to specifically identify the Direct Costs and expenses for each project for which the City claims reimbursement. A reasonable charge for the actual cost incurred in preparing the billing may also be included in said billing.

5.8.5 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.8.6 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City of performing such work.

5.8.7 Costs to be Borne by Franchisee. Franchisee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.8.8 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.8.9 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall

submit an itemized billing so as to specifically identify the Direct Costs incurred by the for each project for which the City claims reimbursement.

5.8.10 Time for Payment. All non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within (30) days of receipt of the itemized invoice.

5.8.11 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at a rate of twelve (12%) percent per annum.

5.8.12 Contesting charges. Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.8.13 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise; provided, however, such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Dispute Avoidance/Mediation.

6.1.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will, as a condition precedent to taking Legal Action, attempt to resolve any such Disputes through discussions between representatives of each Party as set forth in this Section 6.1.

6.1.2 Representatives. If a Dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Dispute.

Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

6.1.3 Mediation. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties hereby agree that the matter shall be referred to mediation. Either Party may request mediation upon a determination by that Party that the Parties are unable to resolve the Dispute pursuant to Section 6.1.2 herein. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of seven (6) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a Party fails to notify the other Party of which mediator it has stricken within two (2) business days, the other Party shall have the option of selecting the mediator from those mediators remaining on the list. Unless the Parties agree otherwise, mediation shall commence in no case later than thirty (30) days after a mediator is selected. Any expenses incidental to mediation shall be borne equally by the Parties.

6.1.4 Intent. The obligations of this Section 6.1 are not intended and shall not be construed to prevent a Party from, assessing liquidated damages, issuing an order to cure an alleged Non-Material Breach, or taking Corrective Action. The intent of the Parties is to require compliance with this Section 6.1 before either party may commence a Legal Action in a court of proper jurisdiction.

6.2 Remedies. The Parties have the right to seek any and all of the following remedies, singly or in combination, in the event of Material Breach:

6.2.1 Specific Performance. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Permit without any requirement to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that either Party would not have an adequate remedy at law for the commission of an Event of Default hereunder.

6.2.2 Injunction. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Franchise without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that the other Party would not have an adequate remedy at law for the commission of an Event of Default hereunder.

6.2.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either Party to commence an action for equitable or other relief, and/or proceed against the other Party

and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, bring a Legal Action for damages Commence an action at law for monetary damages or impose liquidated damages as set forth below or seek other equitable relief.

Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar the City from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Breach.

6.3.1 Notice. If a Party believes that the other Party is in Non-Material Breach, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged non-material Breach. The Noticed Party shall have thirty (30) days, or such lesser or greater time as specified in the notice, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Breach has occurred, and request a meeting in accordance with Section 6.1; or

6.3.1.2 Cure the Breach; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the Breach within the time provided in the notice, because of the nature of the Breach. In the event the Breach cannot be cured within time provided in the notice, the Noticed Party shall promptly take all reasonable steps to cure the Breach and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Communication. If the Noticed Party does not cure the alleged Non-Material Breach within the cure period stated above, or denies the alleged Non-Material Breach the Parties shall meet in accordance with Section 6.1 to attempt to resolve the Dispute.

6.3.3 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Breach, the nature and scope of the work required to cure the Breach, whether the Breach has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implement a cure will result in a violation of Law or breach of contract.

6.3.4 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Non-Material Breach to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Breach, then the Non-Material Breach shall become a Material Breach.

6.4 Material Breach. In the event of a Material Breach, no opportunity to cure shall be required. If the Material Breach has arisen as a result of a failure to cure a non-material Breach, and the Parties have previously mediated the Dispute pursuant to Section 6.1 herein, the Parties are not obligated to further utilize the Dispute resolution process set forth at Section 6.1 before taking Legal Action to remedy the Material Breach created as a result of the failure to cure.

6.5 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Material Breach, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.5.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise and request a meeting and commence dispute resolution pursuant to Section 6.1 of this Franchise. The notice shall set forth the exact nature of the Material Breach. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation. If the Material Breach has arisen as a result of a failure to cure a non-material Breach, and the Parties have previously mediated the Dispute pursuant to Section 6.1 herein, the Parties are not obligated to utilize the Dispute resolution process before proceeding to a public hearing as provided as 6.5.2 herein.

6.5.2 Hearing. In the event the City is unable to resolve the Dispute as to the Material Breach to the satisfaction of the City pursuant to Section 6.1 herein, the City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

6.5.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise is warranted.

6.5.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing

Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

6.5.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise or Site Specific Permit. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made.

6.5.3 Decision to Terminate. The City may consider the following when determining whether or not to terminate/revoke the Franchise based upon the Material Breach:

6.5.3.1 The history of non-compliance by Franchisee with material terms and conditions of this Franchise;

6.5.3.2 Whether other remedies will achieve compliance with this Franchise;

6.5.3.3 Whether the Franchisee has acted in good faith;

6.5.3.4 Whether the acts or omissions that gave rise to the Material Breach were willful or indifferent to the requirements that gave rise to the Material Breach;

6.5.3.5 Whether the type of services provided by the Franchisee will be available to the general public through other providers;

6.5.3.6 Whether services provided by the Franchisee are essential public services or regulated utilities;

6.5.3.7 The impact or potential impact of the Material Breach upon the public health, safety and welfare;

6.5.3.8 The economic risk the City is exposed to as a result of the Material breach;

6.5.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.5.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Material Breach and/or to whether or not the continued presence and operation of the Franchisee Facilities with the Franchise Area will be harmful to the public health, safety or welfare.

6.6 Assessment of Liquidated Damages.

6.6.1 Because it may be difficult to ascertain or quantify the harm to the City in the event of a Breach of this Franchise by Franchisee, the Parties agree to liquidated damages as a reasonable estimation of the actual economic losses resulting from a Breach of those provisions of this Franchise set forth as Section 6.6.7 herein. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for recovery of compensatory damages resulting from such Breach and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a Breach that continues past the time the City stops assessing liquidated damages for such breach.

6.6.2 Prior to assessing any liquidated damages, the City shall follow the procedures set forth in this Franchise that provide the Franchisee proper notice and a right to cure when applicable.

6.6.3 With the exception of failure to comply with a stop work order pursuant to Section 7.5.7 herein, the City shall not assess any liquidated damages if the Franchisee has cured or commenced to and completes the cure under the enforcement provisions of Article 6 of this Franchise. In the event Franchisee fails to cure, the City may assess liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the damages. The City may immediately begin assessing liquidated damages upon issuance of a stop work order in the event that the Franchisee, or its contractors or subcontractors, fails to comply with such stop work order.

6.6.4 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day that the Franchisee received the notice of Breach.

6.6.5 Franchisee may appeal (by pursuing Legal Action) any assessment of liquidated damages upon paying the assessment and shall not be required to comply with the requirements of Section 6.1.

6.6.6 The liquidated damages amount may be adjusted by the City every five years from the date of execution of this Franchise, to take into account cumulative inflation.

6.6.7 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: one hundred dollars (\$100.00) per day for failure to comply with the requirements of the following Sections: 4.5 (Expiration/Termination), 5.3 (Insurance), 5.4 (Financial Security), 5.5 (Parental Guarantee); 7.5.3 (Work Subject to Inspection); 7.7.2 (Facilities Subject to Inspection); five hundred dollars (\$500) per day for the first two days for failure to comply with the requirements of 7.5.7 (Stop Work Order), and one thousand dollars (\$1,000) per day for each day thereafter; and one hundred dollars (\$100.00) per day for any material breaches or defaults not previously listed.

6.6.8 It is not the City's intention to subject the Franchisee to liquidated or monetary damages, fines, forfeitures or termination of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact to the City, or where strict performance would result in practical difficulties and hardship to the Franchisee which outweighs the benefit to be derived by the City. The City may not collect both liquidated damages and actual damages for the same violation.

Franchisee shall not be: (1) obligated to pay these liquidated damages; or (2) held to violation if the noncompliance is "beyond the control" of Franchisee as that term is defined in Section 8.15 herein.

6.7 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of jurisdiction, this Franchise or any Site Specific Permit may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.7.1 The receivership or trusteeship is timely vacated; or

6.7.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

7.1 Permits.

7.1.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Right-of-Way, the City shall, to the extent

practicable, consider such application contemporaneously with the design review requirements hereunder.

7.1.2 Development Permit(s). In the event that, as a condition of applying for a Development Permit or a variance for Work within the Public Right of Way, Franchisee must have authorization from the City (as the owner/manager of the property to be developed) to apply for such Development Permit, the general franchise grant given herein shall, as to the proposed Franchise Area, constitute any such consent or authorization of the City that is necessary for such application. This authorization is not intended to and does not operate to waive the requirement for Franchisee to apply for and obtain all applicable Regulatory Permits prior to commencement of Work within the Franchise Area nor shall such consent or authorized be deemed to be consent to or approval of the governmental action being sought. This authorization/consent is intended solely to allow the Franchisee to seek a Development Permit(s) or variance prior to or contemporaneous with its application for a Regulatory Permit.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location the Facilities in a Franchise Area, Franchisee shall provide the City with 100% Design submittal for review and approval of any Utility System Construction, alteration or change of location within the proposed Franchise Area.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work May not commence without prior approval by the City of the 100% Design Submittal of submitted by the Franchisee. The City may review and approve the Franchisee's 100% Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals,

traffic control signs, intersections, or other facilities and structures in the Public Right-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards and codes; and

7.2.3.7 Compliance and compatibility with the City's six-year transportation plan, capital improvements plan, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Road and Bridge Standards. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Requirements and standards set forth as special conditions;

7.3.4 City Regulations. City Ordinances and regulations adopted by the City Engineer or Public Works Director establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any road design standards that the City shall deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance and maintenance;

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations,

Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City building codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Prior to performing any Work in the Public Right-of-Way requiring a regulatory permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise, including by way of example and not limitation, payment of fees invoiced to Franchisee for City reimbursable costs and expenses related to review and approval of the Site Specific Permit, proof of insurance and proof of financial security.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, Franchisees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are Interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. Franchisee's Facilities shall be designed, located, aligned and Constructed in such a manner as not to interfere with any planned utilities. For purposes of this Section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the Capital Investment Program Plan, a comprehensive utility plan, a transportation improvement plan, the City's Comprehensive Plan, or other written construction or planning schedule.

7.5.2 Prevent Injury/Safety. All Construction Work shall be performed in a manner consistent with high industry standards.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with the Utility Franchise, this Franchise, applicable Law, the applicable approved 100% Design Submittal, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Publicizing Work.

7.5.4.1 Notice to Private Property Owners. Except in the case of an Emergency, Franchisee shall give reasonable advance notice to private property owners and tenants of Construction Work on or adjacent to such private property if the City or Franchisee reasonably anticipates such Work will materially disturb or disrupt the use of such private property.

7.5.4.2 Notice to the Public. Except in the case of an Emergency, the Franchisee shall notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4.3 Additional Requirements. Work shall be publicized as the City may direct, from time to time, in accordance with written procedures established by the City Manager and on file with the City Clerk. The publication of Work may be used to notify the public and operators of other Utility Systems of the impending work, in order to minimize inconvenience and disruption to the public. The cost of publication shall be borne by the Franchisee.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and 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 it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Public Works Director of the need for such repairs. Franchisee may initiate such Emergency repairs, and shall apply for appropriate Utility Permits within forty-eight (48) hours after discovery of the Emergency.

In the event of an Emergency, a Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Regulatory Permit for such Emergency Work, provided that: (1) the Franchisee notifies the City in advance of the Emergency requiring the performance of such Emergency Work and the type and location of such Work; (2) the Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) the Franchisee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 100% Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be, in writing, given to the Person doing the work and be posted on the work site, indicate the nature of the alleged violation or unsafe condition; and Establish conditions under which work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee □

7.5.8 Dedication of City Utilities/Public Improvements. Upon substantial completion of Construction of the Facilities and any related restoration of or improvements to or within the Public Rights-of-Way, including without limitation, curbs, gutters, sidewalks, underlayment, roadway surface, pipe, connectors, catch basins, or any part thereof that will be dedicated to City ownership (collectively “Dedicated Improvements”), and upon satisfaction of other applicable conditions of the City and this Franchise, Franchisee shall submit a written request to the City for a final inspection and acceptance of dedication of all Dedicated Improvements. The written request shall certify that the Work is substantially complete. The Work will be deemed to be “substantially complete” when:

7. 5.8.1 Complete record drawings are provided to the City;

7. 5.8.2 Franchisee has completely and accurately identified within the record drawings the Dedicated Improvements;

7. 5.8.3 The Dedicated Improvements are functioning to the satisfaction of the City, and when appropriate, operationally tested;

7. 5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City;

except for punch list items which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

7. 5.8.5 No other acts are necessary to assign ownership of any and all Dedicated Improvements to the City free and clear of all liens and encumbrances;

7. 5.8.6 Franchisee has assigned to the City any and all manufacturer warranties of the Dedicated Improvements, if any; and

7. 5.8.7 Franchisee, or its contractors or subcontractors, warrant the Dedicated Improvements to be free from defects in design, manufacture and construction for a period of one year from the date that such Dedicated Improvements are accepted by the City. This warranty shall not operate to waive, alter or diminish any rights the City may otherwise have under this Franchise, at law, or in equity.

Upon receipt of Franchisee's request for final inspection and dedication, the City shall within twenty (20) business days thereafter arrange for a final inspection. If the City determines that the Work with regard to the Dedicated Improvements is not substantially complete, it shall promptly provide Franchisee with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

When the City is satisfied that the Work related to the Dedicated Improvements is substantially complete, it will by ordinance, resolution or other lawful means accept ownership of such Dedicated Improvements and thereafter become responsible for maintenance, repair, and replacement of the same.

7.6 Alterations. Except as may be shown in the 100% Design Submittal approved by City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee's contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without City's prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities or the addition of or change in configuration of an antenna. If Franchisee desires to change either the location of any Facilities or otherwise materially deviate from the approved design of any of the Facilities, Franchisee shall submit such change to City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received City's approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Utility System.

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or Site Specific Permit or other applicable Law over which the City has jurisdiction. Franchisee shall respond to requests for information regarding its Utility System as the City may from time to time issue to determine compliance with this Franchise, including requests for information regarding the Franchisee's plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 48 hours after notice from the City, Franchisee shall remove any graffiti on any part of its Utility System, including, by way of example and not limitation, equipment cabinets. If Franchisee fails to do so, the City may remove the graffiti and bill the Franchisee for the cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the 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, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of City to inspect the Work, issue a stop work order, and order or make repairs or alterations, City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and

operated in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, or in the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, the Franchisee shall:

7.7.7.1 If the hazard results from disrepair, repair the Facility to a safe condition;

7.7.7.2 Relocate the Facility to another place within the Public Right-of-Way or underground;

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

7.7.7.5 Relocate the Facility to another location off the Public Rights-of-Way; or

7.7.7.6 In the event that the Facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the Facility.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days notice by the City and in order to facilitate the location, alignment and design of Public Improvements, the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record

drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7.8.1 Public Project. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety (“Public Improvements”). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity.

7.8.2 Alternatives. If the City requires Franchisee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines, in its sole discretion, that there is no other reasonable alternative, the Franchisee shall relocate its Facilities as otherwise provided in this Section. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee’s proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.4 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the

relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.5 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Rights-of-Way, and result in damage to the City, including but not limited to, delay claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

7.8.6 Failure to Comply. Should Franchisee fail to alter, adjust, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to the Franchisee, including all reasonable costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's Utility System. In addition to any other indemnity set forth in this Franchise, the Franchisee will indemnify, hold harmless, and pay the costs of defending the City, from and against any and all claims, suits, actions, damages, or liabilities for delays on Public Improvement construction projects caused by or arising out of the failure of the Franchisee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, the Franchisee shall not be responsible for damages due to delays caused by the City.

7.8.7 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Sections 7.8 or 7.10 of this Franchise to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way. Franchisee acknowledges and consents to such an assignment(s)/transfer(s) and agrees that it is bound by all lawful orders issued by such assignee(s) of the City under color of authority of such assignment(s)/transfer(s) as though such orders had been issued by the City under the terms and conditions of this Franchise. Such assignment/transfer is an assignment/transfer of the City's contract rights under this Franchise and shall not in any way be interpreted or construed as an assignment, transfer, delegation or relinquishment of the City's rights under its police powers to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way.

7.8.8 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in statute.

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Utility System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least ninety (90) days advance written notice, take action to effect the necessary changes requested by the responsible entity; provided that, (a) the Party requesting the same pays for the Franchisee's time and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; (c) the Person requesting the alteration, adjustment, relocation, or protection in place considers alternatives in the same manner as provided at Section 7.8.2; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than seven (7) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to shut down, relocate, remove, replace, modify, or disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Utility System located within the Public Rights-of-Way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting utility service. If after providing notice, there is no immediate response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Utility System located within the Public Rights-of-Way.

7.10.4 Limitation on Liability. The City shall not be liable 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.

7.11 Record of Installations

7.11.1 Map/Record Drawing of Utility System. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content prescribed by the City reflecting the horizontal and vertical location and configuration of its Utility System within the Public Rights-of-Way and upon City property in a format acceptable to the City. Franchisee shall provide the City with updated record drawings and maps upon request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Utility System is shown, such Utility System is shown in its approximate location.

7.11.2 Planned Improvements. Upon written request of the City, Franchisee shall provide the City with the most recent update available of any planned improvements to its Utility System to the extent such plans do not contain confidential or proprietary information or such information can be redacted; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate Franchisee to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements.

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all of located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Utility System is shown, such Utility System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Utility System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City.

7.12.2 Notice. If Franchisees Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to the Public Right-of-Way or other public property, it shall promptly remove any obstructions therefrom and

restore such Public Rights-of-Way and public property to the satisfaction of the City to as good or better a condition as existed before the Work was undertaken, unless otherwise directed by the City. If the City determines that complete or satisfactory restoration is not obtainable, the City shall have the right to require compensation for the less than complete or satisfactory condition of the Public Right-of-Way or public property. Franchisee shall complete the restoration work within forty-eight (48) hours or as authorized by the City's Public Works Director.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The Public Works Director shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Right-of-Way or on other public property for one (1) year, unless a longer period is required by the Municipal Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Franchisee shall pay the City.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Right-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item

reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Utility System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Utility System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 90 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Public Rights-of-Way Facilities by a date specified by the City and restore the Public Rights-of-Way to the same or better condition than existed immediately prior to removal. Within 60 days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances. Absent such request and conveyance, Franchisee shall be and remain responsible for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8 MISCELLANEOUS

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2. Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Breach of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Section 7.8.7 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or its successor), or by the Public Works Director's designee.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Breach shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Breach thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the

injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder; provided, however, that if either Franchisee or the City prevails in any proceeding seeking a finding that any Term invalid, illegal or unconstitutional for any reason, this Franchise shall be declared terminated and all rights and obligations hereunder shall immediately cease and be of no force and effect except with regard to those provisions that survive termination of this Franchise pursuant to Section 8.14 herein. In the event that such Term shall be held or otherwise mutually agreed to by the City and Franchisee to be illegal, invalid, or unconstitutional, the Parties shall reform the Franchise pursuant to Section 3.5 herein.

8.11 Signs. No signs or advertising shall be Permitted in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or Permitted to be given hereunder shall be in writing, unless otherwise expressly Permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee's address: Unite Private Network
950 W 92 Hiway, St 203
Kearney, MO 64060

The City's Address: **City of Puyallup**
Attn. City Manager
333 S. Meridian
Puyallup, WA 98371

And to the City Attorney **Office of City Attorney**
Attn. City Attorney
333 S. Meridian
Puyallup, WA 98371

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses, except by mutual agreement.

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Utility System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, the Franchisee transfers ownership of all Facilities in the Franchise Area to a third-Party, or the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its facilities, and to reimburse the City for its costs to perform Franchisee work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Breach of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's

employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to dispute resolution proceedings under section 6.1 of this Franchise and shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of County in which the City is located, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

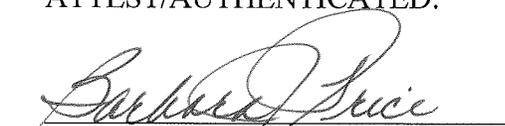
8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 12th DAY OF JANUARY, 2010, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 14 DAY OF January, 2010.

CITY OF PUYALLUP


Kathy R. Turner, Mayor

ATTEST/AUTHENTICATED:


Barbara J. Price, City Clerk

Approved as to form:



Cheryl F. Carlson, City Attorney

Ordinance No. 2949

Date of Publication: January 13, 2010

Effective Date: February 12, 2010

EXHIBIT "A"

(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT ("Agreement") is made this ___ day of _____, 20___, by and between:

1. PARTIES.

1.1 City of Puyallup, a legal subdivision of the state of Washington ("City").

1.2 _____ ("Franchisee").

1.3 _____ ("Transferee").

RECITALS

WHEREAS the City has issued a single Franchise (the "Franchise") to Franchisee, which was authorized on the ___ day of _____, 20____, pursuant to Ordinance No. _____, and

WHEREAS Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

_____ with Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)* _____, and

WHEREAS Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee, and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, will meet or exceed all applicable and lawful federal, state, and local requirements, and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the ___ day of _____, 20___, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of franchise and performance guarantee attached hereto as Exhibit A-1 together with all required certificates of insurance, security fund and performance bond.

2.2 Payment to the City of the Transfer fees.

2.3 The date of closing of the sale/conveyance of the property benefited by this franchise and/or the Facilities located in the franchise area or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows:_____

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the franchise or pursuant to the City code, rules, and regulations that accrued before the transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of the this agreement shall in no way be deemed a representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this agreement and the resulting transfer is made in reliance upon the

representations, documents, and information provided by the Franchisee and Transferee in connection with the request for transfer.

4. MISCELLANEOUS PROVISIONS.

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this transfer, (2) its acceptance of the franchise in substantially the form of the document attached hereto as Exhibit A-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

(Signatures on the following page)

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY

FRANCHISEE

By: City Manager/Administrator

By: _____
Title: _____

TRANSFeree

By: _____
Title: _____

TRANSFER EXHIBIT A-1

Acceptance of Franchise and Performance Guarantee

Franchise issued pursuant to Ordinance No. _____ and accepted _____,
20____; Transfer authorized pursuant to Resolution No. _____, effective _____,
20____.

I, _____, am the _____,
and (am the authorized representative to) accept the above-referenced Franchise on
behalf of _____. I certify that this Franchise and all
terms and conditions thereof are accepted by _____, without
qualification or reservation and that _____ unconditionally
guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____

ss.

CITY OF _____

I certify that I know or have satisfactory evidence that
_____ is the person who appeared before me, and said person
acknowledged that said person signed this instrument, on oath stated that said person was
authorized to execute the instrument and acknowledged it (as the
_____ of _____, a _____
corporation,) to be the free and voluntary act of such corporation/individual for the uses
and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of

_____, residing at _____

My appointment expires _____

EXHIBIT "B"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____,
and (am the authorized representative to) accept the above-referenced Franchise on
behalf of _____. I certify that this Franchise and all
terms and conditions thereof are accepted by _____, without
qualification or reservation and that _____ unconditionally
guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20__.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____

CITY OF _____

ss.

I certify that I know or have satisfactory evidence that
_____ is the person who appeared before me, and said person
acknowledged that said person signed this instrument, on oath stated that said person was
authorized to execute the instrument and acknowledged it (as the
_____ of _____, a _____
corporation,) to be the free and voluntary act of such corporation/individual for the uses
and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of
_____, residing at _____

My appointment expires _____

EXHIBIT "C"

(Environmental Indemnity)

1. Duty to Indemnify/Release/Defend. Franchisee assumes the risk that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever the City and City's officers, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Franchisee might have asserted or alleged against Indemnitees arising from or in any way related to the Condition of the Franchise Area or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Franchise Area (the "**Franchisee Losses**"). Franchisee Losses shall include without limitation (a) the cost of any investigation, removal, or Remedial Action (defined below) that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after the date hereof. Except as may be limited below, Franchisee Losses specifically include losses sustained by Franchisee as a result of any obligation of Franchisee to remove, close, Remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Franchise Area. Notwithstanding the above, Franchisee Losses waived, released, and discharged hereunder by Franchisee shall not include losses as a result of releases or contamination caused by the acts of the City after the Effective Date. The rights, duties and obligations of the city and franchisee pursuant Sections 2 and 3 herein apply to the duty to Indemnify and defend as provided in this Section 1.

2. Discovery Within Franchise Area. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances ("**Discovered Matters**") in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the "**Excavated Areas**"), the Franchisee shall immediately notify the City and take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an agency with jurisdiction to address Hazardous Substances in, on or upon the Franchise Area ("**Environmental Authority**") orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or Franchisee, or Franchisee decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, Franchisee agrees to indemnify, defend, and hold the City harmless from and against the cost of all Remedial Actions which are required by the Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, the City, subject to the

provisions of Section 3 below, shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Franchise Area (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

3 Release by Franchisee. In the event the Franchisee's Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee's share of the liability for the release. Franchisee's liability for the release may, inter alia, be determined by Franchisee's admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

EXHIBIT "D"

(Insurance Requirements)

1 General Requirement. Commencing upon issuance of the first Site Specific Permit under this Franchise, Franchisee must have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise or Site Specific Permit, or involve the Facilities, Franchisee, its agents, representatives, contractors, subcontractors and their employees.

2 Minimum Insurance Limits. The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate limit location endorsement for the Franchise Area, and shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended and specific coverage for the indemnity provisions set forth herein. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence,
\$4,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance with limits of \$1,000,000 each occurrence.

2.4 Excess or Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 policy limit.

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

3 Endorsements. Franchisee Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Franchisee's insurance coverage 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 the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the 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.

3.4 The Franchisee's insurance shall name the City as an additional insured, and other Persons to whom the City is obligated under separate agreement or by Law, to protect or insure as an additional insured, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17.

3.6 The insurance coverages and limits provided herein shall not be canceled or reduced, nor the intention not to renew be stated so as to be out of compliance with the requirements herein without thirty (30) days written notice, certified mail, return receipt requested, first being given to the City. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4 Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A" and in a financial size category of no less than "X", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5 Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with

standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6 Deductible. Commercial General Liability Insurance policies and coverage required herein may include a reasonable deductible not to exceed 10% of the minimum per occurrence commercial general liability policy limits; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

7 No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

8 Modifications of Coverages and Limits. The City reserves the right, during the term of the Franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

9 Public Franchisees. Franchisee Commercial General Liability, Automobile liability and Umbrella Coverage Insurance policies and coverage required herein for Public Franchisees may include a reasonable a self-insured retention; provided, however, that as to any self-insured retention, Franchisee shall itself directly cover, in lieu of insurance, any and all City liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a self-insured retention. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual self-insured retention. "Public Franchisee" for purposes of this Section 9 shall mean and include, any Franchisee organized as a political subdivision of the state of Washington, but shall not mean or include agents, contractors and subcontractors of Franchisee that are not also organized as political subdivisions. Franchisee shall be required to provide verification of self-insurance retention coverage in a form and content acceptable to the City.

EXHIBIT "E"

(Financial Security)

1 Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$50,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2 Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election or upon order by the City pursuant to Section 4 herein, substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities

hereto under this Franchise and all applicable Laws. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

The City shall notify Franchisee in writing, by certified mail, of any default and shall give Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the City, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

3 Restoration Bond.

3.1 Unless otherwise provided in a Regulatory Permit issued by the City for work within the Public Right-of-Way, or by City ordinance, code, rule, regulation or Standards, the City may require Franchisee to enter into a performance agreement, secured by a restoration bond written by a corporate surety acceptable to the City equal to at least _____ percent (___%) of the estimated cost of restoring the Public Rights-of-Way to their pre-construction condition in accordance with Section 7.12 of the Franchise. Such restoration bond shall be deposited before construction is commenced. Such restoration bond may be required, when the City determines that the Performance and Payment Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 Said restoration bond, or a separate bond acceptable to the City, shall warrant all such restoration work for a period of ____ () years.

3.3 In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

3.4 The performance agreement shall guarantee, to the satisfaction of the City:

3.4.1 Timely completion of construction;

3.4.2 Construction in compliance with applicable approved plans, Utility Permits, technical codes, and Standards;

3.4.3 Proper location of the Facilities as approved by the City;

3.4.4 Restoration of the Public Rights-of-Way and other public or private property disrupted, damaged, or otherwise affected by the construction. The performance agreement shall warrant said restoration work for a period of _____ () years;

3.4.5 The submission of "record" drawings after completion of the Work; and

3.4.6 Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

4 Security Fund.

4.1 If there is an Material Breach by Franchisee or a pattern of repeated Breaches, then Franchisee shall, upon written request of the City, establish and provide to the City a cash deposit or irrevocable letter of credit from a local financial institution satisfactory to the City, in a form and content approved by the City Attorney, and in the amount of \$_____ (\$ _____). Such Irrevocable letter of credit shall be established as security for the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example but not limited to, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, and to reimburse the City for its costs,

4.2 If a cash deposit or letter of credit is furnished pursuant to Section 2, the cash deposit or letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

4.3 Upon a Material Breach, the cash deposit/letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

4.3.1 Failure of Franchisee to pay the City sums due under the terms of this Franchise;

4.3.2 Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Franchisee; and

4.3.3 Monetary remedies or damages assessed against Franchisee as provided in this Franchise.

4.4 Within three (3) days of a withdrawal from the Security Fund, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

4.5 Within thirty (30) days following notice that a withdrawal from the cash deposit/letter of credit has occurred, Franchisee shall restore the cash deposit/letter of credit to the full amount required by Section 4.1. If at the time of a withdrawal from the

Security Fund by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the City until it is paid.

4.6 Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

4.7 Failure to maintain or restore the security fund or letter of credit shall constitute a Breach of this Agreement.

4.8 In the event Franchisee believes that the letter of credit was drawn upon improperly, Franchisee shall give notice to the City and the City and Franchisee shall refer the Dispute to the Dispute Resolution process set forth at Section 6.1 of this Franchise.

4.9 The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable Law, and no action, proceeding, or exercise of a right with respect to such Security Fund or letter of credit will affect any other right the City may have. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

EXHIBIT F

(Form of Parental Guarantee)

This Guaranty is made on the date set forth below by [NAME OF GUARANTOR] (hereinafter referred to as the "GUARANTOR").

RECITALS:

WHEREAS, . ** (*Guarantor*) and the City of **, (the "CITY") have entered into a Franchise Agreement (the "Franchise") dated _____, 20__.

WHEREAS, The Franchise requires GUARANTOR to guaranty the observance, fulfillment and performance of Franchisee's obligations under the Franchise.

NOW, THEREFORE, in partial consideration of the City's grant of the Franchise Agreement to Franchisee and in addition to other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the GUARANTOR hereby agrees to the following:

TERMS:

1. GUARANTOR guarantees to the CITY the observance, fulfillment and performance by Franchisee of each and every obligation of Franchisee in the Franchise, except to the extent that any such provision or obligation is unenforceable under applicable law (the "Guaranty").

2. The Guaranty shall continue in full force and effect until the City releases the Guarantor from its obligations under this Guarantee or otherwise by operation of law or contract. In no event shall the Guaranty extend beyond the original term of the Franchise Agreement.

3. This Guaranty shall be governed by and construed in accordance with the laws of the State of Washington.

4. If any provision of this Guaranty is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction, then such determination shall have no effect on the validity of any other provision of this Guaranty.

IN WITNESS WHEREOF, the GUARANTOR has caused the Guaranty to be executed by its duly authorized representative on the date set forth below.

BY:

NAME:

TITLE:

DATE:

STATE OF _____
CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of _____, residing at _____

My appointment expires _____

EXHIBIT "G"

(Contractor/Subcontractor Insurance Requirements)

1 General Requirement. Prior to commencing and during the period of Work performed within the Public Franchise Area, Franchisee contractors and subcontractors (hereafter the "Contractors") must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this such Work.

2 Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate limit location endorsement for the Franchise Area, and shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence,
\$2,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3 Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor's insurance coverage 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 the Contractor's insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the 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.

3.4 The Contractor's insurance shall name the City as an additional insured, and other Persons to whom the City is obligated under separate agreement or by Law, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17.

3.6 The insurance coverages and limits provided herein shall not be canceled or reduced, nor the intention not to renew be stated so as to be out of compliance with the requirements herein without thirty (30) days written notice, certified mail, return receipt requested, first being given to the City. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

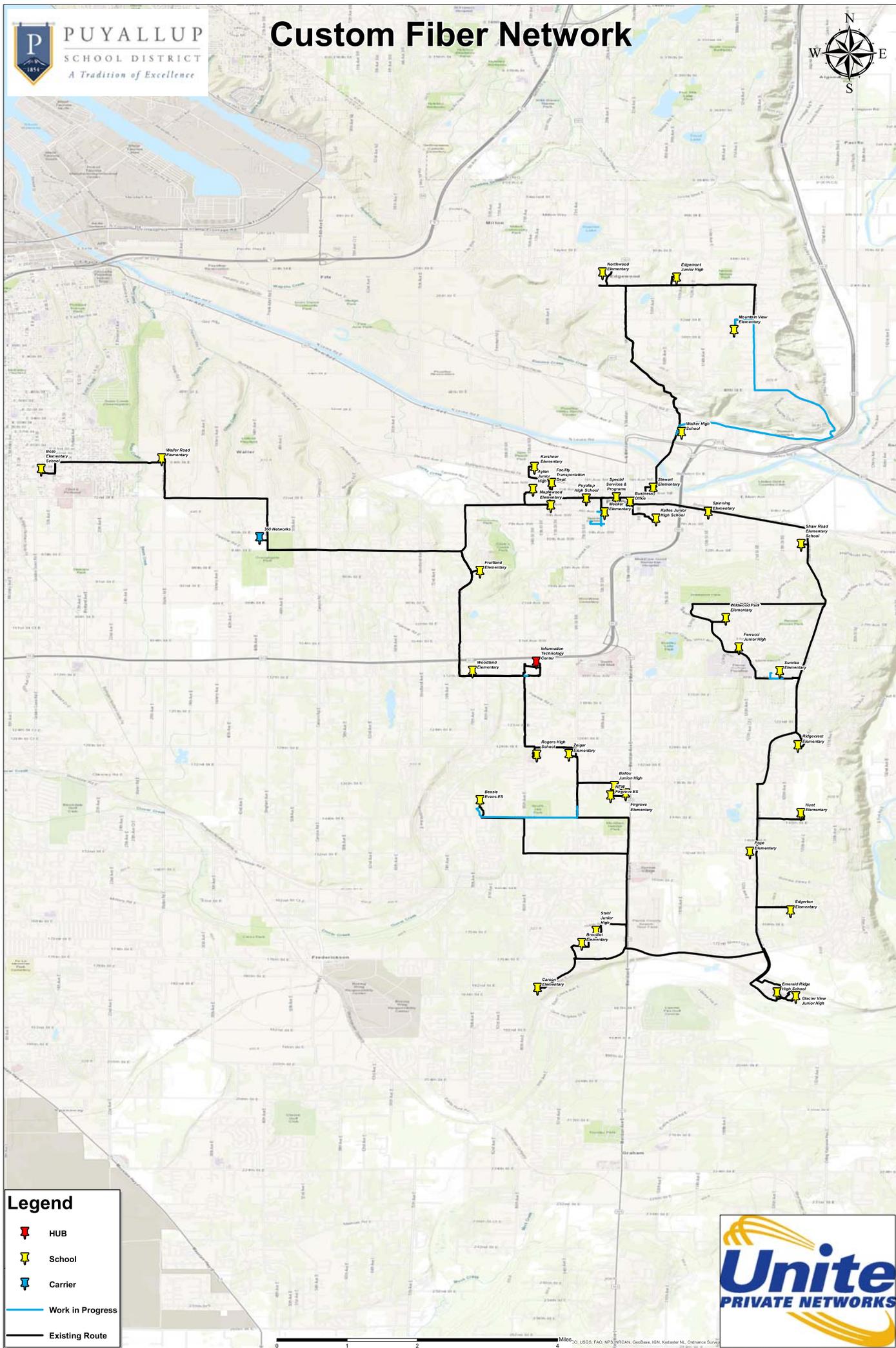
4 Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "IX", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5 Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6 Deductible. Commercial General Liability Insurance policies and coverage required herein may include a reasonable deductible not to exceed ___% of the minimum per occurrence commercial general liability policy limits; provided, however, that if Contractor elects to include any deductible, Contractor shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of these requirements be covered by Contractors insurance if Contractor elected not to include a deductible. Such direct coverage by Contractor shall be in an amount equal to the amount of Contractor's actual deductible.

7 No Limitation. Contractor's maintenance of insurance policies required by herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

8 Modifications of Coverages and Limits. The City reserves the right, during the term of the Franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.



Legend

-  HUB
-  School
-  Carrier
-  Work in Progress
-  Existing Route





City Council Agenda Item Report

Submitted by: Hans Hunger

Submitting Department: Engineering

Meeting Date: 7/21/2020

Subject:

Second reading of an ordinance for a proposed right-of-way vacation along 3rd Ave NW

Presenter:

Hans Hunger, City Engineer

Recommendation:

Approve second reading of an ordinance vacating a portion of 3rd Ave NW located between the 500 and 600 block that lies north of parcel 5870000100 and south of parcels 5870000120 and 5870000110.

Background:

The 3rd Ave NW right-of-way proposed for vacation is all internal to the petitioner's properties. The petitioner for this right-of-way vacation, if vacated, will integrate it into a future site application for the Sound Transit parking garage that will be in conformance with the approved Development Agreement. Approval of this vacation would relieve the City from maintenance responsibility and will provide the petitioner with additional site plan flexibility.

Council Direction:

Fiscal Impacts:

The proposed vacation has been appraised at \$350,000 which will be paid to city.

ATTACHMENTS

- [Ordinance](#)
- [Petition](#)
- [Vicinity Map](#)
- [Staff Report](#)
- [Staff Report Exhibits](#)

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PUYALLUP VACATING A PORTION OF 3RD AVENUE NORTHWEST LOCATED BETWEEN THE 500 AND 600 BLOCKS

WHEREAS, a proper petition for the vacation of a portion of 3rd Ave NW located between the 500 and 600 block that lies north of parcel 5870000100 and south of parcels 5870000120 and 5870000110 has been submitted to the city;

WHEREAS, the City Council directed that a notice of public hearing be published for a hearing on the petition; and

WHEREAS, a public hearing was held before the City Council on July 7, 2020;

NOW, THEREFORE, the City Council of the City of Puyallup, Washington, does hereby ordain as follows:

Section 1. The Council finds that the right-of-way described below is not useful as a part of the City road system, and the public will be benefited by vacation of the City's interest.

Section 2. The following described property is and the same is hereby vacated:

All those portions of 3rd Ave NW located between the 500 and 600 block that lies north of parcel 5870000100 and south of parcels 5870000120 and 5870000110 described as follows:

THAT PORTION OF 3RD AVE NW SHOWN AS KNOX AVENUE ON THE PLAT OF A.J. MILLER'S ADDITION TO PUYALLUP, PIERCE COUNTY, W.T., 1888, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 130, LYING BETWEEN THE EAST RIGHT OF WAY LINE OF 6TH STREET NW AND THE WEST RIGHT OF WAY LINE OF 5TH STREET NW EXTENDED ACROSS SAID 3RD AVE NW, AND LYING BETWEEN BLOCKS 2 AND 3 OF SAID PLAT OF A.J. MILLER'S ADDITION LOCATED IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 2; THENCE NORTH 73°59'46" WEST ALONG THE NORTH LINE OF SAID BLOCK 2 A DISTANCE OF 292.17 FEET; THENCE NORTH 00°57'07" EAST ALONG SAID EXTENSION OF 6TH ST NW A DISTANCE OF 62.13 TO THE SOUTHWEST CORNER OF SAID BLOCK 3; THENCE SOUTH 73°59'46" EAST ALONG THE SOUTH LINE OF SAID BLOCK 3 A DISTANCE OF 292.41 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 3; THENCE SOUTH 01°09'57" WEST ALONG SAID EXTENSION OF 5TH ST NW A DISTANCE OF 62.07 FEET TO THE POINT OF BEGINNING.

Section 3. This vacation approval is subject to the following conditions:

1. Right-of-Way has been appraised at \$350,000.00. The right-of-way has been part of a dedicated public right-of way for more than twenty-five years, and in accordance of RCW 35.79.030 compensation shall be the full appraised value; therefore, payment of \$350,000.00 is required.
2. Payment must be made within 90 days of council approval.
3. The sanitary sewer main will need to be disconnected and capped at the manhole on 5th St NW. This sewer main and all sewer laterals will be removed or filled with CDF their entire length.
4. The storm water main will need to be disconnected and capped at the catch basin on the eastern side of 5th St NW and at the manhole in the 600 block of 3rd Ave NW. This storm water main will be removed or filled with CDF between the before mentioned structures. Additionally, a storm water main extension is required between the 600 block and 700 block of 3rd Ave NW to keep the storm water system functioning in this area.
5. The one-inch domestic water main will need to be disconnected and capped at 5th St NW and 6th St NW.
6. Improvements of widening the curb radii at 5th St SW and W. Main to accommodate bus turning shall be complete before closure of 3rd Ave NW. These improvements must be sufficiently complete in the judgment of the City, before 3rd Ave NW is closed.

Section 4. The above described property shall be equally divided (based on the frontage measurement) between the following parcels (as they exist at the time of recording this document):

5870000100, 5870000120 and 5870000110

Section 5. This ordinance shall be in full force and effect five days after publication as required by law.

DATED this XX day of XXX 2020.

Julie Door
Mayor

APPROVED AS TO FORM:

ATTEST:

Joseph N. Beck
City Attorney

Mary Winter
City Clerk

Published: _____

Effective: _____



We, the undersigned, support this request, and represent two-thirds of the lineal frontage of the property abutting the portion of the right of way to be vacated:

Signature	<u><i>Patrick Sullivan</i></u>	Assessor's Parcel No.	<u>5870000120</u>
Name (Print)	<u>Sound Transit (title transfer by 10/2/18)</u>	Phone	<u>253-845-5056</u>
Street	<u>202 5th St. NW</u>	City	<u>Puyallup</u> Zip <u>98371</u>

Signature	<u><i>Patrick Sullivan</i></u>	Assessor's Parcel No.	<u>5870000110</u>
Name (Print)	<u>Sound Transit (Patrick Sullivan)</u>	Phone	<u>206-398-5437</u>
Street	<u>302 5th Street NW</u>	City	<u>Puyallup</u> Zip <u>98371</u>

Signature	<u><i>Patrick Sullivan</i></u>	Assessor's Parcel No.	<u>5870000100</u>
Name (Print)	<u>Sound Transit (title transfer by 10/2/18)</u>	Phone	<u>253-845-5056</u>
Street	<u>202 5th St NW</u>	City	Zip <u>98371</u>

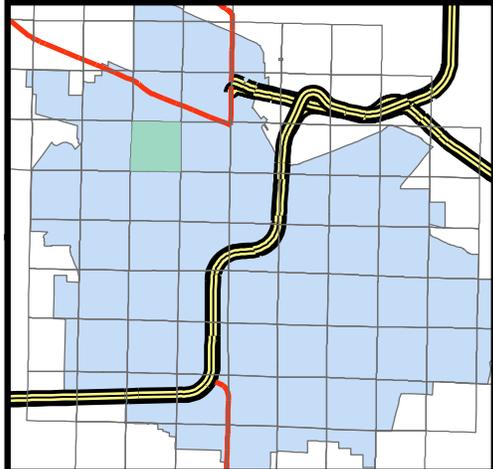
Signature	_____	Assessor's Parcel No.	_____
Name (Print)	_____	Phone	_____
Street	_____	City	Zip _____

Signature	_____	Assessor's Parcel No.	_____
Name (Print)	_____	Phone	_____
Street	_____	City	Zip _____

Signature	_____	Assessor's Parcel No.	_____
Name (Print)	_____	Phone	_____
Street	_____	City	Zip _____

City of Puyallup | Engineering Services
333 S Meridian | Puyallup WA 98371
253-841-5577

Exhibit C
PROPOSED RIGHT-OF-WAY VACATION
500 TO 600 BLOCK OF 3RD AVENUE NORTHWEST



LEGEND:

-  Proposed Vacation
-  City of Puyallup
-  Quarter Section

March 6, 2019
 llansin/vacations/soundtransit
 Not to scale



STAFF REPORT

PREPARED FOR THE CITY COUNCIL BY ENGINEERING SERVICES

For the Hearing to be Held on
July 7, 2020

RIGHT OF WAY VACATION BY LEGISLATIVE AUTHORITY

A. SUMMARY OF REQUEST:

The proposed right-of-way vacation includes that portion of 3rd Ave NW, as shown on the attached site map, Exhibit C.

B. GENERAL INFORMATION:

1. Legal Description of Vacation:

THAT PORTION OF 3RD AVE NW SHOWN AS KNOX AVENUE ON THE PLAT OF A.J. MILLER'S ADDITION TO PUYALLUP, PIERCE COUNTY, W.T., 1888, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 130, LYING BETWEEN THE EAST RIGHT OF WAY LINE OF 6TH STREET NW AND THE WEST RIGHT OF WAY LINE OF 5TH STREET NW EXTENDED ACROSS SAID 3RD AVE NW, AND LYING BETWEEN BLOCKS 2 AND 3 OF SAID PLAT OF A.J. MILLER'S ADDITION LOCATED IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 2; THENCE NORTH 73°59'46" WEST ALONG THE NORTH LINE OF SAID BLOCK 2 A DISTANCE OF 292.17 FEET; THENCE NORTH 00°57'07" EAST ALONG SAID EXTENSION OF 6TH ST NW A DISTANCE OF 62.13 TO THE SOUTHWEST CORNER OF SAID BLOCK 3; THENCE SOUTH 73°59'46" EAST ALONG THE SOUTH LINE OF SAID BLOCK 3 A DISTANCE OF 292.41 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 3; THENCE SOUTH 01°09'57" WEST ALONG SAID EXTENSION OF 5TH ST NW A DISTANCE OF 62.07 FEET TO THE POINT OF BEGINNING.

Please see the attached legal description, Exhibit A

2. Square footage of area to be vacated containing 17,535 square feet, more or less.

C. PURPOSE OF REQUEST:

The area proposed for the right-of-way vacation is a part of an overall area required to build a 5-story parking garage that will enhance service to the Puyallup Sounder Station. If approved by City Council, the right-of-way would be assigned to those abutting parcels that signed the petition to vacate: 5870000100, 5870000120 and 5870000110.

D. HISTORY:

The City of Puyallup acquired the right-of-way dedicated under AFN 8508060263 recorded on March 17, 1888. Please see Exhibit B

E. PHYSICAL LAND CHARACTERISTICS:

1. The right-of-way is located between the 500 and 600 block of 3rd Ave NW.
2. The right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole.
3. The public need shall not be adversely affected.
4. The right-of-way is not contemplated or needed for future public use.
5. No abutting owner becomes landlocked or access will not be substantially impaired; i.e., there must be an alternative mode of ingress and egress, even if less convenient.
6. Vacation of right-of-way shall not be in violation of RCW 35.79.035.

F. ADDITIONAL INFORMATION:

1. The existing right-of-way is currently used for public right-of-way. The site lies within a CG – General Commercial zone
2. The right-of-way has been determined to be unnecessary and is not specified within the Comprehensive Plan as a road of any significance.
3. As part of the City’s review process for street vacation petitions, notice of this application was mailed to various City departments as well as many outside quasi-governmental agencies on January 14, 2019. These agencies, as noted, have provided comments or recommended conditions to the Public Works Engineering Department. These comments, where appropriate, have been incorporated in the “Recommended Conditions of Approval” section of this preliminary report.

G. Staff Recommended Conditions of Approval:

1. Right-of-Way has been appraised at \$350,000.00. The right-of-way has been part of a dedicated public right-of way for more than twenty-five years, and in accordance of RCW 35.79.030 compensation shall be the full appraised value; therefore, payment of \$350,000.00 is required.
2. Payment must be made within 90 days of council approval.
3. The sanitary sewer main will need to be disconnected and capped at the manhole on 5th St NW. This sewer main and all sewer laterals will be removed or filled with CDF their entire length.
4. The storm water main will need to be disconnected and capped at the catch basin on the eastern side of 5th St NW and at the manhole in the 600 block of 3rd Ave NW. This storm water main will be removed or filled with CDF between the before mentioned structures. Additionally, a storm water main extension is required between the 600 block and 700 block of 3rd Ave NW to keep the storm water system functioning in this area.
5. The one-inch domestic water main will need to be disconnected and capped at 5th St NW and 6th St NW.
6. The turning radii at the intersection of W. Main and 5th St SE will need to be increased to accommodate the Puyallup School District's rerouted bus traffic.
7. A Developer's Agreement between the City of Puyallup and Sound Transit has been finalized and recorded.

Please contact Linda Lian at 253-841-5577 for questions regarding the conditions of the pending right of way vacation.

ATTACHMENT: Vacation Jacket containing all pertinent maps and papers.

Exhibit A: Legal Description

Exhibit B: Dedication

Exhibit C: Site Map

EXHIBIT "B"

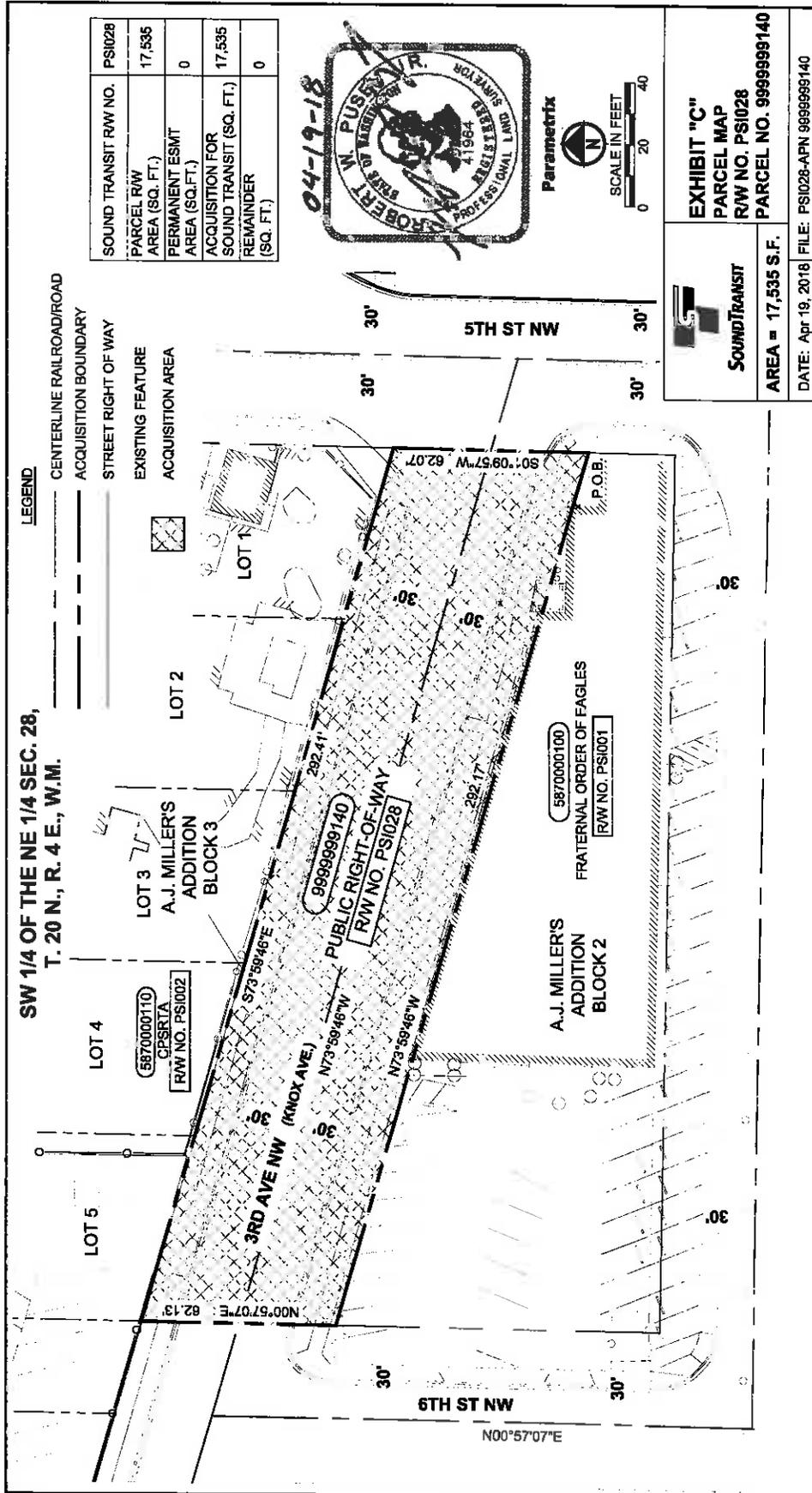
**LEGAL DESCRIPTION FOR SOUND TRANSIT
RIGHT OF WAY ACQUISITION R/W NO. PSI028
PIERCE COUNTY ASSESSOR PARCEL NO. 999999140**

THAT PORTION OF 3RD AVE. NW SHOWN AS KNOX AVENUE ON THE PLAT OF A.J. MILLER'S ADDITION TO PUYALLUP, PIERCE COUNTY, W.T., 1888, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 130, LYING BETWEEN THE EAST RIGHT OF WAY LINE OF 6TH STREET NW AND THE WEST RIGHT OF WAY LINE OF 5TH STREET NW EXTENDED ACROSS SAID 3RD AVE. NW, AND LYING BETWEEN BLOCKS 2 AND 3 SAID PLAT OF A.J. MILLER'S ADDITION LOCATED IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON AND BEING FURTHER DESCRIBED AS FOLLOWS:

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CONTAINING 17,535 SQUARE FEET, MORE OR LESS.

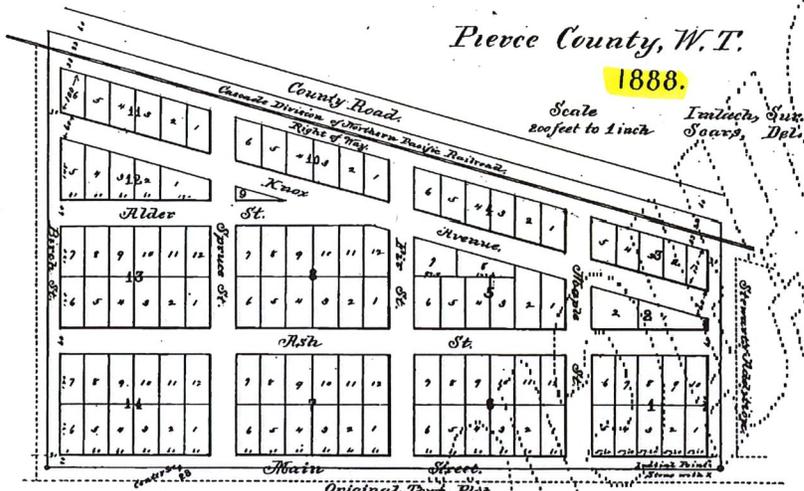




For reference only, not for re-sale.

PLAT OF
A. J. MILLER'S
ADDITION TO PUYALLUP.

BOUNDARY LINE REVISION
No. 4 3578160263



In corrected plat, page 130, this vol.
- De Veritas -

Territory of Washington }
County of Pierce } ss.

Know all men by these presents that we, Allan J. Miller and Margaret Miller his wife, and Walter Adams and Margaret A. Adams his wife, owners in fee simple of the tract of land for Section 28, Township 20 North, of Range 4 East, Willamette Meridian, Territory of Washington, hereby subdivide the same into streets, blocks, and lots, as shown on this plat, and dedicate the same as A. J. Miller's Addition to Puyallup; dedicating by our same act the use of the Streets platted thereon to the use of the public forever.

Witness our hands and seals this 17th day of March A. D. 1888.

Witness of A. J. Miller and wife, -

O. D. Horner
James Knox

Witnesses for Walter Adams and wife -

Arthur A. Miller
John Gahin.

Allan J. Miller
Margaret Miller
Walter Adams
Margaret A. Adams

Territory of Washington }
County of Pierce } ss.

This certifies that on this 17th day of March A. D. 1888, appeared before me, a Notary Public in and for Territory of Washington, Allan J. Miller, and Margaret Miller his wife whose names are subscribed to the foregoing instrument and plat, and they acknowledged the same instrument, each freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal this 17th day of March A. D. 1888.

Chas E. Sears
Notary Public for Washington Territory.

Territory of Washington }
County of Pierce } ss.

This certifies that on this 17th day of March A. D. 1888, appeared before me, a Notary Public in and for the Territory of Washington Walter Adams, and Margaret A. Adams his wife whose names are subscribed to the foregoing instrument, and plat, and they acknowledged the above instrument, and plat, each freely and voluntarily, for the uses and purposes therein specified.

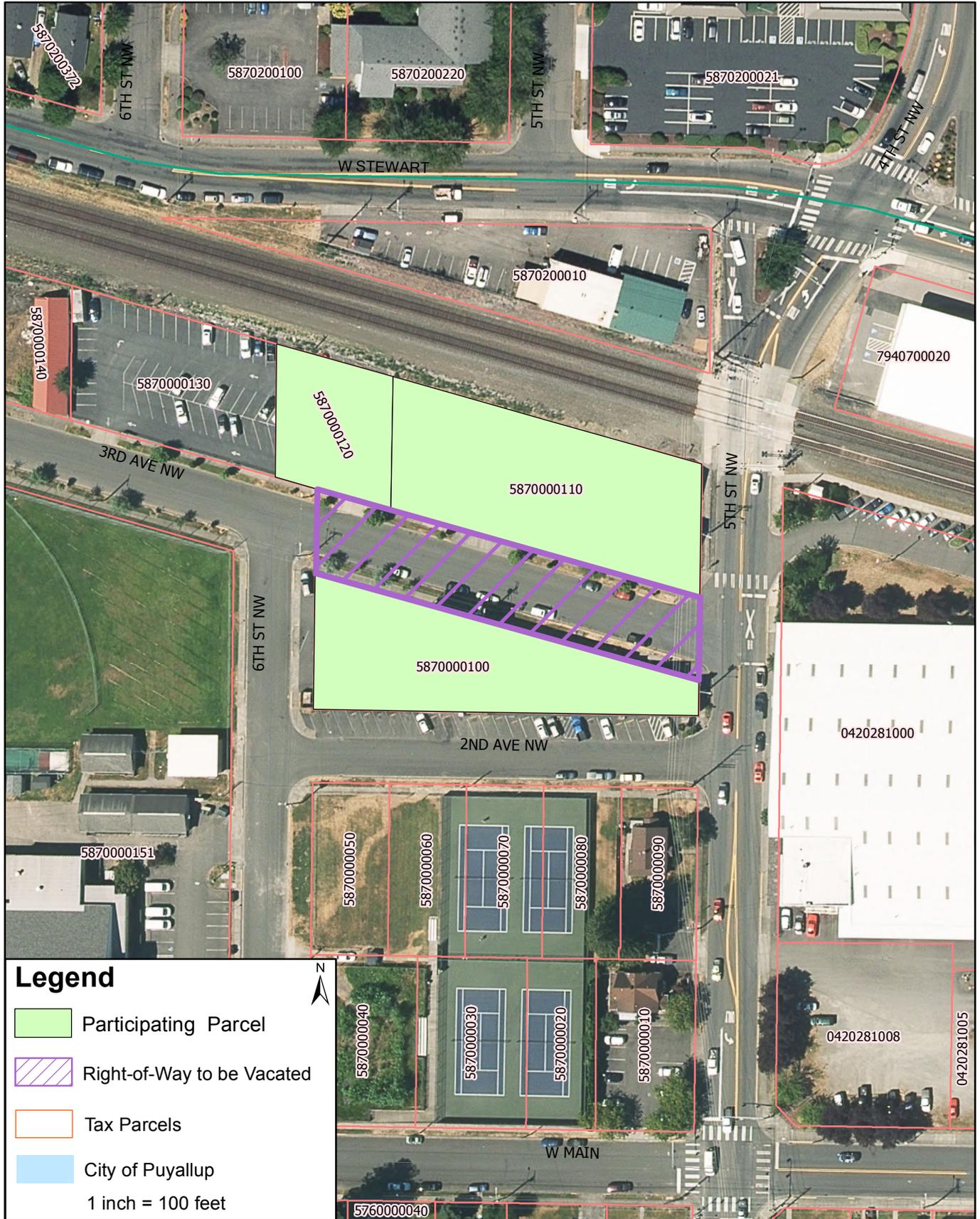
In witness whereof I have hereunto set my hand, and official seal this 17th day of March A. D. 1888.

Chas E. Sears
Notary Public for Washington Territory.

Filed March 20th by A. J. Miller at 12:00 P.M.

Edward Higgins
Auditor.

SOUND TRANSIT Proposed Right-of-Way Vacation 500 -600 Block of 3rd Ave NW





City Council Agenda Item Report

Submitted by: Robyn Buck
Submitting Department: Engineering
Meeting Date: 7/21/2020

Subject:

Adopt a resolution approving the final plat of Christen Estates

Presenter:

Hans Hunger, City Engineer

Recommendation:

Adopt a resolution approving the final plat of Christen Estates, consisting of eleven single family lots, and authorize the Mayor to sign the final plat.

Background:

Christen Estates is an eleven lot subdivision fronting on 5th St. SE just south of 19th Ave. SW, on what will be 20th Ave. SW. The plat was approved in 2009 and engineering permit for the plat improvements were approved in March of 2019. All life safety improvements have now been constructed and the city has received a finance guarantee for improvements that are allowed to be done after the homes are built.

The final plat documents have been reviewed by Engineering, Planning, and Legal.

Council Direction:

Fiscal Impacts:

None

ATTACHMENTS

- [Resolution](#)

RESOLUTION No. _____

**A RESOLUTION OF THE CITY OF PUYALLUP, WASHINGTON,
APPROVING THE FINAL PLAT OF CHRISTEN ESTATES
SUBJECT TO THE CONDITIONS CONTAINED HEREIN.**

WHEREAS, under Chapter 19.08 of the Puyallup Municipal Code, the City's Hearing Examiner is given authority to review and approve preliminary plat applications; and

WHEREAS, on June 25, 2009 the Hearing Examiner approved the preliminary plat of Christen Estates pursuant to chapter 21.06 PMC; and

WHEREAS, the Development Services Division has confirmed that the proposed final plat of Christen Estates, as conditioned, satisfies all conditions of the Hearing Examiner preliminary plat approval and meets zoning requirements; and

WHEREAS, all utility and street improvements have been inspected by the Engineering Services Division staff and are substantially complete. The Review Engineer has reviewed and approved the financial surety provided by the Developer guaranteeing the remaining items will be completed in accordance with this Resolution.

WHEREAS, pursuant to Puyallup Municipal Code 19.08.170, the City Council is authorized to issue final plat approval, and staff recommends final approval be granted for the plat addressed herein;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUYALLUP AS FOLLOWS:

Section 1. Finding.

- a. As required by RCW 58.17.195 and PMC 19.08.170, the City Council finds that the proposed Christen Estates subdivision is in conformity with applicable City zoning and other land use controls as such exist on the date of this resolution.
- b. As required by RCW 58.17.110 the City Council finds that appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- c. That the public use and interest will be served by the platting of this subdivision and dedication.

Section 2. Approval. The final plat of Christen Estates is hereby approved subject to the following conditions:

- a. The street survey monuments, utility grade adjustments, second lift of asphalt, and sidewalks must be completed within eighteen (18) months of final plat approval, or when 90% of the homes are constructed within the plat (as assignment of funds is on file with the Engineering Services Division to guarantee completion of the infrastructure improvements);
- b. The punchlist must be completed within sixty (60) days of final plat approval (a surety is on file with the Engineering Services Division to guarantee completion of the infrastructure improvements);
- c. Maintenance of the public infrastructure is guaranteed by the developer for a one-year period from the date of final construction approval/acceptance and proper surety is on file with the Engineering Services Division;
- d. Street trees and landscaping, as proposed within this development for planting strips abutting residential building lots shall be planted upon completion of the sidewalks (an Assignment of Funds is on file with the Planning Division to guarantee completion). The Assignment of Funds or portion thereof for these trees shall be released upon a finding that root barriers have been installed to protect sidewalks, of healthy establishment and following completion of a full growing season after planting;

Section 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this resolution is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this resolution.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this resolution is hereby ratified and affirmed.

Section 5. Corrections. The City Clerk is authorized to make necessary corrections to this resolution and the City Engineer is authorized to make necessary corrections to the final plat including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

Section 6. Effective Date. This resolution shall take effect and be in force immediately upon its passage.

ADOPTED by the City Council of the City of Puyallup, Washington, this ____ day of _____, 2020 and signed in authentication thereof this ____ day of _____, 2020.

Julie Door, Mayor

ATTEST:

Mary Winter, City Clerk

APPROVED AS TO FORM:

Joseph N. Beck, City Attorney

CHRISTEN ESTATES

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE COUNTY, WASHINGTON

DEDICATION

WE, THE UNDERSIGNED OWNERS OF THE HEREIN DESCRIBED PROPERTY, DEDICATE THESE LOTS TO THE PURCHASERS THEREOF. WE DEDICATE TO THE CITY OF PUYALLUP, TRACT "A" (PUBLIC STORM), THE ROADS HEREIN AND THE PUBLIC EASEMENTS FOR THE USE OF THE PUBLIC FOREVER.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, WAIVE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS, AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF PUYALLUP, ITS SUCCESSORS AND ASSIGNS, WHICH MAY BE OCCASIONED TO ADJACENT LAND BY THE CONSTRUCTION, DRAINAGE OR MAINTENANCE OF DEDICATED ROADS WITHIN THIS SUBDIVISION, OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY THE CITY OF PUYALLUP.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS, TO INDEMNIFY AND HOLD THE CITY OF PUYALLUP, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY LOSSES, INCLUDING ANY REASONABLE COSTS OF DEFENSE, SUFFERED BY THE CITY OF PUYALLUP, ITS SUCCESSORS AND ASSIGNS, RESULTING FROM CLAIMS FOR DAMAGES BY PERSONS WITHIN OR WITHOUT THIS SUBDIVISION FINALLY ADJUDICATED TO HAVE BEEN CAUSED BY THE NEGLIGENCE OR WRONGFUL ACTS OR OMISSIONS OF THE UNDERSIGNED OWNERS, THEIR EMPLOYEES, AGENTS OR CONTRACTORS, IN ALTERING THE GROUND SURFACE, DRAINAGE OR SURFACE OR SUB-SURFACE WATER FLOWS WITHIN THIS SUBDIVISION, OR IN ESTABLISHING OR CONSTRUCTING THE ROADS WITHIN THIS SUBDIVISION.

PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT APPLY TO THE EXTENT THAT ANY LIABILITY OR DAMAGES RESULT IN WHOLE OR IN PART FROM THE NEGLIGENCE OR WRONGFUL ACTS OR OMISSIONS OF THE CITY OF PUYALLUP, OR ITS EMPLOYEES, AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNS.

SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THIS SUBDIVISION, DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS.

THIS SUBDIVISION, DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS.

TRACT 'A' FROM SHORT PLAT 9107240070 (TAX PARCEL 0420338052) WILL BE REPLACED WITH TRACT 'A' AS SHOWN ON THE CHRISTEN ESTATES FINAL PLAT MAP. TRACT 'A' IS A STORM TRACT AND IS DEDICATED TO THE CITY OF PUYALLUP UPON THE RECORDING OF THIS PLAT. SEE ATTESTATION THIS PAGE.

THOMAS K. YOUNG
CHRISTEN ESTATES LLC.

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)ss
COUNTY OF PIERCE,)

ON THIS _____ DAY OF _____, 2020, BEFORE ME PERSONALLY APPEARED THOMAS K. YOUNG, TO ME KNOWN TO BE THE AUTHORIZED MEMBER OF CHRISTEN ESTATES LLC., A WASHINGTON COMPANY, THAT EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT HE IS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAT THE DAY AND YEAR FIRST WRITTEN ABOVE.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT: _____

MY APPOINTMENT EXPIRES: _____

PROTECTIVE COVENANTS

SEE PROTECTIVE COVENANTS AS FILED UNDER RECORDING NUMBER _____ THIS _____ DAY OF _____, 2020. RECORDS OF THE PIERCE COUNTY AUDITOR.

RECORDS OF THE PIERCE COUNTY AUDITOR.

ATTESTATION

I JULIE DOOR, MAYOR OF THE CITY OF PUYALLUP, HEREBY ATTEST THAT TRACT A FROM SHORT PLAT 9107240070 (TAX PARCEL 0420338052) WILL BE REPLACED WITH TRACT A AS SHOWN ON THE CHRISTEN ESTATES FINAL PLAT MAP. TRACT A IS A STORM TRACT AND IS DEDICATED TO THE CITY OF PUYALLUP UPON THE RECORDING OF THIS PLAT.

JULIE DOOR, MAYOR OF THE CITY OF PUYALLUP

STATE OF WASHINGTON)
)ss
COUNTY OF PIERCE,)

ON THIS _____ DAY OF _____, 2020, BEFORE ME PERSONALLY APPEARED JULIE DOOR, TO ME KNOWN TO BE THE MAYOR FOR THE CITY OF PUYALLUP, THAT EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CITY FOR THE USES AND PURPOSES THEREIN MENTIONED AND ON OATH STATED THAT HE IS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAT THE DAY AND YEAR FIRST WRITTEN ABOVE.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT: _____

MY APPOINTMENT EXPIRES: _____

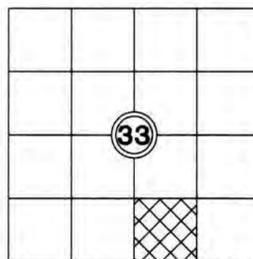
UTILITY EASEMENT PROVISIONS

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF PUYALLUP, ANY POWER COMPANY, ANY GAS COMPANY, ANY WATER COMPANY, ANY TELEPHONE COMPANY, ANY CABLE TELEVISION COMPANY, U.S. POSTAL SERVICE, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS UNDER AND UPON THE FRONT 10 FEET PARALLEL WITH AND ADJOINING THE PUBLIC ROAD FRONTAGE OF ALL LOTS AND TRACTS IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND PIPE, CONDUIT, CABLES AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC, TELEPHONE, GAS AND UTILITY SERVICE, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSES HEREIN STATED. THESE EASEMENTS ENTERED UPON FOR THESE PURPOSES SHALL BE RESTORED AS NEAR AS POSSIBLE TO THEIR ORIGINAL CONDITION. NO LINES OR WIRES FOR THE TRANSMISSION OR ELECTRIC CURRENT OR FOR TELEPHONE USE OF CABLE TELEVISION SHALL BE PLACED OR PERMITTED TO BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING.

EASEMENT PROVISIONS

THE PROPERTY INCLUDED WITHIN THE LEGAL DESCRIPTION CONTAINS A PRIVATE STORM DRAINAGE SYSTEM. IT SHALL BE THE RESPONSIBILITY OF THE HOMEOWNER'S TO MAINTAIN THE PRIVATE STORM DRAINAGE SYSTEM IN ITS ORIGINALLY DESIGNED CONDITION.

EASEMENTS ARE HEREBY GRANTED FOR INSTALLATION, INSPECTION, AND MAINTENANCE OF UTILITIES, STORM DRAINAGE, SEWER FACILITIES AND RETAINING WALLS AS DELINEATED ON THE PLAT FOR THE SUBDIVISION CHRISTEN ESTATES. NO ENCROACHMENT SHALL BE PLACED WITHIN THE EASEMENTS SHOWN ON THE PLAT, WHICH MAY DAMAGE OR INTERFERE WITH THE INSTALLATION, INSPECTION, OR MAINTENANCE OF UTILITIES. MAINTENANCE AND EXPENSE THEREOF OF THE UTILITIES AND DRAINAGE FACILITIES SHALL BE THE RESPONSIBILITY OF THE HOMEOWNER'S.



INDEX: SW 1/4 OF THE SE 1/4 SEC 33, TWP 20 N., R. 4 E., WM.

CITY TREASURER

I HEREBY CERTIFY THAT THERE NO DELINQUENT ASSESSMENTS ON THE PROPERTY HEREIN DESCRIBED

CITY TREASURER, CITY OF PUYALLUP DATE

DEVELOPMENT SERVICES DEPARTMENT

DEVELOPMENT SERVICES DEPARTMENT DATE

CITY ENGINEER

THE CITY ENGINEER CERTIFIES THAT THE STREETS, ALLEYS, BRIDGES, SEWAGE, WATER SYSTEMS, AND OTHER STRUCTURES WITHIN THIS PLAT ARE APPROVED.

CITY ENGINEER DATE

PUBLIC WORKS DEPARTMENT

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2020

PUBLIC WORKS DIRECTOR DATE

CITY ATTORNEY

APPROVED THIS _____ DAY OF _____, 2020

ATTORNEY FOR THE CITY OF PUYALLUP DATE

CITY COUNCIL

APPROVED BY THE CITY COUNCIL OF THE CITY OF PUYALLUP THIS _____ DAY OF _____, 2020.

MAYOR DATE

CITY CLERK DATE

COUNTY ASSESSOR-TREASURER

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HEREIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE, HAVE BEEN FULLY PAID AND DISCHARGED.

ASSESSOR-TREASURER, DATE
PIERCE COUNTY, WASHINGTON

AUDITOR

FILED FOR RECORD THIS _____ DAY OF _____, 2020, AT

_____ MINUTES PAST _____, RECORDS OF PIERCE COUNTY AUDITOR, TACOMA, WASHINGTON.

RECORDING NUMBER _____

PIERCE COUNTY AUDITOR

FEE

BY _____

PARCEL NUMBERS

0420338052, 0420338048, 0420338049, 0420338050, 0420338051, 0420338056, 0420338055, 0420338054, & 0420338053

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT IS BASED ON AN ACTUAL SURVEY DONE BY ME OR UNDER MY DIRECT SUPERVISION; THAT THE BEARINGS AND DISTANCES ARE SHOWN CORRECTLY; THAT THE PERIMETER MONUMENTS HAVE BEEN SET AND THAT ALL OTHER MONUMENTS AND LOT CORNERS HAVE BEEN SET OR BONDED WITH THE COUNTY AND WILL BE SET PRIOR TO THE RELEASE OF THE BOND; THAT I HAVE COMPLIED WITH ALL STATE AND COUNTY REGULATIONS GOVERNING PLATTING AND THAT IT CONFORMS TO THE APPROVED PRELIMINARY PLAT AND THE CONDITIONS OF APPROVAL THEREOF.


SETH D. O'HARE P.L.S.
CERTIFICATE NO. 38985

7-6-2020
DATE

INDEX OF SHEETS

- SHEET 1 SIGNATURES, APPROVALS, ACKNOWLEDGMENT, EASEMENT PROVISIONS
- SHEET 2 GENERAL NOTES, LEGAL DESCRIPTION, EXCEPTIONS
- SHEET 3 MAP, SURVEY NOTES



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

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PUYALLUP, WA 98372 ceservices@cesnwinco.com

JOB NO. 15095

CHRISTEN ESTATES

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE COUNTY, WASHINGTON

LEGAL DESCRIPTION

(PER FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO.: 3276555, DATED JUNE 23, 2020.)

PARCEL A: (0420338048, 8049, 8050 & 8051)

LOTS 1-4, PIERCE COUNTY SHORT PLAT NO. 9107240070, ACCORDING TO THE PLAT THEREOF RECORDED JULY 24, 1991, RECORDS OF PIERCE COUNTY AUDITOR; EXCEPT THEREFROM 20TH CT. SW. SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL B: (0420338053)

REVISED PARCEL A, BOUNDARY LINE ADJUSTMENT 931007083, ACCORDING TO THE SURVEY THEREOF RECORDED OCTOBER 7, 1993, RECORDS OF THE PIERCE COUNTY AUDITOR, BEING A PORTION OF LOT 1, PIERCE COUNTY SHORT PLAT NUMBER 9107230466, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 1991, RECORDS OF THE PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL C: (0420338054)

REVISED PARCEL B, BOUNDARY LINE ADJUSTMENT 9310070835, ACCORDING TO THE SURVEY THEREOF RECORDED OCTOBER 7, 1993, RECORDS OF THE PIERCE COUNTY AUDITOR, BEING A PORTION OF LOTS 2 AND 3, PIERCE COUNTY SHORT PLAT NUMBER 9107230466, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 1991, RECORDS OF THE PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL D: (0420338055)

REVISED PARCEL C, BOUNDARY LINE ADJUSTMENT 9310070835, ACCORDING TO THE SURVEY THEREOF RECORDED OCTOBER 7, 1993, RECORDS OF THE PIERCE COUNTY AUDITOR, BEING A PORTION OF LOTS 3 AND 4, PIERCE COUNTY SHORT PLAT NUMBER 9107230466, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 1991, RECORDS OF THE PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL E: (0420338056)

REVISED PARCEL D, BOUNDARY LINE ADJUSTMENT 9310070835, ACCORDING TO THE SURVEY THEREOF RECORDED OCTOBER 7, 1993, RECORDS OF THE PIERCE COUNTY AUDITOR, BEING A PORTION OF LOT 4, PIERCE COUNTY SHORT PLAT NUMBER 9107230466, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 1991, RECORDS OF THE PIERCE COUNTY AUDITOR;

SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL F: (0420338052)

TRACT A, PIERCE COUNTY SHORT PLAT NUMBER 9107240070, ACCORDING TO PLAT THEREOF RECORDED JULY 24, 1991, RECORDS OF THE PIERCE COUNTY AUDITOR; SITUATE IN THE CITY OF PUYALLUP, COUNTY OF PIERCE, STATE OF WASHINGTON.

TITLE EXCEPTIONS

(PER FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO. 3276555, DATED JUNE 23, 2020.)

- 1.-3. NOT SURVEY RELATED.
4. ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES OR ENCROACHMENTS, NOTES, PROVISIONS AND/OR OTHER MATTERS SHOWN OR DISCLOSED BY PIERCE COUNTY SHORT PLAT RECORDED UNDER RECORDING NUMBER 9107230466. (NOT PLOTTED)
5. ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES OR ENCROACHMENTS, NOTES, PROVISIONS AND/OR OTHER MATTERS SHOWN OR DISCLOSED BY PIERCE COUNTY SHORT PLAT RECORDED UNDER RECORDING NUMBER 9107240070. (NOT PLOTTED)
6. TERMS, COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES, ENCROACHMENTS, AND/OR OTHER MATTERS AS CONTAINED IN RECORDED LOT LINE ADJUSTMENT (BOUNDARY LINE REVISIONS):
RECORDED: OCTOBER 7, 1993
RECORDING INFORMATION: 9310070835.
(NOT PLOTTED)
7. EASEMENT, INCLUDING TERMS AND PROVISIONS CONTAINED THEREIN:
RECORDING INFORMATION: 201709220811
IN FAVOR OF: PUGET SOUND ENERGY, INC.
FOR: ONE OR MORE UTILITY SYSTEMS
AFFECTS: A PORTION OF SAID PREMISES AND OTHER PROPERTY
(AS SHOWN)

NOTES

1. ALL ROADS WITHIN THIS PLAT ARE PUBLIC EXCEPT WHERE NOTED OTHERWISE.
2. NO BUILDING PERMITS WILL BE ISSUED ON ANY LOTS IN THIS SUBDIVISION UNTIL ALL NECESSARY DRAINAGE IMPROVEMENTS, ROADS, SHARED ACCESSES OR ALLEYS ARE COMPLETED, WITH THE EXCEPTION THAT MINOR ITEMS THAT MAY BE DAMAGED DURING HOME-BUILDING (SUCH AS SIDEWALKS, BIO-SWALES LININGS OR SHOULDER LEVELING COURSE) MAY BE FINANCIALLY GUARANTEED.
3. DRIVEWAY RUNOFF: PRIOR TO FINAL BUILDING INSPECTION FOR THE STRUCTURES ON LOTS 1-11 DRIVEWAY RUNOFF SHALL BE ROUTED TO THE ROADWAY DRAINAGE SYSTEM AND SHALL BE INSPECTED BY THE CITY OF PUYALLUP OR THE APPLICANTS RETAINED ENGINEER FOR COMPLIANCE WITH THE DRAINAGE REQUIREMENTS.

THE DRIVEWAY IMPERVIOUS AREA WAS ACCOUNTED FOR IN THE STORM DRAINAGE DESIGN FOR LOTS 1-11. ACTUAL DRIVEWAY AREAS FOR EACH LOT WILL VARY DEPENDING ON LENGTH AND LAYOUT AS LONG AS THE TOTAL AMOUNT IS NOT EXCEEDED. THE COMBINED BUILDING AREA AND ROOF SHALL NOT EXCEED 4,500 SQUARE FEET.
4. ROOF RUNOFF: PRIOR TO FINAL BUILDING INSPECTION FOR THE STRUCTURES ON LOTS 1-11, ROOF DRAIN DOWNSPOUTS SHALL BE ROUTED TO THE STORM DRAIN AREA LOCATED IN TRACT 'A' ON THE APPROVED PLANS.

THE ROOF IMPERVIOUS AREA WAS ACCOUNTED FOR IN THE STORM DRAINAGE DESIGN FOR LOTS 1-11. ACTUAL LOT IMPERVIOUS AREAS WILL VARY DEPENDING ON THE SITE PLAN AS LONG AS THE TOTAL AMOUNT IS NOT EXCEEDED. THE COMBINED BUILDING AREA AND ROOF SHALL NOT EXCEED 4,500 SQUARE FEET.

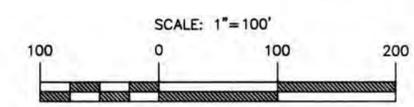
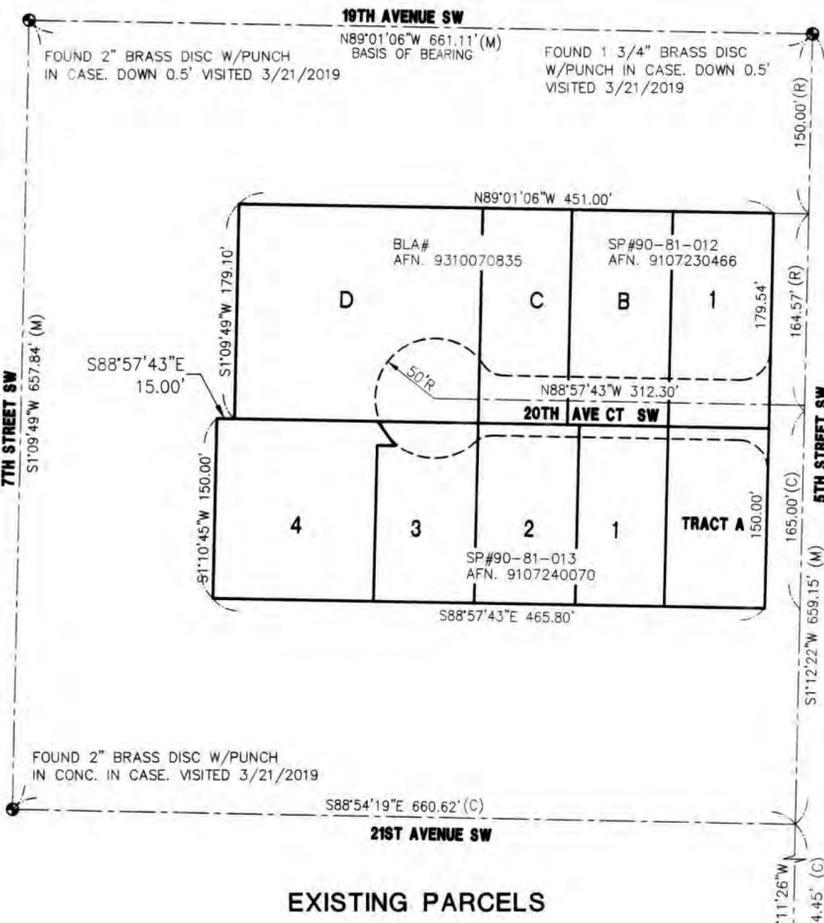
PRIOR TO FINAL BUILDING INSPECTION FOR THE STRUCTURES ON LOTS 1-11, ROOF RUNOFF SHALL BE TIGHTLINED TO THE PLAT STORM DRAINAGE LOT STUB-OUT AND SHALL BE INSPECTED BY THE CITY OF PUYALLUP OR THE APPLICANTS RETAINED ENGINEER FOR COMPLIANCE WITH THE DRAINAGE REQUIREMENTS.

THE ROOF SURFACE AREAS FOR THE INFILTRATION LOTS ARE LIMITED ONLY BY THE SIZE AND PLACEMENT OF THE INFILTRATION TRENCH WITHIN THE REQUIRED SETBACKS.
5. DEVELOPMENT WITHIN THIS PLAT SHALL BE SUBJECT TO ALL CONDITIONS OF PRELIMINARY PLAT APPROVAL.
A. PROJECT SHALL COMPLY WITH ALL FINDINGS AND CONDITIONS OF PRELIMINARY PLAT (CASE ID# P-16-0042), AS APPROVED BY THE CITY HEARING EXAMINER ON SEPTEMBER 30, 2016.
B. PROJECT SHALL COMPLY WITH ALL FINDINGS AND CONDITIONS CONTAINED IN SEPA DNS (CASE ID# P-16-0042), AS ISSUED IN THE AUGUST 25, 2016 ENVIRONMENTAL DETERMINATION.
6. ALL LOTS MUST ACCESS OFF OF 20TH AVENUE COURT SOUTHWEST.
7. NO DIRECT VEHICULAR ACCESS SHALL BE ALLOWED TO 5TH STREET SOUTHWEST FROM LOTS 1 AND TRACT 'A' OVER THE 1' NO ACCESS EASEMENT
8. THE OWNER OF EACH LOT WILL BE RESPONSIBLE FOR THE MAINTENANCE OF THE SIDEWALK AREA AND EACH STREET TREE IN FRONT OF SAID LOT, WITH PROPER PERMIT AUTHORIZATION.
9. A 5 FOOT WIDE PRIVATE STORMWATER EASEMENT UNDER, OVER AND ACROSS LOTS 1-5, AND 8-10, AS DEPICTED ON THIS PLAT, IS HEREBY GRANTED AND CONVEYED TO THE OWNERS OF ALL LOTS WITHIN THIS PLAT THAT SHARE A COMMON STORM DRAINAGE CONNECTION. THE OWNERS THAT SHARE A COMMON DRAINAGE CONNECTION SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE, REPAIR, AND/OR RECONSTRUCTION OF THAT PORTION OF THE DRAINAGE FACILITIES THEY BENEFIT FROM, EXCEPT NO OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE, REPAIR, AND/OR RECONSTRUCTION OF THAT PORTION OF THE COMMONLY USED STORM DRAIN LOCATED UPSTREAM FROM THE POINT OF CONNECTION.
10. A 5 FOOT WIDE PRIVATE STORMWATER EASEMENT UNDER, OVER AND ACROSS LOT 7, AS DEPICTED ON THIS PLAT, IS HEREBY GRANTED AND CONVEYED TO THE BENEFITS OF LOTS; 6-8. THE OWNERS OF SAID LOTS FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF STORM DRAINAGE SYSTEMS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. THE EASEMENT AREAS SHALL NOT BE FILLED OR BLOCKED IN ANY WAY WHICH WOULD IMPEDE OR RESTRICT THE DRAINAGE FLOW.
11. A 10 FOOT WIDE PRIVATE DRAINAGE EASEMENT ACROSS LOTS 1-5 AND 9-11 IS HEREBY RESERVED FOR AND GRANTED TO, FOR THE BENEFITS OF ALL LOTS. THE OWNERS OF SAID LOTS FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF STORM DRAINAGE SYSTEMS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. THE EASEMENT AREAS SHALL NOT BE FILLED OR BLOCKED IN ANY WAY WHICH WOULD IMPEDE OR RESTRICT THE DRAINAGE FLOW.
12. A 15 FOOT WIDE PRIVATE DRAINAGE AND WALL EASEMENT ACROSS LOTS 5, 8, AND 9 IS HEREBY RESERVED FOR AND GRANTED TO, FOR THE BENEFITS OF LOTS; 5-9. THE OWNERS OF SAID LOTS FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF THE STORM DRAINAGE SYSTEMS AND RETAINING WALLS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. NO ADDITIONAL STRUCTURAL FILL SHALL BE PLACED WITHIN SAID EASEMENT.
13. A 20.50 FOOT WIDE PRIVATE DRAINAGE AND WALL EASEMENT ACROSS LOTS 5-7 IS HEREBY RESERVED FOR AND GRANTED TO, FOR THE BENEFITS OF LOTS; 5-9. THE OWNERS OF SAID LOTS FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF THE STORM DRAINAGE SYSTEMS AND RETAINING WALLS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. NO ADDITIONAL STRUCTURAL FILL SHALL BE PLACED WITHIN SAID EASEMENT.
14. A 24.50 FOOT WIDE PRIVATE DRAINAGE AND WALL EASEMENT ACROSS LOT 7 IS HEREBY RESERVED FOR AND GRANTED TO, FOR THE BENEFITS OF LOTS; 5-9. THE OWNERS OF SAID LOTS FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF THE STORM DRAINAGE SYSTEMS AND RETAINING WALLS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. NO ADDITIONAL STRUCTURAL FILL SHALL BE PLACED WITHIN SAID EASEMENT.
15. A 8.50 FOOT WIDE WALL EASEMENT ACROSS LOT 7 IS HEREBY RESERVED FOR AND GRANTED TO, FOR THE BENEFITS OF LOT 8. THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF THE RETAINING WALLS. ANY DISTURBANCE TO SAID LOTS SHALL BE RETURNED TO ITS ORIGINAL CONDITION. NO PERMANENT STRUCTURE, EXCEPT FOR FENCING, SHALL BE LOCATED WITHIN SAID EASEMENT. NO ADDITIONAL STRUCTURAL FILL SHALL BE PLACED WITHIN SAID EASEMENT.
16. ALL LOTS WITHIN THIS PLAT HAVE BEEN CERTIFIED FOR A BEARING LOAD OF 2,500 POUNDS PER SQUARE FOOT AS DETERMINED BY TERRA ASSOC. INC, FINAL REPORT DATED JAN. 10, 2020.

TRACT NOTES

1. TRACT "A" IS A PUBLIC STORM TRACT AND IS DEDICATED TO THE CITY OF PUYALLUP UPON RECORDING OF THIS SUBDIVISION (SEE DEDICATION ON SHEET 1).

LOT ADDRESSES	
LOT #	ADDRESS
1	501 20TH AVE CT SW
2	509 20TH AVE CT SW
3	517 20TH AVE CT SW
4	603 20TH AVE CT SW
5	611 20TH AVE CT SW
6	619 20TH AVE CT SW
7	620 20TH AVE CT SW
8	612 20TH AVE CT SW
9	604 20TH AVE CT SW
10	518 20TH AVE CT SW
11	510 20TH AVE CT SW



FOUND 2" BRASS DISC W/PUNCH IN CASE DOWN 0.7'. VISITED 3/21/2019



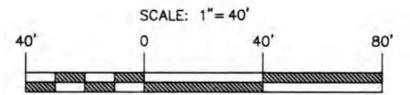
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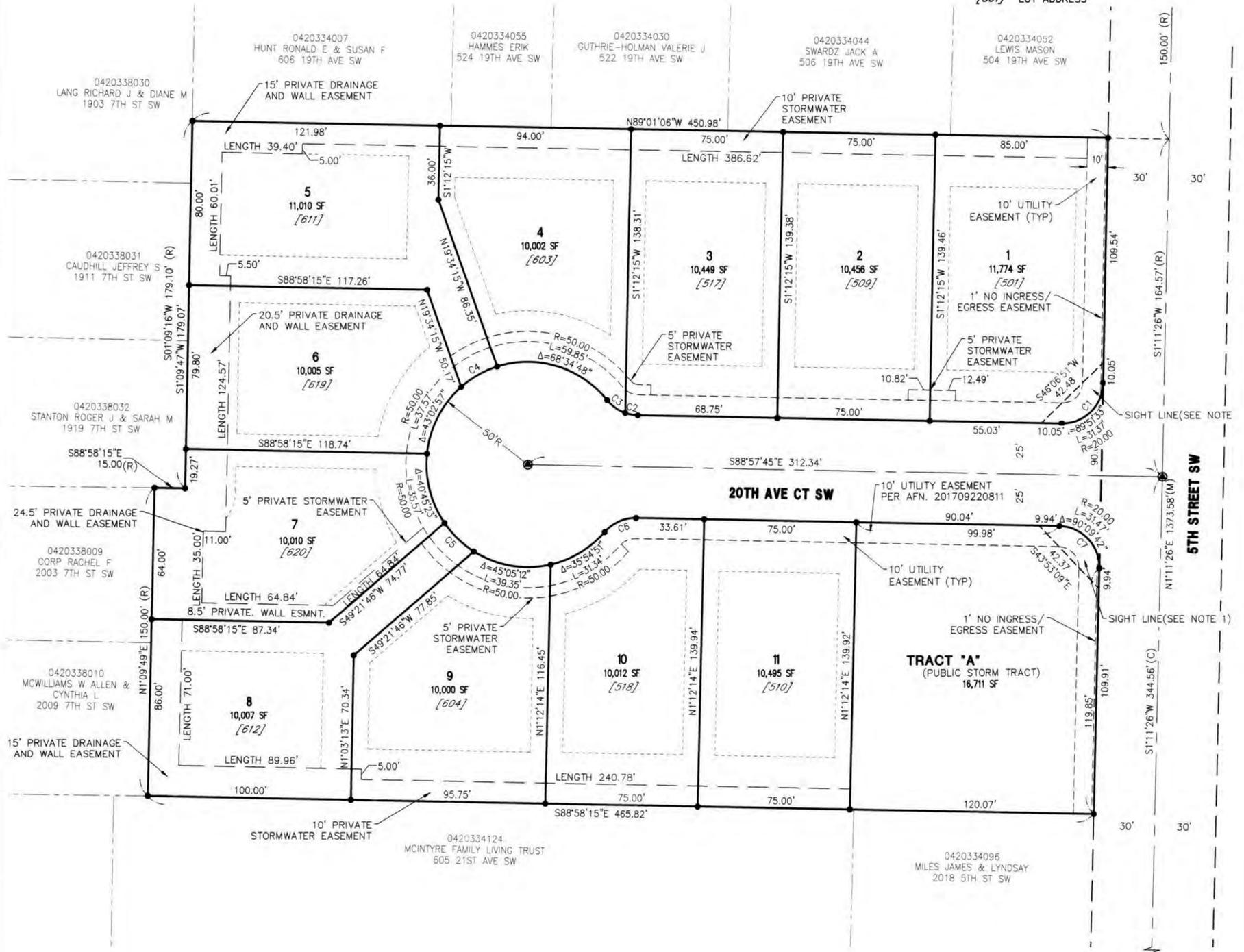
JOB NO. 15095

CHRISTEN ESTATES

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, CITY OF PUYALLUP, PIERCE COUNTY, WASHINGTON



- LEGEND**
- FOUND MON AS NOTED
 - ⊙ SET MONUMENT "LS 38985"
 - SET REBAR/CAP "LS 38985"
 - [501] LOT ADDRESS



SIGHT LINE NOTE

1. THERE SHALL BE NO SIGHT OBSTRUCTIONS LOCATED WITHIN THE 85 FOOT SIGHT DISTANCE TRIANGLE AS DEPICTED. THIS INCLUDES FENCES, SIGNAGE, BUILDINGS, STRUCTURES, LANDSCAPING, STREET TREES, ETC.

Curve Table

Curve #	Length	Radius	Delta
C1	31.37	20.00	89°51'33"
C2	6.35	20.00	18°11'59"
C3	11.10	20.00	31°47'42"
C4	20.43	50.00	23°24'43"
C5	20.24	50.00	23°11'28"
C6	17.45	20.00	49°59'41"
C7	31.47	20.00	90°09'42"

SURVEY NOTES

BASIS OF BEARINGS
MONUMENTED CENTERLINE OF 19TH AVENUE SOUTHWEST NAD 83-2011 (EPOCH 2010.00), WASHINGTON STATE PLANE, SOUTH ZONE, (PER THE WASHINGTON STATE REFERENCE NETWORK, WGS).

METHODS & EQUIPMENT
THIS SURVEY COMPLIES WITH ALL STANDARDS AND GUIDELINES OF THE "SURVEY RECORDING ACT", CHAPTER 58.09 RCW AND 332.130 WAC

METHOD: FIELD TRAVERSE AND GPS OBSERVATIONS IN MARCH, 2019.

EQUIPMENT USED: CARLSON GEOMAX ZOOM 90 AND CARLSON BRX6+. ALL INSTRUMENTS UTILIZED DURING THE COURSE OF THIS SURVEY ARE MAINTAINED IN CONFORMANCE WITH MANUFACTURERS SPECIFICATIONS.

REFERENCES

- (R-1) PIERCE COUNTY SHORT PLAT FILED UNDER RECORDING NUMBER 9107230466.
- (R-2) PIERCE COUNTY SHORT PLAT FILED UNDER RECORDING NUMBER 9107240070.
- (R-3) PIERCE COUNTY SHORT PLAT FILED UNDER RECORDING NUMBER 8205050158.



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JOB NO. 15095



City Council Agenda Item Report

Submitted by: Paul Marrinan

Submitting Department: Stormwater Engineering

Meeting Date: 7/21/2020

Subject:

Authorize the City Manager to sign an agreement with Pierce Conservation District providing rights to forest credits for a city-owned parcel

Presenter:

Paul Marrinan, City Stormwater Engineer and Ryan Mello, Pierce Conservation District

Recommendation:

Approve an agreement, in a form as approved by the City Attorney, allowing forest credits to the Pierce Conservation District for Parcel No. 0420294051 within the City.

Background:

Pierce Conservation District (PCD) is asking the City to enter an 'Agreement to Transfer Potential Credits' for Parcel No. 0420294051 within the City of Puyallup. The agreement would give the rights to sell the credits from planting trees on the subject property as well as obligate the City to leave the trees in place and PCD to maintain these trees for 25 years. This agreement will kick off a pilot program for the Pierce Conservation District that they would be able to use across Pierce County.

City staff believes that due to the fact that this property already has a conservation easement on it and cannot be developed for any purpose in the future, this partnership with PCD on this program will be a win/win for the City and PCD. From the City's perspective, we will save money by not having to pay staff to plant or maintain this habitat restoration area near Clark's Creek and this will allow us to put that money toward other programs or permit requirements.

Council Direction:

Fiscal Impacts:

No specific budgetary impact. This will save the City money on hiring restoration crews.

ATTACHMENTS

- [Memo](#)
- [Agreement](#)

City of Puyallup
Stormwater Engineering

MEMORANDUM

Date: July 16, 2020
To: City Council, meeting date July 21, 2020
From: Paul Marrinan, P.E., Stormwater Engineer
Regarding: City Forest Credits, agreement to transfer potential credits proposal for AFN 0420294051

Pierce Conservation District is asking that the City allow the City Manager to sign an 'Agreement to Transfer Potential Credits' for a specific property within the City of Puyallup. This document would give the Pierce Conservation District rights to sell the credits from planting trees on the subject property as well as obligate the City to leave the trees in place and PCD to maintain these trees for 25 years. This agreement will kick off a pilot program for the Pierce Conservation District that they would be able to use across Pierce County.

Background:

Coordination between the City of Puyallup and Pierce Conservation District.

The City of Puyallup Stormwater, Parks and Planning Staff and the Pierce Conservation District's (PCD) water quality group team up for numerous projects around the City that reduce the overall quantity of runoff into the City's storm system and/or increases the water quality of the water running off our streams. This collaboration also generally improves the quality of our open spaces for enjoyment by people and ultimately provides protection for fish and wildlife.

The City currently has over 350 acres of open space that are being maintained and restored under a management program that we have undertaken with PCD. This City of Puyallup Open space that is within this management program is located along creeks, streams and lakes within Puyallup (many of these areas are also utilized by the Puyallup Loop Trail). These areas are planted and maintained with City oversight and PCD management of Washington Conservation Corps (WCC) and volunteer efforts. PCD is in most circumstances the expert regarding plant layout (creating planting plans), restoration planning and volunteer management that we rely on when it comes to habitat restoration planning and volunteer/event coordination.

Along with the direct benefit to the City's water bodies and the public open spaces, this work helps the City meet our Stormwater Permit requirements including among others Education and Outreach, Stewardship, and TMDL (pollution maximum outputs) goals.

With minimal City staff time generally directing PCD on the City's wishes/requirements for managing these sites, the WCC contract that we agree to yearly to pay for their crew time and materials cost for

plantings with PCD's help we are able to complete a large body of work that the City does not have staffing or budget for on our own.

PCD has recently come to us regarding an opportunity to leverage a program that they are trying to start in Pierce County at the moment that would benefit the City and potentially others in the future. This new program would allow the City to get some of the plant materials and PCD time paid for through the forest credit program where they would leverage 'credits' that private businesses would voluntarily purchase in order to plant and maintain trees on riparian areas.

The specific proposal from PCD would be to leverage 'credits' for planting trees on a City owned property adjacent to Clarks Creek. This credits program would require no City funds and would save us some upfront planting costs and future maintenance costs.

Subject property

Parcel Number: 0420294051, Address: xxx Corwin RD SW.

The property that the Pierce Conservation District would like the City to allow them to use to purchase Forest credits with, is a portion of the property that we commonly call the 'Peck' property (referred to as this internally due to the fact that this is who the City purchased the property from in November of 2015). The Peck property is 3.75 acres and was purchased late in 2015 using Pierce County Conservation Futures funds, which means that with an overall purchase price of \$126,000, the City's portion was only \$22,500. When we agreed to use the Conservation Futures funds, this required a covenant to be placed on the land, that was recorded prior to purchase, to only allow the property to be held as open space for perpetuity and be used for habitat/riparian, floodplain, wetland (or similar) restoration and never to be developed. I have attached the original Conservation Futures document to this memo.

See attached 'Maps'

The City fully understood this when we purchased the property in 2015. Since the entire property is adjacent to Clarks Creek, the idea was that we could use this property to help improve the water quality in Clarks Creek, reduce urban flooding, provide public access and satisfy some of our Municipal Stormwater Permit Requirements that have been mandated by the Department of Ecology.

The City has been slowly restoring the property with the help of the PCD, which generally includes invasive removal and native plantings. A portion of the site has been restored by PCD and WCC crews as part of the City's riparian restoration work and a portion of the site has been planted by PCD and WCC crews as a wetland mitigation for the WSU frontage projects. This leaves a 1.5 acre piece of the property that is still available and in need of invasive species removal and restoration. This would be the portion of the site that they would like to use for the Forest Credit program.

PCD is asking the City to allow them to put an additional covenant on the property that would basically allow them to sell the credits to private companies in order to fund future restoration work. The City would not be able to remove the trees for 25 years and Pierce Conservation District would obtain the trees for us free of charge and agree to maintain them for that period of time. This will be done as part of a program for PCD. They will use the sale of these credits on City property as a pilot project of sorts

to determine whether they think they will be able to turn this into a viable program in the future in Pierce County

As I mentioned above, I believe this to be a win/win for the City and Pierce Conservation District, since we would be able to use this program to pay for work on City property with external funds and I do not think that this covenant adds a burden since we are currently restoring the property anyway and are not allowed to develop this property due to the conservation covenant already on the title.

When Pierce Conservation District approached us with this idea, I thought it would be a great fit for this property, but since we are putting an additional covenant on City property, I will have to leave the final decision to City Council to whether you believe it is ultimately in the City's best interest

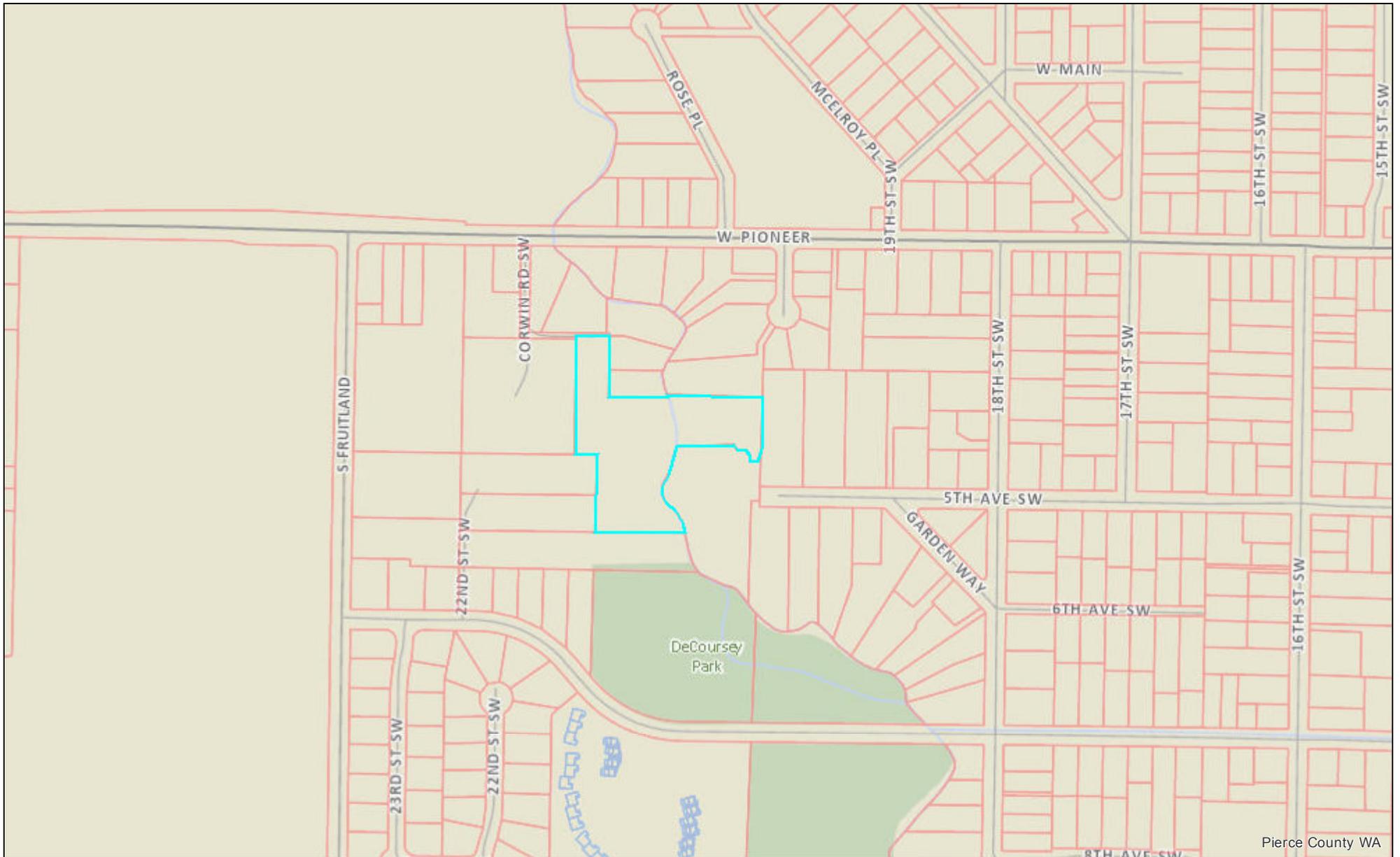
Forest Credit Program Details:

PCD is working with City Forest Credits, a national not-for-profit who works to certify Forest Credits to be monetized and purchased voluntarily in the marketplace by corporations who choose to do so. City Forest Credits' mission is to bring the wide range of environmental benefits of trees to our cities and towns in America. They seek to make American cities greener, healthier, and more equitable by enabling urban tree-planting and preservation projects to earn environmental credits to generate much-needed funding for our declining urban forests. The number of credits and amount of environmental benefit is determined on a case-by-case basis, determined by factors such as tree species, density of planting, soil types and other factors. The monetary value of each credit is determined in the private marketplace based on what buyers are voluntarily willing to pay for them. Generally, environmental credits similar to these are currently being sold for \$12 - \$25/credit.

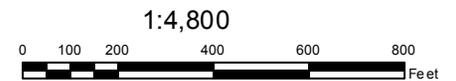
MAPS



QuickView PuyallupEng



- Tax Parcels**
- Base Parcel
 - Condominium
 - Other
 - City Limits





QuickView PuyallupEng



Tax Parcels

Base Parcel

Condominium

Other

Tax Parcel Labels

City Limits

Orange shading depicts approximate limits of Forest Credit plantings, approximately 1.5 acres

1:1,200



Date: 6/11/2010



CITY OF PUYALLUP, WA – PECK RIPARIAN PLANTING PROJECT
Agreement to Transfer Potential Credits

This Agreement to Transfer Potential Credits (“Agreement”) is entered in to this ____ day of _____, 2020 (the “Effective Date”) by City of Puyallup (the “Landowner”) and Pierce Conservation District (“PCD”) whose mission is to work throughout Pierce County with local landowners, citizen volunteers, and public agencies to conserve natural resources that are essential to both our economy and our region’s quality of life and who has undertaken a tree-planting project (“Tree Project”) on the Property of Landowner (the “Property”).

1. Purpose and Intent

PCD and Landowner desire to help PCD fund this Tree Project by allowing PCD to develop potential carbon and environmental credits that it can attempt to sell to defray project costs, future maintenance costs or to plant additional trees. The Landowner will receive the benefits of the trees planted in this project at little to no cost to the Landowner.

These potential carbon or environmental credits or offsets include amounts of carbon dioxide stored, storm water run-off reductions, energy savings, fish habitat, and air quality benefits arising from the planting and growth of trees in the Tree Project (“Carbon+ Credits”). The Carbon+ Credits will be developed using the protocols and registry of City Forest Credits, a non-profit organization (“CFC”).

2. Rights Granted

Landowner grants PCD the title and rights to any and all Carbon+ Credits developed from the Tree Project during the term of this agreement, including rights to register with CFC, and develop and sell the Carbon+ Credits at the sole discretion of PCD.

3. Subject Lands

The Property specified in Exhibit A.

4. Obligations of Landowner

Landowner shall not cut, harvest, or damage trees in the Tree Project except in cases of emergency involving fire or flooding or to mitigate hazard if trees are identified as a hazard by a certified arborist. City inputs will not exceed current agreed upon restoration and maintenance as stated in the Green Puyallup Partnership 20-year Restoration Plan.

5. Obligations of PCD

PCD will pay all costs and assume all responsibilities for development and sale of Carbon+ Credits from the Tree Project. The trees associated with this agreement shall be maintained by PCD for the duration of this agreement.

6. Landowner Representations

Landowner represents that it has authority to enter this agreement, and that the Property is free from any liens, claims, encumbrances, tenancies, restrictions, or easements that would prevent or interfere with the rights to Carbon+ Credits granted under this Agreement.

7. PCD Representations

PCD represents that it has the capacities necessary to execute its obligations under this agreement.

8. Default

If either party is in default of this agreement, the other party may notify the defaulting party of the specific nature of the default. The defaulting Party has 30 days from the date of notice to correct the default. If the default is not corrected in 30 days, the non-defaulting party may cancel this agreement. Notice of cancellation shall be delivered in writing to the current contact address of the defaulting party.

PCD shall keep insurance coverage in full force while performing work on this agreement.

Indemnification and hold harmless: to the fullest extent permitted by law, the PCD and the Landowner shall indemnify, defend, and hold harmless each other, their Boards of Directors, elected officials, agents and employees, as well as the State of Washington, its officials, agents and employees from and against all claims for injuries or death, losses or suits including attorney fees arising out of or resulting from the indemnifying party's performance of this agreement.

9. Term of Agreement and Option to Renew

This Agreement shall remain in force for 25 years after the Effective Date of the Agreement. PCD may renew this Agreement for a second 25 years if it delivers written notice of renewal to Landowner at least 90 days prior to expiration of this Agreement.

10. Governing Law

This agreement shall be construed and enforced in accordance with the laws of the State of Washington.

11. Parties

Pierce Conservation District		Landowner	
Name:	Ryan Mello	Name:	
Title:	Executive Director	Title:	
Address:	PO Box 1057 Puyallup, WA 98371	Address:	
Phone:	253.845.9770	Phone:	
Email:	RyanM@pierccd.org	Email:	
Signature:		Signature:	
Date:		Date:	

Exhibit A

Legal Description of Property

THOSE PORTIONS OF PARCELS 'A' AND 'B' OF CITY OF PUYALLUP BOUNDARY LINE REVISION NO. 98-84-010, RECORDED, UNDER RECORDING NUMBER 9808125004, RECORDS OF PIERCE COUNTY, WASHINGTON, LYING NORTHERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING at the NORTHWEST corner of SAID PARCEL 'A'; THENCE ALONG THE NORTH LINE THEREOF SOUTH 89°18'58" EAST, 338.00 FEET TO THE POINT OF BEGINNING OF THIS LINE DESCRIPTION; THENCE CONTINUING SOUTH 89°18'58" EAST, 68.86 FEET; THENCE SOUTH 01°42'58" WEST, 120.82 FEET TO THE SOUTH LINE OF SAID PARCEL 'A'; THENCE CONTINUING SOUTH 01°42'58" WEST, 110.02 FEET TO THE SOUTH LINE OF SAID PARCEL 'B' AND THE TERMINUS OF THIS LINE DESCRIPTION.

CONTAINING 122,306 SQUARE FEET, OR 2.81 ACRES, MORE OR LESS.



City Council Agenda Item Report

Submitted by: McKenzi Kent

Submitting Department: Police Department

Meeting Date: 7/21/2020

Subject:

Approve a contract between the City of Puyallup and The Salvation Army for emergency shelter services

Presenter:

Scott Engle, Chief of Police

Recommendation:

Authorize the City Manager to sign a 12 month contract, in a form as approved by the City Attorney, with The Salvation Army Tacoma Citadel Corps, awarding grant funds of approximately \$68,232.

Background:

The purpose of this contract is to provide emergency shelter housing for individuals experiencing homelessness. This is our second year partnering with The Salvation Army Tacoma Citadel Corps. Under this contract they will provide priority access to shelter to homeless persons. They will also provide basic shelter amenities, intake interviews, and coordinated entry assessments to each client allowing them to have possible access to financial homeless services. They will work with local Puyallup agencies to help provide services so residents can be relocated back, if they wish, within their home community, help them access mental health services, drug and alcohol treatment services, and help them access employment services.

Council Direction:

Fiscal Impacts:

A total of up to \$68,232 in grant funding.

ATTACHMENTS

- [Salvation Army Contract](#)

SERVICES CONTRACT

1. Parties. This contract is entered into by and between the City of Puyallup (City), a municipal corporation in the State of Washington, and The Salvation Army Tacoma Citadel Corps (Recipient).

In consideration of the mutual promises identified herein, the parties agree as follows:

2. Grant Award. The City awards grant funding in the amount not to exceed \$68,232 to Recipient. The City may issue the grant funding in monthly installments, after appropriate reporting is received by the City.

3. Scope of Services. Recipient shall use the grant funding from the City to provide the Services as described in Exhibit A, incorporated herein by this reference. If Recipient fails, for any reason, to use the grant funding for the Services, or fails to perform its obligations under this contract, the Recipient shall, upon demand of the City, repay the grant funding to the City that is still remaining from the time services ceased to be offered. Recipient expressly agrees that in providing all services under this Contract: It will not discriminate based on religion against any person receiving services and will not limit such services or give preference to persons on the basis of religion. It will provide no religious instruction or counseling, conduct no religious worship or services (not including voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of the services pursuant to this Contract.

4. Term and Termination. This contract shall be effective when both parties have executed this contract (“Effective Date”) and be for the duration of twelve months from the Effective Date. The City may terminate this contract if the Recipient breaches this contract and then fails to cure the breach after the City provides written notice of the breach and allows the Recipient a reasonable opportunity to cure, if such breach is curable. The City may suspend this contract, with or without cause, by providing written notice of suspension to Recipient.

5. Reports and Information. Recipient shall maintain records that fully and accurately reflect the Services or other matters related to the performance of the Services. Recipient, at such times and in such forms as the City may require, including after the cessation of the Services or termination of this contract, shall make available to the City for audit and inspection any and all records that relate to the Services. Recipient shall maintain accounting records in accordance with generally accepted accounting principles and practices. In addition to the foregoing, Recipient shall provide an accounting of grant funding expenditures through December 31, 2020, by January 3, 2021 and an accounting of grant funding expenditures through May 30, 2021, by June 30, 2021.

6. Qualifications. Recipient warrants that its employees or those persons or entities that perform the contract work have sufficient education, training, skill, knowledge, ability, and experience to competently perform the contract work. Recipient further warrants that its

employees or those persons or entities that perform the contract work have satisfied all statutory and regulatory requirements that are necessary to perform the services.

7. Independent Recipient. Recipient shall be an independent Recipient for all federal, state and other purposes.

8. Defense, Hold Harmless, Indemnification. Recipient may, but shall not be required to, defend the City or pay for the defense of the City. However, Recipient shall participate in the defense of the City its officers, officials, employees and volunteers against any and all claims, injuries, damages, losses or suits including attorney fees, to the extent that they arise out of or result from the acts, errors or omissions of the Recipient in performance of this contract. Recipient's duty to participate in the defense of the City shall include, but is not limited to, provision of discoverable documents, witness testimony or other evidence.

Recipient shall indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, to the extent that they arise out of or result from the negligent or tortious acts, errors or omissions of the Recipient in performance of this contract.

Upon attribution of liability to Recipient during proceedings to adjudicate or arbitrate any such claims or suits, or determination of Recipient's share of liability by the parties, Recipient shall reimburse the City for its costs to defend, including reasonable attorney fees, and indemnify the City for all awards, rulings, verdicts, judgments or similar decisions, to the extent of Recipient's attributed or determined liability. If such claims or suits are resolved without an adjudicated or arbitrated attribution of Recipient's share of liability, the parties shall in good faith determine by agreement Recipient's share of liability. If the parties cannot determine Recipient's share of liability by agreement, Recipient's share of liability may be determined in adjudicative or arbitration proceedings.

9. Insurance. Recipient shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Recipient, its agents, representatives, or employees. Recipient's maintenance of insurance as required by this Contract shall not be construed to limit the liability of Recipient to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Notices. Any notices given by the City to Recipient or by Recipient to the City shall be in writing and delivered to the parties at the following addresses:

City of Puyallup Attn: City Clerk's Office 333 S. Meridian Puyallup, WA 98371	The Salvation Army Tacoma Citadel Corps Attn: Randy Kinnamon P.O. Box 1254 Tacoma, WA 98401
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11. Waiver. Failure to insist upon strict compliance with any terms, covenants or conditions of this contract shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

12. Applicable Law; Venue. The venue for any legal action arising from this contract shall be Pierce County, Washington, and that this contract shall be governed, construed, and interpreted according to the laws of the State of Washington.

13. Compliance with Laws and Regulations. Recipient shall comply with all applicable laws, rules, regulations, and orders from any and all authorities having jurisdiction.

14. Discrimination Prohibited. In all Recipient services, programs or activities, and all hiring and employment made possible, directly, indirectly, by or resulting from this contract, Recipient shall not discriminate against any protected class or on any basis prohibited by federal or state law, including, but not limited to, sex, race, color, creed, religion, national origin, disability, use of a guide dog or service animal by a person with a disability, HIV/AIDS or hepatitis C status, sexual orientation, gender identity, or honorably discharged veteran and military status.

15. Misuse of Funds for Political Activity. The funds provided for in this contract may not be used directly or indirectly to further political activity and/or endorse rather than use such funds for their intended purpose. Any such use shall be grounds for immediate termination of this contract and in that event the Recipient hereby agrees to refund all grant funds.

16. Assignment and Subcontract. Recipient shall not assign or subcontract any portion of the service contemplated by this contract without the written consent of the City.

17. Cumulative Remedies. The rights and remedies of each party set forth in any provision of this contract are in addition to and do not in any way limit any other rights or remedies afforded to such party by law.

18. Severability. The invalidity or unenforceability of any particular provision of this contract shall not affect the other provisions, and this contract shall be construed as if such invalid or unenforceable provisions were omitted, unless such invalidity or unenforceability destroys the purpose and intent of this contract.

19. Time. Time is of the essence for the performance of every term of this contract.

20. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Contract, and the incorporated documents, if any. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

21. Concurrent Originals. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. Entire Contract; Possible Amendments. This contract contains the entire

agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall be deemed to exist or bind any of the parties. Either party may request changes in the contract. Proposed changes mutually agreed upon will be incorporated by written amendments to this contract.

The Salvation Army Tacoma Citadel Corps

Dated: _____

By: Major Randy Kinnamon
Its: Corp Officer

City of Puyallup

Dated: _____

By: Steve Kirkelie
Its: City Manager

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Mary Winter
City Clerk

Exhibit A – Scope of Services

Services Provided

The Salvation Army will:

- Provide priority access to shelter to homeless persons as identified by the City
- Provide basic shelter amenities to residents: three meals each day, following guidelines provide by the USD dietary guidelines, access to laundry, a semi-private hygiene room (with shower, toilet and sink), light case management as available through the SHIELD Center.
- Provide an Intake Interview to residents that are referred by the referral team, include all signed documentation necessary to comply with HMIS, Coordinated Entry.
- Offer and provide a Coordinated Entry Assessment to each client, allowing them to have possible access to financial homeless services.
- Work with local Puyallup agencies to help provide services so that they can be relocated back within their home community if they wish.

Light Case Management Services provided by a caseworker:

- Help residents to access mental health services and housing supportive services through a network relationship to mental health agencies and public benefits resource agencies.
- Help residents access drug and alcohol treatment services as needed and as available.
- Help residents access employment services, through local employment assistance agencies.

Room Costs and Types:

- The City shall pay \$2,843.75 per month per room
- The Salvation Army shall provide, upon request of the City, the following types of rooms:
 - One room for up to six (6) males
 - One room for up to eight (8) females



City Council Agenda Item Report

Submitted by: Barbara Lopez
Submitting Department: Finance
Meeting Date: 7/21/2020

Subject:

Update on the 2021-22 biennial budget regarding initial General Fund revenue projections

Presenter:

Barbara Lopez, Finance Director

Recommendation:

Finance is seeking feedback from Council regarding certain General Fund revenue line items where the recommended 2021 budget differs from the calculation outlined in the Budget Stability Policy.

Background:

This 2021-22 Biennial Budget update includes a look at the overall calendar for the process, where we currently are in the process and how it has been and will continue to be shaped by monthly evaluation of revenues impacted by the response to COVID-19. It will also include a discussion of preliminary General Fund revenue projections, highlighting specific revenue types where the recommended budget for 2021 differs from the calculation outlined in the Budget Stability Policy.

Council Direction:

Fiscal Impacts:

General Fund revenue projections are foundational to building a balanced 2021-22 biennial budget.

ATTACHMENTS