CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA-*REVISED*
Tues., August 1, 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.** ***Discussion/Review****(CM Shook will provide at meeting)* – Review submission of Council Highlight (Fall Edition)
   - **B.** ***Discussion*** *(pg. 2)* – Surface Water Management Plan Update
   - **C.** ***Discussion*** *(pg. 17)* – Sewer Development
   - **D.** ***Discussion*** *(pg. 103)* – Verizon Wireless (Seattle SMSA Limited Partnership) Franchise Agreement
   - **E.** ***Discussion/Review*** *(pg. 156)* **–** View Pointe Final Plat

3. **OTHER COUNCIL ITEMS**
4. **ADJOURN**

Special City Council meeting will immediately follow Study Session, see agenda below:

CITY OF EDGEWOOD
CITY COUNCIL SPECIAL MEETING AGENDA -*REVISED*
Tues., August 1, 2017 ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. **CALL TO ORDER**

2. **CONSENT AGENDA** *(pg. 160)***:** *The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.*
   The following items are presented for Council approval:
   A. Regular City Council Meeting Minutes of July 11, 2017,
   B. Study Session Meeting Minutes of July 18, 2017.
   C. AB 17-031, a motion approving July 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems; Dept. of Labor & Industries; Employment Security Department and Payroll Direct Deposit in the amount of $58,154.02; and Vendor Check Numbers 22839-22850 with EFT Payments in the amount of $36,723.00. Total distributions submitted for review & authorization in the amount of $94,877.02

3. **COUNCIL BUSINESS**
   A. AB 17-0503 *(pg 173)*, a motion to accept second reading and adoption of Ordinance No. 17-0503, 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

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: SWMP Update

Date: August 1, 2017

Title: Surface Water Management Plan Update – Status and Schedule

Attachments: DRAFT Gap Analysis Memo from Herrera, with Appendix A

Submitted By: Jeremy Metzler, PE – Senior Engineer / SW Program Manager

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: As agreed under Resolution 17-0365 on April 11, 2017, we have engaged with Herrera Environmental Consultants to perform a comprehensive update to our City's 20-year-old Surface Water Management Plan (SWMP). A kickoff meeting was held on May 12, and Herrera has been coordinating with us in accordance with our contract.

We recently received the attached draft gap analysis memo, which identifies two components of our Municipal Stormwater Permit where additional resources are needed: Public Education and Outreach, and Controlling Runoff. While we have made significant advances in our local stormwater regulations over the last year, we simply lack the local resources to effectively and fully implement and enforce them. That said, we as staff will continue to do everything possible to uphold the regulations and protect the citizens.

We anticipate receiving the "white paper" regarding closed depression flood control methods within a month, followed by initial subsurface investigation work and grant applications. The 2017 update to the Surface Water Capital Improvement Plan (CIP) is underway, with Herrera assisting in evaluation and prioritization. The FCS Group has started their utility rate analysis, digging through the financial data we've provided and preparing for CIP sustainability evaluation. Public workshop(s) are tentatively planned for September, to gather further input and ensure a transparent process. All things considered, the SWMP update schedule targets completion in late November / early December.

Recommendation: No action is required at this time. We will continue to update the Council as progress is made, and we welcome any comments and input the Council may have throughout the process.

Fiscal Impact: The total executed contract amount is $182,350, paid for exclusively by existing Surface Water Utility Funds. As the rate analysis and Capital Improvement Plan components take shape, we anticipate revisions to the City's existing Surface Water Rates. There will be several opportunities for public input and discussion before any such revisions are made.

TECHNICAL MEMORANDUM

Date: July 6, 2017

To: Jeremy Metzler, PE, City of Edgewood

Copy to:

From: Rebecca Dugopolski, PE; Meghan Mullen, and Joy Michaud, Herrera Environmental Consultants

Subject: City of Edgewood Stormwater Program Gap Analysis and Needs Assessment

BACKGROUND

The City of Edgewood (City) currently implements its Stormwater Management Program (SWMP) to achieve regulatory compliance and to minimize the adverse impacts of stormwater on the natural and built environments (i.e., managing peak flow volumes to avoid flooding and providing water quality treatment to mitigate impacts on receiving waters). Implementation of the SWMP is primarily the responsibility of the Public Works Department, with support provided by the Operations and Maintenance division of Public Works, Community Development Department, and Parks and Recreation Department.

The current SWMP activities are described in the 2017 SWMP and 2016 annual report that was submitted to the Washington State Department of Ecology (Ecology) in March 2017. The SWMP includes information on planned SWMP activities to meet the requirements of Ecology's National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit (NPDES Phase II Permit), which is the most significant regulatory requirement driving the City's stormwater program. The NPDES Phase II Permit, requires that the City prepare annual reports to document activities taken to meet the associated requirements.

In preparation of this report, the City's SWMP activities and documentation were reviewed to identify gaps in the SWMP. The primary focus of this effort was to evaluate the program against requirements of the NPDES Phase II Permit; however, other program needs have also been included if they were identified by City staff. Appendix A contains a detailed matrix of the City's activities, provides recommendations for meeting identified data gaps, and includes funding and staffing estimates associated with the recommendations. The purpose of this memorandum is to provide an overview of the gap analysis process and briefly summarize the recommendations from Appendix A. The recommendations will be used by City staff to direct further SWMP activities and to help guide the City's Stormwater Management Plan update.

Methods of Analysis

Potential gaps and areas for improvement were identified through a review of available documents, a questionnaire sent to City staff, a project kickoff meeting with City staff, and follow-up discussions.

Document Review

Document review included pertinent documents identified and/or provided by the City, including; City codes and policies, maps and GIS data, SWMP documents, public education materials, and operations and maintenance (O&M) information. These were reviewed to provide a foundation for characterizing the existing SWMP.

Questionnaire and Kickoff Meeting

To examine the components of the City's SWMP in more detail and to identify gaps and potential issues, City staff members representing various aspects of the City's stormwater program attended a project kickoff meeting with Herrera staff on May 12, 2017.

A Gap Analysis questionnaire was distributed to participants in advance of the meeting to gather staff input and perspective on key stormwater issues. Questionnaire responses were used to shape and facilitate the meeting discussion, focusing on NPDES Phase II Permit requirements, staffing needs, and other issues of concern to City staff.

NPDES Phase II Permit Requirements

The most significant regulatory requirement facing the City's SWMP is Ecology's NPDES Phase II Permit, which addresses a variety of issues associated with stormwater runoff and requires the City to develop several distinct SWMP components. The current NPDES Phase II Permit (issued by Ecology on August 1, 2012; effective on August 1, 2013) specifies requirements for the following:

- Public education and outreach
- Public involvement and participation
- Illicit discharge detection and elimination (IDDE)
- Controlling runoff from new development, redevelopment, and construction sites
- Municipal operations and maintenance (O&M)
- Compliance with Total Maximum Daily Load (TMDL) Requirements

- Monitoring and Assessment
- Reporting Requirements

Recommendations associated with each of these components are provided in Appendix A along with additional resources (e.g., staffing and equipment) required to implement these recommendations.

CONCLUSIONS

The City's SWMP meets a majority of the NPDES Phase II Permit requirements; however, there are two primary areas where additional resources are needed: Public Education and Outreach and Controlling Runoff from New Development, Redevelopment, and Construction Sites. Two additional areas (IDDE and Municipal O&M) could also use a slight increase in funding or staff support to meet existing NPDES Phase II Permit requirements. Based on the recommendations provided in Appendix A, one-time funding needs have been estimated at $50,000 and ongoing funding needs have been estimated at $1,000. One-time funding needs have been identified to support requirements of the City's IDDE program and to support Controlling Runoff from New Development, Redevelopment, and Construction Sites. Ongoing funding would support the replacement of equipment used for illicit discharge field screening and source tracing as part of the City's IDDE program.

Additional City staff support needed has been estimated at 840 hours (or 0.48 Full Time Equivalents [FTE]). This additional staff support is needed to support requirements of the City's Public Education and Outreach program, to Controlling Runoff from New Development, Redevelopment, and Construction Sites, and to support Municipal O&M.

Table 1. Summary of Funding and Staffing Recommendations

	Funding		Staff Support	
Permit Section	**One-time**	**Ongoing**	**Hours**	**FTE**
Public Education and Outreach	$10,000	$0	440	0.25
Public Involvement and Participation	$0	$0	0	0
IDDE	$15,000	$1,000	0	0
Controlling Runoff from New Development, Redevelopment, and Construction Sites	$25,000	$0	320	0.18
Municipal O&M	$0	$0	80	0.05
Compliance with TMDL Requirements	$0	$0	0	0
Monitoring and Assessment	$0	$0	0	0
Reporting	$0	$0	0	0
Total	**$50,000**	**$1,000**	**840**	**0.48**

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Public Education and Outreach				
S5.C.1.a – Education and outreach program "To build general awareness, Permittees shall select from the following target audiences and subject areas: (a) General public (including school age children), and businesses (including home-based and mobile businesses): • General impacts of stormwater on surface waters. • Impacts from impervious surfaces. • Impacts of illicit discharges and how to report them. • Low impact development (LID) principles and LID BMPs. • Opportunities to become involved in stewardship activities."	Based on the City's website: • Brochures and resources on the City website under the heading 'What can you do to help protect the environment?' www.cityofedgewood.org/government/public_works/surface_water_management.php ○ "Ten Ways You Can Improve the Quality of Stormwater Runoff" Handout: ○ "Fish-Friendly Car Wash" handouts ▪ Handout that describes the negative impacts of traditional car wash practices ▪ Handout with contact information and a description of the car wash kit that can be used for fundraising car washes ▪ Handout with instructions on how to set up the car wash kit ○ Natural Yard Care handouts: ▪ "Soil and Mulch" Handout: describes soil components, how to amend soils, and how to mulch (Step 1 of the Natural Yard Care program). ▪ "Planning and Planting a Sustainable Landscape" Handout: describes how to plan landscaping and select appropriate plants (Step 2 of the Natural Yard Care program). ▪ "Watering Wisely" Handout: describes timing, amounts, and techniques for watering and irrigation (Step 3 of the Natural Yard Care program). ▪ "Think Twice Before Using Pesticides" Handout: describes alternative approaches to pesticide use for pest management (Step 4 of the Natural Yard Care program). ▪ "Natural Lawn Care" Handout: describes maintenance practices including mowing, fertilizing, watering, de-thatching and aerating, and controlling pests and weeds (Step 5 of the Natural Yard Care program). ○ Link to the Ecology website page for Washington Waters and related programs. ○ Link to the Ecology website for Saving Puget Sound and related programs. Based on the 2017 Stormwater Management Program (SWMP): • Publish articles in City's quarterly Edgewood Magazine that are related to stormwater. • Provide copies of the *Rain Garden Handbook for Western Washington* at City Hall. • Host community workshops about LID BMPs, conservation, etc. ○ [Request workshop titles and dates since 2013 from Jeremy]	• Move forward with planned activities in the 2017 SWMP: ○ Work with Puyallup School District on stormwater education opportunities ○ Work with the Pierce County Parks' Conservation Futures grant program to preserve sensitive areas • Finalize educational handout for paving contractors • Update broken website links: ○ The 'water-saving tips' page. ○ Recycling and Disposal of Household Hazardous Waste page from Pierce County • Identify regional partners and regional public education campaigns that the City could participate in or post resources from: ○ Puget Sound Starts Here www.pugetsoundstartshere.org/ ○ Don't Drip and Drive https://fixcarleaks.org/ ○ Natural Yard Care: www.co.pierce.wa.us/1816/Natural-Yard-Care ○ Source control resources (see IDDE recommendations under S5.C.3)	160 hours (0.09 FTE)	Assumes 160 hours needed to update the website, coordinate with other partners and programs, and to develop and update some basic educational handouts (ongoing).
		• Host additional community workshops	120 hours (0.07 FTE)	Assumes 120 hours needed to update the workshop materials, schedule, advertise, and implement at least one workshop annually (ongoing).
(b) Engineers, contractors, developers and land use planners • Technical standards for stormwater site and erosion control plans. • LID principles and LID BMPs. • Stormwater treatment and flow control BMPs/facilities."	Refer to handouts listed under New Development, Redevelopment, and Construction Sites (see S5.C.4)	• Refer to S5.C.4	NA	NA

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Public Education and Outreach (continued)				
S5.C.1.b – Stewardship opportunities "Each Permittee shall create stewardship opportunities and/or partner with existing organizations to encourage residents to participate in activities such as stream teams, storm drain marking, volunteer monitoring, riparian plantings and education activities."	No specific stewardship opportunities have been identified	• Develop a plan and a schedule for complying with this permit requirement • Move forward with planned activities in the 2017 SWMP: ○ Coordinate with Pierce Conservation District Stream Teams for the Puyallup River watershed • Consider implementing a tree planting community event • Consider distributing free trees or rain barrels at a community event • Consider a tree coupon program similar to the City of Tacoma: www.cityoftacoma.org/cms/one.aspx?objectId=66710 • Consider implementing a catch basin marking program with local scouts or other community groups	80 hours (0.05 FTE)	Assumes 80 hours of outreach needed per year (ongoing).

S5.C.1.c – Measure the understanding and adoption of targeted behaviors
 	
"Each Permittee shall measure the understanding and adoption of the targeted behaviors for at least one target audience in at least one subject area. No later than February 2, 2016, Permittees shall use the resulting measurements to direct education and outreach resources most effectively, as well as to evaluate changes in adoption of the targeted behaviors. Permittees may meet this requirement individually or as a member of a regional group."
	Based on the 2016 Annual Report:
	• City has identified target audience: engineers, contractors, and developers
	• City has identified subject areas:
	  ○ Technical standards for stormwater site development
	  ○ LID techniques
	• Developed "Storm drainage minimum design requirements for small projects" handout
		• Submit a G20 Non-Compliance Notification letter to Ecology with a plan and schedule for complying with the evaluation component of this permit requirement
		• Develop and conduct a survey for the target audience to follow up on effectiveness of this form
		• Develop a short report or memorandum summarizing the results of the survey
		• Update handout based on survey feedback
			80 hours (0.05 FTE)
			
			$10,000 (one-time)
				Assumes 80 hours needed initially to write the G20 letter, develop the survey approach, and work with an external consultant/ contractor to implement the survey.
				
				Ongoing costs would be to update the survey and to implement changes in the public education program.
				
				External support budget assumes 100 hours at a rate of $100/hour.

		Public Education and Outreach Subtotal	**440 hours (0.25 FTE) and $10,000 (one-time)**	
Public Involvement and Participation				
S5.C.2.a - Create opportunities for public participation "Permittees shall provide ongoing opportunities for public involvement and participation through advisory councils, public hearings, watershed committees, participation in developing rate-structures or other similar activities. Each Permittee shall comply with applicable state and local public notice requirements when developing elements of the SWMP." The minimum performance measures are: "Permittees shall create opportunities for the public to participate in the decision-making processes involving the development, implementation and update of the Permittee's SWMP."	Based on 2016 Annual Report: • The City provides public notice for review and update of all codes, comprehensive plans, and capital improvement programs. The first stop in the review process for any proposed change is the City's Planning Commission, where there are both formal and informal public review opportunities. • Recommendations of the Planning Commission are forwarded to the City Council for final review and action, which includes another public notice and hearing opportunity. • Larger programs and projects, such as comprehensive plan updates, typically include more involved public participation, such as workshops and town halls. Based on Questionnaire: • The Citizen Action Request (CAR) form is available at the counter and on the website. The system allows for complaints to be filed, investigated and resolved by members of City Staff.	• No gaps identified	NA	NA

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations

<table>
<tr><th>Permit Section</th><th>Current Activities</th><th>Recommendations</th><th>Additional Support Needed (staff/funding)</th><th>Support Assumptions</th></tr>
<tr><td colspan="5">Public Involvement and Participation (continued)</td></tr>
<tr><td>S5.C.2.b – Post the SWMP Plan and annual report on City's website

"Each Permittee shall post on their website their SWMP Plan and the annual report required under S9.A no later than May 31 each year. All other submittals shall be available to the public upon request. "</td><td>Current SWMP, annual report, and attachments are posted on the City's website www.cityofedgewood.org/government/public_works/surface_water_management.php</td><td>• No gaps identified</td><td>NA</td><td>NA</td></tr>
<tr><td colspan="3">Public Involvement and Participation Subtotal</td><td>NA</td><td></td></tr>
<tr><td colspan="5">Illicit Discharge Detection and Elimination (IDDE)</td></tr>
<tr><td>S5.C.3.a - Ongoing mapping requirements

"Mapping of the MS4 shall continue on an ongoing basis. MS4 maps shall be periodically updated. Update maps if necessary to meet the requirements of this section no later than February 2, 2018.

At a minimum, maps shall include the following information:
i. Known MS4 outfalls and known MS4 discharge points.
ii. Receiving waters, other than ground water.
iii. Stormwater treatment and flow control BMPs/facilities owned or operated by the Permittee.
iv. Tributary conveyances to all known outfalls and discharge points with a 24 inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems. The following attributes shall be mapped:
• Tributary conveyance type, material, and size where known.
• Associated drainage areas.
• Land use.
v. All connections to the MS4 authorized or allowed by the Permittee after February 16, 2007.
vi. Connections between the MS4 owned or operated by the Permittee and other municipalities or public entities.
vii. Geographic areas served by the Permittee's MS4 that do not discharge stormwater to surface waters."</td><td>Based on the 2017 SWMP:
• MS4 base map available through Pierce County's CountyView GIS platform developed in 2009 and updated each year: www.co.pierce.wa.us/2281/GIS-Applications
○ Pierce County has mapped streams and wetlands as receiving waters.
○ Pierce County has mapped stormwater treatment and flow control structures including catch basins, control structures, dry wells, manholes, and vaults.
○ Pipes and channels mapped by Pierce County include material, type, size, and a description of discharge points. Possible outfalls based on this data are summarized in the table below:
<table>
<tr><th>Conveyance structure</th><th>Ponds</th><th>Streams</th><th>Potholes</th><th>Ravines</th></tr>
<tr><td>All Pipes</td><td>71</td><td>86</td><td>55</td><td>17</td></tr>
<tr><td>Pipes over 24 inch diameter</td><td>0</td><td>17</td><td>0</td><td>0</td></tr>
<tr><td>All Channels</td><td>18</td><td>9</td><td>34</td><td>8</td></tr>
<tr><td>Channels over 24 inches deep</td><td>1</td><td>0</td><td>1</td><td>1</td></tr>
</table>
Based on the 5/12/17 kickoff meeting:
• The City has identified 5 known outfalls:
○ At 114th north of Jovita (24-inch diameter)
○ At the pond south of 24th on Meridian (Simon's Creek) (12-inch diameter)
○ Edgewood Dr. (SE corner into Sumner) (12-inch diameter, discharges into a ravine)
○ At the corner of 32nd St E and 94th Ave E (Simon's Creek) (12-inch diameter)
○ At the crossing of the Surprise Lake discharge channel at 92nd Ave E (south of 20th) (48-inch diameter)

Based on the City's website:
• The City has mapped land use designations: www.cityofedgewood.org/government/planning_and_land_use/index.php</td><td>• Update outfall inventory to include discharges to pothole/closed depression areas that should be classified as outfalls.
• Map the tributary area for the known outfalls of 24-inch diameter or greater</td><td>$10,000 (one-time)</td><td>Assumes contract (or intern) support is needed (100 hours at $100/hour)</td></tr>
</table>

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
IDDE (continued)				
S5.C.3.b - Illicit discharge ordinance "Each Permittee shall implement an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illicit discharges into the Permittee's MS4 to the maximum extent allowable under state and federal law."	Based on 2016 Annual Report: • EMC 13.25 – Illicit Stormwater Discharges updated by Ordinance 16-482 on November 8, 2016	No gaps identified	NA	NA
S5.C.3.c - Ongoing program implementation to identify and detect illicit discharges The program shall include the following components: i. Procedures for conducting investigations of the Permittee's MS4, including field screening and methods for identifying potential sources.	Based on 5/12/17 kickoff meeting: • The City has an interlocal agreement (ILA) with Pierce County to perform catch basin inspections and cleaning. • There are boxes on the Pierce County inspection form to check for oil presence, condition, and comments. Based on 2016 Annual Report: • 40% of MS4 coverage area screened in 2016	• Provide recommendations to Pierce County staff on information that the City would like to track for compliance with this permit requirement. ○ Consider modifying "oil presence" field to apply to other illicit discharges or adding another field for non-oil discharges.	NA	Complete with current staffing
ii. A publicly listed and publicized hotline or other telephone number for public reporting of spills and other illicit discharges.	Based on 2016 Annual Report: • City Hall contact information: 253-952-3299 • 4 calls received in 2016	• Spill hotline is the same as the City Hall general information line and is not well publicized. • Place hotline more prominently on the City's website or create a hotline specific to reporting spills.	NA	Complete with current staffing
iii. An ongoing training program for all municipal field staff, who, as part of their normal job responsibilities, might come into contact with or otherwise observe an illicit discharge and/or illicit connection to the MS4, on the identification of an illicit discharge and/or connection, and on the proper procedures for reporting and responding to the illicit discharge and/or connection. Follow-up training shall be provided as needed.	No established training program for IDDE.	• Require applicable City staff to watch Illicit Connection and Illicit Discharge (IC/ID) Field Screening and Source Tracing Guidance Manual videos: www.wastormwatercenter.org/illicit-connection-illicit-discharge • Attend in-person IC/ID field screening training in late 2018	NA	Complete with current staffing
iv. Permittees shall inform public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.	• General information provided on website (see S5.C.3.a) • Property / business owners are educated upon discovery of potential hazards / illicit discharges	Consider providing the following resources on the City's website: • Dump Smart Program (carpet cleaners, painters, and pressure washers): www.wastormwatercenter.org/dump-smart • Ecology pollution prevention by business type website: www.ecy.wa.gov/programs/hwtr/p2/ta.html • Ecology hazardous substances website: www.ecy.wa.gov/hsieo/index.html • City of Seattle resources (restaurants): www.seattle.gov/util/ForBusinesses/GreenYourBusiness/ToolsResourcesGuides/index.htm • Clark County dumpster maintenance brochure: www.clark.wa.gov/sites/default/files/dept/files/environmental-services/Stormwater/what-you-can-do/Dumpster%20maintenance%20web%206_2_16.pdf	NA	Complete with current staffing or proposed Public Education and Outreach staff under S5.C.1 above

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
IDDE (continued)				
S5.C.3.d - Ongoing program implementation to address illicit discharges "Each Permittee shall implement an ongoing program designed to address illicit discharges, including spills and illicit connections, into the Permittee's MS4. The program shall include: i. Procedures for characterizing the nature of, and potential public or environmental threat posed by, any illicit discharges found by or reported to the Permittee. Procedures shall address the evaluation of whether the discharge must be immediately contained and steps to be taken for containment of the discharge. ii. Procedures for tracing the source of an illicit discharge; including visual inspections, and when necessary, opening manholes, using mobile cameras, collecting and analyzing water samples, and/or other detailed inspection procedures. iii. Procedures for eliminating the discharge; including notification of appropriate authorities; notification of the property owner; technical assistance; follow-up inspections; and use of the compliance strategy developed pursuant to S5.C.3.b.v, including escalating enforcement and legal actions if the discharge is not eliminated.	Based on 5/12/17 kickoff meeting: • City staff investigate calls about IDDE issues. • Current equipment includes: flashlight, catch basin hooks, turbidimeter • Pierce County can assist with IDDE response if requested as part of the ILA.	• Adopt and/or modify the IC/ID Field Screening and Source Tracing Guidance Manual • Purchase basic equipment to assist with field screening and source tracing: o Mirror and pole o Dye testing supplies o Sand bags o Smoke testing equipment o Ammonia test strips o pH probe (with temperature probe) o Surfactant test kit o Potassium meter	$5,000 (one-time) $1,000 (annual replacement/restocking cost)	Adopting and/or modifying the IC/ID Field Screening and Source Tracing Guidance Manual will be completed with current staffing.
S5.C.3.e – Ongoing staff training program "Permittees shall train staff who are responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills, and illicit connections, to conduct these activities. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements or staffing. Permittees shall document and maintain records of the training provided and the staff trained."	No established training program for IDDE.	• Require applicable City staff to watch IC/ID Field Screening and Source Tracing Guidance Manual videos: www.wastormwatercenter.org/illicit-connection-illicit-discharge • Attend in-person IC/ID field screening training in late 2018 • Develop a spreadsheet or simple tracking form to document staff training	NA	Complete with current staffing
S5.C.3.f – Track and maintain records "Recordkeeping: Permittees shall track and maintain records of the activities conducted to meet the requirements of this section."	Based on Questionnaire responses: • The City tracks all complaints, including spills, with the Citizen Action Request (CAR) program which includes an online reporting option: http://cityofedgewood.org/government/city_clerk/citizen_action_form.php	No gaps identified	NA	NA
		IDDE Subtotal	**$15,000 (one-time) and $1,000 (ongoing)**	

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Controlling Runoff from New Development, Redevelopment, and Construction Sites				

S5.C.4.a – Ordinance to address runoff from development, redevelopment, and construction sites
 	
"Implement an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site projects…"
	Based on 2017 SWMP:
	• Policy requires that stormwater facilities are owned and maintained by HOAs, property owners, or another private party. The developer is required to execute and record an *Agreement to Maintain Stormwater Facilities and Implement a Pollution Source Control Plan*:
	  ○ O&M Plan and facility inspection requirements
	  ○ Requires annual inspection and reporting by responsible party which is an education and outreach opportunity for city staff.
	  ○ Contains an O&M facility plan
	• EMC Chapter 13.05 (Stormwater Manual – Site Development Regulations) updated by Ordinance 16-482 on November 8, 2016
	• The City has adopted the 2015 Pierce County Stormwater Management and Site Development Manual (PCM)
		No gaps identified	NA	NA

S5.C.4.b – Permitting process with site plan review, inspection, and enforcement
 	
i. Review of all stormwater site plans for proposed development activities.
	Based on 2016 Annual Report:
	• 119 stormwater site plans were reviewed
	
	Based on Questionnaire:
	• Each plan is carefully reviewed for conformance with the adopted manual, including review and verification of calculations, existing conditions, and potential impacts to adjacent areas / property.
	• The City has developed the following handouts for project proponents:
	  ○ Surface Water Compliance Application www.cityofedgewood.org/document_center/Surface_Water_Compliance_Application1.pdf
	  ○ Surface Water Compliance Application Information Sheet www.cityofedgewood.org/document_center/Surface_Water_Information_Sheet.pdf
	  ○ Storm Drainage Minimum Design Requirements for Small Projects www.cityofedgewood.org/document_center/SD%20Minimum%20Requirements%20(2016-12-01).pdf
		• Update Surface Water Compliance Application and Surface Water Compliance Application Information Sheet for consistency with the 2015 PCM
		• Post SWPPP short form on City's website
		• Consider developing additional checklist(s) and/or BMP sizing guidance
			$25,000 (one-time)	Minor edits to existing handouts and posting the SWPPP short form can be completed with current staffing.
				
				Development of up to 5 new checklists assumes an external support budget of 150 hours at a rate of $100/hour.
				
				Development of simplified BMP sizing guidance assumes an external support budget of 100 hours at a rate of $100/hour.

S5.C.4.b – Permitting process with site plan review, inspection, and enforcement ii. Inspect, prior to clearing and construction, all permitted development sites that have a high potential for sediment transport as determined through plan review based on definitions and requirements in Appendix 7 Determining Construction Site Sediment Damage Potential… iii Inspect all permitted development sites during construction to verify proper installation and maintenance of required erosion and sediment controls. Enforce as necessary based on the inspection. iv. Inspect all permitted development sites upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent stormwater facilities..."	Based on 2016 Annual Report: • 30 construction sites inspected prior to construction • 73 construction sites inspected during construction • 1 enforceable action taken Based on the 2017 SWMP: • Staff inspect all permitted development sites prior to clearing and construction activity • Staff verify installation and maintenance of temporary erosion and sediment control (TESC) and stormwater BMPs. • Enforcement actions are based on inspection results and Citizen Action Requests Based on 5/12/17 kickoff meeting with City Staff: • New Engineering tech performs in-house inspection program.	No gaps identified	NA	NA

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Controlling Runoff from New Development, Redevelopment, and Construction Sites (continued)				
S5.C.4.c – Long term operations and maintenance of stormwater treatment and flow control BMPs/ facilities i. Implementation of an ordinance or other enforceable mechanism that clearly identifies the party responsible for maintenance, requires inspection of facilities …and establishes enforcement procedures.	Based on the 2017 SWMP: • EMC Chapter 13.05 (Stormwater Manual – Site Development Regulations) updated by Ordinance 16-482 on November 8, 2016	No gaps identified	NA	NA

ii. Each Permittee shall establish maintenance standards that are as protective or more protective of facility function than those specified in Chapter 4 of Volume V of the Stormwater Management Manual for Western Washington. For facilities which do not have maintenance standards, the Permittee shall develop a maintenance standard.	• Policy requires that stormwater facilities are owned and maintained by HOAs, property owners, or another private party. The developer is required to execute and record an *Agreement to Maintain Stormwater Facilities and Implement a Pollution Source Control Plan*:
	  ○ O&M Plan and facility inspection requirements
	  ○ Requires annual inspection and reporting by responsible party which is an education and outreach opportunity for city staff.
	• The City has adopted the 2015 PCM which includes maintenance standards
		No gaps identified	NA	NA

iii. Annual inspections of all stormwater treatment and flow control BMPs/facilities that discharge to the MS4 and were permitted by the Permittee according to S5.C.4.b… iv. Inspections of all permanent stormwater treatment and flow control BMPs/facilities and catch basins in new residential developments every six months until 90% of the lots are constructed… vii. The program shall include a procedure for keeping records of inspections and enforcement actions by staff, including inspection reports, warning letters, notices of violations, and other enforcement records…"	The City is performing construction inspections (per S5.C.4.c.iv), but is not performing ongoing annual inspections of private stormwater treatment and flow control BMPs/facilities (per S5.C.4.c.iii).	• Finalize private facility database • Develop a list of private facilities that are required to be inspected • Finalize access easements with landowners to perform private facility inspections. • Submit a G20 Non-Compliance Notification letter to Ecology with a plan and a schedule for complying with the private facility inspection requirement	320 hours (0.18 FTE)	Initial and ongoing effort to keep private facility database, access easements, and mapping up to date is estimated as 160 hours per year. Conducting annual private stormwater facility inspections is estimated as 160 hours per year.
S5.C.4.d - Notice of Intent copies "The program shall make available as applicable copies of the "Notice of Intent for Construction Activity" and copies of the "Notice of Intent for Industrial Activity" to representatives of proposed new development and redevelopment."	Based on 2016 Annual Report: • Copies are provided	No gaps identified	NA	NA

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Controlling Runoff from New Development, Redevelopment, and Construction Sites (continued)				
S5.C.4.e – Ongoing staff training program to control stormwater runoff "Each Permittee shall ensure that all staff whose primary job duties are implementing the program to control stormwater runoff from new development, redevelopment, and construction sites, including permitting, plan review, construction site inspections, and enforcement, are trained to conduct these activities. Follow-up training shall be provided as needed to address changes in procedures, techniques or staffing. Permittees shall document and maintain records of the training provided and the staff trained."	Based on 2016 Annual Report: • Staff are trained • [Request training tracking log from Jeremy to confirm that adequate trainings are being performed]	[TBD based on training records]	TBD	TBD
S5.C.4.f – LID code related requirements "i. Permittees shall review, revise and make effective their local development-related codes, rules, standards, or other enforceable documents to incorporate and require LID principles and LID BMPs… ii. The summary shall include existing requirements for LID principles and LID BMPs in development-related codes…"	Based on the 2017 SWMP: • Revised local development code, rules, and standards to incorporate LID principles so it is the preferred commonly used approach to site development Based on 2016 Annual Report: • City of Edgewood – LID Review and Revision Summary submitted with 2016 Annual Report • EMC 13.05 (Stormwater Manual – Site Development Regulations) updated by Ordinance 16-482 on November 8, 2016	No gaps identified	NA	NA
S5.C.4.g – Watershed-scale stormwater planning	The City is not a participant.	*Not applicable to the City because it is not located in any of the proposed Phase I basins*	NA	NA
Controlling Runoff from New Development, Redevelopment, and Construction Sites Subtotal			**320 hours (0.18 FTE) and $25,000 (one time)**	
Municipal Operations and Maintenance (O&M)				
S5.C.5.a – Implement SWMMWW O&M standards or equivalent "Each Permittee shall implement maintenance standards that are as protective, or more protective, of facility function than those specified in Chapter 4 of Volume V of the Stormwater Management Manual for Western Washington..."	The City has adopted the 2015 Pierce County Stormwater Management and Site Development Manual (PCM)	No gaps identified	NA	NA
S5.C.5.b – Annual inspection of stormwater treatment and flow control facilities/ BMPs "Annual inspection of all municipally owned or operated permanent stormwater treatment and flow control BMPs/facilities, and taking appropriate maintenance actions in accordance with the adopted maintenance standards."	Based on questionnaire responses: • Annual inspection frequency of city-owned facilities Based on 2016 Annual Report: • There are 10 municipally owned facilities, all of which were inspected and maintained last year.	No gaps identified	NA	NA

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Municipal O&M (continued)				
S5.C.5.c – Spot checks of potentially damaged stormwater treatment and flow control facilities/ BMPs "Spot checks of potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events (24 hour storm event with a 10 year or greater recurrence interval)."	Based on questionnaire responses: • Both Pierce County staff and City staff are responsible for spot checks • City staff are mostly responsible for spot checks during storm events • Spot checks are performed annually at a minimum • Spot checks are performed before forecasted significant storm events [Question for Jeremy: Are all 10 City facilities on the spot check list? Or is there a subset on the list? Verify that spot checks are performed after major storm events.]	[TBD based on results from Jeremy]	TBD	TBD
S5.C.5.d – Inspection of catch basins and inlets ". …inspection of all catch basins and inlets owned or operated by the Permittee at least once no later than August 1, 2017 and every two years thereafter…"	Based on 2016 Annual Report: • 1725 CBs, 767 inspected in 2016, 175 cleaned in 2016 • [Question for Jeremy: Does the City have a tally of total CBs inspected since 2013? On track to meet the August 2017 deadline?] Based on questionnaire responses: • Based on the ILA, Pierce County staff perform a majority of the catch basin inspections and clean as needed based on inspection results. • City staff perform inspections on demand as flooding and other problems arise.	[TBD based on results from Jeremy]	TBD	TBD
S5.C.5.f – Practices, policies, and procedures to reduce stormwater impacts "Implement practices, policies and procedures to reduce stormwater impacts associated with runoff from all lands owned or maintained by the Permittee, and road maintenance activities under the functional control of the Permittee… The following activities shall be addressed: • Pipe cleaning • Cleaning of culverts that convey stormwater in ditch systems • Ditch maintenance • Street cleaning • Road repair and resurfacing, including pavement grinding • Snow and ice control • Utility installation • Pavement striping maintenance • Maintaining roadside areas, including vegetation management • Dust control • Application of fertilizers, pesticides, and herbicides according to the instructions for their use, including reducing nutrients and pesticides using alternatives that minimize environmental impacts • Sediment and erosion control • Landscape maintenance and vegetation disposal • Trash and pet waste management • Building exterior cleaning and maintenance"	Based on questionnaire responses: • Pierce County has a maintenance contract to perform regular street sweeping. • The City owns a skid steer and small dump truck for performing small maintenance tasks without County involvement. Based on 5/12/17 kickoff meeting: • City has adopted Pierce County SOPs with some modifications.	Finalize SOPs documenting City practices, policies, and procedures	80 hours (0.05 FTE)	Initial and ongoing effort to finalize SOPs with internal staff, review annually, incorporate necessary updates, and track regional programs that may trigger updates.

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Municipal O&M (continued)				
S5.C.5.g – Ongoing training program to protect water quality "Implement an ongoing training program for employees of the Permittee whose primary construction, operations or maintenance job functions may impact stormwater quality. The training program shall address the importance of protecting water quality, operation and maintenance standards, inspection procedures, selecting appropriate BMPs, ways to perform their job activities to prevent or minimize impacts to water quality, and procedures for reporting water quality concerns. Follow-up training shall be provided as needed to address changes in procedures, techniques, requirements, or staffing. Permittees shall document and maintain records of training provided and the staff trained."	Based on the 2017 SWMP: • Maintenance and inspection staff are CESCL certified • Pierce County Public Works and Maintenance crews are trained using the Regional Roads Maintenance Program • City documents and maintains records of training • [Request training tracking log from Jeremy to confirm that adequate trainings are being performed]	[TBD based on training records from Jeremy]	TBD	TBD
S5.C.5.h – SWMPPP implementation "Implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards, and material storage facilities owned or operated by the Permittee in areas subject to this Permit…"	Based on questionnaire responses: • The City does not currently have any City facilities that require a SWPPP.	No gaps identified	NA	NA
S5.C.5.i – Maintain records of inspections and maintenance "Maintain records of inspections and maintenance or repair activities conducted by the Permittee."	Based on questionnaire responses: • Pierce County tracks inspections through GIS database and project / activity billing and invoices. • City staff track inspections through hardcopy report forms.	No gaps identified	NA	NA
		Municipal O&M Subtotal	**80 hours (0.05 FTE)**	
Compliance with Total Maximum Daily Load (TMDL) Requirements				
Implement TMDL requirements	Based on the 2017 SWMP: • The City is part of the Puyallup TMDL for fecal coliform bacteria listed in Appendix 2 of the NPDES Permit. • The City is required to track construction activities in the basin and prioritize field screening for illicit discharges. Several permitted construction activities occurred in 2016; however, no illicit discharges were detected from these construction sites. The City also did not detect any illicit discharges during routine field screening	No gaps identified	NA	NA
Comply with applicable TMDLs not in the permit	Does not apply	No gaps identified	NA	NA
Comply with permit modifications and TMDL implementation plans	Does not apply	No gaps identified	NA	NA
		Compliance with TMDL Requirements Subtotal	**NA**	

Table A-1. City of Edgewood Stormwater Management Program Activities and Recommendations				
Permit Section	**Current Activities**	**Recommendations**	**Additional Support Needed (staff/funding)**	**Support Assumptions**
Monitoring and Assessment				
Description of stormwater monitoring or stormwater-related investigations	Based on the 2017 SWMP: • Hydrologic Surface Water Analysis commissioned for 108th Avenue East neighborhood (not yet complete)	Provide a description of the study (and a summary of the results when available) in the annual report to Ecology.	NA	Complete with current staffing
Regional Stormwater Monitoring Program participation	Based on the 2017 SWMP: • The City contributes to a collective fund to implement RSMP	No gaps identified	NA	NA
		Monitoring and Assessment Subtotal	**NA**	
Reporting				
Submit annual report	The City submits annual reports as required by Ecology.	No gaps identified	NA	NA
Maintain records for 5 years	Records related to the permit will be kept for at least five years as required by the Permit.	No gaps identified	NA	NA
Make records available to the public	The City makes records available to the public upon request.	No gaps identified	NA	NA
Internal coordination mechanisms summary	Internal coordination mechanisms summary was submitted with the 2014 Annual Report: www.cityofedgewood.org/Edgewood_Policy_internal_coordination.pdf [Jeremy to verify that this is the "written description of internal coordination mechanisms" that was requested with the 2014 Annual Report, due to Ecology in March 2015]	No gaps identified	NA	NA
		Reporting Subtotal	**NA**	
		Total	**$50,000 (one-time)** **$1,000 (ongoing)** **840 hours (0.48 FTE) (ongoing)**	

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Edgewood Sanitary Sewer Utility

Date: August 1, 2017

Title: Edgewood Sanitary Sewer Utility Evaluation

Attachments: Pierce County Agreements (Historic) and Proposed Transfer Agreement w/attachments

Submitted By: Aaron Nix, ACA Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Staff is continuing to wade through past events that have transpired or have not in regard to issues pertaining to the City of Edgewood and sewer service throughout the City of Edgewood. One of the earliest issues pertained to the building of the Northwood Elementary school site, in which the previous school utilized a tank system that involved ongoing, regular pumping intervals that was very labor intensive, at a significant cost to the Puyallup School District at the time it was developed. In order to solve this problem, the school district, pierce county and the City of Edgewood entered into an agreement (1998 timeframe) in which allowed the school district to tie into an existing Pierce County sewer line that ran along Taylor Street, constructed by the School District, which specific provisions required and a buy back concept that allowed the school district to receive money for this installation when new customers elected to tie into this newly constructed line. Further, the City agreed to acquire this line, eventually and also expressed interest to Pierce County that it was interested in acquiring and managing the rest of the Pierce County Sewer system that existed within the City, also serving as the sewer service provider for the residents of Edgewood within its corporate limits. It was the City's intention to continue to utilize Pierce County, as the sewer maintenance and operations service provider, similar to the arrangement that it currently has with Lakehaven Water and Sewer District, in order to manage growth within this section of Edgewood and from what Staff has been able to gather, be able to provide services similar to what others under the LID could expect to receive once that sewer system was up and functioning.

With this, the County has continued to approach Edgewood Staff to finalize that deal. The Draft materials associated with that changeover in ownership of that system, as well as the mechanism in order to pay Pierce County to continue to manage this existing system are in included within the Council's packet materials for their consideration and discussion.

Recommendation: N/A

Fiscal Impact: TBD, further analysis required with the aid of the Finance Department

REIMBURSEMENT AGREEMENT BETWEEN PIERCE COUNTY AND PUYALLUP SCHOOL DISTRICT NO. 3 FOR INSTALLATION OF A PUBLIC SANITARY SEWER SYSTEM AT NORTHWOOD ELEMENTARY - CONTRACT NO. 98-9611

THIS REIMBURSEMENT AGREEMENT is made and entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington, herein known as "County", and **PUYALLUP SCHOOL DISTRICT NO. 3**, a public school district, herein known as "Owner".

WITNESSETH

WHEREAS, County operates a sanitary sewer utility that maintains and operates a public sanitary sewer system that collects, conveys, treats and disposes of wastewater and services portions of both incorporated and unincorporated Pierce County; and

WHEREAS, Owner owns certain real property in Pierce County, Washington, that was not served by the County's sewer system and is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (herein known as the "Property"); and

WHEREAS, Owner requested that the Property be served by the County's sanitary sewer system and submitted plans to the County to connect to public sanitary sewer facilities adjacent to or near the property; and

WHEREAS, County has approved and has on file, the plans, specifications and estimated costs for construction of the public sanitary sewer facilities (herein known as the "Improvements") connecting the Property to the County sewer system; and

WHEREAS, County determined that, in addition to the Owner's Property, there are other properties located in the vicinity of the Improvements which could be provided sewer service at some time in the future due to the installation of the Improvements and those other properties (herein known as the "Tributary Service Area") are defined in Exhibit "B", attached hereto and incorporated by this reference; and

WHEREAS, Owner will construct the Improvements in accordance with the approved plans and specifications; and

WHEREAS, in exchange for the construction and dedication of the Improvements to the County, the County is willing to reimburse the Owner for certain costs associated with construction of the Improvements by reimbursing a portion of the connection charges collected from property owners who subsequently connect their properties to the Improvement after its conveyance to the County; and

WHEREAS, County will allow only those connections agreed to under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of

Sanitary Sewer Service To Northwood Elementary School as described in Exhibit "C" attached hereto and incorporated by this reference; and

WHEREAS, County has the authority pursuant to Pierce County Code Chapter 13.05 to enter into this Agreement to reimburse the Owner for all or a portion of the cost of constructing the Improvements;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS DESCRIBED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide the legal framework and establish the procedures for reimbursing the Owner some portion of the cost of constructing a public sanitary sewer facility to serve the Owner's Property and the Tributary Service Area from the connection charges received within the following fifteen (15) years from the property owners within the Tributary Service Area.

2. Construction of Improvements By Owner. Owner will construct at its own expense, all Improvements necessary to provide sewer service to the Property and to the Tributary Service Area. All construction will be in accordance with the County approved engineering plan and all other applicable County, State, and Federal ordinances, statutes, or regulations. Owner will construct the Improvements and upon final acceptance of the Improvements by the County, transfer the Improvements to the County free and clear of all liens and debts, for inclusion into the sewer system as a public facility, including any right, title and interest in any property upon which the Improvements are located.

3. Owner Connection Charges and Other Fees. In consideration of County's permission to allow Owner to connect to existing County sewer facilities, Owner agrees to pay in full all applicable connection charges due the County prior to approval of the sewer plans. The connection charge shall be calculated in accordance with the Pierce County Administrative Code Chapter 13.04 (or that section of the Pierce County Code governing the calculation of connection charges), with the exception that no front footage charge shall be collected due to Owner being responsible for the cost of installing the Improvements to serve the Property. In addition to the connection charge, Owner shall pay all other fees required by law, including but not limited to plan review fees, inspection fees, contract administration fees, side sewer stub charges, treatment plant capacity charges, and other administrative fees.

4. Eligible Construction Costs. The County and Owner agree that the estimated Total Eligible Construction Cost for the Improvements to be constructed is $232,379.00. Within 15 days of completion of construction of the Improvements and acceptance by the County, Owner shall provide the competitive bid information submitted to construct the Improvements along with complete and itemized copies of all invoices for costs related to construction of the Improvements. In order for bid information to be considered competitive, a minimum of three qualified construction contractors must be afforded the opportunity to bid for the job under the same competitive conditions.

The cost information provided by Owner shall be reviewed by the County to determine the Total Eligible Construction Cost. Certification of the costs and authentication of the copies shall be made by

the party providing the construction service and the Owner. Costs not evidenced by an invoice shall not be considered Eligible Construction Costs. Any costs not previously identified in the approved cost estimate submitted with the sewer plans and specifications shall not be considered an Eligible Construction Cost unless written authorization is received from the County. Construction costs which exceed the approved construction cost estimate shall not be considered eligible construction costs unless written authorization is received from the County.

5. County Agrees to Reimburse. The County agrees to reimburse the Owner for the Total Eligible Construction Costs of constructing the Improvements from a portion of the connection charges paid by property owners within the Tributary Service Area who subsequently connect their properties to the Improvement until the Total Eligible Construction Cost has been paid in full or until the term of the Agreement expires. As the Eligible Construction Cost to serve the tributary area is $232,379.00 as stated in Section 4, the Owner's Net Reimbursable Amount shall be up to $232,379.00.

Reimbursement payments made from the eligible portion of the connection charges collected from Tributary Properties shall be made to the Owner within sixty (60) days following collection of the connection charge by the County.

No interest shall be paid on any unpaid balances related to any amount in this Agreement for the term of the Agreement.

6. Tributary Service Area. The County, pursuant to applicable Administrative Code provisions, will collect connection charges and other applicable fees from property owners within the Tributary Service Area who subsequently connect their properties to the Improvement after its conveyance to the County (herein known as "Tributary Properties"). Those charges and fees shall include, but not be limited to, area charges, capital facility charges, treatment plant capacity charges, plan review fees, inspection fees, contract administration fees, and side sewer stub charges. Only the Area Charges or portions of the Capital Facility Charges calculated pursuant to section 13.04.100 and collected by the County from the Tributary Properties shall be used to reimburse the Owner. No other charges or fees collected from the Tributary Properties shall be utilized to reimburse the Owner.

Connections by properties within the Tributary Service Area are limited to only those connections allowed under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of Sanitary Sewer Service To Northwood Elementary School.

7. Term of Agreement. This Agreement and all obligations contained herein, shall terminate upon final payment of the Net Reimbursement Amount to the Owner pursuant to this Agreement, or at the end of fifteen (15) years from the effective date of this Agreement, whichever occurs first. The effective date of this agreement shall be the date the agreement is fully executed by the Owner and Pierce County as evidenced on the signature page of the agreement.

8. Termination of Agreement Due to Expired Sanitary Sewer Plans. Upon execution of this Agreement, the Owner must proceed with construction of the Improvements prior to the expiration of

his/her approved sanitary sewer plans. Unless extended by mutual agreement between the County and the Owner, should the Owner's approved sanitary sewer plans expire prior to the initiation of construction of the Improvements, then the reimbursement agreement shall be null and void.

9. Owner's Warranty of Improvements. Owner agrees and expressly warrants to the County that the Improvement will be installed pursuant to the approved design plans at the Owner's expense, will function in a satisfactory manner and be in compliance with recognized engineering and construction standards. Owner agrees to indemnify the County against any losses caused by faulty materials and/or poor workmanship incorporated in or relating to the improvements. Such warranty and indemnification shall be in effect for one year commencing on the date of the County's acceptance of the Improvements as constructed. Any maintenance bond requirements shall be accordance with then current County ordinances and regulations. Owner will assign to County all rights Owner possesses, as against the contractor, subcontractors or any other person, firm, or corporation, contractual or otherwise, whether based on an express or implied warranty to recover damages relating to the Improvements.

10. Limitation of Assignment. This Agreement shall not be assignable by Owner without the prior written approval of Pierce County.

11. Notice. Owner shall be responsible for providing the County with its current address at all times during the term of this Agreement. All payments under this agreement shall be mailed to the Owner using the most current address on file with the Pierce County Public Works and Utilities Department. Any change of address notice submitted by the Owner shall be sent by means of Certified Mail, return receipt request, and shall be addressed as follows:

OWNER(S)
Puyallup School District No. 3
109 East Pioneer
Puyallup, WA 98372

PIERCE COUNTY
Pierce County Public Works and Utilities
9116 Gravelly Lake Drive Southwest
Tacoma, Washington 98499

12. No Waiver of Permits. Nothing in this Agreement shall be construed to waive any permitting or approval process otherwise required by any Federal, State or County agency in conjunction with development on the Property.

13. Indemnification. Owner agrees to save harmless and indemnify the County, its appointed and elected officials and employees from and against all claims of loss and expense, including, but not limited to, damage to wastewater facilities, economic loss, environmental remediation, or claims by third

parties for personal injury, death, or property damages arising from performance of the Owner's obligations under this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the Owner and the County with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by both parties hereto.

15. Governing Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by laws of the State of Washington and the ordinances and codes of the County of Pierce.

16. Severability. In the event any portion of this Agreement is determined to be void or unenforceable, such provision shall be severable and will not affect the validity of the remaining portion of this Agreement.

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EXHIBIT "B"

TRIBUTARY SERVICE AREA

See attached Tributary Service Area Map

SECTION 9, TOWNSHIP 20 N., RANGE 4 E., W.M.
PUBLIC SANITARY SEWER

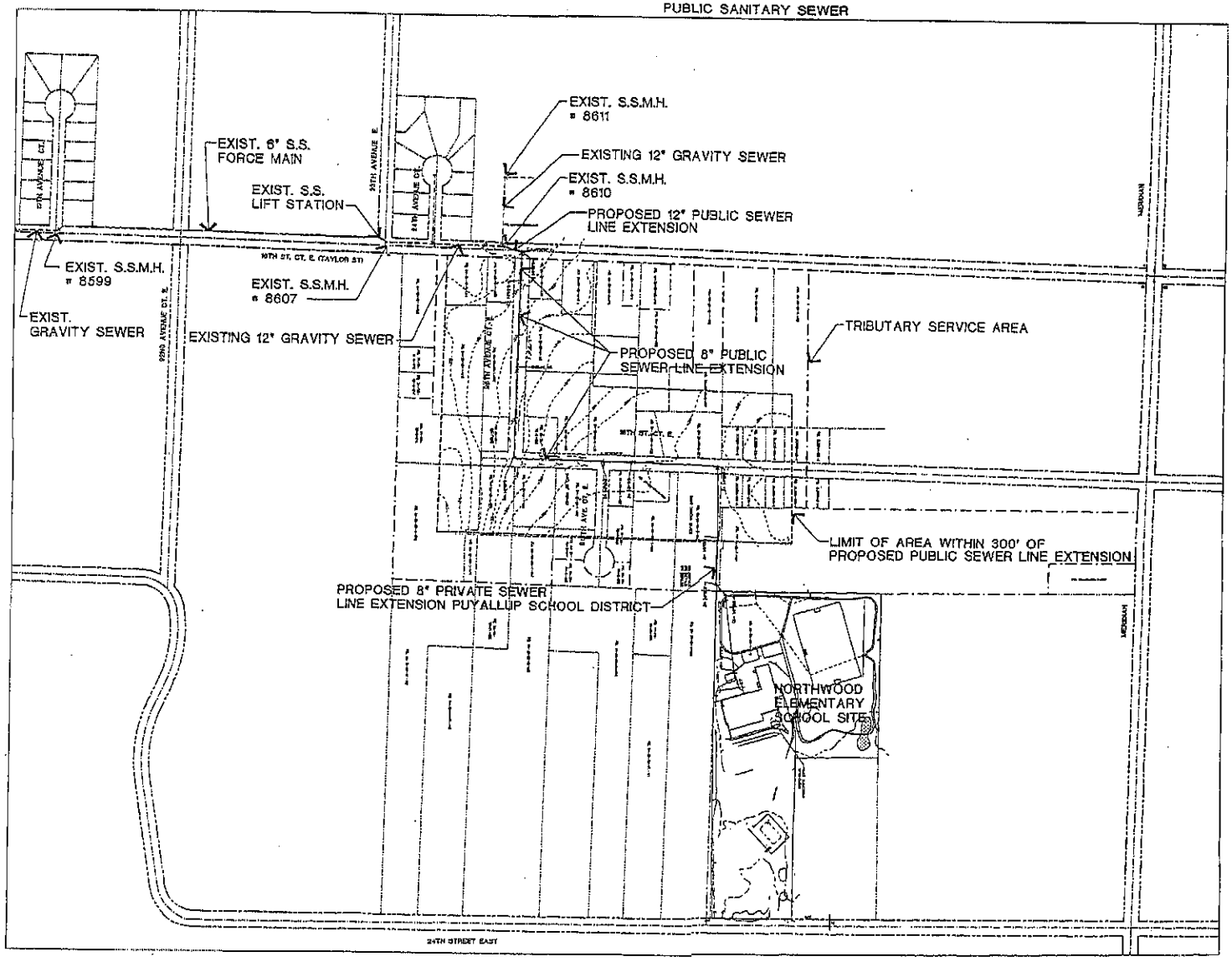

EXHIBIT "C"

INTERLOCAL AGREEMENT BETWEEN THE PUYALLUP SCHOOL DISTRICT, PIERCE COUNTY, AND THE CITY OF EDGEWOOD FOR THE PROVISION OF SANITARY SEWER SERVICE TO NORTHWOOD ELEMENTARY SCHOOL

See attached copy of Interlocal Agreement

Pierce County
Office of the County Executive
930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100
(253) 798-7477 • FAX (253) 798-6628

JOHN W. LADENBURG
Executive
jladenb@co.pierce.wa.us

LYLE QUASIM
Chief of Staff
lquasim@co.pierce.wa.us

RECEIVED
MAR 08 2007
City of Edgewood

M
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HL
DL

March 7, 2007

Mayor Jeff Hogan
City of Edgewood
2221 Meridian Ave E
Edgewood WA 98371-1010

RE: PIERCE COUNTY SANITARY SEWER SERVICE AREA

Dear Mayor Hogan:

As we discussed during our meeting on February 13, 2007, the City of Edgewood is in the process of completing a General Sewer Plan (GSP) for state Department of Ecology (DOE) approval. You indicated that DOE will not approve the final GSP without some assurance that overlapping sewer areas will be corrected in the future. The purpose of this letter is to provide that assurance so that DOE staff can approve Edgewood's final GSP and the City of Edgewood can move forward with constructing and operating the first leg of a new sanitary sewer system prior to the formal amendment of service area boundaries.

As you know, the Pierce County sanitary sewer service area contained in the Pierce County Unified Sewer Plan (USP) includes a portion of the City of Edgewood corporate limits. Moreover, within the County's established service area within Edgewood, there are only seven (7) properties (12 billing accounts) to which the County provides sewer service. I understand that the City of Edgewood has entered into an agreement with the Lakehaven Utility District to provide sanitary sewer service to Phase 1 of the City's sewer service area along Meridian Avenue (SR 161), and that the actual physical connection to Lakehaven's infrastructure and operation of Edgewood's new sewer system may in fact begin in 2007. On behalf of Pierce County, we have no objection to the City of Edgewood and the Lakehaven Utility District commencing service prior to the formal amendment of the Pierce County sewer service area boundaries. It is the County's intention that the entire County service area within the City of Edgewood will be turned over to the City based upon successful boundary and monetary negotiations, finalized by a formal Basin Plan Amendment to the Pierce County Unified Sewer Plan during the next update cycle of the Unified Sewer Plan. The County's current schedule anticipates that the Unified Sewer Plan Update will be sent to the DOE and DOH for their approval in July 2008.

As for the existing seven (7) properties (12 billing accounts) that the County serves within Edgewood, an inter-local agreement between the County and the City will be negotiated to provide for the continued servicing prior to the eventual ownership transfer and rerouting of flows from the seven properties to the City of Edgewood sewer utility. The County and the City will begin negotiations as soon as practicable.

Printed on recycled paper

Pierce County
Public Works and Utilities

Brian J. Ziegler, P.E.
Director
Brian.Ziegler@co.pierce.wa.us

Environmental Services
9850 64th Street West
University Place, Washington 98467-1078
(253) 798-4050 Fax (253) 798-4637

May 9, 2008
U-93997

Dave Lorenzen, P.E.,
Public Works Director
City of Edgewood
2221 Meridian Avenue East
Edgewood, WA 98371-1010

RE: Pierce County Sanitary Sewer Service Area

Dear Mr. Lorenzen:

On March 7, 2007, in a letter to the City of Edgewood (City) from County Executive John Ladenburg, it was stated that Pierce County had no objection with the City of Edgewood contracting with the Lakehaven Utility District for sanitary sewer services. These services for Phase 1 of the City's sewer project would be provided prior to completion of a formal amendment of the sewer service area boundaries between the City and Pierce County.

It now remains for the City and Pierce County to resolve the continuation of sewer services to the existing seven (7) properties (a total of 12 billing accounts) currently served by Pierce County that are located within what will be the City's new service area. To date, there has been limited discussion between the City and the Pierce County Sewer Utility (Utility) pertaining to provisions for continued service, transfer of ownership, or rerouting of flows for these properties.

The City also appears to be proceeding with a new Utility Local Improvement District (ULID) that may include one or more of our existing customers. It would be prudent for the City and the Utility to meet and solidify an Interlocal Agreement and provisions thereto prior to any ULID formation.

Please contact Kip Julin, Strategic Planning and Asset Manager, at (253) 798-4145 at your earliest convenience to set up potential meeting dates and times.

Sincerely,

Tim Ramsaur

Tim Ramsaur PE
Wastewater Utility Manager

TR:hmo
Cors/U93997-TR

c: Kip Julin - Strategic Planning and Asset Manager

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CITY OF EDGEWOOD-PIERCE COUNTY
TEMPORARY SANITARY SEWER AGREEMENT – CONTRACT NO. 06-53110

This agreement is entered into by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "County") and the **CITY OF EDGEWOOD,** a municipal corporation of the State of Washington (herein referred to as "City").

WHEREAS, the City incorporated on February 28, 1996; and

WHEREAS, the City created a wastewater utility on July 12, 2005 and is in the process of preparing/finalizing its general sewer plan; and

WHEREAS, certain properties within the City's proposed sanitary sewer service area require sanitary sewer service to develop to the densities identified in the City's comprehensive plan; and

WHEREAS, development of these properties is desired prior to the anticipated dates of approval of the City's sewerage general plan and sewer service being provided through it's newly formed sewer utility; and

WHEREAS, pursuant to Chapter 36.94 RCW, the County is authorized to operate wastewater collection and treatment systems, and enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of related facilities; and

WHEREAS, the County owns and operates sewer collection and transmission facilities adjacent to certain areas of the City and currently has adequate capacity to temporarily handle wastewater flows from those certain properties, as identified herein, desiring sewer service prior to the City implementing their sewer utility; and

WHEREAS, the City has requested that the County provide temporary sanitary sewer service to these certain properties until the City has implemented its sewerage general plan; and

WHEREAS, the County has the resources necessary and is willing to provide the temporary services contemplated herein;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the County and the City as follows:

SECTION 1. **PURPOSE.** The purpose of this agreement is to define the terms and conditions under which the County will provide temporary sanitary sewer services to certain properties with in the City.

SECTION 2. **DEFINITIONS.** The definitions provided in Pierce County Code Title 13, Public Sanitary Sewer Systems, as it currently exists or is hereafter amended shall apply to the terms within this agreement.

SECTION 3. **SERVICE AREA** . The County will provide temporary sanitary sewer service to those properties, approximately 21.93 acres, currently owned by Plemmons Hutchens LLC, as described below, (herein referred to as "Service Area"):

> Lots 1, 2, 3 and 4 of City of Edgewood Short Plat 99-0006, recorded January 10, 2002, at Auditor's File Number 200201105001, Records of Pierce County, Washington, all located in the southwest quarter of Section 03, Township 20 North, Range 04 East of the WM.

No other properties will be permitted to connect to the County system under the terms of this Agreement.

SECTION 4. **CONNECTION TO THE COUNTY SEWER SYSTEM.**

A. Connection Location. The only permitted connection point to the County's system shall be at existing Pierce County manhole (SSMH# 08813), located in the Surprise Lake Shopping Center approximately 200 feet west of the Service Area.

B. Discharge Volumes. The County will permit the properties within the Service Area to discharge a maximum of 15,000 gallons/day Average Daily Dry Weather Flow to the County's sanitary sewer system. The maximum discharge volume shall be calculated based upon the number of purchased residential equivalent units (R.E.), as identified in the Pierce County Sanitary Sewer Administrative Code (Pierce County Code Chapter 13), on a first come first serve basis.

C. Sewer System Ownership, Operation and Maintenance. All sanitary sewer facilities upstream of the connection point identified in subsection 4A, above, shall be considered a private system. Ownership, operation and maintenance of these facilities shall be the responsibility of the owner(s) of the properties within the Service Area. Prior to approval of the plans for the private sewer system, the County will require the owner(s) of the properties within the Service Area to enter into and record with the Pierce County Auditor, a standard Perpetual Reciprocal Easement, Mutual Maintenance Agreement and Covenant Running With the Land. All permitting for crossing the state right-of-way (SR 161) shall be the responsibility of the owner(s) of the properties within the Service Area. The County will not make application nor take any liability for the crossing.

D. Conformity with Pierce County Sanitary Sewer Administrative Code. All sewer customers within the Service Area connected to the County sewer system shall conform, in the same manner required of all County customers, to the most current statutes, ordinances, rules and regulations governing sewage pretreatment, discharges, permitting, connection charges, monthly sewer service rates, and other matters governing sewer service as provided in the Pierce County Sanitary Sewer

Administrative Code (Pierce County Code Chapter 13) and other applicable County, State, and Federal laws and regulations, as they currently exist and as they may be amended from time to time.

E. Wastewater Design and Construction Standards. Wastewater design and construction standards for facilities connecting to the County sewer system, from and within the Service Area, shall be required to conform to the prevailing specifications, codes, methods, policies, permitting requirements, and standards required by the County for construction in unincorporated Pierce County to ensure that hookups conform to current County Sewer System requirements at the time of connection.

SECTION 5. **CITY RESPONSIBILITIES.** In consideration for the services provided by the County as described herein the City shall perform as follows:

A. Additional discharge to the County sewer system from the Service Area. The City shall not approve a subdivision, short subdivision, or any other segregation/combination of property, nor issue a building permit or a tenant improvement permit for a parcel or facility, within the Service Area that uses or will use County sewer service, until the County through the Sewer Utility Division of its Public Works and Utilities Department has reviewed the plat, building permit, and/or tenant improvement application and is satisfied that all connection charges and permit fees owed to the County has been paid or otherwise provided for, pretreatment requirements have been met, and all other applicable Pierce County Sanitary Sewer Administrative Code requirements have been satisfied.

SECTION 6. **COUNTY RESPONSIBILITIES**. The County shall provide the following:

A. Service Level. All wastewater customers within the Service Area shall be accorded the same service that all other County customers receive. City residents in the Service Area shall have all the rights and responsibilities of County residents with respect to connection and use of wastewater services.

B. Rates and Billings. The County shall bill all customers for wastewater service in the area in the same manner as it bills customers in unincorporated Pierce County for sewer service, and shall determine rates in both areas on the same criteria and methodology. Any charges such as utility taxes or surcharges imposed by the City shall be added to the customer's bills within the City. It shall be the City's responsibility to notify the County of any additional taxes or surcharges to be added. The County shall notify the City of any proposed sewer service rate changes prior to their approval by the Pierce County Council and the City shall be afforded the opportunity to provide the County with recommendations concerning their proposed rate changes. With new sewer connections, billing shall begin from the date the connection is made and approved for use by the County. The County shall have full jurisdiction and authority to impose and enforce liens and foreclosures within the City for the purpose of collecting rates, charges, fees and assessments.

C. Sanitary Sewer System Design and Construction Standards. To ensure that future connections to the sanitary sewer facilities within the Service Area are compatible with the County's current sanitary sewer system, the design and construction of private sanitary sewer facilities constructed within the Service Area shall be reviewed by the County and required to conform to the County's written specifications, codes, standards, and methods required for construction in unincorporated Pierce County. The County agrees to incorporate into its specifications by reference any City policies and regulations regarding construction and restoration within the City as long as those policies and regulations do not conflict with the County's standards and specifications for sanitary sewer construction.

D. Sanitary Sewer Extension Permits and Inspections. There shall be reserved to the County the right to inspect, at any time, all wastewater facilities located in the Service Area, in order to enable the County to verify compliance with any and all conditions of current or future Federal, State and County regulations for its convenience in operating such system, and to ensure its ability to issue permits in accordance with current regulations.

E. Release of Service Area to City of Edgewood. The County will release and transfer to the City the Service Area and those customers within the Service Area at such a time that the City's sewer utility extends wastewater facilities to reroute the wastewater flows out of the County system. Such release and transfer shall occur upon written notice from the City to the County that the connections made under this Agreement have been disconnected from the County sewer system and connected to the City's sewer system. All costs to cap off and abandon the pipeline from the Service Area shall be borne by the City. Upon release and transfer of the Service Area to the City all treatment plant capacity purchased under this agreement shall revert back to the County.

SECTION 7. **TERM**. The initial term of this Agreement shall be five (5) years from the date of execution of this Agreement with renewal terms of five (5) year increments to allow for periodic review of the terms and conditions of the Agreement. Said additional renewals will be automatic unless the Agreement is otherwise modified by written amendment or the Agreement is terminated pursuant to the provisions contained herein. This agreement shall be terminated following the release and transfer provided for in 6. E. above.

SECTION 8. **INDEMNIFICATION AND DEFENSE.** The County shall defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this agreement. In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are

awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's service charges.

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

SECTION 9. **NO THIRD-PARTY BENEFICIARY.** The County does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than the County. The County and the City do not intend that there be any third-party beneficiary to this agreement.

SECTION 10. **NON-DISCRIMINATION.** The County and the City certify that they are Equal Opportunity Employers.

SECTION 11. **ASSIGNMENT.** Neither the County nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 12. **NOTICE.** Any formal notice or communication to be given by the County to the City under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

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

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

Pierce County
Pierce County Executive's Office
930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100

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

SECTION 13. **COUNTY AS INDEPENDENT CONTRACTOR.** County is, and shall at all times deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between City and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement.

Nothing in this agreement shall make any employee of the City a County employee or any employee of the County a City employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded County or City employees by virtue of their employment.

SECTION 14. **WAIVER.** No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this agreement.

SECTION 15. **AMENDMENT.** Provisions within this agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

SECTION 16. **NO REAL PROPERTY ACQUISITION OR JOINT FINANCING.** This Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement.

SECTION 17. **SEVERABILITY.** If any of the provisions contained in this Agreement is illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

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PIERCE COUNTY CONTRACT SIGNATURE PAGE

CONTRACT NAME: City of Edgewood – Pierce County Temporary Sanitary Sewer Agreement-Contract No. 06-53110

IN WITNESS WHERE OF, the parties have executed this Agreement this 6th day of September, 2006.

CITY OF EDGEWOOD

9/9/06
City Manager, City of Edgewood

Approved as to Form

City Attorney

Mailing Address:
City of Edgewood
2221 Meridian Avenue East
Edgewood, WA 98371-1010

Contact Phone: 253-952-~~3537~~ 3299
Contact Name: Mr. Henry J. Lawrence, Jr.

PIERCE COUNTY

M. Peter Shelley — 8/23/06
DEPUTY PROSECUTING ATTY — Date
(as to form only)

P. Kinney — 8.31
BUDGET AND FINANCE — Date

Approved:

Brian Zeffer — 8/18/06
DEPARTMENT DIRECTOR — Date
(if less than $250,000)

9/6/06
COUNTY EXECUTIVE — Date
(if $250,000 or more)

INTERLOCAL AGREEMENT BETWEEN THE PUYALLUP SCHOOL DISTRICT, PIERCE COUNTY AND THE CITY OF EDGEWOOD FOR THE PROVISION OF SANITARY SEWER SERVICE TO NORTHWOOD ELEMENTARY SCHOOL

THIS AGREEMENT is entered into this day by and between the Puyallup School District (herein known as the "District"), Pierce County (herein known as the "County"), and The City of Edgewood (herein known as the "City").

WHEREAS, the City incorporated on February 28, 1996; and

WHEREAS, the City is in the process of preparing its first comprehensive plan; and

WHEREAS, through the comprehensive planning process, the City will determine where it is appropriate for growth and development to occur within its boundaries; and

WHEREAS, the City Council of the City of Edgewood desires that sewer service not be extended or installed until such time as the City has completed its comprehensive planning process; and

WHEREAS, Pierce County operates a sanitary sewer utility which includes a sanitary sewer line located within Taylor Way East (also known as 16th Street East); and

WHEREAS, the Puyallup School District owns and operates the Northwood Elementary School located within the City at 9805 24th Street East, which disposes of its waste by directing its effluent unto a large holding tank which is pumped and trucked for disposal on a regular basis; and

WHEREAS, the Puyallup School District desires to connect its Northwood Elementary School to a permanent sanitary sewer system to alleviate the need to regularly pump the holding tanks serving the school; and

WHEREAS, connection of Northwood Elementary would require the installation of a sewer line that would traverse over private property and within the City's right-of-way to a connection point in Taylor Way East; and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

purposes of maintaining and operating the sewer line to be installed by the District within the City right-of-way and for other purposes as outlined in this agreement.

SECTION 4. TERM OF THE AGREEMENT. This agreement shall become effective upon signature by all parties, and shall remain in effect as along as Northwood Elementary School remains in service, provided that this agreement shall become null and void if construction has not commenced by January 1, 1999. This agreement may be modified by mutual agreement of all parties.

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

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

SECTION 6. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING. This Interlocal Agreement doe not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

SECTION 7. NO THIRD PARTY BENEFICIARY. The County does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than the County. The County and the City do not intend that there be any third-party beneficiary to this agreement.

SECTION 8. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this 9 day of December, 1997.

EDGEWOOD

T.D. Faherty, Mayor

Stephen L. Anderson, City Manager

APPROVED AS TO FORM:

Lisa Marshall, City Attorney

Nacelle Heuslein, City Clerk

PIERCE COUNTY

Department Director — Date 11/14/97

Dep. Prosecuting Attorney (As to form only) — Date 11/18/97

Budget and Finance — Date 12-8

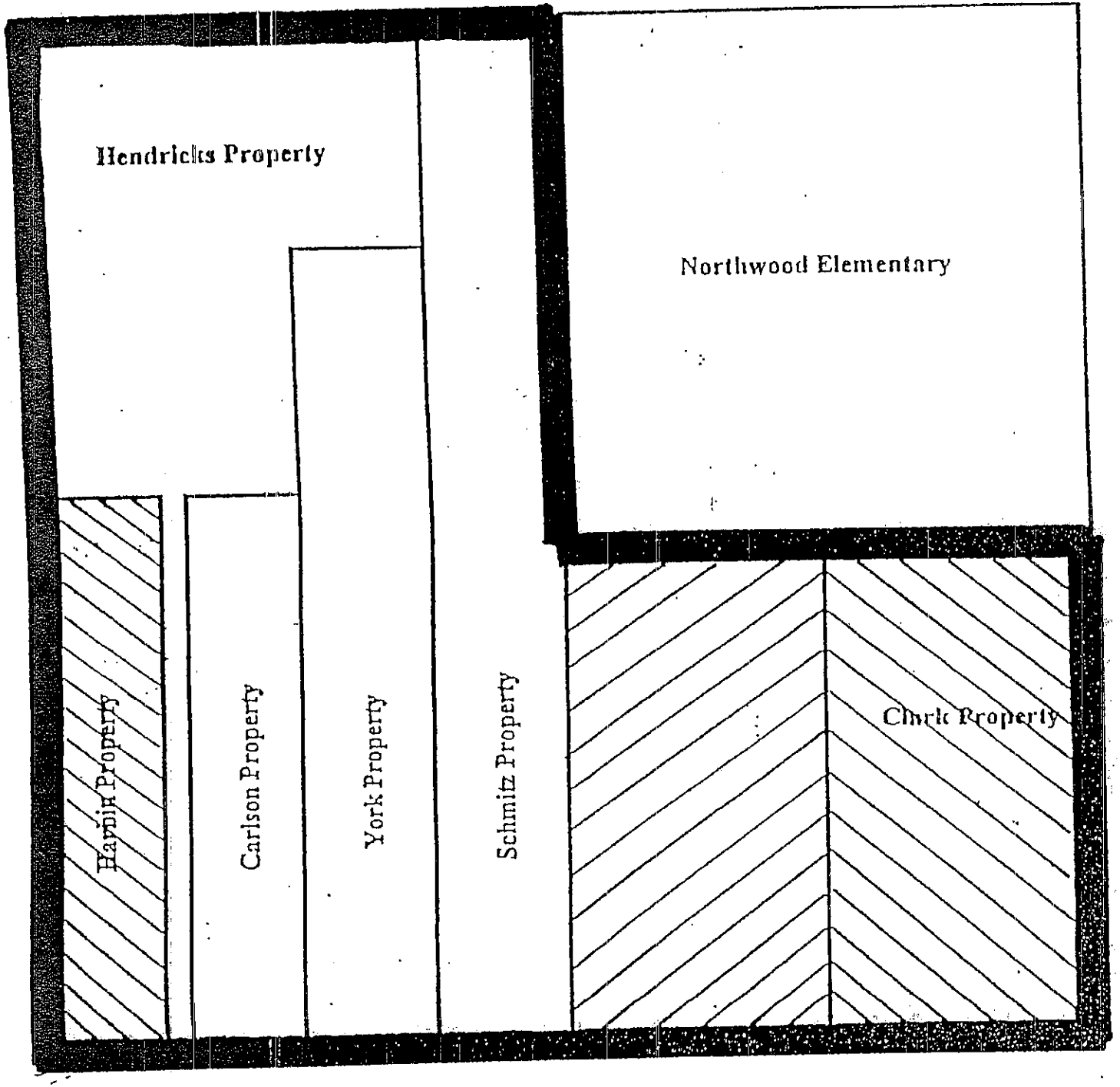
Executive Director — Date 12/7/97

County Executive (if over $50,000) — Date

PUYALLUP SCHOOL DISTRICT

By: Mindy Thompson

Its: President of the Board



7/14/97

North Hill
Property Acquisition

= Purchased by the District

= Already owned the District

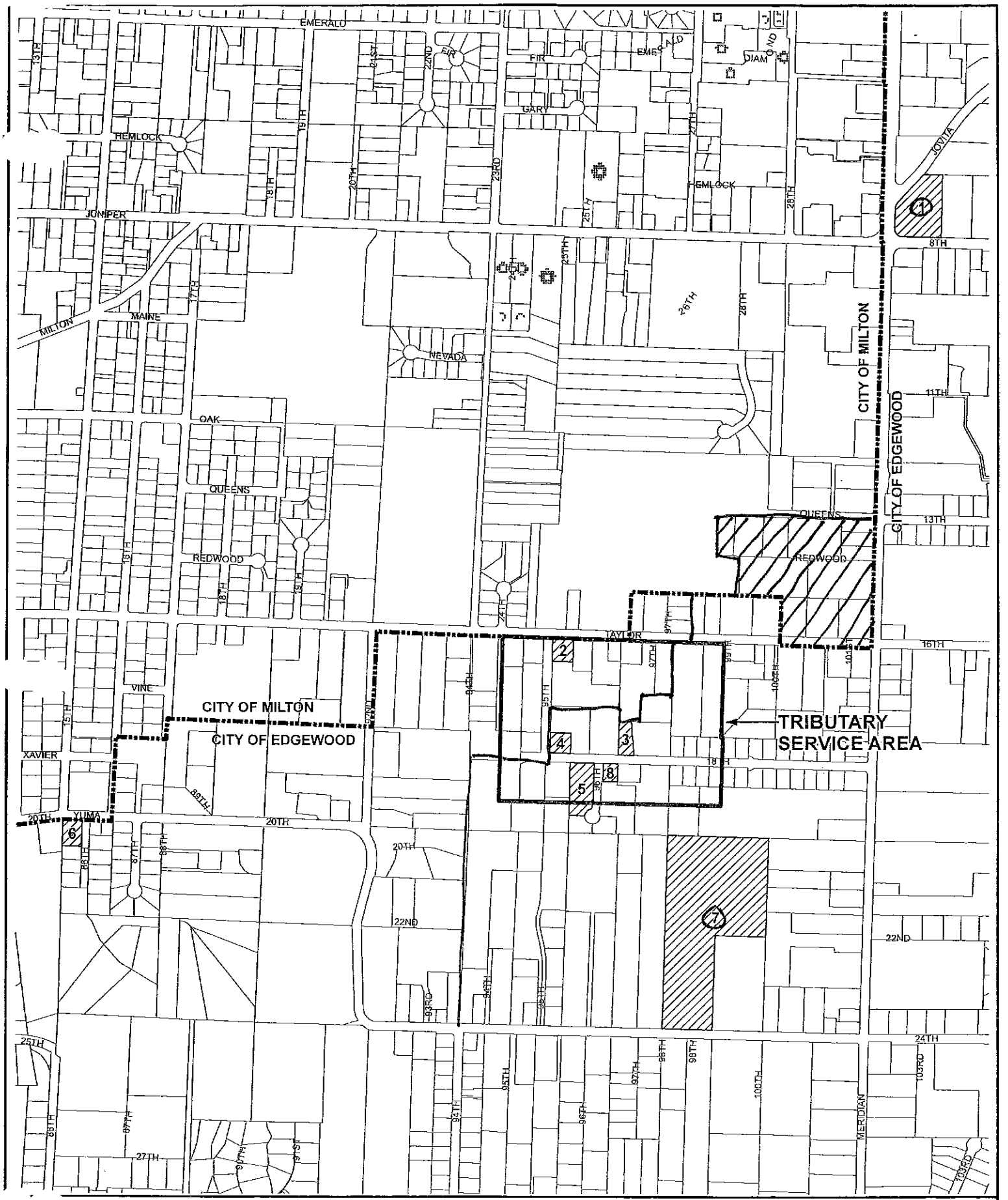


Exhibit B
Tributary Service Area
September, 2009

Presented by:

BHC CONSULTANTS

Legend

City Limits

Tributary Service Area

0 250 500 Feet

N W E S

P:\Mapping\Maps_Generated\Edgewood\08-10125.00\Task072\maps\Exhibit B Tributary 8x5x11.mxd

PIERCE COUNTY - CITY OF EDGEWOOD
SANITARY SEWER AREA INTERLOCAL AGREEMENT
CONTRACT NO. XX-XXXX

This agreement is made and entered into by and between **PIERCE COUNTY**, Washington, a municipal corporation and a political subdivision of the State of Washington (herein referred to as "COUNTY"), and the **CITY OF EDGEWOOD**, Washington, a municipal corporation and code city (herein referred to as the "CITY").

RECITALS

WHEREAS, pursuant to state law, the COUNTY and the CITY are each authorized to operate wastewater collection and treatment systems, and to enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of related facilities; and

WHEREAS, the COUNTY has established certain sewer planning areas within which it provides sewer service and conducts long range planning; and

WHEREAS, the COUNTY has historically conducted sewer planning in a portion of the CITY's incorporated boundaries; and

WHEREAS, the COUNTY owns and operates sewer transmission facilities in the CITY area and the wastewater collected by these facilities is treated at the Tacoma Central Wastewater Treatment Plant pursuant to an interlocal agreement with the City of Tacoma; and

WHEREAS, the CITY established a Sanitary Sewer Utility on June 28, 2005 through adoption of Ordinance 05-249, which was subsequently repealed and replaced by the adoption of Ordinance 06-271 on May 23, 2006 to provide long range sewer planning for properties within its municipal boundaries; and

WHEREAS, the CITY subsequently developed a General Sewerage Plan that has been approved by the Washington State Department of Ecology pursuant to Chapter 35.67 RCW; and

WHEREAS, the said General Sewerage Plan included areas of overlapping service area with the COUNTY's sewer service area; and

WHEREAS, on September 24, 1998, the parties hereto executed a sanitary sewer agreement which established a process and timeline for determining which of the two entities was to provide sanitary sewer service to existing COUNTY sewer customers whose properties were within the CITY limits, to properties within a COUNTY utility local improvement district

adjacent to CITY limits, and to areas newly annexed by the CITY; and

WHEREAS, the COUNTY and the CITY agree that the CITY, with its new Sewer Utility, is better suited to conduct long range planning and to provide sewer service for the areas within the incorporated boundaries of the CITY; and

WHEREAS, the COUNTY wishes to transfer certain designated COUNTY service areas and sewer facilities to the CITY; and

WHEREAS, the transfer of the portions of the COUNTY system to the CITY as specified in this Agreement will not materially affect the operations of any of the COUNTY's remaining obligations; and

WHEREAS, the CITY in exchange for such transfer will assume all ownership, planning and billing responsibility for those facilities including any associated indebtedness and will agree to compensate the COUNTY; and

WHEREAS, this agreement supersedes the December 9, 1997 and October 19, 2006 agreements between the COUNTY and CITY with regard to sanitary sewer service.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

Section 1. **Definitions.** Unless otherwise stated, the definitions provided in Pierce County Code Title 13, Public Sanitary Sewer Systems, as it currently exists or is hereafter amended, shall apply to the terms within this agreement.

Section 2. **Purpose**. The purpose of this agreement is to outline the terms and conditions of the transfer of specific portions of the COUNTY's sanitary sewer service area and facilities to the CITY and the COUNTY's operation and maintenance of specific portions of the CITY's sanitary sewer system.

Section 3. **Service Areas to be Transferred**. The COUNTY hereby confers to the CITY those portions of the COUNTY's service area that currently lie within the CITY limits as shown in Exhibit "1" attached hereto and incorporated herein by this reference. Upon execution of this agreement, the CITY will be responsible for all planning, billing, and permitting responsibilities for sewer service in this area. The areas are generally identified as follows:

Approximately 633 acres, within the current CITY limits generally described as the westerly 2600 feet of the City between the Pierce County - King County boundary and

24th Street East, and northerly 2600 feet of the City between the City of Fife - City Edgewood boundary to the west and SR -161 (Meridian Avenue East) to the East.

Section 4. **Facilities to be Transferred**. The COUNTY facilities that are being transferred to the CITY pursuant to this agreement are listed in Exhibit "2" attached hereto and incorporated herein by this reference. The CITY will assume ownership responsibilities for all sanitary sewer facilities listed in Exhibit "2" on the Title Transfer Date.

Section 5. **Assignment of Reimbursement Agreements**. The COUNTY hereby assigns to the CITY all indebtedness associated with the sewer facilities located within the transferred areas and any reimbursement agreements executed between it and private developers. The Reimbursement Agreement between Pierce County and Puyallup School District No.3 for Installation of a Public Sanitary Sewer System – Northwood Elementary, Contract Number 98-9611 is the only known indebtedness associated with the transferred areas. A copy of this Reimbursement Agreement is attached hereto as Exhibit "4" and incorporated herein by this reference.

Section 6. **Ownership, Operation, and Maintenance Responsibilities of the Transferred facilities and the Billing Services for Properties Connected to Those Facilities**. The CITY shall also assume all long-range planning and billing responsibilities for the transferred service areas and shall notify by mail all affected properties within the transferred areas of the change in service provider within 60 days of execution of this agreement. A listing of the COUNTY customers whose accounts will be transferred to the CITY is attached hereto as Exhibit "5" and incorporated herein by this reference. The COUNTY agrees to operate and maintain the newly transferred facilities, identified in Exhibit "2", for the CITY in accordance with the provisions of Section 11 of this agreement.

Section 7. **Formal Conveyance of COUNTY Sewer System to the CITY.** All COUNTY Sewer System facilities, consisting of all pipes, lines, and pumps and other facilities appurtenant thereto as depicted on, but not limited to, Exhibit "2" attached hereto and made a part hereof shall be conveyed to the CITY by deed and assignment of easements, franchises, contracts/agreements concerning wastewater service and other property rights from the COUNTY to the CITY. The date of said transfer (herein known as the Title Transfer Date) shall occur within 90 days after the date of execution of this agreement unless the parties agree to delay until a date certain. Costs and expenses to the COUNTY or the CITY for all such transfers, including the recording of any such documents necessary to transfer ownership of facilities, easements and other tangible and intangible property from the COUNTY to the CITY, shall be borne individually by the COUNTY or the CITY.

The COUNTY agrees to provide the CITY with as-built drawing and any operation &

maintenance records pertaining to all facilities being transferred to the CITY, as identified in Exhibit "2".

Section 8. **Ownership of Revenues.** All COUNTY sewer system revenues and expenditures that originate from the transfer area prior to the Title Transfer Date shall be, respectively, owned by and become the obligation or responsibility of the COUNTY, including any anticipated revenues derived from pending foreclosure proceedings or other legal action initiated by the COUNTY. From and after the Title Transfer Date, the CITY shall own and shall be responsible for paying the county for maintenance and operation of the facilities constituting the former COUNTY sewer system, which shall be made a part of the CITY Sewer System.

Section 9. **Permission for the CITY to Discharge Wastewater.** The COUNTY hereby grants permission for the CITY to discharge wastewater transported from CITY facilities and customers from within the CITY's new sewer service area, as defined in Exhibit "1", into the County's Sewer System in accordance with all the terms set forth in this Agreement. All points of connection shall be approved by the COUNTY in writing. Current approved connection points are as shown in Exhibit "2". The COUNTY continues to operate and maintain all downstream facilities and will charge the CITY a fee for maintenance and operation of those facilities, in accordance with Section 11, Sewer Service Rates and Charges.

The COUNTY will continue to reserve line capacity in its system and Tacoma treatment plant capacity for the capacity that has been previously purchased from the COUNTY for those properties identified in Exhibit "5". Should the CITY desire to connect new customers to the COUNTY's system directly, through the CITY's facilities flowing into the COUNTY system, or discharge additional flows from properties already connected to the COUNTY's system, the CITY shall be permitted to purchase additional capacity from the COUNTY if available. Payment of these connection fees shall be in accordance with Pierce County connection charge rates in effect at the time of connection.

The CITY will attempt to ensure that the CITY's wastewater flows not have a Peak Flow more than 2.8 times the average dry weather flow (ADWF). ADWF shall be determined by averaging 30 continuous days between June 1 and October 1 of each year. If the CITY exceeds the 2.8 peak flow the CITY will be charged for treatment of the exceeded gallons. The CITY will be billed annually at the rate of $0.0023 per gallon over the allowed Peak Flow. The rate shall be automatically adjusted by 3% a year from the date of the approval of this agreement. This rate shall be reviewed and updated at the same time as this agreement is per Section 18.

For any treatment plant capacity owned or purchased under this agreement, the CITY shall be subject to and obligated to comply with applicable provisions, including the funding of future treatment plant upgrades, of the Central Treatment Plant Capacity Agreement Between Tacoma and Pierce County as it currently exists and as it is amended from time to time. A copy

of the Agreement is attached hereto as Exhibit "3"and incorporated herein by this reference.

Section 10. **Connection to COUNTY Facilities**.

A. Conformity with Pierce County Sanitary Sewer Administrative Code. All sewer customers within the CITY connected to or their flows are directed through County facilities shall conform, in the same manner required of all COUNTY customers, to the most current statutes, ordinances, rules and regulations governing sewage pretreatment, discharges, charges and other matters governing sewer service as provided in the Pierce County Sanitary Sewer Administrative Code and other applicable County, State, and Federal laws and regulations, as they currently exist and as they may be amended from time to time.

B. Wastewater Design and Construction Standards. Wastewater design and construction standards for facilities connecting to a COUNTY facility, within the CITY, shall be required to conform to the then prevailing written specifications, codes, methods, and standards required by the COUNTY for construction in unincorporated Pierce County to ensure that hookups conform to County Sewer System requirements.

C. Connection to COUNTY Owned Facilities. The CITY shall not approve a plat or short subdivision, nor issue a building permit for a parcel or facility, in the CITY that uses or will use COUNTY sewer service, until the COUNTY through its Public Works and Utilities Department has reviewed the plat or building permit application and is satisfied that all money owed to the COUNTY has been paid or otherwise provided for, pretreatment requirements have been met, and all other applicable Pierce County Sanitary Sewer Administrative Code requirements have been satisfied. The COUNTY shall coordinate with the CITY to review and comment on plat and building permit applications in a timely fashion.

D. Additional Flow to COUNTY System. In addition, if there is a change of ownership or use that results in increased sewage flows, then the CITY shall be liable for the increased connection charge, if any, as outlined in the then current Pierce County Sanitary Sewer Administrative Code.

E. Redirecting Flow from COUNTY System. The CITY shall redirect flows from 8th St E to the CITY's sewer facilities constructed as part of City of Edgewood's LID No. 1 immediately upon completion of the CITY's SR 161 improvements. The CITY shall be responsible for abandoning the sewer pipeline within the SR 161 right-of-way and within the CITY.

Section 11. **Sewer Service Rates and Charges**.

A. The COUNTY shall charge and the CITY shall pay the COUNTY its proportionate share of the sewer service charges billed to the COUNTY by the City of Tacoma for wastewater treatment services provided by the City of Tacoma to CITY customers. The terms, conditions and rates for wastewater treatment services provided to CITY customers under this agreement shall be the same as those contained in the Sewerage Rate Agreement between the City of Tacoma and Pierce County as it currently exists and as hereafter amended. The current agreement between the COUNTY and City of Tacoma governing wastewater treatment services is attached as Exhibit "6" and incorporated herein by this reference.

B. In addition to the wastewater treatment charges, the COUNTY shall charge and the CITY shall pay the COUNTY for the transmission of sewage from its collection system, through the COUNTY's collection system, to the Hylebos Interceptor transmission facilities owned by the COUNTY and utilized by the CITY.

C. In addition to Subsection A and B, the COUNTY shall charge and the CITY shall pay the COUNTY for the transmission of sewage from the CITY's customers through the Hylebos Interceptor transmission facilities. The CITY shall pay its proportionate share of the COUNTY's maintenance, operation, and capital expenditures on the Hylebos Interceptor collection and transmission facilities owned by the COUNTY and utilized by the CITY.

The COUNTY's costs shall include all costs and expenses relating to labor, utilities, equipment (including repair, upgrade, and replacement), tools, materials, supplies, insurance premiums, contract services, taxes, capital expenditures and other expenses directly and properly chargeable to the operation and maintenance of the Hylebos Interceptor collection and transmission facilities. In addition the CITY shall pay an amount equal to 35% of its proportionate share of all costs except capital expenditures, as an allowance for administrative and general overhead expenses. On capital expenditures, the CITY shall pay an amount equal to 10% of its proportionate share as an allowance for administrative and general overhead expenses.

Proportionate share or use shall mean the CITY's annual average dry weather flow compared to the total annual average dry weather flow in the Hylebos Interceptor collection and transmission facilities pursuant to the method provided in the COUNTY's sewerage rate agreement with the City of Tacoma as amended

from time to time. Average dry weather flow shall be based on the total residential equivalents of capacity purchased for properties within the CITY connected to COUNTY facilities.

D. Invoices for wastewater treatment services provided under Subsection A above shall be provided to the CITY on a quarterly basis after receipt by the COUNTY of the City of Tacoma's quarterly invoicing for wastewater treatment services.

Invoices for the use of the COUNTY's collection system provided under Subsection B shall be provided to the CITY quarterly along with the wastewater treatment services invoice. The rate shall be 33% of the COUNTY's sewer service rate as determined by Title 13 of the County Code.

Invoices for operation, maintenance and capital expenditures on the Hylebos Interceptor collection and transmission facilities under Subsection C above shall be provided to the CITY on a yearly basis approximately 60 days after the close of the previous year.

All invoices provided to the CITY shall be due and payable within 30 days of receipt. Payments not remitted within 30 days shall accrue interest from the due date at a rate of 1% per month until paid.

E. The CITY shall have the right to inspect the COUNTY's books and financial records at any time upon reasonable notice for the purpose of verifying that invoices for wastewater treatment services and collection and transmission costs are in accordance with this agreement.

F. In January of each year, the CITY shall furnish the COUNTY with a digital spreadsheet or database listing all users, account numbers, billing and site addresses, residential/commercial site designation, number of residential units connected through the COUNTY's collection and transmission system. The CITY will update all additions or deletions of single family, multifamily and commercial/industrial customer accounts within 30 days of connection / disconnection. In the event there is a change of use on any property or for any existing account that results in increased sewage flows; then the CITY shall notify the COUNTY within 30 days of the change in sewerage flow increase. For all commercial and industrial accounts, the CITY shall provide the metered water flow records for the previous 12 months. Water meters for commercial and industrial customers shall be periodically calibrated and certified on a regular established schedule to the extent possible. If abnormally high variations in flow volumes are encountered, the CITY will be asked to check and recalibrated their

flow meters for those user accounts in question.

G. If at a future date, the COUNTY becomes obligated through Local, State or Federal law to pay and collect taxes or fees on revenues derived from this agreement, those taxes and fees shall be added as additional amounts to the invoice billings sent the CITY and the CITY shall remit such amounts to the COUNTY as provided in Subsection C above.

Section 12. **Indemnification and Hold Harmless**. The COUNTY shall defend, indemnify, and save harmless the CITY, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY, its officers, employees, or agents associated with this Interlocal Agreement. In executing this Interlocal Agreement, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility which arises in whole or in part from the existence or effect of CITY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such CITY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's service charges.

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

Section 13. **Complete Agreement**. This agreement is a complete and integrated document, embodying all prior agreements and representations of the parties, oral or written, with regards to this transfer of service areas. This agreement may not be modified except in writing signed by both parties.

Section 14. **Governing Law**. This Agreement shall be governed by and interpreted in

accordance with the laws of the State of Washington.

Section 15. **Assignment**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the CITY and the COUNTY. Neither the COUNTY nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other.

Section 16. **Recording**. Copies of this Agreement, together with the resolution and/or ordinance of the each party's legislative body approving and ratifying this agreement, shall be filed with the Fife City Clerk, the Pierce County Auditor, and the Secretary of State of Washington after execution of the agreement by both parties.

Section 17. **Severability**. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the COUNTY's and the CITY's authority to enter into such agreements, and this Agreement shall be construed to reserve to the COUNTY and the CITY only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. The parties acknowledge the COUNTY and Cities have police powers, contracting authority and other powers granted by the Washington State Constitution and by general law, including without limitation home rule charter authority, authority to enter into interlocal agreements, statutory enabling legislation and authority to adopt development regulations as a part of its powers.

If any provisions of this Agreement are determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law.

Section 18. **Term**. The initial term of this Agreement shall be twenty (20) years from the date of execution of this Agreement with renewal terms of five (5) year increments to allow for periodic review of the terms and conditions of the Agreement and to adjust service area boundaries. Said additional renewals will be automatic unless the Agreement is otherwise modified by written amendment or the Agreement is terminated pursuant to the provisions contained herein.

Section 19. **Termination**. COUNTY may terminate this Agreement in whole or in part for failure of the CITY to perform its obligations pursuant to this Agreement whenever it determines, in its sole discretion that such termination is in its best interests. Should the COUNTY elect to terminate, it shall provide written notice to the CITY no less than sixty (60) days prior to the date the termination shall become effective. If, in the COUNTY'S opinion, the CITY has cured its non-compliance before the effective date of the termination, the COUNTY may withdraw its notice of termination by providing the CITY written notice to that effect. Unless otherwise specified and agreed to in writing in an agreement entered into between the

COUNTY and the CITY, a termination of this Agreement by the COUNTY shall not affect the transfer of assets and service areas that has occurred prior to the date that the COUNTY provides a notice of termination to the CITY.

Section 20. **Headings**. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

Section 21. **Dispute Resolution**. Disputes regarding any matter contained herein shall be referred to the City Administrator and the County Executive for mediation and/or settlement. Any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof that cannot be resolved by and between the City Administrator and County Executive, shall be submitted to arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW. The COUNTY will appoint one arbitrator and the CITY will appoint one arbitrator, and the two arbitrators will appoint a third arbitrator. The decision rendered by the arbitrators may be entered in any court having jurisdiction thereof. The cost of arbitrating the dispute will be borne equally by all parties.

Section 22. **Waiver**. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this agreement. If any party violates any provision or obligation of this Agreement, the other party may seek legal and equitable relief including specific performance and damages. The prevailing party (or the substantially prevailing party if no one party prevails entirely) shall be entitled to reasonable attorney's fees and costs.

DRAFT

WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2011.

CITY OF EDGEWOOD

_____

Jeff Hogan MAYOR OF EDGEWOOD

_____

Date

_____

Janet Caviezel CITY CLERK

_____

Date

Approved as to Form:

_____

CITY ATTORNEY

_____

Date

Mailing Address:

_____

_____

Phone: _____

Street Address (if different)

_____

_____

PIERCE COUNTY

Approved:

_____

Pat McCarthy COUNTY EXECUTIVE

_____

Date

_____

Brian Ziegler DEPARTMENT DIRECTOR

_____

Date

Recommended:

_____

BUDGET AND FINANCE

_____

Date

Approved as to legal form only:

_____

DEPUTY PROSECUTING ATTORNEY

_____

Date

DRAFT

LISTING OF EXHIBITS

EXHIBIT 1 - Description of Service Areas to be Transferred

EXHIBIT 2 - List of Facilities that are being Transferred to the CITY

EXHIBIT 3 - Central Treatment Plant Capacity Agreement between Tacoma and Pierce County

EXHIBIT 4 - Reimbursement Agreement between Pierce County and Northwood Elementary School for Installation of a Public Sanitary Sewer System.

EXHIBIT 5 - Customer Accounts to be Transferred to the CITY

EXHIBIT 6 - Sewerage Rate Agreement between the City of Tacoma and Pierce County

DRAFT

EXHIBIT "1"

Map of Service Areas to be Transferred

DRAFT

EXHIBIT "2"

Facilities to be Transferred to the CITY

Pipelines

Asset #	Size (in)	Length (ft)	Location
MH# 8825 to MH# 8826	8	100	10300 block of 8th St E
MH# 8826 to MH# 8827	8	347	10300 block of 8th St E
MH# 11283 to MH# 11284	8	115	1700 block of 95th Ave Ct E
MH# 11284 to MH# 11285	8	350	1700 block of 95th Ave Ct E
MH# 11285 to MH# 11286	8	350	1700 block of 95th Ave Ct E
MH# 11286 to MH# 11287	8	350	9500 and 9600 block of 18th StCt E
MH# 11287 to MH# 11288	8	125	9600 block of 18th StCt E
MH# 11288 to MH# 11289	8	337	9700 block of 18th StCt E

Manholes

Asset #	Location
MH# 8826	At NE corner of Meridian and 8th St E
MH# 8827	In 8th St E in front of 10304 8th St E
MH# 11284	South of the intersection of Taylor St E and 95th Ave Ct E
MH# 11285	Near south property edge of 1711 95th Ave Ct E
MH# 11286	At intersection of 95th Ave Ct E and 18th StCt E
MH# 11287	At intersection of 96th Ave Ct E and 18th StCt E
MH# 11288	In 18th StCt E in front of 9624 18th StCt E
MH# 11289	In 18th StCt E in front of 9720 18th StCt E

DRAFT

EXHIBIT "3"

Central Treatment Plant Capacity Agreement between Tacoma and Pierce County

DRAFT

EXHIBIT "4”

Reimbursement Agreement between Pierce County and Northwood Elementary School for Installation of a Public Sanitary Sewer System.

DRAFT

EXHIBIT "5"

Customer Accounts to be Transferred to the CITY

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DRAFT

EXHIBIT "6"

Sewerage Rate Agreement between the City of Tacoma and Pierce County

DRAFT

From:	Kip Julin
To:	Mark Bauer; Eric Phillips
Cc:	Tim Ramsaur; Brian Ziegler; Toby Rickman
Subject:	Draft PC/Edgewood ILA
Date:	Tuesday, January 11, 2011 2:25:45 PM
Attachments:	Exhibit 1 - Service Area to Edgewood.pdf Exhibit 2 - Facilities to Edgewood.pdf Exhibit 3 - Capacity Agreement.pdf Exhibit 4 - Northwood Elem reimbursement agreement and amendment.pdf Exhibit 5 - Accounts to Edgewood.pdf Exhibit 6 - Sewerage Rate Agreement.pdf City of Edgewood Transfer Agmt draft 1-11-11.doc

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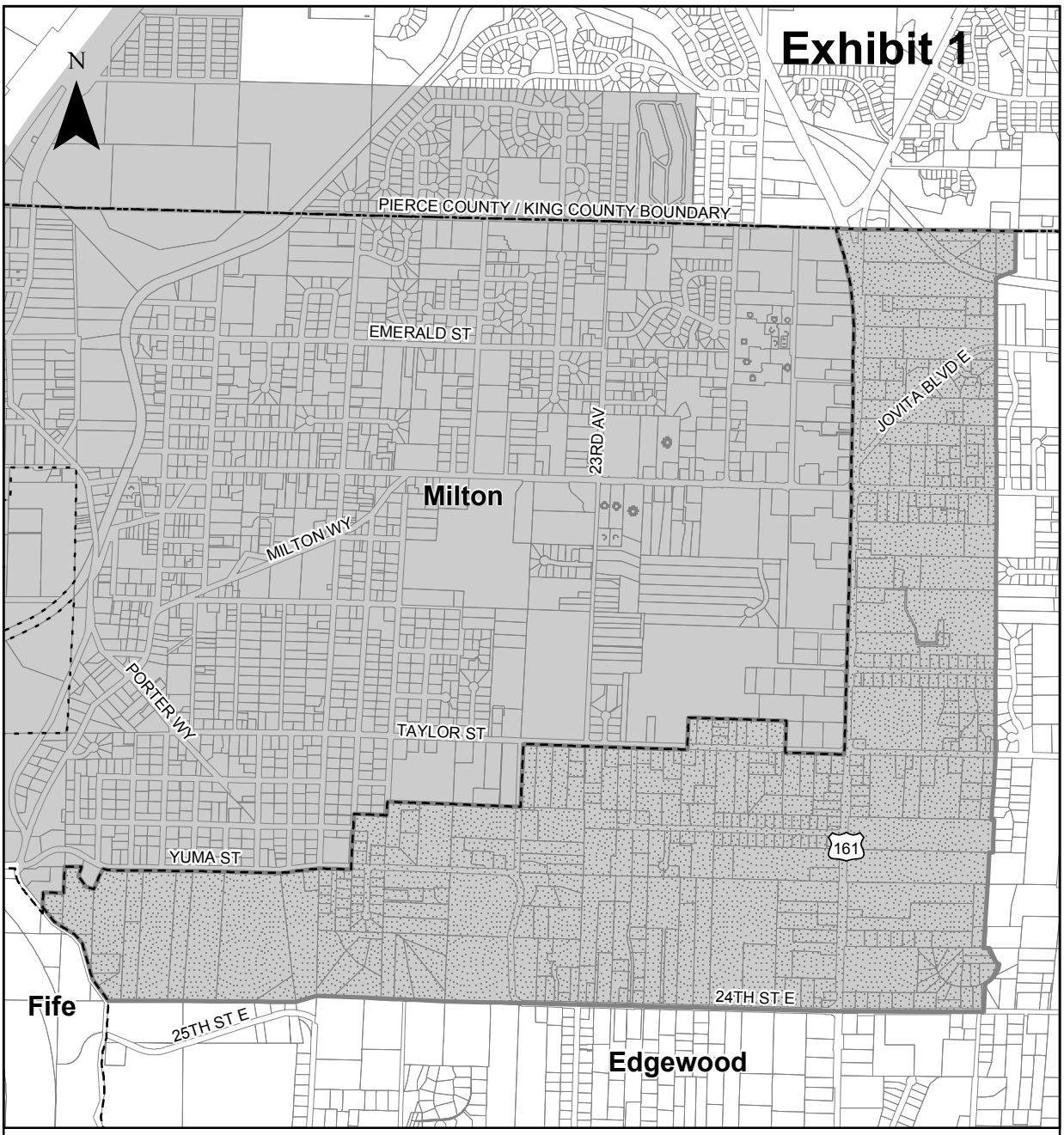
Mark / Eric

Please find attached our proposed "draft" interlocal agreement for the transfer of service area and assets within the City to the City and conditions for the Sewer Utility operating and maintaining those same assets for the City. The draft ILA is tailored after an ILA the County has with the City of Fife. Payment for services is similar to what we have with both City of Fife and Lakehaven Sewer District; except for we will be charging Edgewood for use of the Milton collection system also (both Fife or Edgewood only utilize the Hylebos Interceptor to convey their wastewater to Tacoma's Central WWTP). This would mean Edgewood pays (1) 85% of our rate for Treatment through our agreement with Tacoma (2) 33% for use of collection system (the 33% is based on an recent analysis performed for an ILA for the Town of Steilacoom; and (3) O&M costs for the Hylebos Interceptor system (varies year to year based on improvements and maintenance needs).

Once you have had a chance to review the draft language we would be happy to sit down with you to discuss the agreement. The Sewer Utility will bring the Edgewood ILA to the County Council to authorize execution, once the City and the Utility have negotiated out all of the major issues.

Should you have any questions or want to set meeting times, you may either email me or give me a call

Kip Julin
Strategic Planning and Asset Manager
Pierce County Public Works & Utilities
9850 - 64th Street W.
University Place, WA 98467-1078
(253) 798-4145
kjulin@co.pierce.wa.us



Pierce County Service Area to be Transferred to Edgewood

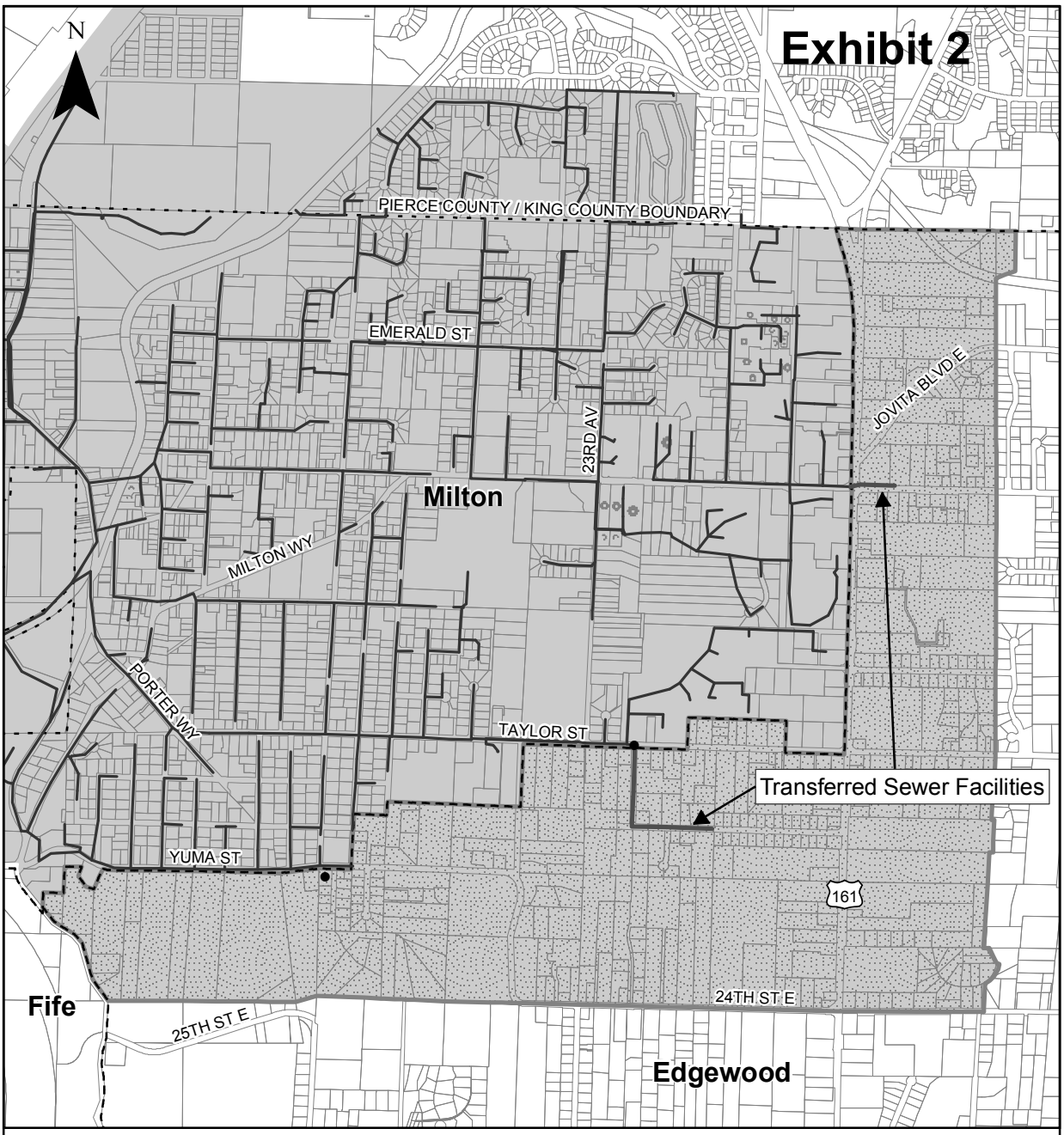
PC SA to be transferred to Edgewood

Pierce County Sewer Service Area

Pierce County · PUBLIC WORKS AND UTILITIES

Date: October 20, 2010

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.



Pierce County Facilities to be Transferred to Edgewood

- Pierce County Sewer Service Area
- Pierce County Sewer Service Area to be Transferred to Edgewood
- Pierce County Sewer LInes
- Facilities to be Transferred to Edgewood
- Point of Connection into Pierce County Sewer System

Pierce County Public Works and Utilities

Date: October 20, 2010

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

865331

Exhibit "A" to Ord. 86-95

29378

CENTRAL TREATMENT PLANT

CAPACITY AGREEMENT

BETWEEN

TACOMA AND PIERCE COUNTY

THIS CONTRACT is made and entered into as of the 25th day of November, 1986, by and between the CITY OF TACOMA, WASHINGTON (hereinafter referred to as "Tacoma") and PIERCE COUNTY, WASHINGTON (hereinafter referred to as the "County").

WHEREAS, Tacoma presently owns and operates the Central Treatment Plant for the purpose of treating sewage from residential, commercial, and industrial sources for the benefit of the citizens of Tacoma; and

WHEREAS, the County presently owns and operates the Chambers Creek Plant for the purpose of treating sewage from residential, commercial, and industrial sources for the benefit of the citizens of the unincorporated areas of the County; and

WHEREAS, Tacoma will construct additional facilities at the Central Treatment Plant to upgrade it to secondary treatment; and

WHEREAS, Tacoma presently provides sewerage service to the County in many areas contiguous with the City Limits; and

WHEREAS, the County presently is now able to provide sewerage service to Tacoma in many County areas contiquous with the Tacoma City Limits; and

WHEREAS, each sewerage service agreement includes rental of treatment capacity in the Tacoma system; and

WHEREAS, the County wishes to purchase 3.0 MGD average daily flow permanent primary and secondary capacity rights in the new treatment plant in order to provide for the orderly development of the County's sewerage system; and

WHEREAS, Tacoma is willing to sell capacity rights to the County in the Central Treatment Plant; and

WHEREAS, the County and Tacoma are willing to exchange capacity rights in their respective wastewater treatment plants when there is capacity in the receiving plant available; and

WHEREAS, it is in the best interest of both parties to this Contract and in the interest of the public health, safety and welfare of the territory served by both parties, that this contract be entered into;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. AUTHORITY FOR CONTRACT - COMPLETENESS - TERM

This contract is made and entered into pursuant to the authority vested in Tacoma and the County by the provisions of RCW 36.94.190 and Chapter 39.34 RCW.

2. DEFINITIONS

A. Agreement Area shall mean that area generally described as follows:

1. The areas of all present and future sewerage service agreements between Tacoma and the County served by the Central Treatment Plant.

2. The areas of all future sewerage service agreements between Tacoma and the County to be served by the Chambers Creek Plant.

B. Average Dry Weather Flow (ADWF) shall be the average daily flow measurement recorded at the point of discharge of County/Tacoma sewage into Tacoma/County sewerage system for a minimum flow period over the same consecutive five days that the Total Dry Weather Flow from the Tacoma Central Treatment Plant/County Chambers Creek Plant is measured. This measurement shall be taken during the period between July 1 and October 31. This definition is to be used for capacity right determination only.

C. County shall mean Pierce County, Washington, the governing body of which is the Pierce County Council and County Executive.

D. County Sewer System shall mean the system of sanitary sewage collection, interceptor, treatment and disposal system owned and operated by Pierce County, that serve the agreement area.

E. Local Share Cost shall mean that portion of treatment and disposal facilities' cost not covered by Federal and/or State grant funds.

F. MGD shall mean million gallons per day.

G. Sewage shall mean sanitary sewage only, consisting of domestic, commercial, and industrial wastewater from which storm water is excluded.

H. Tacoma shall mean the City of Tacoma, Washington, the governing body of which is the Tacoma City Council.

I. Tacoma Sewer System shall mean the sanitary sewage collection, interceptor, treatment, and disposal system owned and operated by Tacoma that serve the agreement area..

3. PERMISSION TO DISCHARGE SEWAGE

A. Tacoma hereby grants the County permission to discharge sanitary sewage transported by the County from the County System into that portion of the Tacoma Sewer System commonly designated as the Central System in accordance with all terms set forth in this Agreement.

B. The County hereby grants Tacoma permission to discharge sanitary sewage transported by Tacoma from the Tacoma system into that portion of the County sewer system commonly designated as the Chambers Creek system in accordance with all terms set forth in this agreement.

4. ACQUISITION OF CAPACITY RIGHTS IN THE TACOMA CENTRAL TREATMENT PLANT

Tacoma has previously constructed or will construct certain sewage treatment facilities with greater capacity than required for Tacoma presently or in the near future at the Central Treatment Plant. Tacoma grants the County the right, on a permanent basis, to available capacity in the Tacoma Central Treatment Plant in the amount of 3.0 MGD ADWF and a peak hydraulic flow of 9.0 MGD under the following conditions:

A. Primary Treatment Facilities

The County shall pay to Tacoma $2,102,956.52 for acquisition of the above specified capacity rights.

B. Secondary Treatment Facilities

The County shall pay to Tacoma $2,190,000.00 for acquisition of the above specified capacity rights.

The payments for acquisition of the permanent capacity rights shall commence on July 1, 1986, and be spread over eight equal payments ending January 1, 1990. The semi-annual payments include the County's share of the estimated local share costs of the construction of the Central Treatment Plant outfall. The exact local share cost of secondary treatment facilities will not be known until completion of the EPA audit of the costs after completion of the project. It is agreed that after completion of the audit an adjustment shall be made in the local share cost according to the results of the audit. Tacoma shall credit, or bill, the County as appropriate. The County/Tacoma agrees to pay any adjusted billing within 30 days of receipt of the adjustment invoice.

Capacity rights acquired by the County pursuant to this agreement shall not constitute ownership by the County of any facilities comprising the Tacoma Sewer System.

5. EXCHANGE OF CAPACITY

A. In the future Tacoma may find that in certain areas it is in the best interests of its citizens to discharge into the Chambers Creek system. If there is sufficient Chambers Creek Plant capacity, Tacoma and the County shall enter into agreement area contracts to serve such areas. It is mutually agreed that an equal amount of capacity utilized by Tacoma in the Chambers Creek Plant shall be added to the total permanent capacity rights the County has acquired in the Central Treatment Plant as noted in Section 4 of this Agreement.

B. Beyond the total of permanent and exchange capacity rights the County currently will hold, the County may find that in certain areas it is in the best interests of its citizens to discharge into the Central system. If there is sufficient Central Plant capacity, the County

shall enter into agreement area contracts with Tacoma. It is mutually agreed that the capacity utilized by the County in excess of the County's total permanent and exchange capacity in the Central Plant shall be added to the exchange capacity rights Tacoma has in the Chambers Creek Plant.

6. TRANSFER OF CAPACITY

The permanent and exchange capacity in the Central Treatment Plant/Chambers Creek Treatment Plant herein granted to the County/Tacoma may be used by the County/Tacoma in any of the sewerage service agreement areas served by the Central Treatment Plant/Chambers Creek Treatment Plant.

7. CAPACITY RIGHTS AVAILABILITY

To optimize the current treatment plant facilities it is mutually agreed that any unused permanent capacity rights of the County/Tacoma in the Central Treatment Plant/Chambers Creek Treatment Plant can be rented, in accordance with the formula in attachment "A", to Tacoma/County in the event there are unused County/Tacoma capacity rights in the treatment plant facility, that would have to be expanded/enlarged to accommodate the Tacoma/County sanitary sewer needs.

The County and Tacoma shall work together to optimize the use of current treatment plant capacity.

8. PEAK FLOWS

It is mutually agreed that attachment "B" shows the peak flows expected in the mains of Tacoma/County and that flows that will exceed those peaks must be mitigated to prevent exceeding the Tacoma Central Plant peak factor of 3.0 to 1.0 peak to average flow or the County Chambers Creek Plant peak factor of 2.5 to 1.0 peak to average flow.

9. FUTURE TREATMENT PLANT ENLARGEMENTS

In the event enlargements are required to any Central Treatment Plant/Chambers Creek Treatment Plant facilities, the County/Tacoma shall only be responsible for that portion of the cost of these enlargements based on the additional requested capacity needs of the County/Tacoma determined as follows:

A. County/Tacoma Share. The County/Tacoma share shall be computed as the total Enlargement cost times the ratio of the County/Tacoma capacity from the County/Tacoma System and the total capacity in the Enlargement. The Tacoma/County capacity shall be the Enlargement capacity less County/Tacoma capacity.

B. Tacoma/County Share. The Tacoma/County share shall be the difference between total Enlargement cost and the County/Tacoma share as determined in subsection A above.

C. Enlargement and Enlargement Cost shall be deemed any expansion of design flow capacity based on the new current quality of treatment in the Tacoma Central Wastewater Treatment Plant/Chambers Creek Waste-

water Treatment Plant. Any increase of quality of treatment in compliance with State or Federal requirement, the cost thereof shall be deemed an "upgrading" covered by Section 10 of this Contract.

Nothing in this Section 9 shall prevent the County/Tacoma from acquiring and Tacoma/County from relinquishing to the County/Tacoma additional capacity rights in any existing Tacoma treatment and/or trunkage facilities upon the same basis as set forth in Section 4 and 5.

10. FUTURE TREATMENT PLANT UPGRADING

In the event upgrading of treatment processes is required, the costs shall be shared between the County and Tacoma on a ratio of average dry weather capacity or peak flow capacity (whichever is the controlling factor in causing the upgrading to be made) required by or granted to each party. Total capacity shall be the amount contributed by each party at the time of the upgrading plus the amount required by either party for future anticipated flows.

11. AMENDMENT OF EXISTING CAPACITY RIGHTS

Tacoma and the County have several existing sewerage service agreements which have listed capacities in the Central Treatment Plant. This Agreement shall supercede and replace the temporary capacity rights itemized on Attachment 'C' with permanent capacity rights in the Central Treatment Plant as of the effective date of this agreement.

12. SEWERAGE SERVICE RATES AND CHARGES

Sewerage service charges shall be paid in accordance with the Sewerage Rate Agreement dated April 17, 1979, between Tacoma and the County, or as that may be hereafter amended.

13. MAINTENANCE AND OPERATION

Tacoma and the County shall operate and maintain all facilities subject to this Contract located within their respective jurisdictions and upstream from the points of connection to the other's sewerage system. All such maintenance and operation shall be consistent with good sanitary engineering practice in accordance with all applicable laws, standards, and requirements.

14. QUALITY OF SEWAGE

The quality of sewage delivered to the Tacoma/County System by the County/Tacoma shall conform to the requirements set forth by the then prevailing Tacoma/County regulations applicable to Tacoma/County sewage.

There shall be reserved to Tacoma/County the right to inspect all sewerage facilities of the County/Tacoma included within this Agreement in order to enable Tacoma/County to comply with any and all conditions of current or future Federal and/or State Regulations including, but not limited to, the monitoring of wastes and requiring construction of monitoring station facilities.

15. INSURANCE - LIABILITY

The County/Tacoma shall self-insure or secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewer systems of like character against loss of or damage to the sewerage facilities operated and maintained by the County/Tacoma and against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost. Any liability incurred by Tacoma/County solely as a result of the operation of its treatment facilities and not caused or occasioned by any act of the County/Tacoma, or any of its customers, or resulting from the connection to County/Tacoma facilities, shall be the sole liability of Tacoma/County.

16. RESOLUTION OF DISPUTES

In the event of any dispute or disagreement arising under this contract, the City's Director of Public Works and the County's Director of Utilities shall agree on a neutral, impartial Arbitrator. If they are unable to agree on an Arbitrator within three (3) weeks of receipt by either party of a written demand for arbitration from the other party, then either party may submit a request for a list of seven (7) arbitrators from the American Arbitration Association. The parties shall then select an Arbitrator from that list of seven (7), by alternately striking one from the list until an Arbitrator is selected. Once an Arbitrator is selected by either of the two (2) above methods, the matter shall be submitted to the Arbitrator. The decision of the Arbitrator shall be rendered as expeditiously as possible and shall be final and binding upon both parties. Any decision rendered shall be within the scope of the agreement and shall not add to or subtract from any of the terms of the agreement. The decision shall be an interpretation of the terms of the agreement. The Arbitrator shall confine himself or herself to the precise issue or issues submitted for arbitration by the parties and shall have no authority to determine other issues not so submitted. All expenses of the Arbitrator shall be shared equally by the City and the County.

17. REVIEW OF CONTRACT

It is understood that the terms of this contract shall be reviewed at any time requested by either party. Each Party hereto reserves the right as stated above to review and renegotiate this contract when the flows meet or exceed those as outlined in Sections 4 and 5 as measured under Section 2, Paragraph B. In any event, this agreement shall be reviewed at five-year intervals.

18. EFFECTIVE DATE

It is mutually agreed that the effective date of this agreement shall be January 1, 1986.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 25th day of November, 1986.

29378

PIERCE COUNTY, WASHINGTON

Joe De Rosa for Mike Panajotovich
Risk Manager

By Joe Stortini
County Executive

Patt Kenny
Budget Director

By C F Gordon
Chairman, Pierce County Council

APPROVED AS TO CONTENT:

Donald M Perry
Director, Pierce Co. Utilities

ATTEST:

By Geri Ramsdale
County Clerk of the Council

APPROVED AS TO FORM:
WILLIAM H. GRIFFIES
PROSECUTING ATTORNEY

By Lloyd P. Fitterly
Civil Deputy

COUNTERSIGNED:

Leslie T. Hancock
for Director of Finance

CITY OF TACOMA, WASHINGTON

By
City Manager

ATTEST:

City Clerk

APPROVED

By
Asst. City Attorney

Final page of Agreement between the City of Tacoma and Pierce County for Central Treatment Plant Capacity Rights

PRESENT WORTH OF THE CENTRAL TREATMENT PLANT
as of January 1, 1986

Total Plant value in 1965:

Structures	$2,635,636.00
Equipment	$731,821.00
TOTAL	$3,367,457.00

The above value was derived by taking the original plant construction cost and escalating it to the 1965 dollars using the 'ENGINEERING NEWS RECORD' Construction Cost Index.

1913	ENR	SEATTLE	CCI	=	100
1959	ENR	SEATTLE	CCI	=	790
1965	ENR	SEATTLE	CCI	=	975
1971	ENR	SEATTLE	CCI	=	1560
1982	ENR	SEATTLE	CCI	=	4235
1985	ENR	SEATTLE	CCI	=	4599

1985 Plant Value: 3,367,457 x 4599 / 975 = $15,884,035.63

1985 value of State and Federal Grants:

1959: 186,550 x 4599 / 790 = $1,086,004.37

1971: 251,408 x 4599 / 1560 = $741,170.12

1985 value the Plant, less State and Federal Aid: $14,056,861.14

Outstanding DEBT SERVICE is subtracted out because it is paid via service charges.

1959 issue is 27/30's paid: 31,694 - (27 / 30 x 31,694) = $3,169.40

1961 issue is 25/30's paid: 259,187.50 - (25 / 30 x 259,187.50) = $43,197.92

1971 issue is 15/30's paid: 257,100 - (15 / 30 x 257,100) = $128,550.00

TOTAL $174,917.32

1985 OWNED value of the 'pre-modified' plant: $13,881,943.82

The modifications to the existing plant were in 1982. the matching funds came from the Operating Fund. The matching funds are to be brought forward to 1985 and added to the above 'pre-modified' value of STP #1.

Total Operating Fund Contribution: $1,827,648

1985 value of Contribution: 1,827,648 x 4599 / 4235 = $1,984,735.10

PRESENT WORTH OF THE CENTRAL TREATMENT PLANT
as of January 1, 1986

A thermophilic digestion system was constructed at STP #1 in 1985 and went on line in early 1986. The County has indicated that they wish to add it to the purchase price of PRIMARY CAPACITY and forego payment of it through Debt Service. Future rates will be determined by deducting the specific bond expenses from the overall expenses of the Sewer Utility.

TOTAL PROJECT COST IN 1985 DOLLARS: (Est'd as of 3/14/86) $3,900,000.00
(Includes Construction, Engineering, Administration, etc.)

TOTAL 1985 'OWNED' VALUE OF THE CENTRAL TREATMENT PLANT: $19,766,678.92

Cost per MGD Capacity: 19,766,678.92 / 28 = $705,952.82

THE TOTAL COST OF PURCHASE OF 3.0 MGD PRIMARY CAPACITY IN THE CENTRAL TREATMENT PLANT AS OF 1/1/86 IS:

3.0 * $705,952.82 = $2,117,858.46

Deduct Pierce County's contribution towards the retirement of STP #1's Debt Service principle paid through Service Charges.(See Sheet No. 3) $14,901.94

THE TOTAL COST OF PURCHASE OF 3.0 MGD PRIMARY CAPACITY IN THE CENTRAL TREATMENT PLANT FOR PIERCE COUNTY UTILITIES AS OF 1/1/86 IS: $2,102,956.52

ANNUAL RENTAL OF CAPACITY RIGHTS AS OF 1/1/86 FOR 0.01 MGD IS AS FOLLOWS, BASED ON A 45 YEAR DESIGN LIFE:

19,751,776.98 x 0.01 / 45 / 28 = $156.88

PIERCE COUNTY SHARE OF DEBT PRINCIPAL
for the CENTRAL TREATMENT PLANT

YEAR	TOTAL PC CHARGES	OPERATING REVENUE	PRINCIPAL PAID OFF	COUNTY SHARE	COUNTY TOTAL	ANNUAL ENR INDEX	PRESENT WORTH
1973	$5,608.17	$3,060,318.00	$16,331.00	0.1833%	$29.93	1934	$71.17
1974	$58,113.43	$3,119,409.00	$17,129.00	1.8630%	$319.11	2098	$699.52
1975	$117,679.17	$3,383,646.00	$17,966.00	3.4779%	$624.84	2150	$1,336.58
1976	$178,371.20	$3,431,820.00	$18,803.00	5.1976%	$977.30	2486	$1,807.97
1977	$124,715.78	$3,446,247.00	$19,789.00	3.6189%	$716.14	2515	$1,309.55
1978	$134,242.27	$3,815,397.00	$18,952.00	3.5184%	$666.81	3025	$1,013.77
1979	$207,818.69	$5,068,032.00	$20,741.00	4.1006%	$850.51	3535	$1,106.51
1980	$216,234.93	$5,596,658.00	$22,001.00	3.8636%	$850.03	3909	$1,000.07
1981	$268,926.56	$5,737,891.00	$22,300.00	4.6869%	$1,045.18	4235	$1,135.01
1982	$284,855.56	$5,952,870.00	$23,137.00	4.7852%	$1,107.15	4505	$1,130.25
1983	$364,312.26	$7,078,146.00	$23,974.00	5.1470%	$1,233.94	4560	$1,244.49
1984	$417,445.78	$7,357,886.00	$24,811.00	5.6734%	$1,407.63	4546	$1,424.04
1985	$665,826.23	$10,521,832.00	$25,648.00	6.3280%	$1,623.01	4599	$1,623.01
TOTALS	$3,044,150.03	$67,570,152.00	$271,582.00		$11,451.58		$14,901.94

REIMBURSEMENT AGREEMENT BETWEEN PIERCE COUNTY AND PUYALLUP SCHOOL DISTRICT NO. 3 FOR INSTALLATION OF A PUBLIC SANITARY SEWER SYSTEM AT NORTHWOOD ELEMENTARY - CONTRACT NO. 98-9611

THIS REIMBURSEMENT AGREEMENT is made and entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington, herein known as "County", and **PUYALLUP SCHOOL DISTRICT NO. 3**, a public school district, herein known as "Owner".

WITNESSETH

WHEREAS, County operates a sanitary sewer utility that maintains and operates a public sanitary sewer system that collects, conveys, treats and disposes of wastewater and services portions of both incorporated and unincorporated Pierce County; and

WHEREAS, Owner owns certain real property in Pierce County, Washington, that was not served by the County's sewer system and is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (herein known as the "Property"); and

WHEREAS, Owner requested that the Property be served by the County's sanitary sewer system and submitted plans to the County to connect to public sanitary sewer facilities adjacent to or near the property; and

WHEREAS, County has approved and has on file, the plans, specifications and estimated costs for construction of the public sanitary sewer facilities (herein known as the "Improvements") connecting the Property to the County sewer system; and

WHEREAS, County determined that, in addition to the Owner's Property, there are other properties located in the vicinity of the Improvements which could be provided sewer service at some time in the future due to the installation of the Improvements and those other properties (herein known as the "Tributary Service Area") are defined in Exhibit "B", attached hereto and incorporated by this reference; and

WHEREAS, Owner will construct the Improvements in accordance with the approved plans and specifications; and

WHEREAS, in exchange for the construction and dedication of the Improvements to the County, the County is willing to reimburse the Owner for certain costs associated with construction of the Improvements by reimbursing a portion of the connection charges collected from property owners who subsequently connect their properties to the Improvement after its conveyance to the County; and

WHEREAS, County will allow only those connections agreed to under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of

Sanitary Sewer Service To Northwood Elementary School as described in Exhibit "C" attached hereto and incorporated by this reference; and

WHEREAS, County has the authority pursuant to Pierce County Code Chapter 13.05 to enter into this Agreement to reimburse the Owner for all or a portion of the cost of constructing the Improvements;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS DESCRIBED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide the legal framework and establish the procedures for reimbursing the Owner some portion of the cost of constructing a public sanitary sewer facility to serve the Owner's Property and the Tributary Service Area from the connection charges received within the following fifteen (15) years from the property owners within the Tributary Service Area.

2. Construction of Improvements By Owner. Owner will construct at its own expense, all Improvements necessary to provide sewer service to the Property and to the Tributary Service Area. All construction will be in accordance with the County approved engineering plan and all other applicable County, State, and Federal ordinances, statutes, or regulations. Owner will construct the Improvements and upon final acceptance of the Improvements by the County, transfer the Improvements to the County free and clear of all liens and debts, for inclusion into the sewer system as a public facility, including any right, title and interest in any property upon which the Improvements are located.

3. Owner Connection Charges and Other Fees. In consideration of County's permission to allow Owner to connect to existing County sewer facilities, Owner agrees to pay in full all applicable connection charges due the County prior to approval of the sewer plans. The connection charge shall be calculated in accordance with the Pierce County Administrative Code Chapter 13.04 (or that section of the Pierce County Code governing the calculation of connection charges), with the exception that no front footage charge shall be collected due to Owner being responsible for the cost of installing the Improvements to serve the Property. In addition to the connection charge, Owner shall pay all other fees required by law, including but not limited to plan review fees, inspection fees, contract administration fees, side sewer stub charges, treatment plant capacity charges, and other administrative fees.

4. Eligible Construction Costs. The County and Owner agree that the estimated Total Eligible Construction Cost for the Improvements to be constructed is $232,379.00. Within 15 days of completion of construction of the Improvements and acceptance by the County, Owner shall provide the competitive bid information submitted to construct the Improvements along with complete and itemized copies of all invoices for costs related to construction of the Improvements. In order for bid information to be considered competitive, a minimum of three qualified construction contractors must be afforded the opportunity to bid for the job under the same competitive conditions.

The cost information provided by Owner shall be reviewed by the County to determine the Total Eligible Construction Cost. Certification of the costs and authentication of the copies shall be made by

the party providing the construction service and the Owner. Costs not evidenced by an invoice shall not be considered Eligible Construction Costs. Any costs not previously identified in the approved cost estimate submitted with the sewer plans and specifications shall not be considered an Eligible Construction Cost unless written authorization is received from the County. Construction costs which exceed the approved construction cost estimate shall not be considered eligible construction costs unless written authorization is received from the County.

5. County Agrees to Reimburse. The County agrees to reimburse the Owner for the Total Eligible Construction Costs of constructing the Improvements from a portion of the connection charges paid by property owners within the Tributary Service Area who subsequently connect their properties to the Improvement until the Total Eligible Construction Cost has been paid in full or until the term of the Agreement expires. As the Eligible Construction Cost to serve the tributary area is $232,379.00 as stated in Section 4, the Owner's Net Reimbursable Amount shall be up to $232,379.00.

Reimbursement payments made from the eligible portion of the connection charges collected from Tributary Properties shall be made to the Owner within sixty (60) days following collection of the connection charge by the County.

No interest shall be paid on any unpaid balances related to any amount in this Agreement for the term of the Agreement.

6. Tributary Service Area. The County, pursuant to applicable Administrative Code provisions, will collect connection charges and other applicable fees from property owners within the Tributary Service Area who subsequently connect their properties to the Improvement after its conveyance to the County (herein known as "Tributary Properties"). Those charges and fees shall include, but not be limited to, area charges, capital facility charges, treatment plant capacity charges, plan review fees, inspection fees, contract administration fees, and side sewer stub charges. Only the Area Charges or portions of the Capital Facility Charges calculated pursuant to section 13.04.100 and collected by the County from the Tributary Properties shall be used to reimburse the Owner. No other charges or fees collected from the Tributary Properties shall be utilized to reimburse the Owner.

Connections by properties within the Tributary Service Area are limited to only those connections allowed under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of Sanitary Sewer Service To Northwood Elementary School.

7. Term of Agreement. This Agreement and all obligations contained herein, shall terminate upon final payment of the Net Reimbursement Amount to the Owner pursuant to this Agreement, or at the end of fifteen (15) years from the effective date of this Agreement, whichever occurs first. The effective date of this agreement shall be the date the agreement is fully executed by the Owner and Pierce County as evidenced on the signature page of the agreement.

8. Termination of Agreement Due to Expired Sanitary Sewer Plans. Upon execution of this Agreement, the Owner must proceed with construction of the Improvements prior to the expiration of

his/her approved sanitary sewer plans. Unless extended by mutual agreement between the County and the Owner, should the Owner's approved sanitary sewer plans expire prior to the initiation of construction of the Improvements, then the reimbursement agreement shall be null and void.

9. Owner's Warranty of Improvements. Owner agrees and expressly warrants to the County that the Improvement will be installed pursuant to the approved design plans at the Owner's expense, will function in a satisfactory manner and be in compliance with recognized engineering and construction standards. Owner agrees to indemnify the County against any losses caused by faulty materials and/or poor workmanship incorporated in or relating to the improvements. Such warranty and indemnification shall be in effect for one year commencing on the date of the County's acceptance of the Improvements as constructed. Any maintenance bond requirements shall be accordance with then current County ordinances and regulations. Owner will assign to County all rights Owner possesses, as against the contractor, subcontractors or any other person, firm, or corporation, contractual or otherwise, whether based on an express or implied warranty to recover damages relating to the Improvements.

10. Limitation of Assignment. This Agreement shall not be assignable by Owner without the prior written approval of Pierce County.

11. Notice. Owner shall be responsible for providing the County with its current address at all times during the term of this Agreement. All payments under this agreement shall be mailed to the Owner using the most current address on file with the Pierce County Public Works and Utilities Department. Any change of address notice submitted by the Owner shall be sent by means of Certified Mail, return receipt request, and shall be addressed as follows:

OWNER(S)
Puyallup School District No. 3
109 East Pioneer
Puyallup, WA 98372

PIERCE COUNTY
Pierce County Public Works and Utilities
9116 Gravelly Lake Drive Southwest
Tacoma, Washington 98499

12. No Waiver of Permits. Nothing in this Agreement shall be construed to waive any permitting or approval process otherwise required by any Federal, State or County agency in conjunction with development on the Property.

13. Indemnification. Owner agrees to save harmless and indemnify the County, its appointed and elected officials and employees from and against all claims of loss and expense, including, but not limited to, damage to wastewater facilities, economic loss, environmental remediation, or claims by third

parties for personal injury, death, or property damages arising from performance of the Owner's obligations under this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the Owner and the County with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by both parties hereto.

15. Governing Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by laws of the State of Washington and the ordinances and codes of the County of Pierce.

16. Severability. In the event any portion of this Agreement is determined to be void or unenforceable, such provision shall be severable and will not affect the validity of the remaining portion of this Agreement.

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Executed this 11 day of September, 1998.

PIERCE COUNTY
Pierce County Executive

By: _____ 9/11/98
Date

Its: County Executive

OWNER(S)
Puyallup School District No. 3

By: _____
Ray Graham Date

Its: _____
(Title)

_____ 8/31/98
Department Director Date

109 East Pioneer
Puyallup, WA 98372
(253) 841-1301
Address and Phone Number

_____ 8/25/98
Deputy Prosecuting Attorney Date
(as to form only)

Tax Identification Number

91-6001545

_____ 9-9
Budget and Finance Date

_____ 9/10
Executive Director Date

Document\Agree\puy9611.agr
August 25, 1998

EXHIBIT "A"

LEGAL DESCRIPTION

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 20 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN.

EXCEPT THE SOUTH 30 FEET OF SAID WEST HALF FOR MICKELSON COUNTY ROAD.

SITUATED IN PIERCE COUNTY, STATE OF WASHINGTON.

EXHIBIT "B"

TRIBUTARY SERVICE AREA

See attached Tributary Service Area Map

INTERLOCAL AGREEMENT BETWEEN THE PUYALLUP SCHOOL DISTRICT, PIERCE COUNTY AND THE CITY OF EDGEWOOD FOR THE PROVISION OF SANITARY SEWER SERVICE TO NORTHWOOD ELEMENTARY SCHOOL

THIS AGREEMENT is entered into this day by and between the Puyallup School District (herein known as the "District"), Pierce County (herein known as the "County"), and The City of Edgewood (herein known as the "City").

WHEREAS, the City incorporated on February 28, 1996; and

WHEREAS, the City is in the process of preparing its first comprehensive plan; and

WHEREAS, through the comprehensive planning process, the City will determine where it is appropriate for growth and development to occur within its boundaries; and

WHEREAS, the City Council of the City of Edgewood desires that sewer service not be extended or installed until such time as the City has completed its comprehensive planning process; and

WHEREAS, Pierce County operates a sanitary sewer utility which includes a sanitary sewer line located within Taylor Way East (also known as 16th Street East); and

WHEREAS, the Puyallup School District owns and operates the Northwood Elementary School located within the City at 9805 24th Street East, which disposes of its waste by directing its effluent unto a large holding tank which is pumped and trucked for disposal on a regular basis; and

WHEREAS, the Puyallup School District desires to connect its Northwood Elementary School to a permanent sanitary sewer system to alleviate the need to regularly pump the holding tanks serving the school; and

WHEREAS, connection of Northwood Elementary would require the installation of a sewer line that would traverse over private property and within the City's right-of-way to a connection point in Taylor Way East; and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION 1. The District shall design and construct, at its own cost, an 8" sanitary sewer line to serve its Northwood Elementary School property. The City hereby authorizes the District and the County to utilize a portion of the City right-of-way within which to locate the sewer line. The routing of the sewer line, including that portion of right-of-way to be utilized, based on preliminary engineering drawings is shown in Exhibit "A" attached hereto and incorporated herein by this reference. This authorization is further conditioned by the terms outlined below:

A. The District shall be responsible for obtaining all plan and permit approval from the County in order to connect to the County's sanitary sewer line in Taylor Way East.

1. All plans must be reviewed and approved by the City prior to submittal to the County for approval.

2. The County shall consult with the City on all matters pertaining to the placement of lines within the City right-of-way and road restoration.

B. This agreement shall apply to the provision of sanitary sewer service to Northwood Elementary School property only, and shall in no way be construed to apply to any other property near or adjacent to Northwood, except as provided for in this agreement.

1. Provided that the district shall not permit any other property owners to hookup to their private side sewer.

2. Provided that nothing in this agreement shall prevent the School District from hooking up the new Edgemont Junior High to their private side sewer.

C. Sanitary sewer service shall be provided only in accordance with plans developed by a licensed engineer and approved by the County and after payment of all relevant fees and connection charges to the County.

D. The Puyallup School District shall assume responsibility for all costs associated with the connection of sewer service to Northwood Elementary School property, including all County permit fees, connection charges, and construction and engineering costs associated with installing the pipeline, and pretreatment facilities such as a grease interceptor or acid neutralizers; provided that

1. Nothing shall preclude the District from executing a latecomers' agreement in accordance with the provisions of this agreement in order to recoup a portion of the expenses associated with installing the line from subsequent property owners who may utilize the sanitary sewer main;

2. The City shall incur no expense associated with this agreement.

E. As the area within which the District property is located may fall within the sanitary sewer service area of the City of Puyallup and the City of Puyallup has no sewer facilities within this area, the District will assist the County in obtaining the written consent of the City of Puyallup for the County to provide sanitary sewer service to the District property.

SECTION 2. Nothing in this agreement shall preclude the County from approving requests from individual property owners to connect to the sanitary sewer line installed by the District, PROVIDED that all of the following conditions have been met:

A. Any associated land use or right-of-way use permit application request has been reviewed and approved by the City.

B. The request is to serve an existing single family residence whose septic system has failed and cannot be repaired or replaced in accordance with Tacoma-Pierce County Health Department standards, or the request is for side sewer service to serve a newly constructed single family residence located on property within 300' from the sanitary sewer line as depicted in exhibit A.

1. Provided that nothing in this agreement shall be construed to permit the extension of sanitary sewer service to new construction beyond this 300' limitation.

C. The request to connect to sewers is entirely voluntary. No involuntary connections, other than those mandated by the Health Department due to health risks associated with failed systems, shall be required.

D. All engineering and construction costs and connection charges associated with connecting the property to sewers will be borne by the party seeking connection.

SECTION 3. CITY WILL GRANT A LIMITED FRANCHISE. The City of Edgewood hereby confers to Pierce County a franchise to use City right-of-way for

purposes of maintaining `d operating the sewer line to be `talled by the District within the City right-of-way and for other purposes as outlined in this agreement.

SECTION 4. TERM OF THE AGREEMENT. This agreement shall become effective upon signature by all parties, and shall remain in effect as along as Northwood Elementary School remains in service, provided that this agreement shall become null and void if construction has not commenced by January 1, 1999. This agreement may be modified by mutual agreement of all parties.

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

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

SECTION 6. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING. This Interlocal Agreement doe not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

SECTION 7. NO THIRD PARTY BENEFICIARY. The County does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than the County. The County and the City do not intend that there be any third-party beneficiary to this agreement.

SECTION 8. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this 9 day of December, 1997.

EDGEWOOD

T.D. Faherty, Mayor

Stephen L. Anderson, City Manager

APPROVED AS TO FORM:

Lisa Marshall, City Attorney

Nacelle Heuslein, City Clerk

PIERCE COUNTY

Karen Cocan 11/14/97
Department Director Date

Lori Kennedy 11/18/97
Dep. Prosecuting Attorney Date
(As to form only)

12-8
Budget and Finance Date

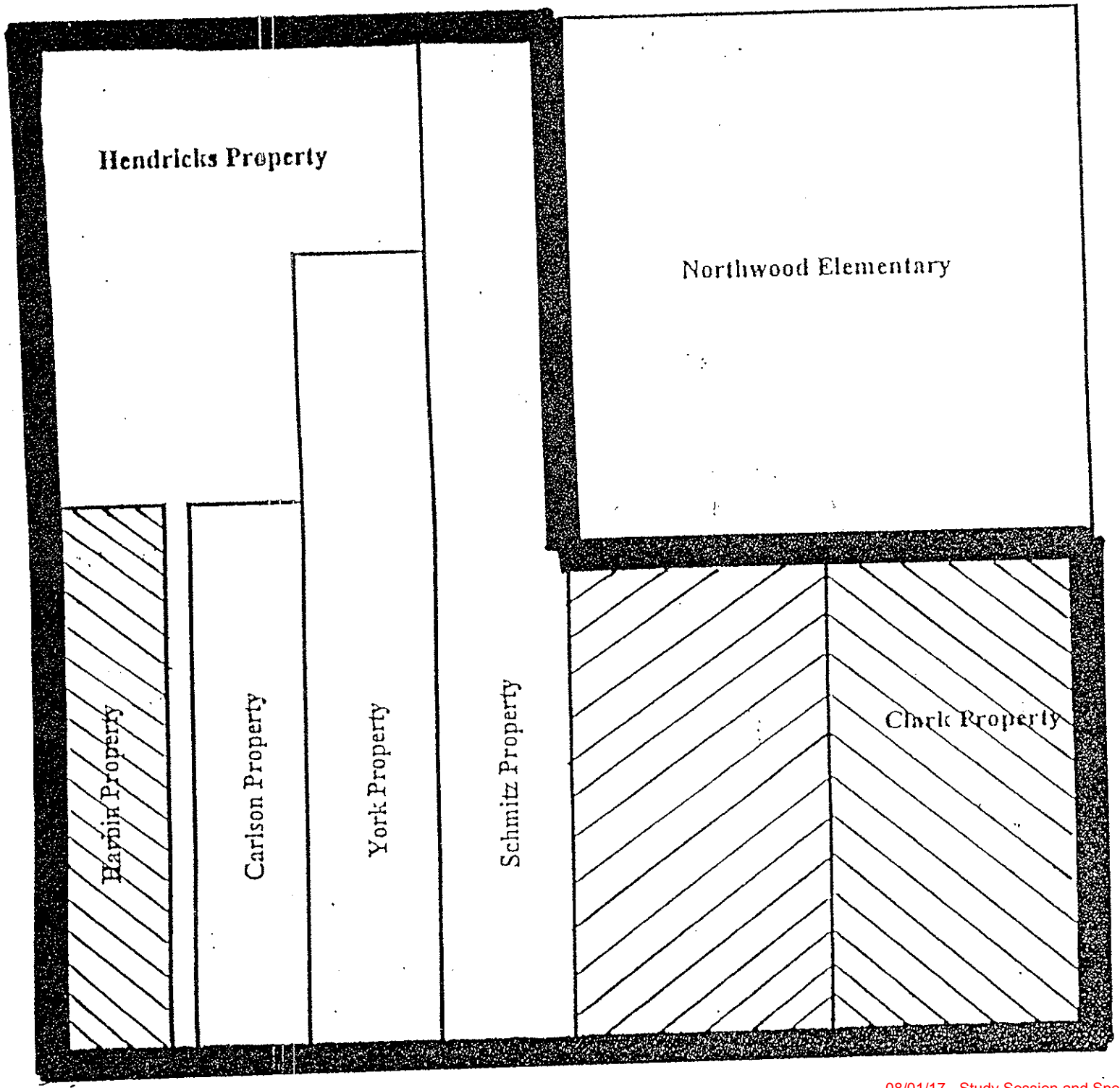
12/7/97
Executive Director Date

County Executive Date
(if over $50,000)

PUYALLUP SCHOOL DISTRICT

By: Mindy Thompson

Its: President of the Board



7/14/97

North Hill
Property Acqu ion

= Purchased by the District

= Already o ed the District

FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT NO. 98-9611 BETWEEN PIERCE COUNTY AND PUYALLUP SCHOOL DISTRICT NO. 3 FOR INSTALLATION OF A PUBLIC SANITARY SEWER SYSTEM AT NORTHWOOD ELEMENTARY

THIS FIRST AMENDMENT TO THE REIMBURSEMENT AGREEMENT is made and entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington, herein known as "County", and **PUYALLUP SCHOOL DISTRICT NO. 3**, a public school district, herein known as "Owner".

WITNESSETH

WHEREAS, County operates a sanitary sewer utility that maintains and operates a public sanitary sewer system that collects, conveys, treats and disposes of wastewater and services portions of both incorporated and unincorporated Pierce County; and

WHEREAS, Owner owns or legally represents certain real property in Pierce County, Washington, that was not served by the County's sewer system and is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (herein known as the "Property"); and

WHEREAS, the parties hereto have previously entered into Reimbursement Agreement No. 98-9611 on September 11, 1998 (the "Agreement") pursuant to Pierce County Code Chapter 13.05 to reimburse the Owner for all or a portion of the cost of constructing the Improvements; and

WHEREAS, the Owner has constructed and the County has accepted the Improvements called for in the Agreement; and

WHEREAS, after reviewing the Improvements constructed by the Owner, the County and the Owner have mutually agreed to execute an amendment to the Agreement to increase the Total Eligible Construction Cost from $232,379.00 to $294,427.41 and the Owner's Net Reimbursable Amount for this project from $232,379.00 to $294,427.41; and

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NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS DESCRIBED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Total Eligible Construction Cost is increased by $62,048.41 from $232,379.00 to $294,427.41; the Owner's Net Reimbursable Amount is increased by $62,048.41 from $232,379.00 to $294,427.41.

Executed this 12 day of OCTOBER, 2000

PIERCE COUNTY
Pierce County Executive

By: _____ 10/12/00
Date

Its: County Executive
DEPUTY

BOS _____ 10/6/00
Department Director Date

_____ 10/06/00
Deputy Prosecuting Attorney Date
(as to form only)

_____ 10-12
Budget and Finance Date

_____
Executive Director Date

OWNERS
Puyallup School District No. 3

By: _____ 10-3-00
Date

Rudolph J.K. Fyles
(Print Name)

Its: Director of Facilities
(Title)

ADDRESS:
~~109 E. Pioneer~~ 302 2nd St. SE
Puyallup, WA 98372

PHONE NUMBER:
(253) 841-1301

TAX ID NUMBER:
916001545

F:/wpfiles/Document/Agree/Puyallup SD#3 98-9611 Amd#1
September 20, 2000

NORTHWOOD ELEMENTARY - REIMBURSEMENT AGREEMENT

9805 24th Street East

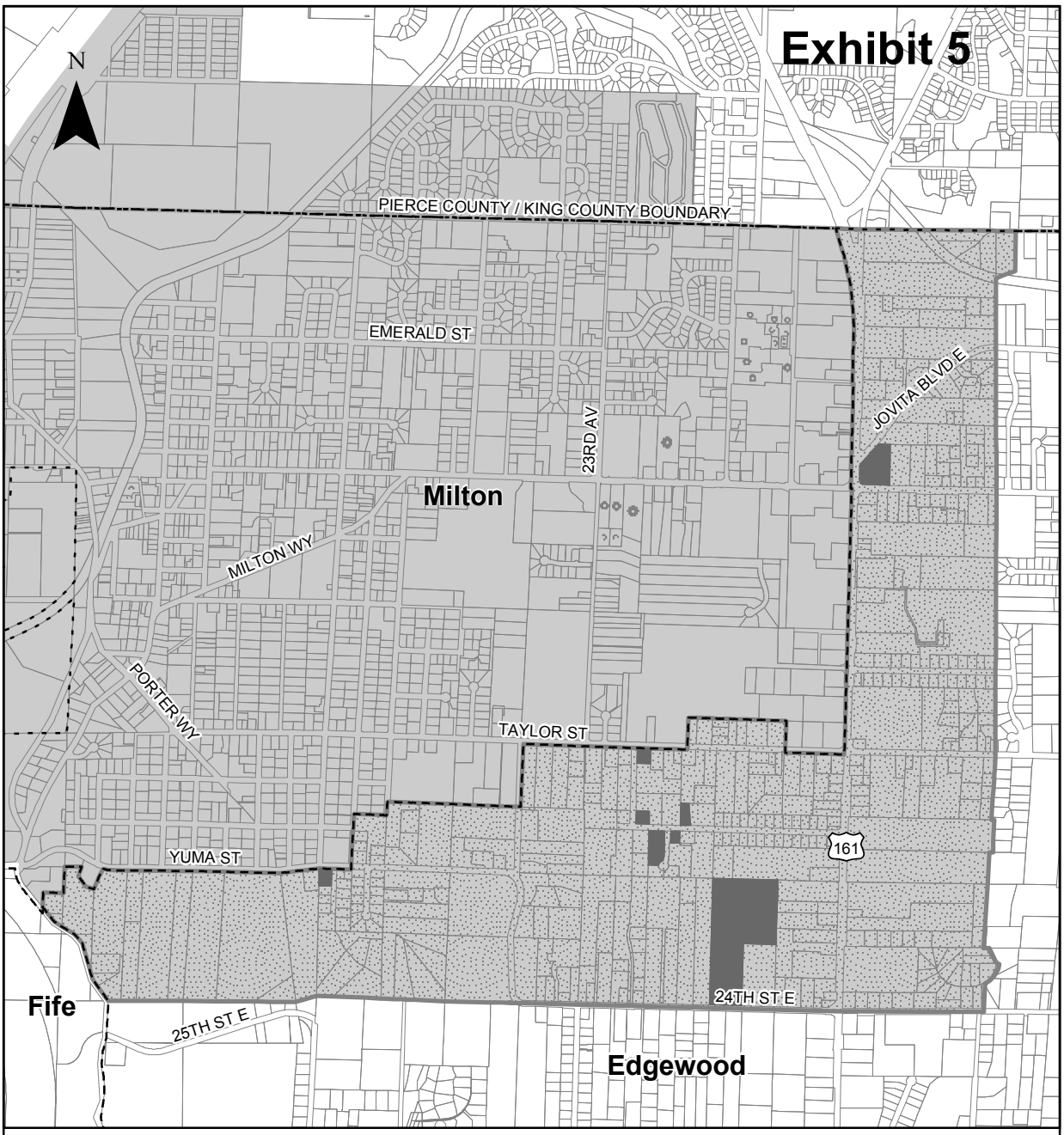
Permit Number:	SWLE #255619	OWNER:	Puyallup School District #3
Contract Number:	98-9611		Ray Graham
AFN Number:	N/A (Will not record)		109 East Pioneer
Contract Date:	11-Sep-98		Puyallup WA 98372
Contract Term:	15 Years		(253) 841-1301
Expiration Date:	7-Sep-13		
Eligible Construction Costs:	$ 232,379.00		
Owners' Area Charge:	$ 39,857.40 (SWLE #255619 - PAID: 7/15/98)		
Net Reimbursable Amount:	$ 232,379.00 AREA CHARGE USED INSTEAD OF FACILITIES CHARGE AND IS NOT REIMBURSABLE		

TRIBUTARY PROPERTIES

					REIMBURSABLE						ACCOUNT SUMMARY	
APPLICATION DATE	PERMIT	VOUCHER No.	PARCEL NUMBER	APPLICANT	NORTHWOOD CHARGE	PIERCE COUNTY AREA CHARGE	CAPACITY CHARGE	ADMIN. FEE	TOTAL	REIMBURSABLE AMOUNT	REIMB. AMOUNT PAID	DECLINING BALANCE
3/20/1998	255618		0420091011	Puyallup School Dist	N/A	$ 39,857.40	$ 4,375.00	N/A	$ 44,232.40	0	$ -	$ 232,379.00
3/29/2002	340137	531182	0420091011	Clinton & Judith Williams	$ 1,302.01	$ -	$ 1,250.00	$ 65.10	$ 2,617.11	$ 1,302.01	$ 1,302.01	$ 231,076.99
3/20/2008	630680	828821	0420091081	Edward Hardie	$ 690.86		$ 1,250.00	$ 34.54	$ 1,975.40	$ 690.86	$ 690.86	$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
								$ -	$ -	$ -		$ 230,386.13
TOTALS												

Exhibit 5

Account #	Parcel #	Owner	Business Name	Site Address	Billing Address	Owners Address	Purchased RE
512702	0420032115	C A H INVESTMENTS INC	NOEL'S RESTAURANT	715 MERIDIAN E	715 MERIDIAN, PUYALLUP, WA	5312 PACIFIC HWY E, FIFE, WA	8.2
512729	0420032115	C A H INVESTMENTS INC	LIQUOR STORE	717 MERIDIAN E	PO BOX 43085, OLYMPIA, WA	5312 PACIFIC HWY E, FIFE, WA	0.24
513466	0420032115	C A H INVESTMENTS INC	PIZZA HUT	719 MERIDIAN E	PO BOX 789758, WICHITA, KS	5312 PACIFIC HWY E, FIFE, WA	3.25
513440	0420032115	C A H INVESTMENTS INC	EDGEWOOD CLEANERS	725 MERIDIAN E	725 MERIDIAN E, PUYALLUP, WA	5312 PACIFIC HWY E, FIFE, WA	2.4
513458	0420032115	C A H INVESTMENTS INC	HEALTH	727 MERIDIAN E	5312 PACIFIC HWY E	5312 PACIFIC HWY E, FIFE, WA	0.24
512711	0420032115	C A H INVESTMENTS INC	WALGREEN CO	729 MERIDIAN E	PO BOX 4024, DANVILLE, IL	5312 PACIFIC HWY E, FIFE, WA	1.45
884391	0420091079	WILLIAMS CLINTON H & JUDITH	SINGLE FAMILY RESIDENCE	9520 TAYLOR ST E	9520 TAYLOR ST E, PUYALLUP, WA	9520 TAYLOR ST E, PUYALLUP, WA	
709158	0420095022	KLINGELE DIONE & JOHN LABROW	SINGLE FAMILY RESIDENCE	9709 18TH STCT E	9709 18TH ST CT E, EDGEWOOD, WA	9709 18TH ST CT E, EDGEWOOD, WA	
709549	0420091059	BROWN HERBERT O JR & JOY M	SINGLE FAMILY RESIDENCE	1813 95TH AVCT E	PO BOX 394, MILTON, WA	PO BOX 394, MILTON WA	
765490	0420095027	TUNGSVIK CLEON H & MARY K TTEE	SINGLE FAMILY RESIDENCE	1914 96TH AVCT E	1914 96TH AVE CT E, EDGEWOOD, WA	1914 96TH AVE CT E, EDGEWOOD, WA	
1349309	0420091081	HARDIE EDWARD III & COMPTON MONA E	SINGLE FAMILY RESIDENCE	9624 18TH STCT E	9624 18TH ST CT E, EDGEWOOD, WA	9624 18TH ST CT E, EDGEWOOD, WA	
516210	0420092013	SINAY CAROLYN & CURTIS	SINGLE FAMILY RESIDENCE	8610 20TH ST E	8610 20TH ST E, EDGWOOD, WA	8610 20TH ST E, EDGEWOOD, WA	
645087	0420091011	PUYALLUP SCH DIST #3	ELEMENTARY SCHOOL	9805 24TH ST E	323 12TH ST NW, PUYALLUP, WA	323 12TH ST NW, PUYALLUP, WA	3.5



Pierce County Customers to be Transferred to Edgewood

- Pierce County Sewer Customers to be Transferred to Edgewood
- PC SA to be transferred to Edgewood
- Pierce County Sewer Service Area

Pierce County · Public Works and Utilities

Date: October 20, 2010

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

SEWERAGE RATE AGREEMENT
BETWEEN
THE CITY OF TACOMA
AND
PIERCE COUNTY

AN AGREEMENT prescribing rates and charges to be paid by Pierce County to the City of Tacoma for sewerage service provided by Tacoma to the County. It is agreed between the parties that the method of determining rates and conditions set forth below shall also be used in those situations where the County provides sewerage service to Tacoma. This agreement supersedes all previous sewerage rate agreements between Tacoma and Pierce County.

1. AUTHORITY FOR CONTRACT - COMPLETENESS - TERM

This agreement is made and entered into pursuant to the authority vested in *Tacoma* and *Pierce County* by the provisions of Chapters 39.34 and 36.94 RCW. This agreement, except where otherwise provided, shall be complete within itself and shall remain in effect for a period of thirty-five years from the effective date hereof.

2. DETERMINATION OF RATES

The *County* shall pay *Tacoma* a sewerage service charge for the provision of such service to the *County* by *Tacoma*. The charge levied upon the *County* shall be the total of all categorical charges determined according to the prevailing rates listed in *Tacoma's* Municipal Code. Individual categorical rates shall be determined as follows:

A. RESIDENTIAL RATES

It is agreed that the following methodology shall be used to determine residential charges for the respective parties.

i. *PIERCE COUNTY*

The ratio times the *Tacoma* residential rate for 732 cubic feet per month.

ii. *TACOMA*

The ratio times the *County* residential rate for 732 cubic feet per month, plus the NPDES Permit Fee and

Washington State Public Utility Tax. The total rate shall not exceed 85 % of the County Residential Rate as published in its current ordinance.

B. **COMMERCIAL/INDUSTRIAL RATES**

It is understood that the commercial/industrial (C/I) rates used by the respective parties are not mutually comparable. *Tacoma* uses a system based on combining flow and strength parameters (BOD, & SS) to determine individual C/I rates. *Tacoma* classifies its C/I users into approximately 40 different rates, according to SIC Code designation. *Pierce County's* system also uses flow, but only classifies its C/I users into one of five (5) categories on the basis of the highest strength (BOD or SS) to determine rates. *Pierce County* also uses the SIC Code to designate its C/I users. It is agreed for the purposes of determining charges between the parties, *Tacoma* will align each of its C/I classifications into one of the five *County* classifications. Attachment A shows the alignment and rates for the purpose of determining charges.

It is agreed that the following methodology shall be used to determine commercial/industrial charges for the respective parties.

i. *PIERCE COUNTY*

The ratio times the equivalent *Tacoma* commercial/industrial rate for the measured flow for the specific type of customer, as determined by SIC Code designation and shown on Attachment A.

ii. *TACOMA*

The ratio times the equivalent *County* commercial/industrial rate for the measured flow for the specific type of customer, as determined by SIC Code designation and shown on Attachment A, plus the NPDES Permit Fee and Washington State Public Utility Tax. The total rate shall not exceed 85 % of the County Commercial/Industrial Rate as published in its current ordinance..

3. DEFINITIONS

A. Commercial Flow shall be determined by measurement of water consumed, or metered sewage flow, as determined by billing records for those commercial users listed by SIC Code, and/or those commercial users so defined in the prevailing *Tacoma* rate ordinance or *Pierce County* rate ordinance as each may apply.

B. County shall mean *Pierce County, Washington*, the governing body of which is the Pierce County Council and County Executive.

C. Industrial Flow shall be determined by measurement of water consumed, or metered sewage flow, as determined by billing records for those industrial users listed by SIC Code, and/or those industrial users so defined in the prevailing *Tacoma* rate ordinance or *County* rate ordinance as each may apply.

D. NPDES Permit shall mean the National Pollutant Discharge Elimination System Permit as issued by the Washington State Department of Ecology.

E. The Rate(s) shall be the applicable composite sewerage service rate(s) for each agency consisting of fixed cost, flow, and strength parameters as defined in the respective prevailing ordinances.

F. The Ratio shall be eighty-three per cent (83%) for charges levied by the *County*, and eighty-five per cent (85%) for charges levied by *Tacoma*.

G. A Residential Equivalent is the unit of service as defined in Section 2 above to be used for a single-family or multiple-family dwelling unit.

H. Sewage shall mean sanitary sewage only, consisting of domestic, commercial, and industrial wastes, and excluding storm and surface water.

I. SIC Code shall mean the code number used to identify specific types of commercial/industrial users according to the Standard Industrial Classification Manual of 1987, as published by the Executive Office of the President, Office of Management and Budget, or as may be amended.

J. Tacoma shall mean the *City of Tacoma, Washington*, the governing body of which is the Tacoma City Council.

4. **QUALITY OF SEWAGE**

The quality of sewage delivered to either system shall conform to the requirements set forth in the then prevailing regulations of the agency receiving the sewage. All requirements of the "Pretreatment Agreement Between Tacoma and Pierce County" shall apply.

5. **PAYMENT OF ANNUAL SEWERAGE SERVICE CHARGES**

Tacoma and the *County* shall bill each other for sewerage service charges on a quarterly basis. The annual sewerage service charges shall be estimated from the previous year's fourth quarter billing figures. The first three (3) quarterly billing statements shall be based on this estimate. The final quarterly statement shall be based on the difference between the charges previously billed and the final amount determined by using the actual billing figures for the calendar year.

Each agency shall submit to the other all information necessary to compile sewerage service charges for the final billing period on or before the fifteenth (15) day of February of the next year. The final charges shall be computed and the bills submitted on or about the fifteenth (15) day of March.

All sewerage service charges shall be due and payable within thirty (30) days of receipt of the invoice.

The amount on the invoice shall be considered correct unless the billing agency is notified to the contrary within ten (10) working days of the receipt. If corrections are necessary, the thirty (30) days shall begin upon receipt of the corrected invoice.

Any charges, or portions thereof, not paid within the thirty (30) days shall begin accruing interest at the rate of eight per cent (8%) per annum beginning with the thirty-first (31st) day.

It is further agreed that *Tacoma* shall not be charged more than 85% of what it charges its customers in any of the listed rate categories. If, in the fourth quarter adjustment billing for the end of the calendar year the total charges by the *County* exceed this amount, *Tacoma* shall be credited with the excess charges.

It is also further agreed that *Pierce County* shall not be charged more than 85% of what it charges its customers in any of the listed rate categories. If, in the fourth quarter adjustment billing for the end of the calendar year the total charges by *Tacoma* exceed this amount, *Pierce County* shall be credited with the excess charges.

Sections 2 A ii and 2 B ii and the above paragraphs recognize that the *County* bills separately for its share of the Washington State Public Utility Tax and NPDES Permit Fees from its rates as set by ordinance, while *Tacoma* includes those same fees within its published rates.

Attachment B shows the calculation of charges by each agency, and compares the rates and charges in the various categories.

The annual transmission capacity rights rental charges as per individual sewerage service area agreements shall be billed for the calendar year with the sewerage service charge statement for the final billing period of the calendar year. Capacity rights charges are not part of the sewerage service charge as determined herein.

6. RESOLUTION OF DISPUTES

In the event of any dispute or disagreement arising under this agreement, *Tacoma's* Director of Public Works and the *County's* Director of Utilities shall agree on a neutral, impartial arbitrator. If they are unable to agree on an arbitrator within three (3) weeks of receipt by either party of a written demand for arbitration from the other party, then either party may submit a request for a list of seven (7) arbitrators from the American Arbitration Association. The parties shall then select an arbitrator from that list of seven (7), by alternately striking one from the list until an arbitrator is selected. Once an arbitrator is selected by either of the two (2) methods above, the matter shall be submitted to the arbitrator. The decision of the arbitrator shall be rendered as expeditiously as possible, and shall be final and binding upon both parties. Any decision rendered shall be with the scope of the agreement, and shall not add to, or subtract from, any of the terms of the agreement. The arbitrator shall confine himself, or herself, to the precise issue or issues submitted for arbitration by the parties, and shall have no authority to determine other issues not so submitted. All expenses of the arbitrator shall be shared equally by *Tacoma* and the *County*.

7. REVIEW OF AGREEMENT

It is agreed that the terms of this agreement shall be reviewed at any time requested in writing by either party. In any event, this agreement shall be reviewed at five (5) year intervals.

8. EFFECTIVE DATE

The effective date of this agreement shall be January 1, 1991.

CITY CLERK CONTRACT/AGREEMENT NO. 4285

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their proper officers on this 25th day of February, 1991.

PIERCE COUNTY, WASHINGTON

By: Dep Exec
Joe Stortini
Pierce County Executive

TACOMA, WASHINGTON

By:
Ray E. Corpuz, Jr.
City Manager

Approved as to Content:

Donald T. Perry, P.E.
Director of Utilities

DEPARTMENT OF PUBLIC WORKS

Fred A. Thompson, P.E.
Director

Countersigned:

Patrick Kenney
Director of Budget and Finance

David H. Dow PJB 2-20-91
Director of Finance

Mike Panagiotu
Risk Manager

Attest:

Genelle Birk
City Clerk

Approved as to Form:

Prosecuting Attorney
Deputy

Approved as to Form:

Assistant City Attorney

ATTACHMENT A
SIC CODE ALIGNMENT
BETWEEN
TACOMA AND PIERCE COUNTY

Pierce County uses a five (5) category system to set Commercial/Industrial rates for its customers based on strength, either BOD or SS. Tacoma's C/I rates are set by individual user strength characteristics. In order to minimize confusion, Tacoma's categorized SIC Codes for individual users will be classified within the five Pierce County strength classes. It is understood that the rates charged shall be that which is currently in effect within each jurisdiction.

Pierce County Strength Range	Tacoma SIC Code
0 --> 300 mg/l	2751
	2761
	2800
	2873
	2952
	3274
	3411
	3471
	3720
	5813
	7011
	7215
	7221
	7261
	7395
	7542
	8050
	8060
	Domestic

Pierce County Strength Range	Tacoma SIC Code
301 --> 500 mg/l	2086
	2090
	3273
	3321
	5411
	5500
	7531
	7538
	7933

CITY CLERK CONTRACT/AGREEMENT NO. 4285

ATTACHMENT A (Cont'd)
SIC CODE ALIGNMENT
BETWEEN
TACOMA AND PIERCE COUNTY

Pierce County Strength Range	Tacoma SIC Code
501 --> 700 mg/l	2050
	2793
	3479
	5460

Pierce County Strength Range	Tacoma SIC Code
701 --> 900 mg/l	2851
	5147
	5420
	7210

Pierce County Strength Range	Tacoma SIC Code
> 900 mg/l	2065
	3714
	4172
	5812

CITY CLERK CONTRACT/AGREEMENT NO. 4285

ATTACHMENT B
EXAMPLES
OF
INTERAGENCY SEWER CHARGE CALCULATIONS

The reader should bear in mind that rates shown below in the various examples will change from time to time, and the prevailing rates should be substituted to determine current charges.

TACOMA CHARGES TO PIERCE COUNTY:

The rates used here are the rates that would be in effect for 1990 if a full reallocation of costs were to have been made for that year. They are not necessarily those that will be in effect for 1991 and the future.

RESIDENTIAL: (7.32 ccf/mo)

0.85(6.84 + (7.32 x 1.26)) = $13.65 /mo/res conn.

COMMERCIAL/INDUSTRIAL:

Pierce County SIC Category #1 (0 - 300 mg/l):

SIC Code "Others" @ 15 ccf/mo

0.85(3.37 + (15 x 1.80)) = $25.81

SIC Code 7215 @ 100 ccf/mo

0.85(3.37 + (100 x 1.60)) = $138.86

Pierce County SIC Category #2 (301 - 500 mg/l):

SIC Code 5411 @ 80 ccf/mo

0.85(3.37 + (80 x 2.53)) = $174.90

Pierce County SIC Category #3 (501 - 700 mg/l):

SIC Code 5460 @ 30 ccf/mo

0.85(3.37 + (30 x 3.40)) = $89.56

Pierce County SIC Category #4 (701 - 900 mg/l):

SIC Code 7210 @ 345 ccf/mo

0.85(3.37 + (345 x 4.34)) = $1,275.57

ATTACHMENT B (Cont'd)
EXAMPLES
OF
INTERAGENCY SEWER CHARGE CALCULATIONS

Pierce County SIC Category #5 (> 900 mg/l):

SIC Code 5812 @ 121 ccf/mo

0.85(3.37 + (121 x 5.49)) = $567.11

PIERCE COUNTY CHARGES TO TACOMA:

RESIDENTIAL: (7.32 ccf/mo)

0.83(7.50 + (7.32 X 1.44)) =	$14.97
+ NPDES Permit Fee	.05
+ St. PU Tax @ 1.7%	.25
Total PC Charge	$15.27

COMMERCIAL/INDUSTRIAL:

Pierce County SIC Category #1 (0 - 300 mg/l):

SIC Code "Others" @ 15 ccf/mo

0.83(7.50 + (15 x 1.76)) =	$28.14
+ NPDES Permit Fee ((28.14/19.45 x 0.83) x .05)	.09
+ St. PU Tax @ 1.7%	.48
Total PC Charge	$28.71

SIC Code 7215 @ 100 ccf/mo

0.83(7.50 + (100 x 1.76)) =	$152.30
+ NPDES Permit Fee ((152.30/16.1435) x .05)	.47
+ St. PU Tax @ 1.7%	2.59
Total PC Charge	$155.36

Pierce County SIC Category #2 (301 - 500 mg/l):

SIC Code 5411 @ 80 ccf/mo

0.83(7.50 + (80 x 2.35)) =	$162.26
+ NPDES Permit Fee ((162.26/16.1435) x .05)	.50
+ St. PU Tax @ 1.7%	2.76
Total PC Charge	$165.52

ATTACHMENT B (Cont'd)
EXAMPLES
OF
INTERAGENCY SEWER CHARGE CALCULATIONS

Pierce County SIC Category #3 (501 - 700 mg/l):

SIC Code 5460 @ 30 ccf/mo

0.83(7.50 + (30 x 2.54)) =	$69.47
+ NPDES Permit Fee ((69.47/16.1435) x .05)	.22
+ St. PU Tax @ 1.7%	1.18
Total PC Charge	$70.87

Pierce County SIC Category #4 (701 - 900 mg/l):

SIC Code 7210 @ 345 ccf/mo

0.83(7.50 + (345 x 3.53)) =	$1,017.04
+ NPDES Permit Fee ((1017.04/16.1435) x .05)	3.15
+ St. PU Tax @ 1.7%	17.29
Total PC Charge	$1,037.48

Pierce County SIC Category #5 (> 900 mg/l):

SIC Code 5812 @ 121 ccf/mo

Q Charge = 0.83(7.50 + (121 x 1.16)) =	$122.72
BOD = (.83)(.1304)(1000/1000000)(6243)(121)	81.76
SS = (.83)(.2886)(900/1000000)(6243)(121)	162.85
Subtotal	367.33
+ NPDES Permit Fee ((367.33/16.1435) x .05)	1.14
+ St. PU Tax @ 1.7%	6.24
Total PC Charge	$374.71

NOTES:

The Sewerage Rate Agreement limits the charges from one agency to another to 85% of the amount an agency charges its own customers. EXAMPLE: Pierce County cannot charge Tacoma more than 85% of what Tacoma charges its own customers in any rate category. The reverse is true if Tacoma is levying the charges. Pierce County cannot be charged more than 85% of what it charges its customers in any rate category. Any charge in excess of the 85% level is written off in the fourth quarter adjustment billing by the appropriate agency.

The following is an example of the above limits, based on the calculations shown.

ATTACHMENT B (Cont'd)
INTERAGENCY SEWER CHARGE COMPARISON

TACOMA CHARGES TO PIERCE COUNTY:

TACOMA CHARGE TO COUNTY	85% OF COUNTY CHARGE Including Fees & Taxes Max. Allow. Tacoma Charge
RESIDENTIAL	
$13.65/mo/conn	$16.86
COMMERCIAL/INDUSTRIAL	
Pierce County SIC Category #1 (0 - 300 mg/l):	
SIC "Others" @15 ccf/mo	
$25.81/mo	$29.38/mo
SIC 7215 @ 100 ccf/mo	
$138.86/mo	$159.03/mo
Pierce County SIC Category #2 (301 - 500 mg/l):	
SIC Code 5411 @ 80 ccf/mo	
$174.90/mo	$169.42/mo*
Pierce County SIC Category #3 (501 - 700 mg/l):	
SIC Code 5460 @ 30 ccf/mo	
$89.56/mo	$72.54/mo*
Pierce County SIC Category #4 (701 - 900 mg/l):	
SIC Code 7210 @ 345 ccf/mo	
$1,275.57	$1,061.93/mo*
Pierce County SIC Category #5 (> 900 mg/l):	
SIC Code 5812 @ 121 ccf/mo	
$567.11	$383.55/mo*

* In the above noted examples Tacoma will be required to write off all charges above the 85% equivalent Pierce County Charge.

CITY CLERK CONTRACT/AGREEMENT NO. 4285

ATTACHMENT B (Cont'd)
INTERAGENCY SEWER CHARGE COMPARISON

PIERCE COUNTY CHARGES TO TACOMA:

COUNTY CHARGE TO TACOMA Including Fees & Taxes	85% OF TACOMA CHARGE Max. Allow. County Charge
RESIDENTIAL	
$15.27/mo/conn	$13.65/mo/conn*
COMMERCIAL/INDUSTRIAL	
Pierce County SIC Category #1 (0 - 300 mg/l):	
SIC "Others" @15 ccf/mo	
$28.71/mo	$25.81/mo*
SIC 7215 @ 100 ccf/mo	
$155.36/mo	$138.86/mo*
Pierce County SIC Category #2 (301 - 500 mg/l):	
SIC Code 5411 @ 80 ccf/mo	
$165.52/mo	$174.92/mo
Pierce County SIC Category #3 (501 - 700 mg/l):	
SIC Code 5460 @ 30 ccf/mo	
$70.87/mo	$89.56/mo
Pierce County SIC Category #4 (701 - 900 mg/l):	
SIC Code 7210 @ 345 ccf/mo	
$1,037.48	$1,275.57/mo
Pierce County SIC Category #5 (> 900 mg/l):	
SIC Code 5812 @ 121 ccf/mo	
$374.71	$567.11/mo

* In the above noted examples the County will be required to write off all charges above the 85% equivalent Tacoma Charge.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Verizon Franchise Agreement
Seattle SMSA Limited Partnership Communications (DBA Verizon)

Date: August 1, 2017

Title: Verizon Franchise Agreement (Seattle SMSA Limited Partnership Communications)

Attachments: Draft Franchise Agreement with SMSA Limited Partnership, DBA Verizon Ordinance No. 17-XXXX

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

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Staff and the City Attorney have been working with Verizon (i.e. Seattle SMSA Limited Partnership), another extension to this Corporation, in establishing a Franchise Agreement to allow them the ability to construct, install, maintain, repair and operate a telecommunications system to provide telecommunications (data transport services) within the City's right of way, as dictated by Edgewood Municipal Code. As discussed on several occasions with the Council, Staff is exploring opportunities in which the City may benefit from this wireless infrastructure in exchange for the use of the City's right of way. Staff is continuing to work with legal counsel and this potential franchisee, as time allows, in order to find some common ground based on the Council's request. Limited staffing is hindering progress in this regard, at this time.

Recommendation: Recommend that Staff continue negotiation in regard to the Council's request on providing city-wide benefit in exchange for the use of the City's right of way by these types of franchisees and move the current franchise agreement onto the full Council for first reading.

Fiscal Impact: N/A

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ORDINANCE NO. 17 -XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO SEATTLE SMSA LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO CONSTRUCT AND OPERATE A 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, SEATTLE SMSA LIMITED PARTNERSHIP has made application to the City of Edgewood for a telecommunications franchise to construct, install, maintain, repair and operate a telecommunications system to provide telecommunications (data transport services) using specified portions of the Public Rights-of-Way, and

WHEREAS, SEATTLE SMSA LIMITED PARTNERSHIP represents that it is a telecommunications company within the meaning of Title 80 RCW and that it may provide competitive telecommunications services within the meaning of Title 80 RCW, and

WHEREAS, based on representations and information provided by **SEATTLE SMSA LIMITED PARTNERSHIP** 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, operate, maintain, repair, replace, upgrade, excavate, dig, restore, remove, and/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 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 Facilities.

"Direct Costs" shall mean and include all administrative expenses allowed to be charged by the City to Franchisee under RCW 35.21.860(1)(b) including administrative expenses directly related to approving this Franchise, to inspecting plans and construction, or the preparation of a detailed environmental impact statement pursuant to RCW 43.21(C). .

"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 (ies)" means any part or all of the facilities, equipment and appurtenances of Franchisee, whether underground, overhead, across, above, along, below, in, over, or through, and located within the Public Right-of-Way as part of the Franchisee's Telecommunications Service, including but not limited to, conduit, case, pipe, line, fiber, fiber optic cables, cabling, coaxial cables, equipment, equipment boxes, cabinets and shelters, electric meters, backup power supplies, power transfer switches, telecom demarcation boxes, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and signage, and related materials and equipment; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing.

"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, 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 not be required to amend this Franchise to construct new Facilities within the Franchise Area.

"Franchisee" shall mean Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless 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 incorporated area of the City, as depicted and described in Exhibit A-1.

"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. Notwithstanding the foregoing, Laws shall not include any preempted law, amended law or newly created law (whether arising from the Federal's, State's, City's or any other governmental authority's lawful exercise of their powers, including the City's police power as further described in Section 3.3, or otherwise), that violates Franchisee's rights to continue or modify existing non-conforming uses, or any other changes to laws, which do not apply to previously-constructed real estate improvements or telecommunications facilities.

"Legal Action" shall mean filing a lawsuit or invoking the right to arbitration.

"Material Breach" shall mean any of the following circumstances that continues for a period of thirty (30) days after written notice and opportunity to cure (except that if the circumstance cannot reasonably be cured within the thirty (30) day period, then the circumstance shall not be deemed a Material Breach so long as the Party commences to cure within the thirty (30) day period and diligently pursues the cure):

- 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.

"Public Rights-of-Way" means the surface of, and the space above, across, along, in over, through, under and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, shoulder, curb, landscape area between sidewalk and curb or shoulder, utility easement, 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 Facilities as Constructed, establishing the final scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. In addition, the As Built plans and specifications 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 its implementing regulations at Chapter 173-340 WAC.

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

"Telecommunications" 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 (including all or a portion of the Facility) 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 pursuant to this Franchise.

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

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 Area, or the conformity of any such property to its intended uses.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose; provided that such other uses do not unreasonably interfere with Franchisee's rights set forth in this Franchise including but not limited to Franchisee's use and placement of Franchisee's Facilities in any Public Right-of-Way and/or Franchise Area. 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 by the City of Exhibit "A-1", or a form substantially similar to Exhibit "A-1", 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 the Franchisee arising after the effective date of Transfer. 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, and performance bond as required pursuant to this Franchise, if any, and paying all Direct Costs, if any, 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 Facilities, or any portion thereof, to another Person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Facilities to another Person; provided that, Franchisee at all times retains exclusive control over its Facilities 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 Facilities for any purpose not authorized herein.

2.8 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee pursuant to this Franchise is to be vacated during the Franchise Term, 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, within ninety (90) days after Franchisee's receipt of written notice from 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 where such removal has occurred, in as good or better a condition as existed immediately prior to the removal of Franchisee's Facilities, unless a lesser condition may be required by the City.

2.9 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable; provided that City's use shall not unreasonably interfere with Franchisee's rights set forth in this Franchise including but not limited to Franchisee's use and placement of Franchisee's Facilities in any Public Right-of-Way and/or Franchise Area.

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 except to the extent caused by the negligence or willful misconduct of City or its agents, employees or contractors. Notwithstanding anything to the contrary contained in this Franchise, City authorizes and acknowledges Franchisee's use of Hazardous Substances used in the normal course of providing Telecommunications Services including, without limitation, backup batteries, and such use shall not be deemed a failure to comply with Laws.

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 thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular

business hours, or such other person as may be designated by the City, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with 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 Intentionally deleted.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the 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 Franchise Term (defined below).

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) years ("Initial Term"), 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 year term upon the same terms and conditions as provided herein and in accordance with then-applicable Laws ("Extension Term"). The Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council. The Initial Term and any Extension Term shall be defined collectively as the "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, extension 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, Franchisee shall, at Franchisee's sole expense: (1) within ninety (90) days after the expiration or termination of the Franchise, remove its structures or property from the Public Rights-of-Ways and restore the Public Right-of-Way where such removal has occurred to such condition as the City may reasonably require (except that in no event in a condition better than the condition existing immediately prior to the removal of Franchisee's Facilities); (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) upon City approval, which approval shall be provided to Franchisee in writing, 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 reasonably determines that the safety, appearance, or use of the Public Rights-of-Way would be adversely affected, then City shall provide Franchisee with written notice of such determination ("Determination Notice") and the Facilities must be removed by the Franchisee by a date reasonably specified by the City in the Determination Notice in light of the amount of work to be performed (but in no event less than ninety (90) days after Franchisee's receipt of the Determination Notice). 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/Defense. To the fullest extent permitted by law, Franchisee shall fully 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 third party 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 (in whole or in part):

5.1.1.1 Intentionally deleted;

5.1.1.2 Intentionally deleted;

5.1.1.3 Franchisee's occupation and use of the Public Right-of-Way;

5.1.1.4 Franchisee's operation of the Facilities;

5.1.1.5 The presence of the Facilities 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, employees, or agents; and

5.1.1.7 Any negligent act or omission of Franchisee or Franchisee's contractors, agents, or employees in connection with work in the Public Right-of-Way.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Right-of-Way or other public place in performance of work or services permitted under this Franchise.

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 negligent 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.

Notwithstanding anything to the contrary contained herein, the terms of this section shall not require Franchisee to protect, release, indemnify, defend, and hold harmless the City and City's Indemnitees from any Liabilities to the extent caused by or arising out of the negligence or willful misconduct of City or City's Indemnitees, and provided further that if the Liabilities are caused by or result from the concurrent negligence of (a) the Franchisee or its agents, employees or contractors and (b) City or its Indemnitees, this Section with respect to Liabilities based upon such concurrent negligence shall be valid and enforceable only to the extent of the negligence of the Franchisee or its agents, employees or contractors and only to the extent allowed by Law and except as limited in this Franchise.

If a court of competent jurisdiction determines that this Franchise is subject to the provisions of RCW 4.23.115, the Parties agree that the indemnity provision hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

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 that 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, conditioned or delayed. 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 reasonable and actual 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 relating solely to indemnity claims made by the City directly against Franchisee for claims made against the City by Franchisee's employees 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 Laws except that Franchisee shall not be required to comply with future changes in land use laws existing non-conforming uses and other changes to laws that do not apply to previously-constructed real estate improvements and/or wireless communications facilities.

5.3 Insurance Requirements. See Attached Exhibit "C".

5.4 Financial Security. See Attached Exhibit "D".

5.5 Intentionally omitted.

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 "E".

5.7 Liens. In the event that any City property becomes subject to any claims for mechanics' or materialmen's liens, which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within thirty (30) days, cause such lien claim 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. If any such claim 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 thirty (30) 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 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. Intentionally deleted.

5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall 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 Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee

shall 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 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 Ordinance, 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 shall exempt Franchisee from Franchisee's obligation to pay any lawful utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any lawful fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.8.9 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.8.10 Time for Payment. All non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within thirty (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 percent (12%) 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 Franchise Term 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); 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. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable 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 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.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of the Facilities in a Franchise Area, Franchisee shall provide the City with 100% Design Submittal for review and approval of any Facility 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, which approval shall not be unreasonably withheld, conditioned or delayed, 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" in effect on the date of the applicable Regulatory Permit:

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 Regulatory 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 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 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 facilities 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 Rights-of Way 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 Regulatory 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 reasonably 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.

7.5.9 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 the Dedicated Improvements within the record drawings;

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

7. 5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City; except for punch list items, which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

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

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

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

Upon receipt of Franchisee's request for final inspection and dedication, the City shall within twenty (20) business days thereafter arrange for a final inspection. If the City determines that the Work with regard to the Dedicated Improvements is not substantially complete, it shall promptly provide Franchise with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee

shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

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

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

7.7 General Conditions.

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

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or Regulatory Permit or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Facilities 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 it's 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 Facilities, 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 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, re-attach, secure, relocate, or protect in place its Facilities within the Public Right-of-Way when necessary in the City's reasonable 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 Rights-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 reasonable 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. Franchisee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the Public Right-of-Way upon approval by the City, any section of the Facility required to be temporarily disconnected or removed.

7.8.3 Intentionally omitted.

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 ninety (90) 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, re-attach, secure, 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, re-attach, secure, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, re-attached, secured, 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, then after providing Franchisee thirty (30) days' notice and Franchisee's continued failure to cure within the thirty (30) day period, 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 Facilities, except to the extent damage is caused by the negligence or wilful misconduct of City or its Indemnitees. 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, re-attach, secure, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Franchisee shall not be responsible for damages due to delays to the extent caused by the City or its Indemnitees.

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, re-attach, secure, 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, re-attach, secure, 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, re-attachment, securitization, temporary relocation, or protection in place of the Facility 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, re-attachment, securitization, relocation or protection in place is reasonably necessary to accommodate such work; (c) the Person requesting the alteration, adjustment, re-attachment, securitization, relocation, or protection in place considers alternatives in the same manner as provided at Section 7.8.2; and (d) such alteration, adjustment, re-attachment, securitization 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 thirty (30) 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 temporarily shut down, relocate, remove, replace, modify, re-attach, secure 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 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, or temporarily disconnect, remove, re-attach, secure, or relocate any or all parts of the Facilities 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 Service. If after providing notice, there is no immediate response, the City may protect, support, or temporarily disconnect, remove, or relocate any or all parts of the Facilities 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 except to the extent caused by the negligence or willful misconduct of the City or its Indemnitees.

7.11 Record of Installations

7.11.1 Map/Record Drawing of Facilities. 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 Facilities within the Public Rights-of-Way 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 Facilities are shown, such Facilities are shown in their approximate location.

7.11.2 Intentionally Deleted.

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all of located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably acceptable to 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 Facilities are shown, such Facilities are shown in their approximate location.

7.11.4 Confidentiality. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential documents, books or records to the extent permitted by Law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary. In the event that the City receives a public records request under RCW 42.56 or similar Law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.11.4 prohibits the City from complying with RCW 42.56, or any other applicable Law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any Law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records.

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 Facility, 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 unauthorized obstructions therefrom and restore the disturbed surface of such Public Rights-of-Way and public property to as good or better a condition as existed before the Work was undertaken. 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 thirty (30) days prior written notice to Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Franchisee shall pay the City.

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

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Utility System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Utility System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 90 days of the receipt of notice of abandonment from Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Public Rights-of-Way Facilities by a date specified by the City and restore the portion of the Public Rights-of-Way where the removal occurred 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 except antennas and associated cables; 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 except that Franchisee may at any time construct, operate, and maintain its antennas and associated cables above ground, overhead or aerially. 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, except that this provision shall not apply to Franchisee's antennas and associated cables. 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 (except antennas and associated cables) underground and remove its overhead Facilities (except antennas and associated cables) 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, Franchisee agrees to bear the costs of converting Franchisee's Facilities (except antennas and associated cables) 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 or City, such time shall be deemed to be of the essence, and any failure of Franchisee or City, as applicable, 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 that 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.

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 or required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the Franchise Term, 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, (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, (ii) when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) 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:

And to:	**Seattle SMSA Limited Partnership** **d/b/a Verizon Wireless** **Attn: Network Real Estate** **180 Washington Valley Road** **Bedminster, New Jersey 07921**
With a copy to:	**Seattle SMSA Limited Partnership** **d/b/a Verizon Wireless** **Attn: Pacific Market General Counsel**

15505 Sand Canyon Avenue
Irvine, CA 92618

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

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 Facilities or any part thereof remain in whole or in part in the Public Rights-of-Way, or until Franchisee transfers ownership of all Facilities in the Franchise Area to the City or a third-party, or until the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee work.

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

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate 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.

Remainder of page left intentionally blank. Signature page immediately follows.

Presented to Council for First Reading on _____
Presented to Council for Second Reading on _____

ADOPTED BY THE CITY COUNCIL ON XX, 20

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

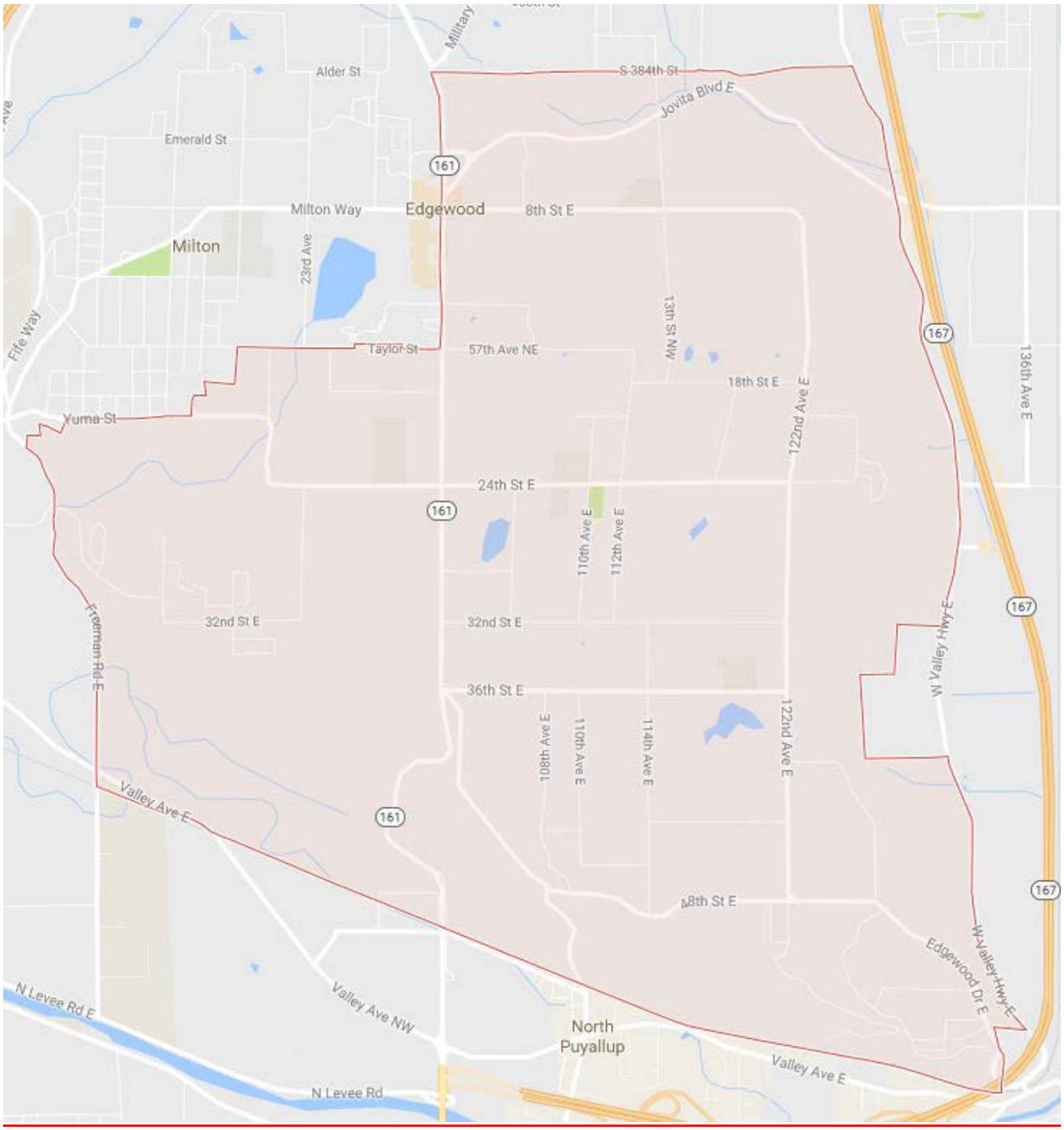
APPROVED AS TO FORM:

_____
Carol Morris, City Attorney

Date of Publication: _____
Effective Date: _____

EXHIBIT "A-1"

(Franchise Area – Incorporated Area of the City)



TRANSFER EXHIBIT "A-1"

Acceptance of Franchise

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 Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner. I certify that this Franchise and all terms and conditions thereof are accepted, and agreed to, by Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner.

DATED this _____ day of _____, 20___.

_____
By_____
Its _____

Tax Payer ID# _____

STATE OF _____ | ss.
CITY OF _____

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

Dated this _____day of _____, _____.

(Signature of Notary)_____
_____
Print Name
Notary public in and for the state of _____,
residing at _____

My appointment expires _____

EXHIBIT "B"

(*Acceptance of Franchise*)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and (am the authorized representative to) accept the above-referenced Franchise on behalf of Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner. I certify that this Franchise and all terms and conditions thereof are accepted by Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner.

DATED this _____ day of _____, 20___.

_____
By_____
Its _____

Tax Payer ID# _____

STATE OF _____ | ss.
CITY OF _____

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

Dated this _____day of _____, _____.

_____
(Signature of Notary)

_____
Print Name

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

My appointment expires _____

EXHIBIT "C"

(Insurance Requirements)

1 General Requirement. Commencing upon issuance of the first Regulatory 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 against claims for death or injuries to Persons or damages to property 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 Insurance Limits. The Franchisee shall maintain the following 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, and shall provide coverage for all costs, including defense costs, and losses and damages resulting from bodily injury (including death), property damage, personal and advertising injury, contractual liability and products liability/completed operations. Coverage must be written with the following limits of liability:

$5,000,000 per occurrence,
$5,000,000 general aggregate and
$5,000,000 products/completed operations aggregate.

2.2 Commercial Automobile Liability: covering all owned, hired, and non-owned vehicles with a combined single limit of $5,000,000 each accident for bodily injury and property damage.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory requirements of the State and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit covering 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 of their employees.

2.4 Intentionally deleted.

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

3 Endorsements. Franchisee Commercial General Liability insurance policies are 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 shall waive its rights of subrogation for workers compensation 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 include the City as an additional insured as their interest may appear under this Franchise, 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 Intentionally deleted.

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.

5 Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the blanket additional insured endorsement evidencing the Automobile Liability and Commercial General Liability 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. Intentionally deleted.

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 the Franchise Term, 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. Intentionally deleted.

EXHIBIT "D"

(*Financial Security*)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance bond in the amount of one hundred twenty five 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, 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 reasonably 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 bond, and shall keep the same in full force and effect at all times during the Franchise Term. 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 Intentionally deleted.

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 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. 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 Direct 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 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 reasonably 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 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 sixty (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 provide for the following:

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, 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 dirbed, 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 Franchise Term.~~

~~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 "E"

(*Contractor/Subcontractor Insurance Requirements*)

Franchisee will require any contractors and subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Franchisee under this Franchise.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: View Point Final Plat

Date: August 1, 2017

Title: Edgewood View Pointe Final Plat Overview, File #4965

Attachments:

Submitted By: Barb Kincaid, Contract Interim Planning Director; Jeremy Metzler, Senior Engineer.

Approved For Agenda by: Daryl Eidinger, Mayor

Discussion: Applicant is requesting final plat approval for a subdivision named "Edgewood View Pointe". This subdivision will create 46 single family residential lots along with various tracts to include a new, north-south roadway. The site is located at 10413-13th Street Court East, Edgewood. A SEPA (State Environmental Policy Act) Mitigated Determination of Non-significance (MDNS) was issued on March 11, 2016. Preliminary Plat approval was granted subject to conditions on April 29, 2016.

Staff deemed the final plat application "complete" on July 6, 2017 and began its technical review to assess whether the applicant has sufficiently met all preliminary plat conditions, SEPA mitigations, as well as Edgewood Municipal Code and Washington State statutory requirements for final plat approval.

As of July 28, 2017, the applicant has demonstrated that most of the requirements for final plat approval have been met. This includes a showing that site development and infrastructure improvements are substantially complete. Outstanding items to date include the following:

- Documentation from East Pierce Fire & Rescue confirming the Fire Marshal's acceptance of the final plat.
- A fully executed Substantial Completion Agreement with Lakehaven Water and Sewer District.
- Fully executed bonds for site improvements and wetland mitigations.
- The City Engineers Certificate.
- Final Mylar with required signatures.

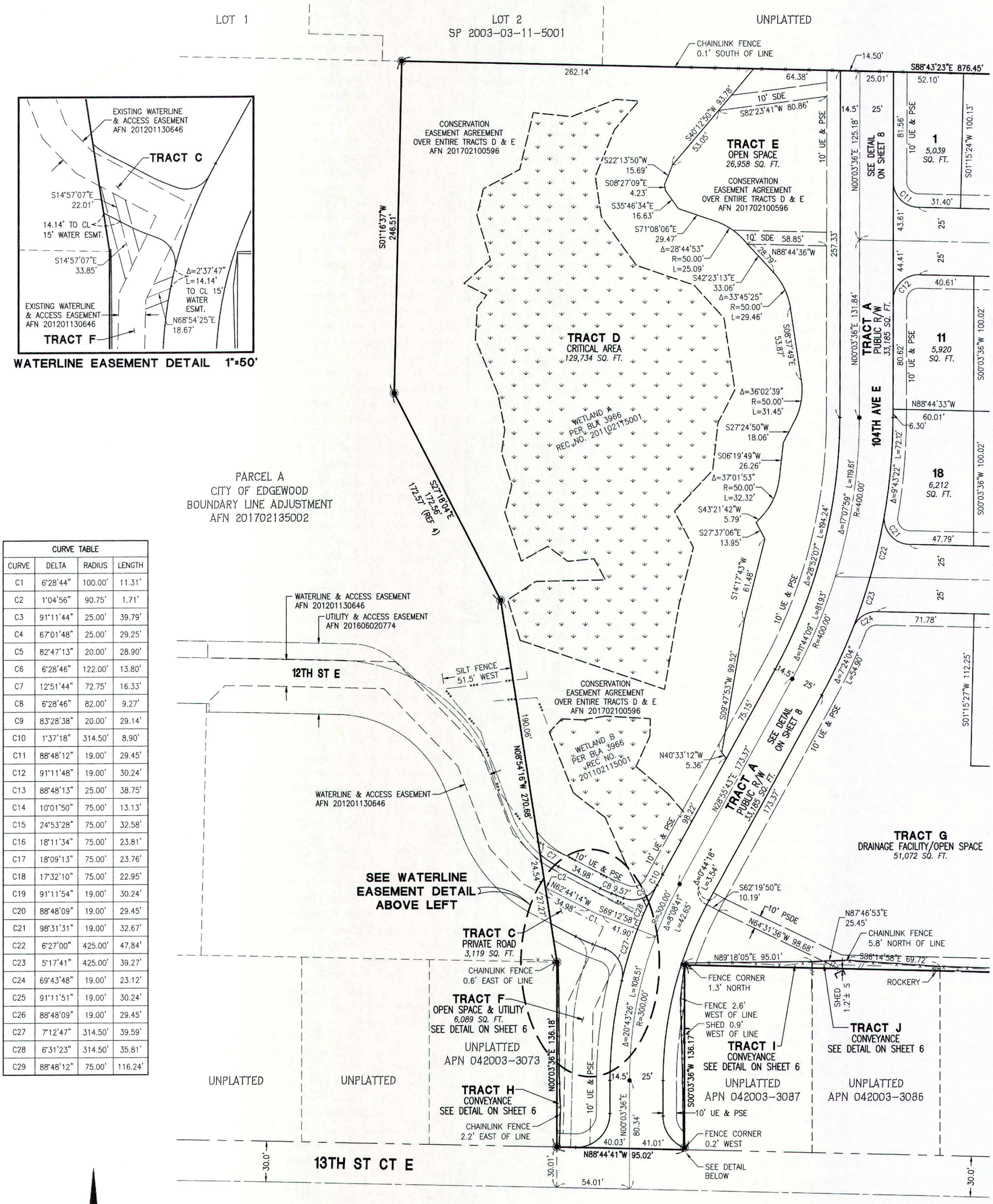
The applicant is obligated to submit the above mentioned outstanding items by noon on August 2. Staff believes the materials received to date are sufficient to convene this study session. Complete application materials are available upon request. If the applicant does not submit the remaining outstanding items by the deadline, consideration for final plat approval will not be placed on the August 8 Council Agenda.

Recommendation: Move consideration of final plat approval to the August 8, 2017 Council agenda.

Fiscal Impact: Has no additional impact to the budget.

EDGEWOOD VIEW POINTE

A PORTION OF THE NW1/4 & SW1/4 OF THE SW1/4
SECTION 3, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN
CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	6°28'44"	100.00'	11.31'
C2	1°04'56"	90.75'	1.71'
C3	91°11'44"	25.00'	39.79'
C4	67°01'48"	25.00'	29.25'
C5	82°47'13"	20.00'	28.90'
C6	6°28'46"	122.00'	13.80'
C7	12°51'44"	72.75'	16.33'
C8	6°28'46"	82.00'	9.27'
C9	83°28'38"	20.00'	29.14'
C10	1°37'18"	314.50'	8.90'
C11	88°48'12"	19.00'	29.45'
C12	91°11'48"	19.00'	30.24'
C13	88°48'13"	25.00'	38.75'
C14	10°01'50"	75.00'	13.13'
C15	24°53'28"	75.00'	32.58'
C16	18°11'34"	75.00'	23.81'
C17	18°09'13"	75.00'	23.76'
C18	17°32'10"	75.00'	22.95'
C19	91°11'54"	19.00'	30.24'
C20	88°48'09"	19.00'	29.45'
C21	98°31'31"	19.00'	32.67'
C22	6°27'00"	425.00'	47.84'
C23	5°17'41"	425.00'	39.27'
C24	69°43'48"	19.00'	23.12'
C25	91°11'51"	19.00'	30.24'
C26	88°48'09"	19.00'	29.45'
C27	7°12'47"	314.50'	39.59'
C28	6°31'23"	314.50'	35.81'
C29	88°48'12"	75.00'	116.24'

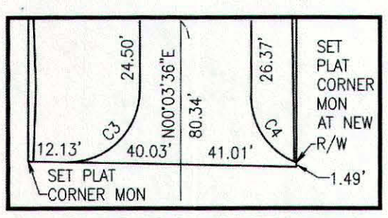
LEGEND:

- ● SET CITY OF EDGEWOOD STANDARD ROAD MONUMENT UPON COMPLETION OF CONSTRUCTION
- ◉ SET PLAT CORNER MONUMENT
- ○ FOUND REBAR/CAP AS NOTED
- SDE PUBLIC STORM DRAINAGE EASEMENT SEE PLAT NOTE 10 ON SHEET 1
- PSDE PRIVATE STORM DRAINAGE EASEMENT SEE PLAT NOTE 11 ON SHEET 1
- PSE PUGET SOUND ENERGY EASEMENT AFN 201612150431

0 25 50 100

SCALE: 1" = 50'

CITY OF EDGEWOOD PLAT NO. 4965



DETAIL 1"=50'

OWEN B. HILLE
STATE OF WASHINGTON
40016
REGISTERED
PROFESSIONAL LAND SURVEYOR

Barghausen Consulting Engineers,Inc.
Civil Engineering, Land Planning, Surveying, Environmental Services
18215 72nd Avenue South Kent, WA. 98032
Telephone: (425) 251-6222 Fax: (425) 251-8782

NW1/4 & SW1/4 OF SW1/4, SECTION 3, T20N-R4E, W.M.

SHEET 4 OF 8

JOB NO. 17829

SEE SHEET 3

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RECEIVED
JUL 27 2017
City of Edgewood

EDGEWOOD VIEW POINTE

A PORTION OF THE NW1/4 & SW1/4 OF THE SW1/4
SECTION 3, TOWNSHIP 20 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN
CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON

CURVE TABLE			
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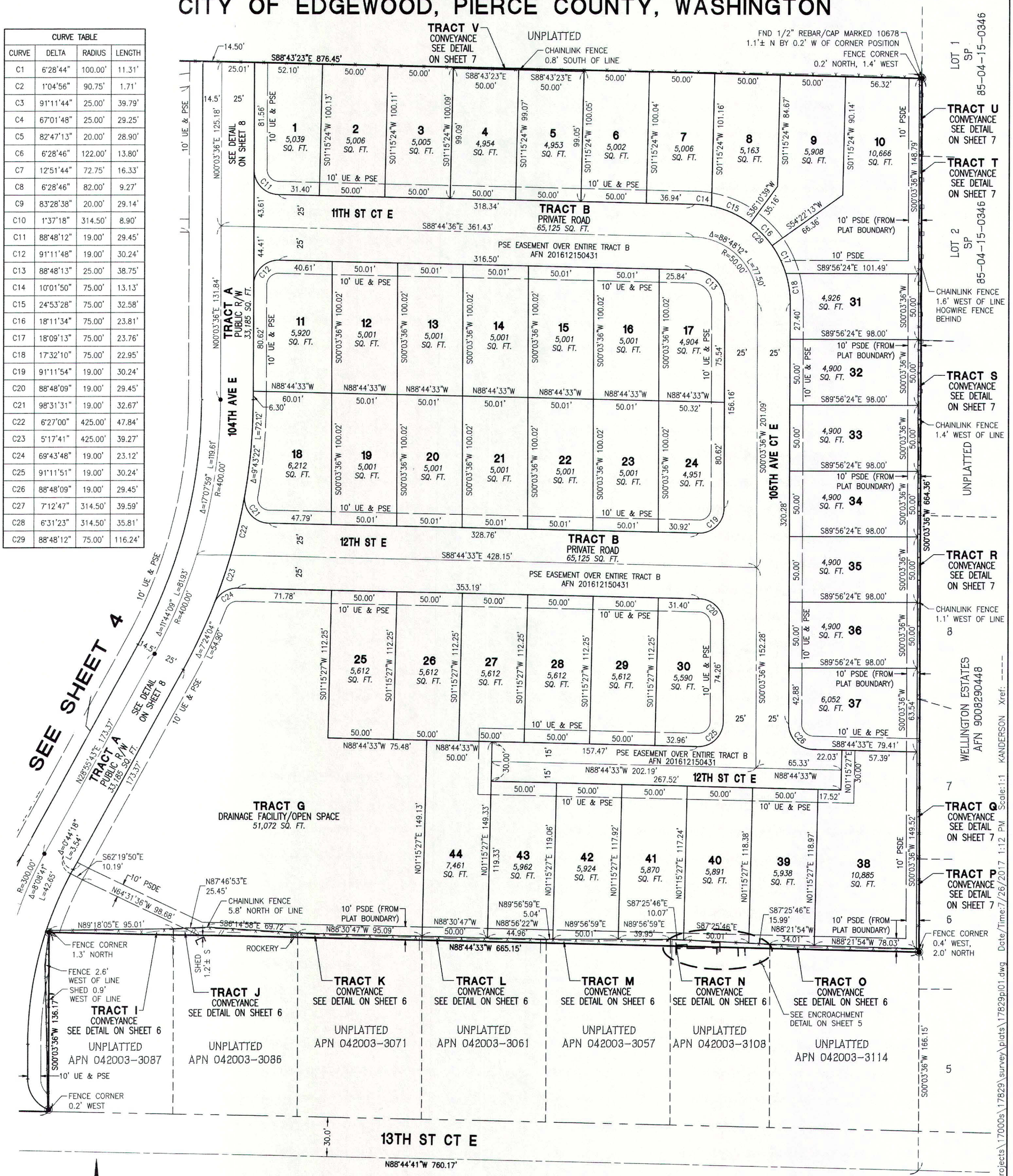

SEE SHEET 5 FOR WATER & SEWER EASEMENT DETAILS WITHIN TRACT "B"

JOB NO. 17829

LEGEND:

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- ◉ SET PLAT CORNER MONUMENT
- ○ FOUND REBAR/CAP AS NOTED
- PSDE PRIVATE STORM DRAINAGE EASEMENT SEE PLAT NOTE 11 ON SHEET 1
- PSE PUGET SOUND ENERGY EASEMENT AFN 201612150431

0 25 50 100

SCALE: 1" = 50'

CITY OF EDGEWOOD PLAT NO. 4965

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SHEET 3 OF 8

File:\\Apollo-VM\Projects\17000s\17829\survey\plats\17829pl01.dwg Date/Time:7/26/2017 1:12 PM Scale:1:1 KANDERSON Xref: ----

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JUL 27 2017
City of Edgewood

08/01/17 Special Council Meeting – Packet Material

CITY OF EDGEWOOD
REGULAR COUNCIL MEETING SUMMARY
Tues., July 11, 2017 – 7:00 p.m. ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm. Councilmember Lowry led the attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Donna O'Ravez, Councilmember Rosanne Tomyn, Councilmember Nate Lowry. Excused: Councilmember Stephanie Shook.
Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Senior Engineer, Jeremy Metzler, Police Chief Micah Lundborg, Carol Morris, City Attorney.

Additions/Deletions to the Agenda
There were no additions or deletions to the agenda.

2. AUDIENCE COMMENT

Betty Savage – thanked the City for cleaning up the pond; requested that the trees around the fencing come down, and gravel put around the front of her house on the street; she also requested streetlights on 32nd.

Linda Howard – noted the importance of the development code that needed to be changed she comments on the construction of Edgewood Heights along Meridian- trees being cut down, from her property; she noted the development code and the work hours during the weekend needing to be updated and changed.

City Attorney Morris noted that any conditions that the Council wants to set could be done through the Hearing Examiner under his conditions of approval.

3. MAYOR'S REPORT

Mayor Eidinger spoke about the following:

- Installing of flag on the barn by Coots on Scoots;
- Site development has started on site North of City Hall;
- Water leak on 24th St. in front of Northwood;
- Painting project completed;
- Staff interviewing CDD position; with recommendation soon after.

ACA Nix updated Council on code work regarding construction standards, and other code modifications; he noted once the Community Development Director in place, which will help Mr. Nix be able to focus on the public works side of the city.

Chief Lundborg briefed on the following:

- Crime incidents;
- Pets and Pedestrians and Community Academy;
- National Night Out in August

- July 23 law change regarding distracted driving;
- New Officer, Jeff Laugher has started.

4. CONSENT AGENDA

The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.

The following items are presented for Council approval:

A. Regular City Council Meeting Minutes of June 27, 2017,

B. **AB17-030,** a motion approving July 2017 Budgeted Expenditures as follows: AWC Employee Benefit Trust; IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of $73,566.42; and Vendor Check Numbers 22813-22838 with EFT Payments in the amount of $218,069.43. Total distributions submitted for review & authorization in the amount of $291,635.85

C. **AB17-0379,** a motion adopting Resolution No. 17-0379, authorizing the Mayor to execute an on-call contract for services with Akana

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Mark Creley, **Seconded by** Deputy Mayor Tyron Christopherson. **Motion passed unanimously (6-0).**

5. COUNCIL BUSINESS

A. **AB17-0380**, a motion to adopt Resolution No. 17-0380, conditionally approving the application for a Planned Residential Development for Domus Homes (File No. 16-5633), for one (1) commercial lot and 55 townhomes located East of Meridian Ave. E. at 10413 11th Street E. in Edgewood, adopting Findings and Conclusions in support

Assistant City Administrator Nix briefed on the agenda item-noted the key issues that were addressed from the closed record hearing.

Motion: As Read, **Action:** Approve, **Moved by C**ouncilmember Donna O'Ravez, **Seconded by** Councilmember Mark Creley. **Motion passed (5-1, Meyers)**

B. **AB17-0503,** a motion to accept the first reading of Ordinance No. 17-0503, 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

Assistant City Administrator Nix briefed on the agenda item.

Councilmember Meyers noted that in the future with these franchises, and with fiber and communications running through the city, he would like to see something added for additional benefit for the citizens and residents of the city.

Motion: Approve First Reading, **Action:** Approve, **Moved by** Deputy Mayor Tyron Christopherson, **Seconded by** Councilmember Luke Meyers. **Motion passed unanimously (6-0).**

6. COUNCIL COMMENTS

Deputy Mayor Christopherson stated with the fire, and tree down that took out the cable services throughout portions of Pierce County- his concern there is no provided back up service in the case of emergencies; he noted he is also concerned about not having construction standards – he noted he would like to be notified of when projects start.

City Attorney Morris wanted to note again, that any conditions that the Council wants to set could be done through the Hearing Examiner under his conditions of approval.

Councilmember Meyers stated he would like to see on the study session agenda the top 5-10 projects and their status.

7. EXECUTIVE SESSION

Mayor Eidinger asked City Attorney Carol Morris if there was an executive session.

City Attorney Morris stated there would be an Executive Session pursuant to RCW 42.30.110(1)(i), the City Council will now convene an executive session for the purpose of discussing potential litigation with legal counsel. The Executive Session will last approximately 15 minutes.

Mayor Eidinger recessed the meeting to Executive Session at 7:52pm for 15 minutes.

Mayor Eidinger extended the Executive Session at 8:07pm for 5 minutes.

Mayor Eidinger extended the Executive Session at 8:12pm for 5 minutes.

Mayor Eidinger called the meeting back to order at 8:17pm.

Mayor Eidinger asked for a motion to adopt Ordinance No. 15-0504, adopting an immediate, six-month moratorium on the acceptance of applications for Planned Residential Developments (PRD's) under EMC 18.50.095, for the purpose of allowing the city to evaluate the existing regulations for consistency with law and the city's Comprehensive Plan, such moratorium to be in effect while the city performs the necessary infrastructure analysis, legal review and follows the processes for any needed code amendments, and setting the date for the required public hearing, pursuant to RCW 36.70a.390.

Motion: , **Action:** Approve, **Moved by** Deputy Mayor Tyron Christopherson, **Seconded by** Councilmember Mark Creley. **Motion passed unanimously (6-0).**

Mayor Eidinger noted a public hearing is set for August 8, 2017 on this Ordinance.

8. ADJOURN

Mayor Eidinger adjourned the meeting at 8:17 pm.

_____ _____

Rachel Pitzel, City Clerk Daryl Eidinger, Mayor

CITY OF EDGEWOOD
COUNCIL STUDY SESSION SUMMARY
Tues., July 18, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm and led attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Donna O'Ravez, Councilmember Mark Creley, Deputy Mayor Tyron Christopherson, Councilmember Stephanie Shook, Councilmember Rosanne Tomyn, Councilmember Nate Lowry. **Excused:** Councilmember Luke Meyers.
Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Senior Engineer Jeremy Metzler, Police Chief Micah Lundborg.

2. COUNCIL BUSINESS

A. Review/Discussion - Conservation Futures Grant Opportunity Update

Senior Engineer/Stormwater Manager Metzler briefed Council on this agenda item and noted staff encourages Council to reach out the County Council with letters or memorandums of support as they consider the proposed ranking and funding prioritization.

B. Review/Discussion - Comp. Plan and Code Amendments

Assistant City Administrator Nix briefed Council on this agenda item, and noted this is something that has been in the works for a time. With the recommendation of legal counsel, the updates of the regulations are needed as shown on the Draft Ordinance regarding legislative actions of the Comprehensive Plan and the Land Use Map Amendments as well as Development Regulation updates. The code updates clarify, and simplify the process for undertaking these actions.

C. Review/Discussion - Noise Pollution Ordinance

Assistant City Administrator Aaron Nix briefed Council on this agenda item and noted he wanted to bring this forward to give Council a chance to look at it in advance, it will have some changes from the Attorney after her review. He stated when it came to the decibel levels, it was an "out of the box" thought when dealing with noise. Discussion took place regarding classes and allowances.

D. Discussion (no material) - School Zone Cameras

Chief Lundborg discussed he needed direction and noted what he has been hearing from citizens and their wants. He noted that with the school zone cameras there is a possibility of getting some much needed revenue but an ordinance would need to be generated that stipulates what the money could be used for. He discussed this being a great opportunity that would not impact the city. He also discussed staff and the city's needs and what he has learned and seen in the last 6 months of being on board, he noted what hard working staff the City has and how they need help, and any revenue source that the city can get, should be looked at to benefit the City and its needs. Mayor Eidinger noted that from what he gathered from the discussion, that Council would be okay with this moving forward.

E. Discussion (no material) - Budget Retreat Dates

Assistant City Administrator Gray noted it is time to look at the calendar and select a date for the Budget Retreat. He noted that there is not a significant change in the budget with no new sources of income, so

technically an all-day meeting is not necessary unless Council wishes to discuss other revenue sources. Council selected Saturday, September 16 from 11:30am – 4:00pm for the retreat.

F. Discussion (no material) - Council Highlight article for Fall edition of Edgewood Magazine
City Clerk Pitzel noted that Council would see this item has been added to the Future Agendas List (FAL) in order to allow Councilmembers to discuss who will be writing the next article in the Edgewood Magazine as well as discuss what topic. It was determined that Councilmember Shook would like to write the fall editions article and focus on children and public safety. Discussion also took place regarding which Councilmembers would like to do the next few Connect over Coffee dates- volunteers were selected; discussion pursued regarding a location change to Starbucks. City Clerk Pitzel also noted, that when available, the next few Council movie dates and titles are needed for the fall edition of the magazine as well.

3. OTHER COUNCIL ISSUES

None.

4. ADJOURN

Mayor Eidinger adjourned the meeting at 8:26pm.

_____ _____

Rachel Pitzel, City Clerk Daryl Eidinger, Mayor

CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-031-*REVISED*

Date Action Requested: August 1, 2017

Title: AB 17-031, a motion approving July 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems; Dept. of Labor & Industries; Employment Security Department and Payroll Direct Deposit in the amount of $58,154.02; and Vendor Check Numbers 22839-22850 with EFT Payments in the amount of $36,723.00. Total distributions submitted for review & authorization in the amount of $94,877.02

Attachments: Payment Distribution Review & Authorization, Voucher Directory

Submitted By: Dave Gray, Assistant City Administrator, Finance
Approved For Agenda By: Mayor Daryl Eidinger
Prepared For Agenda By: Rachel Pitzel, City Clerk

Recommendation: Move to Approve AB17-031

Discussion: Approval of Claims and Payroll Expenditures

Alternatives: 1) Do not approve. **2)** Refer to Council Study Session for Further Review.

Fiscal Impact: An increase in the sum of $94,877.02 to authorized Budgeted Expenditures.

City of Edgewood 2017

July 25th 2017 Council Meeting Check & EFT Payment Distribution Review & Authorization

Number	Name	Print Date	Amount
US Bank	**PAYROLL ACCOUNT DISTRIBUTION**		
10606	**Last Number Issued Previous Authorization**		
Q2 2017 L&I EFT	Dept of Labor & Industry	6/30/2017	$3,833.53
UI Q2 2017 EFT	Employment Security Department	6/30/2017	$3,566.50
DCP EFT 7/14/17	Deferred Compensation Program	7/14/2017	$4,526.87
Direct Deposit Run -	Payroll Vendor	7/14/2017	$33,740.45
DRS EFT 7/14/17	Dept of Retirement Systems	7/14/2017	$7,067.51
IRS 941 EFT 7/14/17	IRS 941	7/14/2017	$5,419.16
		Total	**$58,154.02**

Number	Name	Print Date	Amount
	CLAIM VOUCHER ACCOUNT DISTRIBUTION		
22838	**Last Number Issued Previous Authorization**		
22839	City of Sumner	7/25/2017	$1,247.00
22840	East Pierce Fire & Rescue	7/25/2017	$6,241.30
22841	ESRI	7/25/2017	$879.20
22842	Lakehaven Water & Sewer District	7/25/2017	$64.46
22843	Landau Associates	7/25/2017	$846.50
22844	McCarthy & Causseaux	7/25/2017	$976.07
22845	Morris Law PC	7/25/2017	$7,383.00
22846	Northwest Landscape Services	7/25/2017	$826.74
22847	Office Depot	7/25/2017	$436.58
22848	Smarsh, Inc.	7/25/2017	$199.65
22849	Transpo Group	7/25/2017	$4,996.25
22850	WA State Treasurer	7/25/2017	$288.00
EFT Payment 7/14/2017	Puget Sound Energy	7/25/2017	$3,765.26
EFT Payment 7/14/2017	Shell	7/25/2017	$520.13
EFT Payment 7/14/2017	US Bank Corporate Payment System	7/25/2017	$2,068.76
EFT Payment 7/14/2017	Wells Fargo Financial Leasing	7/25/2017	$85.93
EFT Payment 7/14/2017	Wells Fargo Vendor Fin Serv	7/25/2017	$368.17
USBank EFT 7/7/17	US Bank ACH/EFT	7/25/2017	$30.00
EFT Payment 7/28/2017	US Bank ACH/EFT	7/25/2017	$5,500.00
		Grand Total	**$36,723.00**

Total Claims Voucher Distribution	**$36,723.00**
Total Distribution Submitted for Review & Authorization	$94,877.02
Authorization Adjustments:	
Total Distribution Net of Prior Authorized Adjustments	**$94,877.02**

Claims Voucher Approval : I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed

_____Mayor, Daryl Eidinger

_____Council Member

Voucher Directory

Vendor	Number	Reference	Account Number	Description	Amount
City of Sumner					
	22839		**2017 - July - 2nd Council Meeting**		
		063017-COS			
			2nd Qtr 2017 Animal License Fees		
			650-000-000-586-10-00-05	Animal Licenses	$1,247.00
			2nd Qtr 2017 License Fees		
		Total 063017-COS			**$1,247.00**
	Total 22839				**$1,247.00**
Total City of Sumner					**$1,247.00**
East Pierce Fire & Rescue					
	22840		**2017 - July - 2nd Council Meeting**		
		063017-EPF			
			2nd Qtr 2017 Fire Plan Review Fees		
			650-000-000-586-10-00-06	Fire Plan Review	$6,241.30
			2nd Qtr 2017 Fire Plan Review Fees		
		Total 063017-EPF			**$6,241.30**
	Total 22840				**$6,241.30**
Total East Pierce Fire & Rescue					**$6,241.30**
ESRI					
	22841		**2017 - July - 2nd Council Meeting**		
		93311752			
			10/1/17-9/30/18 ArcGIS Maintenance		
			001-018-000-518-85-48-03	Computer Maintenance-Permitting SW	$879.20
		Total 93311752			**$879.20**
	Total 22841				**$879.20**
Total ESRI					**$879.20**
Lakehaven Water & Sewer District					
	22842		**2017 - July - 2nd Council Meeting**		
		3574701 4/3-6/6/17			
			4/3/17-6/6/17 Services		
			001-018-000-518-30-47-04	Sewer Charges	$64.46
			City Hall		
		Total 3574701 4/3-6/6/17			**$64.46**
	Total 22842				**$64.46**
Total Lakehaven Water & Sewer District					**$64.46**

Vendor	Number	Reference	Account Number	Description	Amount
Landau Associates					
	22843		**2017 - July - 2nd Council Meeting**		
		0039506			
			June Svcs-Prj 0495098.010		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	$846.50
			Reimer Residence		
		Total 0039506			**$846.50**
	Total 22843				**$846.50**
Total Landau Associates					**$846.50**
McCarthy & Causseaux					
	22844		**2017 - July - 2nd Council Meeting**		
		188			
			June Services		
			001-015-000-515-32-41-14	Hearing Examiner Legal Fees	$976.07
			Volente		
		Total 188			**$976.07**
	Total 22844				**$976.07**
Total McCarthy & Causseaux					**$976.07**
Morris Law PC					
	22845		**2017 - July - 2nd Council Meeting**		
		070517-MOR			
			June Services		
			001-015-000-515-32-41-01	Legal Services	$7,383.00
		Total 070517-MOR			**$7,383.00**
	Total 22845				**$7,383.00**
Total Morris Law PC					**$7,383.00**
Northwest Landscape Services					
	22846		**2017 - July - 2nd Council Meeting**		
		RC000027625			
			July Maintenance		
			101-000-000-542-70-48-04	Road Maint ROW Veg Maint Contractor	$826.74
		Total RC000027625			**$826.74**
	Total 22846				**$826.74**
Total Northwest Landscape Services					**$826.74**
Office Depot					
	22847		**2017 - July - 2nd Council Meeting**		
		938617651001			
			June Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	$141.80
			Pens, Tape, Sharpies		
		Total 938617651001			**$141.80**

Vendor	Number	Reference	Account Number	Description	Amount
		940895563001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	$120.51
			Laser Address Labels		
		Total 940895563001			**$120.51**
		940895583001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	$21.52
			Key Tags		
		Total 940895583001			**$21.52**
		941501323001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	$65.93
			Accordion File Folders		
		Total 941501323001			**$65.93**
		941501375001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	$86.82
			Copy Paper		
		Total 941501375001			**$86.82**
	Total 22847				**$436.58**
Total Office Depot					**$436.58**
Puget Sound Energy					
	EFT Payment 7/14/2017 4:31:58 PM - 1		**2017 - July - 2nd Council Meeting**		
		300000011233 June 2017			
			June 2017 Statement		
			001-018-000-518-20-47-01	Electricity	$3,765.26
		Total 300000011233 June 2017			**$3,765.26**
	Total EFT Payment 7/14/2017 4:31:58 PM - 1				**$3,765.26**
Total Puget Sound Energy					**$3,765.26**
Shell					
	EFT Payment 7/14/2017 4:31:58 PM - 2		**2017 - July - 2nd Council Meeting**		
		8000093974707			
			June Statement		
			001-018-000-518-30-32-01	Fuel	$520.13
		Total 8000093974707			**$520.13**
	Total EFT Payment 7/14/2017 4:31:58 PM - 2				**$520.13**
Total Shell					**$520.13**

Vendor	Number	Reference	Account Number	Description	Amount
Smarsh, Inc.					
	22848		**2017 - July - 2nd Council Meeting**		
		INV00244588			
			June Services		
			001-014-000-518-80-49-03	Computer Subscriptions	$199.65
		Total INV00244588			**$199.65**
	Total 22848				**$199.65**
Total Smarsh, Inc.					**$199.65**
Transpo Group					
	22849		**2017 - July - 2nd Council Meeting**		
		20540			
			June Svcs-Prj 0.13312.00		
			340-000-000-595-10-41-02	CIP Transportation Engineering	$4,996.25
			24th St/122nd Ave Traffic Control Analysis		
		Total 20540			**$4,996.25**
	Total 22849				**$4,996.25**
Total Transpo Group					**$4,996.25**
US Bank ACH/EFT					
	EFT Payment 7/28/2017 11:50:20 AM - 1		**2017 - July - 2nd Council Meeting**		
		060117-USBank			
			City Hall GoBond-Interest Payment		
			201-000-000-592-18-83-01	Interest on Bonds	$5,500.00
			June 2017 Payment		
		Total 060117-USBank			**$5,500.00**
	Total EFT Payment 7/28/2017 11:50:20 AM - 1				**$5,500.00**
	USBank EFT 7/7/17		**2017 - July - 2nd Council Meeting**		
		070717-USBank			
			June Safekeeping Fees		
			001-014-000-514-20-42-05	Bank & Bond Fees	$30.00
		Total 070717-USBank			**$30.00**
	Total USBank EFT 7/7/17				**$30.00**
Total US Bank ACH/EFT					**$5,530.00**
US Bank Corporate Payment System					
	EFT Payment 7/14/2017 4:31:58 PM - 3		**2017 - July - 2nd Council Meeting**		
		062617-USBank			
			June 2017 Statement		
			001-013-000-513-10-43-02	Lodging Charges	$330.44
			D.Eidinger-Hilton-Hotel-AWC Conference		
			001-014-000-514-20-31-05	Meeting Meals Expense	$327.66
			J.Herrera-Taco Del Mar-Kevin Stender Luncheon		
			001-018-000-518-20-31-01	Office & Operational Supplies	$17.44
			J.Herrera-Amazon-TP		
			001-018-000-518-20-31-01	Office & Operational Supplies	$47.47
			D.Eidinger-Lowes-Misc Supplies		

Vendor	Number	Reference	Account Number	Description	Amount
			001-018-000-518-20-31-01	Office & Operational Supplies	$5.34
			J.Herrera-Safeway-Gift Card Activiation-K.Stender		
			001-018-000-518-20-31-01	Office & Operational Supplies	$31.99
			J.Herrera-Fred Meyer-Mayors Bday Cake		
			001-018-000-518-20-31-01	Office & Operational Supplies	$38.88
			J.Herrera-Amazon-Binders		
			001-018-000-518-20-31-01	Office & Operational Supplies	$99.54
			A.Nix-DS Services-City Hall Water Delivery		
			001-058-000-558-50-31-01	Office & Operational Supplies	$82.48
			J.Herrera-Amazon-Yellow Door Hangers-Bldg Dept		
			001-058-000-558-50-43-01	Training/Travel Costs	$17.14
			B.Centen-Whistle Stop-Training-Lunch		
			001-058-000-558-50-49-01	Memberships	$15.00
			D.Mundy-IAPMO Membership		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	$23.75
			A.Nix-USPS-Postage Pass Thru Exp-North Edgewood Apt		
			001-076-000-576-80-31-01	Operational Supplies	$87.91
			H.Bowers-Lowes-Headset		
			001-076-000-576-80-31-01	Operational Supplies	$26.99
			A.Nix-Autozone-Vehicle Maint Supplies		
			001-076-000-576-80-32-01	Fuel	$99.58
			D.Eidinger-Star Ice & Fuel-Mower Propane		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	$109.00
			J.Herrera-Amazon-Headphones-Howard		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	$19.14
			D.Eidinger-Lowes-Parks Supplies		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	$17.58
			D.Eidinger-Lowes-Locks for Parks		
			101-000-000-542-30-31-01	Operational Supplies	$139.99
			R.Pederson-Experimac-Cell Phone Repair		
			101-000-000-542-30-31-01	Operational Supplies	$39.92
			A.Nix-Amazon-Cell Phone Supplies		
			410-000-000-531-38-35-05	Equipment - Surface Water	$351.13
			J.Metzler-Amazon-Weather Station		
			410-000-000-531-38-43-01	Training/Travel Costs	$20.00
			J.Metzler-AWC-Seminar		
			410-000-000-531-38-43-02	Professional Licenses & Certification	$116.00
			J.Metzler-DOL-PE License Renewal		
			650-000-000-586-10-00-09	Suspense	$4.39
			J.Herrera-Error-Pers Exp-repaid rec #3583		
		Total 062617-USBank			**$2,068.76**
	Total EFT Payment 7/14/2017 4:31:58 PM - 3				**$2,068.76**
Total US Bank Corporate Payment System					**$2,068.76**

Vendor	Number	Reference	Account Number	Description	Amount
WA State Treasurer					
	22850		**2017 - July - 2nd Council Meeting**		
		Q2 2017-WA State Treasurer			
			2nd Qtr 2017 Building Code Fees		
			650-000-000-586-10-00-04	State Bldg Code Fee	$288.00
			Q2 2017 Fees		
		Total Q2 2017-WA State Treasurer			**$288.00**
	Total 22850				**$288.00**
Total WA State Treasurer					**$288.00**
Wells Fargo Financial Leasing					
	EFT Payment 7/14/2017 4:31:58 PM - 4		**2017 - July - 2nd Council Meeting**		
		5004084358			
			8/4/17-9/3/17 Lease		
			001-018-000-518-30-45-06	Copier Lease	$85.93
			Lexmark Printers		
		Total 5004084358			**$85.93**
	Total EFT Payment 7/14/2017 4:31:58 PM - 4				**$85.93**
Total Wells Fargo Financial Leasing					**$85.93**
Wells Fargo Vendor Fin Serv					
	EFT Payment 7/14/2017 4:31:58 PM - 5		**2017 - July - 2nd Council Meeting**		
		67162260			
			August Lease		
			001-018-000-518-30-45-06	Copier Lease	$368.17
			Kyocera Copier		
		Total 67162260			**$368.17**
	Total EFT Payment 7/14/2017 4:31:58 PM - 5				**$368.17**
Total Wells Fargo Vendor Fin Serv					**$368.17**
Grand Total		**Vendor Count**	**18**		**$36,723.00**

CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0503

Date: August 1, 2017

Title: Verizon Franchise Agreement (MCI Metro)

Attachments: Franchise Agreement with Verizon Ordinance No. 17-0503

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

Approved For Agenda By: Daryl Eidinger, Mayor

Prepared For Agenda By: Aaron C. Nix, ACA Municipal Services – PW/Interim CD Director

Recommendation: Move to adopt Ordinance No. 17-0503, granting a non-exclusive franchise to MCIMetro Access Transmission Services Corp., DBA, 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.

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. Based on previous discussion with the City Council, the franchise term has been extended to 10 years, as requested by Verizon. Additional details have been worked out by Staff and the service provider and we are ready to move forward with the adoption of the attached Ordinance for the Council's consideration.

Alternatives: 1) Do not adopt. **2)** Forward to Study Session for further review

Fiscal Impact: N/A

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ORDINANCE NO. 17 -0503

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

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

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services has made application to the City of Edgewood for a telecommunications franchise to construct, install, maintain, repair and operate a Private Telecommunications System to provide telecommunications (data transport services) using specified portions of the Public Rights-of-Way; and

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services represents that it is a telecommunications company and that all or a portion of its services may be subject to Title 80 RCW and that it may provide competitive telecommunications services within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

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

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

ARTICLE 1. DEFINITIONS

Except as provided at Section 3.7 herein (order of precedence), for the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in relevant sections of the Edgewood Municipal Code. Words not defined herein or in the Edgewood Municipal Code, shall have the meaning given pursuant to such state and federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee now existing or hereafter amended, including without limitation the definitions and word usages set forth in the Communications Act (as hereafter defined). Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent

with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

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

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

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

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

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

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

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

"Design Document(s)" shall mean the plans and specifications, in electronic form and in a file format requested by the City, for the Construction of the Facilities illustrating and describing the refinement of the design of the Utility System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

"100% Design Submittal" means a Design Document, in electronic form and in a file format requested by the City, upon which Franchisee's contractors will rely in constructing the Utility System Facilities.

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

i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or

activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

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

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

"Development Permit" shall mean and refer to a project permit as that term is defined in EMC 18.20.070(D).

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

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

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

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

"Franchise" shall mean the non-exclusive grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way, as authorized pursuant to a Regulatory Permit, and to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions of the Franchise Ordinance.

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

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

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

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

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

"Legal action" shall mean filing a lawsuit or invoking the right to arbitration.

"Material Breach" shall mean any of the following circumstances:

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

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

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

"Party (ies)" shall mean either the City or the Franchisee or both, dependent upon the context.

"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).

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

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

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

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

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

"Telecommunications" shall have the same meaning as given under Section 3 of the Communications Act, 47 U.S.C. §153(43).

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

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

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

ARTICLE 2. FRANCHISE GRANT

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

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to construct, install, maintain, repair and operate a 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). Franchisee may lease or provide an indefeasible right of use for all or part of its Telecommunications System, provided that Franchisee retains ownership of all of its Telecommunications System. 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-1, 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 it 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 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 ten (10) year term upon the same terms and conditions as provided herein.

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, judgements, 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 or 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".

5.5 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".

5.6 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.

5.7 Financial Conditions.

5.7.1 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.

5.7.2 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.

5.7.3 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.

5.7.4 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 Franchise, 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.

5.7.5 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.

5.7.6 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.

5.7.7 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.

5.7.8 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.

5.7.9 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.

5.7.10 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.

5.7.11 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.

5.7.12 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 owning 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.

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

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Dispute Avoidance/Mediation.

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

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

6.1.3 Mediation. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties hereby agree that the matter may, at the mutual discretion of the Parties, be referred to mediation. Either Party may request mediation upon a determination by that Party that the Parties are unable to resolve the Dispute pursuant to Section 6.1.2 herein. The Parties shall thereupon mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to

agree upon a mediator, the Parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a Party fails to notify the other Party of which mediator it has stricken within two (2) business days, the other Party shall have the option of selecting the mediator from those mediators remaining on the list. Unless the Parties agree otherwise, mediation shall commence in no case later than thirty (30) days after a mediator is selected. Any expenses incidental to mediation shall be borne equally by the Parties. Nothing herein shall be construed as requiring mediation as a prerequisite to litigation or other method of Dispute Resolution.

6.1.4 Intent. The obligations of this Section 6.1 are not intended and shall not be construed to prevent a Party from, assessing liquidated damages, issuing an order to cure an alleged Non-Material Breach, or taking Corrective Action.

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

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

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

6.2.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either Party to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the default or Breach and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, (i) seek equitable relief, and/or (ii) commence an action at law for monetary damages or impose liquidated damages as set forth below. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Breach.

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

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

6.3.1.2 Cure the Breach; or

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

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

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

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

6.4 Material Breach. In the event of a Material Breach, no opportunity to cure shall be required before taking Legal Action to remedy the Material Breach created as a result of the failure to cure.

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

6.5.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise and request a meeting and commence dispute resolution

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

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

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

6.5.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

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

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

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

6.5.3.2 Whether other remedies will achieve compliance with this Franchise;

6.5.3.3 Whether Franchisee has acted in good faith;

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

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

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

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

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

6.6 Assessment of Liquidated Damages.

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

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

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

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

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

6.6.6 The liquidated damages amount shall be automatically adjusted every five years from the date of execution of this Franchise, to reflect the extent of cumulative inflation.

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

6.6.8 The City may not collect both liquidated damages and actual damages for the same violation.

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

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

6.7.1 The receivership or trusteeship is timely vacated; or

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

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

7.1 Permits.

7.1.1 Regulatory Permit and Administrative Permit. If Franchisee has submitted an application for a Regulatory Permit, Utility Right-of-Way Permit, or Administrative Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable and consistent with applicable Laws, consider such application contemporaneously with the design review requirements hereunder.

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

seek any required Development Permit(s), approvals, or variance prior to or contemporaneous with its application for a Regulatory Permit or Administrative Permit.

7.2 Submission/Approval of Design Submittal.

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

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

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

7.2.3.1 Location/Alignment/Depth;

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

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

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Right-of-Way;

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

7.2.3.6 Compliance with applicable Standards and codes including temporary erosion control measures and stormwater compliance; and

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

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

7.3.1 Road and Bridge Standards. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington

State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

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

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

7.3.4 City Regulations. City of Edgewood Municipal Code, Ordinances and regulations adopted by the City Council authorize a designated City official to establish standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any road design standards that the City shall deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance and maintenance;

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

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

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

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

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

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

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

7.5 Work in the Public Rights-of-Way.

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

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

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

7.5.4 Publicizing Work.

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

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

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

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants

and agents of Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the Work performed by them.

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

7.5.7 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Mayor of the need for such repairs. Franchisee may initiate such Emergency repairs, and shall apply for appropriate Utility Permits within forty-eight (48) hours after discovery of the Emergency. In the event of an Emergency, a Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Regulatory Permit for such Emergency Work, provided that: (1) Franchisee notifies the City in advance of the Emergency requiring the performance of such Emergency Work and the type and location of such Work; (2) Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) Franchisee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.8 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 100% Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be, in writing, given to the Person doing the work and be posted on the work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to

taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee.

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

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

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

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

7. 5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City; except for punch list items which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

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

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

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

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

reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

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

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

7.7 General Conditions.

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

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

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

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

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or

City-owned property, the City may reasonably require Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of City to inspect the Work, issue a stop work order, and order or make repairs or alterations, City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

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

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

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

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

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

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

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all

members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements, Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

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

7.8.2 Alternatives. If the City requires Franchisee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration, subject to RCW 35.99.060, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines, in its sole discretion, that there is no other reasonable alternative, the Franchisee shall promptly relocate its Facilities as otherwise provided in this Section at Franchisee's sole expense. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until Franchisee funds the additional costs to the City to complete its evaluation.

7.8.4 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than thirty (30) days, or such longer period as mutually agreed to

by the parties. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

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

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

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

7.8.8 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in RCW 35.99.060.

7.9 Movement of Facilities for Others.

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

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

7.10 Movement of Facilities During Emergencies.

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

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

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

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations

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

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

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

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

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

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

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to the Public Right-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the satisfaction of the City to as good or better a condition as existed before the Work was undertaken, unless otherwise directed by the City. If the City determines that complete or satisfactory restoration is not obtainable, the City shall have the right to require compensation for the less than complete or satisfactory condition of the Public Right-of-Way or public property. Franchisee shall complete the restoration work within forty-eight (48) hours or as authorized by the Mayor.

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

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

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

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

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

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Utility System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Utility System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which

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

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

The City shall not be required to obtain any easements or other property rights for Franchisee. Franchisee shall, to the extent economically feasible, participate with other Service Providers in joint trench projects to relocate its overhead Facilities underground and remove its overhead Facilities in areas where utilities are being converted to underground.

In the event of a City-driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare and provided such requirement is equally applicable to all entities with overhead facilities at such location(s), Franchisee agrees to bear the costs of converting Franchisee's Facilities from an overhead system to an underground system as follows:

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

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

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

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

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

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

ARTICLE 8 MISCELLANEOUS

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

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

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

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

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

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties

intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Section 7.8.7 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Mayor or duly authorized designee.

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

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, or no breach thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Breach shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Breach thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

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

8.11 Signs. No signs or advertising shall be permitted to be posted or otherwise displayed by Franchisee within the Franchise Area except as may be allowed by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

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

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

Franchisee's address: **MCImetro Access Transmission Services Corp.**
d/b/a Verizon Access Transmission Services
Attn: Franchise Manager
600 Hidden Ridge
Mailcode: HQE02G295
Irving, TX 75038

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

The City's Address: **City of Edgewood 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 June 6, 2017
Presented to Council for Second Reading on June 27, 2017

ADOPTED BY THE CITY COUNCIL ON JULY 11, 2017

_____
Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

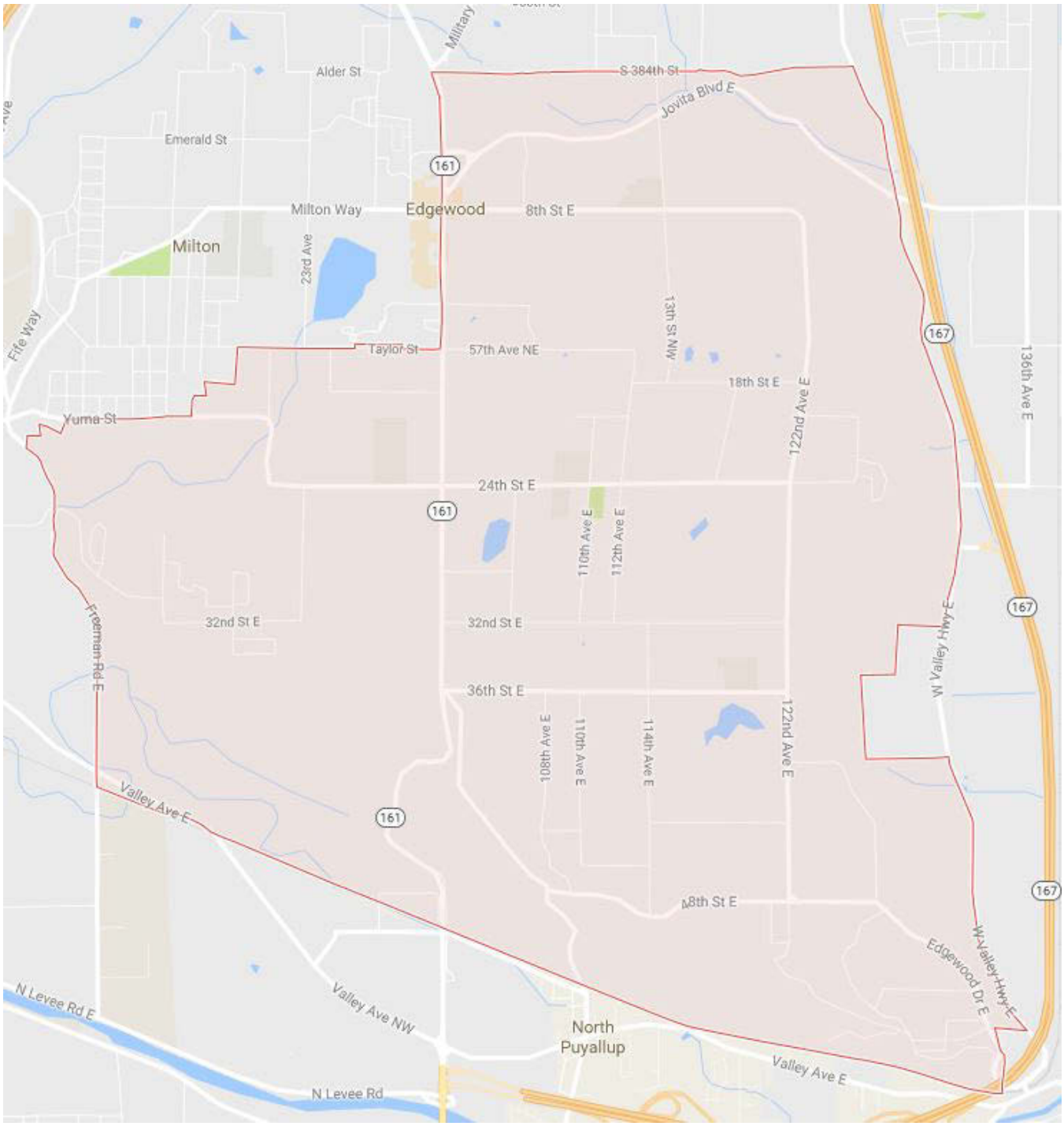
_____
Carol Morris, City Attorney

Date of Publication: **July 12, 2017**
Effective Date: **July 11, 2017**

CITY OF EDGEWOOD

Exhibit A-1

(*Franchise Area*)



TRANSFER EXHIBIT A

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 | ss.
CITY OF IRVING

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

Dated this _____day of _____, _____.

(Signature of Notary)

_____

_____

Print Name

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

My appointment expires _____

EXHIBIT "B"

(*Acceptance of Franchise*)

Franchise issued pursuant to Ordinance No. 17-0503

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

DATED this 26 day of JUNE, 2017.

By Robert McGee
Its Executive Director-Ntwk Eng&Ops

Tax Payer ID# 52-2102063

STATE OF TEXAS
ss.
COUNTY OF DALLAS

Before me, JOSEPH M. WEACHOCK, on this day personally appeared Robert F. Mcgee, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the Executive Director of MCImetro Access Transmission Services Corp., a Delaware Corporation, and acknowledged to me that he executed the said instrument for the purposes and consideration therein expressed, on behalf of said Corporation.

Given under my hand and seal of office this 26 day of June, 2017.

Notary Public
JOSEPH M. WEACHOCK
Printed Name

My Commission Expires: 10/13/19

[S E A L]

Joseph M. Weachock
Notary Public,
State of Texas
Expires: 10/13/2019

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 liablity 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*)

1. Performance Bond.

1.1 In connection with individual projects, the City may require performance bonds to ensure that the Franchisee constructs certain improvements in connection with individual projects, that such improvements are constructed in full compliance with City standards, and that the project conforms to the submitted plans and specifications. The performance bond shall remain in effect until the obligations secured have been fully performed. These bonds shall expire according to the terms and conditions set forth in the bond document.

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 restoration 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 restoration 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 restoration 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 restoration 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.

4. Performance Agreement. The performance agreement secured by the bond or cash deposit/letter of credit described in Section 1 and 2, and as secured by the restoration bond described in Section 3 of this Exhibit E, shall guarantee, to the satisfaction of the City:

4.1 Timely completion of construction;

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

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

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;

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

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