



**CITY OF EDGEWOOD  
COUNCIL STUDY SESSION AGENDA**

Tues., April 18, 2017 – 7:00 PM ♦ City Hall – 2224 104<sup>th</sup> Avenue East ♦ Edgewood, WA

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**1. CALL TO ORDER**

Pledge of Allegiance & Roll Call

**2. COUNCIL BUSINESS**

- A. *Discussion* (pg. 2) – Brian Levenhagen – PRAB Annual Work Program
- B. *Discussion/Review* (pg. 5) – Development Agreement Updates
- C. *Discussion/Review* (pg. 16) – Map Error Fix
- D. *Discussion (no material)* – 1<sup>st</sup> Quarter 2017 Budget to Actual Financial Review
- E. *Discussion/Review* (pg. 20) – Ordinance – Lakehaven ILA Map Revision
- F. *Discussion/Review* (pg. 42)– Verizon Franchise Agreement
- G. *Discussion/Review* (pg. 92) - Community Services Manager position/job description
- H. *Discussion/Review* (pg. 99) – Vehicle Use Policy
- I. *Discussion/Review* (pg. 106) – Social Media Policy
- J. *Discussion(no material)* – Park Reservation Policy

**3. OTHER COUNCIL ITEMS**

**4. ADJOURN**

*This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.*



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM:** PRAB Annual Check-In with Council

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**Date:** April 18, 2017

**Title:** Parks and Recreation Board Annual Check-In

**Attachments:** 2016 work plan and hand-out for 2017 Park Appreciation Day Event

**Submitted By:** Aaron Nix, ACA – Municipal Services

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** Staff was asked by the Parks and Recreation Advisory Board (PRAB) to set up some time at an April Council Study session in order to have the PRAB Chair, Brian Levenhagen, come and check in the Council on the activities of the PRAB and their work plan for the upcoming year. The PRAB has been busy, as Chair Levenhagen will outline in his meeting with the Council, as well preparing for the Parks Appreciation Day Event that will be held on the 22<sup>nd</sup> of April at the Nature Park again this year.

**Recommendation:** N/A

**Fiscal Impact:** N/A

# *City of Edgewood*

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## Parks and Recreation Advisory Board

### **Draft 2016 Work Program Draft**

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**The Parks and Recreation Advisory Board** has set forth a number of goals and tasks to be addressed during the year 2016. This Work Program is intended to highlight major activities and projects that include support and involvement of the PRAB including major course and setting future mile stones in accordance with the powers and duties listed in section 2.31.030 of Ordinance 06-0272, which established the Parks and Recreation Advisory Board.

#### **GENERAL**

1. Pursue funding for native plants along the Interurban
2. Look into the possibility of having 4-H activities at the Nelson Farm Park
3. Add promotional kiosk for parks at each location to advertise parks and activities
4. We support the concept of having a reader board to announce parks and other City events
5. Encourage City to be a Pierce Conservation District contributor and monitor new Green Puyallup Partnership
6. Seek out potential land acquisition opportunities

#### **PARK PLANNING**

1. Monitor and contribute to 36<sup>th</sup> and Meridian Design and Development
2. Participate in trail planning for the Mortenson Farm property
3. Create a playground renovation plan for Edgemont Park
4. Create a plan for the recently cleared area at Nelson Nature Park (trail and plantings)
5. Look for alternate routes for next Interurban Trail phase

#### **EVENTS and ACTIVITIES**

7. Plan Parks Appreciation Day event – April 23th
8. Plan and host 4 movie nights, Educational, Classic, Outdoor/Family, Holiday
9. Participate in the planning of the Edgewood City Picnic and plan the Holiday Tree Lighting Ceremony

# Volunteers Needed



**When:** Saturday April 22<sup>nd</sup> 2017 10am-1pm

**Where:** Nelson Nature Park – 2228 118<sup>th</sup> Ave East

**What:** Weeding, removing invasive vegetation, and trail maintenance

**About the Event:** Those interested are encouraged to share the information and register to participate. Please use the registration form below, for yourself or your organization.

Although registration is **NOT** required to participate it is appreciated.

**The Day of:** Wear weather appropriate comfortable work clothes and shoes.

**Bring hand tools, rakes, shovels and gloves if you have them.**

\*Waiver forms and sign-up sheets will be available on-site.

A parent or legal guardian must sign the waiver form for any minors.

Volunteers 13 and under must be accompanied/supervised by an adult at all times.

**Light refreshments will be provided, see you there!**

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

Group: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Participants Expected: \_\_\_\_\_ Adults: \_\_\_\_\_ Minors: \_\_\_\_\_

Remove bottom portion and  
return completed form to:

Attn: Aaron Nix  
Edgewood City Hall  
2224 1104<sup>th</sup> Ave E  
Edgewood, WA 98372

or

[aaron@cityofedgewood.org](mailto:aaron@cityofedgewood.org)

\*Please initial if you agree to the following:

"I authorize necessary emergency medical treatment should an incident occur" \_\_\_\_\_

"I give permission to have my photo/video taken and used by the City for publicity" \_\_\_\_\_

04/18/17 Study Session  
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\* Not initialing photo/video permission will not keep you from participating)



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: Development Agreement Code**

Updates

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**Date:** April 18, 2017

**Title:** Development Agreement Code Updates

**Attachments:** DRAFT Ordinance 17-0497

**Submitted By:** Kevin Stender, Community Development Director

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** As part of our ongoing code updates, Legal Counsel has suggested adopting revisions to the process for Development Agreements processing. More specifically, a Development Agreement cannot modify City adopted regulations. At this time our existing code allows for this to occur. The revised code addresses this along with providing clarification changes to how a request is reviewed. The Planning Commission reviewed the DRAFT Ordinance at the February 27, 2017 Planning Commission meeting and a new DRAFT Ordinance at the March 6, 2017 Planning Commission meeting. The Planning Commission also held a Public Hearing on the revised Language at the March 20, 2017 Planning Commission meeting and recommends adoption of the DRAFT Ordinance. The City Council reviewed the DRAFT Ordinance at the April 4, 2017 Study Session, did not recommend any changes to the DRAFT and asked Staff to place the Ordinance on the agenda for first reading on April 11, 2017. City Staff has scheduled for a Public Hearing to occur on this item at the April 25, 2017 regular Council Meeting along with potentially second reading and adoption.

**Recommendation:** Move to Public Hearing and Second Reading

**Fiscal Impact:** N/A

**DRAFT – 3/29/2017**

**ORDINANCE NO. 17-~~XXXX~~0497**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING PROCEDURES FOR THE EXECUTION OF DEVELOPMENT AGREEMENTS WITH PROPERTY OWNERS, REQUIRING CONSISTENCY WITH EXISTING DEVELOPMENT REGULATIONS AS REQUIRED BY RCW 36.70B.170, IDENTIFYING THE ELEMENTS OF A COMPLETE APPLICATION FOR A DEVELOPMENT AGREEMENT, DESCRIBING THE PROCEDURE FOR PROCESSING DEVELOPMENT AGREEMENTS, CLARIFYING THE EFFECT, FORMAT, REQUIREMENTS FOR PUBLIC HEARING ON DEVELOPMENT AGREEMENTS, RECORDING, APPEALS AND REVISIONS TO APPROVED DEVELOPMENT AGREEMENTS; ADOPTING A NEW CHAPTER ~~18.55~~18.55 TO THE EDGEWOOD MUNICIPAL CODE, REPEALING SECTIONS 18.50.090 AND 18.90.015 OF THE EDGEWOOD MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the City of Edgewood desires to amend its procedures allowing the City to enter into development agreements with property owners, so that such procedures are consistent with RCW 36.70B.170 through RCW 36.70B.200; and

WHEREAS, the City's existing code provisions are incomplete and inconsistent with law, and in addition, because they allow modifications of development regulations through a development agreement; and

WHEREAS, the City ~~further~~ desires to add provisions in its code relating to development agreements that will add provisions better enabling the City to evaluate and approve development agreements, such as a list of materials needed to process a development agreement; and

WHEREAS the SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, after providing the requisite public notice, the Planning Commission held a public hearing on ~~\_\_\_\_\_~~, March 20, 201~~7~~, to consider this Ordinance, together with public testimony, and forwarded its recommendation to the City Council; and

WHEREAS, the City Council consider this Ordinance during its regular City Council meeting on ~~\_\_\_\_\_~~, April XX, 201~~7~~; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, ORDAINS  
AS FOLLOWS:

Section 1. Section 18.50.090 of the Edgewood Municipal Code is hereby repealed.

Section 2. Section 18.90.015 of the Edgewood Municipal Code is hereby repealed.

Section 3. A new Chapter 18.55 is hereby added to the Edgewood Municipal Code, which shall read as follows:

**Chapter 18.55  
DEVELOPMENT AGREEMENTS**

**Sections:**

|                  |                                                          |
|------------------|----------------------------------------------------------|
| <u>18.55.010</u> | <b>Intent and Purpose.</b>                               |
| <u>18.55.020</u> | <b>Form of Agreement, Effect and General Provisions.</b> |
| <u>18.55.030</u> | <b>Application Requirements.</b>                         |
| <u>18.55.040</u> | <b>Public Notice of Public Hearing.</b>                  |
| <u>18.55.050</u> | <b>SEPA.</b>                                             |
| <u>18.55.060</u> | <b>Phasing.</b>                                          |
| <u>18.55.070</u> | <b>Processing Procedures and Appeals.</b>                |
| <u>18.55.080</u> | <b>Revisions to Approved Development Agreements.</b>     |

18.55.010 **Intent and Purpose.**

The purpose of this chapter is to authorize the use of development agreements, consistent with RCW 36.70B.170 through RCW 36.70B.210. The City may, but

under no circumstances is required to, enter into a development agreement with a person having ownership or control of real property within the City (or real property lying outside the City limits but within the urban growth area). The development agreement may address such project elements as those set forth in RCW 36.70B.170B(3). The development agreement shall be consistent with the applicable portions of the comprehensive plan as well as the development regulations of the City. The consideration provided by the property owner for the City's decision to enter into the development agreement may vary, depending on the benefit the development agreement will provide to the City and/or the public in general.

**18.55.020 Form of Agreement, Effect and General Provisions.**

A. **Form.** All development agreements shall be on the standard form approved in advance by the City Attorney for this purpose.

B. **Effect.** Development agreements are not project permit applications and are not subject to the permit processing procedures in Chapter 36.70B RCW and Title ~~18.40~~ of the Edgewood Municipal Code. A development agreement shall constitute a binding contract between the City and the property owner and the subsequent owners of any later-acquired interests in the property identified in the development agreement. A development agreement governs the project identified in the development agreement during the term of the development agreement, or for all or that part of the build-out period specified in the development agreement, and may not be subject to an amendment to a zoning ordinance or development standard adopted after the effective date of the agreement. A permit or approval issued/granted by the City after execution of a valid development agreement must be consistent with the development agreement.

C. **Limitations.** Any provision of the development agreement which requires the City to: (1) forego adoption of any development regulations affecting the property identified in the agreement; and/or (2) allow vesting beyond the applicable deadlines for a phased development; shall be limited to a period of **five** ~~(5)~~ years.<sup>1</sup> The development agreement shall also reserve authority to impose new or different regulations during the term of the development agreement, to the extent required by a serious threat to public health and safety. This proviso shall clearly state that the City may, without incurring any liability, engage in action that would otherwise be a breach if the City adopts findings of fact to support a determination on the record that the action is necessary to avoid a serious threat to public health and safety, or if the action is required by federal or state law.

D. **Developer's Compliance.** The development agreement shall include a clause stating that the City's duties under the agreement are expressly conditioned



upon the property owner's substantial compliance with each and every term, condition, provision and/or covenant in the development agreement, all applicable federal, state and local laws and regulations and the property owner's obligations as identified in any approval or project permit for the property identified in the development agreement.

E. No Third Party Rights. Except as otherwise provided in the development agreement, the development agreement shall create no rights enforceable by any party who/which is not a party to the development agreement.

F. Liability. The development agreement shall include clause providing that any breach of the development agreement by the City shall give rise only to damages under state contract law and shall not give rise to any liability under chapter 64.40 RCW, the Fifth and Fourteenth Amendments to the U.S. Constitution or similar state constitutional provisions.

G. Termination. Every development agreement shall have an identified, specific termination date. Upon termination, any further development of the property shall conform to the development regulations applicable to the property.

**18.55.030 Application Requirements.** A complete application for a development agreement shall consist of the following:

- A. Name, address, telephone number and e-mail address of the property owner. If the applicant is not the property owner, the applicant must submit a verified statement from the property owner that the applicant has the property owner's permission to submit the application. Only the property owner has authority to sign the development agreement;
- B. Address, parcel number and legal description of the property proposed to be subject to the development agreement;
- C. Recent title report confirming that the property identified in the application is owned by the applicant-property owner;
- D. Identification of any application (project permit application, comprehensive plan amendment application, development regulation amendment application) that is related to the proposed development agreement;
- E. SEPA Checklist;
- F. A completed application form and the application fee established by the City for this purpose;

G. Description of the purpose of the development agreement, or the proposed language to be included in the development agreement, and how it complies with both the City's comprehensive plan and development regulations; and

H. Any other information requested by the Community Development Director relevant to the processing of the development agreement.<sup>2</sup>

**18.55.040 Public Notice of the Public Hearing.**

A. Project Permit Applications. Public notice of the public hearing on a development agreement associated with an underlying project permit application shall be provided consistent with Section 18.40.190 EMC.

B. Legislative Action. Public notice of the public hearing on development agreements associated with an underlying legislative action or application shall be provided consistent with Section 18.40.190 EMC.

C. No Underlying Application or Action. Public notice of the public hearing on development agreements for which there is no underlying application or action, such as revisions to development agreements, shall be provided consistent with both Chapter Sections 18.55 and Section 18.40.190 EMC.

**18.55.050 SEPA.** The City shall comply with SEPA, chapter 20.05 EMC, in order to process a development agreement to a final decision. Appeals of the City's SEPA threshold decision shall be consolidated with the public hearing on the underlying project permit application or legislative application/action and addressed as set forth in chapter 20.05 EMC (SEPA).

**18.55.060 Phasing.**

A. In order to phase a development, and to extend the vested rights associated with an underlying project permit application, a development agreement is required. This ensures the availability of public facilities and services to all of the property in the identified individual phases, allows tracking of the available capacity of public facilities and utilities during each phase of construction, and with the extension of the vested rights associated with the project, provides certainty to the developer in the subsequent development approval process.

B. The deadlines in the City's code relating to each type of project permit application must be consulted to establish the baseline vesting period. The City is not required to extend the vesting period, and the City shall not extend any vested rights to regulations relating to stormwater. If the City decides to do so through a development agreement, it must be in exchange for the property owner's provision of corresponding benefits to the City in the form of, for example, contributions to public facilities and amenities over and above what would

normally be required. In any event, the City shall not allow vesting to extend beyond the established ~~five~~ (5) year period in Section ~~18.55.020~~(C) after approval of the project permit application.

C. A development agreement for a phased development (such as a subdivision) shall include (in addition to all of the information in Section ~~18.55.030~~), all of the following:

1. identification of the phasing schedule;
2. identification of the number of phases and all lots included in each phase;
3. identification of the approximate dates for construction of public streets, public utilities and other improvements in each phase;
4. identification of the approximate dates for commencement of development of each lot, lot sales and building occupancy;
5. identification of the benefits that the property owner will provide to the City in exchange for permission to phase the development according to the proposed schedule;
6. establishment of the deadline for the property owner to submit development applications, including building permit applications, for each phase;
7. a description of the manner in which each phase is designed such that all site requirements are satisfied independently of phases yet to be given final approval and constructed;
8. a description of the manner in which the property owner will ensure that adequate public facilities are available when the impact of development occurs. The property owner shall acknowledge in the development agreement that if the demand for public facilities or services needed to accommodate a subsequent development phase increases following the issuance of a development permit for a prior phase in the approval process, or if public facilities or services included in a concurrency or SEPA determination are not constructed as scheduled in the City's capital facilities plan, final development approval may have to be delayed for future phases pending the achievement of the adopted levels of service.

~~18.55.070~~ **Processing Procedures and Appeals.** Development agreements are not defined as "project permit applications," in RCW 36.70B.020 and are not subject to the permit processing procedures in chapter 36.70B RCW.

A. Project Permit Applications. Development agreements associated with project permit applications shall be processed as follows.

1. *Consolidation.* Whenever possible, the development agreement shall be consolidated for processing with an underlying project permit application or other application for approval. If the development agreement is consolidated with a project permit application, the property owner must agree to waive the deadline in RCW 36.70B.080 ~~and EMC Section~~ for issuance of a final

decision on the underlying application, as well as the prohibition on no more than one open record hearing and one closed record hearing on the underlying project permit application in RCW 36.70B.060(3). ~~and EMC Section \_\_\_\_.~~

2. *Recommendation, Public Hearing and Final Decision.*

a. Hearing Examiner makes final decision. If the final decision on the underlying project permit application is made by the hearing examiner, then he/she shall consider both the project permit application and the proposed development agreement together, during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement, and his/her decision on the underlying permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the hearing examiner may issue his/her final decision on the underlying project permit application. Nothing in this section obligates the hearing examiner to forward a recommendation to the city council on the development agreement if the hearing examiner denies the underlying project permit application.

b. Staff makes final decision. If the final decision on the underlying project permit application is made by the city administrative staff, then the city staff shall consider both the project permit application and the proposed development agreement together. The city staff shall make a recommendation to the city council on the development agreement, and the city staff's decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the city staff may then issue its final decision on the underlying project permit application. Nothing in this section obligates the city staff to forward a recommendation to the city council on the development agreement if the city staff denies the underlying project permit application.

B. Legislative Applications. A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established for legislative actions. The planning commission shall make its recommendation to the city council on any development agreement relating to legislative action. A public hearing shall be held on the development agreement (and underlying legislative action) and if consistent with this chapter, the council may pass a resolution or ordinance authorizing the mayor to execute the development agreement on behalf of the city.

C. Appeal.

1. A development agreement associated with an underlying project permit application may be judicially appealed in the same manner and within the same deadline as the underlying project permit application.

2. A development agreement associated with a legislative approval, such as a comprehensive plan amendment, may be appealed in the same manner and within the same deadline as the legislative approval. Appeals may be directed to the Growth Management Hearings Board, the Shoreline Hearings Board or to the Superior Court, but there is no further administrative appeal before the City.

D. Recording Against the Property. The City shall record the development agreement against the property (at the property owner's cost) in the real property records of the Pierce County Auditor.

~~18.55.080~~ **Revisions to Approved Development Agreements.** All of the provisions of EMC Section ~~18.55.020~~ shall apply to revisions to approved development agreements. A complete application for a revision to an approved development agreement shall consist of the materials described in EMC Section ~~18.55.030~~.

A. Criteria for Approval. The proposed revision to the Development Agreement must be consistent with: (1) the applicable portions of the Comprehensive Plan in effect at the time the revision application is submitted; (2) the applicable portions of the development regulations at the time the revision application is submitted; (3) the decision in the underlying project permit application or the underlying legislative decision. If the revision involves an extension of the termination date, the City Council must make findings and conclusions after evaluation of all of the information in subsection (B) below. The City Council shall not approve any revision of an approved development agreement involving an extension of the termination date for purposes of extension of the applicant's vested rights, unless the Council makes a finding that the extension is in the public interest.

B. Extension of Termination Date. If the applicant requests an extension of the termination date in order to extend his/her vested rights with regard to phasing of the development, the application materials submitted by the applicant shall provide the following additional information for the Council to review:

1. A list of the development regulations that have been amended by the City since the development agreement was originally approved;

2. A comparison of the effect of the amended development regulations (identified in subsection B(1) above) with the development regulations used to approve the original development agreement; and

3. An up-to-date concurrency evaluation of the City's water rights, sewer capacity and transportation system as applied to the proposed revision, and the effect that approval of the proposed revisions to the development agreement would have on the City's water availability, sewer capacity and transportation concurrency.

C. Public Hearing. In order to revise an approved development agreement, the City must follow the procedures associated with approval of the original development agreement. See, EMC Section ~~18.55~~.18.55.050(A).

D. Recording Against the Property and Appeals. Appeals of a revised development agreement shall follow the procedures in EMC Section ~~18.55~~.18.55.050(C). The development agreement shall be recorded against the property as set forth in EMC Section ~~18.55~~.18.55.070(D).

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Edgewood, this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 201\_.

CITY OF EDGEWOOD

\_\_\_\_\_  
Mayor

|

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO:



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: Map Amendments to  
Future Land Use Map-Map Error Fix**

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**Date:** April 18, 2017

**Title:** Future Land Use Map Amendments-Map Error Fix

**Attachments:** DRAFT Resolution 17-XXXX

**Submitted By:** Kevin Stender, Community Development Director

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** In 2013, the Council processed and passed an Ordinance (13-0402) to modify the land use map designation from a split-zone of TC and SF-3 to MR-2. That map amendment was never completed and was mistakenly missed as a map error when the map was most recently updated with the 2015 Comprehensive Plan Map Amendments.

**Recommendation:** Move to Resolution with Council at the April 25, 2017 Regular Council Meeting to make the appropriate map fixes consistent with Ordinance 13-0402 and Exhibit A.

**Fiscal Impact:** N/A



## RESOLUTION NO. 17-~~XXX~~

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AMENDING THE CITY'S COMPREHENSIVE LAND USE MAP CONSISTENT WITH ORDINANCE NO. 13-0402, TO CHANGE THE LAND USE DESIGNATION OF A PARCEL FROM TOWN CENTER/SINGLE FAMILY MODERATE TO MIXED RESIDENTIAL MODERATE ON THE COMPREHENSIVE PLAN LAND USE MAP, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, on December 27, 2012, the City of Edgewood received a Comprehensive Plan map amendment application from Christine Phillips for the property located at 10304 24<sup>th</sup> Street East, to change the Comprehensive Plan land use map designation from a split designation on the land use map designation of Town Center, Single Family Moderate, to a proposed Mixed Residential Moderate designation, as shown on Exhibit A, attached hereto and incorporated herein by this reference; and

**WHEREAS**, during the Comprehensive Plan amendment review process in 2013, the Planning Commission reviewed that application concurrently with the other comprehensive plan amendments; and

**WHEREAS**, a State Environmental Policy Act (SEPA) checklist was prepared and a Determination of Nonsignificance (DNS) was issued, a legal notice was published in the City's official newspaper on July 17, 2013, and no appeals were filed; and

**WHEREAS**, notice of intent to adopt in accordance with the procedures for 60 day review was transmitted to the Washington State Department of Commerce, Growth Management Division, and other state agencies on July 18, 2013; and

**WHEREAS**, the City encouraged public participation and provided information on the Comprehensive Plan amendments on its website throughout the City's annual review process; and

**WHEREAS**, the Planning Commission held public meetings and held a public hearing on August 5, 2013 on the Comprehensive Plan Amendments, including the Phillips Land Use map amendment; and

**WHEREAS**, the Planning Commission recommended approval of the 2012 Comprehensive Plan Amendments at the August 26, 2013 regular council meeting; and

**WHEREAS**, the Council held a Public Hearing on the 2012 Comprehensive Plan Land Use Amendment at the October 22, 2013 meeting to receive comments for and against the proposed Comprehensive Plan amendments; and

**WHEREAS**, as a result of the City's efforts, the public had extensive opportunities to participate in the Comprehensive Plan amendment process and all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

**WHEREAS**, the City Council adopted the Planning Commission's Findings and adopted Ordinance 13-0402, the 2012 Comprehensive Plan Amendments including the Phillips land use map changes on the subject discussed above; and

**WHEREAS**, the City did not complete the map changes approved by the City Council by preparing the appropriate Comprehensive Plan Land Use Map changes in 2013 and again missed that opportunity during the major comprehensive plan amendment process in 2015; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Map Correction.** The Council directs the City Staff to make the appropriate map corrections originally approved by Ordinance 13-0402 shown on the Comprehensive Plan land use map as split-zoned as Town Center and Single Family Moderate to Mixed Residential Moderate identified as the Phillips application in the 2012 Comprehensive Plan Amendment Exhibit A.

**Section 2. Effective Date.** This resolution will take effect immediately upon passage by the City Council.

**ADOPTED this xx<sup>th</sup> day of XXXXXXXXXXXX, 2017**

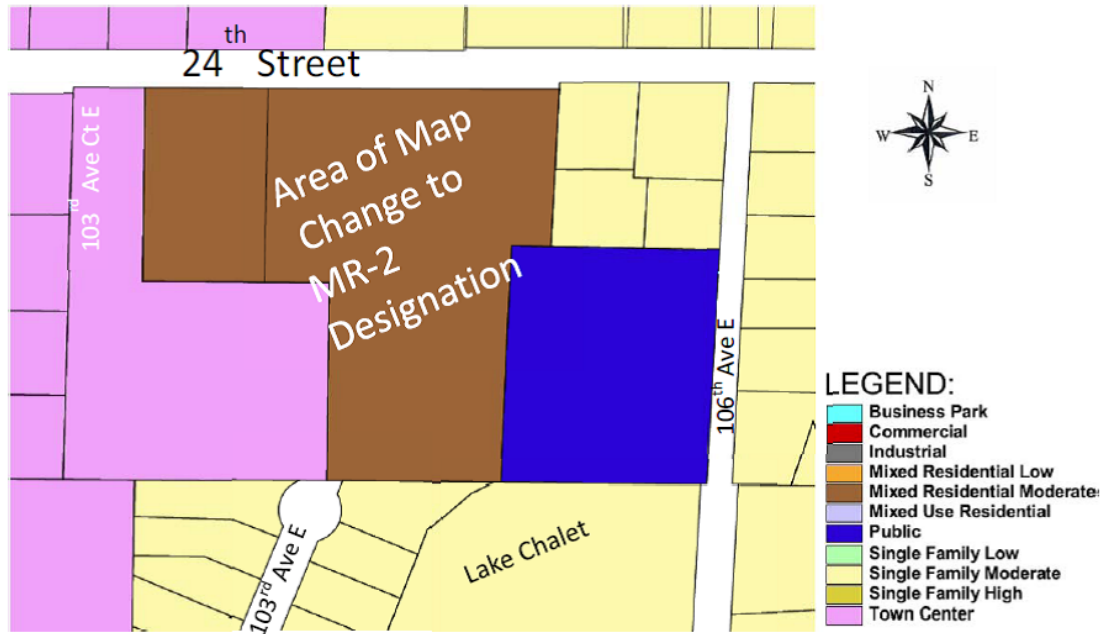
\_\_\_\_\_  
Daryl Eiding, Mayor

**ATTEST:**

\_\_\_\_\_  
Rachel Pitzel, City Clerk

**Exhibit A**  
**Ordinance No. 13-0402**

**Comprehensive Land Use Map Change – Affecting Parcel # 0420107031 and 0420107030**





**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM:** Lakehaven Interlocal Sewer Service

Area Agreement Amendment

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**Date:** 04/18/2017

**Title:** First Amendment to Interlocal Agreement for Sewer Services with LWSD

**Attachments:** Original Interlocal Agreement, Sewer Service Area Map Now and Proposed, First Amendment and Resolution 17-XXXX

**Submitted By:** Aaron Nix, City of Edgewood, ACA – Municipal Services

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** Two properties, identified as Pierce County tax parcels #0420102018 and #0420032004, were included within the boundaries of the City of Edgewood's Local Improvement District #1, but not included within the boundaries of the service area within the interlocal agreement with the Lakehaven Water and Sewer District. In order to allow these properties to develop and receive similar services as those under the original service agreement with LWSD, a modification to the original Interlocal Agreement is needed. Staff has drafted these materials and are bringing these materials forward for the Council's consideration. If approved by Edgewood's City Council, the materials would then need to be approved by the Board of Director's for LWSD in order to allow the property owners to move forward with their development proposals as it relates to sanitary sewer services outlined within the City's Interlocal Agreement with LWSD.

**Recommendation:** N/A

**Fiscal Impact:** N/A

## **RESOLUTION NO. 17-XXXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE 2007 INTERLOCAL AGREEMENT (JANUARY 23, 2007) BETWEEN THE CITY OF EDGEWOOD AND THE LAKEHAVEN WATER AND SEWER DISTRICT FOR SERVICES ASSOCIATED WITH ACCEPTING, CONVEYING AND TREATING SEWAGE FOR SPECIFIED PROPERTIES WITHIN THE CITY OF EDGEWOOD, AS OUTLINED WITHIN THE AGREEMENT.**

**WHEREAS**, The City of Edgewood entered into an Interlocal Agreement, in accordance with RCW 39.34, on January 23, 2007 with then, Lakehaven Utility District (LUD), to accept, convey and treat sewage from residential and non-residential property lying within the City; and

**WHEREAS**, two additional properties, identified as Pierce County tax parcels #0420102018 and #0420032004 were two properties included within the boundaries of the City of Edgewood's Local Improvement District #1, in accordance, generally, with the City's approved General Sewer Plan, but were not included within the boundaries of the map within the original Interlocal Agreement with LUD, identified herein as Exhibit A; and

**WHEREAS**, the City's approved General Sewer Plan states that Phase I Core areas and selected Phase II areas would be

**WHEREAS**, On October 6, 2016, Lakehaven Utility District (LUD) officially changed its name to Lakehaven Water and Sewer District (LWSD); and

**WHEREAS**, the City of Edgewood has approached Lakehaven Water and Sewer District for the inclusion of these properties within the service area and have revised the map to include these properties shown in Exhibit B, with the desire to include these properties under the terms and conditions as outlined in the signed, January 23, 2007 Interlocal Agreement between the City of Edgewood and Lakehaven Water and Sewer District; and

**WHEREAS**, the City Attorney has drafted a first amendment to the Interlocal Agreement that was signed in January 2007, that includes these proposed service area revisions and has been included herein as Exhibit C;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** (First Amendment to Interlocal Agreement). (Insert Summary Statement).  
Current Sewer Service Area Map, Exhibit A, Proposed Sewer Service Area Map, Exhibit B and First Amendment to Interlocal Agreement, Exhibit C.

**Section 2.** Effective Date. This resolution will take effect immediately upon passage by the City Council.

**ADOPTED this x<sup>th</sup> day of XXXXXXXXXXXX, 2017**

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Daryl Eiding, Mayor

**ATTEST:**

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Rachel Pitzel, City Clerk

**Exhibit A**  
(Current Sewer Service Area)

**Exhibit B**  
(Proposed Sewer Service Area)



**Exhibit C**  
(First Amendment to Interlocal Agreement)

**FIRST AMENDMENT TO  
AGREEMENT BETWEEN THE  
CITY OF EDGEWOOD  
AND  
LAKEHAVEN WATER AND SEWER DISTRICT**

**Section 1. Date and Parties.**

This document (“First Amendment”), is dated the \_\_\_ day of \_\_\_\_\_, 2017, and is entered into by and between the CITY OF EDGEWOOD, a Washington municipal corporation (“City”) and the LAKE HAVEN WATER AND SEWER DISTRICT, a Washington municipal corporation (“LWSD”). This First Amendment modifies the Agreement between City of Edgewood and Lakehaven Water and Sewer District dated January 23<sup>rd</sup>, 2007 (the “2007 Agreement”).

**Section 2. General Recitals.**

A. In the 2007 Agreement, the City and LWSD agreed that because LWSD operates sewer facilities near the northern boundary of the City, that LWSD would allow properties within the City to connect and discharge sewage for treatment by LWSD, under the terms and conditions set forth in that 2007 Agreement; and

B. The properties served by LWSD as provided in the 2007 Agreement were depicted in the map attached to that 2007 Agreement as Exhibit C;

C. (Describe the facts supporting the need to amend Exhibit C); and

D. The parties have agreed to amend Exhibit C in the 2007 Agreement by substituting the Exhibit C-1 attached hereto, which shows the additional properties to be included in the City Sewer Service Area Served by LWSD.

**Section 3. Amendment to 2007 Agreement.** Section 2 references Exhibit C, which is the City Sewer Service Area Served by LWSD under the 2007 Agreement. The parties hereto agree that Exhibit C shall be eliminated and replaced by Exhibit C-1, which is attached to this First Amendment and incorporated herein.

**Section 4. Other Terms Unchanged.** All other terms of the 2007 Agreement remain unchanged and enforceable. This First Amendment is intended to modify the terms and conditions of the Agreement only insofar as such modifications are set forth in this First Amendment. In the case of any conflict between the terms of the 2007 Agreement and the terms of the First Amendment, the provisions of the First Amendment shall control.

DATED: This \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF EDGEWOOD

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

Its: Mayor

Date:

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

LAKEHAVEN WATER AND SEWER  
DISTRICT

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

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

Its: \_\_\_\_\_

Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
LWSD Attorney

**AGREEMENT BETWEEN  
CITY OF EDGEWOOD  
AND  
LAKEHAVEN UTILITY DISTRICT**

**THIS AGREEMENT** is made this date between the City of Edgewood, a municipal corporation of the State of Washington hereinafter referred to as "City", and the Lakehaven Utility District, a municipal corporation of the State of Washington, hereinafter referred to as "LUD".

**WHEREAS**, the boundaries of LUD and the City, which are set forth in Exhibit A and B, respectively and attached hereto and by this reference made a part hereof, are geographically proximate; and

**WHEREAS**, the City has formed a sewer utility and will be constructing a new sewer system; and

**WHEREAS**, because the City is not planning to construct wastewater treatment facilities, it desires to discharge its sewage into the facilities of a nearby jurisdiction with adequate capacity to convey and treat such sewage flows; and

**WHEREAS**, LUD operates sewer facilities near the northern boundary of the City; and

**WHEREAS**, LUD is willing to allow properties within the City to connect and discharge sewage for treatment by LUD under terms and conditions as set forth herein; and

**WHEREAS**, this Agreement will promote the health, safety, and welfare of the public; and

**WHEREAS**, LUD has or will have, as needed, adequate capacity to convey sewage from the City of Edgewood to its wastewater treatment plant to meet demand projected in Phase One of the City's General Sewer Plan; and

**WHEREAS**, LUD has wastewater treatment capacity adequate for itself and the City;

**NOW, THEREFORE**, pursuant to the Interlocal Cooperation Act (RCW 39.34) and in consideration of the terms and conditions set forth herein, the parties mutually agree as follows:

1. Purpose: This Agreement establishes the terms and conditions under which LUD will accept, convey, and treat sewage from residential and non-residential property lying within the City.

2. Sewer Connections:

2.1 Connection: LUD agrees to provide, pursuant to all regulatory requirements, sewer service to property lying within the City Sewer Service Area, as shown on Exhibit "C", upon connection of the sewer improvements identified in section three (3) below to the LUD sewer system. Sewer service to property within the City which is outside of the City Sewer Service Area shall be subject to the execution of a separate agreement or agreements between the parties providing for such service. Following connection of such improvements to the LUD sewer system, property owners may, subject to approval of the City and LUD, connect to the collection system owned by the City and, to the extent of the sewer service provided by LUD, shall be subject to all regulations and be afforded all privileges of LUD customers. LUD shall exclusively determine any capacity limitations for service to City customers and shall be under no obligation to permit connections which may cause it to exceed capacity projections included in the current Phase One of the City's General Sewer Plan. As a condition of service to any property within the City, the City shall issue a letter to

LUD indicating the parcel, or parcels, of property meets the City planning criteria for connecting to the City sewer system, and by so doing, the City shall be deemed to be exercising approval authority for sewer connections issued within the City.

**2.2 Connection Charges:** The City shall establish connection charges for customers within its jurisdiction. Property owner's connecting to the sewer system shall, prior to connection, pay to LUD the connection charges established by LUD and those adopted by the City for connection to its system and the connection charges established by the City for service through its sewer system. City connection charges collected by LUD shall be sent to the City monthly. LUD will determine the level of sewer system capacity utilization of customers within the City and will retain the authority to levy charges to such customers for excess capacity utilized in the LUD system. LUD will provide such capacity information to the City and, where directed, levy charges to customers within the City as set forth in the City capacity charge schedule, and remit to the City, upon payment, the charge for excess capacity utilized in the City sewer system.

**2.3 Rates:** The City shall set monthly rates for sewer service to customers within its jurisdiction. Such rates shall include LUD rates, as set by resolution of the LUD Board of Commissioners. LUD shall communicate its estimated schedule for updates to its rate resolution for the following year by the first of September for the adoption by the City beginning January 1 of the following year. LUD will bill, on a bi-monthly basis, sewer customers within the City and remit the City rates collected during the preceding billing period to the City on a bi-monthly basis. By execution of this Agreement, the City, to the extent permissible, assigns its authority to collect rates and charges to LUD as necessary to enable it to collect rates and charges on behalf of Edgewood. LUD will be responsible to collect any delinquent customer accounts for service to property within the City. The form of the customer bill shall be as determined by LUD (Exhibit "D" is attached as a sample of information that may be included in customer bills within the City).

### **3. Sewer Improvements:**

**3.1 Construction:** The parties acknowledge that a connection facility shall be installed between the City and the LUD sewer system at LUD SSMH No. 29, Record Drawing No. 1633, located in the vicinity of the intersection of 19<sup>th</sup> Way S. and Enchanted Parkway S. (see Exhibit E). The City shall be responsible for installing and shall own such connection improvements and other appurtenances pursuant to the approval of plans and specifications by LUD. Unless expressly approved by the City, LUD shall have no authority to make connections into such line to serve LUD customers.

**3.2 Improvements/Extensions:** The City shall own all collection system improvements within its boundaries, the installation of which shall be made to conform to LUD standards. The City shall install and maintain, at its cost, a radio telemetry system sufficient, as determined by LUD, to provide functional telemetry-based connectivity of its facilities to LUD's telemetry system. The City shall be solely responsible for the authorization for, and administration of, any Utility Local Improvement Districts (ULID's) or Local Improvement Districts (LID's) to be formed for the installation of sewer facilities within the City. Applications for private extensions to the sewer system with the City will be made to the City and contracts for extensions will be executed between the property owner and the City. LUD will administer the contracts for system extensions in accordance with its standards and practices for contracts for system extensions within LUD, and will collect all charges from the City in reimbursement of its costs associated therewith. The parties agree to

cooperate to share information concerning their respective development requirements and standards as necessary to allow LUD to efficiently administer the extension agreements. The installation of any joint facilities required for service shall be administered pursuant to separate agreement between the parties.

3.3 Approvals: The City shall provide LUD with a copy of its General Sewer Plan upon approval of such plan by DOE. All changes, updates, or modifications to the City General Sewer Plan, Title 11 EMC, or Design and Construction Standards, shall be submitted to LUD for review and comment prior to adoption by the City.

3.4 Operation and Maintenance: LUD shall perform regular operation and maintenance of the connection facility and the City collection system as necessary and consistent with the level of operation and maintenance it provides within its service area. Should additional or abnormal maintenance activities be required, including, but not limited to, the replacement of manholes or repair or replacement of any capital item costing in excess of \$5,000, due to the condition of the City facilities or sewage, LUD shall consult, either orally or in writing with the City about the need for such expenditure and if the City gives approval, which approval shall not be unreasonably withheld, bill the City for the cost of such additional maintenance and the City shall pay LUD such amounts within thirty days of the date of the billing for such services. The City shall be responsible to repair any damage caused by vandalism and to cause the disconnection of, or otherwise remedy at the direction of LUD, illegal connections, including those that violate discharge or pretreatment standards applicable to LUD, occurring within the City. LUD shall be indemnified and held harmless from the cost of vandalism and from liability of any kind for illegal connections and be reimbursed by the City for its costs associated therewith. The City shall be responsible to, where appropriate, disconnect property no longer deemed by LUD to require, or otherwise be eligible for, sewer service from the system. Except to the extent resulting from the negligence of LUD, the City shall be solely responsible to the District and/or the property owner for any backups in the sewer system within the City and to repair, rehabilitate or replace, in a reasonable time, any facility LUD determines to require repair, rehabilitation or replacement. In an emergency, LUD shall perform the work needed and bill the City for said work. LUD shall make a good faith effort to notify City staff before such work begins, if possible, in the emergency situation. City staff will be notified as soon as possible, if the work needs to be accomplished immediately. LUD shall perform facility locations requested within the City, however, LUD shall not be responsible for the consequences of erroneous locates resulting from any incomplete or inaccurate information provided to it in connection with the locate service. Billings to the City for any work or administrative charge levied in accordance with this Agreement shall be paid by the City within thirty (30) days of the date of transmittal of such billing and the City agrees to pay LUD interest on such billings not paid when due at a rate of 6% per annum. Should it be necessary to institute legal action to collect such amounts, the prevailing party shall be entitled to collect its costs, including attorneys fees, from the non-prevailing party.

3.5 The City agrees that sewer service within the City will be provided pursuant to LUD standards, regulations and policies as currently exist and as may be amended from time to time. The District may recognize City regulations not in conflict with LUD regulations.

4. Term: Unless terminated for default or as otherwise agreed in writing by the parties, this agreement shall run for twenty years from the date of execution below and shall automatically extend for five additional twenty year terms, unless within five years from the end of the initial

or any extension term, a party gives notice of its intent to not extend the agreement, in which case the agreement shall expire at the end of the term. In the event either party intends to terminate earlier than the end of a term, or extension term, the party shall give notice of its intent to terminate ten years prior to termination. The parties agree that either party may terminate this Agreement at any time the other shall be in material default of its obligations hereunder, including, but not limited to, the obligation to pay any bill when due or to remedy any illegal connection in a timely manner; provided, however, that before termination, such party shall give the other party 180 days prior written notice of the alleged default and an opportunity to cure such default. The City shall have the authority to elect to independently manage and maintain the collection system within the City without terminating the treatment provisions of this Agreement. In the event the city so elects to independently manage and maintain the collection system within the City without terminating the treatment provisions of this Agreement, the City shall give LUD 180 days notice of such election and parties will agree to meet to discuss any administrative matters associated therewith. Lakehaven shall determine whether, and to what extent, that it will make any rate adjustment for City customers in response to the City's operation and maintenance of the sewer collection system.

5. Indemnification and Defense: LUD shall defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of LUD, its officers, employees, or agents associated with this agreement. In executing this agreement, LUD does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, LUD, or both, the City shall satisfy the same, including all chargeable costs and attorney's service charges.

The City shall defend, indemnify and save harmless LUD, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the acts or omissions of the City, its officers, employees or agents associated with this agreement. In executing this agreement, the City does not assume liability or responsibility for or in any way release LUD from any liability or responsibility which arises in whole or in part from the existence or effect of LUD ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such LUD ordinance, rule, regulation, resolution, custom, policy or practice is at issue, LUD shall defend the same at its sole expense and if judgment is entered or damages are awarded against LUD, the City, or both, LUD shall satisfy the same, including all chargeable costs and attorney's service charges.

The City shall, prior to the connection of any property to the City sewer system pursuant to this Agreement, obtain modification of the Pierce County Sewer General Plan to reflect LUD's designation as the provider of treatment for the service area noted in Exhibit "B" and procure, and provide to LUD, any other necessary approvals for this Agreement and the services to be provided by LUD from agencies with jurisdiction over sewer service within the City.

The obligations to indemnify, defend and hold harmless expressed herein shall survive the expiration of this Agreement.



6. Dispute Resolution/Venue. The parties agree to cooperate to submit any dispute or disputes that arise in connection with this Agreement or the performance of any term hereunder to mediation and to use good faith in attempting to secure a resolution through meditation. In the event that the parties are unable to resolve such dispute or disputes through mediation, it is agreed that the disputed matter/s shall be submitted to the jurisdiction of the King County Superior Court. In any such proceeding, the parties shall bear their own attorneys fees and costs, including those costs and attorneys fees incurred on appeal.
7. No Third-Party Beneficiary. LUD does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than LUD. LUD and the City do not intend that there be any third-party beneficiary to this agreement.
8. Assignment. Neither LUD nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.
9. Notice. Any formal notice or communication to be given by LUD to the City under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

City of Edgewood  
2221 Meridian Avenue East  
Edgewood, WA 98371-1010  
Attention: City Manager

Any formal notice or communication to be given by the City to the LUD under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Lakehaven Utility District  
31627 1<sup>st</sup> Avenue South  
Federal Way, WA 98003  
Attention: General Manager

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the City or LUD giving notice thereof to the other as herein provided.

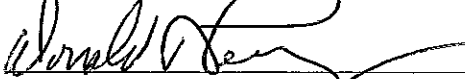
10. LUD As Independent Contractor. LUD is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between City and LUD or any of the LUD's agents or employees. The LUD shall retain all authority for standards of performance, control of personnel, and other matters incident to the performance of services by LUD pursuant to this Agreement.  
  
Nothing in this agreement shall make any employee of the City a LUD employee or any employee of the LUD a City employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded LUD or City employees by virtue of their employment.
11. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this agreement.



12. Amendment. Provisions within this agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.
13. No Real Property Acquisition or Joint Financing. This Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement. Pursuant to RCW 39.34.040 this Agreement shall be listed by subject matter on each party's web site.
14. Severability. If any of the provisions contained in this Agreement is illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement this 23rd day of January, 2007.

**LAKEHAVEN UTILITY DISTRICT**

  
Donald Perry, General Manager

Date: 1/23/07

**APPROVED AS TO FORM:**

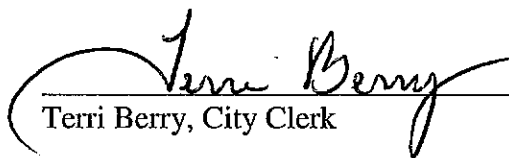
  
Steven H. Pritchett, General Counsel

**CITY OF EDGEWOOD**

  
Henry J. Lawrence, Jr., City Manager

Date: 1/3/07

**ATTEST/AUTHENTICATED:**

  
Terri Berry, City Clerk

**APPROVED AS TO FORM:**

  
Wayne D. Tanaka, City Attorney

# **EXHIBIT A** **LAKEHAVEN UTILITY DISTRICT** **SERVICE AREA**

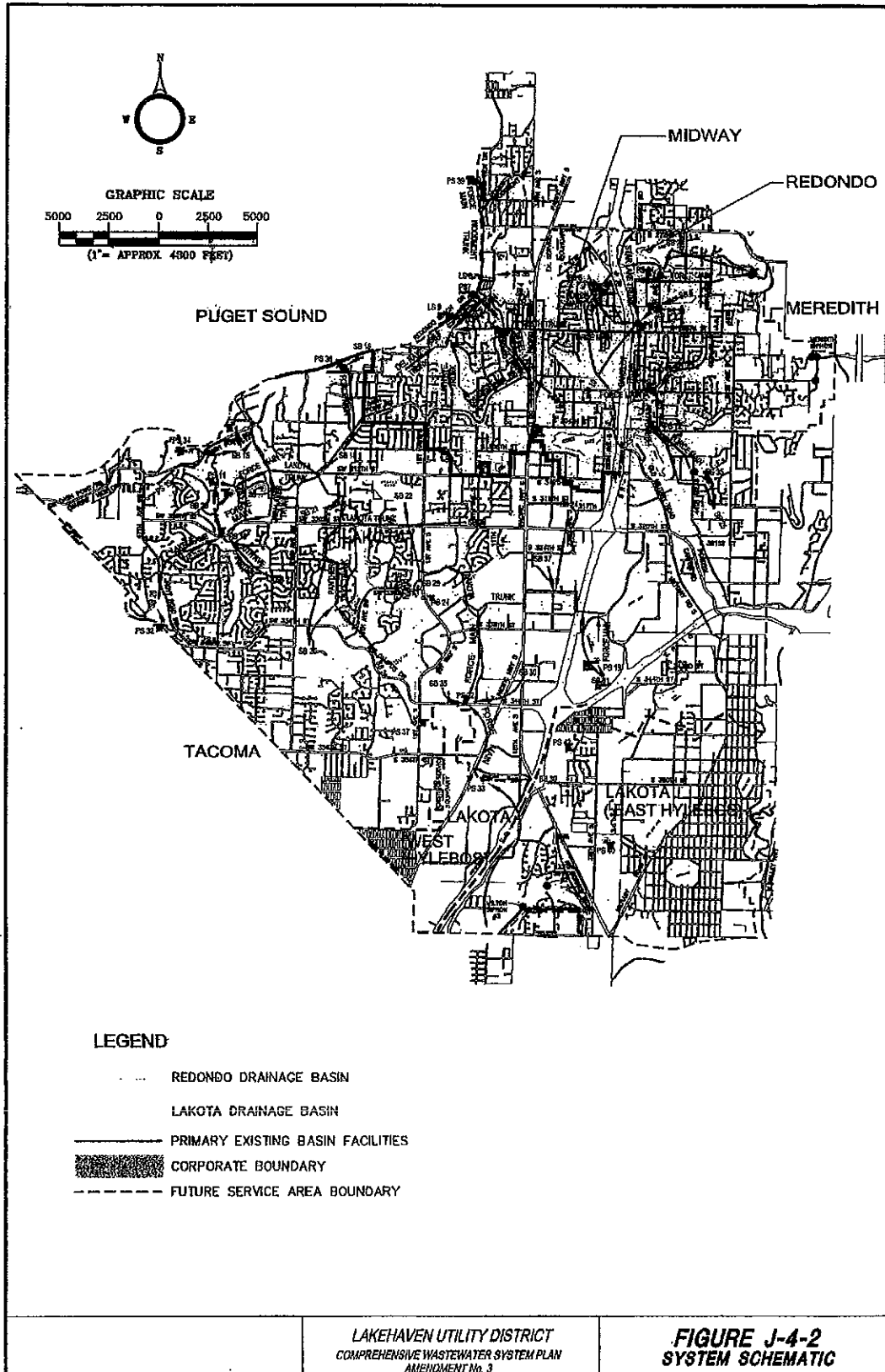
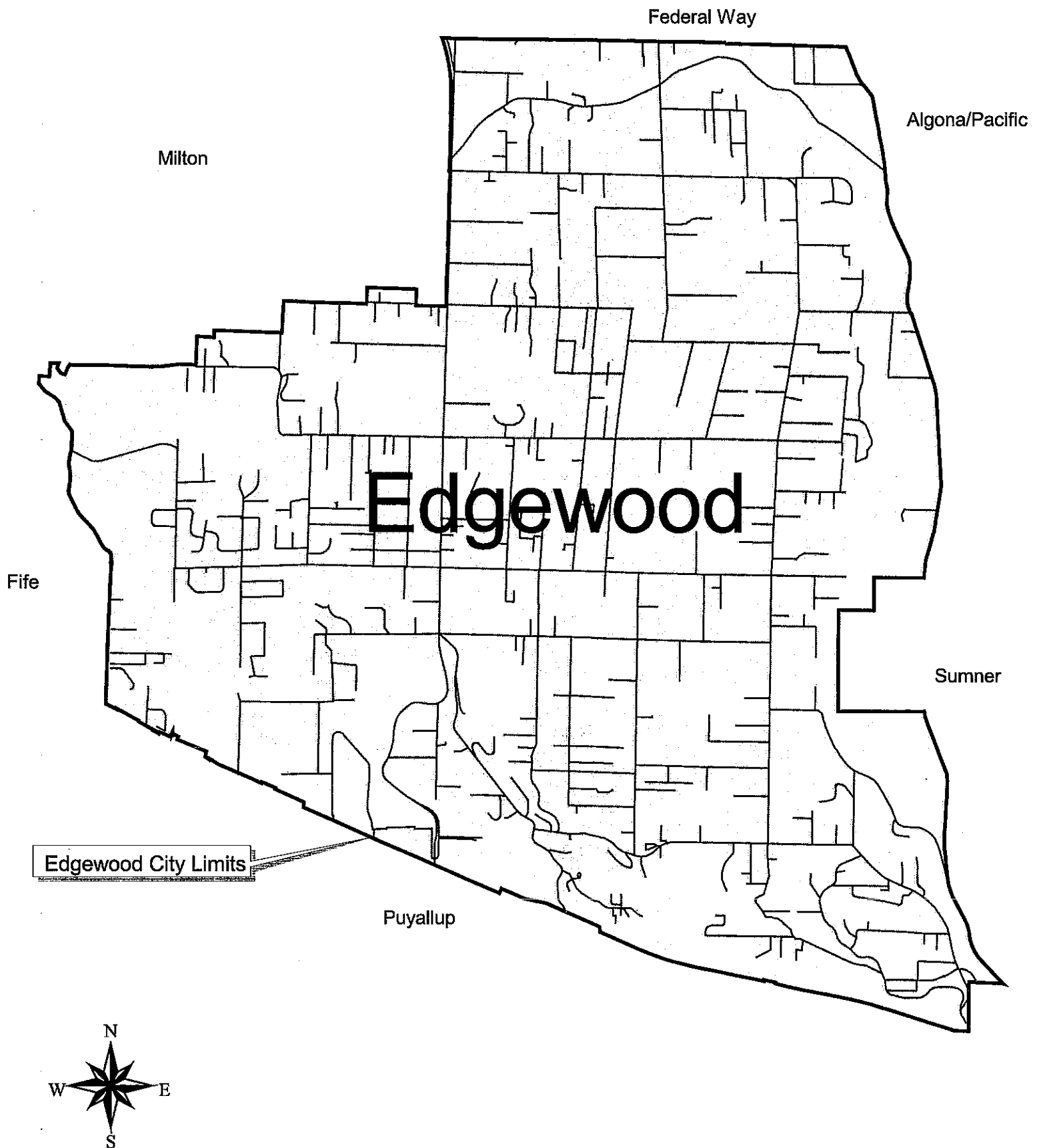


Exhibit "B"  
Edgewood City Limits

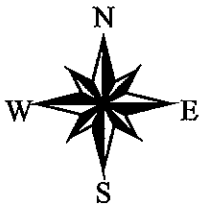


# EXHIBIT "C"

June 15, 2007

AREA TO BE SERVED BY LUD  
SR-161 CORRIDOR

Milton



Edgewood

Federal Way

JOVITA BLVD E

8TH STE

SR161/MERIDIAN AVENUE

24TH STE

36TH STE

## **EXHIBIT D**

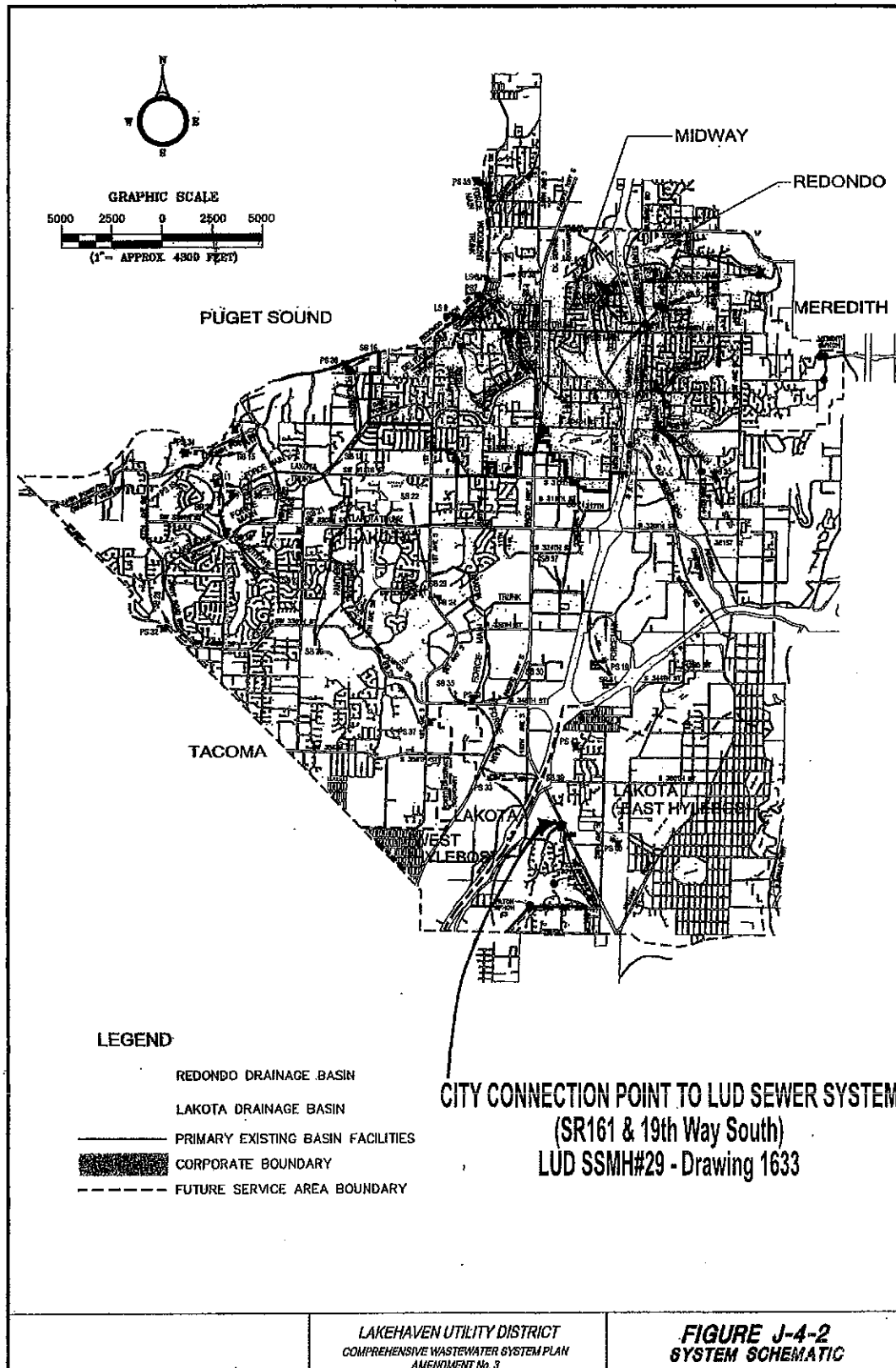
### **CUSTOMER BILLS WITHIN THE CITY OF EDGEWOOD**

Items that may be included in the LUD billing to City customers include but are not be limited to the following:

1. Normal fees and charges for service for LUD.
2. LUD capacity lease or rental cost, if utilization of capacity exceeds that purchased by the customer for the property.
3. Any capacity charge lease or rental cost the City would charge for utilization of capacity exceeding that which was purchased by the customer for the property.
4. Discharge cost for customer: (NPDES, pretreatment etc) any additional charges related to pretreatment or NPDES charges that are related to the property specifically.
5. City of Edgewood costs that the City sets and the LUD will be including on the bills are: Overhead costs incurred by Lakehaven for administering and responding to non-Lakehaven charges and reimbursements exclusive to the City, such as for collection of utility taxes imposed by the City and reimbursements for same.
6. Normal taxes that are included on LUD bills (based on the total of the above charges noted).
7. Delinquent Charges and penalties.
8. City Utility Tax, if applicable.

# EXHIBIT E(1)

## LOCATION OF CONNECTION OF CITY TO LUD SEWER SYSTEM



### LOCATION OF CONNECTION OF CITY TO LUD SEWER SYSTEM

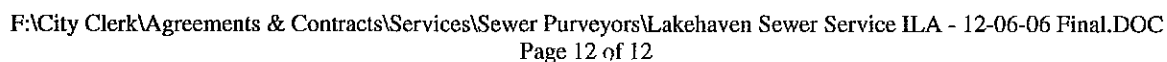
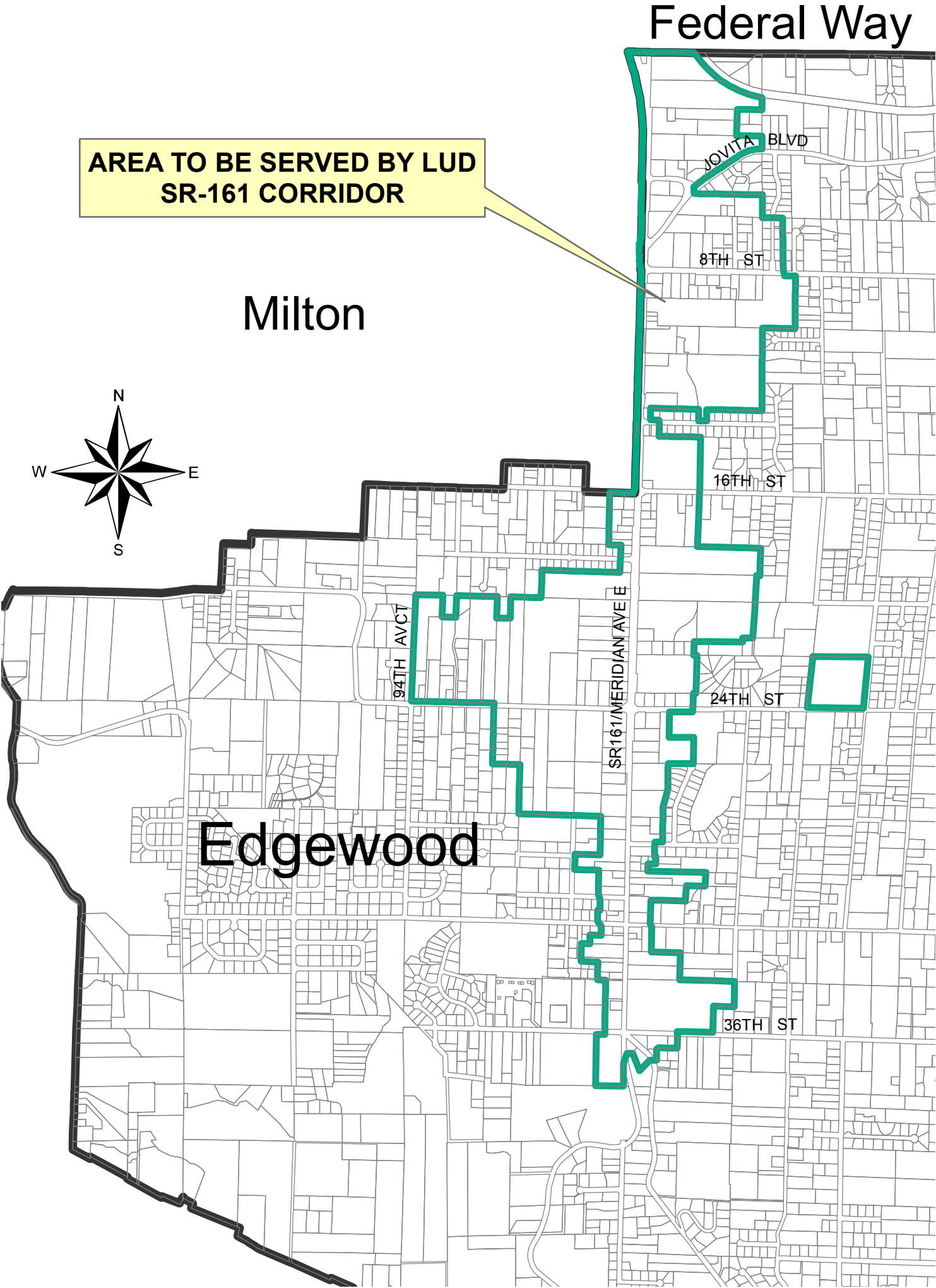


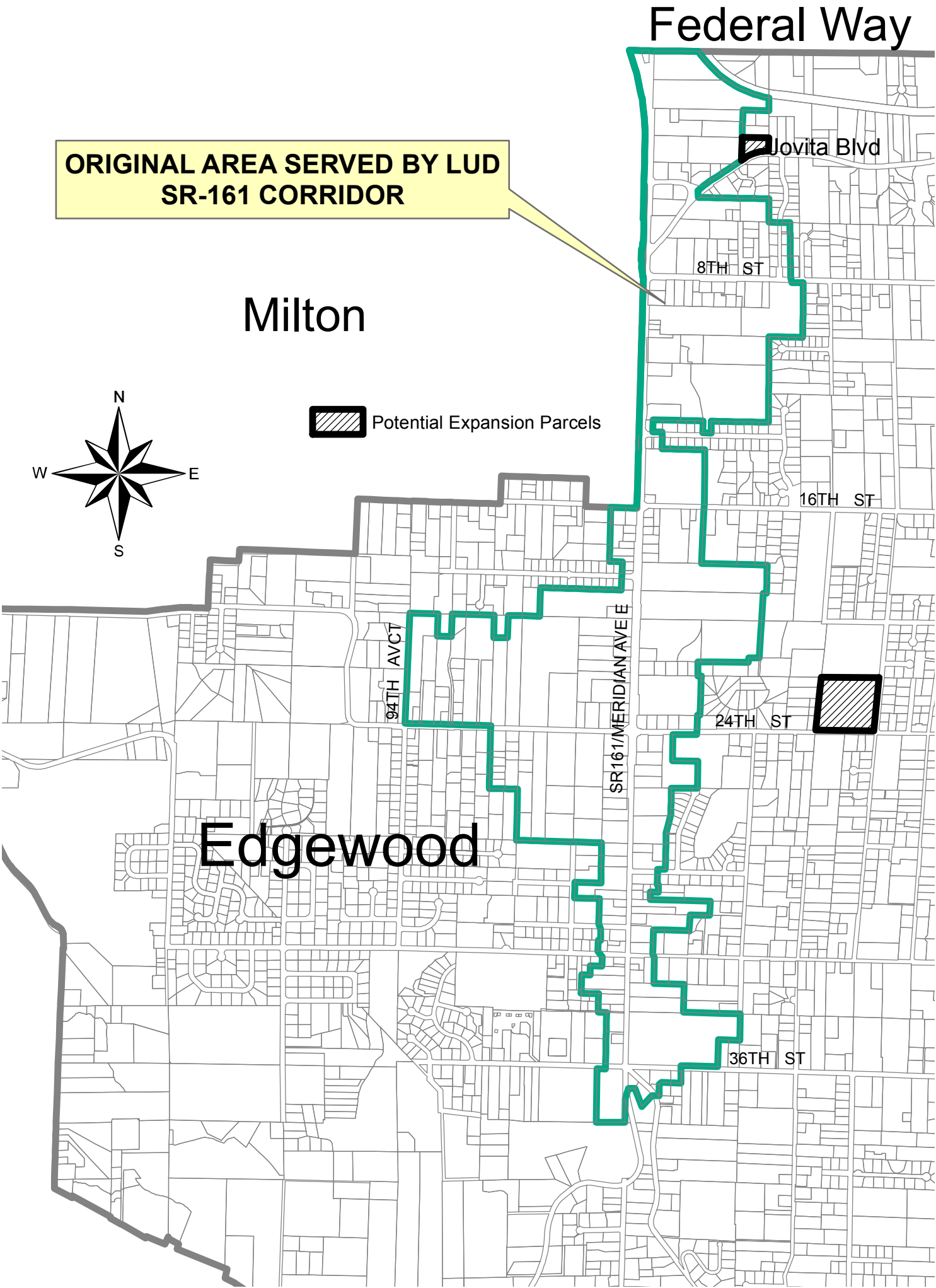


EXHIBIT C-1  
MAP OF THE CITY SEWER SERVICE AREA  
SERVICED BY LUD





**EXHIBIT C**  
**MAP OF THE ORIGINAL CITY SEWER**  
**SERVICE AREA SERVICED BY LUD**





**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM:** Ordinance 17-XXXX, Verizon  
Fiber

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**Date:** April 18, 2017

**Title:** Verizon Fiber Franchise Agreement

**Attachments:** Draft Franchise Agreement (Ordinance 17-XXXX)

**Submitted By:** Aaron Nix, Assistant City Administrator – Municipal Services

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** The City Attorney and Staff have been working with Verizon Fiber Infrastructure to move forward with a negotiated franchise agreement in order to allow this part of the organization to begin applying for permits associated with placing fiber infrastructure within the City of Edgewood's right of way. After several iterations with Staff and the Company's Attorney out of Texas, Staff is nearing a completed document that we will be ready to recommend for approval to the full City Council. The intent of this study session item is go over the details of this particular franchise agreement and inform the Council on what has been agreed to and/or what is left to be negotiated.

**Recommendation:** This is a study session discussion item. No recommendation as discussions continue to between City Staff and Verizon Fiber Infrastructure.

**Fiscal Impact:** N/A

## **TELECOMMUNICATIONS FRANCHISE AGREEMENT**

### **ORDINANCE NO. 17 -XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, TO CONSTRUCT AND OPERATE A PRIVATE TELECOMMUNICATIONS SYSTEM WITHIN CERTAIN PUBLIC RIGHTS OF WAY; 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**, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services has made application to the City of Edgewood for a telecommunications franchise to construct, install, maintain, repair and operate a Private Telecommunications System to provide telecommunications (data transport services) using specified portions of the Public Rights-of-Way, and

**WHEREAS**, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services represents that it is a telecommunications company and that all or a portion of its services may be subject to 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 MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services 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, is consistent with the public interest; and

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

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

#### **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 relevant sections of the Edgewood Municipal Code. Words not defined herein or in the Edgewood Municipal Code, shall have the meaning given pursuant to such state and federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee now existing or hereafter amended, including without limitation the definitions and word usages set forth in the Communications Act (as hereafter defined). 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 Franchisee.

“Mayor” means and refers to the City of Edgewood Mayor or his or her designee.

“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 Edgewood, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Communications Act” shall mean the Communications Act of 1934, 47 U.S.C. 151, et seq., as amended by the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be amended from time to time.

“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, in electronic form and in a file format requested by the City, 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, design specifications or standards, 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, in electronic form and in a file format requested by the City, 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 in EMC 18.20.070(D).

"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, the Model Toxics 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 non-exclusive grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way, as authorized pursuant to a Regulatory 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.

"Franchisee" shall mean MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services and any of its Affiliates.

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

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the specific project area described in and pursuant to this Franchise, as depicted and described in Exhibit A.

“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, dependent upon the context.

"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 and does not include “cable services” as that term is defined in 47 U.S.C. § 522(6) .

“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, but 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.

“Record Drawings” shall mean the “**As Built**” plans and specifications, in electronic form and in a file format requested by the City, showing the construction of the facilities illustrating and describing the refinement of the design of the Utility System Facilities as Constructed, establishing the final scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. In addition, the **As Built** Documents shall include plans that identify other utilities, major material and systems, Public Right-of-Way improvements and restoration and repair locations.

“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 Right-of-Way permit, construction permit, building permit, street utility 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 it’s 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” shall have the same meaning as given under Section 3 of the Communications Act, 47 U.S.C. §153(43).

“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 (the “Transferee”). 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 Regulatory 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 Private 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, as permitted under applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein.

2.3 No rights shall pass to Franchisee by Implication. No rights shall pass to 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 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

**Comment [A1]:** Let's discuss this please. Verizon intends to offer competitive telephone service, internet access service, private line service, front- and back-haul to cell sites and dark fiber leasing to third parties.

Except for dark fiber leasing to third parties (which is covered in the last paragraph of Sec. 2.7 below), the services Verizon will offer are covered as a telephone business under RCW 82.16.010 and as a service provider under RCW 35.99.010(6).

**Comment [cm2R1]:** So they want to change the definition of “private telecommunications System”



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, including Regulatory Permits, or other authorizations that may be required under the zoning and 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.

Franchisee 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.

2.5 Condition of Franchise Area. Franchisee represents that it has inspected or will inspect the Franchise Area, and enters upon such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near the 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 representations or warranties, expressed 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 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. The City hereby disclaims any representations or warranty, whether expressed or implied, as to the design or condition of the franchise area, its merchantability or fitness for any particular purpose, the quality of the materials or workmanship of the Public Right-of-Way, or the conformity of any part of the Public Right-of-Way to its intended uses. The 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. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the city may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

2.7 Transfer. Franchisee may Transfer this Franchise after receipt from the City's Transferee of Exhibit A, or a form substantially similar to Exhibit A, agreeing 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 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 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 all obligations under this Franchise, including but not limited to 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. In the event of a vacation, the City, where practicable, will reserve an easement for Franchisee's continued use of the portion of the area vacated where its Facilities are located.

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, Franchisee shall comply fully 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, and shall fully indemnify, protect, defend and hold harmless the City, its officials, officers and employees from and against any and all claims, losses, suits, penalties, costs and causes of action arising from any failure by Franchisee to so comply.

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 expressly 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.

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, which the City hereby expressly reserves in full.

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 Franchisee. Nothing in this Franchise 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. Nothing in this Franchise shall abrogate the City's right to perform any public works or public improvements of any description.

3.5 Subsequent Action. 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 except as expressly provided by applicable Laws.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the Edgewood Municipal Code or City ordinances in effect upon 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 ordinances 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 ordinances 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 ordinances shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise.

3.8 WSDOT Requirements. To the extent that some Public Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations, the provisions of this subsection 3.8 shall apply, and Franchisee agrees that:

(a) Any pavement trenching and restoration performed by or on behalf of Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

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

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

ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within ~~thirtysixty (360)~~ 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

**Comment [A3]:** Providing all of the items below may require more than 30 days.

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 the Exhibits hereto, 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~~<sup>sixtieth</sup> (60th) day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the first business day following 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 Mayor without further action required by the City Council or the consent of 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 31<sup>st</sup> day (one month) 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 ~~Five (5)~~<sup>ten (10)</sup> 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 ~~five~~<sup>ten (10)</sup> year term upon the same terms and conditions as provided herein. The Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

**Comment [A4]:** Verizon requests a 10-year term. I did not see a prohibition on a 10-year term in the EMC.

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

4.4.1 Accepts and agrees to comply with and abide by all of the 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, 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 was not induced to accept this Franchise; and, that this Franchise represents the entire agreement between 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, at Franchisee's sole expense: (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; (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 from Franchisee.

## 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 fully protect, release, indemnify, defend, and hold harmless the City and 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, reasonable attorney's 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;

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 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

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 negligence or intentional misconduct of an indemnitee or the 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, as a result of the 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.

This covenant of indemnification shall specifically include, without limitation, claims for delay, damages, costs and/or time asserted by any contractor performing public work for or on behalf of the City to the extent such matters are caused by or result from the acts or omissions of Franchisee under this Franchise.

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 to assume liability for and/or save and hold harmless any Indemnitee. City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. 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.** 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 Compliance with all Applicable Laws.** Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon



expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

5.3 Insurance Requirements. See Attached Exhibit “D”.

5.4 Financial Security. See Attached Exhibit “E”.

5.6 Contractors/Subcontractors. Franchisee’s contractors and subcontractors performing Work in the Public Rights-of-Way shall comply fully 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, Franchisee’s 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 thirty (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 ten (10) 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.

5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall, to the extent allowable by law, fully reimburse the City for the City’s reasonable Direct Costs (including attorney’s fees) 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 or an

**Comment [A5]:** Let’s discuss please any costs the city anticipates billing Verizon for completion of this agreement. Verizon is aware that this is a new form being used by the city. Verizon does not believe it would be reasonable to bill Verizon for development of this form.

**Comment [cm6R5]:** I don’t plan to bill the City for the development of this form. However, I do plan to bill the City to review their changes to this form.

Administrative Permit. Therefore, Franchisee shall fully reimburse to the City, its reasonable 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 fully reimburse the City for the reasonable 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 reasonable Direct Costs to the City of performing such work.

5.8.7 Costs to be Borne by Franchisee. Franchisee shall fully 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 lawful 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 lawful fees, charges and/or fines provided for in the Edgewood 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 City 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 the rate set forth in RCW 19.52.020, which as of the Effective Date is twelve (12%) percent per annum from the date that such payment is due.

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 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.

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 may, at the mutual discretion of the Parties, 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 thereupon 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 (7) 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. Nothing herein shall be construed as requiring mediation as a prerequisite to litigation or other method of Dispute Resolution.

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.

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 or Breach 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 or Breach 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 or Breach 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 or Breach and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, (i) seek equitable relief, and/or (ii) commence an action at law for monetary damages or impose liquidated damages as set forth below. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party 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 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. 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 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 The impact or potential impact of the Material Breach upon the public health, safety and welfare;

6.5.3.6 The economic risk the City is exposed to as a result of the Material Breach;

6.5.3.7 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 Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.5.3.8 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 Franchisee's Facilities within 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 Franchisee's Breach of those provisions of this Franchise set forth as Section 6.6.7 herein, and not as a penalty. 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 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 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 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 provisions of Section 6.1.

6.6.6 The liquidated damages amount shall be automatically adjusted every five years from the date of execution of this Franchise, to reflect the extent of 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 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 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 and Administrative Permit. If Franchisee has submitted an application for a Regulatory Permit, Utility Right-of-Way Permit, or Administrative Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable and consistent with applicable Laws, 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 or Administrative Permits prior to commencement of Work



within the Franchise Area nor shall such consent or authorization be deemed to be consent to or approval of the governmental action being sought. This authorization/consent is intended solely to allow Franchisee to seek any required Development Permit(s), approvals, or variance prior to or contemporaneous with its application for a Regulatory Permit or Administrative Permit.

## 7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit or Administrative 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 submitted by 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 including temporary erosion control measures and stormwater compliance; 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 of Edgewood Municipal Code, Ordinances and regulations adopted by the City Council authorize a designated City official to establish 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 Edgewood Municipal Code, ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits and Administrative Permits.

7.4.2 Compliance with Franchise. Franchisee shall be and remain 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 Regulatory 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's 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, 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 Improvement 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, 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 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 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 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 Tree Trimming.** Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 7.5.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

**7.5.7 Emergency Permits.** In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Mayor 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) 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) Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) 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.

**7.5.8 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 Franchise 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 Regulatory 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 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. 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 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 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 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 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, 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, 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 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 necessary in the City's sole discretion 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. 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 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 Franchisee full and fair consideration, subject to RCW 35.99.060, 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 promptly relocate its Facilities as otherwise provided in this Section at Franchisee's sole expense. 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 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 thirty (30) days, or such longer period as mutually agreed to by the parties. 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 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 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, 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 Franchisee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Franchisee shall not be responsible for damages due to delays caused solely 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 RCW 35.99.060.

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 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 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 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 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 an industry-standard, generally available 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 and in accordance with all Regulatory Permit conditions.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, Franchisee shall promptly notify the property owner and adjacent property owners 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 Mayor.

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 Mayor 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 Franchisee, the City may, after prior notice to 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 Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, 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 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, 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.

7.15 Aerial and Underground Construction. If all of the distribution lines of all of the wireline service providers, including without limitation telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a cable operator (collectively “Service Providers”) in any portion of the Franchise Area are underground, with the exception of power company lines, Franchisee shall similarly place its Facilities underground within that area; provided that such underground locations are actually capable of accommodating Franchisee’s Facilities without unreasonable technical degradation of transmission quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Franchisee shall have the discretion to construct, operate, and maintain its Facilities, or any part thereof, aerially or underground to the extent consistent with applicable regulations and this Franchise. In areas where a Service Provider’s wiring is aerial, Franchisee may install aerial Facilities, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. If funds exist, are set aside for such purpose, or provided by a third party, Franchisee may seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Franchisee shall utilize existing conduit wherever possible.

The City shall not be required to obtain any easements or other property rights for Franchisee. Franchisee shall, to the extent economically feasible, participate with other Service Providers in joint trench projects to relocate its overhead Facilities underground and remove its overhead Facilities in areas where utilities are being converted to underground. In the event of a City-driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare and provided such requirement is equally applicable to all entities with overhead facilities at such location(s), Franchisee agrees to bear the costs of converting Franchisee's Facilities from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Franchisee shall only pay for the work hours necessary to complete Facility-related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement: Franchisee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo trench as follows:

1. If a City contractor is completing this task, Franchisee shall pay the direct costs in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

2. If the direct costs of Franchisee's approved labor and materials exhibits are not agreeable to the City or its contractor, Franchisee shall have the option to hire its own contractor(s) to complete the work in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

3. If Franchisee chooses to hire its own contractor(s), the City and its contractor(s) are responsible to coordinate with Franchisee's contractor(s) to provide reasonable notice and time to complete the placement of Franchisee's Facilities in the supplied joint trench.

C. Within the conversion area, Franchisee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo trench.

#### 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 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, 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 Mayor or duly authorized 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 Franchisee; and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever 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, or 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 to be posted or otherwise displayed by Franchisee within the Franchise Area except as may be allowed 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:**      **MCImetro Access Transmission Services Corp.  
d/b/a Verizon Access Transmission Services  
Attn: Franchise Manager  
600 Hidden Ridge  
Mailcode: HQE02G295  
Irving, TX 75038**

**And to (except for invoices): Verizon Business Network Services  
1320 North Courthouse Road, Suite 900  
Arlington, VA USA 22201  
Attn: Vice President and Deputy General Counsel, Network  
Operations**

**The City's Address:**      **City of Edgewood  
Attn: Mayor  
2224 104<sup>th</sup> Avenue  
Edgewood, Washington 98372-1513**

**And to:**                      **Carol Morris, City Attorney  
Morris Law, P.C.  
3304 Rosedale St. N.W.  
Gig Harbor, WA 98335**

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, Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, 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 Franchisee's Utility System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, unless 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 or availability of materials 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 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, 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 Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with Franchise without unduly endangering the health, safety, and integrity of 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 Pierce County Superior Court. 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.

8.19 Preemption. In the event that federal or state law preempts a provision or limits the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent required by law. In the event such federal or State law is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee.

8.20 Regulatory Authority Reserved. Nothing herein shall be construed as a waiver, abridgment or limitation of the City's regulatory authority and police power, which the City hereby expressly reserves in full.

**Presented to Council for First Reading on \_\_\_\_\_**  
**Presented to Council for Second Reading on \_\_\_\_\_**

**ADOPTED BY THE CITY COUNCIL ON XX, 20**

\_\_\_\_\_  
Mayor

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Date of Publication: \_\_\_\_\_

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

**CITY OF EDGEWOOD**  
**2224 104<sup>th</sup> AVENUE EAST, EDGEWOOD, WA 98372-1513**  
**PH: (253) 952-3299 ♦ Fax: (253) 952-3537**

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**LEGAL NOTICE**

**Date;** \_\_\_\_\_

**NOTICE OF ORDINANCE PASSED BY EDGEWOOD CITY COUNCIL**

The following is a summary of an Ordinance passed by the City of Edgewood City Council on \_\_\_\_\_ and shall take effect and be in full force on \_\_\_\_\_.

**ORDINANCE NO. ----**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES TO CONSTRUCT AND OPERATE A PRIVATE TELECOMMUNICATIONS SYSTEM WITHIN CERTAIN PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

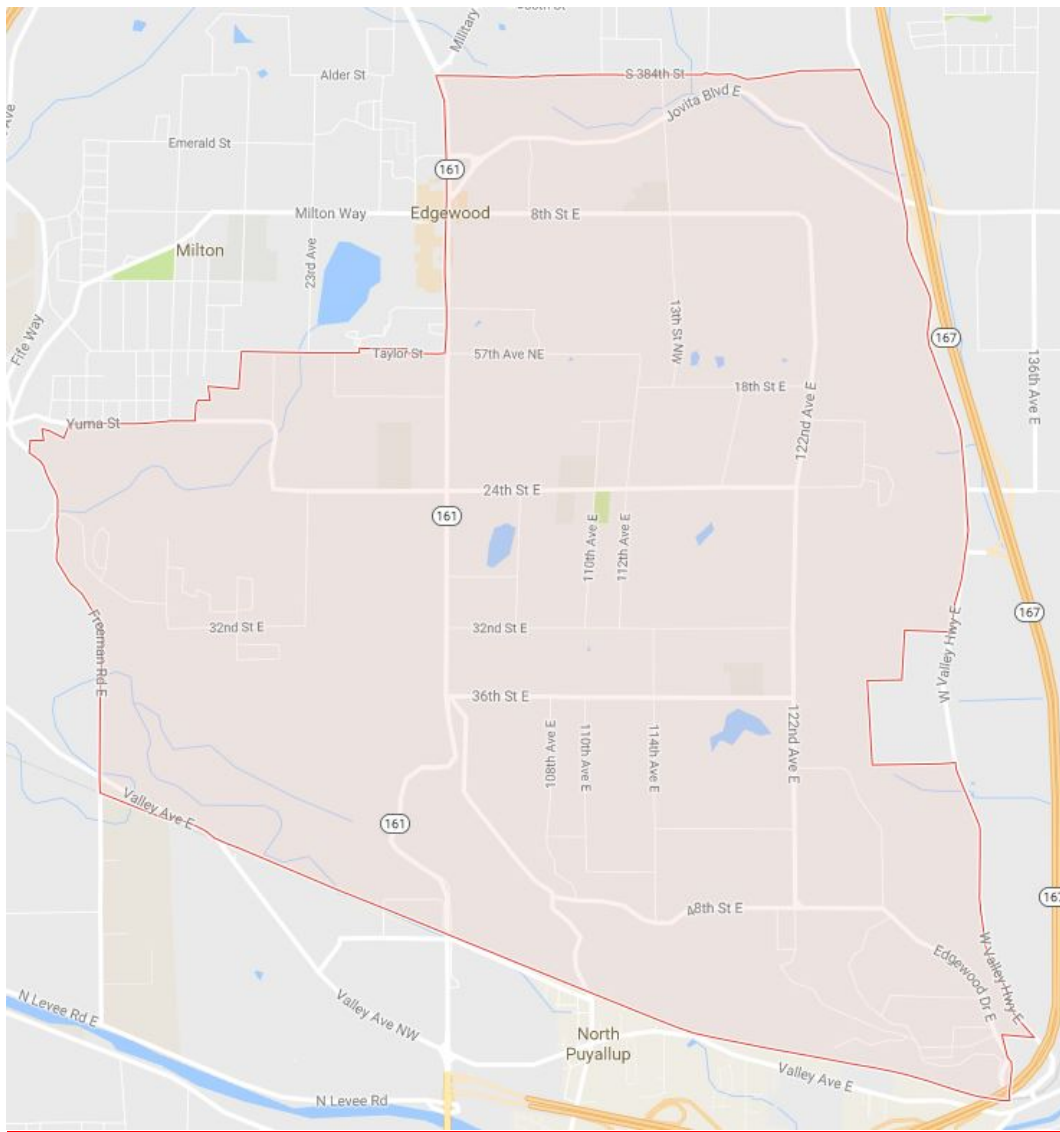
The full text of the Ordinance is available at Edgewood City Hall, 2224 104<sup>th</sup> Avenue East, Edgewood, Washington, 98372-1513, (253) 952-3299

\_\_\_\_\_  
Rachel Pitzel, City Clerk

Published in the Tacoma News Tribune on \_\_\_\_\_

**Exhibit A**

(Franchise Area)



## 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 guarantees ~~(s)~~  
performance of all such terms and conditions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_  
Its \_\_\_\_\_

Tax Payer ID# \_\_\_\_\_

STATE OF  
\_\_\_\_\_~~TEXAS~~

ss.

CITY OF  
\_\_\_\_\_~~IRVING~~

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)

My appointment expires \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Print Name  
Notary public in and for the state of \_\_\_\_\_,  
residing at \_\_\_\_\_

**EXHIBIT "B"**

*(Acceptance of Franchise)*

Franchise issued pursuant to Ordinance No. \_\_\_\_\_.

I, Robert McGee, am the Executive Director-Ntwk Eng&Ops, and (am the authorized representative to) accept the above-referenced Franchise on behalf of MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services. I certify that this Franchise and all terms and conditions thereof are accepted by MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, without qualification or reservation and that MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services unconditionally guarantees~~s~~(e) performance of all such terms and conditions.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By Robert McGee  
Its Executive Director-Ntwk Eng&Ops

Tax Payer ID# -52-2102063

STATE OF  
TEXAS

ss.

CITY OF  
IRVING

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 "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 ~~(including 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 Commercial Automobile Liability: ~~covering all shall include~~ owned, hired, and non-owned vehicles ~~with a combined single limit of on an occurrence basis with coverage of at least \$1,000,000 for each person and \$3,000,000 for bodily injury and property damage per occurrence.~~

2.3 Workers Compensation Insurance: ~~in compliance with the statutory requirements of the state of operation and Employer's liability with a limit of \$1,000,000 each accident/disease/policy limit~~ 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: ~~\$12,000,000 each occurrence and aggregate and \$5,000,000 policy limit.~~

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and ~~\$150,000,000~~ in the aggregate.

3 Endorsements. Franchisee Commercial General Liability insurance policies ~~shall be 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 ~~excluding workers compensation and employer's liability~~ shall ~~include~~ name the City as an additional insured as their interest may appear under this Agreement, 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 Upon receipt of notice from its insurer(s) Licensee shall use commercially reasonable efforts to provide the City with thirty (30) days prior written notice of cancellation. It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew.

3.7 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<sub>-</sub>" and in a financial size category of no less than "VII~~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 blanket additional insured 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

**Comment [cm7]:** So, they are going to provide the City with "commercially reasonable efforts" but they don't want to identify these efforts? But in the next sentence they will provide the City with a written notice delivered by registered mail? What's wrong with stating that the notice will be delivered by registered mail in 30 days?

**Comment [cm8]:** No, not "commercially reasonable efforts." I have no idea what that means. They are required to provide notice to the City at the addresses in the franchise.

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 —



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: Community Services Manager Job  
Description-Second Study Session Review**

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**Date:** April 18, 2017

**Title:** Community Services Manager Job Description

**Attachments:** Community Services Manager Job Description, Pierce County 2017 Contract Cost breakdowns before and after the reduction for the PCSO Office Assistant.

**Submitted By:** Dave Gray, Asst. City Administrator

**Approved For Agenda By:** Daryl Eidinger, Mayor

**Discussion:** The Mayor has led an extensive review of policing services including options to replace the existing Office Assistant with a Community Services Officer provided by the Pierce County Sheriff's Office. After several consultations with PCSO Business Manager Williams and Deputy Chief Masco, and at Council direction, PCSO let a job opening for a CSO to serve on the City of Edgewood force. No applicants were received. After further discussion with PCSO personnel and Chief Lundborg, it was agreed the City would hire a City staff position that best fit the City of Edgewood needs. The position will be funded by the reduction in the PCSO contract, a result of eliminating the PSCO Office Administrator position. Staff presents a draft Community Services Manager job description for review. The basic job functions and essential job functions have been reviewed by Leadership staff, including Chief Lundborg and discussed with PCSO leadership as well.

**Recommendation:** Approve the Community Service Manager job description and the reduction in the PCSO 2017 contract for services of \$93,594.00.

**Fiscal Impact:** The Mayor, exercising fund management authority, will cause the Council authorized reduction in the PCSO 2017 contract to be moved to fund the administrative cost of funding the newly created Community Service Manager position on an expenditure neutral basis. The Salary Schedule will be initially set at FT17-08, Code Enforcement.



# City of Edgewood

2224 104<sup>th</sup> Ave E

Edgewood WA 98372-1513

Phone (253) 952-3299 Fax (253) 952-3537

## Community Services Manager Job Description

**Salary Range: FT17-08 4,726 - \$6,246**

**Reports to: City Clerk**

**Opening Date:** April 26, 2017

**Closing date:** Open until filled

**First Review:** May 22, 2017

### General Scope of Work:

The Community Services Manager has primary responsibility for managing the City's communication content, format, message marketing, city-wide coordination of effort and cost-benefit analysis of community support programs and City outreach efforts. In concert with the City Clerk and Communication Coordinator, serves as the City's primary outreach liaison between City Staff and the Edgewood Community. Engages City staff, elected officials and members of the community to promote the City's effort of providing responsive general and targeted services to the Citizens of Edgewood. Receives direction and guidance from the Mayor, Police Chief, Public Works, Community Development, Building Inspection, Parks and Administrative personnel for support program activities. This is a public service position with on-going contact with the public that will involve after hours meetings and events on a routine basis.

Because of the small size of the City staff, each staff member is expected to perform a wide range of office and field duties as may be required from time to time. This is a working manager position and is therefore FLSA exempt, not eligible for overtime compensation. It is an at-will position and serves at the pleasure and discretion of the Mayor.

### Supervision:

Works under the broad policy guidance and direction of the City Clerk. This position requires a high degree of independent judgment, initiative, and discretion. Shared supervision and direction of various staff activities is a component of this Management position.

### Essential Job Functions:

The duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position.

Community Services Manager:

1. Work with apartment managers, business owners and citizens to organize and maintain neighborhood crime prevention and reporting programs.
2. Conducts studies and with support of the Mayor and Police Chief crafts community outreach, policing, chronic nuisance, homelessness, community enhancement and public service access policy, process and programs.

3. Act as the City's liaison for interaction, engagement and program management with:
  - a. Metro Animal Services
  - b. Repeat & Sexual Offender Tracking & Alert Programs
  - c. Neighbor City, County and State Emergency Alert and Operations Centers
  - d. Public Safety Programs
  - e. Homeless Programs
4. Interface with the Mayor, Staff, Law Enforcement and the public for administering the Citizen Action Report program with the intent to keep solutions at the lowest escalation resolution point.
5. Support the Police Chief with Community Policing programs and act as outreach point of contact.
6. Data mine and coordinate the presentation of City of Edgewood crime, enforcement and program impact, statistics and assessments.
7. Educate the public on utilization of City services and regulatory requirements and processes.
8. Produce general and targeted community communication content and effectively deliver it via social media and direct public contact, one on one or at public events.
9. Act as the City's point of contact for annual and ad hoc public events.
10. Research, and administer City Communications, Public Safety, Public Health and Community Enhancement grants in coordination with other City staff and outside resources.
11. Act as the first contact for code enforcement efforts of an informational nature (Not citations).
12. Interface with Law Enforcement or City Staff for escalation of code enforcement action.
13. Document and provide metrics to assist the City in understanding public service needs, levels of expectation, and various perceptions of how well the City is accomplishing meeting them.
14. Be able to cope with emotionally tense situations, including contentious interactions.
15. Ability to speak in public and make clear presentations in both written and oral form.
16. Serve as back up for the Communications Coordinator.
17. Maintain an open accessible communication process for staff, elected officials and members of the public.
18. Exercise sound judgment and thorough knowledge of city policies and procedures.
19. Assist with answering public inquiries. Works independently and/or within a team on assignments or special projects, which may include coordinating meetings and retreats, disseminating information and organizing City events, and maintaining interagency relations.
20. Performs related work as required and other duties as assigned.

### **Necessary Knowledge, Skills, and Abilities:**

To perform this job successfully, the person in this position must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Community Services Manager:

### **Ability to:**

1. Must be able to deal effectively with the public in a customer-friendly manner and use considerable tact, patience, and courtesy in difficult situations. Provide excellent customer service.
2. Communicate clearly and concisely, both orally and in writing. Understand and carry out oral and written directions.
3. Operate a personal computer, calculator, ruler, copier, fax machine, and multi-line telephone.
4. Knowledge of research methods using a variety of information and data sources.
5. Must be able to use standard word processing programs and computer database systems.

6. Establish and maintain a variety of record and filing systems.
7. Utilize professional standards for business correspondence; in addition, this person will have mastered proper usage, spelling, grammar, and punctuation of the English language.
8. Ability to establish and maintain effective working relationships with a wide variety of others encountered in the course of the work.
9. Work independently and as part of a service oriented team and effectively handle multiple and conflicting tasks simultaneously.
10. Be a self-starter.
11. Ability to pay attention to detail and accuracy.
12. Work under challenging conditions and with frequent interruptions.
13. Ability to plan, organize, prioritize, and coordinate a diverse workload with a minimum amount of supervision.
14. Ability to make sound, accurate, and consistent decisions.
15. Advanced knowledge in social media and other traditional communications processes.
16. A sense of humor and positive attitude are essential.

**Minimum Requirements:** Any equivalent combination of education and experience which provides the applicant with the knowledge, skills, and abilities required to perform the job. A typical way to obtain the required knowledge, skills, and abilities would be to have graduated from an accredited four year college or university with a degree in communications, marketing, criminal justice, or a closely related field with two years of progressively responsible experience in community crime prevention programs, or any equivalent combination of education and experience. Experience in marketing, law enforcement, and/or public speaking is preferred.

**Physical Demands and Working Conditions:**

The physical demands described herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. The work environment characteristics described herein are representative of those an employee may encounter while performing the essential functions of this position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. Work is performed in an office setting with frequent field contact and public interaction off-site. Hand-eye coordination is necessary to operate computers and a variety of office equipment. While performing the duties of this job, the employee is frequently required to stand or sit, walk, climb, talk and hear, use hands and fingers to handle, feel or operate office equipment and controls, and reach with hands and arms. Specific vision abilities required by this job include close vision and the ability to adjust focus. The employee must occasionally lift and/or move up to 25 pounds.

Duties are split between indoor office and outdoor on-site inspection as well as visits to non-city facilities for public interaction and meetings. Duties are usually performed alone, but are also performed as part of a work team comprising both City Staff and Law Enforcement. Attendance at some night meetings and off site activities will be required. The work environment is fast-paced and moderate to very noisy.

**Acknowledgements:**

The statements contained herein reflect general details as necessary to describe the principal functions of this job, the level of knowledge and skill typically required, and the scope of responsibility, but should not be considered an all-inclusive listing of work requirements. Individuals may perform other duties as assigned including work in other functional areas to cover absences or relief, to equalize peak work periods or otherwise to balance the workload.



**This position description does not constitute a contract for employment. It is subject to change by the City as the needs of the City and requirements change.**

**The City of Edgewood is an Equal Opportunity Employer.**

If you meet the minimum qualifications and are interested in applying for this position, please send a cover letter, resume, and completed City of Edgewood Employment Application to:

**City of Edgewood  
Human Resources  
2224 104<sup>th</sup> Ave E  
Edgewood, WA 98372-1513**

Applications may also be e-mailed to [humanresources@cityofedgewood.org](mailto:humanresources@cityofedgewood.org).

The City of Edgewood Employment Application may be found on our website at [www.cityofedgewood.org](http://www.cityofedgewood.org). Incomplete application packets will be disqualified. Only those applicants selected to move forward in the process may be contacted. Applications will be retained in accordance with Records Retention practices. If you have questions regarding the application process, please contact human resources at 253-952-3299 or via e-mail at [humanresources@cityofedgewood.org](mailto:humanresources@cityofedgewood.org).



# 2017 POLICE BUDGET

2017 CITY OF EDGEWOOD CONTRACT COST FOR SHERIFF SERVICES

Current Model (c) 10/28/2016

| FUNCTION                                                                                 |           | NUMBER | TYPE                                                            | UNIT COST   | 2017<br>ANNUAL COST                 | TCC %       |
|------------------------------------------------------------------------------------------|-----------|--------|-----------------------------------------------------------------|-------------|-------------------------------------|-------------|
| Patrol/Traffic                                                                           |           | 8      | Deputies                                                        | \$169,116   | \$1,352,928                         | 3.0%        |
| Investigator                                                                             |           | 0      | Deputy                                                          | \$169,116   | \$0                                 | 3.0%        |
| Sargent                                                                                  |           | 0      | Sergeant                                                        | \$177,098   | \$0                                 | New         |
| Supervision/Liaison                                                                      |           | 1      | Contract Chief                                                  | \$211,134   | \$211,134                           | 3.0%        |
|                                                                                          |           |        | Central investigations (major crimes and investigative support) |             |                                     |             |
| SS911                                                                                    |           |        | S911 costing Methodology                                        |             | \$81,507                            | 3.0%        |
| Professional Support                                                                     |           | 1      | O/A 3 Mos- CSO 9 Mos                                            | 83047/97110 | \$156,690                           | 5.8%        |
|                                                                                          |           |        |                                                                 |             | \$93,594                            | New         |
| Special Services (Canine, SWAT, HazDevices, Lab Team Credit for Unincorporated Responses |           |        | % of calls per service                                          |             | No charge                           |             |
| <b>TOTAL</b>                                                                             | <b>10</b> |        |                                                                 |             | <b>2017 Actual Cost \$1,885,093</b> | <b>3.8%</b> |
|                                                                                          |           |        |                                                                 |             | <b>2017 Annualized \$1,888,609</b>  | <b>4.0%</b> |

1,885,093

## 2016 ENDING HEADCOUNT

Training Cost for 2016 (Included in Deputies) = \$140,930

| FUNCTION                                                                                 | NUMBER    | TYPE                                                            | UNIT COST | 2016<br>ANNUAL COST |
|------------------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------|-----------|---------------------|
| Patrol/Traffic                                                                           | 7         | Deputies                                                        | \$164,190 | \$1,149,330         |
| Investigator                                                                             | 1         | Deputy                                                          | \$164,190 | \$164,191           |
| Supervision/Liaison                                                                      | 1         | Contract Chief                                                  | \$204,984 | \$204,984           |
|                                                                                          |           | Central investigations (major crimes and investigative support) |           |                     |
| SS911                                                                                    |           | S911 costing Methodology                                        |           | \$79,133            |
| Professional Support                                                                     | 1         | Office Assistant II                                             | \$80,628  | \$148,130           |
|                                                                                          |           |                                                                 |           | \$80,628            |
| Special Services (Canine, SWAT, HazDevices, Lab Team Credit for Unincorporated Responses |           | % of calls per service                                          |           | No charge           |
| <b>TOTAL</b>                                                                             | <b>10</b> |                                                                 |           | <b>\$1,815,949</b>  |

|                                        |          |
|----------------------------------------|----------|
| Total Gross \$ Increase in Annual Cost | \$69,144 |
| Total Gross % Increase in Annual Cost  | 3.8%     |

|   |           |          |        |
|---|-----------|----------|--------|
| 7 | \$169,116 | \$34,482 | \$0.21 |
|   | \$169,116 | \$4,926  | \$0.03 |
|   | \$211,134 | \$6,150  | \$0.03 |
|   | \$81,507  | \$2,374  | \$0.03 |
|   | \$156,690 | \$8,560  | \$0.06 |
|   | 83047     | \$2,419  | \$0.03 |
|   | -\$10,760 | -\$313   |        |
|   |           | \$58,598 |        |

BEORE

# EXHIBIT "A" - Reduced (AFTER)

## 2017 CITY OF EDGEWOOD COST FOR SHERIFF SERVICES

| FUNCTION                                                             | NUMBER                 | TYPE                                                                  | UNIT COST  | ANNUAL COST        |
|----------------------------------------------------------------------|------------------------|-----------------------------------------------------------------------|------------|--------------------|
| Patrol/Traffic                                                       | 8                      | Deputies                                                              | \$ 169,116 | \$ 1,352,928       |
| Supervision/Liaison                                                  | 1                      | Contract Chief                                                        | 211,134    | \$ 211,134         |
|                                                                      |                        | Central Investigations<br>(major crimes and<br>investigative support) |            | \$ 81,507          |
| SS911                                                                |                        | SS911 costing<br>Methodology                                          |            | \$ 156,690         |
| Special Services<br>(Canine, SWAT,<br>Hazardous Device, Lab<br>Team) |                        | % of calls per service                                                |            | No charge          |
| Credit for Unincorporated<br>Responses                               |                        |                                                                       |            | \$<br>(10,760)     |
| <b>TOTAL</b>                                                         | <b>9 <del>10</del></b> |                                                                       |            | <b>\$1,791,499</b> |

Δ < 43,594 >



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: Vehicle Use and Driving Policy**

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**Date:** April 18, 2017

**Title:** Vehicle Use and Driving Policy

**Attachments:** Draft vehicle use and driving policy

**Submitted By:** Mayor Daryl Eiding

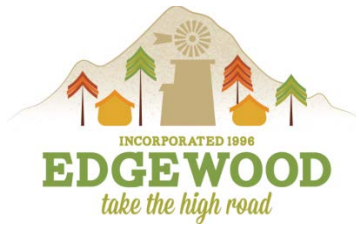
Management Staff

**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** The City has utilized vehicles in order to aide Staff in carrying out daily duties as required of their positions with the City. This offers a cost savings and helps curb liability to the City, instead of having the employees provide these resources as part of their employment with the City. It also helps ensure that these resources will be available when needed and are reliable. Instituting a Vehicle Use and Driving Policy is essential in ensuring the safe use of these resources, as well as helping protect the citizen's investment in these resources. Staff have drafted this working policy that has been vetted with both the City's insurance carrier (WCIA), as well as the City Attorney and is being brought forward to the Council for their review and approval for implementation as there are potential financial implications associated with this type of policy.

**Recommendation:** Ask Staff to place this item on the consent agenda for approval at the Council's April 25, 2017 Council meeting.

**Fiscal Impact:** N/A



**CITY OF EDGEWOOD  
POLICIES AND PROCEDURES**

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**TITLE:** Vehicle Use and Driving Policy

**POLICY MANUAL SECTION & NO.**  
**Section 9(G)**

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**APPROVED BY**

**REVISES OR SUPERSEDES**

**EFFECTIVE DATE:**

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**A. PURPOSE:** To provide procedures that provide vehicles for business use, to allow employees to operate vehicles on City business, including expected maintenance/monitoring requirements, training, evaluation and to reimburse employees for business use of personal vehicles according to the guidelines below.

**B. ORGANIZATIONS EFFECTED:** All Departments/Divisions, except Police and Fire.

**C. REFERENCES:** N/A

**D. POLICY:** It is the policy of the City of Edgewood to provide vehicles for business use, to allow employees to drive on City of Edgewood business, and to reimburse employees for business use of personal vehicles according to the guidelines below.

The term “vehicle” as used in these guidelines includes, but is not limited to, cars, trucks, and vans.

1. Employees may not operate any vehicle for City of Edgewood business without prior approval of their supervisor. Before approving a driver, and periodically throughout employment, each supervisor should verify the existence of a valid driver's license and request from the driver a copy of a current Abstract of Driving Record (ADR).
2. Employees approved to drive on City of Edgewood business are required to inform their supervisor immediately of any changes that may affect either their legal or physical ability to drive or their continued insurability. Employees are not permitted, under any circumstances, to operate a City of Edgewood vehicle, or a personal vehicle for City of Edgewood business, if their drivers license has been suspended or revoked or when any physical or mental impairment causes the employee to be unable to drive safely. This prohibition includes, but is not limited to, circumstances in which the employee is temporarily unable to operate a vehicle safely or legally because of injury, illness, or medication. In all cases an employee shall not operate a vehicle illegally.

3. Employees in job positions requiring regular driving for business as an essential job function must, as a condition of employment, be able to meet the driver approval standards. For job positions that require periodic driving for City of Edgewood business, driver approval standards should be met prior to the employee's initial trip.
4. Employees who drive a vehicle on City of Edgewood business must, in addition to meeting approval requirements, exercise due diligence to drive safely and to maintain the security of the vehicle and its contents.
5. Employees may use City of Edgewood vehicles for non-business purposes only with the approval of a supervisor. Such operation shall be limited to facilitating use, for the convenience of the City or employee, where a return to the base of operations is neither practical or cost effective.
6. Non-employee, non-business passengers are prohibited from riding in City of Edgewood vehicles without prior approval. Non-employee, non-business passengers are prohibited from riding in the employee's personal vehicle, without prior approval, when the vehicle is being used for City of Edgewood business. Such operation shall be limited to facilitating use, for the convenience of the City or employee, where an alternative is neither practical or cost effective.
7. The City of Edgewood prefers and encourages employees to use City vehicles for all approved business use. Employees may use their own vehicles for business purposes with prior approval of a supervisor, when a City vehicle is not available or the mixed use of City business and personal business are better served by use of a personal vehicle. Auto liability coverage follows the vehicle. Therefore, the employee's personal vehicle insurance is primary, and the City's liability coverage is excess. Employees who operate personal vehicles for City of Edgewood business should obtain auto liability coverage for bodily injury and property damage and any other required coverage determined by the employee's personal auto insurance agent or broker. Employees who use their personal vehicle for approved business purposes will receive a mileage allowance equal to the Internal Revenue Service optional mileage allowance. This allowance is to compensate for the cost of gasoline, oil, depreciation, and insurance.
8. Employees must report any accident, theft, or malicious damage involving a City of Edgewood vehicle to their supervisor, Fleet Manager or the Personnel Department, regardless of the extent of damage or lack of injuries. Such reports must be made as soon as possible but no later than twenty-four (24) hours after the incident. Employees are expected to cooperate fully with authorities in the event of an accident. However, employees should avoid making voluntary statements regarding the accident; other than reply to questions of investigating officers.
9. Employees who are on call on a 24-hour basis and are allowed to take a City of Edgewood vehicle home are to provide written acknowledgment that they fully understand that the vehicle should only be used as part of an emergency response.
10. The City of Edgewood has a zero tolerance policy prohibiting employees from operating a City of Edgewood vehicle or any personal vehicle while on City of Edgewood business while using, consuming or under the influence of alcohol, illegal drugs, prescription

medications and over the counter medications that may affect ability their ability to drive. (Refer to drug and alcohol policy.)

11. Employees shall not smoke, vape or allow others to smoke and/or vape in any City of Edgewood vehicle.
12. Employees are personally responsible for all tickets, citations, or infractions issued for moving violations or parking violations while using a City of Edgewood vehicle or a personal vehicle for City of Edgewood business. Employees should advise their supervisor of any such tickets, citations, or infractions received.
13. Employees should obey all safety laws and regulations while operating a City of Edgewood vehicle or a personal vehicle on City of Edgewood business. This would include the proper use of seat belt, the prohibition on using cell phones without a proper hands free device, and obeying applicable traffic laws.
14. To protect the safety of employees, reduce accidents, extend the life of the fleet, and promote good public relations, the City of Edgewood requires regular inspections and maintenance of vehicles as an element of its Fleet Program.
  - a. Management - The management of the City of Edgewood supports the inspection and maintenance program. .
  - b. Managers and Supervisors - Managers and supervisors are responsible for:
    - i. Supporting the inspection and maintenance program.
    - ii. Providing equipment, tools and adequate shop facilities
    - iii. Supervising drivers for compliance with the fleet inspection and maintenance requirements. This may include but not limited to establishment of an incentive and award program to encourage employee participation and compliance.
  - c. Drivers - Drivers are responsible for safe operation of their assigned vehicles. The City of Edgewood requires drivers to inspect their vehicles for defects and unsafe conditions to report them according to policy.

## DRIVER SELECTION, TRAINING, PERFORMANCE EVALUATION & MONITORING

A. Driver Selection - Although driving may be incidental to the employee's primary job responsibilities, the considerations given to driver selection are often the most important factor that will affect municipal vehicle accidents.

Therefore, the City of Edgewood expects managers and supervisors to comply with the following when hiring individuals who will drive vehicles:

1. Evaluate driver qualifications through the following:
  - a. Previous Employer's Reference. Check to verify employment and to help determine the driving qualifications and history of the applicant.
  - b. Abstract Driving Records (ADR) checked through the Washington Department of Licensing, Government Subscription Service to verify validity of their Drivers License.

- c. Personnel File if current employee. Review to consider driver training received, record of preventable accidents, driving history, driving certifications, vehicle operator record, etc.
- d. Demonstrated proficiency with the type of vehicle or equipment they will operate.

2. Managers and supervisors should take reasonable action to verify that all employees who operate any vehicle within the course and scope of employment meet all licensing, driving qualifications, fitness and training requirements. Employees holding jobs which require regular driving for business must, as condition of employment, be able to meet the Member's driver approval standards at all times.

- a. The following is a partial list of conditions or convictions that can include but are not limited to the following:
  - ☐ Two at fault accidents in the past three years, or
  - ☐ Two minor traffic convictions in the past three years, or
  - ☐ A combination of one at fault accident and one minor traffic conviction in the past three years, or
  - ☐ Operating under the influence of liquor or drugs, or
  - ☐ Operating with an unlawful blood alcohol content, or
  - ☐ Failure to stop or report an accident, or
  - ☐ Negligent homicide, manslaughter, assaults involving the operation of a motor vehicle, or
  - ☐ Driving on a suspended or revoked license.
- b. Verify that applicants possess, or are eligible to obtain, any special license endorsements the law requires for the type or types of vehicle they will operate in performing their duties. Here we speak primarily of the Commercial Driver's License (CDL) requirements.

3. Supervisors are responsible for reporting vehicle operator information to the Human Resources Manager, which will then be placed in the employee's personnel file.

B. Driver Training - To evaluate and assist drivers in maintaining an acceptable level of performance, the City of Edgewood shall periodically administer or arrange for attendance at a Defensive Driving Course. The City of Edgewood shall make assignments for the course as follows:

- 1. Mandatory attendance for employees who have been involved in a "preventable accident."
- 2. Voluntary attendance for employees who have not attended a Defensive Driving Course in the past three (3) years.

C. Performance Evaluation and Monitoring - Because careless or poor driving may lead to worker injuries and to decreased public confidence in the City of Edgewood, we require managers and supervisors to monitor and evaluate employees who operate vehicles. They must:

- 1. Check all employees' ADR's at a minimum of one time per year.
- 2. Assign a specific individual to oversee the license review and screening process. This individual should also manage the entity's compliance with Commercial Driver's



License, federal random drug testing and other legal requirements. The review should conform to the guidelines in your motor vehicle operations policy.

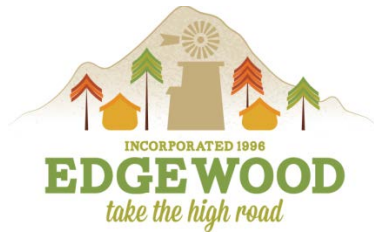
3. Take appropriate corrective action for current employees with unacceptable driving records.

Corrective actions may range from reassignment to non-driving related positions up to and including termination. . Falsification of information regarding driving records by employees is cause for immediate termination.

4. Document all corrective actions taken and forward it upon completion to Human Resources.

*Please read and sign the VEHICLE USE AND DRIVING POLICY ACKNOWLEDGEMENT on the next page.*





**CITY OF EDGEWOOD**  
**VEHICLE USE AND DRIVING POLICY ACKNOWLEDGEMENT**

I acknowledge receiving, reading, and understanding the Vehicle Use and Driving Policy and accept all the terms of and conditions stipulated in the policy. I understand that failure to comply with the stated policies may lead to disciplinary actions, including the possibility of termination of my employment.

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Print Employee Name

---

Employee Signature

---

Date



**CITY OF EDGEWOOD  
STAFF REPORT**

**STUDY SESSION AGENDA ITEM: Social Media Policy**

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**Date:** April 18, 2017

**Title:** Social Media Policy

**Attachments:** Social Media Policy

**Submitted By:** Rachel Pitzel, City Clerk

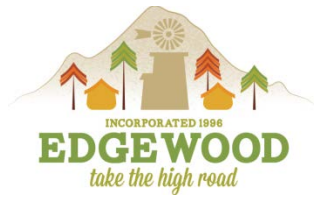
**Approved For Agenda By:** Daryl Eiding, Mayor

**Discussion:** In the rapidly expanding world of electronic communication, social media can mean many things. Social media includes all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else's web log or blog, journal or diary, personal web site, social networking or affinity web site, web bulletin board or a chat room, whether or not associated or affiliated with the City of Edgewood, as well as any other form of electronic communication.

This policy is intended to help staff make appropriate decisions and to establish rules and expectations for the appropriate use of social media by City of Edgewood employees, whether the use is personal, or work related.

**Recommendation:** To move this item to the April 25<sup>th</sup> Regular Council Meeting Consent Agenda for Council action.

**Fiscal Impact:** N/A



**CITY OF EDGEWOOD  
POLICIES AND PROCEDURES**

|                                             |                                                                |                        |
|---------------------------------------------|----------------------------------------------------------------|------------------------|
| <b>TITLE:</b><br><b>Social Media Policy</b> | <b>POLICY MANUAL SECTION &amp; NO.</b><br><b>Section 2 (L)</b> |                        |
| <b>APPROVED BY</b>                          | <b>REVISES OR SUPERSEDES</b><br><b>New Content</b>             | <b>EFFECTIVE DATE:</b> |

1. **Purpose:** The purpose of this policy is to establish rules and expectations for the appropriate use of social media by City of Edgewood employees, whether the use is personal, or work-related.
2. **Applicability:** This policy applies to all users of City of Edgewood communications and computing resources on the City's behalf. The City Clerk along with the Communications Coordinator (herein after referred to as "Coordinators") will be given access to the City's Social Media sites (Facebook, Twitter and the City website) by the Mayor only after this policy has been reviewed and signed. Coordinators may access City social media sites from City computers or City devices and only post content. The Mayor will review and approve all content before it has been posted.
3. **Background:** The City of Edgewood encourages the use of social media technologies to enhance communication, involvement, and information exchange in support of the mission of the City of Edgewood. As the technology evolves, this document will evolve, but in general terms, this document defines guiding principles for use of these technologies by Coordinators using these resources on the City's behalf. The use of social media technology follows the same standards of professional practice and conduct associated with everything else we do. Common sense and sound judgment help avoid the most vexing issues.
4. **Definitions:** "Social media" is an umbrella term that encompasses the various activities that integrate technology, social interaction, and content creation. Social media uses many technologies and forms, for example blogs, wikis, photo and video sharing, podcasts, social networking, and virtual worlds, whether or not associated or affiliated with the City, as well as any other form of electronic communication.
5. **Guiding Principles:**
  - a) Know and follow City of Edgewood conduct guidelines, such as Chapter 2. General Policies and Procedures and Chapter 9. Employee Responsibilities and Conduct in the City of Edgewood Personnel Manual. These standards cover topics of prohibited activities such as: engaging in vulgar or abusive language, personal attacks of any

kind, or offensive terms targeting individuals or groups; endorsement of commercial products, services, or entities; endorsement of or opposition to political parties, candidates, groups or ballot initiatives; lobbying members of the legislature using City of Edgewood or any other appropriated resource.

- b) When you are representing the City of Edgewood in an official capacity, the City of Edgewood is responsible for the content you publish on blogs, wikis or any other form of user-generated media. Assume your communications are in the public domain, available for publishing or discussion in all forms of media.
- c) If you publish content to any website outside of City of Edgewood's official online presence (this may include City of Edgewood websites as well as City of Edgewood's official presence on third party sites) and it has something to do with subjects associated with City of Edgewood, consider a disclaimer such as this: "The postings are my own and do not necessarily represent City of Edgewood's positions, strategies or opinions." Never use or reference your formal position when writing in a non-official capacity.
- d) Those with leadership responsibilities, by virtue of their position, must consider whether personal thoughts they publish, even in clearly personal venues, may be misunderstood as expressing City of Edgewood positions. They should assume that their team and those outside the City of Edgewood will read what is written. A public blog is not the place to communicate the City of Edgewood policies to the City of Edgewood employees. Assume your thoughts are in the public domain and can be published or discussed in all forms of media. Presume you have no expectation of privacy.
- e) Respect copyright, fair use and financial disclosure laws. Always protect sensitive information, such as protected acquisition and personally identifiable information. Do not publish or report on conversations that are meant to be pre-decisional or internal to the City of Edgewood unless given permission by management.
- f) Be aware of your City of Edgewood association in online social networks. If you identify yourself as a City of Edgewood employee or have a public facing position for which your City of Edgewood association is known to the general public, ensure your profile and related content (even if it is of a personal and not an official nature) is consistent with how you wish to present yourself as a City of Edgewood professional, appropriate with the public trust associated with your position, and conforms to existing standards, as referenced in the City of Edgewood Personnel Policy. Presume you have no expectation of privacy.
- g) Remain focused on customers, existing commitments, and achieving City of Edgewood's mission. Your use of social media tools should never interfere with your primary duties.
- h) Employees are to refrain from taking action via social media that is intended, or would reasonably be expected, to negatively affect the City, its reputation, services, management or employees. These disparaging or derogatory actions include but are not limited to, inappropriate or offensive postings or comments (for example, postings that include discriminatory remarks, harassment, language that could contribute to a hostile work environment on the basis of race, gender, disability, religion or any other status protected by law or city policy, or harm or disgrace the City's or an employee's reputation).

Keep in mind that while you are employee, your words and actions reflect upon the City, but at no point should you purport to speak for the City. Do not make statements or comments claiming to represent the City or City positions unless you have prior written authorization from the Mayor.

**6. City Use of Social Media:**

All of the City's social media shall clearly indicate it is maintained by the City, have the City logo and contact information prominently displayed, and be linked to this Social Media Policy. It will also contain the following language:

*The City of Edgewood, Washington is a municipal corporation of the State of Washington. This site is intended to serve as a mechanism for communication between the public and the City on the listed topics related to the City's municipal government services. The opinions expressed by visitors to this site do not reflect the opinions of the City. Any comments submitted to this site and any lists of users or links are public records subject to disclosure pursuant to RCW 42.56. Users recognize that there is no expectation of privacy in the use of the City's Social Media and users are cautioned to never disclose private or confidential information on this site.*

*Communications made on this site do not constitute official notice to the City or any City personnel. Public Record Act requests may not be made on this site and must be submitted to the City's Public Records Officer consistent with the City's Public Records Policy.*

*The City is not responsible for the content that appears on outside links and provides links as a convenience only.*

*All information and materials generated by the City and provided on City Social Media pages are the property of the City. The City retains copyright on all text, graphic images and other content that was produced by the City and found on the page. You may print copies of information and material for your own non-commercial use, provided that you retain the copyright symbol or other such proprietary notice intact on any copyrighted materials you copy. Please include a credit line reading: "Courtesy of City of Edgewood, Washington."*

*Commercial use of text, City logos, photos and other graphics are prohibited without the express written permission of the City. Use of the City logo is prohibited for any non-governmental purpose. Any person reproducing or redistributing a third party copyright must adhere to the terms and conditions of the third party copyright holder. If you are a copyright holder and you feel that the City did not use an appropriate credit line please notify the City's Communications Coordinator with detailed information about the circumstances, so that the copyright information can be added or the material in question can be removed.*

In addition, all City social media will contain the following Public Use Guidelines (or a link to these Public Use Guidelines):

- a) Any individual accessing, using, posting or commenting on this site accepts without limitation or qualification, the City's Social Media Policy including but not limited to these Public Use Guidelines. The City retains the right to modify its Policies without notice and any such modification shall be effective immediately. Users of City Social Media further recognize that such use is governed by the terms of service and privacy policies of the underlying social media service provider.
- b) Any individual accessing, using, posting or commenting on this site recognizes that Social Media use is not private and that the City is subject to the Washington State Public Records Act (chapter 42.56 RCW).
- c) The City's Social Media constitutes a limited public forum. The City monitors this site on a regular basis and reserves the right to restrict or remove any content that is deemed in violation of the City's social media policy, these Public Use Guidelines or any applicable law. Public posts, comments or links that contain any of the following forms of content shall not be allowed:
- Comments not topically related to the particular post being commented upon.
  - Uses for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of City Social Media is specifically prohibited by this Policy and RCW 42.17A.555, subject to the exceptions stated therein.
  - Posts and comments that include vulgar, offensive, threatening or harassing language, personal attacks or unsupported accusations.
  - Posts and comments that promote, foster or perpetuate discrimination on the basis of creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;
  - Obscene or sexual content or links to obscene or sexual content;
  - Illegal activity or encouragement of illegal activity;
  - Information that may tend to compromise the safety or security of the public or public systems;
  - Comments from children under 13 cannot be posted in order to comply with the Children's Online Privacy Protection Act. By posting on a City social media site, users acknowledge that they are at least 13 years old. Those 12 years old or younger may e-mail the City instead;
  - Content that violates a legal ownership interest of any other party; or Anonymous posts.
  - Content that violates the privacy policies or terms of use of the specific social media platform being used.

Any content removed based on these guidelines must be retained, including the time, date, and identity of the poster when available.

Social media content shall adhere to all applicable laws, regulations, and policies. Content is subject to the Washington State Public Records Act and the Department of Archives record retention requirements for social media formats and content. Any content maintained in City

social media that is related to City business, including a list of subscribers and posted communication, and all City images are public records.

**7. Personal Use of Social Media:**

The City does not seek to censor employees who are active on social media on their own time and using their own computer resources. However, there are situations in which employees may be held accountable or disciplined for their off-duty social media activity when the activity violates City policies and rules. The following guidelines apply to employees' personal use of social media:

1. Even when a communication occurs on personal time and/or away from work, employees should carefully distinguish between postings or comments made in their individual capacity versus their capacity as someone professionally affiliated with the City. If any confusion is reasonably likely, the employee should expressly state with a disclaimer that he/she is speaking in his individual capacity and not for or on behalf of the City.
2. Employees must adhere to the same ethical obligations that govern their other off-duty behavior. For example, confidential City information or documents must not be disclosed or discussed.
3. Employees shall not post, share or support comments or other content that negatively affects City operations or the City's ability to serve the public such as:
  - postings that include harassment, threats of violence, or similar conduct;
  - postings that ridicule, disparage, or express bias on the basis of race, religion, gender, sexual orientation, national origin, or other legally protected class; or
  - postings that otherwise violate a law or City policy.

If you have questions about this policy, please discuss them with your supervisor.