



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA**

Tues., June 6, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance & Roll Call

2. COUNCIL BUSINESS

- A. Presentation/Discussion** (*no material*) - Sumner Public Works Dept. – Bridge Construction Plan
- B. Review/Discussion** (pg. 2)- Planning Commission Recommendations – Comp. Plan Annual Amendments
- C. Review/Discussion** (pg. 27)- Closed Record Review Proceeding Process- Domus Homes PRD
- D. Review/Discussion** (pg. 30)- Labor Attorney Services Contract – Summit Law, P.C.
- E. Review/Discussion** (pg. 44)- Development Standards – Marijuana Related Uses
- F. Review/Discussion** (pg. 52)- Building Code Enforcement Provisions to the EMC
- G. Review/Discussion** (pg. 72)- Verizon Franchise Agreement
- H. Review/Discussion** (pg. 127)- Consultant Contract Extensions (Transportation/General Engineering)
- I. Discussion** (pg. 161)- Lowering Speed Limits / Redflex Traffic Systems, Inc.

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: 2016 Comprehensive Plan Phase 1
Planning Commission Recommendation**

Date: June 6, 2017

Title: 2016 Comprehensive Plan Phase 1 Planning Commission Recommendation

Attachments: Attachment A Planning Commission Amendment Memos/Written
Comments

Attachment B Planning Commission Recommendation

Submitted By: Community Development Director Kevin Stender

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Annually, the City of Edgewood accepts Amendments to the City of Edgewood Comprehensive Plan from Citizens. For 2016, the City received two (2) applications. Both amendments were to the City's Comprehensive Plan Land Use Map. These applications have been reviewed following the procedures outlined within EMC 18.60 as legislative decisions accordingly and the Planning Commission conducted a 300-foot noticed public hearing regarding the amendments May 15, 2017 and made a formal recommendation to begin Phase 2 review following the Public Hearing. The goal tonight is to educate you on the proposals and answer any questions before a resolution is in front of you next week to consider these amendments for Phase 2 Planning Commission review.

The two amendments included the Uchida Amendment that encompasses approximately 65 acres of property on the southern edge of the City and the Mountain-View Edgewood Water Company (MTVE) Map Change for a small parcel located just south of the water towers at 12224 48th Street East. The Uchida amendment proposes a land use map change from Single Family Moderate to Industrial and the MTVE amendment proposes a change from Single Family Moderate to Public.

The Planning Commission Public Hearing was well attended with approximately 35-40 citizens in present. The vast majority of people present at the hearing were there to speak regarding the Uchida Land Use Map Amendment. Of those in attendance citizens spoke both against and for this amendment with a slight majority speaking against the

amendment. In addition to public testimony, the City received several letters against the proposal as well. This information is included as part of Attachment A in this packet.

The City also received public testimony regarding the MTVE proposed map amendment at the Public Hearing and received a letter against the proposal as well. This information is also included as part of Attachment A in this packet.

Recommendation: Place the item on the agenda for Resolution at the June 13, 2017 meeting to decide whether or not to consider the amendments for Phase 2 review, consistent with EMC 18.60.

Fiscal Impact: N/A



City of Edgewood

INTEROFFICE MEMORANDUM

TO: Edgewood Planning Commission

C: Mayor Eidinger and City Council

FROM: Kirk Rappe, Associate Planner
Kevin Stender, Community Development Director

DATE: April 3, 2017

**SUBJECT: REVIEW OF ATTACHMENT "A" MOUNTAIN VIEW-
EDGEWOOD WATER COMPANY PROPOSAL, FILE #5214**

On December 27, 2016, Ms. Jacki Masters from Mountain View-Edgewood Water Company (MTVE) submitted a Comprehensive Plan Land Use Map change amendment to re-designate a piece of property owned by MTVE (parcel number: 0420236041) from split-zoned Public (P) and Single Family Three (SF-3) to Public (P).

BACKGROUND INFORMATION:

The parcel under consideration is located in the southeastern part of the City of Edgewood on the south side of 48th Street East. The property is surrounded by single family residences all zoned Single Family Three (SF-3). The parcel totals approximately 0.98 acres or 42,689 square feet.

Mountain View Edgewood Water Company purchased a residential property directly to the south of their existing headquarters building property. In January 2008, MTVE submitted for a boundary line adjustment (BLA) with another neighboring single family residential property. This BLA moved the boundary line between the MTVE owned parcels and the neighboring residential property providing MTVE with one large parcel, albeit split-zoned.

MTVE applied for a comprehensive plan amendment to re-zone the property from its current status as a split-zoned property (Public and Single Family Three) to be designated as a Public (P) zone. Uses allowed on Public zoned land include civic uses, office/business uses, commercial uses, and utility uses. Specific to this site, these include Administration and professional offices and water supply facilities as allowed uses in the Public (P) zone.

The parcel is currently used as Mountain View Edgewood Water Company headquarters and site for two MTVE-owned water tanks.

Sewer service is not available to the parcels. The parcel is served by an on-site septic system.

Environmentally, the City's critical areas map shows no critical areas present or within 165 feet of the parcel. The closest critical areas are steep slope designated areas approximately 261 feet to the south and southeast of the subject property.

Type of Amendment: **18.40.120 Process V – Legislative review.**

The process for legislative review will be followed per EMC 18.60. The amendment requires a future land use map change and a rezone application to accompany a future permit submittal/issuance for this action.

Type of Action: Requires SEPA (consolidated as part of Phase II as appropriate with other updates for non-project actions), Staff Report discussion of any policy changes, PC to hold Public Hearing, Recommendation from PC following hearing to council for action.

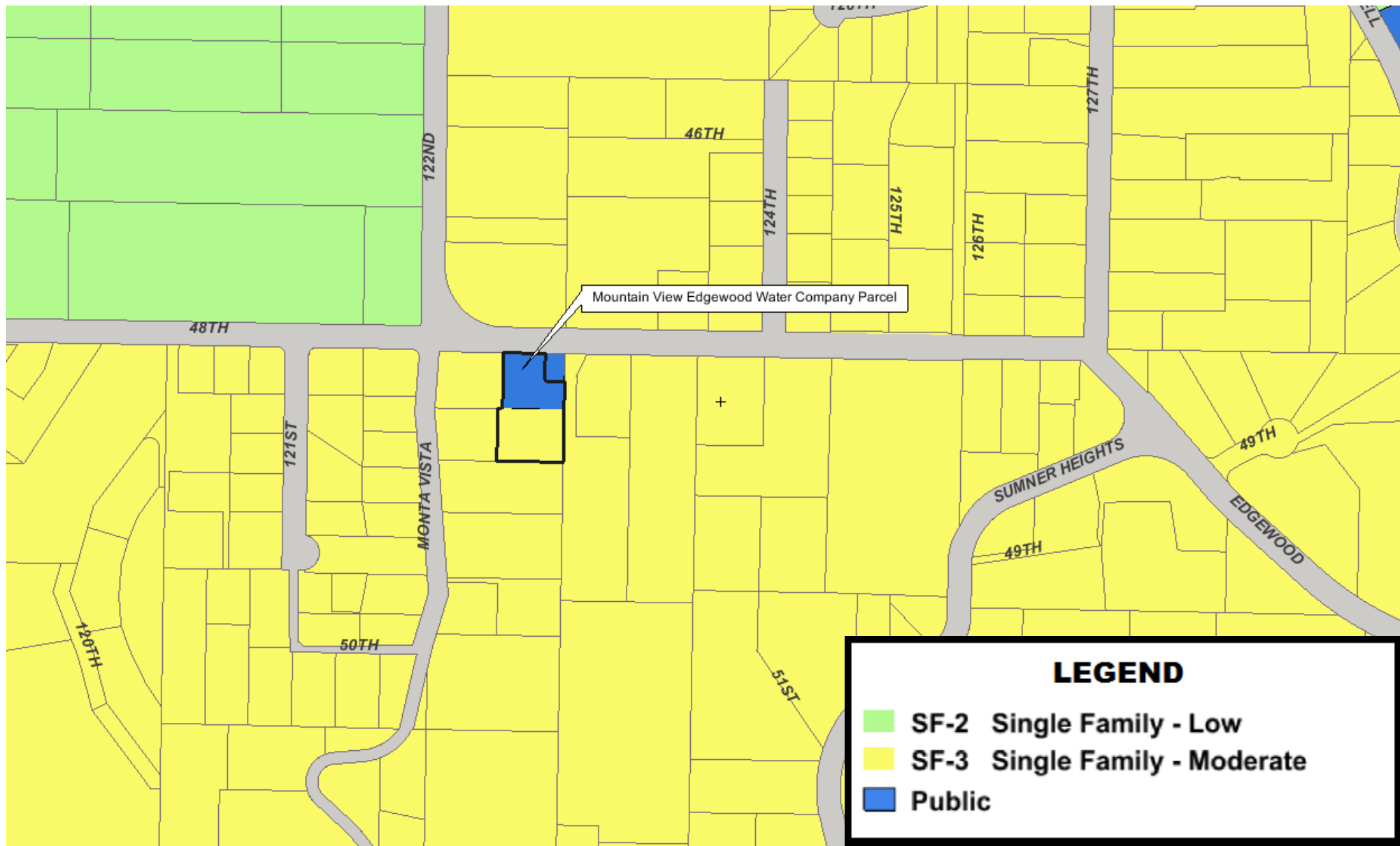
Main Issues: This parcel is in the third and final phase of the City's sewer service area.

As stated above there are no critical areas within 165 feet of the site. Steep slopes are present about 260 feet south and southeast of the parcel.

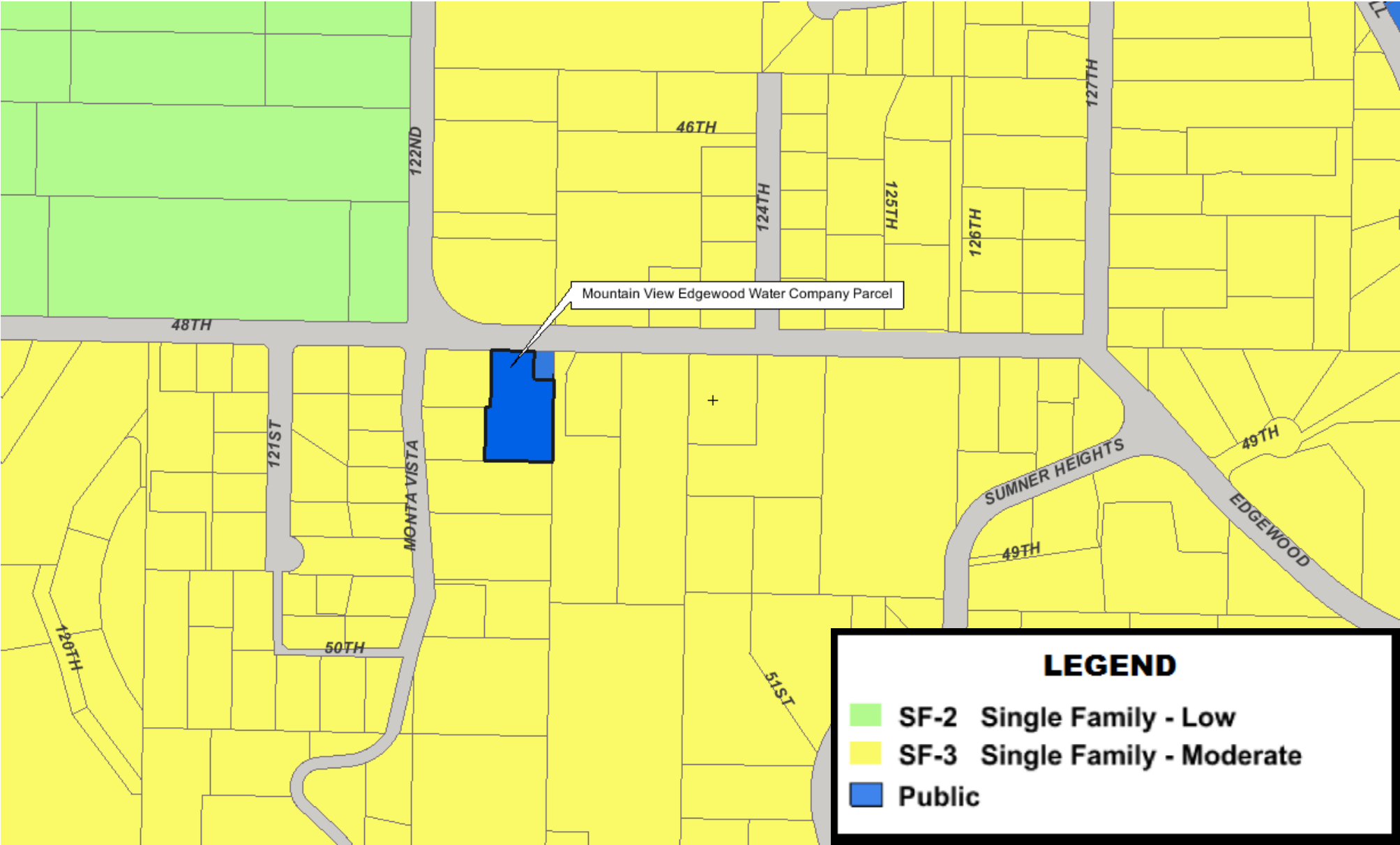
Surrounding land use designations are SF-3 to the west, south, east, and across 48th Street to the north. Parcels northeast of the intersection between 122nd Avenue East and 48th Street East are zoned SF-2. No residential dwelling units will be affected by this zoning change.

Maps: Map of parcels under consideration and existing zoning
Map of proposed zoning
Map of critical areas in and around re-zone area

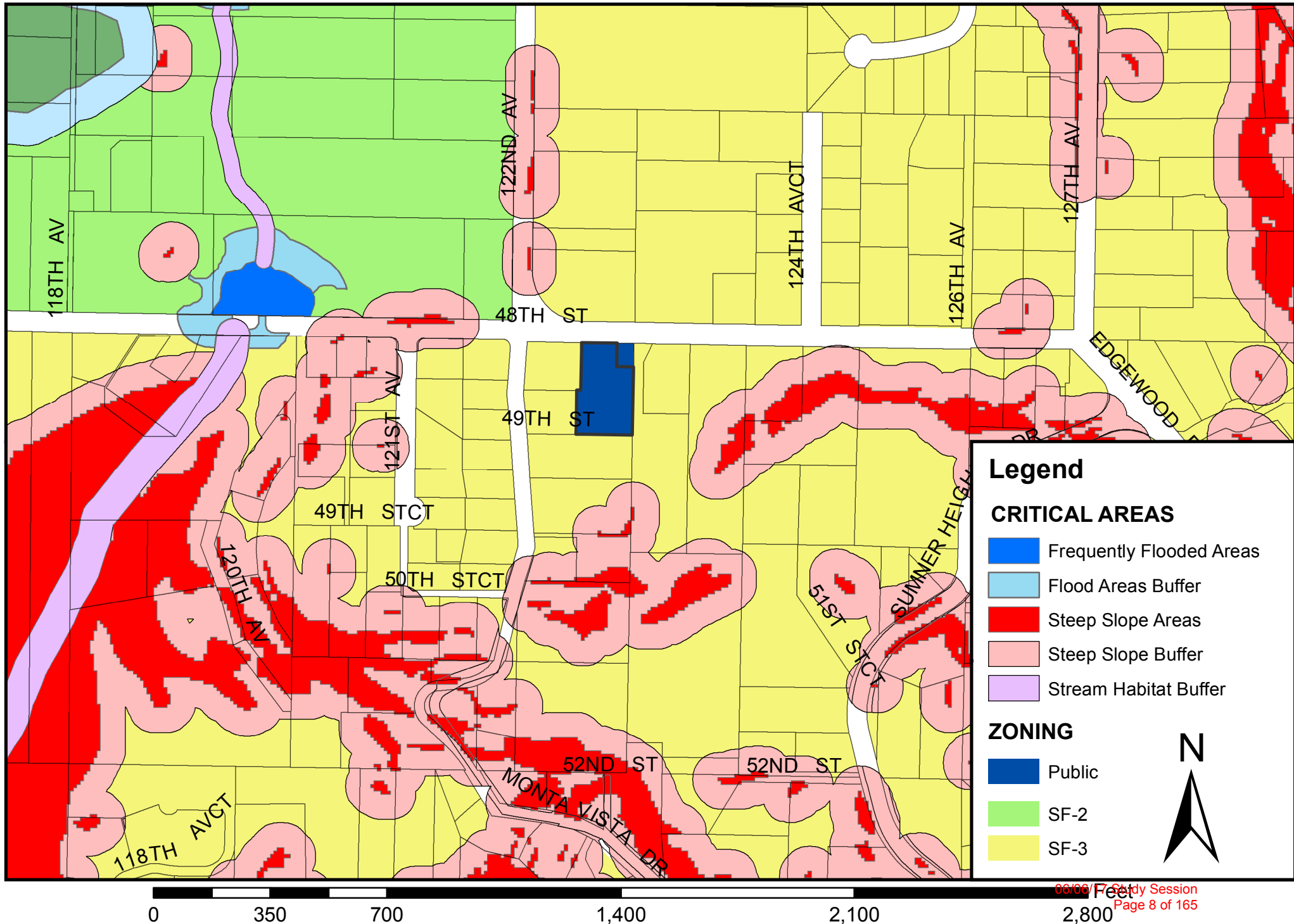
MTVE Parcel – Existing Zoning Map



MTVE Parcel – Proposed Zoning Map



MTVE Parcel - Critical Areas Map





City of Edgewood

INTEROFFICE MEMORANDUM

TO: Edgewood Planning Commission

C: Mayor Eiding and City Council

FROM: Kirk Rappe, Associate Planner
Kevin Stender, Community Development Director

DATE: February 6, 2017

**SUBJECT: REVIEW OF ATTACHMENT “A” UCHIDA FARM LLC
PROPOSAL, FILE #5214**

On December 14, 2016, Mr. Minoru Uchida from Uchida Farm LLC submitted a Comprehensive Plan Land Use Map change amendment to re-designate a portion of the area known as the “Special Land Use Study Area” (specifically parcel numbers: 0420175005/0420166003, 0420175004, 0420162700, 0420163052, 0420163054, 0420163702, 0420163055, 0420163047, 0420163026, 0420163023. 0420174047) from Single Family Three (SF-3) to Industrial (I).

BACKGROUND INFORMATION:

The eleven properties under consideration are located north of the city limits along Valley Avenue between approximately Cherrywood Manor Mobile Home Park, Wapato Creek, and 40th Street to the north, 84th Avenue Court to the west, and approximately 1,000 feet east of 90th Avenue. The parcels total 66.55 acres (2.9 million sf) out of the study area total of 147 acres (6.4 million sf).

The current use of the parcels is for agricultural, business, and single family residence uses and is currently zoned for single family development.

The applicant proposes a re-zone to the Industrial Land Use designation to allow for development of industrial uses per the Edgewood Municipal Code 18.80.100. Uses allowed on Industrial zoned land include multiple commercial uses, offices and training schools, utility uses, and industrial uses including warehousing and freight distribution, among other industrial uses.

Sewer service is not available to the parcels and would require the City to amend our sewer comprehensive plan and develop interlocal agreement with Puyallup, Fife, or Pierce County for sewer service.

Environmentally, the area requesting the re-zone is in the Puyallup River Watershed and has the Wapato and Simons Creek running through several parcels. These creeks have designated frequently flooded areas and habitat buffers along them. The northern most properties along Wapato Creek border steep slope areas.

There will be no transition between industrial zoned land and single family zoned land.

Type of Amendment: **18.40.120 Process V – Legislative review.**

The process for legislative review will be followed per EMC 18.60. The amendment requires a land use map change and a rezone application to accompany a future permit submittal/issuance for this action.

Type of Action: Requires SEPA (consolidated as part of Phase II as appropriate with other updates for non-project actions), Staff Report discussion of any policy changes, PC to hold Public Hearing, Recommendation from PC following hearing to council for action.

Main Issues: This parcel is not within any phase of the City’s sewer service area.

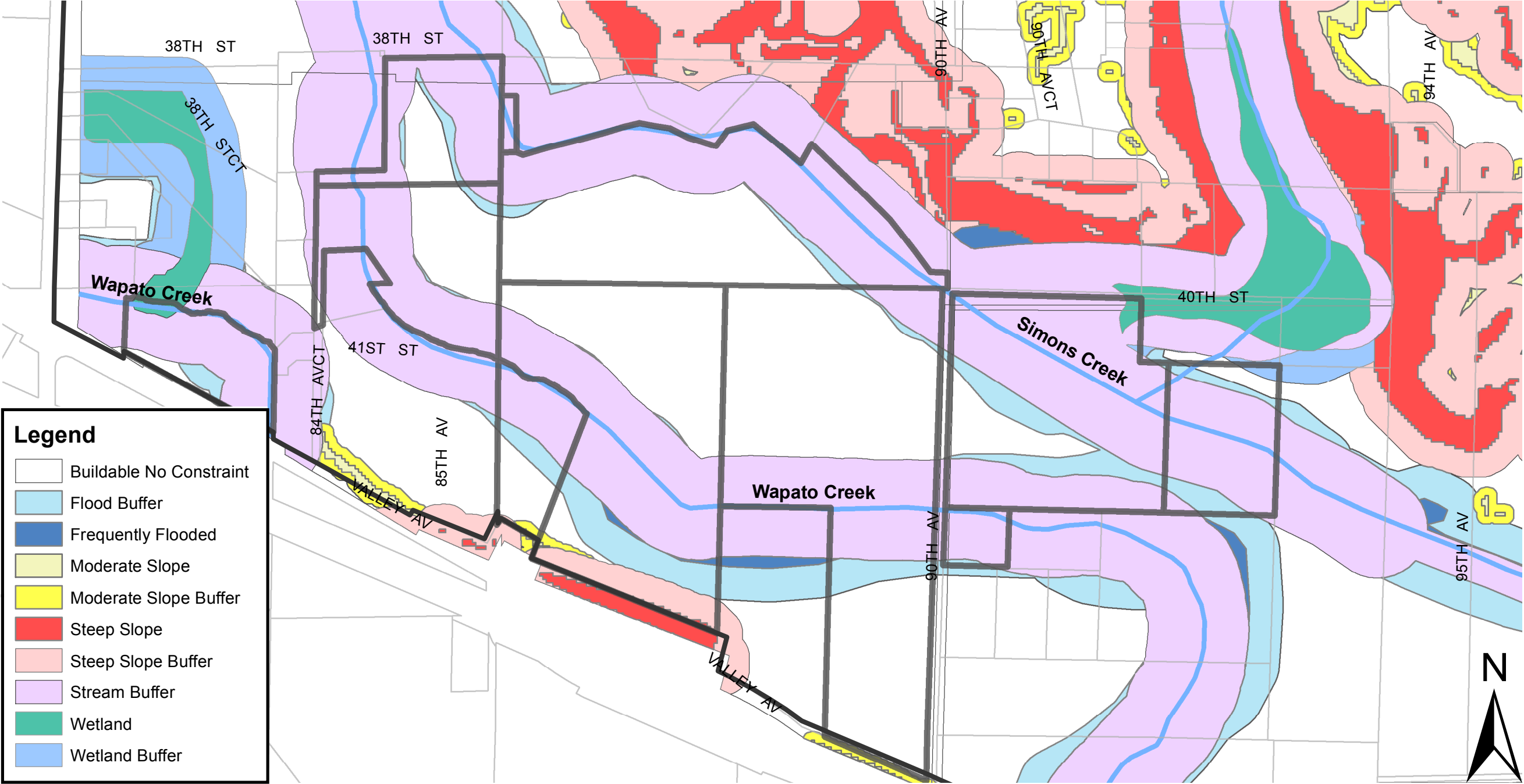
The proposal area has several critical area designations that abut or encroach on the proposal site. The two stream corridors that run through the project area include designated habitat buffers and are also considered frequently flooded areas. There may also be steep slope and wetland areas at the far north edge.

Surrounding land use designation is SF-3 to the west, north, and east, and to the south in Puyallup, land use is designated “Limited Manufacturing.”

Existing Single-Family residential units exist to the northwest, north, and southeast. There are three single family dwelling units in the proposal area which, based on a 2.5 person per household figure, amounts to the loss of dwelling units for about 8 people (7.5 rounded up).

Maps: Map of economic study area
Map of parcels under consideration and existing zoning
Map of proposed zoning
Map of proposed SR-167 expansion
Map of on-site and nearby dwelling units
Map of critical areas in and around re-zone area
Map of nearby sewer service

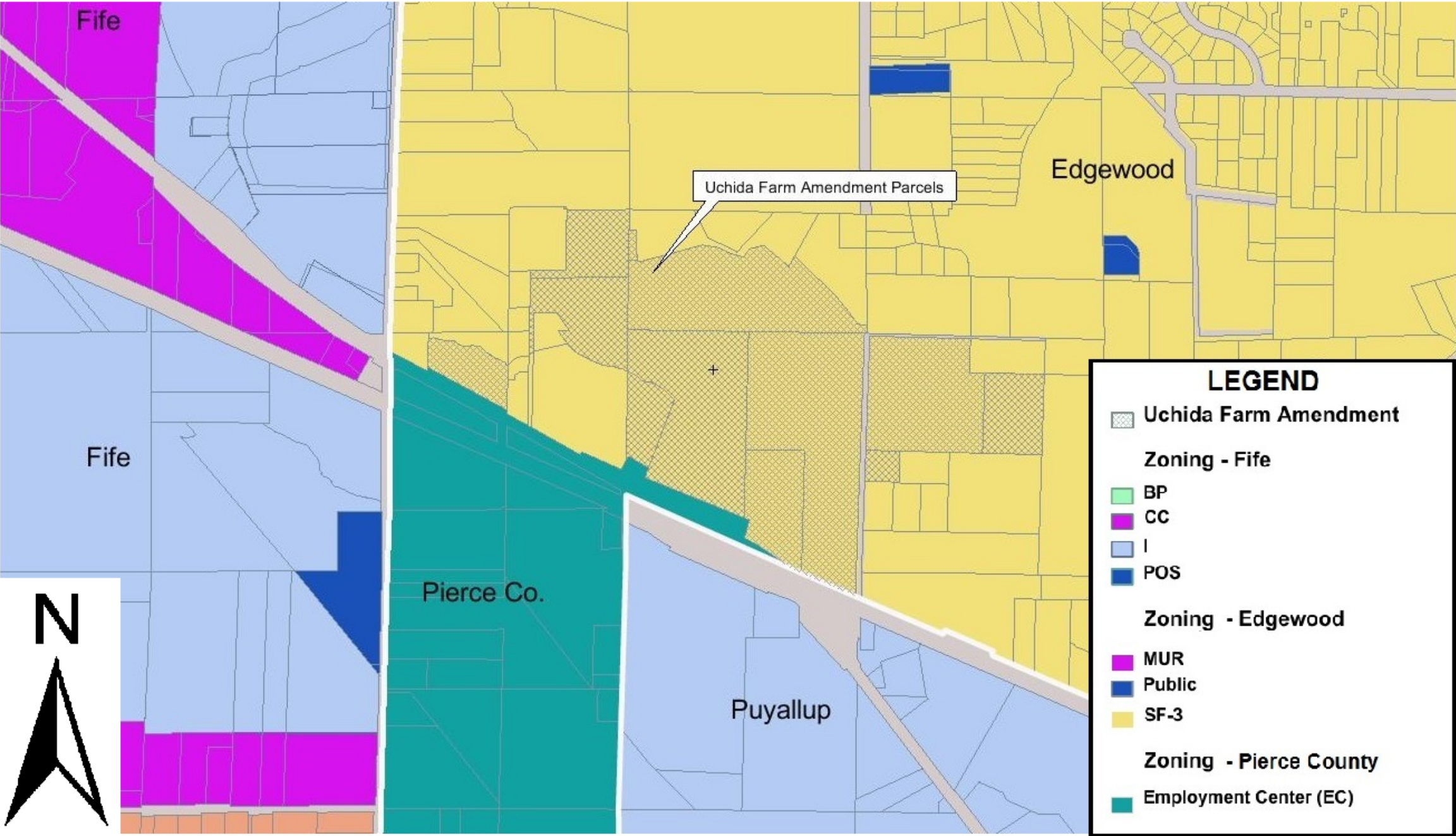
Uchida Farm Amendment Parcels - Critical Areas

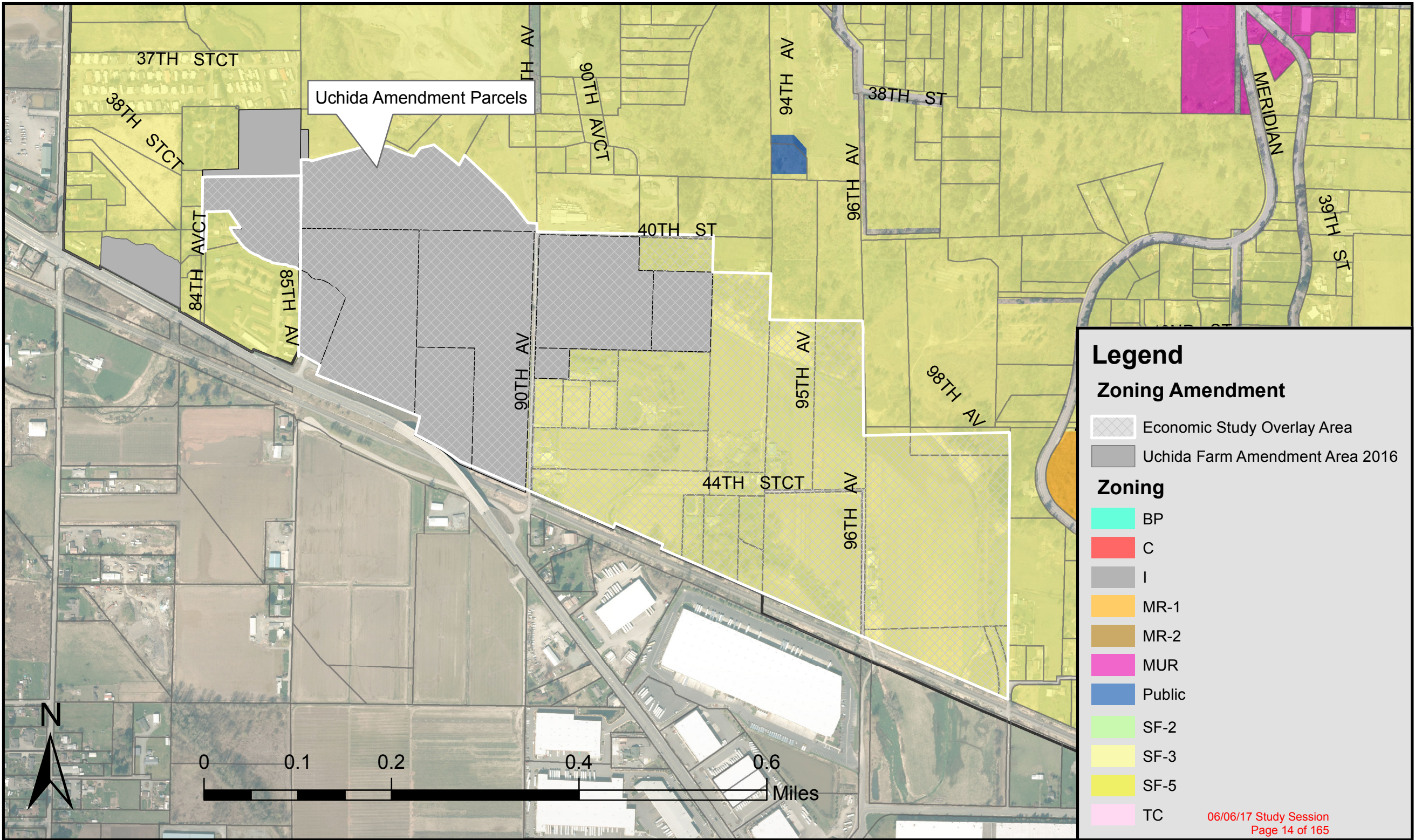


Uchida Farm Amendment Area Nearby and On-Site Dwelling Units

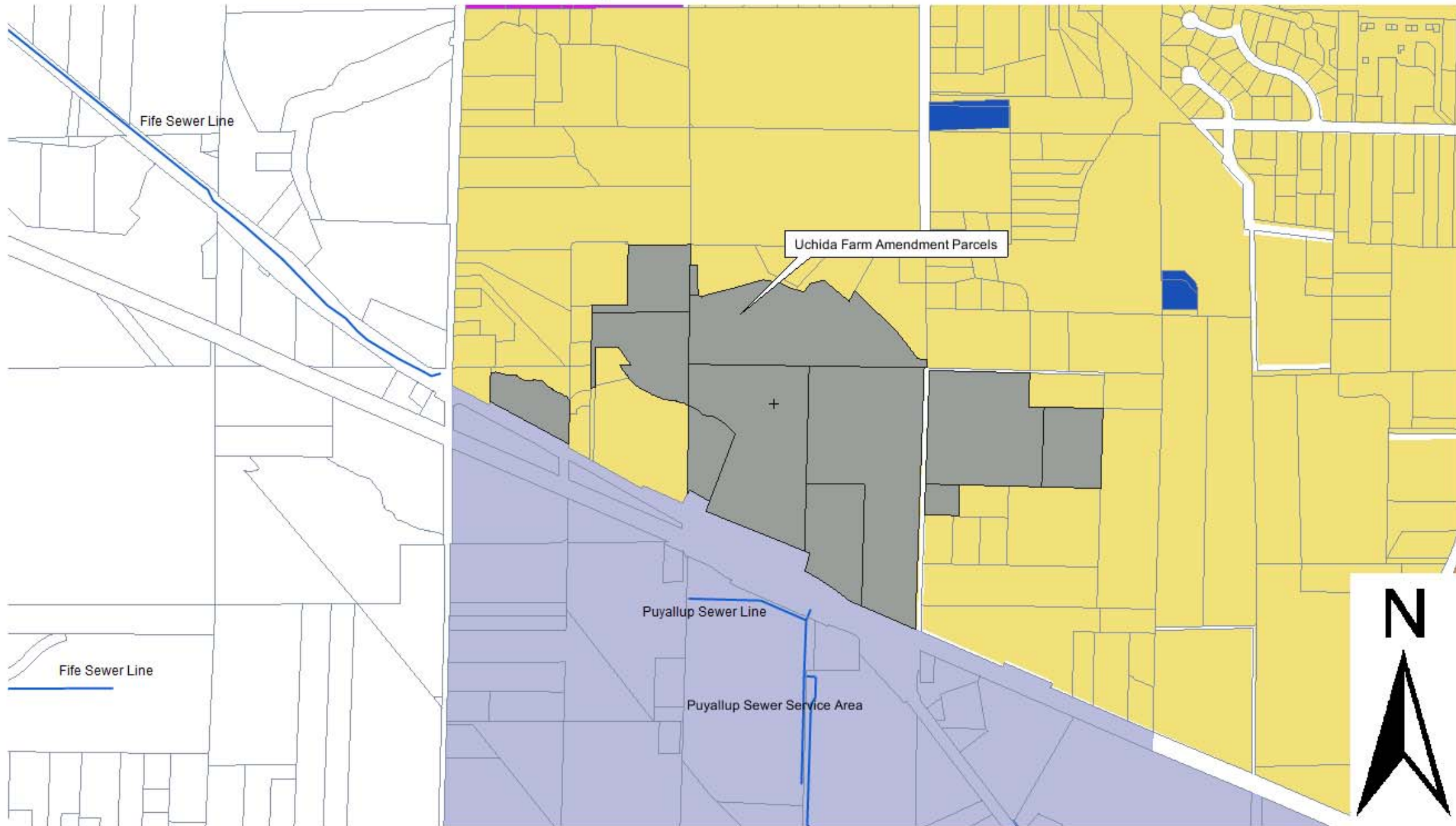


Uchida Amendment Parcels and Nearby Zoning

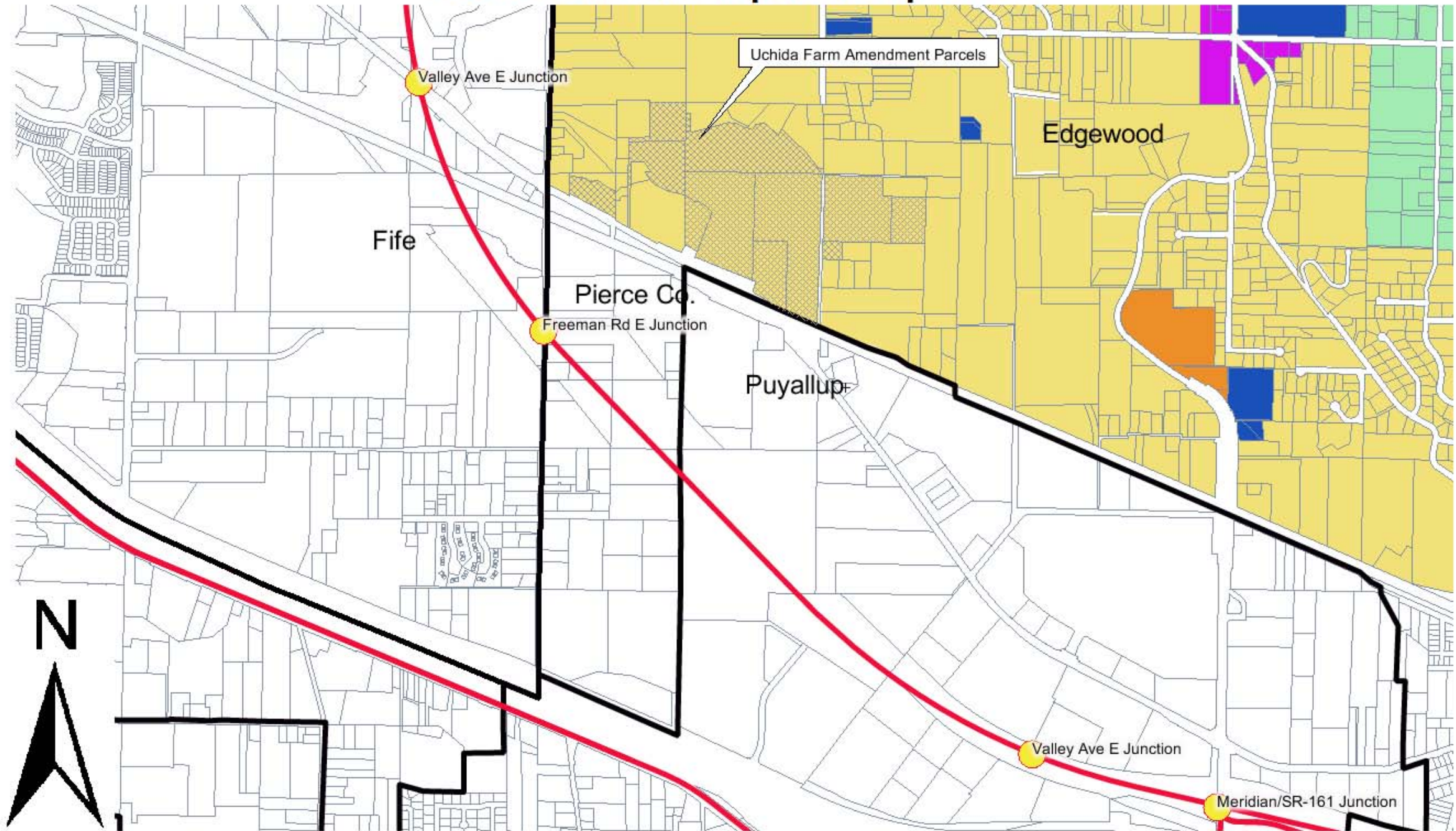




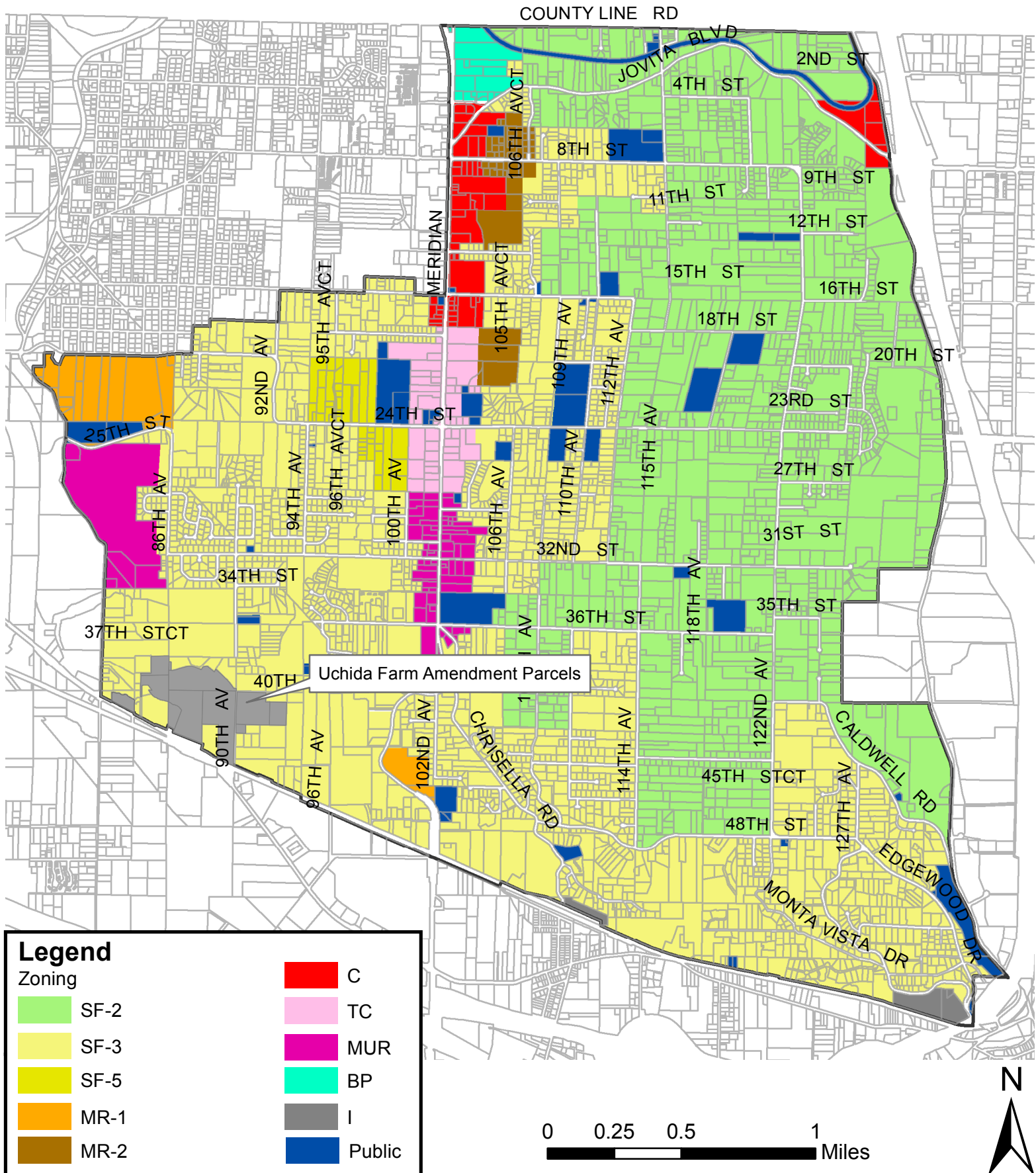
Sewer Service Adjacent to Uchida Farm Parcels



WSDOT SR-167 Proposed Expansion



Uchida Farm Zoning Amendment



**Public Comments Received regarding Uchida Farm Amendment proposal
(File # 5214) prior to Public Hearing**

From: Judy A Thomas [<mailto:joodeetea@gmail.com>]
Sent: Friday, April 21, 2017 9:01 AM
To: Kevin Stender
Subject: Zoning File 5212

Kevin Stender

As property/homeowners with two parcels on 90th Avenue East, we are concerned and object to the Amendment Request to make the Land Use Map change from Single-Family Three to Industrial, File 5212.

Looking at the map enclosed with the notification, there does not seem to be any valid reason to make this change, unless Edgewood is trying to capitalize on the areas in Fife and Puyallup that have been changed and are now warehouses and industries.

We believe that there is sufficient warehouses and buildings already in place. Changing zoning to industrial will only encourage additional warehouses or industry. This will decrease the property value of our homes up on the hill and take away from the housing opportunities here in Edgewood.

Additionally, there will be an increase in noise of the heavy traffic, for which there is insufficient street capacity. The habitat of the current wild animal population and rodents will be driven up the hill into our neighborhoods.

We would prefer to continue with the current zoning, allowing for housing to be built or be retained. Valley Avenue East makes a good buffer between housing and industry. Edgewood has enough property for additional building of non-housing facilities and should not encourage a change from the general feel of the community, which this zoning change will do.

If the zoning remains as is, which is our hope, please consider using more information in the LEGEND of the map. Please spell out the abbreviations. Knowing what the zoning refers to, would help make an intelligent response. What is BP, CC, POS, MUR and what is Employment Center?

Thank you

Judy and John B (Jack) Thomas, Jr

3501 90th Ave E, Edgewood, WA 98371 (not our mailing address.)

joodeetea@gmail.com

From: Cheryl Baker [<mailto:cbaker@soundvoc.com>]
Sent: Monday, May 01, 2017 8:53 AM
To: Kevin Stender
Subject: File 5212-Comprehensive Plan Land Use Map Amendment Request

Morning Kevin,

Unfortunately I will be unable to attend the Phase 1 Public Hearing today regarding File 5212-Comprehensive Plan Use Map Amendment Request. Please consider the following my opposition to the proposed amendment to the Land Use Map. I am the owner of, and reside at, 9308 44th Street Court E. Edgewood, WA 98371 Parcel # **0420163034**.

My family has owned the aforementioned property since the early 1970's. I became the sole owner of the property in 2013. I strongly oppose the amendment due to the following:

- The proposed amendment in Land Use is not the desire of the collective residences in the current zoned area. This has been demonstrated and conveyed to the City of Edgewood via numerous prior Industrial zoning attempts. I was lucky enough to receive notice as my property resides within 300 feet of the proposed amendment. Based on prior failed Industrial zoning attempts, this spot or cluster zoning, appears to be taking the wishes of a few over the desires and well being of your residences. Industrial zoning is not a community building endeavor. Calling a spade a spade...this proposed amendment is designed to line the pockets of a few.
- As a resident who currently has warehouses immediately South to my parcel, the following issues are regular and ongoing. They are unsafe and unfair consequences to impose on your neighbors. The proposed amendment will create similar/related issues.
 - Noise and more Noise - The warehouses often run 24 hours. This means nightly noise to include running trucks, backing up of forklifts/equipment, bright yard lights, dropping of trailers, etc. Of note, the warehouses I hear daily (and nightly) fall under the jurisdiction of the City of Puyallup. There is a noise ordinance in the City. However, there is a warehouse that routinely and customarily runs in excess of the allowed levels. The excessive noise levels have been documented, recorded, and reported. Police have been involved....but yet....issues are ongoing. Please realize that spot/cluster Industrial zoning in the middle of a Single-Family zone will create noise pollution to your current single family residences.
 - Blocked Emergency Access and Roadways - I live down a single lane road. Trucks block my road nightly preventing myself and emergency vehicles access. The warehouse at the entrance of my road has posted signs of no parking, but to no avail. This means if I want to leave my residence at night, I have to get out of my vehicle, go up to a running truck, knock on the door, and ask a sleeping truck driver to move. Beyond annoying, this endeavor is dangerous.
 - Property Damage - Often times a truck driver will think they should venture down my one land road. They shortly find there is no turn around. The option is to then turn around in my yard causing damage. The one lane road they travel has not been keep up by the City of Edgewood due to reported lack of funds (44th St. Court E.). The truck traffic exacerbates the road conditions and safety.

- Safety - Blocked roads, damaged roads, industrial traffic on roads where our children play, excesses traffic in areas not designed for such.
- Reduced Property Values - By placing a warehouse next door you are lowering my property value if not overtly in a "real world" way based on the above.
- Bait and Switch or Conquer and Divide- From speaking with my neighbors/community there is a real sense of confusion and perceived ill-will over this spot/cluster zoning. What makes these 5 or 6 parcel owners special? Why should they be allowed to switch zoning to allow them to make more money at the expense of the rest of us?

I am your single-family neighbor living in Single-Family zoning. Please consider the negative impact you will have on myself, family, and community before passing this proposed amendment to the Land Use Map.

Thank you for your time and consideration. I am reachable via email or phone (253-778-5588) if anyone should desire to speak with me further on this issue.

Cheryl L. Baker, CDMS
Vocational Consultant | Owner

Sound Vocational Services, Inc.
1100 Dexter Avenue North, Suite 100
Seattle, WA 98109
P: (253) 778-5588 | F: (206) 535-2616

From: Anna Holt [<mailto:aholt@soundvoc.com>]
Sent: Monday, May 01, 2017 12:45 PM
To: Kevin Stender
Subject: Proposed Zoning Change, File 5212-Comprehensive plan Land Use Amendment Request.

May 1, 2017

City of Edgewood
Regarding Phase I Public Hearing, File 5212-Comprehensive Plan Land Use Map Amendment Request

I own Tax Parcel 0420163037.

I would like to formally note I am against the proposed rezoning from SFR-3 to Industrial per the Uchida Farm Amendment for the following reasons:

1. The industrial zone is not consistent with single family use and is being proposed within a single-family zoning area. The proposed change is in the middle of a single-family zoning area and is not even along the edge of the zoning.
2. There are existing single family residences near and adjacent to the proposed changes.
3. The proposed change would place a considerable amount of heavy truck traffic on a road shared by single family residences placing the residents at risk. Children utilizing the road for things such as biking would be especially at risk. It is unfair to curtail a child's ability to utilize roadways within a single-family zoning area for the sake of developers.
4. Based on what is happening up the road in Puyallup around the area of Cintas, there is a high likelihood the area will become a parking lot for trucks at night. Transient truckers leave garbage behind not to mention relieve themselves. This is not appropriate within a single-family zoning area.
5. The property values near the industrial zoning will decline. It is not fair to lower property values of those around the proposed industrial site just because the owners of these properties wish they were not within said SFR-3 zone. The fact is, they are within a SFR-3 zone and industrial sites next to a single-family residence will lower the value of the single-family property.
6. The proposed change will adversely affect future single-family development as developers most likely would not want to develop next to an industrial zone as the home prices asked would be less than those next to other single-family residences. If a developer does purchase property for single family development, the property owner can expect a lower price than an owner within a SFR-3 zone which is not next to an industrial zone.
7. Those proposing the change will no longer reside within the proposed altered zoning area, and will not have to live with the results of the changes. However, those remaining will have to live with the results as they are still single family residents of Edgewood. As those proposing the change will only benefit and those remaining will only be harmed, it is beyond conscience that these changes be allowed.

Please do not allow the proposed zoning change from SFR-3 to Industrial as it is not

consistent with zone uses of SFR-3 and will adversely impact property owners.

Please note, I would be supportive of rezoning this area to a higher density single-family use as that would be consistent with the current zoning and would not have the adverse impacts listed above.

Respectfully,

Anna Holt

Owner Tax Parcel 0420163037

Phone call received on April 14, 2017

A phone call was received by Kirk Rappe, Associate Planner, from Rebecca Bean, a resident who lives at 3923 84th Avenue Court East just south of one of the parcels in the proposed Uchida Farm Comprehensive Plan Amendment area. Rebecca's concerns are summarized below, in no particular order. They are:

- Her single family property will be surrounded on three sides by Industrial zoned property.
- She says that 84th Avenue Court East will likely be the primary access road to the Industrial parcels and when a project is proposed and developed, the road will not be able to withstand the increased truck traffic.

Kirk Rappe, Associate Planner, talked to her about the process of reviewing proposed Comprehensive Plan Amendments and noted her concerns. She said she would likely be at the public hearing on May 1, 2017.

Phone calls received on April 25 and May 1, 2017

Kelly Pinchak from Cherrywood Village expressed concerns:

- She heard that at Elmwood Mobile Home park they had property adjacent to new industrial warehouse development in Fife or Puyallup (south of Valley Avenue) experienced increased flooding and water would no longer drain because the gravel fill under the warehouses prevents natural infiltration. She is concerned about the same happening to her property.
- Her property is in a flood zone and concerned about flooding impact on her land.

And had several questions:

- If her property decides to submit for a Comprehensive Plan Amendment, does that mean they can continue their triplex use?
- When would they be prevented from rebuilding as a triplex if a fire or other disaster happened?
- What does the Industrial zone category do to property owners taxes?



Pierce County

Drainage District 21
PO Box 1168
Milton, WA 98354

RECEIVED

APR 25 2017

City of Edgewood

April 25, 2017

City of Edgewood
ATTN: Kevin Stender – Community Development Director
2224 104th Ave E
Edgewood, WA 98372-1513

Subject: Edgewood File 5212-Comprehensive Plan Land Use
Map Amendment Request

Dear Mr. Stender

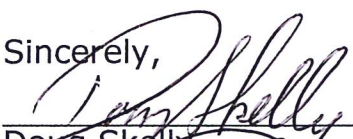
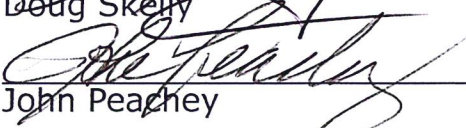
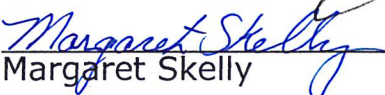
The Pierce County Drainage District 21 (hereafter designated as "DD21") is governed by RCW 85 and overseen by 3 elected Commissioners. The purpose is to ensure that the constituents are protected from any adverse impacts to the existing Drainage Conveyance System. The proposed land use change to the 66.55 acres impacts the Simon's Conveyance on the north side of the property and the Wapato Conveyance on the south side of the property (see attached DD21 District Map).

Therefore, considering Edgewood's Notice Of Public Hearing, dated 4/14/17, regarding the above Subject, we will attend the Hearing, and will require the following items to be addressed at the Hearing and in writing to the District. It is important to understand that this requirement is needed to ensure a fully functional District Conveyance System. It is not our intent to enter into any disputes, suits or litigation having to do with the proposed land use amendment or future development of the property. That said, however, our lawful responsibility as elected officials of Pierce County is to be wholly satisfied that adverse downstream and upstream flow impacts will not occur, and that

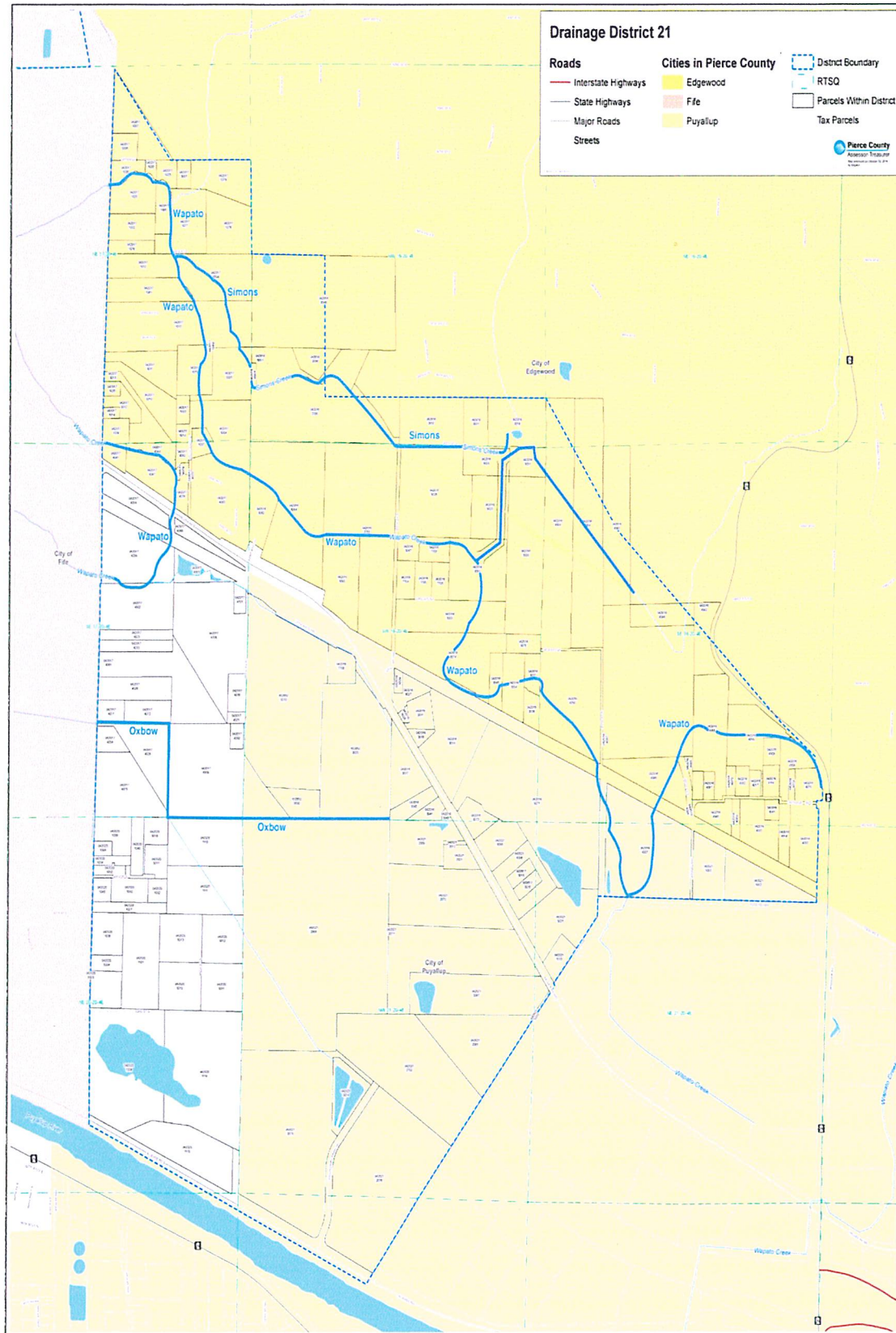
the current conveyances on the property will be properly mitigated and maintained. Following are the items

1. Schedule a meeting wherein all affected entities are present and wherein all topics of concern shall be addressed in writing.
2. Perform a "walk-thru", preferably at the meeting, to view first-hand the current state of the above-mentioned conveyances, the results of which shall be in writing.
3. Provide evidence of the following in writing:
 - a. SEPA Determination.
 - b. HPA Determination.
 - c. Impact analysis.
 - d. Proposed Mitigation for total plan as it relates to making the affected drainage conveyances whole (e.g. culverts, plantings, and other mitigation related items).
4. Provide City of Edgewood's written assurance to Pierce County Drainage District 21 that any and all action(s) regarding the Land Use Amendment process and any and all future action(s) regarding the aforementioned property will have full involvement of and approval by the District.
5. Provide written confirmation that any costs other than those for which DD21 is responsible shall not be born by DD21.

We are pleased to be partnered with the City of Edgewood, and look forward to being involved in reaching mutually agreed upon decisions regarding this property.

Sincerely,

Doug Skelly - Commissioner #1, Date: 4/25/17

John Peachey - Commissioner #2, Date: 4/25/17

Margaret Skelly - Commissioner #3, Date: 4-25-17

DGS/ds
Copies: Doug Skelly
John Peachey
Margaret Skelly
DD21 Files





**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Domus Homes PRD – Closed
Record Review Proceeding Process

Date: June 6, 2017

Title: Domus Homes PRD – Closed Record Review Proceeding Process

Attachments: Memorandum

Submitted By: Community Development Director Kevin Stender

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: The City of Edgewood received an application for a Planned Residential Development (PRD) in accordance with Edgewood Municipal Code (EMC) 18.50.095, Planned Residential Developments. At the June 6, 2017, Study Session the Council will be discussing the Closed Record Hearing Process only and no specific project or details of that project will be discussed.

Recommendation: The Council's consideration process for a PRD includes providing a written legal notice of the hearing. At the conclusion of the closed record review, the city council shall issue a final written decision approving or denying the proposed PRD through adoption of an ordinance similar to the process for a rezone. At that time, the City Council may adopt the hearing examiner's findings and/or enter its own findings in support of the ordinance.

Fiscal Impact:



City of Edgewood

2224 104th Avenue East Meridian Avenue East

Edgewood, WA 98372-1513

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

MEMORANDUM

TO: Mayor and City Council

FROM: Community Development Director Kevin Stender

DATE: June 6, 2017

RE: PLANNED RESIDENTIAL DEVELOPMENT HEARING EXAMINER DECISION

The City of Edgewood received an application for a Planned Residential Development (PRD) in accordance with Edgewood Municipal Code (EMC) 18.50.095, Planned Residential Developments. At the June 6, 2017, Study Session the Council will be discussing the Closed Record Hearing Process only and no specific project or details of that project will be discussed.

The process for achieving final PRD approval is outlined within EMC 18.50.095, Planned Residential Developments and is reviewed in accordance with EMC 18.40.110, Process IV-Quasi-Judicial Rezones. Per code, the City Council shall consider the hearing examiner's report in a closed record review proceeding without additional testimony or evidence. The Council must make its decision based exclusively upon the existing record evidence, which will be provided to the Council in advance of the meeting, in relation to the applicable standards for PRD approval set forth in the EMC.

Please note that as a site-specific proceeding involving the rights of particular landowners, the PRD consideration process is quasi-judicial in nature — i.e., the City Council will essentially be sitting as an impartial judge of the proposal. This process is accordingly subject to the Appearance of Fairness Doctrine under Washington law, which requires proceedings of this type to be not only fair in fact, but also objectively fair in appearance. The City Attorney or the Mayor will ask you at the commencement of the Council's review process to disclose any personal, financial or familial connections you may have with respect to the project, the parties, and/or the subject property. The City Attorney will also ask each of you to verify for the record that you will approach your decisional obligations impartially and without prejudice or bias. **Staff strongly recommends that you do not have any conversations regarding the project outside of the quasi-judicial review process at the scheduled hearing.** If you are approached or otherwise engage in communications about the proposal while the matter is pending before the Council, please notify staff immediately and be prepared to formally disclose the content of such communications during the Council's proceedings.

The Council's consideration process for a PRD includes providing a written legal notice of the hearing. At the conclusion of the closed record review, the city council shall issue a final written decision approving or denying the proposed PRD through adoption of an ordinance similar to the

process for a rezone. At that time, the City Council may adopt the hearing examiner's findings and/or enter its own findings in support of the ordinance.



**CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION**

Study Session Staff Report – Labor Attorney Services Contract – Summit Law, P.C.

Date Action Requested: June 6, 2017

Title: Labor Attorney Services Contract with Summit Law, P.C.

Attachments: Resolution No. 17-0XXX; Labor Law Attorney Services Contract

Submitted By: Dave Gray, ACA/Finance Director

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: When the City executed a contract with the current City Attorney, several specialty areas of legal expertise were noted as not something Morris Law engaged in within the scope of the City Attorney's contract (Labor Law and LID/Foreclosure and Collection). The City does not routinely engage the services for Labor Law. Foster Pepper has been under contract with the City for LID/Foreclosure matters since 2009. City staff is pleased with the work Foster Pepper has provided the City in guidance - all things LID, and intends to continue to utilize them in that capacity. Both ACA's have used Summit Law for Labor Law issues in other jurisdictions and are hereby recommending contracting with Summit Law for the infrequent need the City does utilize said services. State Law does not mandate a RFQ for legal service; however, MRSC does recommend the City adopt a process. The City used an RFQ process for executing a contract for City Attorney services, knowing the service would be used routinely and continuously with an expectation of annual costs in the \$100,000 range.

Recommendation: Authorize the Mayor to execute the Summit Law Attorney Service Contract for Labor Law issues.

Fiscal Impact: The City expects the total service cost for Labor Issues in fiscal 2017 to be less than \$5,000. The City expects this level of expenditure, budgeted as legal expense in the annual budget is a reasonable annual maximum.

RESOLUTION NO. 17-0XXX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF EDGEWOOD, PIERCE COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN
ATTORNEY SERVICES AGREEMENT WITH SUMMIT
LAW P.C. FOR CITY LABOR LAW SERVICES**

WHEREAS, the City has selected a law firm, renowned in the area for excellence in the field of municipal labor law; and

WHEREAS, the City has made a selection based upon a recommendation from a panel consisting of Assistant City Administrator Nix, Assistant City Administrator Gray and City Clerk Pitzel, who have worked directly with several labor law firms including Summit; and

WHEREAS, the panel unanimously recommended Summit Law, P.C. as a firm qualified and willing to provide the necessary services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute an agreement for Labor Law Services with Summit Law, P.C. for Labor Law services substantially in the form attached here to as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 13TH DAY OF
JUNE 2017**

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk

AGREEMENT FOR ATTORNEY SERVICES

THIS AGREEMENT, is made between the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), located at 2224 - 104th Avenue East, Edgewood, WA 98372, and Summit Law Group, PLLC, organized under the laws of the State of Washington, located and doing business at 315 Fifth Avenue South, Suite 1000, Seattle, WA 98104 (hereinafter the "Attorney").

Section 1. Purpose. The purpose of this Agreement is to ensure that the City receives professional services from the Attorney in an effective, timely and cost efficient manner while ensuring that the Attorney is appropriately and fairly compensated for services rendered.

Section 2. Scope of Service. The Attorney agrees to provide legal services, as requested by the City in connection with personnel and labor matters, or as described in Exhibit A, attached hereto, the Engagement Letter from Shannon Phillips to Dave Gray dated May 25, 2017, and the Appendix.

Section 3. Compensation. The City hereby agrees to pay Attorney for legal services at the rates set forth in the Appendix. The Attorney agrees that the hourly rate charged for the Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement.

Section 4. Independent Contractor Status. It is expressly understood and agreed that Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the City. The parties agree that the Attorney has the ability to control and direct the performance and details of his work, the City being interested only in the results obtained.

Section 5. Billings. Attorney shall submit invoices to the City, describing the legal services provided during the previous month. Attorney's monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date the services were performed; and the amount of time spent on each date services were performed and by whom. In addition to providing copies of all documents as specified below, Attorney shall provide any information that will assist the City in performing a thorough review and/or audit of the billings, as may be requested by the City. The Attorney acknowledges that the City may receive public records requests for copies of the Attorney's bills, and the Attorney agrees not to include any confidential information in the bills.

Section 6. Advice and Status Reporting. Attorney shall provide the Mayor and/or City Council with timely notice and advice of all significant developments arising during performance of his or her services hereunder, orally or in writing, as appropriate or as requested. Attorney shall provide the City Attorney (and/or Mayor and City Council) with copies of all e-mails, pleadings, motions, discovery, correspondence, and other documents prepared by the Attorney, including research memoranda, or received by the Attorney unless they have been otherwise provided to the City.

Section 7. Communications. Attorney will communicate primarily with the Assistant City Administrator of Administrative Services, Dave Gray or Daryl Eiding, Mayor.

Section 8. Non-Assignment. The parties recognize hereto that a substantial inducement to the City for entering into this Agreement was, and is, the professional reputation and competence of the Attorney. Neither this Agreement nor any interest therein may be assigned by the Attorney without the prior written approval of the City.

Section 9. Indemnification and Insurance.

A. The Attorney and Summit Law Group, PLLC agree to indemnify, hold harmless and defend the City, its elected and appointed officials, employees and agents from and against any and all claims, judgments or awards of damages, arising out of or resulting from the acts, errors or omissions of the Attorney. The City agrees to indemnify, hold harmless, and defend the Attorney and the Summit Law Group PLLC from and against any and all claims, judgments or awards of damages, arising out of or resulting from the acts, errors or omissions of the City, its elected and appointed officials, employees and agents. The provisions of this indemnification shall survive the termination or expiration of this Agreement.

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

C. Minimum Scope of Insurance. The Attorney shall obtain insurance of the types and limits below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. There must be a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability malpractice insurance, written with limits no less than \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit.

The Attorney's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Attorney's insurance and shall not contribute with it.

The Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Attorney shall furnish the City with certificates and any amendments before providing services under this Agreement.

Section 10. Licenses. Attorney warrants that he is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 11. Termination. This Agreement may be terminated by either party upon written notice with or without cause. In the event of termination, the Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or the City in connection with this Agreement.

Section 12. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

Attorney:

Shannon Phillips
Summit Law Group, PLLC
315 Fifth Ave S., Suite 1000
Seattle, WA 98104

To the City:

City Clerk
City of Edgewood
2224 - 104th Avenue E.
Edgewood, WA 98372

And to: Carol Morris, City Attorney
Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Section 13. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 14. Conflict of Interest. Attorney warrants and covenants that Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 15. Confidentiality. Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the process or operation of the City and/or any of its departments and divisions. Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

Section 16. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the Attorney and the duly authorized representative of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 17. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 18. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 19. Controlling Law. The laws of the State of Washington shall govern this Agreement and all matters relating to it.

Section 20. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. In the case of a conflict between this Agreement and its attachments and exhibits, this Agreement shall control.

Section 21. Disputes. In the event that the parties are unable to resolve any dispute regarding the performance of the legal services or this Agreement, any litigation brought to enforce the terms of this Agreement shall be filed in Pierce County Superior Court. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

SUMMIT LAW GROUP, PLLC

By 
Attorney

Dated: 6/11/2017

THE CITY OF EDGEWOOD

By _____
Mayor Daryl Eiding

Dated: _____

ATTEST:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol A. Morris, City Attorney

EXHIBIT A



SUMMIT
LAW GROUP

a professional limited liability company

SHANNON E. PHILLIPS
DID: (206) 676-7092
EMAIL: shannonp@summitlaw.com

315 Fifth Ave S Suite 1000
Seattle, Washington 98104
phone · 206.676.7000
fax · 206.676.7001

Via Email
dave@cityofedgewood.org

May 25, 2017

Dave Gray
City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372

Re: Engagement Letter

Dear Mr. Gray:

Thank you for hiring Summit Law Group to represent the City of Edgewood with regard to general labor matters. We will represent your interests vigorously and do our very best to be prompt, thoughtful and practical in everything we do on your behalf.

If you have not yet had an opportunity to view the background of Summit Law Group, please take a moment to view our website (www.summitlaw.com). Summit Law Group was founded on the principles that the market for legal services has dramatically changed and that a modern firm should be leaner, more efficient and more customer-responsive. We want to form productive working partnerships with our customers, delivering a better product at greater value.

Fee Arrangements. We will build a working partnership with you to enable you to maintain control over the scope and cost of your legal work. We are especially interested in fee arrangements that provide incentives for us to be cost effective and that reward us for superior results. Unless we agree otherwise, however, we will charge for our services by the billable hour. We encourage you to consider and suggest other ways of measuring the value of our services during the course of our relationship. Whether you choose to be billed by the hour, or some other fee arrangement, we, unlike any other law firm we know of in the country, invite you to pay in accordance with your perception of the value of our legal services. To that end, within 30 days of our invoice, you are free to adjust our billed amount, upward or downward, based on your perception of the value that you have received.

Dave Gray
May 25, 2017
Page 2

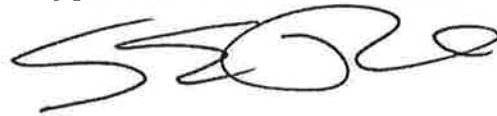
At present, my current hourly rate applicable to this engagement is \$295. The billing rates and contact information of the Summit team members who are expected to work on this engagement are included in the Appendix to this letter.

Unless otherwise agreed in writing, we will provide you with full itemized billing information on a monthly basis, including people working on your engagement, their hours and rates and a detailed description of services performed. Payment of our bill is due upon receipt of our invoice and bills not paid within thirty (30) days of the date of the invoice will accrue interest at a rate of 1% per month. We do not charge for telephone, photocopying, computerized legal research, local travel, or other costs that are properly part of our cost of doing business. We charge our actual costs for out-of-town travel and meals, working meals, and other third-party vendor expenses (e.g., for high volume photocopying, courier and messenger services, conference calls and other extraordinary expenses). We also charge for costs related to document processing and discovery, electronic or otherwise. Our billings are monthly, unless otherwise agreed.

Attached to this letter is an Appendix, which includes additional terms of this engagement. Together, this letter and the Appendix constitutes the agreement between you and us regarding our professional services. If the terms of our representation as described above and in the Appendix are acceptable, please date and sign this letter where indicated below and return it to me via mail, facsimile or electronic mail. This agreement will take effect on the date of your signature or when we first perform services, whichever is earlier.

Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in black ink, appearing to read 'SE Phillips', written over a horizontal line.

Shannon E. Phillips

Dave Gray
May 25, 2017
Page 3

AGREED AND ACCEPTED:

City of Edgewood

By _____
Its _____
Dated _____

APPENDIX TO ENGAGEMENT LETTER OF SUMMIT LAW GROUP, PLLC

The term “you” below refers to the client in this engagement. If the client is an entity, then we have addressed the accompanying engagement letter to the client’s authorized representative, but the term “you” below refers to the entity client.

IDENTITY OF CLIENT.

In representing a client which is an entity, we do not thereby also separately represent affiliates or other constituents of the entity, nor do we separately represent the owners, officers, directors, founders, managers, members, partners, fiduciaries, or employees of the entity in their individual capacities or with respect to their individual affairs. We will rely upon you to inform them of this fact where appropriate. Unless we agree otherwise in writing, we do not by virtue of our representation of you also represent any entity that controls you, is controlled by you or is under common control with you. We will look to the addressee of the engagement letter for our instructions on behalf of the entity, unless you inform us otherwise in writing.

SCOPE OF ENGAGEMENT.

The scope of this engagement is described in the accompanying engagement letter. The scope of our engagement may change if you ask us to provide different or additional services and we agree in writing to provide them or we actually proceed to provide them and bill you for them. If our engagement changes, the terms set out in the accompanying engagement letter and this Appendix will apply to the changed engagement, unless we enter into a further agreement modifying this one. Our engagement may be terminated by either one of us upon written notice to the other.

SUMMIT TEAM ASSIGNED TO THIS ENGAGEMENT.

At Summit Law Group, we assign a team to your engagement. Your team includes the individuals listed below.

Attorney	Direct Dial	Email	Hourly Rate
Shannon E. Phillips	(206) 676-7092	<i>shannonp@summitlaw.com</i>	\$295
Peter Altman	(206) 676-7048	<i>petera@summitlaw.com</i>	\$255
Kristin D. Anger	(206) 676-7012	<i>kristina@summitlaw.com</i>	\$295
Michael C. Bolasina	(206) 676-7006	<i>mikeb@summitlaw.com</i>	\$295
Sarah Hale	(206) 676-7022	<i>sarahh@summitlaw.com</i>	\$255
Beth Kennar	(206) 676-7068	<i>bethk@summitlaw.com</i>	\$295

Attorney	Direct Dial	Email	Hourly Rate
Otto Klein	(206) 676-7034	<i>ottok@summitlaw.com</i>	\$320
Sofia D. Mabee	(206) 676-7112	<i>sofiam@summitlaw.com</i>	\$295
M. Quinn Oppenheim	(206) 676-7106	<i>quinno@summitlaw.com</i>	\$275
Bruce L. Schroeder	(206) 676-7052	<i>bruces@summitlaw.com</i>	\$320
Dan Swedlow	(206) 676-7024	<i>dans@summitlaw.com</i>	\$290
Rodney B. Younker	(206) 676-7080	<i>rody@summitlaw.com</i>	\$315
Donna Murbach	(206) 676-7020	<i>donnam@summitlaw.com</i>	\$150
Linda Swanson		<i>lindas@summitlaw.com</i>	\$150

BILLING AND PAYMENT.

We review and make changes to our hourly rates from time to time, usually on an annual basis. Changes may or may not apply across the board to all timekeepers.

Timely payment in full is a condition to our continuing provision of services. You agree that we may suspend or terminate our services and may withdraw from this engagement in the event our fees and other charges are not timely paid, subject to applicable rules governing attorney withdrawal. In extreme cases, we may pursue recovery of unpaid fees through collection actions or litigation. If our engagement is terminated by either you or us for any reason, you will remain obligated to pay us all fees and other charges properly incurred up to the termination date.

Although on occasion we will in good faith attempt to estimate in advance the fees and costs of an engagement, we are not bound by any such estimate unless agreed in writing. Also, we are not obligated to revise, amend or correct any such estimate if subsequent developments make it inaccurate.

If we have more than one client in this engagement, then each is jointly and severally obligated to pay us unless we agree otherwise in writing. Any outside arrangements you may have for allocation, reimbursement, insurance, indemnification or the like will not relieve you of your obligation to pay amounts due.

CONFLICT CHECK.

At the beginning of each engagement we conduct a review of potential conflicts of interest to ensure compliance with the Rules of Professional Conduct, using names that you have provided. As we move forward, please be sure to immediately provide us with any new or different names of adverse or interested parties so that we may update our conflict check.

OWNERSHIP AND RETURN OF FILES.

By executing our engagement letter, you agree that the files generated or accumulated as a result of our representation belong to Summit Law Group. If you desire a copy of the files at the conclusion of our representation, you will be responsible for costs associated with file duplication and mailing, based on the hourly rate of our administrative staff. Under our document retention policy, we normally destroy client records seven years after the conclusion of a matter unless other arrangements are made. Prior to destruction, we will attempt to contact you at your last known address on record with Summit Law Group. It is your responsibility to notify Summit Law Group of any change of mailing address after the termination of an engagement. E-mails that are duplicative, routine or otherwise not part of the client file may be destroyed before the end of the seven-year period, without prior notice to you. If your engagement will involve significant long-term storage costs, then we may charge you for our actual costs of such storage.

DISPUTE RESOLUTION AND ARBITRATION.

If you become dissatisfied with any aspect of our relationship, including the quality or adequacy of our representation, you agree to bring that to our attention, and we each agree to negotiate in good faith to resolve the matter. If we cannot reach agreement, we each agree to comply with any mandatory dispute resolution procedures that apply to any such dispute. If such applicable mandatory dispute resolution procedures have been completed or waived, and a dispute still exists between us, we each agree that the dispute will be submitted for mediation in Seattle, Washington, under the rules of JAMS. If such mediation fails, and a dispute still exists between us, we each agree that the dispute will be submitted to binding arbitration in Seattle, Washington, under the rules of JAMS. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review.

By signing the engagement letter to which this is attached, you acknowledge that the agreement to arbitrate results in a waiver of your right to a court or jury trial for any fee dispute or malpractice claim. This also means that you are giving up your right to discovery and appeal. If you later refuse to submit to arbitration after agreeing to do so, you may be ordered to arbitrate pursuant to the provisions of Washington law. You acknowledge that before signing this agreement and agreeing to binding arbitration, you are entitled to, and have been given, a reasonable opportunity to seek the advice of independent counsel.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Marijuana Related Uses and Business Code Modifications

Date: June 6, 2017

Title: Marijuana Related Uses and Business Code Modifications

Attachments: Ordinance No. 17-XXXX, Planning Commission Recommendation

Submitted By: Aaron C. Nix, ACA Municipal Services, Acting Public Works Director

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: With subsequent modifications to State law as it pertains to the legalization of both medicinal and recreational marijuana in the State of Washington, the City of Edgewood has been advised by its legal counsel to update components of its previously passed Ordinance No.14-0425, relating to development standards geared towards marijuana related uses. More specifically, definitions related to this subject matter. The Planning Commission held a Public Hearing on this issue, as well as offered a recommendation on these modifications, which is included for the Council's review and consideration.

Recommendation: Recommend that Staff prepare Ordinance No. 17-XXXX, related to regulating Marijuana related uses and businesses within the City of Edgewood.

Fiscal Impact: N/A

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S REGULATIONS PROHIBITING ILLEGAL MARIJUANA-RELATED USES AND MARIJUANA-RELATED BUSINESSES, ADDING DEFINITIONS, AND PROHIBITING MARIJUANA COLLECTIVES, AMENDING SECTION 18.100.120 OF THE EDGEWOOD MUNICIPAL CODE, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Edgewood adopted zoning regulations prohibiting marijuana uses and marijuana related businesses in 2014; and

WHEREAS, since that time, the Washington State Legislature has amended the regulations relating to medical and recreational marijuana; and

WHEREAS, one of the recent amendments has been to eliminate “collective gardens” and to add “cooperatives”; and

WHEREAS, RCW 69.51A.250(3)(c) specifically acknowledges that “cooperatives” may not be located in a city if the city has prohibited it in the city’s zoning code; and

WHEREAS, the City desires to update its regulations to be consistent with State Law and to prohibit “cooperatives” within City limits; and

WHEREAS, the SEPA Responsible Official issued a DNS for this ordinance on May 3, 2017, 2017; and

WHEREAS, the Planning Commission held a public hearing on this ordinance on May 2, 2017; and

WHEREAS, the Planning Commission submitted a formal recommendation of approval to the Council dated May 1, 2017; and

WHEREAS, the City Council considered this ordinance during its regular City Council meeting of June 6, 2017;

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

Section 1. Section 18.100.120 of the Edgewood Municipal Code is hereby amended to read as follows:

18.100.120 Marijuana-Related Uses—Prohibited.

A. Definitions.

1. The definitions in Section 69.51A.010 RCW (relating to Medical Cannabis) are hereby adopted by reference.

2. The definitions in Section 69.50.101 RCW are hereby adopted by reference.

~~The following definitions shall apply for purposes of this section:~~

~~1. “Collective garden” means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients for medical use in accordance with the provisions of Chapter 69.51A RCW.~~

~~2 3. “Marijuana-related business” means any facility for the growing, production, processing, transportation sale and/or delivery of marijuana or marijuana products in accordance with the provisions of Chapter 69.50 RCW. Without limitation of the foregoing, marijuana-related businesses specifically include marijuana producers, marijuana processors and marijuana retailers as defined by Chapter 69.50 RCW. “Cooperatives” as described in RCW 69.51A.250, are included in this definition of “marijuana-related businesses.”~~

~~34. “Illegal marijuana uses” means any growing, production, processing, transportation sale and/or delivery of cannabis or marijuana or marijuana products under Chapters 69.51A and 69.50 RCW which is in violation of either state or federal law. Provided, however, that nothing herein shall be construed as criminalizing the growing or manufacture of cannabis by a qualifying patient or designated provider in accordance with RCW 69.51A.040.~~

~~Unless the context clearly indicates otherwise, all other terms used in this section shall have the meanings established pursuant to Chapters 69.50 and 69.51A RCW.~~

B. Prohibition. ~~Collective gardens,~~ Cooperatives, marijuana-related businesses and illegal marijuana uses are prohibited in the following zoning districts:

1. All single-family, multi-family and mixed residential zones, including without limitation SF-2, SF-3, SF-5, MR-1, MR-2 and MUR;

2. All town center, commercial and business park zones, including without limitation TC, C, and BP;

3. All industrial zones, including without limitation I;

4. All public zones, including without limitation P; and

5. Any new zoning district established after October 28, 2014.

C. Additional Violations.

1. It is unlawful to own, establish, operate, use or permit the establishment or operation of a marijuana-related business, marijuana cooperative, or to produce, process, dispense, barter, sell or deliver medical or recreational marijuana, except as otherwise allowed in the definition of "illegal marijuana uses" in Section 18.100.120(4). This prohibition extends to producers, processors, retailers and collectives, even if the same are licensed by the State of Washington. This prohibition applies to any person who participates as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana-related business or illegal marijuana use, regardless of whether he/she has a license from the State of Washington.

2. It is unlawful to perform any group marijuana cultivation activities, including cooperatives, anywhere in the City, regardless of whether such group cultivation or cooperatives are addressed in chapter 69.51A RCW and allowed with a license from the State.

3. It is unlawful to lease, rent, or otherwise allow any site, whether located indoors, outdoors, in any building, premises, location or land in the City, for marijuana-related businesses or illegal marijuana uses, regardless of whether such activity has been licensed by the State of Washington.

4. The City shall not issue any business license for any marijuana-related business or illegal marijuana use. Any business license obtained through misrepresentation of the activities conducted by the individual business or use shall be invalid and of no force and effect.

D. No Vested or Nonconforming Rights. Neither this Section 18.100.120 nor any other City Ordinance, City action, failure to act, statement, representation, certificate, license, approval or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana-related business or illegal marijuana use, even if licensed by the State of Washington.

E. Penalty. Violations of this Section 18.100.120 shall be enforced as set forth in chapter 18.85 EMC, or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the city attorney under applicable provisions of this code or state law, including but not limited to the provisions of Chapter 1.10 EMC, Chapter 8.05 EMC and Chapter 18.30 85 EMC.

Section 2. Pursuant to RCW 35A.12.140, a copy of RCW 69.51A.010, RCW 69.50.101 and RCW 69.51A.250 are attached hereto. These statutes have been filed in the office of the City Clerk for examination by the public as an Exhibit to this Ordinance. These statutes have been available to the public while this Ordinance was under consideration by the Council.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and this Ordinance shall take effect and be in full force five (5) days after the date of publication.

Presented to Council for its first Reading on April 4, 2017

Presented to Council for its second Reading on June 6, 2017

PASSED BY THE CITY COUNCIL ON THE June XX, 2017

Daryl Eiding, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, CITY ATTORNEY

DATE OF PUBLICATION:

EFFECTIVE DATE:

**CITY OF EDGEWOOD
2224 - 104th Ave. East
Edgewood, WA 98371
(253) 952-3299
Fax: (253) 952-3537**

LEGAL NOTICE

Date:

NOTICE OF ORDINANCE PASSED BY EDGEWOOD CITY COUNCIL

The full text of the Ordinance is available at the City Clerk's office, Edgewood City Hall, 2224 - 104th Ave. East, Edgewood, WA 98371 (253) 952-3299.

Rachel Pitzel, City Clerk

Published in the Tacoma News Tribune on:

EDGEWOOD PLANNING COMMISSION RECOMMENDATION:

RECOMMENDATION OF THE CITY OF EDGEWOOD PLANNING COMMISSION RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S REGULATIONS PROHIBITING ILLEGAL MARIJUANA-RELATED USES AND MARIJUANA-RELATED BUSINESSES, ADDING DEFINITIONS, PROHIBITING MARIJUANA COLLECTIVES, AMENDING SECTION 18.100.120 OF THE EDGEWOOD MUNICIPAL CODE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Edgewood adopted zoning regulations prohibiting marijuana uses and marijuana related businesses in 2014; and

WHEREAS, the City has adopted prohibited uses regulations in chapter/section 18.100.120 of the Edgewood Municipal Code, related to Marijuana-related uses which need to be updated; and

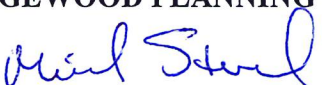
WHEREAS, the Planning Commission met on April 17, 2017 and again on May 1, 2017 to discuss the DRAFT Transportation Concurrency Ordinance; and

WHEREAS, the Planning Commission held a public hearing to review and gather public comment on May 1, 2017, providing recommendations on the proposed amendments; and

NOW, THEREFORE SHALL IT BE ADVISED by the Planning Commission that it hereby makes the following recommendations:

The Planning Commission recommends approval of the Draft Ordinance amending the City's regulations prohibiting illegal marijuana-related businesses and adding definitions, as presented following the Public Hearing and additional discussion prior to taking action.

THIS RECOMMENDATION WAS UNANIMOUSLY APPROVED BY THE CITY OF EDGEWOOD PLANNING COMMISSION ON THE 1st DAY OF MAY 2017.


Mike Stanzel, Acting Planning Commission Chair

Attest by:


Kevin Stender, Community Development Director



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Building Code Enforcement Code

Update

Date: June 6, 2017

Title: Building Code Enforcement Code Update

Attachments: Ordinance 17-0501

Submitted By: Aaron C. Nix, ACA Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The City's Building code enforcement provisions defer to the International Building Code provisions that are general and do not typically outline sufficient processes or appeal procedures that are appropriate for the needs of the City of Edgewood. Staff and the City Attorney have begun drafting language for consideration by the Mayor and City Council as it pertains to code enforcement provisions as it relates to Edgewood's Building Code. A draft version/Ordinance has been included for the Council's re-consideration, of which a public hearing was held by the City Council at their May 23rd regular Council meeting, in which minimal comment was received. An adjustment was made, as requested by Councilmember Lowry, in regard to allowing email correspondence as a method for appealing. Otherwise, the revisions are similar to what the Council has seen from previous versions that they've reviewed.

Recommendation: Recommend that Staff bring this Ordinance forward to the City Council for consideration for adoption at the Council's June 13, 2017 Council meeting.

Fiscal Impact: N/A

ORDINANCE NO. 17-0501

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO BUILDING CODE ENFORCEMENT, ADOPTING NEW BUILDING CODE ENFORCEMENT PROCEDURES WHICH DESCRIBE VIOLATIONS, EXPLAIN THE PROCESS FOR INVESTIGATION AND ENFORCEMENT OF VIOLATIONS, LISTING THE ELEMENTS OF A NOTICE OF VIOLATION, DESCRIBING THE PROCEDURES FOR ISSUANCE AND SERVICE OF NOTICES OF VIOLATION, STOP WORK ORDERS AND EMERGENCY ORDERS, PROVIDING FOR HEARINGS ON APPEALS, DESCRIBING THE HEARING PROCESS, SETTING PENALTIES FOR VIOLATIONS, REPEALING PREVIOUS BUILDING CODE ENFORCEMENT PROCEDURES AND MODIFYING REFERENCES IN THE CODE TO ENFORCEMENT PROCEDURES IN THE NEW ENFORCEMENT CHAPTER, AMENDING SECTIONS 15.05.050, 15.05.060, 15.05.080, 15.05.090, 15.05.100, 15.05.110, AND ADDING A NEW CHAPTER 15.07 TO THE EDGEWOOD MUNICIPAL CODE

WHEREAS, the City has decided to update its Building Code enforcement procedures and make various housekeeping amendments to chapter 15.05 of the Edgewood Municipal Code; and

WHEREAS, the City 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, on May 23, 2017, the City Council held a public hearing on this Ordinance and received no comments on the proposed Ordinance; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings on May 1, 2017 and June 6, 2017, Now, Therefore,

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

Section 1. Section 15.05.050(O) of the Edgewood Municipal Code, which amends

Section 110.6 of the International Building Code, is hereby amended to read as follows:

110.6 Approval Required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Official. The Building Official, upon notification, shall make the requested inspections and shall either indicate that portion of the construction is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this Code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Building Official.

There shall be a final inspection ~~and approval~~ and issuance of a Certificate of Occupancy for ~~of~~ all buildings and structures when completed and ready for occupancy or use. ~~Buildings that have not received a final approval shall not be occupied without written approval of the Building Official and Fire Chief.~~

Section 2. Section 15.05.050(Q) of the Edgewood Municipal Code, which amends

Section 111.5 of the International Building Code, is hereby amended to read as follows:

111.5 Violation of requirements of certificate of occupancy. The City Council affirms that the issuance of any certificate of occupancy is of vital importance in the safeguarding of life safety, property, safety and health of occupants of any structure; and further, that the enforcement of all City development regulations is of vital importance to the City's economic vitality and the public good. Any person allowing a building to be occupied without a certificate of occupancy first being issued as required by this Chapter shall be in violation of this Chapter, ~~and shall be assessed a civil penalty not to exceed \$500. Such person shall also be guilty of a gross misdemeanor punishable by a criminal penalty not to exceed \$5,000 and/or one year imprisonment. Each day that a building is occupied without a certificate of occupancy shall be a separate violation.~~

Section 3. Section 114.4 of the International Building Code is hereby amended to read as follows:

114.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to the enforcement procedures and penalties as set forth in chapter 16.07 EMC. ~~Shall be subject to a civil~~

~~penalty in the amount of \$ — per day for each violation. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

Section 4. Section 115 of the International Building Code shall be amended to read as follows:

115.2 Issuance. ~~The building official shall follow the procedures in chapter 15.07 EMC for the substance of the stop work order and issuance. Appeals of a stop work order shall proceed as set forth in chapter 15.07 EMC. The stop work order shall be in writing and shall be given to the owner of the property involved, the owner's authorized agent or the person performing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume.~~

Section 5. Section 15.05.050(S) of the Edgewood Municipal Code, which amends Section 115.3 of the International Building Code, is hereby amended to read as follows:

115.3 Unlawful continuance. ~~It is unlawful for any person who to continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition. The penalties for violations of stop work orders shall be as established in chapter 15.07 EMC. , shall be assessed a civil penalty not to exceed \$500. Such person shall also be guilty of a gross misdemeanor punishable by a criminal penalty not to exceed \$5,000 and/or one year imprisonment. Each day that work continues after a person has been served with a stop work order shall be a separate violation.~~

Section 6. Section 15.05.060(E) of the Edgewood Municipal Code, which amends Section R106.1 of the International Residential Code, is hereby amended to read as follows:

R106.1 Submittal Documents. ~~In addition to the materials required by RCW 19.27.095 for a complete building permit application, plans, specifications, engineering calculations, diagrams, soil investigation reports, environmental data pertaining to any Critical Area designation as required by EMC Title 14, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted in one or more sets with each application for a permit. When such plans are not prepared by a licensed architect, geologist, or engineer, the Building Official may require that the applicant submitting such plans or other data demonstrate that state law does not require that the plans be prepared by a licensed architect, geologist or engineer.~~

~~The Building Official may require plans, computations and specifications to be prepared and designed by an engineer, geologist or architect licensed by the state to practice as such, even if not required by state law.~~

Each sheet of plans must bear the seal and signature of the architect, geologist, or engineer who prepared the plans and specifications. Such architect, geologist or engineer must be qualified in the proposed work and authorized for such practice in the state of Washington. Further, plans, computations and specifications for all structural design work must bear the seal and signature of and be prepared and designed by (or under the direct supervision of) an architect, geologist or structural engineer authorized to practice as such in the state of Washington. However, the Building Official may accept the design of a professional engineer for assembly line products or designed specialty structural products.

Section 7. Section 15.05.060(L) of the Edgewood Municipal Code, which amends

Section R113.4 of the International Residential Code, is hereby amended to read as follows:

R113.4 Violation Penalties. Any person who erects, constructs, alters or repairs a building or a structure in violation of this Code, shall be subject to the enforcement procedures and penalties set forth in chapter 15.07. EMC. In addition, any person who erects, constructs, alters or repairs a building or a structure before obtaining the necessary permits required by this Code, or fails to obtain a permit when otherwise required by this Code, shall be subject to a \$500 Administrative Compliance Fee or an investigation fee equal to the permit fee as required by this Code, whichever may be greater in addition to all other applicable remedies and penalties. The \$500 Administrative Compliance Fee or the investigation fee shall be in addition to the required permit fees.

Section 8. Section 15.05.060(M) of the Edgewood Municipal Code, which amends

Section R114. of the International Residential Code, is hereby amended to read as follows:

R114.1 Notice to owner or the owner's authorized agent. Upon notice from the building official that work on any building or structure is being executed contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. ~~The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's authorized agent or to the person performing the work and shall state the conditions under which work will be permitted to resume.~~ The building official shall follow the procedures in chapter 15.07 EMC for the preparation, issuance and service of the stop work order. Appeals of stop work orders shall follow the procedures in chapter 15.07 EMC.

R114.2 Unlawful Continuance. Any person who continues any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove an unsafe condition, shall be subject to the enforcement procedures and penalties set forth in chapter 15.07 EMC. ~~Assessed a civil penalty not to exceed \$500. Such person shall also be guilty of a gross misdemeanor punishable by a criminal penalty not to exceed \$5,000 and/or one year imprisonment. Each day that work continues after a person has been served with a stop work order shall be a separate violation.~~

Section 9. Section 15.05.080(C) of the Edgewood Municipal Code, which amends Section 106.3 of the Uniform Plumbing Code, is hereby amended to read as follows:

106.3 Penalties. Any person, firm or corporation violating any provision of this Code shall be ~~deemed guilty of a Civil Infraction as specified in EMC Title 16. Guilty of a misdemeanor, punishable by a criminal penalty as set forth in EMC Section 1.10.010. or by imprisonment not exceeding 364 days, or by both such penalty and imprisonment.~~

106.4 Stop Orders. The building official shall use the procedures in chapter 15.07 EMC for the preparation, issuance and service of stop work orders. Appeals of stop work orders shall proceed as set forth in chapter 15.07 EMC. ~~Where work is being done contrary to the provisions of this code, the Authority having Jurisdiction shall be permitted to order the work stopped by notice in writing to be served on persons engaged in the doing or causing such work to be done, and such persons shall forthwith stop work until authorized by the Authority Having Jurisdiction to proceed with the work.~~

* * *

Section 10. Section 15.05.080(D) of the Edgewood Municipal Code, which amends Section 107.3 of the Uniform Plumbing Code, shall be amended to read as follows:

107.3 Appeals. Appeals of final orders or decisions made by the building official under the Uniform Plumbing Code, other than enforcement actions, shall be processed according to the procedures set forth in chapter 15.07 EMC. ~~The hearing examiner shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of UPC as amended in accordance with chapter 2.40 EMC. The appellant shall pay the fee required pursuant to the City's currently adopted fee schedule, as may be amended from time to time. An application for appeal shall be based on the claim that the true intent of the UPC as amended or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the~~

~~UPC as amended do not fully apply or an equally good or better form of construction is proposed. The hearing examiner shall have no authority to waive requirements of the UPC as amended.~~

Section 11. Section 15.05.090(E) of the Edgewood Municipal Code, which amends Section 108.4 of the International Mechanical Code, is hereby amended to read as follows:

108.4 Violation -- Penalties. Persons who shall violate a provision of this Code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the approved construction documents or directive of the Code Official, or of a permit or certificate issued under the provisions of this Code, shall be guilty of a misdemeanor and subject to the criminal penalty set forth in EMC Section 1.10.010. ~~guilty of a civil infraction, as specified in EMC Title 18.~~

Section 12. Section 108.5 of the International Mechanical Code shall be amended to read as follows:

108.5 Stop Work orders. Upon notice from the code official that mechanical work is being performed contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. The code official shall follow the procedures in chapter 15.07 EMC for preparation, issuance and service of the stop work order. ~~Such notice shall be in writing and shall be given to the owner of the property, or to the owner's authorized agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume.~~ Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for the criminal penalty as set forth in EMC Section 1.10.010. ~~fine of not less than ____ dollars or more than ____ dollars.~~

Section 13. Section 15.05.090(F) of the Edgewood Municipal Code, which amends Section 109.1 of the International Mechanical Code, is hereby amended to read as follows:

109.1 ~~Application for Appeals.~~ Appeals of final orders or decisions other than enforcement actions under the International Mechanical Code shall be processed according to the procedures set forth in chapter 15.07 EMC. ~~The hearing examiner shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this~~

~~Code as amended in accordance with chapter 2.40 EMC. The appellant shall pay the fee required pursuant to the City's currently adopted fee schedule, as may be amended from time to time. An application for appeal shall be based on a claim that the true intent of this Code as amended or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code as amended do not fully apply or an equally good or better form of construction is proposed. The hearing examiner shall have no authority to waive requirements of this Code as amended. References made to the board of appeals or decision of the board, IMC 109.2 through 109.6.2 shall mean hearing examiner or decision of the hearing examiner.~~

Section 14. Section 15.05.100(D) of the Edgewood Municipal Code, which amends Section 106.4 of the International Property Maintenance Code, is hereby amended to read as follows:

106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, shall be subject to the enforcement procedures and penalties set forth in chapter 15.07 EMC. In addition, any person who violates a provision of this code by erecting, constructing, altering or repairing a building or structure before obtaining the necessary permits required by this Code shall be subject to a \$500 Administrative Compliance Fee or an investigation fee equal to the permit fee as required by this Code, whichever may be greater in addition to all other applicable remedies and penalties. The \$500 Administrative Compliance Fee or the investigation fee shall be in addition to the required permit fees.

Section 15. Section 15.05.100(E) of the Edgewood Municipal Code, which amends Section 109.6 of the International Property Maintenance Code, is hereby amended to read as follows:

109.6 Hearing. Hearings on any final order or decision made by city officials relative to the application and interpretation of the IPMC shall follow the procedures set forth in chapter 15.07 EMC. Any person required to take emergency measures shall comply with such order forthwith. Any affected person may request an appeal using the procedures specified in Chapter 2.40 EMC. The applicant shall first file an appeal with the required processing fee with the Department of Community Development, whereupon a hearing date will be scheduled. The Hearing Examiner will render his decision within 10 days of the closing of the hearing.

Section 16. Section 15.05.100(F) of the Edgewood Municipal Code, which amends Section 111.1 of the International Property Maintenance Code, is hereby amended to read as follows:

111.1 Application for Appeals. Appeals of any final order or decision made by city officials relative to the application and interpretation of the IPMC shall follow the procedures set forth in chapter 15.07 EMC. The hearing examiner shall hear and decide appeals of orders, decisions or determinations made by city officials relative to the application and interpretation of the PMC as amended in accordance with chapter 2.40 EMC. The appellant shall pay the fee required pursuant to the City's currently adopted fee schedule, as may be amended from time to time.

Section 17. Section 15.05.110(C) of the Edgewood Municipal Code, which amends Section 108.1 of the International Fire Code, is hereby amended to read as follows:

108.1 Board of Appeals established. ~~In order to decide appeals of orders, decisions, or determinations made by the fire code official relative to the application and interpretation of this code, there is hereby created an appeals process for administrative decisions consisting of the hearing examiner as appointed by the City. The hearing examiner and appellant will use the procedures already specified in chapter 2.40 EMC, and shall render his decision within 10 days of the closing of the hearing. The applicant or aggrieved party shall first file an appeal, including the required processing fee, to the Department of Community Development.~~ Appeals of any final order or decision made by the fire code official relative to the application and interpretation of the IFC, other than enforcement actions, shall follow the procedures set forth in chapter 15.07 EMC.

Section 18. Section 15.05.110(C) of the Edgewood Municipal Code, which amends Section 109.3 of the International Fire Code, is hereby amended to read as follows:

109.3 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under the provisions of this code, shall be guilty of misdemeanor, punishable by a criminal penalty as set forth in EMC Section 1.10.010. Each day that a violation continues after due notice has been served shall be deemed a separate

~~offense. shall be guilty of a civil infraction as specified in Edgewood Municipal Code (EMC) 18.30.130.~~

Section 18. Section 15.05.110(C) of the Edgewood Municipal Code, which amends Section 111.1 of the International Fire Code, is hereby amended to read as follows:

111.1 Stop Work Order. ~~The fire code official or building code official may issue a stop work order under the circumstances described in chapter 15.07 EMC, and shall follow the procedures in chapter 15.07 EMC for preparation, issuance and service of stop work orders. Appeals of stop work orders shall follow the procedure in chapter 15.07 EMC. Whenever the fire code official or building code official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the fire code official or building code official is authorized to issue a stop work order.~~

Section 19. Section 15.05.110(C) of the Edgewood Municipal Code, which amends Section 111.4 of the International Fire Code, is hereby amended to read as follows:

111.4 Failure to Comply. Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to the criminal penalties set forth in EMC Section 1.10.010. ~~assessed a civil penalty not to exceed \$500. Such person shall also be guilty of a gross misdemeanor punishable by a criminal penalty not to exceed \$5,000 and/or one year imprisonment. Each day that work continues after a person has been served with a stop work order shall be a separate violation.~~

Section 20. A new Chapter 15.07 is hereby added to the Edgewood Municipal Code, which shall read as follows:

Chapter 15.07 BUILDING CODE ENFORCEMENT

Sections:

- 15.07.010 Intent.**
- 15.07.020 Violations.**
- 15.07.030 Responsibility to Enforce.**
- 15.07.040 Investigation and Notice of Violation.**
- 15.07.050 Time to Comply.**

- 15.07.060 Stop Work Order.**
- 15.07.070 Emergency Order**
- 15.07.080 Appeals.**
- 15.07.090 Appeal Hearing.**
- 15.07.100 Civil Penalty.**
- 15.07.110 Criminal Penalties.**
- 15.07.120 Additional Relief.**

15.07.010 Intent. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of the Building Code, Title 15. No provision of, or any term used in this chapter, is intended to impose any duty to enforce, or any other duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

15.07.020 Violations.

A. It is a violation of the Building Code, Title 15, for any person to initiate, maintain or cause to be initiated or maintained, the use of any structure, land or property within the City, without first obtaining the permits or authorizations required for the use by the aforementioned Code.

B. It is a violation of the Building Code, Title 15, for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the City, in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the aforementioned Code; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

C. In addition to the above, it is a violation of Title 15:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned Title; and
2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization.

15.07.030 Responsibility to enforce.

A. The Building Official shall have the responsibility to enforce this Chapter. The Building Official may call upon the police, fire, community development, public works or other appropriate City departments to assist in enforcement. As used in this chapter, "Building Official" or "Code Official" shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the Building Official may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued

inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the responsibilities imposed by this Chapter.

15.07.040 Investigation and Notice of Violation.

A. Investigation. The Building Official is authorized to investigate any structure or use which he/she reasonably believes does not comply with the standards and requirements of the Building Code, Title 15.

B. Notice of Violation. If, after investigation, the Building Official determines that the standards or requirements of the Building Code, Title 15, or the provisions of this chapter have been violated, the Building Official may serve a Notice of Violation upon the owner, tenant or other person responsible for the condition. The Notice of Violation shall contain the following information:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A statement that the Notice (or Order, in the case of a Stop Work or Emergency Order) is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. The Notice of Violation may include or reference a Stop Work Order or Emergency Order requiring that the violation immediately cease, or that the potential violation be avoided;
5. The Notice of Violation may include or reference a Stop Work or Emergency Order requiring that the person cease all work on the premises until correction and/or remediation of the violation as specified in the Order;
6. A specific identification of each standard, code provision or requirement violated;
7. A specific description of the actions required to correct, remedy or avoid the violation or to comply with the standards, code provision or requirements, including but not limited to, replacement, repair, supplementation, re-vegetation or restoration;
8. A reasonable time for compliance;
9. A statement that the violation may result in the imposition of penalties, and if the violation is not already subject to criminal prosecution, that any subsequent violations may result in criminal prosecution as provided in Section 15.07.110;
10. A statement that failure to comply with the Notice of Violation may result in further enforcement actions, including issuance of additional Notices of Violation, civil fines and/or criminal penalties; and

11. A statement that the Notice of Violation represents a determination that a violation has been committed by the person named in the Notice of Violation, and that the determination shall be final unless appealed as provided in Section 15.07.080, and that the appeal must be timely filed under the procedures set forth in 15.07.080(E) (within 15 calendar days of service of the Notice of Violation).

C. Each Day a Separate Violation. Each day a person or entity fails to comply with the code provision cited in the Notice of Violation may be considered a separate violation for which a citation may be issued.

D. Service. The Notice of Violation shall be served on the owner, tenant or other person responsible for the condition in the manner set forth in RCW 4.28.080 for service of a summons, or personally, as set forth in RCW 4.28.080(15). In lieu of service under RCW 4.28.080(15), where the person cannot with reasonable diligence be served as described, the Notice of Violation may be served as provided in RCW 4.28.080(16).

E. Posting. A copy of the Notice of Violation shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

F. Other Actions May Be Taken. Nothing in this chapter shall be deemed to limit or preclude any action or proceeding pursuant to Sections 15.07.060 (Stop Work Order), 15.07.070 (Emergency Order), 15.07.100 (Civil Penalty), 15.07.110 (Criminal Penalties), or 15.07.120 (Additional Relief).

G. Additional Notice to Others. The Building Official may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure, or post at a conspicuous place on the property, a notice which informs each recipient or resident about the Notice of Violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

H. Recording. A copy of the Notice of Violation may be filed with the County Auditor when the responsible party fails to correct the violation and no appeal is filed, or the Building Official requests that the City Attorney take appropriate enforcement action. The Building Official may choose not to file a copy of the Notice or Order if the Notice or Order is directed only to a responsible person other than the owner of the property.

I. Amendment. A Notice or Order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

15.07.050 Time to comply. When calculating a reasonable time for compliance in the Notice of Violation, the Building Official shall consider the following criteria:

A. The type and degree of violation cited in the Notice;

- B. The stated intent, if any, of a responsible party to take steps to comply;
- C. The procedural requirements for obtaining a permit to carry out corrective action;
- D. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
- E. Any other circumstances beyond the control of the responsible party.

15.07.060 Stop Work Order.

A. Whenever a continuing violation of Titles 15 will materially impair the Building Official's ability to secure compliance, or when the continuing violation threatens the health or safety of the public, the Building Official has the authority to issue a Stop Work Order prohibiting any work or other activity at the site. The Stop Work Order shall be in writing and served upon persons engaged in doing such work or causing such work to be done. The Stop Work Order shall be immediately posted on the property. Failure to comply with a Stop Work Order shall constitute a violation of this Chapter.

B. The Stop Work Order shall include the information in Section 15.07.040(B)(1) through (8). In addition, the Stop Work Order shall include a statement that the person to whom the Stop Work Order is directed or the property owner may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) calendar days after service of the Stop Work Order. If no appeal is filed and compliance is not achieved within the compliance date, the Building Official may ask the City Attorney to seek additional relief under Section 15.07.120 and/or the Building Official may file a Notice of Violation for the violation pursuant to 15.07.040, seeking compliance and describing penalties.

C. Expedited appeal. The Hearing Examiner shall hold the expedited appeal hearing on a Stop Work Order according to the applicable procedures in Section 15.07.090. If the Hearing Examiner finds that a violation has occurred which has not been corrected by the deadline established for compliance, the Building Official may ask the City Attorney to seek additional relief under Section 15.07.120 and/or the Building Official may issue a Notice of Violation for the violation pursuant to 15.07.040, describing penalties.

15.07.070 Emergency order.

A. Whenever any use or activity in violation of Title 15 threatens the health and safety of the occupants of the premises or any member of the public, the Building Official has the authority to issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall be immediately posted on the property and served on the person(s) responsible. Failure to comply with an Emergency Order shall constitute a violation of this Chapter.

B. The Emergency Order shall include all of the information in Section 15.07.040(B)(1) through (8). In addition, the Emergency Order shall include a statement that the person to

whom the Emergency Order is directed may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) calendar days after service or posting of the Emergency Order. If no appeal is filed and compliance is not achieved, the Building Official may ask the City Attorney to seek additional relief under Section 15.07.120 and/or the Building Official may issue a Notice of Violation pursuant to 15.07.040, seeking compliance and penalties.

C. **Expedited appeal.** The Hearing Examiner shall hold the expedited appeal hearing on an Emergency Order according to the applicable procedures in Section 15.07.090. If the Hearing Examiner finds that the violation described in the Emergency Order occurred or exist, any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Building Official may ask that the City Attorney take action to obtain a warrant of abatement for the property in Superior Court. The owner or person responsible (or both) shall be responsible for the costs associated with the abatement, in the manner provided by law.

15.07.080 Appeals.

A. No appeal of a Notice of Violation or Infraction citing criminal penalties. There is no administrative appeal of a Notice of Violation issued pursuant to 15.07.040 for violations which would subject the violator to criminal prosecution and/or the imposition of criminal penalties. A Notice of Violation or citation for a violation that subjects the violator to criminal penalties is enforced in municipal court.

B. Expedited Appeal Hearings on Stop Work and Emergency Orders. An expedited public hearing shall be held by the Hearing Examiner, according to the procedures in this Section, on an appeal of a Stop Work or Emergency Order, regardless of whether the violations described in the Stop Work Order or Emergency Order would eventually subject the violator to civil or criminal prosecution and/or the imposition of civil or criminal penalties. The expedited appeal hearing shall be for the sole purpose of determining whether the Stop Work or Emergency Order was correctly issued and/or whether a violation occurred. If a violation occurred, the Building Official may issue a Notice of Violation.

C. Appeal Hearings on Notices of Violations Citing Civil Penalties. Unless an appeal of a Notice of Violation is filed with the Building Official in accordance with this Section, or an appeal involving an expedited hearing is filed, the Notice of Violation shall become the Final Order of the Building Official. The Final Order, including the collection of penalties, may be enforced by the City Attorney in Superior Court.

D. Standing to file appeal.

1. *Notice of Violation.* Only parties of record have standing to file an appeal of a Notice of Violation. Parties of record are defined to mean:

- a. The property owner or the person responsible for the condition of the property;

- b. Any person who can demonstrate that he/she is aggrieved by the decision; and
- c. The City Council.

2. *Stop Work Order and Emergency Order.* Only the property owner or the person responsible for the condition of the property may request an expedited appeal hearing for a Stop Work Order or Emergency order.

E. Time to file appeal.

1. Notice of Violation under 15.07.040. The party of record must file an appeal with the Building Official within fifteen (15) calendar days of service of the Notice of Violation.

2. Stop Work or Emergency Orders under 15.07.060 or 15.07.070. The property owner or the person responsible for the condition of the property may request an expedited appeal hearing within seven (7) calendar days after service of the Stop Work or Emergency Order.

3. Computing deadline for filing appeal. For purposes of computing the time for filing an appeal, the day the decision issued shall not be counted. If the last day of the deadline for filing the appeal is a Saturday, Sunday or holiday designated by RCW 1.16.050 or city ordinance, then the appeal must be filed on the next business day. Appeals shall be delivered to the Building Official by mail, email, by personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period. Appeals received by mail after 5:00 p.m. on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked.

E. Content of appeal. Appeals shall be in writing, be accompanied by the required appeal fee, and contain the following information:

- 1. Appellant's name, address and phone number;
- 2. A statement describing appellant's standing to appeal;
- 3. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
- 4. The specific relief sought;
- 5. A statement that the appellant has read the appeal and believe the contents to be true, followed by the appellant's signature.

F. Effect. The timely filing of an appeal shall stay any enforcement action based on a Stop Work Order, Emergency Order or Notice of Violation until the Hearing Examiner's decision issues unless the Building Official finds that the violation causes an immediate threat to public health or safety.

15.07.090 Appeal Hearing.

A. The public hearing on an appeal shall include the following elements and be conducted as follows:

1. The Hearing Examiner shall set the time and place of the hearing, and arrange for notice of the public hearing to be provided, except in cases involving an expedited hearing. For expedited hearings, notice of the hearing shall be provided to the appellant and every reasonable effort shall be made to schedule the hearing within one week after receipt of the appeal.
2. A party to the hearing may participate personally or by an attorney.
4. The Hearing Examiner shall, at the appropriate stage in the proceeding, give all parties full opportunity to submit and respond to motions and file briefs and objections.
5. If the person requesting the hearing fails to attend or participate in the hearing (other than filing the timely request for an appeal hearing as provided in this chapter), the Hearing Examiner may issue a default order of dismissal.
6. To the extent necessary for full disclosure of all relevant facts and issues, the Hearing Examiner shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence.
7. The Hearing Examiner shall cause the hearing to be recorded by a method chosen by the City, which shall allow preparation of a verbatim transcript.
8. The hearing shall be open to public observation.
9. All testimony of parties and witnesses shall be made under oath or affirmation.
10. Ex parte communications shall be addressed as set forth in chapter 42.36 RCW.
11. The scope and standard of review shall be de novo. The City shall have the initial burden of proof in cases involving notices of violation, stop work orders, emergency orders or penalties, to demonstrate by a preponderance of the evidence the existence of a violation or that the legal standard for imposing the penalty has been met. The Examiner shall grant substantial weight or otherwise accord deference whenever directed by ordinance or statute.

12. The Hearing Examiner may hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application and interpretation of the Building Code (all incorporated into Title 15). An appeal of these orders, decisions or determinations shall be based upon a claim that the intent of the Code(s) have been incorrectly interpreted, the provisions of the Code(s) do not fully apply, or an equivalent method of protection or safety is proposed. The Hearing Examiner shall not have authority to waive requirements of the Codes in Title 15.

13. After the conclusion of the public hearing, the Hearing Examiner may allow the parties a designated time for the submission of memos, briefs or proposed findings, as long as the Hearing Examiner can still issue his/her final decision according to any applicable deadline established by this chapter.

14. At or after the appeal hearing on a Notice of Violation, the Hearing Examiner may:

- (a) Sustain the notice of violation;
- (b) Withdraw the notice of violation;
- (c) Continue the review to a date certain for receipt of additional information;
- (d) Modify the notice of violation, which may include an extension of the compliance date.

D. Except with regard to expedited hearings, the Hearing Examiner shall issue written findings of fact and conclusions of law within 10 calendar days of the date of the completion of the hearing and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible. A copy of the final decision may be recorded against the property in the County Auditor's office. The decision on expedited hearings shall issue within five (5) business days after the completion of the hearing.

E. The decision of the Hearing Examiner on appeal shall be final, and no further administrative appeal may be filed. In order to appeal the decision of the Hearing Examiner, a person with standing must file an appeal of the decision to superior court as provided under Chapter 36.70C RCW within the deadline set forth in RCW 36.70C.040.

15.07.100 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter relating to the International Building Code, the International Residential Code or the Property Maintenance Code, shall be subject to a cumulative civil penalty in the amount of Two hundred fifty dollars (\$250.00) per day for each violation from the date set for compliance until compliance is achieved. Each day of noncompliance shall constitute a separate offense.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Building Official shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Building Official, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

15.07.110 Criminal penalties.

A. Any person violating or failing to comply with any of the provisions of the International Fire Code, the International Mechanical Code or the Uniform Plumbing Code (all as incorporated into Title 15) or who has had a judgment entered against him or her pursuant to 15.07.100 or 15.07.110(B) for the same violation within the past five years shall be subject to criminal prosecution and upon conviction shall be fined the amount set forth in EMC 1.10.010. Each day of noncompliance shall constitute a separate offense.

B. The above criminal penalty may also be imposed:

1. For any other violation of this chapter or the Building Code, Title 15, for which corrective action is not possible; and

2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this chapter or the Building Code, Title 15.

15.07.120 Additional relief.

The Building Official may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Building Code, Title 15, when civil or criminal penalties are inadequate to effect compliance.

Section 21. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 22. 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 23. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, SIGNED
BY THE MAYOR AND ATTESTED BY THE CITY CLERK IN AUTHENTICATION
OF SUCH PASSAGE ON THIS 13TH DAY OF JUNE, 2017.**

Mayor, Daryl Eiding

ATTEST/AUTHENTICATED:

City Clerk, Rachel Pitzel

APPROVED AS TO FORM:

City Attorney, Carol Morris



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Verizon Franchise Agreement (MCI Metro)

Date: June 6, 2017

Title: Verizon Franchise Agreement (MCI Metro)

Attachments: Draft Franchise Agreement with Verizon Ordinance No. 17-XXXX

Submitted By: Aaron C. Nix, ACA Municipal Services – Acting Public Works Director

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: Staff and the City Attorney have been working with Verizon (i.e. MCI Metro) in establishing a Franchise Agreement with this working arm of the telecommunications company in order to allow them the ability to work within the City's right of way, as dictated by Edgewood Municipal Code. MCI Metro provides transmissions infrastructure for Verizon as it pertains to telecommunications for Verizon. The last remaining issue pertains to the length of the Franchise Agreement. City Code is clear that Franchise Agreements are limited to maximum timeframe of 5 years, with some flexibility. Verizon has requested that this be extended and additional 5 years for these reasons, "Verizon is making a substantial investment in the city and as a result requests a longer franchise period. Verizon requests a 10-year franchise. Alternatively, a 5-year term with an automatic 5-year renewal is a possibility." Staff is open to this option, but asks the Council for some guidance on this modification to the City's current code language:

12.06.040 Term of grant.

Unless otherwise specified in the franchise, or unless otherwise renewed, a franchise granted hereunder shall be in effect for a term of not more than five years.

Recommendation: Recommend that Staff bring this Ordinance to the Council's regular June 13, 2017 Council meeting to be considered for adoption and passage.

Fiscal Impact: N/A

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ORDINANCE NO. ~~17XX~~ -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 MCI Metro 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.

“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. “Telecommunications System” does not include “cable services” as that term is defined in 47 U.S.C. § 522(6)~~+-~~1.

“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~~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 Telecommunications System to provide Telecommunications, which may include one or more of the following services: competitive telephone and data services, internet access, private line services, front-haul and back-haul for wireless communications (but not including provisions of personal wireless services). Franchisee may provide competitive telephone service and/or network telephone service as such terms are defined in RCW 82.16.010 and act as a service provider as such term is defined in RCW 35.99.010(6). 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 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 are, 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 sixty (60) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or such other person as may be designated by the City, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with 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 sixtieth (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 31st 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)~~ten (10) years, unless sooner terminated, revoked or rendered void. No more than 180 days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional ~~five~~ten (10) 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 [A1]: Verizon requests a 10-year term. Verizon will be making a significant investment by adding additional network capability and capacity in the city to support wireless services and adding new products and services for business and government use. Considering the commitment Verizon will make and the fact that a franchise term of longer than five years, is permitted by city code, Verizon requests a ten-year franchise term.

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 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 or 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 Franchisee with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

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

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

7.7 General Conditions.

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

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or 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 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

Franchisee 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 Washington
Attn: Mayor
2224 104th 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 104th AVENUE EAST, EDGEWOOD, WA 98372-1513
PH: (253) 952-3299 ♦ Fax: (253) 952-3537

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. ----

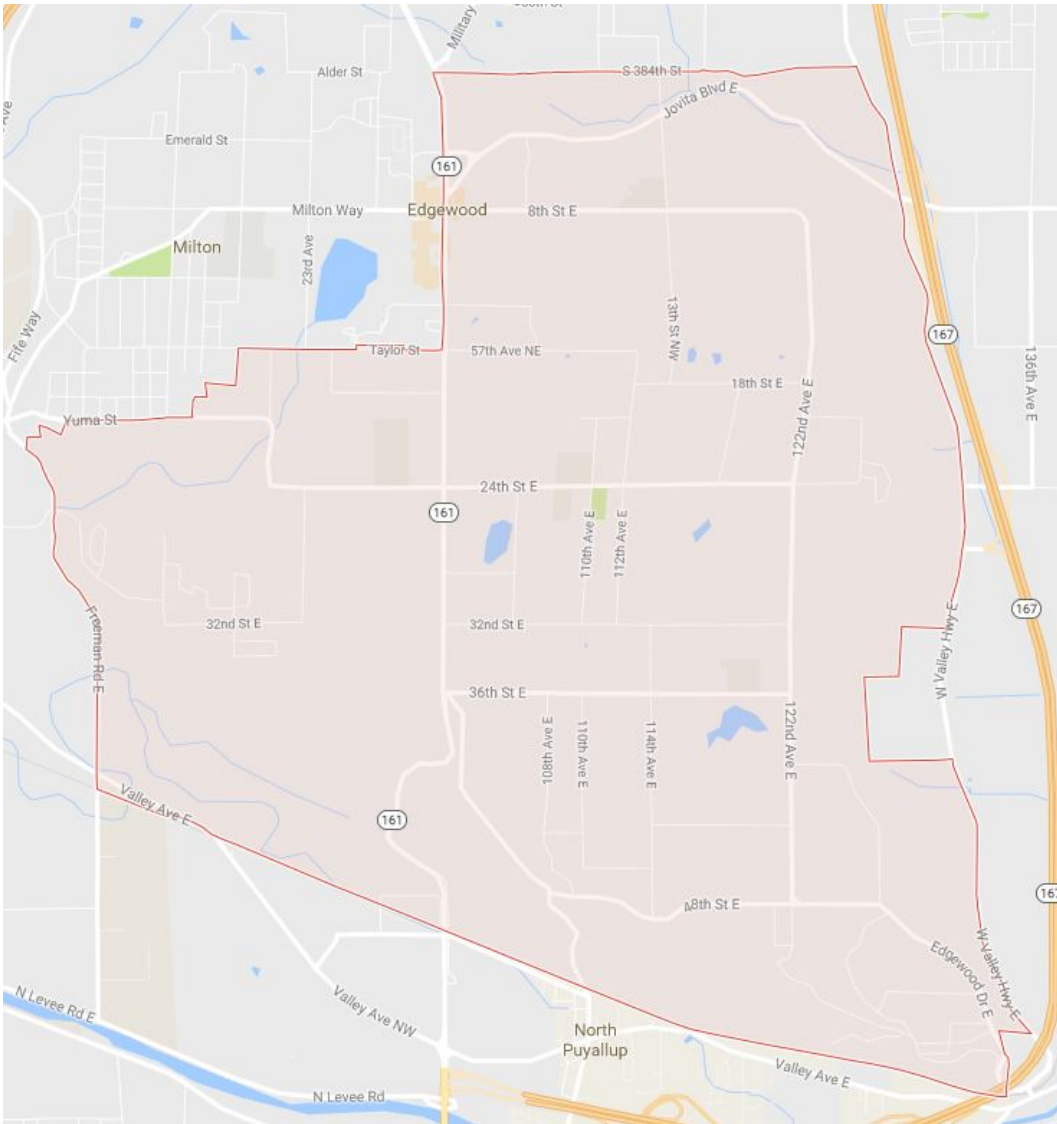
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES TO CONSTRUCT AND OPERATE A PRIVATE TELECOMMUNICATIONS SYSTEM WITHIN CERTAIN PUBLIC RIGHTS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

The full text of the Ordinance is available at Edgewood City Hall, 2224 104th 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 performance of all such terms and
conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID#

STATE OF TEXAS

CITY OF IRVING

ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

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

My appointment expires _____

EXHIBIT "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 MCI metro 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 MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, without qualification or reservation and that MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services unconditionally guarantees 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

CITY OF IRVING

ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

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

My appointment expires _____

EXHIBIT “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. In addition, Franchisee’s contractors/subcontractors shall carry comparable insurance as set forth below when such contractors/subcontractors are doing work on behalf of Franchisee in the Public Rights-of-Way.

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 and shall provide coverage for losses and damages resulting from bodily injury (including death), property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage. 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 owned, hired, and non-owned vehicles with a combined single limit of \$3,000,000 for bodily injury and property damage.

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.

2.4 Excess or Umbrella Liability: \$1,000,000 each occurrence and aggregate

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and \$50,000,000 in the aggregate.

3 Endorsements. Franchisee Commercial General Liability insurance policies shall 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 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 the City as an additional insured as their interest may appear under this Agreement, 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.

3.6 Upon receipt of notice from its insurer(s) Licensee shall 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-" and in a financial size category of no less than "VII", 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 blanket additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6 Deductible. Commercial General Liability Insurance policies and coverage required herein may include a reasonable deductible not to exceed 10% of the minimum per occurrence commercial general liability policy limits; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that

would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

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

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

EXHIBIT "E"

(Financial Security)

Comment [cm2]: Are you going to require the bond as a condition of the franchise granting? How much?

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of 125 percent (125%) of the costs of design, materials, and labor to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

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

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

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

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

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

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

Franchisee may, at its election or upon order by the City pursuant to Section 4 herein, substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all applicable Laws. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

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

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

3 Restoration Bond.

3.1 Unless otherwise provided in a Regulatory Permit issued by the City for work within the Public Right-of-Way, or by City ordinance, code, rule, regulation or Standards, the City may require Franchisee to enter into a performance agreement, secured by a restoration bond written by a corporate surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of restoring the Public Rights-of-Way to their pre-construction condition in accordance with Section 7.12 of the Franchise. Such restoration bond shall be deposited before construction is commenced. Such restoration bond may be required, when the City determines that the Performance and Payment Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 The restoration bond shall remain in force until 60 days after substantial completion of the work, as determined by the city engineer or designee, including restoration of all rights-of-way and other property affected by the construction.

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

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

3.4.1 Timely completion of construction;

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

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

3.4.4 Restoration of the Public Rights-of-Way and other public or private property disrupted, damaged, or otherwise affected by the construction. The performance agreement shall warrant said restoration work for a period of one (1) year;

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

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

4 Security Fund.

4.1 If there is an Material Breach by Franchisee or a pattern of repeated Breaches, then Franchisee shall, upon written request of the City, establish and provide to the City a cash deposit or irrevocable letter of credit from a local financial institution satisfactory to the City, in a form and content approved by the City Attorney, and in the amount of twenty five thousand dollars (\$ 25,000). Such Irrevocable letter of credit shall be established as security for the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example but not limited to, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, and to reimburse the City for its costs,

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

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

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

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

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

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

4.5 Within thirty (30) days following notice that a withdrawal from the cash deposit/letter of credit has occurred, Franchisee shall restore the cash deposit/letter of credit to the full amount required by Section 4.1. If at the time of a withdrawal from the Security Fund by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the City until it is paid.

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

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

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

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

EXHIBIT "G"

(Contractor/Subcontractor Insurance Requirements)

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

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

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

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

~~2.2 — Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 for each person and \$3,000,000 per occurrence.~~

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

~~2.4 — Excess or Umbrella Liability: \$2,000,000 each occurrence and \$5,000,000 policy limit.~~

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

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

~~3.1—The Franchisee’s insurance coverage shall be primary insurance with respect to the City. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee’s insurance and shall not contribute to it.~~

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

~~3.3—That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.~~

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

~~3.5—The Franchisee’s insurance shall include a requirement that the “railroad exclusion” be deleted or may include, in the alternative, ISO endorsement CG 24 17.~~

~~3.6—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” and in a financial size category of no less than “X”, in the latest edition of “Best’s Rating Guide” published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.~~

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

~~6—Deductible. Commercial General Liability Insurance policies and coverage required herein may include a reasonable deductible not to exceed 10% of the minimum per occurrence commercial general liability policy limits; provided, however, that if Franchisee elects to include any deductible, Franchisee~~

~~shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.~~

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

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

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



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: Contract Addendum to Consulting
Contracts for Staffing Gaps

Date: June 6, 2017

Title: Contract Addendum to Consulting Contracts for Staffing Gaps

Attachments: Original Contracts with SJC Alliance, Transpo, Gray and Osborne and
Contract Amendment Template

Submitted By: Aaron C. Nix, ACA Municipal Services – Acting Public Works Director

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Due to the current work load and the need for continued consultant fill in as it pertains to work associated with general engineering, transportation and acting City Engineer services, Staff is in need of extending these existing contracts in order to continue these types of services through the beginning of 2018. At that time, Staff will be able to conduct a needed RFQ process in order to allow these firms to compete for these types of services, as it is much needed, but due to timing limitations, cannot conduct this lengthy process at this time. The items for these services are covered under budgeted items included within the City's current budget and/or covered through pass through fees that are allowed under City of Edgewood Municipal Code.

Recommendation: Recommend that Staff bring forward appropriate amendments to the previously approved contracts with these consultants in order to extend these contracts for services into 2018, at which time, Staff will conduct a new RFQ process allow these types of firms to compete for these types of services, as time will better allow.

Fiscal Impact: None. Budgeted and/or pass through items related to plan review, general engineering and capital improvement design work associated with the City's approved Capital Improvement Plan.

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF EDGEWOOD
AND _____**

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 _____, ("Consultant"). This First Amendment modifies the Professional Services Agreement dated _____, by and between the City and Consultant (the "Agreement").

Section 2. General Recitals.

A. The City and Consultant entered into the Contract for the purposes of _____.

B. According to Section IV of the Agreement, it will expire on _____, and an amendment is required for the continuation of services.

C. Explain reason the Consultant will not be able to complete the work on or before the contract completion date.

D. The parties have now determined that such an amendment is appropriate, and thus the intent of the First Amendment is for the Consultant to provide further _____ services to the City for another year.

Section 3. Compensation and Hourly Rate. Section II of the Agreement remains unchanged and the City will pay a maximum of _____ to the Consultant for the services described in Section I of the Agreement during the effective date of the Agreement, as modified by this Agreement. Exhibit A to the Agreement remains unchanged.

Section 4. Amendment to Section IV. Section IV, "Duration of Work" of the Agreement shall be amended to read as follows:

The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties, and the City has issued a Notice to Proceed. This Agreement shall be effective beginning January 1, 2016 and shall expire December 31, 2016 ~~2015~~, unless extended by an amendment executed by the duly authorized representatives of the parties.

Section 5. Other Terms Unchanged. All other terms of the Agreement remain unchanged and enforceable. The First Amendment is intended to modify the terms and conditions of the

Agreement only insofar as such modifications are set forth in this Amendment. In the case of any conflict between the terms of the Agreement and the terms of the First Amendment, the provisions of the First Amendment shall control.

DATED: This ____ day of _____, 2017.

CITY OF EDGEWOOD

CONSULTANT

By: _____

By: _____

Its: Mayor

Printed Name: _____

Its: _____

Date: December ____, 2017

Date: December ____, 2017

ATTEST:

Rachel Pitzel, City Clerk
APPROVED AS TO FORM:

Carol Morris, City Attorney

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF EDGEWOOD AND TRANSPO GROUP**

THIS AGREEMENT, is made this 6th day of September, 2012, by and between the City of Edgewood (hereinafter referred to as "City"), a Washington Municipal Corporation, and The Transpo Group, Inc. (hereinafter referred to as "Service Provider"), doing business at 11730 118th Ave NE, Suite 600, Kirkland, WA. 98034.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for On-Call Transportation Systems review, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
2. **Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in Exhibit B, ~~but not more than a total of _____ dollars (\$ _____) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.~~
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily

engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Project Name.** On-Call Transportation Systems Review
5. **Duration of Work.** Service Provider shall provide services for a period of one (1) year from date of approval.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

8. **Indemnification / Hold Harmless.** Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from the acts, errors or omissions of the Service Provider in negligent performance of this Agreement, except for injuries and damages caused by the negligence of the City. Without prejudice to the foregoing, if: (i) Service Provider wrongfully rejects the City's tender of defense or otherwise fails to fulfill its indemnity obligations upon demand as required hereunder, and (ii) it is subsequently determined by a court or other tribunal of competent jurisdiction that the underlying claim, injury, damage, loss or suit arose out of or resulted from Service Provider's negligence, then Service Provider shall fully reimburse the City for all costs and expenses, including attorney fees, incurred by the City in obtaining such determination.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to

the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 4. Professional Liability insurance appropriate to the Service Provider's profession.
- B. Minimum Amounts of Insurance. Service Provider shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
 3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
 2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Verification of Coverage. Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

- F. Subcontractors. Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
- A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
- B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be

deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
18. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
19. **Public Records Disclosure.** Service Provider shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by Service Provider and related to the services performed under this Agreement. Upon written demand by the City, the Service Provider shall furnish the City with full and complete copies of any such records within five business days.

Service Provider's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Service Provider shall fully indemnify and hold harmless the City as set forth in Section 8.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

The provisions of this section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF EDGEWOOD

By: 
City Manager

The Transpo Group, Inc.

By: 
Title: Associate Principal
Taxpayer ID #: **91-1052718**

CITY CONTACT

City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372-1513
Phone: 253-952-3299
Fax: 253-952-3537

SERVICE PROVIDER CONTACT

Jon C. Pascal
The Transpo Group, Inc.
11730 – 118th Ave NE, Suite 600
Kirkland, WA 98034
Phone: 425-821-3665
Fax: 425-825-8434

ATTEST/AUTHENTICATED

By: _____

City Clerk

APPROVED AS TO FORM

By: _____

Office of the City Attorney

Exhibit A

Scope of Services On-Call Transportation Services

Transpo Group will assist the City of Edgewood with transportation engineering and planning services. Services will be provided on a task order basis. For each task order, Transpo will provide the City with a summary of tasks to be conducted, an estimated budget, and a schedule. To facilitate project schedules, the task orders may be in email format. Transpo Group will not commence work until the City has provided written authorization via email, fax, or letter.

Typical services may include:

- Maintain and operate the City's traffic model and Meridian Avenue Synchro model.
- Collect, monitor, and maintain traffic counts.
- Support the City with implementation of the traffic impact fee program.
- Support the City in defining scopes of services for Traffic Impact Analyses (TIA) for development applications.
- Review development TIAs for consistency with City regulations and policies. This review may include:
 - Existing and future background conditions without development
 - Trip generation
 - Trip distribution/assignment
 - Traffic operations analyses
 - Mitigation
 - Calculation of traffic impact fee
 - Concurrency review
- Support staff with presentations to the City Council or Planning Commission on transportation policy matters.
- Provide testimony at City of Edgewood public hearings.
- Perform traffic safety and operational studies
- Support the City with other transportation engineering and planning needs including travel demand forecasting, preliminary and final design, traffic simulation, or other related services in support of capital projects.



Transpo Billing Rate Range Schedule

Updated 07/28/2012

Rates are effective July 28, 2012 through July 26, 2013

Category	Billing Rate Range	
	Min	Max
Engineer/Planner - Principal	\$200	\$250
Engineer/Planner/Analyst/Proj Adm - Senior Level III	\$160	\$200
Engineer/Planner/Analyst/Proj Adm - Senior Level II	\$145	\$165
Engineer/Planner/Analyst/Proj Adm - Senior Level I	\$120	\$155
Engineer/Planner/Analyst/Proj Adm - Level III	\$80	\$130
Engineer/Planner/Analyst/Proj Adm - Level II	\$65	\$110
Engineer/Planner/Analyst/Proj Adm - Level I	\$50	\$100

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF EDGEWOOD AND SCJ ALLIANCE**

THIS AGREEMENT, is made this 19th day of January, 2015, by and between the City of Edgewood (hereinafter referred to as "City"), a Washington Municipal Corporation, and Shea, Carr & Jewell, Inc. (dba SCJ Alliance) (hereinafter referred to as "Service Provider"), doing business at 8730 Tallon Lane NE, Suite 200, Lacey Washington.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for **Transportation and Stormwater Engineering, Planning and Design On-Call Services**, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Service Provider shall perform work as described in **Exhibit A**, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
2. **Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in **Exhibit B**, for the services described in this Agreement.
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or

subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Project Name.** **Transportation and Stormwater On-Call Professional and Peer Review Services.**
5. **Duration of Work.** Service Provider shall provide services for a period of one (1) year from date of approval.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from

the acts, errors or omissions of the Service Provider in negligent performance of this Agreement, except for injuries and damages caused by the negligence of the City. Without prejudice to the foregoing, if: (i) Service Provider wrongfully rejects the City's tender of defense or otherwise fails to fulfill its indemnity obligations upon demand as required hereunder, and (ii) it is subsequently determined by a court or other tribunal of competent jurisdiction that the underlying claim, injury, damage, loss or suit arose out of or resulted from Service Provider's negligence, then Service Provider shall fully reimburse the City for all costs and expenses, including attorney fees, incurred by the City in obtaining such determination.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 4. Professional Liability insurance appropriate to the Service Provider's profession.
- B. Minimum Amounts of Insurance. Service Provider shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
 3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
 2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Verification of Coverage. Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

- F. Subcontractors. Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
- A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
- B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be

deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
18. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
19. **Public Records Disclosure.** Service Provider shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by Service Provider and related to the services performed under this Agreement. Upon written demand by the City, the Service Provider shall furnish the City with full and complete copies of any such records within five business days.

Service Provider's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Service Provider shall fully indemnify and hold harmless the City as set forth in Section 8.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

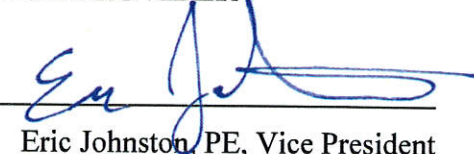
The provisions of this section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF EDGEWOOD

By: 
City Manager

SERVICE PROVIDER

By: 
Eric Johnston, PE, Vice President
Taxpayer ID #: 20-4834444

CITY CONTACT

ERIC PHILLIPS

City of Edgewood

2224 104th Avenue East

Edgewood, WA 98372-1513

Phone: 253-952-3299

Fax: 253-952-3537

SERVICE PROVIDER CONTACT

Perry Shea, PE, President

SCJ Alliance

8730 Tallon Lane NE

Lacey WA 98516

Phone: 360-352-1465

Fax: 360-352-1509

ATTEST/AUTHENTICATED

By: Jane Montgomery

City Clerk

APPROVED AS TO FORM

By: [Signature]

Office of the City Attorney



EXHIBIT A

SCOPE OF SERVICES

Transportation and Stormwater Engineering, Planning and Design On-Call Services

SCJ Alliance will assist the City of Edgewood with transportation and stormwater engineering, planning and design. Services will be provided on a task order basis. Prior to commencing work on any given task order, SCJ Alliance will provide the City with a summary of tasks to be completed, an estimated fee and schedule. Certain task orders (such as Single Family Residential Stormwater Review) may be subject to an agreed upon flat fee per task order. Task orders may be in email format. The City will provide written authorization to proceed via email, fax or letter.

Typical services are listed below.

Transportation

- Traffic modeling using Synchro/SimTraffic and SIDRA
- Assist City with Concurrency Program.
- Collect, monitor and manage traffic data.
- Advise City on Traffic Impact Fee implementation.
- Define scope of analysis for Traffic Impact Analyses (TIA) for development applications.
- Review TIAs for consistency with City regulations and policies. Review may include:
 - Project Trip Generation
 - Project Trip Distribution and Assignment
 - Existing Conditions Analysis
 - Future Without Project Conditions Analysis
 - Future With Project Conditions Analysis
 - Mitigation Determination/Negotiation



- Traffic Impact Fee Calculations
 - Concurrency Review
- Support Staff with Council and Planning Commission Presentations
- Provide Expert Testimony at public hearings.
- Prepare traffic safety and operational studies.
- Prepare conceptual or preliminary design concepts.
- Other transportation related services as requested by the City.

Stormwater

- Single Family Residential Stormwater Review
 - Conformance to SWMM and EMC
 - Communication with applicant or engineer
 - Short memo to City indicating recommendation
 - Review of resubmitted plans
 - QA/QC review
 - City will be responsible for application intake and review for completeness
- Single Family Residential Field Verification
- Commercial Development Review
 - Conformance to SWMM and EMC
 - Review analysis methodology
 - Review of threshold determinations
 - Review road designs
 - Communication with applicant or engineer
 - Short memo to City indicating recommendation
 - Review of resubmitted plans
 - QA/QC review
- Construction Site Review
- Design Review relative to Flood Hazard Areas
- Drainage Facility Construct Site Review
- Civil Plan Review
- Stormwater Facility Design and Engineering



- Stormwater Compliance Reporting and NPDES Municipal Permit Support
- Development of Draft Guidelines, Policies, and Stormwater Regulations

N:\Marketing\Proposals\Proposal Numbers\P1488.01 Edgewood 2015 On-Call Services\Contract\Exhibit A - Scope of Services.docx

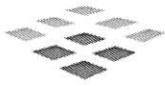


EXHIBIT B

SCJ Alliance Billing Rate Schedule Effective July 1, 2014

Classification	Hourly Billing Rate
Principal Engineer	\$195.00 - \$240.00
Principal Planner	\$195.00 - \$225.00
Principal Landscape Architect	\$125.00 - \$140.00
Senior Consultant	\$195.00 - \$215.00
Senior Project Manager	\$155.00 - \$195.00
Project Manager	\$128.00 - \$152.00
Project Engineer I	\$118.00 - \$125.00
Senior Designer	\$100.00 - \$112.00
Design Engineer	\$90.00 - \$100.00
Landscape Designer	\$80.00 - \$95.00
Senior Planner	\$120.00 - \$135.00
Planner	\$95.00 - \$110.00
Environmental Scientist	\$135.00 - \$142.00
Senior Transportation Planner	\$125.00 - \$150.00
Transportation Planner	\$95.00 - \$115.00
Traffic Analyst	\$85.00 - \$105.00
Engineering Technician	\$80.00 - \$95.00
Project Coordinator II	\$90.00 - \$105.00
Project Coordinator I	\$70.00 - \$85.00
Project Accountant	\$105.00 - \$145.00

Other Fees:

- Direct project expenses and reproduction costs are billed at cost plus 15%

Reimbursable Expenses:

- | | |
|--------------------|---------------|
| • Mileage | \$0.65/Mile |
| • Bond Paper Plots | \$2.50/Sheet |
| • Mylar | \$20.00/Sheet |
| • Reports | \$35.00/Each |

RECEIVED

MAR 21 2014

City of Edgewood

DATE: March 20, 2014

TO: City of Edgewood
2224 104th Avenue E
Edgewood, WA 98372

ATTN: Mr. Eric Phillips, AICP
Assistant City Manager

FROM: Tani Stafford, P.E.

PROJECT #: 13478

SUBJECT: Partially Signed Contract - 2014 On-Call Services Contract; City of Edgewood; Pierce County

WE ARE TRANSMITTING:

- ☒ Herewith
☐ Under Separate Cover

Number of Copies: 2

THE FOLLOWING:

- ☐ Prints
☐ Construction Drawings
☐ Specifications
☐ Shop Drawings
☐ Change Order
☐ Legal Description
☐ Letters
☒ Partially Signed Contracts

FOR:

- ☐ Review & Comment
☒ Approval
☒ Signature
☐ Your Use & Files
☐ As Requested
☐ Action Noted Below

COMMENTS:

Eric – Attached please find two original contracts for the City of Edgewood 2014 On-Call Services that have been signed by our president, for the City's review and consideration. A copy of our insurance is being sent to you via email by our insurance carrier. If these meet with the City's approval, please have the appropriate city official sign them and send one original back to me.

Thanks -Tani Stafford

approved 1/28/14

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF EDGEWOOD AND GRAY & OSBORNE, INC.**

THIS AGREEMENT, is made this 21st day of March, 2014, by and between the City of Edgewood (hereinafter referred to as "City"), a Washington Municipal Corporation, and Gray & Osborne, Inc. (hereinafter referred to as "Service Provider"), doing business at 701 Dexter Avenue North, Suite 200, Seattle, Washington 98109.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for Surveying and Engineering On-Call Services, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
2. **Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in Exhibit B.
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to,

compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Project Name.** Surveying and Engineering On-Call Services
5. **Duration of Work.** Service Provider shall provide services for a period of one (1) year from date of approval.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from the acts, errors or omissions of the Service Provider in negligent performance of this Agreement, except for injuries and damages caused by the negligence of the City. Without prejudice to the foregoing, if: (i) Service Provider wrongfully rejects the City's tender of defense or otherwise fails to fulfill its indemnity obligations upon demand as required hereunder, and

(ii) it is subsequently determined by a court or other tribunal of competent jurisdiction that the underlying claim, injury, damage, loss or suit arose out of or resulted from Service Provider's negligence, then Service Provider shall fully reimburse the City for all costs and expenses, including attorney fees, incurred by the City in obtaining such determination.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

9. **Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Service Provider's profession.

- B. Minimum Amounts of Insurance. Service Provider shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
 3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
 2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Verification of Coverage. Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.
- F. Subcontractors. Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
10. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

11. **City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
 - A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
 - C. Documents produced by Service Provider are for specific individual on-call projects requested by the City. The City agrees to indemnify and hold harmless the Service Provider from any unauthorized reuse of documents.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

18. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
19. **Public Records Disclosure.** Service Provider shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by Service Provider and related to the services performed under this Agreement. Upon written demand by the City, the Service Provider shall furnish the City with full and complete copies of any such records within five business days.

Service Provider's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Service Provider shall fully indemnify and hold harmless the City as set forth in Section 8.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

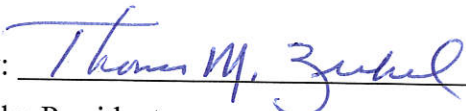
The provisions of this section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF EDGEWOOD

By: 
City Manager

GRAY & OSBORNE, INC.

By: 
Title: President
Taxpayer ID #: 91-0890718

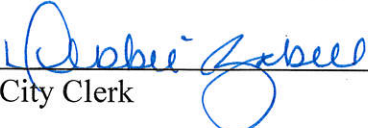
CITY CONTACT

City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372-1513
Phone: 253-952-3299
Fax: 253-952-3537

SERVICE PROVIDER CONTACT

Gray & Osborne, Inc.
701 Dexter Avenue North, Suite 200
Seattle, Washington 98109
Phone: 206-284-0860
Fax: 206-284-3206

ATTEST/AUTHENTICATED

By: 
City Clerk

APPROVED AS TO FORM

By: 
Office of the City Attorney

EXHIBIT "A"

SCOPE OF WORK

Upon written direction of the Agency to proceed, the Engineer shall provide engineering services in accordance with a written scope of work, which describes the engineering services to be provided, such services may include, but are not limited to, engineering studies, financial analysis, predesign, design, grant and/or loan application assistance, developer sponsored reviews, local improvement district or utility local improvement district formation, the preparation and acquisition of easements and right-of-way, environmental studies and documentation, the preparation of regulatory permits and approvals, public meeting and hearing facilitation, project bid and award services, and construction management and administration, surveys, the preparation of legal descriptions for easements and right-of-way acquisition, and construction staking, records of survey and boundary line adjustments.

EXHIBIT "B"

GRAY & OSBORNE

COMPUTATION OF OVERHEAD MULTIPLIER

The total cost of on-call engineering services, to be described in scopes of work requested by the City, cannot be determined at this time, in advance. The total cost for services will be established by agreement between the City and the Engineer on a case-by-case basis as the need arises, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

Federal, State, and Local Taxes.....	25.47%
Insurance and Medical.....	26.58%
Professional Development and Education.....	4.56%
Vacations and Holidays.....	15.14%
Administration (Typing, CADD, GIS, Computer)**	54.21%
Rent, Utilities, and Depreciation	17.74%
Office Expenses.....	8.12%
Recruiting	0.12%
Professional Services.....	1.22%
Incentive and Retirement.....	26.60%
Facilities Cost of Capital	0.24%

TOTAL:..... 180.00%

PROFESSIONAL ENGINEERING SERVICES CONTRACT ENGINEER'S REPRESENTATIVE PAYROLL RATES THROUGH JUNE 15, 2014*

Employee Classification

Payroll Rates

AutoCAD/GIS Technician/Engineering Intern	\$14.00	to	\$27.00
AutoCAD/GIS Manager/Graphic Artist	\$29.00	to	\$36.00
Senior Electrical Engineer	\$44.00	to	\$53.00
Senior Structural Engineer	\$36.00	to	\$49.00
Electrical Engineer	\$32.00	to	\$43.00
Structural Engineer	\$31.00	to	\$40.00
Environmental Technician/Specialist	\$25.00	to	\$40.00
Geomorphologist/Geologist	\$36.00	to	\$40.00
Civil Engineer	\$24.00	to	\$35.00
Project Engineer	\$33.00	to	\$43.00
Project Manager	\$35.00	to	\$56.00
Principal-in-Charge	\$35.00	to	\$59.00
Resident Engineer	\$38.00	to	\$48.00
Field Inspector	\$23.00	to	\$37.00
Field Survey Crew (2 Person)**	\$45.00	to	\$65.00
Field Survey Crew (3 Person)**	\$68.00	to	\$85.00
Professional Land Surveyor	\$34.00	to	\$38.00
Secretary/Word Processor**	N/A**		

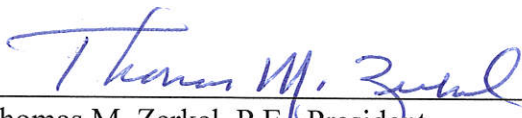
* Updated annually, together with the overhead.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.56 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

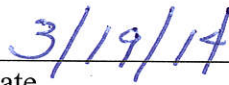
** Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. – Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; and printing costs, which are less than \$150.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS**

- I. The Engineer, Gray & Osborne, Inc., certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I)(B) of this certification; and
 - D. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.



Thomas M. Zerkel, P.E., President
Gray & Osborne, Inc.



Date

The Agency may confirm the Engineer's suspension or debarment status on General Services Administration Excluded Parties List System website: www.epls.gov.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: City Speed Limit Discussion

Date: June 6, 2017

Title: City Speed Limit Discussion

Attachments: EMC Chapter 10.10, Posted Speed Limits Map

Submitted By: Daryl Eidingen

Approved For Agenda By: Daryl Eidingen, Mayor

Discussion: As the Council is aware, numerous citizens have expressed concern over various roads in the City in regard to pedestrian safety. Most of the concerns are about lack of shoulder to walk on. The City of Seattle recently lowered all speeds on residential roads with a study showing that reduction by 10 mph would increase the survival rates for pedestrians from impact by a factor of 4, reducing injuries to the citizens. I have included our EMC, and as you can see, the Council can pick which roads might most need speed adjustments.

Recommendation: Determine which, if any, roads the council feels safety could be improved to our citizens, and seek public impute after specific changes are determined.

Fiscal Impact: Estimated to be about \$1000 per reduction for new signage installed.

Chapter 10.10

SPEED LIMITS

Sections:

- 10.10.010 State speed laws applicable – Exceptions.
- 10.10.020 Increasing state speed limit.
- 10.10.030 Decreasing state speed limit.
- 10.10.040 Posting of signs authorized.
- 10.10.050 Speed limits within school zones.
- 10.10.100 Penalties.

10.10.010 State speed laws applicable – Exceptions.

The state traffic laws regulating the speed of vehicles at 25 miles per hour. shall be applicable upon all streets within the city, except that the legislative authority of the city, as authorized by state law, may declare and determine by order, rule or regulation, properly adopted, that certain increased or decreased speed regulations shall be applicable upon specified streets or in certain areas, in which event it is unlawful for any person to operate a vehicle at a speed in excess of the speed so established when proper signs are in place giving notice thereof. (Ord. 98-124 § 1, 1999).

10.10.020 Increasing state speed limit.

Whenever conditions are found to exist upon an arterial street or highway which warrant an increase in the speed permitted by state law, the legislative authority of this city, subject to the approval of the State Highway Commission in cases involving state highways, shall determine and declare a reasonable and safe maximum speed limit for such arterial street or highway, or portion thereof, not to exceed 55 miles per hour. Pursuant to the foregoing authority, the following speed limits are established for the following streets and highways:

A. Thirty-Five Miles Per Hour.

1. 8th Street East from 114th Avenue East to 122nd Avenue East;
2. 8th Street East from SR 161 to 114th Avenue East;
3. 16th Street East from 112th Avenue East to 114th Avenue East;
4. 18th Street East from 112th Avenue East to 114th Avenue East;
5. 18th Street East from 114th Avenue East to 122nd Avenue East;
6. 20th Street East from 87th Avenue Court East to 92nd Avenue East;
7. 24th Street East from 92nd Avenue East to SR 161;
8. 24th Street East from 112th Avenue East to 122nd Avenue East;
9. 24th Street East from SR 161 to 112th Avenue East;
10. 32nd Street East from 114th Avenue East to 112th Avenue East;
11. 32nd Street East from 112th Avenue East to SR 161;
12. 32nd Street East from 122nd Avenue East to 114th Avenue East;
13. 36th Street East from SR 161 to 114th Avenue East;
14. 36th Street East from 114th Avenue East to 122nd Avenue East;
15. 48th Street East from 122nd Avenue East to 114th Avenue East;

16. 48th Street East from 114th Avenue East to Chrisella Road East;
17. 48th Street East/Edgewood Drive East from 122nd Avenue East to Sumner Heights Drive East;
18. 92nd Avenue East from 20th Street East to 24th Street East;
19. 112th Avenue East from 24th Street East to 18th Street East;
20. 112th Avenue East from 32nd Street East to 24th Street East;
21. 112th Avenue East from 18th Street East to 16th Street East;
22. 114th Avenue East from 36th Street East to 32nd Street East;
23. 114th Avenue East from 8th Street East to Jovita Blvd East;
24. 114th Avenue East from 18th Street East to 8th Street East;
25. 114th Avenue East from 48th Street East to 36th Street East;
26. 114th Avenue East from Jovita Boulevard to County Line;
27. 122nd Avenue East from 36th Street East to 48th Street East;
28. 122nd Avenue East from 8th Street East to 18th Street East;
29. 122nd Avenue East from 32nd Street East to 36th Street East;
30. 122nd Avenue East from 24th Street East to 32nd Street East;
31. 122nd Avenue East from 18th Street East to 24th Street East;
32. Edgewood Drive East from Sumner Heights Drive East to Sumner Heights Drive East;
33. Jovita Blvd East from 114th Avenue East to West Valley Hwy East;
34. Jovita Blvd East from SR 161 to 114th Avenue East;
35. Sumner Heights Drive East from Edgewood Drive East to Sumner city limits.

B. Forty Miles Per Hour.

1. Meridian Avenue from the Pierce County line south to the city limits. (Ord. 98-124 § 2, 1999).

10.10.030 Decreasing state speed limit.

Whenever it is deemed inadvisable for vehicles to operate at the maximum speed allowed by state law at 25 miles per hour on any portion of a street or public highway on account of a sharp curvation, highway construction or repairs, excessive traffic, any dangerous condition, or other temporary or permanent cause, the legislative authority of the city, subject to the approval of the State Highway Commission in cases involving state highways, shall determine and fix a lower maximum speed or otherwise regulate a lesser speed; provided, that in no case shall the maximum speed be reduced to less than 20 miles per hour. (Ord. 98-124 § 3, 1999).

10.10.040 Posting of signs authorized.

The mayor is hereby authorized and directed to cause appropriate signs to be posted informing the public of the speed limits established pursuant to this chapter. The city clerk is hereby directed to file a certified copy of the ordinance codified in this chapter with the Secretary of Transportation for approval of the speed limits on state highways as provided by law. (Ord. 15-447 § 1 (Exh. A); Ord. 98-124 § 4, 1999).

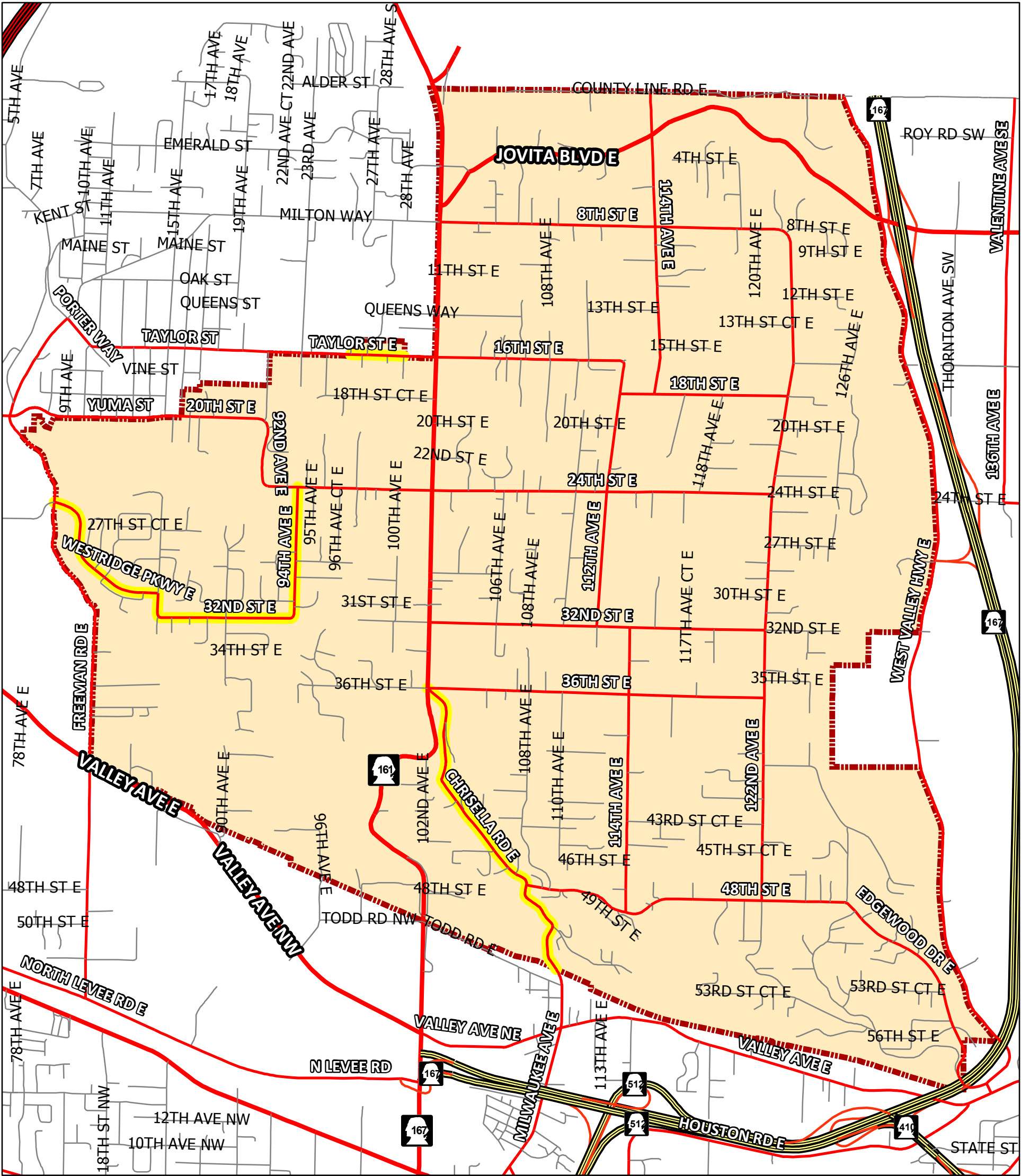
10.10.050 Speed limits within school zones.

A. Whenever a child or children are present in the vicinity of a city street, sidewalk or shoulder area posted with school speed limit signs, and/or when that school limit sign is equipped with flashing yellow lights to indicate that the school speed limit sign is in effect, no person shall operate a motor vehicle in excess of 20 miles per hour within such posted areas.

B. The mayor is authorized to establish school speed limit zones in the vicinity of schools within the city and to direct the placement of appropriate signage to advise the motoring public of the speed restrictions. (Ord. 15-447 § 1 (Exh. A); Ord. 01-173 § 1).

10.10.100 Penalties.

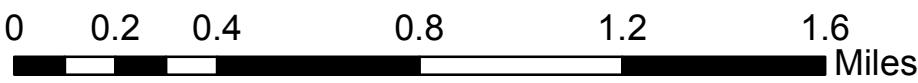
Unless another penalty is expressly provided, every person convicted of a violation of any section of this title shall be guilty of an infraction and shall be punished by a fine of not more than \$250.00. (Ord. 01-173 § 2).



Legend

Roads

- Interstate Highway
- Highway Ramp
- Limited Access State Highway
- Other State Highway
- Major Road
- Arterial
- Residential
- 25 MPH Arterials
- Edgewood City Limits



1 inch = 2,000 feet

Note: All Arterial Roads (red lines) are posted 35 miles per hour, unless otherwise noted. All other roads are 25 miles per hour.



Author: Jeremy Metzler
Date Prepared: 5/3/2017

City of Edgewood Posted Speed Limits

