



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING AGENDA**

Tues., July 11, 2017 – 7:00 pm. ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance, Roll Call, Additions/Deletions

2. AUDIENCE COMMENT

3. MAYOR'S REPORT

4. CONSENT AGENDA (pg. 2): *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 (pg. 19), a motion adopting Resolution No. 17-0379, authorizing the Mayor to execute an on-call contract for services with Akana

5. COUNCIL BUSINESS

A. AB17-0380 (pg. 31), 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

B. AB17-0503 (pg. 85), a motion to adopt 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

6. COUNCIL COMMENTS

7. EXECUTIVE SESSION

8. ADJOURN



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING SUMMARY**

Tues., June 27, 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 and led the attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Donna O'Ravez, Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Stephanie Shook, Councilmember Rosanne Tomy, Councilmember Nate Lowry.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, 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

Gary Todd- asked about industrial land in the valley and wanted to get an update on it.

Rosemary Simons – discussed her home and property.

William Bennett- discussed supporting the Comp. Plan amendment and changing it to Industrial.

Buddy Uchida- stated he is a proponent for the land use change; and would like to ask for consideration to move to Phase II.

3. PRESENTATION

East Pierce Fire and Rescue – Chief Bud Backer

Chief Backer presented a PowerPoint presentation to Council- introduced Board Chair Dale Mitchell; Chief Backer discussed the following: challenges and demand for service; EMS workload; short staffed engine companies; emergency vehicles; and facilities.

4. CONTINUED CLOSED RECORD REVIEW PROCEEDING

Planned Residential Development for Domus Homes, File No. 16-5633

Mayor Eidinger briefed Council on the purpose of the Closed Record Hearing.

Mr. Dexter Meecham interrupted the Mayor's introduction of the Closed Record Review Proceeding to state the PRD is on his property and he had a copy of his deed for Council.

Mayor Eidinger stated the record is closed and Council cannot accept any new testimony or information at this time, he noted if he would like to give the City Clerk his paperwork, she will give it to staff.

Mayor Eidinger continued the Closed Record Review Proceeding and asked the following questions.

Appearance of Fairness Disclosures

Mayor Eidinger noted, the Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance, and appearance. The hearing must not only be fair, it also must appear to be fair. He then stated he would like to ask whether any member of this decision-making body has engaged in communication with opponents or proponents regarding the issues relating to this application outside of the public hearing process.

Council and Mayor answered none.

Mayor Eidinger then asked the following questions:

1. Is there any member of the Council who has a conflict of interest or believes that he or she cannot hear and consider this application in a fair and objective manner?

Council and Mayor each answered no.

2. Is there anyone in the audience who objects to my participation or to any other Councilmember's participation as a decision-maker in this hearing?

There were no comments from the audience.

Assistant City Administrator Aaron Nix provided information on the Staff Report and Application.

Mayor Eidinger stated Council may now ask clarifying questions on disputed issues of the Staff and applicant, with an opportunity for rebuttal by the staff and applicant. The Council shall not request information outside the administrative record.

Council's clarifying questions:

Councilmember Meyers asked about the Exhibits noted in the record, that were not attached/included from page 3, revised documents- SR Meridian Site Plan Map; rough street map.

Councilmember Meyers asked about the Traffic Impact Study Analysis note mentioning the shopping center.

Deputy Mayor Christopherson echoed CM Meyer's comments; he also noted the appearance of a future entrance and wondered about opposing entrances in that area.

Assistant City Administrator Nix wanted to state that 12th and 8th are major connectors, not 11th. He noted the developer is paying impact fees to make those improvements for traffic flow and enhancements.

Deputy Mayor Christopherson addressed short density and independent access.

Councilmember Creley asked about a recreational park area.

Assistant City Administrator Nix noted the open space in between buildings (track D) is a grass/landscape area.

Councilmember Lowry asked about the connection with 11th and Meridian and a left hand turn lane.

Councilmember Shook asked about parking and making it accessible to emergency vehicles.

Craig Peck, Civil Engineer and representative for Domus Homes clarified that the traffic analysis was done during peak hours. He also noted that developer is not in favor of a right hand turn. Mr. Peck stated the developer would make improvements to 11th, (20ft wide with curbs and gutter). In addition, the construction on 11th they will be replacing the driveway approach with a textured driveway approach and it will continue to look like a driveway and not a “through road.” He also noted that in the record, there is a title report.

Mayor Eidinger stated if there were no more questions, the Council might now begin deliberations.

Motion: to approve the PRD with condition of working with developer if the property in question, is within the PRD.

Vote: Motion passed (**summary:** Yes = 6, No = 1, Abstain = 0).

Yes: Councilmember Donna O'Ravez, Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Rosanne Tomin, Councilmember Nate Lowry.

No: Councilmember Stephanie Shook.

5. MAYOR'S REPORT

Mayor Eidinger spoke about the following:

- Public Works in full swing, mowing and road work happening throughout the City; the summer edition of the Edgewood magazine notes the major projects that will be occurring;
- Staff has received several applicants for the Community Development Director position, first review is scheduled for next week with expectation we will be interviewing the following week;
- Met with members of Verizon Communications regarding the next generation cell tower systems. They are smaller and lower, but more frequent, covering about 800 feet between towers, but can be designed to match city standards in lighting. The first area that they would like to upgrade is in the southeast region of our city;
- Since our last meeting, we have had Connect over Coffee and last Friday we had the “Trolls” movie. With each movie, our attendance increases. Our next two movies are outdoors here at City Hall;
- Last week attended the AWC annual conference in Vancouver. Across the street from the Hilton was a park that was used every day for events of one kind or another, some public, some private. Any design work that we do will need to include multi-purpose facilities. The conference included breakout session that were well planned and informative. He noted he will share concepts at a later date;
- Noted the new fireworks restrictions go into effect this year.

Mr. Nix updated Council on how busy staff is, noted the contracts under the consent agenda that will help with the workload, he also noted there are many CARs coming in.

Chief Lundborg briefed on the following:

- Staffing change next week losing Brian Anderson; Officer, Jeff Laughner will be his replacement, has worked for the State Patrol, and is excited to come work in Edgewood.

6. 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 13, 2017,
- B. Study Session Meeting Minutes of June 20, 2017.
- C. **AB17-028**, a motion approving June 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of \$59,031.93; and Vendor Check Numbers 22796-22812 with EFT Payments in the amount of \$184,226.58. Total distributions submitted for review & authorization in the amount of \$243,258.51
- D. **AB17-0375**, a motion adopting Resolution No. 17-0375, authorizing the Mayor to execute an on-call contract for services with Transpo Group USA, Inc.
- E. **AB17-0376**, a motion adopting Resolution No. 17-0376, authorizing the Mayor to execute an on-call contract for services with Gray & Osborne, Inc.
- F. **AB 17-029**, a motion authorizing the posting of the 2016 Annual Report to the city's website under the Finance page.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Stephanie Shook, **Seconded by** Councilmember Rosanne Tomin. **Motion passed unanimously (7-0).**

7. COUNCIL BUSINESS

- A. **AB17-0377**, a motion adopting Resolution No. 17-0377, in accordance with Edgewood Municipal Code, Chapter 18.60.010, instructing the City's Planning Commission to begin their Phase II analysis of the proposed Comprehensive Plan Amendments to the Future Land-Use Map, following the Commissions proposed timeline for completion and providing a recommendation on the proposed changes to the City Council for their consideration.

Assistant City Administrator Nix briefed on the agenda item.

Mayor noted during public comments, there was three proponents of this project.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Donna O'Ravez, **Seconded by** Deputy Mayor Tyron Christopherson. **Motion passed unanimously (7-0).**

- B. AB17-0378,** a motion adopting Resolution No. 17-0378, adopting the 2016 supplement to the 2000 Tacoma-Pierce County Solid Waste Management Plan and recommitting the City of Edgewood to its partnership with Pierce County

Assistant City Administrator Nix briefed on the agenda item.
Councilmember Creley asked about a recycling component in this area.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Rosanne Tomin, **Seconded by** Councilmember Nate Lowry. **Motion passed unanimously (7-0).**

8. COUNCIL COMMENTS

Councilmember Meyers – discussed the fireworks hours and posting.

City Clerk Pitzel noted they have been posted on the website, Facebook and Twitter as well as on the electronic reader board.

Deputy Mayor Christopherson noted a need for sidewalk on 24th Street as here were eight people pushing stroller this evening in the oncoming lane.

Assistant City Administrator Nix discussed transportation impact fees.

Assistant City Administrator Gray stated for the record to those in attendance, the Council does not have the ability to rewrite the code during the meetings, it is incumbent on the information they have in front of them. He noted the difficulty at times for them to make decisions on the code as it sits today. He stated Staff is working hard to rewrite the code.

Councilmember Tomin- stated there has been concern with fireworks being discharged each night within the last week – and wondered what the direction is to tell citizens. If they have complaints, do they call the emergency line or 911?

Chief Lundborg stated they have the option to do one or the other; calls will be placed in order that they are received and priority of those calls.

Discussion took place of also noting the citation amount along with the hours of discharge on the social media pages and website.

Councilmember Creley asked if the traffic study was done on 122nd and 24th.

Assistant City Administrator Nix summarized the study - the average speed is 41mph – LOS for southbound would change the wait time significantly. Discussed mechanisms that can be done (i.e. roundabout at that intersection.)

9. EXECUTIVE SESSION

There was no executive session.

10. ADJOURN

Mayor Eidinge adjourned the meeting at 8:40 pm.

Rachel Pitzel, City Clerk

Daryl Eidinge, Mayor



CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-030

Date Action Requested: July 11, 2017

Title: **AB 17-030**, 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

Attachments: Payment Distribution Review & Authorization, Voucher Directory

Submitted By: Dave Gray, Assistant City Administrator, Finance

Approved For Agenda By: Mayor Daryl Eiding

Prepared For Agenda By: Rachel Pitzel, City Clerk

Recommendation: Move to Approve AB17-030

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 \$291,635.85 to authorized Budgeted Expenditures.

July 11th 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			
<u>AWC EFT 6/30/17</u>	AWC Employee Benefit Trust	6/30/2017	\$22,866.68
<u>DCP EFT 6/30/17</u>	Deferred Compensation Program	6/30/2017	\$4,582.77
<u>Direct Deposit Run -</u>	Payroll Vendor	6/30/2017	\$34,359.87
<u>DRS EFT 6/30/17</u>	Dept of Retirement Systems	6/30/2017	\$6,206.25
<u>IRS 941 EFT 6/30/17</u>	IRS 941	6/30/2017	\$5,550.85
Total			\$73,566.42

Number	Name	Print Date	Amount
CLAIM VOUCHER ACCOUNT DISTRIBUTION			
22812 Last Number Issued Previous Authorization			
<u>22813</u>	A & R Services dba Angela Rojo	7/11/2017	\$785.00
<u>22814</u>	Century Link	7/11/2017	\$217.63
<u>22815</u>	City of Sumner	7/11/2017	\$2,677.13
<u>22816</u>	Code Publishing Inc.	7/11/2017	\$747.32
<u>22817</u>	Daryl Eidinger	7/11/2017	\$179.01
<u>22818</u>	Ed Fietz	7/11/2017	\$3,185.93
<u>22819</u>	ESI Security	7/11/2017	\$359.92
<u>22820</u>	G & K Services Co.	7/11/2017	\$212.80
<u>22821</u>	Gray & Osborne, Inc	7/11/2017	\$4,087.52
<u>22822</u>	Herrera Environmental Consultants, Inc.	7/11/2017	\$10,585.28
<u>22823</u>	Kennedy/Jenks Consultants Inc.	7/11/2017	\$1,399.20
<u>22824</u>	Kyocera Document Solutions NW	7/11/2017	\$1,442.36
<u>22825</u>	Landau Associates	7/11/2017	\$5,356.73
<u>22826</u>	Les Schwab Tire Center	7/11/2017	\$15.39
<u>22827</u>	Lower 48 Contracting/Painting Inc.	7/11/2017	\$35,536.17
<u>22828</u>	O'Reilly Auto Parts	7/11/2017	\$26.02
<u>22829</u>	Philips Publishing Group	7/11/2017	\$4,505.63
<u>22830</u>	Pierce County Budget & Finance Jail	7/11/2017	\$944.00
<u>22831</u>	Pierce County Budget & Finance PW	7/11/2017	\$4,875.43
<u>22832</u>	Pierce County Budget & Finance Sheriff	7/11/2017	\$135,198.58
<u>22833</u>	Schwerzler-Herrera, Jill	7/11/2017	\$128.40
<u>22834</u>	Rick Pederson	7/11/2017	\$242.89
<u>22835</u>	Sewall Wetland Consulting, Inc.	7/11/2017	\$870.00
<u>22836</u>	The News Tribune	7/11/2017	\$1,219.10
<u>22837</u>	Transpo Group	7/11/2017	\$1,082.50
<u>22838</u>	Washington Tractor	7/11/2017	\$130.06
<u>Direct Pay Payment</u>	Public Finance Inc.	7/11/2017	\$1,363.91
<u>EFT Payment 7/6/2017</u>	Comcast	7/11/2017	\$101.33
<u>EFT Payment 7/6/2017</u>	Department of Labor & Industries	7/11/2017	\$44.80
<u>EFT Payment 7/6/2017</u>	Verizon Wireless	7/11/2017	\$549.39
Grand Total			\$218,069.43

Total Claims Voucher Distribution	\$218,069.43
Total Distribution Submitted for Review & Authorization	\$291,635.85

Authorization Adjustments:

Total Distribution Net of Prior Authorized Adjustments	\$291,635.85
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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
A & R Services dba Angela Rojo	22813			2017 - July - 1st Council Meeting	
		426			
			July Services		
			001-018-000-518-30-41-01	Professional Services	\$785.00
				Monthly Janitorial Svs. for July	
		Total 426			\$785.00
	Total 22813				\$785.00
Total A & R Services dba Angela Rojo					\$785.00
Century Link	22814			2017 - July - 1st Council Meeting	
		253-927-2018 680B 6/25-7/25/17			
		6/25-7/25/17 Services			
		001-018-000-518-30-42-01		Telecommunications Charges	\$109.18
				Elevator Alarm Line	
		Total 253-927-2018 680B 6/25-7/25/17			\$109.18
		253-952-3537 889B 6/22-7/22/17			
		6/22-7/22/17 Services			
		001-018-000-518-30-42-01		Telecommunications Charges	\$108.45
				Fax and Fire Alarm Line	
		Total 253-952-3537 889B 6/22-7/22/17			\$108.45
	Total 22814				\$217.63
Total Century Link					\$217.63
City of Sumner	22815			2017 - July - 1st Council Meeting	
		03506			
			July Services-Acct 0083		
			001-018-000-554-30-51-01	Animal Control Services	\$2,677.13
				Animal Control Svs. for July	
		Total 03506			\$2,677.13
	Total 22815				\$2,677.13
Total City of Sumner					\$2,677.13
Code Publishing Inc.	22816			2017 - July - 1st Council Meeting	
		56859			
			June Services		
			001-014-000-514-30-41-01	Professional Services	\$644.01

Vendor	Number	Reference	Account Number	Description	Amount
				EMC Updates	
		Total 56859			\$644.01
		56906			
			June Services		
			001-014-000-514-30-41-01	Professional Services	\$103.31
				EMC Updates	
		Total 56906			\$103.31
	Total 22816				\$747.32
Total Code Publishing Inc.					\$747.32
Comcast					
	EFT Payment 7/6/2017 1:17:30 PM - 1		2017 - July - 1st Council Meeting		
	8498 35 021 0458551 6/25-7/24/17				
		6/25-7/24/17 Services			
		001-018-000-518-30-42-01		Telecommunications Charges	\$101.33
				City Hall Internet	
		Total 8498 35 021 0458551 6/25-7/24/17			\$101.33
	Total EFT Payment 7/6/2017 1:17:30 PM - 1				\$101.33
Total Comcast					\$101.33
Daryl Eidinger					
	22817		2017 - July - 1st Council Meeting		
		062317-DE			
		Expense Reimbursement-AWC Conf			
		001-013-000-513-10-43-03		Mileage Reimbursement	\$153.01
				AWC Conference-Vancouver	
		001-013-000-513-10-43-04		Conference Meals	\$26.00
				AWC Conference-Vancouver	
		Total 062317-DE			\$179.01
	Total 22817				\$179.01
Total Daryl Eidinger					\$179.01
Department of Labor & Industries					
	EFT Payment 7/6/2017 1:17:30 PM - 2		2017 - July - 1st Council Meeting		
	285807				
		2017-2019 Boiler Certification			
		001-018-000-518-30-45-07		Operating Permits	\$44.80
				2017-2019 Boiler/Pressure Certification	
		Total 285807			\$44.80
	Total EFT Payment 7/6/2017 1:17:30 PM - 2				\$44.80
Total Department of Labor & Industries					\$44.80

Vendor	Number	Reference	Account Number	Description	Amount
Ed Fietz	22818			2017 - July - 1st Council Meeting	
		062217-Fietz			
			File 4378-Final Release of Funds		
			640-000-000-586-10-00-01	Assignment of Funds-Deposits in Lieu of Bond	\$3,185.93
				Fietz SP-File #4378-Final Release	
		Total 062217-Fietz			\$3,185.93
	Total 22818				\$3,185.93
Total Ed Fietz					\$3,185.93
ESI Security	22819			2017 - July - 1st Council Meeting	
		046880			
			June Purchases		
			001-018-000-518-20-35-01	Small Tools/Minor Equipment	\$359.92
				Padlocks Keyed and Cores	
		Total 046880			\$359.92
	Total 22819				\$359.92
Total ESI Security					\$359.92
G & K Services Co.	22820			2017 - July - 1st Council Meeting	
		6068430493			
			6/5/17 Weekly Service		
			001-018-000-518-30-41-01	Professional Services	\$53.20
		Total 6068430493			\$53.20
		6068432470			
			6/12/17 Weekly Service		
			001-018-000-518-30-41-01	Professional Services	\$53.20
		Total 6068432470			\$53.20
		6068434434			
			6/19/17 Weekly Service		
			001-018-000-518-30-41-01	Professional Services	\$53.20
		Total 6068434434			\$53.20
		6068436386			
			6/26/17 Weekly Service		
			001-018-000-518-30-41-01	Professional Services	\$53.20
		Total 6068436386			\$53.20
	Total 22820				\$212.80
Total G & K Services Co.					\$212.80
Gray & Osborne, Inc	22821			2017 - July - 1st Council Meeting	
		1-G&O prj 16463.09			
			June Svcs-Prj 16463.09		
			001-058-000-558-60-41-03	Prof. Services (Non-reimbursable)	\$1,054.87

Vendor	Number	Reference	Account Number	Description	Amount
				View Pointe File 4965-Cert. of Completion	
		Total 1-G&O prj 16463.09			\$1,054.87
		1-G&O prj 16463.10			
		June Svcs-Prj 16463.10			
		001-058-000-558-60-41-03		Prof. Services (Non-reimbursable)	\$1,082.68
				General Engineering-Nicklaus, Volente, Domus	
		Total 1-G&O prj 16463.10			\$1,082.68
		1-G&O prj 16463.12			
		June Svcs-Prj 16463.12			
		001-058-000-558-60-41-03		Prof. Services (Non-reimbursable)	\$1,265.18
				Caldwell Crest File 5226-Cert. of Completion	
		Total 1-G&O prj 16463.12			\$1,265.18
		2-G&O prj 16463.07			
		June Svcs-Prj 16463.07			
		410-000-000-594-31-64-60		Land Impr-Closed Depression Basin Plan	\$150.70
				Chrisella Road Geotech Study	
		Total 2-G&O prj 16463.07			\$150.70
		6-G&O prj 16463.03			
		June Svcs-Prj 16463.03			
		001-058-000-558-60-41-03		Prof. Services (Non-reimbursable)	\$534.09
				Westridge Slope	
		Total 6-G&O prj 16463.03			\$534.09
	Total 22821				\$4,087.52
Total Gray & Osborne, Inc					\$4,087.52
Herrera Environmental Consultants, Inc.					
	22822			2017 - July - 1st Council Meeting	
		40525			
			May Services-Prj 17-06504-000		
			410-000-000-531-38-41-02	Prof. Service-Plan Update	\$10,585.28
		Total 40525			\$10,585.28
	Total 22822				\$10,585.28
Total Herrera Environmental Consultants, Inc.					\$10,585.28
Kennedy/Jenks Consultants Inc.					
	22823			2017 - July - 1st Council Meeting	
		113090			
			May Svcs-Prj 1096032*04		
			410-000-000-531-38-41-01	Professional Service	\$1,399.20
				SW Comp Plan	
		Total 113090			\$1,399.20
	Total 22823				\$1,399.20
Total Kennedy/Jenks Consultants Inc.					\$1,399.20

Vendor	Number	Reference	Account Number	Description	Amount
Kyocera Document Solutions NW					
	22824			2017 - July - 1st Council Meeting	
		55T1021280			
			3/19-6/18/17 Overage Charges		
			001-018-000-518-20-45-06	Copier Lease	\$1,442.36
				Kyocera Overage Charges	
		Total 55T1021280			\$1,442.36
	Total 22824				\$1,442.36
Total Kyocera Document Solutions NW					\$1,442.36
Landau Associates					
	22825			2017 - July - 1st Council Meeting	
		0039473			
			May Svcs-Prj 0495075.010		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$5,356.73
				Westridge/Conner Homes	
		Total 0039473			\$5,356.73
	Total 22825				\$5,356.73
Total Landau Associates					\$5,356.73
Les Schwab Tire Center					
	22826			2017 - July - 1st Council Meeting	
		42700138018			
			June Services		
			001-076-000-576-80-48-04	Equipment Repairs	\$15.39
				Flat Tire Repair	
		Total 42700138018			\$15.39
	Total 22826				\$15.39
Total Les Schwab Tire Center					\$15.39
Lower 48 Contracting/Painting Inc.					
	22827			2017 - July - 1st Council Meeting	
		2459			
			June Services-95% Prj Completion		
			001-018-000-518-30-48-03	Maintenance/Repairs - Buildings	\$31,982.55
				CH Exterior Painting	
		Total 2459			\$31,982.55
		2466			
			Project Completion-Final Pmt		
			001-018-000-518-30-48-03	Maintenance/Repairs - Buildings	\$3,553.62
				CH Exterior Painting	
		Total 2466			\$3,553.62
	Total 22827				\$35,536.17
Total Lower 48 Contracting/Painting Inc.					\$35,536.17

Vendor	Number	Reference	Account Number	Description	Amount
O'Reilly Auto Parts	22828			2017 - July - 1st Council Meeting	
		3725-137646			
			June Purchases		
			001-018-000-518-30-35-01	Small Tools/Minor Equip.	\$24.93
				Water Meter Installation	
		Total 3725-137646			\$24.93
		3725-137667			
			June Purchases		
			001-018-000-518-30-35-01	Small Tools/Minor Equip.	\$1.09
				Water Meter Installation	
		Total 3725-137667			\$1.09
	Total 22828				\$26.02
Total O'Reilly Auto Parts					\$26.02
Philips Publishing Group	22829			2017 - July - 1st Council Meeting	
		26468			
			Summer 2017 Edgewood Magazine		
			001-018-000-518-20-49-05	Printing & Binding	\$4,505.63
		Total 26468			\$4,505.63
	Total 22829				\$4,505.63
Total Philips Publishing Group					\$4,505.63
Pierce County Budget & Finance Jail	22830			2017 - July - 1st Council Meeting	
		CI-234275			
			May Services		
			001-021-000-523-60-51-01	Jail Services	\$944.00
		Total CI-234275			\$944.00
	Total 22830				\$944.00
Total Pierce County Budget & Finance Jail					\$944.00
Pierce County Budget & Finance PW	22831			2017 - July - 1st Council Meeting	
		CI-234153			
			May Services		
			101-000-000-542-64-51-02	Traffic Operations (Contract)	\$4,875.43
		Total CI-234153			\$4,875.43
	Total 22831				\$4,875.43
Total Pierce County Budget & Finance PW					\$4,875.43
Pierce County Budget & Finance Sheriff	22832			2017 - July - 1st Council Meeting	
		CI-234176			
			June Police Services		
			001-021-000-521-20-51-01	Police Services	\$149,291.58

Vendor	Number	Reference	Account Number	Description	Amount
			001-021-000-521-20-51-01	Police Services	(\$14,093.00)
				Deputy Wheeler Credit	
		Total CI-234176			\$135,198.58
	Total 22832				\$135,198.58
Total Pierce County Budget & Finance Sheriff Public Finance Inc.					\$135,198.58
	Direct Pay Payment 7/6/2017 1:24:50 PM - 1			2017 - July - 1st Council Meeting	
	0002012				
		Q3 2017 Services			
		411-000-000-535-10-41-01		Professional Services	\$1,363.91
		Total 0002012			\$1,363.91
	Total Direct Pay Payment 7/6/2017 1:24:50 PM - 1				\$1,363.91
Total Public Finance Inc.					\$1,363.91
Refunds/Reimbursements Vendor					
	22833			2017 - July - 1st Council Meeting	
		062717-JSH		Jill Schwerzler-Herrera	
		Mileage Reimbursement			
		001-014-000-514-30-43-03		Mileage Reimbursement	\$128.40
				Professional Development II - Tacoma	
		Total 062717-JSH			\$128.40
	Total 22833				\$128.40
Total Refunds/Reimbursements Vendor					\$128.40
Rick Pederson					
	22834			2017 - July - 1st Council Meeting	
		063017-RP			
		June Mileage Reimbursement			
		101-000-000-542-90-43-03		Mileage Reimbursement	\$72.87
		410-000-000-531-38-43-03		Mileage Reimbursement	\$170.02
		Total 063017-RP			\$242.89
	Total 22834				\$242.89
Total Rick Pederson					\$242.89
Sewall Wetland Consulting, Inc.					
	22835			2017 - July - 1st Council Meeting	
		42298			
		June Svcs-Job 17-128			
		001-058-000-558-60-41-01		Reim.Engineering - Prof. Serv	\$170.00
				17-128 Edgewood Terrace	
		Total 42298			\$170.00
	42299				
		June Svcs-Job 17-161			
		001-058-000-558-60-41-01		Reim.Engineering - Prof. Serv	\$700.00

Vendor	Number	Reference	Account Number	Description	Amount
			17-161 Gagnon		
		Total 42299			\$700.00
	Total 22835				\$870.00
Total Sewall Wetland Consulting, Inc.					\$870.00
The News Tribune					
	22836			2017 - July - 1st Council Meeting	
		255556 05/29-06/25/17			
		5/29/17-6/25/17 Services			
		001-014-000-511-30-41-02		Legal Publications	\$216.26
				Legal Notice	
		001-058-000-558-60-41-08		Legal Notices/Publications	\$1,002.84
				Legal Notice	
		Total 255556 05/29-06/25/17			\$1,219.10
	Total 22836				\$1,219.10
Total The News Tribune					\$1,219.10
Transpo Group					
	22837			2017 - July - 1st Council Meeting	
		20116			
		March Svcs-Prj 0.13312.00			
		001-058-000-558-60-41-01		Reim.Engineering - Prof. Serv	\$1,082.50
				16-5676 Northwood Elementary	
		Total 20116			\$1,082.50
	Total 22837				\$1,082.50
Total Transpo Group					\$1,082.50
Verizon Wireless					
		EFT Payment 7/6/2017 1:17:30 PM - 3		2017 - July - 1st Council Meeting	
		9788111105			
		6/24-7/23/17 Services			
		001-018-000-518-30-42-01		Telecommunications Charges	\$549.39
		Total 9788111105			\$549.39
		Total EFT Payment 7/6/2017 1:17:30 PM - 3			\$549.39
Total Verizon Wireless					\$549.39
Washington Tractor					
	22838			2017 - July - 1st Council Meeting	
		1318492			
		June Purchases			
		001-076-000-576-80-35-01		Small Tools/Minor Equipment	\$130.06

Vendor	Number	Reference	Account Number	Description	Amount
				Mower-Hose Guide Kit	
		Total 1318492			\$130.06
	Total 22838				\$130.06
Total Washington Tractor					\$130.06
Grand Total		Vendor Count	30		\$218,069.43



**CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0379**

Date Action Requested: July 11, 2017

Title: Akana Civil Construction Inspection On-Call Contract

Attachments: Resolution 17-0379

Submitted By: Dave Gray ACA – Administrative Services

Approved For Agenda By: Daryl Eiding, Mayor

Prepared For Agenda By: Dave Gray ACA – Administrative Services

Recommendation: Move to adopt Resolution No. 17-0379, authorizing the Mayor to enter into an on-call contract for services with Cooper Zietz Engineers, Inc., DBA, Akana, for construction inspection related services.

Discussion: Due to the amount of private construction projects coming online within the City of Edgewood, on-call civil construction inspection services are needed in order to verify that these projects are being constructed in accordance with approved plans and City civil engineering construction standards. The City's current, lone Engineering Technician is attempting to balance .25 of his time towards maintenance issues and, while utilizing .75 of his remaining time for private development, right of way and single family residential (Storm Drainage/Planning Issues) inspection duties. Due to the volume of these duties, private development inspection is often a lessor priority and is being backfilled by other Staff as they can attend to these duties. It is Staff's intent to utilize a consultant inspector, as resources will allow to meet this deficiency.

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

Fiscal Impact: \$30,000 of pass through funds that will be charged to Developers for onsite construction inspection for private development projects, as needed by Staff due to workload constraints.

RESOLUTION NO. 17-0379

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF EDGEWOOD, PIERCE COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AN ON-CALL
CONTRACT FOR SERVICES WITH COOPER ZIETZ
ENGINEERS, INC., DBA, AKANA**

WHEREAS, Akana is a regional civil engineering company well known for its area of expertise and has worked with a variety of local government entities; and

WHEREAS, the City need for civil inspection services has grown rapidly and while sporadic, need has outpaced the ability to stay current with our in-house work force; and

WHEREAS, the Assistant City Administrator-Municipal Services utilized the MSRC consultants roster to solicit interest and evaluate the available resources to engage in on-call civil engineering studies, inspection and project management and has selected Akana to assist with the current and future surges of activity as they occur from time to time;

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

Section 1. The Mayor is hereby authorized to execute a one year contract for services with Akana in an amount not to exceed \$30,000.

**PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 11TH DAY OF
JULY, 2017.**

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk

**ON-CALL CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF EDGEWOOD AND
AKANA**

THIS AGREEMENT is made by and between the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), and Cooper Zietz Engineers, Inc. dba Akana, (hereinafter the "Consultant,") a Oregon corporation organized under the laws of the State of Oregon located and doing business at 3380 146th Place SE, Suite 105, Bellevue, WA 98007

RECITALS

WHEREAS, the City requires the provision of Civil Engineering on-call services, and

WHEREAS, the Consultant has agreed to provide Civil Engineering on-call services under the terms and conditions specified herein;

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

TERMS

I. Description of Work.

The Consultant shall perform services described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. The City shall issue a written Task Order for each project assigned to the Consultant. The written Task Order shall include the following information, which may be furnished in consultation with the Consultant: (1) Task Order Title (project name); (2) technical approach to the task (if necessary); (3) specific deliverables; (4) schedule with milestones and deliverables; (5) cost/hour estimate; (6) due date of work. All of these items may be brief, but will be sufficiently detailed for the Consultant to understand the work being authorized and the amount it will cost. Written Task Orders and Notices to Proceed may be issued as e-mail documents.

The City does not permit subconsultants for those items of work necessary for the completion of any Task Order on any project. The Consultant shall not subcontract with subconsultants for the performance of any work under this Agreement without prior written permission of the City.

II. Payment

A. This Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed as determined by the City and as provided for in this Agreement. The City shall pay the Consultant an amount based on time and materials, not to exceed thirty thousand dollars (\$30,000) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in this Agreement, and shall not

be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall be paid by the City for completed services rendered under each approved individual Task Order. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies equipment and incidentals necessary to complete the work. The Consultant shall submit an itemized invoice to the City for each separate Task Order after the services have been performed.

C. The amount paid by the City for each invoice shall not exceed the amount in Section II(A) above and the Hourly Billing Rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

D. The Consultant will not undertake any work or otherwise financially obligate the City in excess of said not-to-exceed amount in Section II (A) without a duly authorized amendment to this Agreement. In the event services are required beyond those specified in the Scope of Work and are not included in the compensation listed in this Agreement, a written contract amendment shall be negotiated and approved by the City before any effort is expended on such services.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties, and the City has issued a Notice to Proceed. This Agreement shall expire on July 1, 2018, unless extended by an amendment executed by the duly authorized representatives of the parties.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described herein. If delivered to Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or resulting from the acts, errors or omissions of the Consultant in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

VIII. Insurance

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

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

B. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
 4. Employer's Liability each accident \$1,000,000. Employer's Liability Disease each employee \$1,000,000. Employer's Liability Disease -- Policy Limit \$1,000,000.
- C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
 2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
 3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
 4. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy and proof of this extended reporting period provided to the City.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant

will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to Independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all Items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use In connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Edgewood shall determine the term or provision's true intent or meaning. The City of Edgewood shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

Attn: Jeff Faunce, PE
Akana
3380 146th Place SE, Suite 105
Bellevue, Washington 98007

CITY:

Attn: Aaron Nix
City of Edgewood
2224 - 104th Avenue East
Edgewood, WA 98372

With a copy to the "City Clerk" at the same address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 29th day of June, 2017.

CONSULTANT

By: _____
_____, President

Akana

CITY OF EDGEWOOD

By: _____
Daryl Eidinger, Mayor

ATTEST: _____

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

Exhibit A

Scope of Work

Development Inspection Services:

- Construction inspection and coordination efforts for commercial / private development projects and private utility projects for compliance with approved plans, specifications, and contract agreements as well as applicable Federal, State, and City standards, permits, codes, and regulations. Specifically as it relates to earthwork, erosion control, stormwater and roadway construction.
- Attend and help oversee pre-construction conferences.
- Interpret plans and specifications and evaluate deviations from specified construction procedures including identification of impacts, estimation of any associated cost, and evaluation of deviation's affecting the project budget and schedule.
- Facilitate resolution with the project team for features of the construction plans and specifications that are in conflict with existing features or elements of the project that will not work as designed. Requires coordinating closely with City Staff, including Engineering Technician, Senior Engineer and Public Works Director.
- Manage the construction contract budget under the supervision of the assigned supervisor by measuring, calculating, preparing, and monitoring contract payments, force account work, change orders, and preparation of monthly pay estimates, as needed.
- Review of preliminary and final plans and specifications for compliance with engineering standards and good construction practices.
- Coordinate and facilitate meetings and work progress with design project managers, contractors, subcontractors, inspectors, consultants, other city staff, property owners (citizens and businesses), franchise utilities, and local, state, and federal agencies.
- Maintain constant awareness of progress on assigned projects. Ensure proper schedule and progress documentation.
- Ensure proper construction procedures and materials are utilized.
- Oversees activities for proper use and placement of traffic control devices to assure compliance with Traffic Control Plans, the Manual on Uniform Traffic Control Devices and permit conditions.
- Oversees and verifies compliance with applicable erosion/sedimentation control and ADA requirements.
- Communicate professionally and effectively with consultant inspectors, consulting engineers, contractors, property owners, businesses, city staff and the general public.
- Maintain a variety of logs and records related to work assignments and inspection activities.

The scope of work for this contract is limited to 8-12 hours of development related inspection services on a weekly basis for the duration of the contract.

Exhibit B

Rate Schedule

BREAKDOWN OF BILLING RATES

Project Name:	2016 Edgewood On-Call Construction Mgt. Services (Civil Construction)	Audited Overhead Rate*	1.3685
Firm Name:	AKANA	* Year	2016

DIRECT LABOR COSTS

Company	Classification	Anticipated Staff	2016 Direct Labor Rate (DLR)	Overhead	# Profit at 30% on DLR only	2016 Max Billing Rate
AKANA	Project Manager/RE	Jeff Faunce -PE	\$ 75.00	\$102.64	\$22.50	\$ 200.14
AKANA	Project Manager/RE	Matt Cadicamo	\$ 55.00	\$75.27	\$16.50	\$ 146.77
AKANA	Project Manager/RE	Alan Heiman	\$ 60.00	\$82.11	\$18.00	\$ 160.11
AKANA	Project Manager/RE	Carl Zietz-PE	\$ 60.00	\$82.11	\$18.00	\$ 160.11
AKANA	Project Assistant	Mindy Corey	\$ 38.00	\$52.00	\$11.40	\$ 101.40
AKANA	Project Assistant	Tara Clark	\$ 33.00	\$45.16	\$9.90	\$ 88.06
AKANA	Project Assistant	Tammy Christopherson	\$ 35.00	\$47.90	\$10.50	\$ 93.40
AKANA	Inspector - Structural/ Civil	Ian Scott -EIT	\$ 34.00	\$46.53	\$10.20	\$ 90.73
AKANA	Inspector - Civil	Alan Lobdell -PE	\$ 47.50	\$65.00	\$14.25	\$ 126.75
AKANA	Inspector- ICBO, Civil/Structural	Tom Gilbert	\$ 40.00	\$54.74	\$12.00	\$ 106.74
AKANA	Inspector civil structural	Gale Parker	\$ 42.50	\$58.16	\$12.75	\$ 113.41
AKANA	Inspector Civil / water sewer PS	Jeremy Privett	\$ 34.50	\$47.21	\$10.35	\$ 92.06
AKANA	Inspector - Mechanical	Jim Quinn	\$ 32.00	\$43.79	\$9.60	\$ 85.39
AKANA	Inspector - Civil/Structural	Rick McNichols	\$ 45.00	\$61.58	\$13.50	\$ 120.08
AKANA	Inspector -civil structural	Doug Noyes	\$ 47.50	\$65.00	\$14.25	\$ 126.75
AKANA	Inspector - electrical	Dean Wagstaff	\$ 47.50	\$65.00	\$14.25	\$ 126.75
AKANA	Inspector - mechanical	Jim Zess	\$ 70.00	\$95.80	\$21.00	\$ 186.80
AKANA	Inspector - Civil -environmental haz mat	Tim Norman	\$ 25.00	\$34.21	\$7.50	\$ 66.71
AKANA	inspector	Justin Kinney	\$ 55.00	\$75.27	\$16.50	\$ 146.77
AKANA	inspector safety	Jason Lampley	\$ 35.00	\$47.90	\$10.50	\$ 93.40
AKANA	Project Assistant	Rachel Currey	\$ 30.00	\$41.06	\$9.00	\$ 80.06



**CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
AGENDA BILL NO.: 17-0380**

Date Action Requested: July 11, 2017

Title: Resolution No. 17-0380, approving the Planned Residential Development (PRD) for Domus Homes (File 5663); entering findings and conclusions in support of said approval; providing for severability; and establishing an effective date.

Attachments: Resolution No. 17-0380, Exhibit “A” which includes the site plan, Hearing Examiner’s recommendation, and the exhibits associated with his recommendation provided by Staff from the processing of the application. The administrative record for this matter has been separately made available for Council Member review prior to the meeting.

Submitted By: Aaron C. Nix, ACA Municipal Services

Approved For Agenda By: Mayor Daryl Eiding

Prepared For Agenda By: Aaron C. Nix, ACA Municipal Services

Recommendation: Motion to approve Resolution No. 17-0380, approving the Planned Residential Development (PRD) for Edgewood Heights (File no. 5663); entering findings and conclusions in support of said approval; providing for severability; and establishing an effective date.

Background: On October 28, 2016, the City of Edgewood received an application for a Planned Residential Development (PRD) (Edgewood Heights PRD) in accordance with Edgewood Municipal Code (EMC) 18.50.095, Planned Residential Developments. Following the procedural requirements for review, notice was provided to citizens and agencies during a Notice of Application (NOA) comment period. Comments from citizens during that timeframe were received. Upon conclusion of the NOA comment period, Staff prepared a Staff Report to the Hearing Examiner and at the same time noticed property owners and agencies regarding the public hearing. The Hearing Examiner conducted an open Public Hearing and then formulated a recommendation to the City Council in accordance with EMC 18.50.095. No public testimony or additional comments were provided prior to or at the public hearing and the record only includes

Exhibit “A” (The City’s staff report, the site plan, the staff report’s associated exhibits and the subsequent Hearing Examiner’s recommendation only).

The Hearing Examiner recommendation was received on February 27, 2017. The recommendation concluded that the requirements for approving a PRD per EMC 18.50.095 had been met by the applicant. The recommendation included 57 recommended conditions with which the applicant shall comply in order to receive final construction approval.

Pursuant to EMC 18.50.095(O), the City Council’s consideration of the Hearing Examiner’s Report and Recommendation is formatted as a closed-record hearing. The City Council should accordingly confine its review and consideration to the factual information contained within the administrative record. No additional testimony or evidence should be allowed or otherwise considered by the Council in rendering a decision.

The City Council’s decision should be based exclusively on the criteria for PRD approval set forth in EMC 18.50.095. The Council may approve or deny the PRD, and may either adopt the Hearing Examiner’s findings and conclusions or enter new findings and conclusions to reflect the Council’s ultimate determination. If the Council decides to reject the Examiner’s original recommendation and/or to enter new findings and conclusions, staff will prepare a new ordinance reflecting the Council’s decision for consideration and adoption at a subsequent meeting.

This matter is quasi-judicial and is accordingly subject to the Appearance of Fairness doctrine. The City Council will be asked a series of questions at the commencement of the closed-record review proceeding for the purpose of disclosing any potential conflicts of interest, *ex parte* communications, and similar issues under the doctrine. In the interim, Council Members should avoid discussing this matter with parties of record, and should likewise refrain from any comments or actions that could suggest bias, pre-judgment and/or partiality with respect to the parties, the underlying project, or any issues implicated by the proposal.

Alternatives: 1) Do not adopt and instead deny the proposed PRD by different ordinance to be prepared by staff

Fiscal Impact: Any infrastructure, and/or amenities implicated by the proposed development will be fully funded by the developer.

RESOLUTION NO. 17-0380

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF EDGEWOOD, PIERCE COUNTY, WASHINGTON,
CONDITIONALLY APPROVING THE APPLICATION FOR
A PLANNED RESIDENTIAL DEVELOPMENT FOR
DOMUS HOMES (FILE NO. 16-5633), FOR ONE
COMMERCIAL LOT AND 55 TOWNHOMES LOCATED
EAST OF MERIDIAN AVE. E. AT 10413-11TH STREET E. IN
EDGEWOOD, ADOPTING FINDINGS AND
CONCLUSIONS IN SUPPORT**

WHEREAS, Craig Peck of Peck and Associates submitted an application seeking approval of a Planned Residential Development (PRD) for Domus Homes (File No. 16-5633) on October 28, 2016; and

WHEREAS, on January 11, 2017, the City issued a Determination of Non-significance (DNS) for the application, which was not appealed; and

WHEREAS, on February 9, 2017, the Edgewood Hearing Examiner held an open public hearing on the PRD, and issued his recommendation for approval of the PRD on February 27, 2017, subject to 56 conditions; and

WHEREAS, on June 13, 2017, the Edgewood City Council considered the PRD application in a closed record hearing, and voted to continue the hearing until June 27, 2017; and

WHEREAS, on June 27, 2017, the Edgewood City Council held the continued closed record hearing on the PRD application, voted to approve it subject to conditions; and

WHEREAS, on July 11, 2017, the Edgewood City Council voted to approve this Resolution incorporating its findings and conclusions supporting its decision;

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

Section 1. Appearance of Fairness/Conflict of Interest. At the outset of both the June 13 and June 27, 2017 closed record hearings, the Mayor asked whether any member of the decision-making body had any appearance of fairness/conflict of interest issues to disclose. None of the Councilmembers had any to disclose and the Mayor had none. The Mayor asked the public whether there were any objections on appearance of fairness/conflict of interest grounds of any decision-makers, and there was no response.

Section 2. Staff Report. The staff report was provided by Aaron Nix on June 13,

2017, which summarized the application and the action taken by the Hearing Examiner in his February 27, 2017 decision.

Section 3. Deliberations. During the June 13, 2017 closed record hearing, there was a discussion regarding the traffic impacts of the proposed PRD. As a result, the hearing was continued until June 27, 2017 so that the decision-makers could review the traffic study provided by the applicant as well as the review of that traffic study by the City's consultant.

Section 4. Criteria for Approval. EMC Section 18.50.095(N) requires that the decision to approve a PRD be based on the following:

1. Suitability of the site area for the proposed development;
2. Requirements of the subdivision code, if applicable, for the proposed development;
3. Reasons for density bonuses or adjustments;
4. Any recommended mitigation measures and conditions of approval, including, without limitation, the amount and location of open space areas;
5. Time limitations for the entire development and specified stages;
6. Development in accordance with the Edgewood Comprehensive Plan; and
7. Public purposes that have been served by the proposed development.

Section 5. Hearing Examiner's Recommendation. On February 27, 2017, the Hearing Examiner issued his written decision recommending approval subject to 56 conditions. With regard to the above criteria for approval, the Examiner found that EMC Section 18.50.095(N) was satisfied. (See, pages 9X through 10X of the February 27, 2017 decision.)

Section 6. Title Issue. During the June 27, 2017 continued closed record hearing, Dexter Meacham interrupted the hearing by claiming that the PRD was proposed to be located on his property. He handed out a copy of a deed. After the hearing, Carol Morris, City Attorney, reviewed this deed with the documentation provided by Mr. Peck, applicant, for the property. She provided her analysis to staff in an e-mail dated June 28, 2017 of the conveyances. Based on the language of the conveyances, she determined that the Deed handed out by Mr. Meacham did not affect the Domus PRD application. However, this determination was qualified by the fact that the deeds mention property identified by different legal descriptions. An engineer is required to read and interpret the different legal descriptions in the documents. City Staff, specifically, the City's Senior Engineer, Jeremy Metzler, P.E., reviewed the documents supplied by both parties and concluded that, while both describe a

common non-exclusive easement across Mr. Meacham's property, the real property legal description produced by Mr. Meacham describes different property than that provided with the Domus PRD application.

Section 7. Traffic Issues. The site plan shows access provided from Meridian (SR 161) via 11th Street East, which the applicant proposes to construct to City standards. (H.E. Recommendation, No. 6, p. 6X.) This is a condition of approval recommended by the Examiner in condition No. 38, p. 16X (which requires that the applicant submit offsite access improvement construction plans for review and approval to the City Engineer, prior to final plat approval).

Access is also provided via a north-south street located in the western portion of the site that will be connected to the north-south street serving the View Pointe residential development on the abutting parcel to the south. The applicant will extend this road to the north property line to allow an eventual connection to the north to 8th Street. (H.E. Recommendation, No. 6, p. 6X.)

Councilmember Meyers had questions about the Traffic Impact Study and the fact that the shopping center was not mentioned in it. Councilmember Christopherson echoed these comments and noted the appearance of a future entrance and wondered about opposing entrances in that area. Assistant City Administrator Nix explained that 12th Street Court East and 8th Street East are the designated major connectors, and that 11th is not designed to be a major connector. He also noted that the developer is paying impact fees to make the necessary transportation improvements for traffic flow and enhancements.

Councilmember Christopherson commented that the density was concentrated in a short distance. While he understood that Domus has jumped through all the hoops, he noted that everyone wants a piece of Meridian.

Craig Peck, civil engineer and representative for Domus Homes clarified that the traffic analysis was done during the peak hours. He also noted that the developer is not in favor of a right hand turn at the proposed driveway entrance at 11th Street East and Meridian. Mr. Peck stated that the developer would make improvements to 11th (20 foot wide with curbs and gutter). In addition, they will be replacing the driveway approach on 11th with a textured driveway, so it will continue to look like a driveway and not a "through road."

Section 8. Park. Councilmember Creley asked about a recreational park area. As stated in the Hearing Examiner's Recommendation, "the applicant proposes 43,996 square feet of open space, which also includes a park tract of 17,131 square feet." (*Id.*, No. 12, p. 7X.)

Section 9. Emergency Vehicle Access. Councilmember Shook questioned compliance with parking requirements and emergency vehicle access. As required by the Hearing Examiner's Recommendation:

The onsite private road shall include, at a minimum, a 20-foot drive lane per City of Edgewood Local Street cross-section and PCC Section 17.B.20.040, Table 17B.20.040-3, a minimum 1.5 foot curb and gutter section on both sides of the road, a stormwater system per EMC 13.05, a 4-foot landscaping strip, and a 5-foot concrete sidewalk. Any dead-end segment of road with centerline length over 150 feet must have an EVA turnaround. The site development plans must be submitted to the City of Edgewood and be approved prior to site development commencement.

Id., No. 35, p. 16X. Additional street construction requirements are included in the Hearing Examiner's Recommendation, Conditions 32-42, pages 15-17X.

Section 10. Deliberations, Vote and Final Decision. City Attorney Morris explained to the Council that their decision should be conditioned upon the review of the deeds provided by Mr. Meachum and the developer, because the City could not determine title issues.

The Council continued their deliberations and voted to approve the PRD, subject to a review of the deeds by staff. On July 11, 2017, the City Council considered these findings of fact and conclusions, and determined that the PRD application satisfied the requirements of EMC Section 18.50.095(N).

Final Decision: The City Council hereby adopts and incorporates by reference, the Hearing Examiner's Recommendation dated February 27, 2017, approving the Domus Homes Planned Residential Development, subject to the 56 conditions set forth therein.

Section 11. Distribution, Appeals.

A. There is no administrative appeal of this decision. Appeals may be filed according to chapter 36.70C RCW.

B. A copy of this decision shall be provided to the applicant, and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application. On July 12, 2017, the City Clerk mailed a copy of this Resolution to the following:

Craig Peck & Associates, applicant
11402- 40th Avenue East
Tacoma, WA 98446

Jeanette Wheeler
17817 - 28th Avenue E.
Tacoma, WA 98445-4321

Jeff Stokes
909 Meridian East
Edgewood, WA 98371

Carol Hubbird
10601 - 10th Street Court East
Edgewood, WA 98372

Dave Zahradnik
927 Meridian
Edgewood, WA 98372

Jim Otness
973 Altandena Drive
Fircrest, WA 98466

Dexter Meacham
1009 Meridian Avenue East
Edgewood, WA 98372

Pierce County Assessor (this is required by RCW 36.70B.130)
2401 S. 35th St., Room 142
Tacoma, WA 98409-1498

C. Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of re-evaluation.

**PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 11TH DAY OF
JULY, 2017.**

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk



VICINITY MAP 1"=1000'

DOMUS TOWNHOMES, PRD SITE PLAN

IN THE NW 1/4 OF THE SW 1/4 OF SECTION 3, TOWNSHIP 20 N., RANGE 4 E., W.M., CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON
ADDRESS: 10413 11TH ST E, EDGEWOOD WA 98372
PARCEL # 0420033084

SQUARE FEET	UNITS	BUILDING 1	BUILDING 2	BUILDING 3	BUILDING 4	BUILDING 5	BUILDING 6	BUILDING 7	BUILDING 8	TOTAL PLANS	SERVICE AREA
1842	A	5	0	0	2	2	0	2	2	13	1689
1964	B	5	0	0	4	4	0	0	2	15	1811
2139	C	0	0	0	0	1	0	2	2	5	1986
2176	D	0	0	0	1	1	0	2	1	5	2023
2184	E	0	5	3	0	0	3	0	0	11	2031
2402	F	0	2	2	0	0	2	0	0	6	2249
Total S.F.	105,577	11,784	15,724	11,356	13,510	15,649	11,356	12,144	14,054	55	
Total Srvs	104,017	17,030	14,653	10,591	12,490	14,476	10,591	11,328	12,858		
Total Units:		10	7	5	7	8	5	6	7		

BASIS OF BEARINGS:

WASHINGTON COORDINATE SYSTEM OF 1983, SOUTH ZONE
NAD83(CORS96) (EPOCH 2002.0)
PER PIERCE COUNTY "PCSN" SURVEY CONTROL NETWORK
ALL DIMENSIONS ARE SHOWN AT GROUND LEVEL, UNLESS OTHERWISE NOTED.

VERTICAL DATUM:

NAVD88
NOTE: CONTOURS WERE CREATED FROM PIERCE COUNTY 2010
LIDAR DATA AND ARE APPROXIMATE. USE AT YOUR OWN RISK.
CONTOUR INTERVAL = 2'

SYMBOL LEGEND:

- FOUND MONUMENT AS NOTED
- FOUND AS NOTED

LINETYPE LEGEND:

- CHAINLINK FENCE
- WIRE FENCE
- WOODEN FENCE

PUBLIC IMPROVEMENTS

PUBLIC WORKS DIRECTOR

DATE

PIERCE COUNTY ORDINANCE NUMBER(S)

THESE ACTIONS MUST BE COMPLETED PRIOR TO BEGINNING CONSTRUCTION:

- CONTACT THE APPLICANT'S RETAINED ENGINEER TO COORDINATE REQUIRED INSPECTIONS.
- APPOINT A TRAINED ESC LEAD WHO SHALL BE PROVIDED A COPY OF THE ESC PLAN & INSPECTION SCHEDULE.

- CONTACT THE AREA INSPECTOR, AT 253-798-_____, TO COORDINATE THE PRECONSTRUCTION MEETING AND COUNTY INSPECTIONS.
- FAILURE TO OBTAIN REQUIRED INSPECTIONS MAY ENDANGER OR DELAY PROJECT APPROVAL.
- ALL WORK IN THE PUBLIC RIGHT-OF-WAY REQUIRES A PERMIT FROM THE PIERCE COUNTY PUBLIC WORKS DEPARTMENT.

Domus Homes
1420 NW Gilman Blvd, Suite 2, #2617
Issaquah, WA 98027
Mike Newffer, 425-518-2478
Contact: Craig Peck, 253-840-5482

Craig A. Peck Associates

11402 40th Ave. E.
Tacoma, WA 98446
E-Mail: peckassociates@comcast.net
(253)840-5482 • FAX: (253)200-4523



DRAWING NO.

JOB NO.

DOMUS TOWNHOMES, PRD

SITE PLAN

DESIGNED

DRAWN

CHECKED

APPROVED

SCALE

DATE

SCALE: 1" = 30'

1

1

SCALE: 1" = 30'

UTILITY NOTE: ALL DRY UTILITY SERVICES (POWER, TELEPHONE, CABLE, ETC) ARE TO BE PLACED ALONG EXISTING AND PROPOSED ROADWAYS AS REQUIRED BY APPROPRIATE AGENCIES.



City of Edgewood

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

2224 104th Avenue East, Edgewood, Washington 98372-1513

16-5633

OFFICE OF THE HEARING EXAMINER

CITY OF EDGEWOOD

AMENDMENT TO EXAMINER'S RECOMMENDATION

TO THE EDGEWOOD CITY COUNCIL

RECEIVED

APR 24 2017

City of Edgewood

PROJECT FILE NO.: 16-5633
Domus Homes Planned Residential Development

APPLICANT: Craig A. Peck & Associates
11402-40th Avenue East
Tacoma, WA 98446

PLANNER: Kirk Rappe, Associate Planner

By Report and Recommendation issued February 27, 2017, the Examiner recommended that the Edgewood City Council approve the Domus Homes Planned Residential Development subject to compliance with 56 conditions of approval. During the City's presentation at the public hearing a discussion occurred regarding the commercial building size proposed for Lot 1 of the commercial lot. At the conclusion of the discussion Kirk Rappe, associate planner, recommended an additional condition requiring notice on the Title for Lot 1, that restricted it to certain commercial uses. Neither the applicant nor any party of record opposed the condition. However, the Examiner neglected to include Mr. Rappe's recommendation as a condition of approval. Therefore, the recommendation to the Edgewood City Council is hereby amended to add the following condition:

57. The applicant shall place a notice on the Title of Lot 1, restricting the uses thereof to commercial retail, restaurant, or personal service.

RECOMMENDED this 20th day of April, 2017.


STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 20th day of April, 2017, to the following:

APPLICANT: Craig A. Peck & Associates
11402-40th Avenue East
Tacoma, WA 98446

OTHERS:

Jeff Stokes
909 Meridian East
Edgewood, WA 98371

Dave Zahradnik
927 Meridian
Edgewood, WA 98372

Jeanette Wheeler
17817-28th Avenue East
Tacoma, WA 98445-4321

Jim Otness
973 Altadena Drive
Fircrest, WA 98466

Carol Hubbird
10601-10th Street Court East
Edgewood, WA 98372

Mike Neuffer
1420 N.W. Gilman Boulevard
Suite 2, #2617
Issaquah, WA 98027

CITY OF EDGEWOOD



CITY OF Edgewood

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

2224 104th Avenue East, Edgewood, Washington 98372-1513

February 27, 2017

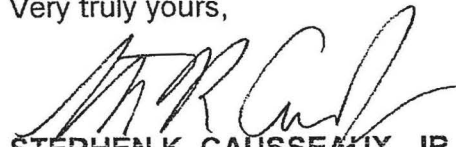
Craig A. Peck & Associates
11402-40th Avenue East
Tacoma, WA 98446

RE: 16-5633
Domus Homes Planned Residential Development

Dear Applicant:

Transmitted herewith is the Report and Recommendation of the City of Edgewood Hearing Examiner relating to the above-entitled matter.

Very truly yours,



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/jjp
cc: Parties of Record

1X

OFFICE OF THE HEARING EXAMINER

CITY OF EDGEWOOD

REPORT AND RECOMMENDATION

PROJECT FILE NO.: 16-5633
Domus Homes Planned Residential Development

APPLICANT: Craig A. Peck & Associates
11402-40th Avenue East
Tacoma, WA 98446

PLANNER: Kirk Rappe, Associate Planner

SUMMARY OF REQUEST:

Planned Residential Development approval to allow improvement of a 5.83 acre parcel with one commercial lot and 55 townhomes. The site is located east of Meridian Avenue East at 10413-11th Street East, Edgewood.

SUMMARY OF RECOMMENDATION: Approve, subject to conditions.

PUBLIC HEARING:

After reviewing Planning and Community Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on February 9, 2017, at 9:04 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1"	- Planning and Community Development Department Staff Report
Att. A	- PRD Application
Att. B	- Site Plan
Att. C	- Landscape/Planting Plan
Att. D	- Tree Retention Plan
Att. E	- Zoning Map
Att. F	- Notice of Application, Affidavit of Publication and Posting

- Att. G** - **SEPA**
- Att. H** - **Mitigated Determination of Nonsignificance**
- Att. I** - **Notice of Hearing, Affidavit of Publication**
- Att. J** - **Water Company Availability Letter**
- Att. K** - **Certificate of Sewer Availability**
- Att. L** - **Public and Agency Comments**
- Att. M** - **Design Review Application, Checklist, Elevations**
- Att. N** - **Surface Water Compliance, Stormwater Report, Review Letter**
- Att. O** - **Wetland Delineation Assessment Report and Restoration Plan, Review Letter**
- Att. P** - **Traffic Impact Analysis, Review Letter**
- EXHIBIT "2"** - **Diagram**
- EXHIBIT "3"** - **Jeff Stokes Photographs**
- EXHIBIT "4"** - **David Zadradnik Submittal**
- EXHIBIT "5"** - **Full Sized Site Plan**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

KIRK RAPPE appeared, presented the City Staff Report, and testified that the applicant proposes 55 attached townhomes that will require minimal intrusion into a wetland buffer, and will include construction of a storm drainage facility. The responsible official issued a MDNS following SEPA review and received no appeals. The site is located north of the View Pointe project currently under construction. The parcel has mixed zoning of Commercial and MR-2. Abutting uses include a vacant parcel to the north and single-family to the east. Access will be provided by public roads that will extend north and south and east and west across the parcel. He received one comment relating to privacy, possible damage of an onsite septic system, and tree removal. The stormwater system and grading must meet City standards and a condition requires protection of trees. The PRD allows a combination of the density of both zones. The applicant could construct a maximum of 141 dwelling units, but proposes 55. The TIA was reviewed by the City's expert, who found it appropriately addresses the traffic impacts. Private roads will extend through the site to provide access to all units. Traffic mitigation will consist of the construction of 11th Street and the payment of Traffic Impact Fees. Staff finds that the project meets all PRD requirements and design standards, and therefore recommends approval subject to 55 conditions. The parcel size is 5.83 acres and the maximum density is 141 units, not the 262 units reflected in the MDNS. The Examiner makes a recommendation to the City Council, which makes the final decision to approve or disapprove.

KEVIN STENDER appeared and referred to the code section that requires a recommendation to the Council. The Council considers the Examiner's decision and the complete file in a closed record hearing. The Council can impose additional requirements.

JEREMY METZLER, City engineer, appeared and referred to the recent Washington Supreme Court case that ruled stormwater standards are not vested. Therefore, the City has held this project to its current stormwater regulations. The present regulations allow four exceptions if infiltration is provided. A discussion was held regarding the requirement for a commercial building that meets the minimum ten percent of the overall footprint of the project. Such requires a 4,200 square foot commercial building. MR. RAPPE suggested a condition requiring notice on the title and a note on the plat. The roads will have a paved surface.

CRAIG PECK, applicant, and professional engineer, appeared and testified that he attended the neighborhood meeting. He introduced Exhibit 2, a full set of site plans. Concerning the septic drainfield, their infiltration pond will be below the elevation of the drainfield. They have also changed the design of the buildings abutting the east property line to provide more privacy for adjacent homes. He has reviewed all 55 conditions and has no concern about any. He also has no concerns about the condition regarding the size of the commercial building.

JEFF STOKES appeared and testified that he is here in a spirit of support. He owns the abutting property to the north and needs to address the stormwater concerns on his property and the high cost of stormwater facilities. He performed a wetland delineation and also had questions regarding the eventual access to 8th Street. He introduced Exhibit 3, photographs of flooding. The water is coming from storm vaults located on Meridian. He and other property owners need a pipe across Meridian. The current pipe that he would use is over burdened and was not accounted for in the recent reconstruction. Mr. Peck is correct that they are squeezing to get under the maximum flow the pipe can accommodate. He has explored the stormwater issue since May, 2011, but cannot get his runoff to an appropriate storm drainage line on an adjacent parcel. The pipe at 11th and Meridian causes flooding and he can't get an easement to the appropriate pipe that would accommodate his runoff. The stormwater problem was not created by Mr. Peck or Mr. Otness, but the City needs to deal with the overall problem now.

DAVE ZAHRADNIK appeared and testified that he owns the property between Meridian and this project. He echoes Mr. Stokes' testimony. All are working in a spirit of cooperation. The problems were created during the Meridian upgrade. They have an extreme stormwater problem. He has owned his property for about 20 years and never had water behind it until the road improvement. He then introduced photographs of flooding as Exhibits 4 and 5. The Exhibit 5 photo was taken this morning from his phone.

MR. METZLER reappeared and testified that he and the overall City have been working for a solution. DOT designed the Meridian improvements and allowed the City very little input. The City is trying to correct the problems created by DOT. They are encouraged by this project getting to the connection point, as such will improve the water situation for the whole area. One property owner will not agree to provide an easement across their

property that would solve the storm drainage problems for everyone. The City continues working on a citywide solution. They are trying to solve the problem.

MR. STOKES reappeared and testified that the City argues that drainage is the State's fault, and the State argues that it is the City's fault. We can't get anywhere if we are pointing fingers at each other.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded at 9:55 a.m.

NOTE: A complete record of this hearing is available in the office of City of Edgewood Planning and Community Development Department.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The City of Edgewood issued a Final Mitigated Determination of Nonsignificance (MDNS_ using the optional DNS process pursuant to WAC 197-11-355 on January 11, 2017 for the project. There were no appeals to the MDNS.
3. All notices were provided and the site was posted pursuant to requirements of the Edgewood Municipal Code.
4. The applicant has a possessory ownership interest in a rectangular, 5.84 acre parcel of property located east of Meridian Avenue East (SR-161) at 11th Street East within the City of Edgewood. Improvements on the site include two, single-family residential dwellings in the eastern and central portions and a workshop/office building in the southwest portion. Access to the parcel is provided via a gravel road constructed within the 11th Street East right-of-way. The parcel measures 332 feet in a north-south orientation and approximately 765 feet in an east-west orientation.
5. The topography slopes downward from the east property line to the west and features steeper grades of ten to 25 percent in the eastern portion, and flatter, 4-8 percent grades in the western portion. Vegetation was previously cleared and the site is presently overgrown with grasses, blackberries and shrubs, but also has scattered coniferous and deciduous trees. The parcel supports a 3,305 square foot, Category III wetland in the northwest corner that requires a 50 foot wide buffer.
6. The applicant requests approval of a planned residential development (PRD) and design review to allow improvement of the site with 55 single-family, attached

homes (townhomes) and one commercial lot. Development of the site will require removal of all improvements. The site plan shows access provided from Meridian via 11th Street East that the applicant will construct to City standards. Access is also provided via a north-south street located in the western portion of the site that will connect to the north-south street serving the View Pointe residential development on the abutting parcel to the south. The applicant will extend said road to its north property line to allow an eventual connection to the north to 8th Street.

7. The site plan shows the wetland and buffer preserved in an undisturbed Tract A at the northwest corner of the parcel. Tract B abuts the south property line of Tract A and will provide the location for a park and the stormwater facilities for the overall project. The commercial lot (Lot 1) is located between the south property line of Tract B and the 11th Street East right-of-way. All 55 townhomes are shown to the east of the internal, north-south road. The site plan shows three rows of townhomes in six buildings extending in an east-west orientation, and two buildings located in a north-south orientation adjacent to the east property line. An internal drive circulates through the townhome buildings to provide access to all units. The site plan shows three story structures with garages on the ground floor.
8. Abutting uses include the View Pointe subdivision to the south, a church and partially developed commercial site to the north, and single-family residential homes to the east and west. Zoning of abutting properties includes Commercial (C) to the west, Mixed Residential Two (MR-2) to the north and south, and Single-Family Three (SF-3) to the east.
9. The applicant's parcel is split zoned as the eastern portion is within the MR-2 classification and the western portion within the C classification. The applicant requests approval of a PRD that would allow a blending of authorized densities within the two zone classifications. The C classification authorizes retail/service businesses and multi-family development while the MR-2 classification allows multi-family and single-family development. The applicant proposes a mix of one commercial lot and 55 townhomes on individual lots. Lot sizes will vary between 1,574 and 2,235 square feet. Units will have either three or four bedrooms and will vary in size between 1,842 and 2,402 square feet. Utilizing densities authorized by the PRD in accordance with the EMC, the applicant could construct a maximum of 141 residential units, but proposes 55. The project thus provides a step-down in use intensity from the commercial area along Meridian to the single-family residential neighborhoods to the east.
10. The project complies with applicable policies with the City of Edgewood Comprehensive Plan as set forth on pages 4-6 of the Staff Report. Of particular note, the project protects a Category III wetland and buffer in accordance with the goals and policies of the Natural Environment Element. The applicant also proposes a land use consistent with the City's vision. The project proposes 55 townhomes on individual lots, a housing type presently unavailable within the City.

The project will provide a new, full service access onto Meridian at 11th Street East and will also provide an alternative, north-south road that will eventually extend to 8th Street.

11. Section 18.50.095(J)(2) EMC sets forth the process for determining the overall density authorized for a split zoned parcel. Said section authorizes a total of 80 percent of the density of the combined total allowed in the underlying zones. For the reasons set forth in Finding 5 on page 11 of the Staff Report, the maximum number of dwelling units allowed calculates to 141. As previously found, the applicant proposes less than half of the authorized density. The building on the commercial parcel must measure at least ten percent of the gross floor area of improvements within the commercially zoned area of the parcel. The gross floor area (footprint) of the townhomes in the commercially zoned area of the parcel calculates to 42,650 square feet. Therefore, the minimum commercial building size must equal 4,265 square feet. Proposed Lot 1 has sufficient size to accommodate such building size as well as the required number of parking spaces. A recommended condition addresses this requirement.
12. Section 18.50.095(H) EMC requires the provision of onsite open space in an amount equal to 20 percent of the total, gross floor area of all structures within the overall PRD. The gross floor area calculates to 105,577 square feet, which requires a minimum of 21,115 square feet of open space. The applicant proposes 43,996 square feet of open space, which also includes a park tract of 17,131 square feet. The project will also satisfy the tree preservation requirements of the EMC.
13. The applicant submitted a Traffic Impact Analysis (TIA) prepared by Heath & Associates, a qualified traffic engineering firm. The City's traffic engineering consultant, Transpo, reviewed the TIA (and a revision thereof) and found that the revision adequately addresses the proponent's traffic impacts and access to the site. Mitigation requires payment of City Traffic Impact Fees at building permit application as well as construction of 11th Street East to a standard that includes a minimum 20 foot wide, pavement section and a gravel pathway on the north side of the street. The Lakehaven Utility District will provide sanitary sewer service to the project site, and the Mt. View-Edgewood Water Company will provide both domestic water and fire flow. The applicant or future owners must also satisfy the City's school and park impact fee requirements.
14. Concerns were raised by a neighbor to the east regarding potential adverse impacts on her onsite septic drainfield, removal of trees along the joint property line, and security during project development. The applicant's storm drainage infiltration area will be located well to the west of the neighbor's east property line and at a lower elevation than all residential drainfields to the east. Thus, the PRD storm drainage system will have no impact on septic drainfields. The applicant has committed to preserving all trees along the joint property line and will also construct a berm and fence along said joint property line to provide protection and privacy for abutting

owners. The applicant also redesigned the townhouses adjacent to the east property line by lowering the deck to the first floor and providing the berm/fence. Stormwater will flow to the west away from the single-family parcels, and compliance with EMC requirements will ensure no erosion will occur during construction. The EMC also includes site development requirements.

15. The most significant issue raised at the public hearing concerned the inability of off-site property owners to drain stormwater from their sites beneath SR-161 following its reconstruction by the State Department of Transportation. Property owners acknowledge that the City, and specifically the City engineer, is working with them in an effort to provide a stormwater solution. All parties agree that at present a sole property owner refuses to grant a utility easement that would allow the installation of a storm drainage pipe across its parcel to a culvert beneath SR-161 that has adequate capacity to convey all stormwater drainage to Surprise Lake. Property owners requested assistance from the Examiner in arriving at a solution. Property owners also believe that if the issue is not addressed as part of the PRD approval process, it likely cannot be successfully addressed in the future. Property owners introduced photographs of flooding on their sites and further noted that they are paying for the sewer LID, but are not able to develop their parcels.
16. When the Edgewood City Council adopted a hearing examiner system, it set forth the authority of the hearing examiner in Chapter 2.40 EMC. The Council authorized its hearing examiner to issue decisions or recommendations on various types of land use applications and appeals. The City examiner has authority to issue decisions/recommendations on site specific projects, but does not have authority to resolve disputes between property owners (easements) or to resolve area wide drainage or other issues. Thus, the Examiner cannot address the off-site property owners' dilemma regarding storm drainage. The Examiner's authority is limited to providing a recommendation to the Edgewood City Council as to whether or not the proposed PRD satisfies all criteria set forth in the EMC. In the present case the applicant's storm drainage system must meet the current storm drainage criteria within the EMC in accordance with the recent Washington Supreme Court decision of Snohomish County et. al., v Pollution Control Hearings Board et. al., Case Number 92805-3, issued on December 29, 2016. Compliance with said criteria assures that the PRD makes appropriate provision for its storm drainage.
17. Section 18.50.095(N) EMC sets forth findings an Examiner must include in the recommendation to the City Council. Findings on each criteria are hereby made as follows:
 - A. The site is suitable for the proposed development as it is generally rectangular and gently sloping. The project protects critical areas and provides more than ample room for the proposed improvements. The site plan shows a neat, efficient layout for future residents, easy access for emergency vehicles, and circular walking routes for pedestrians.

- B. The project satisfies all criteria for preliminary plat approval as set forth in the findings above. The project makes appropriate provision for the public health, safety, and general welfare for open spaces, drainage ways, streets, roads, alleys, other public ways, critical areas, transit stops (no improvements requested), parks and recreation and playgrounds, schools and school grounds, and safe walking conditions.
 - C. The applicant has requested no density bonuses or adjustments.
 - D. Recommended conditions of approval are set forth hereinafter.
 - E. Time limitations for completion of development are set forth within the City subdivision code, and the applicant proposes no phasing of development. The applicant must obtain final plat approval within five years pursuant to EMC 16.04.170.
 - F. As previously found, the project complies with applicable goals and policies of the Comprehensive Plan and is consistent with uses contemplated in both the Commercial and MR-2 designations.
 - G. The proposed PRD will serve the public use and interest by providing an attractive location for a joint, commercial/residential development that provides an appropriate use intensity step-down from the commercial uses along Meridian to the single-family subdivisions to the east.
18. The project satisfies the criteria set forth EMC 18.50.095(A) as follows:
- A. The project retains a significant feature of the natural environment, namely a wetland and buffer in the northwest corner, and also provides additional landscaping and screening along the east property line. The development will have no impact on waterways or views.
 - B. The project will provide a new housing type (townhouses) that presently does not exist in the City's housing market.
 - C. The site plan shows maximum efficiency in the layout of streets, utility networks, and other public improvements. The project provides both north-south and east-west access routes, as well as the opportunity for continuation of the north-south street to serve other parcels.
 - D. The applicant proposes a park for the enjoyment of occupants and will also provide sidewalks and pathways for walking and jogging.

19. The PRD meets the design and layout goals set forth in EMC 18.50.095(E) as it positively accentuates and harmonizes the relationship of the project to surrounding zones and existing uses. The perimeter landscaping and tree retention requirements minimizes undesirable impacts of the PRD on adjacent properties to the east for the reasons previously found. Commercial uses exist to the north and west and a compatible residential use is under construction to the south. The project also satisfies the three specific criteria set forth in said section as it serves as a zone transition feature and provides buffering to the single-family dwellings to the east. Buffering, landscape features, and fencing are provided along the north, east, and south property lines. As previously found the project incorporates streets and site improvements to enhance on-site planning, and streets that can provide internal access to off-site parcels.
20. As set forth in the Staff Report the perimeter setbacks are comparable to existing development on abutting parcels, and the overall PRD lot size exceeds the minimum of three acres. The project provides more than twice the amount of open space required. The applicant will establish a homeowners association that will assume responsibility for maintenance of the common open space areas and park. Sufficient parking areas are shown for both the commercial and residential uses. As previously found the applicant does not request bonus density; to the contrary, the density is less than half of that authorized by the PRD process.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and make recommendations to the Edgewood City Council on the issues presented by this request.
2. The request for PRD approval satisfies all criteria set forth in EMC 18.50.095 as well as all criteria for a preliminary plat set forth in EMC 16.04.080. The Edgewood City Council should therefore approve the Domus Townhomes PRD subject to the following conditions:
 1. The Mitigated Determination of Nonsignificance was issued on January 11, 2017. The conditions are hereby incorporated fully and shall be incorporated into the design of the project and considered conditions of the final PRD approval.
 2. The applicant shall provide adequate site control measures for erosion control for the proposed movement of up to 19,000 cubic yards of soil. If soil is proposed to be moved on or off of the site during site development, the applicant shall provide a trip plan showing the route of travel. Any routes that have been damaged and require repair based on actions associated with the project shall be repaired at the expense of the applicant to pre-site development condition.

3. During construction, the stockpiling of excavated materials or backfill materials shall meet the TESC plans and specifications as approved. Material stockpile locations shall be approved prior to stockpiling of soils by the City of Edgewood.
4. In accordance with EMC Chapter 13.25, all oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained onsite during construction, and removed in a manner that will prevent their discharge from the site, either to surface waters or soils. The cleanup of spills shall take precedence over other work on the site.
5. During construction, if any contaminated soil is suspected or discovered, testing of the it shall be removed and sent to approved sites and appropriate documentation of the disposal shall be made available upon request.
6. Dust control measures shall be performed during site development and any home construction, as needed due to soil conditions during periods of dry weather. Dust control measures shall be addressed in the SWPPP.
7. Appropriate provisions shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads during site development and home construction. If sediment is deposited, it shall be cleaned by the end of each working day by shoveling or sweeping. Water cleaning shall only be done after the area has been shoveled out or swept.
8. Provisions (tire washings of vehicles or approved alternatives (e.g. quarry spalls) shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads during site development and apartment home construction. If sediment is deposited, it shall be cleaned every day by shoveling or sweeping. Water cleaning shall only be done after the area has been shoveled out or swept.
9. The applicant shall submit and receive final design review approval prior to site development application in accordance with EMC 18.95.
10. If the applicant proposes fences on individual lots, the applicant shall submit a Sight Distance Study that evaluates the impact of proposed lot fences on roadway sight distance for review by the City. The study shall be submitted and reviewed prior to issuance of the site development permit.
11. The applicant shall provide a copy of the facility maintenance plan prior to permit issuance of the first apartment building to address all common spaces as well as building maintenance and shall specifically include provisions regarding stormwater maintenance referencing the Operation and

Maintenance (O&M) Manual prepared by the Engineer of Record, landscaping, parking lot, site lighting and general building maintenance and lighting maintenance. The manual shall include:

- A landscape maintenance plan including irrigation system maintenance.
 - A parking lot maintenance plan for striping and future overlay/coating.
 - Reference to the International Property Maintenance Code requiring regular maintenance of the project's structures, and associated appurtenances.
12. Addresses for individual buildings shall be obtained from the City prior to submittal for the final plat. Addresses shall be assigned and displayed in accordance with the International Fire Code (IFC).
 13. The applicant shall comply with the comments provided by the Mountain View Edgewood Water Company found in Part 4 – Agency/Public Comments, Section b, above.
 14. The applicant shall comply with the comments provided by Lakehaven Utility District found in Part 4 – Agency/Public Comments, Section c, above.
 15. The applicant shall comply with the comments provided by East Pierce Fire and Rescue found in Part 4 – Agency/Public Comments, Section d, above.
 16. The applicant submitted a Design Standards Review Checklist as prescribed within EMC 18.95 including documents regarding building design, landscaping and irrigation. A Design Review Letter requesting additional information be provided was sent to the applicant on January 10, 2017.
 17. The applicant shall provide an updated site plan including patterned crosswalks that meet the Edgewood Meridian Avenue/State Route 161 corridor parallel road standards (Ordinance No. 07-0279). The patterned sidewalks shall connect sidewalks along the east side of the parallel road, crossing the private road connections to the north-south parallel road. A patterned crosswalk shall also cross the parallel road to the proposed park/stormwater tract and cross the parallel road at the SE corner of the Commercial tract to the SW corner of the project site tract.
 18. The color elevations indicate differentiating materials may be used on the buildings. In addition to the color schemes provided, the applicant shall provide material samples, material sample photos and material information, or weblinks to information on proposed differentiating material that is proposed.

19. The applicant shall submit rear elevations for buildings 4, 5, 7, and 8 on the construction plans for review and approval by the City.
20. The applicant shall install screening, composed of a free-standing wall or trellis and landscaping, in front of the electrical meters proposed for the end walls of buildings 1, 4, and 7 facing the proposed north-south public road per EMC 18.95.040 I.2.b.
21. The applicant shall install landscaping around the perimeter of the site per EMC 18.90.090. Type IV (25-foot solid barrier) landscaping shall be installed along the property boundaries with single family zoned properties (the east boundary of the site), and along the north and south property lines in the MR-2 zone section of the subject property. The applicant shall install Type I (15 foot Vegetative Buffer) landscaping along the property boundary of the Commercially zoned portion of the site.
22. The applicant shall install Type II Streetscape landscaping along all public and private road frontages in accordance with EMC 18.90.090.
23. Compliance with EMC Chapters 13.05 (Stormwater Manual- Site Development Regulations) and 13.25 (Illicit Stormwater Discharges) is required during and following any site development activity.
24. Engineered storm water drainage facilities are required for all disturbed areas of the project site. The applicant shall provide a Stormwater Site Plan in accordance with EMC Chapter 13.05 and the 2005 DOE Stormwater Management Manual for Western Washington (SMMWW) at the time of site development. The plan shall include Stormwater Pollution Prevention Plan (SWPPP) addressing Minimum Requirement Two for all proposed development. The applicant shall provide engineering plans for City approval prior to site development approval.
25. A Temporary Erosion and Sedimentation Control (TESC) plan must be submitted with the SWPPP prior to site development permit issuance, approved by the City Engineer, and implemented during site development and any future home construction. Said plan and SWPPP must adequately propose BMP measures to address the movement of 19,000 cubic yards of earth, as proposed. If removal of material is necessary, the applicant shall prepare a haul route plan for review and approval. Prior to approval of site development permits, the applicant shall prepare a haul route plan for review and approval for import of material from an approved off-site source.
26. As more than one (1) acre of land disturbance is expected, the applicant shall acquire a National Pollution Discharge Elimination System (NPDES) permit and provide a copy of the permit to the City of Edgewood prior to site

development permit issuance. A Certified Erosion and Sediment Control Lead (CESCL) shall be present throughout the construction of site development improvements, implement and maintain the SWPPP, and provide regular reports to the City of Edgewood.

27. Any proposed surface water discharged from the project site (including areas bypassing proposed facilities) must meet all of the Minimum Requirements of the SMMWW, with any stormwater modeling of pre-development conditions assuming "forested" land coverage and using the "42 IN EAST" precip I evap station (or equivalent). Any dispersion facilities proposed for stormwater mitigation purposes (including overflows) must demonstrate adequate flowpath length on the project site and outside of any sensitive areas (EMC 13.05.170).
28. As discharge from the site is proposed and a potential capacity problem has been identified within one-quarter mile of the proposed improvements, a complete downstream analysis consistent with Volume I, Section 2.6.2 of the 2005 DOE SMMWW must be prepared and submitted with the site development application. This analysis must clearly identify existing drainage problems downstream (based on existing tributary flows), evaluate the capacity of the existing downstream conveyance, consider other tributary properties in the capacity analysis, and propose measure(s) to ensure downstream property will not be adversely impacted by the proposal.
29. If onsite retention is proposed, in-situ infiltration testing must be performed on the project site to determine the design infiltration rate, consistent with the 2005 DOE SMMWW, 2012 LID Manual, or the 2015 Pierce County Manual's Falling Head Test (Appendix IIIA). All applicable correction factors must be applied to the chosen infiltration test method. All retention facilities shall be modeled with an overflow riser, even if no overflow is provided or proposed, to properly simulate and identify any potential for overflow.
30. The applicant's geotechnical engineer shall verify and confirm soil conditions and design infiltration rates during and following construction of any proposed storm water retention BMPs, including facilities designed using Low Impact Development (LID) techniques. If conditions are different than design, the applicant's geotechnical engineer shall provide a revised infiltration rate and the stormwater retention BMPs shall be redesigned accordingly. Revisions shall be submitted to the City of Edgewood and approved prior to implementation and final construction approval. Corrections and/or design errors may require revisions to the plat.
31. The applicant shall provide right of entry by the City of Edgewood for all storm water facilities prior to final site development approval. If constructed conditions are found to be different than those designed and approved, the applicant's engineer shall revise the stormwater system accordingly. Any

revisions shall be provided to the City of Edgewood and approved prior to implementation and final site development construction approval. Corrections and/or design errors may require revisions to the plat.

32. The applicant shall submit street improvement construction plans for the proposed public parallel and onsite loop private roadways, for review and approval by the City Engineer, prior to final plat submittal. Improvements shall be designed in compliance with EMC Title 12 (Streets, Sidewalks and Public Places), which adopts Pierce County Code (PCC) Title 12 by reference. The specific cross section shall be in accordance with the "Manual on Design Guidelines and Specifications for Road and Bridge Construction in Pierce County," and Pierce County Standard Drawing PC.A3.2 and as described herein.
33. The public parallel road (104th Avenue East) shall be designed in accordance with Ordinance 07-0279, regarding the Meridian Corridor Roadway Network and meeting the City's Commercial Collector Cross Section, with cement concrete barrier curb and gutter, buffer and sidewalk with closed drainage. The public road right-of-way shall be 50-foot minimum, with a minimum 22-foot drive lane, 4.5-foot landscape buffers, 6-foot concrete sidewalks, 1.5-foot concrete barrier curb and gutter with storm drainage, and a minimum asphalt road surface thickness of 3 inches. The applicant may propose 8-foot concrete parallel parking strips on one or both sides of the road. The applicant shall dedicate the public road right-of-way to the City of Edgewood upon approval and acceptance of the construction and at the time of final plat approval.
34. Prior to final site development construction approval the applicant shall dedicate the public road (104th Avenue East) Right-of-Way and the approved public road system to the City of Edgewood.
35. The onsite private road shall include, at minimum, a 20-foot drive lane per City of Edgewood Local Street cross-section and PCC Section 17B.20.040, Table 17B.20.040-3, a minimum-1.5-foot curb and gutter section on both sides of the road, a stormwater management system per EMC 13.05, a 4-foot landscaping strip, and a 5-foot concrete sidewalk. Any dead-end segment of road with centerline length over 150 feet must have an EVA turnaround. The site development plans must be submitted to the City of Edgewood and be approved prior to site development commencement.
36. Tract 'C' (Private Road Tract) must include the entire width of the roadway improvements, from back-of-sidewalk to back-of-sidewalk, with a minimum width of 40 feet. This road improvement area may be designated as a separate tract and/or an easement over the individual lots.

37. The applicant shall submit street improvement construction plans for the new roadway intersections to the proposed private road from the public parallel road, for review and approval by the City Engineer, prior to final plat submittal. The intersections shall be constructed in accordance with EMC Title 12, which adopts by PCC Title 17B, including Section 17B.1 0.060, the "Manual on Design Guidelines and Specifications for Road and Bridge Construction in Pierce County." Details on the roadway intersection improvements may be found in Chapter 5: Access and Intersections.
38. The applicant shall submit offsite access improvement construction plans for 11th Street East, for review and approval by the City Engineer, prior to final plat submittal. Improvements shall include, at minimum, a 20-foot drive lane per City of Edgewood Local Street cross-section and PCC Section 17B.20.040, Table 17B.20.040-3, a minimum-1.5-foot curb and gutter section on both sides of the road, a stormwater management system per EMC 13.05, and a 5-foot gravel pathway for pedestrian access on the north side of the road, all designed in accordance with EMC Title 12. For ease of stormwater facility construction, the access may be sloped all to one side (north preferred).
39. The applicant shall submit lighting plans for the project site, consistent with City of Edgewood design standards, for review and approval by the City Engineer, prior to final short plat submittal. Vehicle-level street lighting shall be provided at the three proposed intersections and near the southeast corner of the project, per PCC 17B.20.005, Table 17B.20.005-2, as incorporated in EMC Title 12. Installation, utility charges, and ongoing maintenance of private roadway street lighting shall be the responsibility of the developer and future homeowner's association (HOA). Street lights in the parallel road (1041h Avenue East) ROW shall become City property upon dedication of the street to the City and the City will take responsibility for this street lighting in the public ROW.
40. The applicant shall submit a plan detailing all roadway signs (in and adjacent to public right-of-way) in accordance with Manual on Uniform Traffic Control Devices (MUTCD) standards, for review and approval by the City Engineer, prior to site development permit Issuance.
41. Patterned concrete crosswalks shall be installed at intersections with the private road system and 1041h Avenue East (north-south parallel road) on the east side of the 104th Avenue East providing a continuous pedestrian walkway along the east side of the 104th Avenue East from the south property line to the north property line of the development. Additional crosswalks shall be provided crossing 1 041 A venue East for access to the park/stormwater tract and to provide a continuous east-west pedestrian walkway on the north side of 11th Street East across 104th Avenue East. The patterned concrete

crosswalks shall be installed per the City of Edgewood Roadway Design Standards, Roadway Detail Drawing "Detail C."

42. The design and construction of the new roadways and pedestrian improvements shall meet or exceed current Americans with Disabilities Act (ADA) requirements. This includes but is not limited to design of sidewalk transitions, curb ramps, street crossings, and lighting.
43. The applicant shall coordinate with the Puyallup School District regarding the location and construction of future bus stops within the project area prior to site development approval and shall provide a letter from the Puyallup School District providing location approval at the time of site development application.
44. Any significant trees to be retained that may be affected by grading activity shall incorporate tree wells in accordance EMC 18.90.180(2)(e)(i)(G). An area free of disturbance, corresponding to the dripline of the significant tree's canopy shall be identified and protected during the construction stage with a temporary three-foot-high chain-link or plastic net fence. No impervious surfaces, fill, excavation, storage of construction materials, operations or parking of vehicles shall be permitted within the area defined by such fencing or stakes.
45. The applicant shall ensure protection of off-site trees on adjacent properties that have tree root systems that encroach onto the project property.
46. Any installed plant material that dies shall be replaced within the spring or fall growing season following plant loss, but not to exceed three months from the time of loss. In order to guarantee performance of the landscaping requirements, cash bonds or other appropriate security (including letters of credit) in the amount of 125 percent of the estimated cost of the required landscaping shall be required if replacement landscaping is not installed prior to issuance of occupancy permits.
47. A Pre-Construction Meeting with the City of Edgewood shall be held prior to any site development activity and scheduled at least 72 hours in advance. All construction activity shall occur between 7 a.m. and 5 p.m., Monday through Friday. Special provisions to work beyond these hours may be permitted through written request to the Mayor (or designee) a minimum of 48 hours before the special hours or days requested.
48. The wetland and reduced wetland buffer shall be placed in a separate tract from the remainder of the site per EMC 14.30 – Wetlands.

49. The applicant shall place permanent, clearly visible, wetland boundary buffer signs at the edge of the buffer per EMC 14.30- Wetlands prior to any earth moving activities.
50. A Homeowners' Association (HOA) shall be created to address all private improvements within the proposed plat including storm/park tract and stormwater facilities, private streets, curbs and gutters, street lighting, landscaping, and irrigation. Associated Covenants, Conditions and Restrictions (CCRs) shall be submitted at the time of final plat for review and approval. Once approved by the City, the CCRs shall be recorded separately at the time of final plat recording and the recording number shall be handwritten on the face of the final plat and the final plat number hand-written on the cover sheet of the CCRs as cross-reference.
51. The applicant shall coordinate and receive approval from Mt. View-Edgewood Water Company (MTVE) prior to final site development approval. The applicant shall provide water service improvements in accordance with the MTVE requirements and provide MTVE approval to the City prior to final site development approval.
52. The applicant shall pay School Impact Fees to the Puyallup School District in accordance with EMC 4.1 0.
53. The applicant shall pay Park Impact Fees in accordance with EMC 4.20.
54. The applicant shall pay Traffic Impact fees in accordance with EMC 4.30.
55. If significant changes are made to the proposal, additional documentation and study will be required to be submitted to the City and supplemental SEP A environmental review will be required.
56. The commercial building on Lot 1 shall have a minimum footprint of 4,265 square feet. Lot 1 shall provide the required number of parking spaces for said building.

RECOMMENDATION:

It is hereby recommended that the Edgewood City Council approve the Domus Townhomes PRD subject to the conditions contained in the conclusions above.

RECOMMENDED this 27th day of February, 2017



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 27th day of February, 2017, to the following:

APPLICANT: Craig A. Peck & Associates
11402-40th Avenue East
Tacoma, WA 98446

OTHERS:

Jeff Stokes
909 Meridian East
Edgewood, WA 98371

Dave Zahradnik
927 Meridian
Edgewood, WA 98372

Jeanette Wheeler
17817-28th Avenue East
Tacoma, WA 98445-4321

Jim Otness
973 Altadena Drive
Fircrest, WA 98466

Carol Hubbird
10601-10th Street Court East
Edgewood, WA 98372

CITY OF EDGEWOOD

PROJECT FILE NO.:

16-5633

Domus Homes Planned Residential Development

NOTICE

RECONSIDERATION:

Any aggrieved party or person affected by the recommendation of the Examiner may file with the department a written request for reconsideration based on any one of the following grounds materially affecting the substantial rights of said party or person:

- A. Errors of procedure or misinterpretation of fact, material to the party seeking the request for reconsideration.
- B. Irregularity in the proceedings before the Examiner by which such party was prevented from having a fair hearing.
- C. Clerical mistakes in the official file or record transmitted to the Examiner, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Examiner's recommendation on the matter.

The request must be filed on forms provided by Edgewood City Hall along with required reconsideration fee no later than 4:30 p.m. on **March 8, 2017**, (7 working days) with the Edgewood City Hall. This request shall set forth the bases for reconsideration as limited by the above. The Examiner shall review said request in light of the record and take such further action as he/she deems proper; including, but not limited to, denying the request, granting the request, with or without oral argument, and may render a revised recommendation. The recommendation of the Examiner shall be subject to reconsideration only one time, even if the Examiner reverses or modifies the original recommendation.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.



City of Edgewood, Washington

2224 104th Avenue East, Edgewood WA 98372-1513

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

Staff Report and Recommendation Domus Homes Planned Residential Development Public Hearing February 9, 2017 9:00 AM

To: Stephen Causseaux, Jr., Hearing Examiner
From: Kirk Rappe, Associate Planner
Kevin Stender, Community Development Director
Date: February 2, 2017
Subject: Public Hearing for Domus Homes PRD

Summary: Staff recommends approval of this Planned Residential Development to construct 55 new residential single-family attached townhomes on 5.83 acres in the Commercial and Mixed Residential Two zones. The purpose of the project is to provide a mix of living space options and a commercial site with the City of Edgewood consistent with zoning. The project proposes to construct eight townhome buildings, extension of the north-south public road (to be dedicated to the City), a wetland tract, park/stormwater infiltration tract, and commercial lot. The project requires minor intrusion into the wetland buffer. The applicant proposes buffer averaging and wetland enhancement including installation of native plant species within the buffer to mitigate for project impacts. This recommendation is based on the suggested findings of fact and conditions contained within Part 5 – Staff Recommendation.

Part 1 – General Information

FILE NUMBER: 16-5633

LOCATION: 10413 11th Street East, Edgewood, WA 98372

TAX PARCELS: 0420033084

APPLICANT: Craig A. Peck & Associates, 11402 40th Avenue East, Tacoma, WA 98446

PROPOSAL:

The applicant submitted a Planned Residential Development, SEPA Checklist, Design Review, and Surface water Compliance Application for Domus Homes, a single-family townhome residential project to construct 55 townhomes on 5.83 acres of land on a split-zoned lot zoned Commercial (C) and Mixed Residential Two (MR-2).

LEGAL DESCRIPTIONS:

0420033084: Section 03 Township 20 Range 04 Quarter 32 : N 1/2 OF S 1/2 OF NW OF SW
OF SEC LESS W 683.6 FT THEREOF SEG F 2490

ZONING:

C – Commercial and MR-2 – Mixed Residential Two

COMPREHENSIVE PLAN DESIGNATION:

C – Commercial and MR-2 – Mixed Residential Two

CRITICAL AREAS:

The property contains one Category III wetland.

ENVIRONMENTAL (SEPA) REVIEW:

The City of Edgewood issued a Final Mitigated Determination of Nonsignificance (MDNS) using the optional DNS process pursuant to WAC 197-11-355 on January 11, 2017 for the project. There were no appeals to the MDNS.

UTILITIES:

- The project is located within the Sewer LID and associated Phase I Sewer Area as defined and shown within the City's General Sewer Plan. A Certificate of Sewer Availability was issued on January 29, 2013 for the parcel that will be developed with need for sewerage.
- The applicant received a Certificate of Water Availability for the proposal from the Mt. View-Edgewood Water Company on November 1, 2016. Water service will be provided through the extension of existing water main(s).

EXHIBITS:

The following exhibits are found in the binder submitted with the Staff Report.

- A. PRD Application
- B. Site Plan
- C. Landscape / Planting Plan
- D. Tree Retention Plan
- E. City of Edgewood Official Zoning Map
- F. Notice of Application (NOA)/Legal NOA/NOA Affidavit of Publication/Affidavit of Posting/Completeness
- G. State Environmental Policy Act (SEPA) Checklist/Notice of Decision (NOD)/Legal SEPA NOD/ NOD Affidavit of Publication
- H. Mitigated Determination of Nonsignificance (MDNS).
- I. Notice of Hearing (NOH)/Legal NOH/NOH Affidavit of Publication
- J. Mountain View Edgewood Water Company Water Availability Letter
- K. City of Edgewood Certificate of Sewer Availability
- L. Public and Agency comments received

- M. Design Review Application/Design Review Checklist/Color Building Elevations
- N. Surface Water Compliance Application/Preliminary Stormwater Report/Engineering Peer Review Letter
- O. Wetland Delineation Assessment Report and Restoration Plan/Wetland Biologist Peer Review Letter
- P. Traffic Impact Analysis/Transportation Peer Review Letter/Revised Traffic Impact Analysis/Final Transportation Peer Review Letter

Part 2 – Site Characteristics

The subject property is located east of Meridian Avenue East and north of 11th Street East, which terminates at the property. The subject property is currently developed with two single-family residences in the eastern and central portions of the property, a work shop/office building in the southwestern portion of the site, and a shared gravel access road in the 11th Street East right-of-way. The property is bounded on the east and west by existing residential development, on the south by the View Pointe residential single-family project site and the north by a church and partially developed commercial site.

The property generally slopes downward from east to west. The eastern high point of the site starts at a steeper grade of about 10-25 percent. At the about the mid-point of the site the slope flattens to 4-8 percent grade. The soils are Alderwood gravelly loam with other loamy soils. Vegetation on the site consists of previously cleared areas now overgrown with native and invasive grasses, a few coniferous and deciduous trees, blackberries and native shrubs.

A Category III wetland approximately 3,305 sf in size occupies a shallow depression on the northwest corner of the site. The standard buffer width for this category of wetland is 50 feet per the Edgewood Municipal Code.

1. SURROUNDING ZONING: Properties surrounding the project area are zoned Commercial (C), Mixed Residential Two (MR-2), and Single-Family Three (SF-3).
2. ACCESS: Proposed ingress and egress will be from the north-south public road to be constructed on-site which will connect to the north-south public road extension being built on the View Pointe residential site and to either 12th Street or 13th Street Court to Meridian Avenue East. Direct access from the project site to Meridian will also be provided via 11th Street.

Part 3 – Comprehensive Plan

Comprehensive Plan Designation(s):

The applicant is following the Planned Residential Development process of the City code which allows for a blending of density requirements for single-family or multifamily development in certain zones such as Commercial and Mixed Residential Two. The Commercial designation accommodates a wide range of commercial development, such as retail and service businesses. The designation also allows for multifamily development and single-family attached, such as townhouses (as a conditional use). The Mixed Residential Two designation allows for

residential, civic, and utility uses but limits commercial uses. This designation allows for single-family attached or detached dwellings and multifamily dwelling units.

Comprehensive Plan Goals And Policies:

The following are goals and policies from the Comprehensive Plan that are applicable to the proposal:

NATURAL ENVIRONMENT ELEMENT (Chapter 1)

GOAL NA. I: Protect and enhance the natural environment for the benefit of current and future generations.

Policy NA.I.a: *Conduct all City operations in a manner that minimizes adverse environmental impacts, including policy and regulatory decisions, budget decisions, public projects and departmental operations.*

GOAL NA.II: Protect and enhance water quality.

Policy NA.II.d: *Require new development to utilize stormwater best management practices, such as low impact development and other natural drainage techniques.*

Policy NA.II.g: *Protect and preserve areas that are critical for aquifer recharge, such as wetlands, streams, and water bodies.*

LAND USE ELEMENT (Chapter 2)

GOAL LU.I: Establish a future land use pattern that is consistent with the City's vision.

Policy LU.I.i: *The Mixed Use Residential designation is intended to accommodate a range of medium density residential housing types and to provide a visual and functional transition between residential neighborhoods and areas of more intensive development. A mix of land uses is allowed, including commercial, professional and other uses that are compatible with neighborhood character.*

Policy LU.I.k: *The Commercial designation is intended to accommodate a wide range of commercial uses, including large-format retail, auto-oriented commercial uses and regional scale commercial uses. Compatible uses are also allowed.*

GOAL LU.II: Promote a land use pattern that strengthens Edgewood's identity and sense of place.

Policy LU.II.b: *Promote community character and identity, including consideration of the following:*

- *Compatibility with natural site characteristics*

- *Development at a scale and character appropriate to the site and surrounding vicinity.*
- *Design that reflects the community's current and historical character.*
- *Landscaping to enhance building and site appearance.*

GOAL LU.III: Promote development that respects and preserves the natural environment.

Policy LU.III.a: *Provide design flexibility to encourage the preservation and integration of existing natural site features in new development, including clusters of trees, watercourses, slopes, and open spaces*

GOAL LU.IV: Promote the quality, character and function of residential neighborhoods.

Policy LU.IV.a: *Consider natural constraints, surrounding development and proximity to services and facilities when establishing residential densities.*

LAND USE ELEMENT (Chapter 3)

GOAL CC.I: Promote commercial and residential development that is carefully considered, aesthetically pleasing, and functional.

Open Space

Policy CC.I.m: *Preserve and encourage open space as a dominant element of the community's character through parks, trails, water features, cemeteries and other significant properties that provide public benefit.*

GOAL CC.II: Promote the creation of highly usable public spaces that maintain community character and increase public safety.

Public Spaces

Policy CC.II.a: *Ensure that public places are designed to include pedestrian amenities such as seating, landscaping, kiosks, walkways, pavilions, canopies and awnings.*

Policy CC.II.b: *Consider the edges of public places that abut adjacent property for special design treatment to create a buffer effect.*

Pedestrian Linkages

Policy CC.II.d: *Provide clear and identifiable systems of accessible sidewalks, walkways and trails.*

Street Corridors

Policy CC.II.f: *Encourage street designs that provide safe pedestrian design elements, especially at the corners of intersections.*

HOUSING (Chapter 4)

GOAL H.III: Promote a mix of housing types to meet the needs of current and future residents.

Policy H.III.c: *Encourage residential infill development on vacant or underutilized sites in areas with appropriate land use designations.*

Policy H.III.d: *Increase the diversity of the City's housing stock by encouraging construction of moderate- and higher-density housing, such as apartment buildings, mixed use developments, townhomes, cottage housing and garden apartments, in appropriate land use designations.*

Policy H.III.e: *Encourage a range of unit sizes to accommodate different household types, including single person households, two-person households, households with children, households with seniors and group households with unrelated people living together.*

TRANSPORTATION ELEMENT (Chapter 5)

GOAL T.I: Develop a safe and efficient street system that accommodates all transportation modes and maximizes people-carrying capacity. Improve the operating efficiency of the existing system and maintain the capacity to adequately serve present and future travel demand.

Policy T.I.c: *Require dedication of roadway rights-of-way as part of new development consistent with the appropriate functional classification, adopted road standards and Comprehensive Plan.*

GOAL T.III: Provide clear and identifiable systems of walkways, sidewalks, and trails.

Policy T.III.b: *Develop a non-motorized transportation system that promotes connectivity between residential developments via pathways, trails, and street extensions.*

Part 4 –Agency Review/ Public Comment:

1. Notices:

Application Received:	October 28, 2016
Determination of Completeness:	November 2, 2016
Notice of Application:	November 5, 2016
SEPA Determination:	January 11, 2017
Notice of Public Hearing:	January 26, 2017

A 15-day public comment period was utilized, which ended November 18, 2016. The notice was posted on the site, published in *The News Tribune* newspaper, and mailed to property owners within 300 feet of the project and parties of record on November 5, 2016.

2. GENERAL PUBLIC COMMENTS:

One comment letter from the public was received during the Notice of Application during the comment period. The concerns expressed are summarized as follows:

Comment	Response
Concerns regarding preservation of trees along her property line, that the root systems remain intact and desires extensive soil testing to be performed as assurance against erosion damage.	The City will require protective measures during site development to protect off-site tree root systems (see recommendation #43). Potential site erosion issues will be handled through a required Stormwater Pollution Prevention Plan and required site preparation to prevent erosion (see recommendations #22 – 24).
Desires and additional row of trees to be planted along fence on the Domus property to protect privacy.	The applicant is required to provide a minimum of 10 feet of Type IV landscape strip. The applicant proposes 20 to 25 feet of landscaping. The applicant is also required to plant one deciduous or evergreen tree per 20 linear feet and a 6-foot high fence (see recommendation #21).
Desires written assurances from the Domus property interests that her septic system will not be impacted by the development.	City review of the proposed site stormwater and grading plan indicates that after site preparation, the stormwater system will sit lower than the commenters property and stormwater will flow west away from the single family zoned properties, including her property. Potential erosion issues will be handled as noted in the prior answers.
Requests temporary retaining walls and additional security when site development is underway.	The City requires the applicant to follow City code in establishing hours of construction and erosion prevention as well as to provide site control during construction. In a conversation with the commentor at City Hall on 1/30/17 City Staff explained that the City's police department is made aware when project site preparation activities begin and are connected with the site construction supervisor.

The public comments, where appropriate, have been incorporated into the decision under the “Findings of Fact” or “Conclusions of the Responsible Official.”

3. AGENCY COMMENTS:

An Interagency Memorandum was mailed on November 5, 2016. The City of Edgewood received comments from the following agencies:

a. DEPARTMENT OF ECOLOGY (DOE)

- i. The Washington State Department of Ecology provided comments regarding potential toxics cleanup, water quality, and erosion control. The comments have been incorporated into this SEPA threshold determination conditions where appropriate.

b. MOUNTAIN VIEW-EDGEWOOD WATER COMPANY (MTVE)

- i. Water is available for this plat from a 10" main located along Meridian and a 8" main located at the SW corner of the Slavic Church Property. System pressure is about 80 PSI and the fire flow is 3000 GPM.
- ii. A "to and thru" 8" Class 52 Ductile Iron water main extension is required. The extension shall tie into the existing 10" main located along Meridian with a 3 valve cluster, tie into the Slavic Church main, and tie into the Edgewood View Pointe main. Existing services along Meridian shall be relocated. Main extension shall be constructed per the most current MTVE Developer Standards and centered on a 15' wide easement. Easement shall be recorded using MTVE form. Water main shall not be placed under roadway except for crossings.
- iii. Hydrant locations per EPF&R requirements.
- iv. Install new services per MTVE standard. They shall be clustered and not installed in driveways, parking areas, or sidewalks.
- v. There is one membership for the parent parcel. This membership must be transferred to one of the newly created children parcels.
- vi. Install new services per MTVE standard. They shall be clustered at common lot corners and not installed in driveways, parking areas, or sidewalks.
- vii. All other utilities shall be located at least 36" away from the outside of the water main. Crossings shall be a minimum of 24" over the top or 12" below the water main.
- viii. Plantings and other utility pedestals (phone, power, etc.) shall not block the road side of the meter box and shall be located a minimum of 36" away from the sides and rear of the meter boxes.

c. LAKEHAVEN UTILITY DISTRICT

- i. The City of Edgewood previously issued a Letter of Sewer Availability for the property, required for Lakehaven to process sewer system extension &/or service connections.
- ii. A Lakehaven Developer Extension Agreement will be required to construct new City of Edgewood sanitary sewer facilities necessary for the proposed development, including extend-to-far-edge (northern point in proposed North/South Road) in accordance with long-standing Lakehaven policy. Pipe slopes from existing sewer facilities/point-of-connection to the northerly extend-to-far-edge point should be kept at the allowable minimum (0.5%) to maximize future sewer extensions north of this property. Additional detail and/or design requirements can be obtained from Lakehaven by completing & submitting a separate application to Lakehaven for either a Developer Pre-Design Meeting or a Developer Extension Agreement (application forms attached). Lakehaven encourages owners/developers/applicants to apply for Lakehaven processes separately to Lakehaven, and sufficiently early in the pre-design/planning phase to avoid delays in overall project development.
- iii. The associated Developer Extension Agreement must achieve a point of either Substantial Completion or Acceptance, as determined by Lakehaven prior to activating any new sewer service connection(s).
- iv. Based on the proposal submitted, preliminary estimated Lakehaven sewer service connection fees/charges/deposits (2016 schedule) will be as follows. Actual connection charges will be determined upon submittal of service connection application(s) to Lakehaven. Connection charges are separate from any DE fees/charges/deposits & are due at the time of application for service. All Lakehaven fees, charges and deposits are typically reviewed & adjusted (if necessary) annually, and are subject to change without notice.
 - a. Sewer Service Connection Permit Fee: \$16,500.00 (\$300.00 per building).
 - b. Capital Facilities Charge(s)-Sewer: \$176,330.00 (\$3,206.00 per Equivalent Residential Unit (ERU)).
- v. All comments herein are valid for one (1) year and are based on the proposal(s) submitted and Lakehaven's current regulations and policies. Any change to either the development proposal(s) or Lakehaven's regulations and policies may affect the above comments accordingly.

d. EAST PIERCE FIRE AND RESCUE

- i. The minimum fire flow requirements for detached one-family residential dwellings having a fire flow calculation area which does not exceed 3,600 square feet shall be 1,000 gallons per minute with a minimum duration of 45 minutes. Fire flow and flow duration for dwellings having a fire flow calculation area in excess of 3,600 square feet shall not be less than specified in the International Fire Code. For residential fire-flow requirements, see Section B 105.1 One family dwellings.
- ii. Provide the required fire flow for the building which is based on size and type of construction at at 20 psi residual pressure for 2 hours. (IFC Appendix Table B 105.1). Contact Lane Walthers for additional information (see below).
- iii. An automatic fire sprinkler system shall be installed in all apartments, townhouses and duplexes regardless of square footage and in all single family residences that exceed 5,000 square feet of livable space. A separate permit and plan review submittal is required for the installation of the fire sprinkler system.
- iv. Provide proof of water availability prior to the issuance of building permits for the proposed development.
- v. At the time of a building permit submittal, a fire flow worksheet shall be completed.
- vi. Provide a Fire hydrant at the entrances of the development and on the corner of 11th street with a maximum spacing for fire hydrants serving residences shall be 500 feet at street corners. Additional hydrants may be required.
- vii. All on site fire hydrants shall be 300 feet spacing.
- viii. Fire apparatus access roads shall be provided to within 150 feet of all portions of the exterior walls of the first story of the proposed residence(s) as measured by an approved route around the exterior of the building. The minimum width of the fire apparatus access road more than 2 lots shall be 20 feet wide paved. The access road shall be provided with a driving surface designed to support the imposed load of fire apparatus.
- ix. All fire lanes over 150 feet shall be provided with an approved turnaround and shall adhere to appendix D of the IFC 2015 for the type and size of construction.

- x. Where installed, security gates on fire apparatus access roads shall be equipped for automatic operation by Opticom Pre Emption and a Knox key override switch and shall be designed and installed in accordance with the East Pierce Fire & Rescue requirements for security gates.
- xi. Provide a guarantee of access to all lots/parcels through a recorded easement or other appropriate legal instrument.
- xii. All lots shall be addressed in accordance with the standard adopted by the City of Edgewood, Planning and Community Development Department.

The comments received above have been incorporated into the Findings of Fact, Conclusions and recommended Conditions of Approval.

Part 5 – Staff Analysis/ Findings of Fact:

GENERAL:

1. The applicant submitted a SEPA Checklist with a subdivision application to construct 55 single-family attached dwelling units on 5.83 acres within the Commercial (C) and Mixed Residential Two (MR-2) zones. The proposed project includes one commercial lot, a park/stormwater tract, and wetland tract. A new north-south roadway is proposed that will be dedicated to the City upon completion.
2. The applicant also submitted a Planned Residential Development (PRD) application. A PRD allows for an increase in density when open space and other specific amenities are provided as set forth in EMC 18.50.095.
3. A neighborhood meeting was held on October 10, 2016 in accordance with EMC 16.04.040 and 16.04.080. There were approximately 15 Edgewood residents in attendance.
4. A PRD is allowed in Single Family Five (SF-5), Mixed Residential One (MR-1), Mixed Residential Two (MR-2), and any split-zoned parcel greater than three acres where residential uses are allowed in both zones. The project parcels meet these requirements.
5. The parcel is split-zoned C and MR-2 designations. The applicant has proposed to follow the PRD process identified within EMC 18.50.095(J)(2) which addresses combined density (shifting the overall density within a split zoned parcel). PRD density is calculated for split zoned parcels as 80 percent of the combined total allowed density in the underlying zones. The allowed density in the underlying zones is 8 dwelling units/acre for the MR-2 zone and 48 dwelling units/acre for the C zone. The net developable acreage in the C zone, after subtracting for the Category III wetland and Commercial Lost is 2.5 acres. The net developable acreage in the MR-2 zone is approximately 2.5 acres. The net acreage totals approximately 5.0 acres resulting in a maximum number of dwelling units allowed of 141. The project proposes 55 townhome units coming in below the maximum density allowed.

6. Impervious surface coverage allowed in the C zone is 85%. Impervious surface allowed in the MR-2 zone is 65%. The proposals impervious surface covers 60% of the total site area (3.52 acres of a total of 5.83 acres) and is under the maximum coverage allowed.
7. The applicant proposes a separate Commercial parcel to meet the mixed use requirements of the Commercial zone per EMC 18.80.080 Table 2, footnote I. The Commercial parcel shall accommodate a commercial building (including parking and stormwater mitigation) that is at least 10% of the gross floor area of the development. The gross floor area of the townhomes in the Commercially zoned portion of the parcel is 42,650 sf. Ten percent of this is 4,265 sf, so the minimum Commercial building size shall be at least that size. The applicant demonstrated a Commercial building can be built on the Commercial lot that meets the 4,265 sf size threshold.
8. Open space shall be provided on-site per EMC 18.50.095H at a rate of 20% of total gross floor area of all structures. The gross floor area of all structures proposed is 105,577 sf and the calculated minimum open space to be provided is 21,115 sf. The applicant proposes 43,996 sf of open space (including a park tract of 17,131 sf) which exceeds this requirement.
9. The application was determined to be complete on November 2, 2016. A Notice of Application was mailed to surrounding property owners, published in The Tacoma News Tribune on November 5, 2016, a newspaper of general circulation, mailed to permanent parties of record, faxed for posting in public places, and was posted on the site.
10. Per EMC 18.80.080, the applicant shall submit for design standards approval and shall comply with EMC 18.95, Design Standards. The applicant provided design review documentation with the application that was reviewed by the City and revisions were requested on January 10, 2017. The applicant shall submit revised site design and landscape plan documents as prescribed within EMC 18.95 prior to submission of the site development plans.
11. The applicant provided a tree preservation plan in accordance with EMC 18.90.180 with the application. The applicant proposes to retain two significant trees and replace removed trees at a replacement rate of 1.5x per removed tree. 194 new 2" diameter trees are proposed.
12. The applicant proposes to construct all associated infrastructure for the project and has estimated that approximately 19,000 cubic yards of material will be moved, approximately balanced on-site. Select fill will be imported from off-site permitted sources for special purposes. Import materials such as gravel and select backfill will require the submittal of a haul-route plan at the time of site development application and may also require the submittal of a traffic control plan depending upon frequency and routing of the truck traffic associated with construction.

13. Review of the environmental checklist indicates that development of the site will generate short-term noise and dust during construction. EMC Title 8 adopted the Pierce County Codes regarding noise. Chapter 8.76.060 establishes maximum permissible noise levels. The City has established a policy limiting the hours that construction activity can occur in order to address noise impacts to neighboring residential properties.
14. Review of the environmental checklist indicates that the proposal will have no significant impact on animals, water, noise, environmental health, public services or land use. Additionally, no significant historic or cultural resources have been identified within the proposed project site.
15. Per EMC 18.90.060 any fences proposed on the individual lots must meet height requirements and not obstruct the sight distance of a driveway, private street, or public street. Fences may be a maximum of 4 feet in height in the front yard setback and 6 feet in height in the interior or rear yard setback.

Wetlands/Critical Areas

16. The City critical areas map indicated the presence of a wetland on-site. A Critical Areas checklist was required to be submitted and a wetland analysis report per EMC 14.30.030.
17. The applicant submitted a Critical Areas Checklist and Wetland Analysis Report with the application on October 28, 2016. The City's wetland biologist reviewed the wetland report (Titled: Critical Areas Report- #0420033084) and visited the site to verify conditions and findings of the report. The City's biologist concurred with the report that the wetland is a Category III wetland that would normally require a 50-foot buffer, but the proposed buffer averaging and enhancement as described in the report is consistent with the Edgewood Municipal Code.

Stormwater

18. As submitted, the proposal includes construction of 55 new townhome-style single family residences, extension of a public parallel road from the adjacent View Pointe project to the north boundary (consistent with City of Edgewood Ordinance #07-0279), onsite private road improvements (looped to and from the parallel road for home site circulation and Emergency Vehicle Access), and offsite improvements to 11th Street East (private access). Associated stormwater infrastructure improvements include onsite buried conveyance, water quality treatment and flow control detention I retention facilities, offsite buried conveyance and treatment I flow control facilities, and may include Low Impact Development (LID) techniques such as porous pavement. The applicant proposes to construct all required infrastructure for the project, estimating that approximately 19,000 cubic yards of material will be moved (balanced cut and fill on site).
19. The "Soils Report: Stormwater Feasibility" by GeoResources, LLC provides design infiltration rates based on in-situ Pilot Infiltration Testing (PIT) results, following the procedure listed in the 2005 Department of Ecology (DOE) Stormwater Management

Manual for Western Washington (SMMWW), the vested standard. While the lowest correction factor suggested by the DOE SMMWW is 5.5, a reduced correction factor of 4 was recommended by the geotechnical engineer without any further justification. An addendum dated December 28, 2016 was provided with further explanation and justification, citing the safety factors contained in the 2015 Pierce County Stormwater Management and Site Development Manual (current standard), being an acceptable alternative guidance.

20. While in-situ testing has been performed, said testing was performed during the summer of 2016. Additional testing and observations shall be made during the wet season (winter/spring), per the 2005 DOE SMMWW, Volume III, Section 3.3.8, to confirm the design infiltration rates prior to site development approval. Corrections and/or design errors may require revisions to the plat.
21. The Preliminary Drainage Control Plan contains a basic downstream analysis that identifies a potential capacity problem within one-quarter mile of the proposed improvements. The applicant must provide a quantitative downstream analysis, addressing this potential capacity problem prior to site development approval.

Traffic/Streets

22. The applicant has proposed a location for their segment of the north-south public parallel road in accordance with Ordinance 07-0279, regarding the Meridian Corridor Roadway Network. The City of Edgewood reviewed the applicant's preliminary plans and finds the location of 104th Avenue East (the north-south parallel road) aligns with the existing connection to the network's south (View Pointe Subdivision). In conjunction with the construction of the roadways within the network and at the time of final plat approval, the applicant shall dedicate the 104th Avenue East north-south right-of-way and road system to the City of Edgewood.
23. The new private roadway network proposed for this project shall be in compliance with EMC 12.05, Streets, Sidewalks and Public Places and the specific cross section shall be in accordance with the approved Neighborhood Collector Cross Section drawing. The applicant proposes 20-foot wide drive lane, 5-foot concrete sidewalk, and curb and gutter section. The landscape plan also proposes trees and landscaping along the back of sidewalk. Details on the requirements for the roadway improvements are discussed in the Required Mitigation Section below.
24. Reviewing City of Edgewood Ordinance #07-0279, 11th Street East is not identified as a proposed connection to Meridian Avenue East (SR 161). Any improvements made to 11th Street East shall be consistent with an interim access following Section 4.A.3 of said Ordinance, having no formal intersection with the proposed parallel roadway. Also, if a pedestrian walkway is desired along 11th Street East between the project and Meridian Avenue East, it should be surfaced in such a manner as to deter use of private property by the general public.

25. The City of Edgewood required that the applicant provide a traffic impact analysis to evaluate traffic impacts generated by future development of the proposed 55 residential townhome units to the City of Edgewood road network. Heath and Associates prepared the Edgewood P RD-Domus Homes Traffic Impact Analysis dated October 20, 2016. The report was peer-reviewed by the City's Traffic Engineering Consultant, Transpo on December 21, 2016. Revisions to the report were provided on January 5, 2017, and Transpo provided additional review of the report on January 10, 2017. No additional revisions to the report were requested as a result of the second review. Transpo found that the revised TIA adequately addressed the proponents traffic engineering recommendations associated with traffic and access for the proposed project.
26. In the January 10th, 2017 letter Transpo concurred that mitigation associated with the project shall include payment of traffic impact fees as prescribed by EMC 4.30, Traffic Impact Fees, as well as construction of 11th Street East improvements that include a 20-foot wide (minimum) pavement section and gravel pathway on the north side of the street, will adequately address the traffic impacts from the proposed development.

Improvements/Other Requirements

27. A Homeowners' Association (HOA) shall be created to address all private improvements, including streets, curbs, landscaping, irrigation, sidewalks, stormwater management, and stormwater conveyance per RCW 64.38. Associated Covenants, Conditions and Restrictions (CCRs) shall be submitted at the time of final plat for review and approval.

Part 6 - Conclusions:

The City enters the following conclusions in support of its recommendation:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request. Appropriate notice was given.
2. The PRD is consistent with the applicable policies of the City of Edgewood Comprehensive Plan, including encouraging attractive, stable, high quality residential development and encouraging residential development projects to help support commercial areas.
3. The PRD application was received on October 28, 2016, and determined to be complete on November 2, 2016.
4. The utilities in the area of the subject property are adequate to serve the anticipated demand of this proposal. A Certificate of Water Availability and a Certificate of Sewer Availability show that satisfactory utility service is available.
5. Adequate provisions have been made for traffic, streets, parks, schools and storm water. Prior to final City approval, the applicant will be required to construct or bond for the proposed roads and mitigation requirements and provide surface water improvements that will ensure adequate services and facilities are available.

6. As conditioned, the proposal will not be detrimental to public health, safety or welfare. The proposal will provide new residential housing on sites suitable for development.
7. The City has adhered to the permit review requirements of EMC Section 18.40.100, Process III (Hearing Examiner Actions), EMC Title 20.05, SEPA, as well as all other pertinent chapters of the EMC considered with this application.

Part 7- Staff Recommendation/ Conditions of Approval

After review of the submitted materials and the comments received, staff recommends APPROVAL of Application #16-5633, Domus Townhomes Planned Residential Development, a single-family townhome project consisting of 55 dwelling project, **subject to the conditions** described below.

GENERAL PROJECT RECOMMENDATIONS:

1. The Mitigated Determination of Nonsignificance was issued on January 11, 2017. The conditions are hereby incorporated fully and shall be incorporated into the design of the project and considered conditions of the final PRD approval.
2. The applicant shall provide adequate site control measures for erosion control for the proposed movement of up to 19,000 cubic yards of soil. If soil is proposed to be moved on or off of the site during site development, the applicant shall provide a trip plan showing the route of travel. Any routes that have been damaged and require repair based on actions associated with the project shall be repaired at the expense of the applicant to pre-site development condition.
3. During construction, the stockpiling of excavated materials or backfill materials shall meet the TESC plans and specifications as approved. Material stockpile locations shall be approved prior to stockpiling of soils by the City of Edgewood.
4. In accordance with EMC Chapter 13.25, all oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained onsite during construction, and removed in a manner that will prevent their discharge from the site, either to surface waters or soils. The cleanup of spills shall take precedence over other work on the site.
5. During construction, if any contaminated soil is suspected or discovered, testing of the it shall be removed and sent to approved sites and appropriate documentation of the disposal shall be made available upon request.
6. Dust control measures shall be performed during site development and any home construction, as needed due to soil conditions during periods of dry weather. Dust control measures shall be addressed in the SWPPP.

7. Appropriate provisions shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads during site development and home construction. If sediment is deposited, it shall be cleaned by the end of each working day by shoveling or sweeping. Water cleaning shall only be done after the area has been shoveled out or swept.
8. Provisions (tire washings of vehicles or approved alternatives (e.g. quarry spalls) shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads during site development and apartment home construction. If sediment is deposited, it shall be cleaned every day by shoveling or sweeping. Water cleaning shall only be done after the area has been shoveled out or swept.
9. The applicant shall submit and receive final design review approval prior to site development application in accordance with EMC 18.95.
10. If the applicant proposes fences on individual lots, the applicant shall submit a Sight Distance Study that evaluates the impact of proposed lot fences on roadway sight distance for review by the City. The study shall be submitted and reviewed prior to issuance of the site development permit.
11. The applicant shall provide a copy of the facility maintenance plan prior to permit issuance of the first apartment building to address all common spaces as well as building maintenance and shall specifically include provisions regarding stormwater maintenance referencing the Operation and Maintenance (O&M) Manual prepared by the Engineer of Record, landscaping, parking lot, site lighting and general building maintenance and lighting maintenance. The manual shall include:
 - A landscape maintenance plan including irrigation system maintenance.
 - A parking lot maintenance plan for striping and future overlay/coating.
 - Reference to the International Property Maintenance Code requiring regular maintenance of the project's structures, and associated appurtenances.
12. Addresses for individual buildings shall be obtained from the City prior to submittal for the individual building permits. Addresses shall be assigned and displayed in accordance with the International Fire Code (IFC).
13. The applicant shall comply with the comments provided by the Mountain View Edgewood Water Company found in Part 4 – Agency/Public Comments, Section b, above.
14. The applicant shall comply with the comments provided by Lakehaven Utility District found in Part 4 – Agency/Public Comments, Section c, above.
15. The applicant shall comply with the comments provided by East Pierce Fire and Rescue found in Part 4 – Agency/Public Comments, Section d, above.

DESIGN REVIEW RECOMMENDATIONS:

16. The applicant submitted a Design Standards Review Checklist as prescribed within EMC 18.95 including documents regarding building design, landscaping and irrigation. A Design Review Letter requesting additional information be provided was sent to the applicant on January 10, 2017.
17. The applicant shall provide an updated site plan including patterned crosswalks that meet the Edgewood Meridian Avenue/State Route 161 corridor parallel road standards (Ordinance No. 07-0279). The patterned sidewalks shall connect sidewalks along the east side of the parallel road, crossing the private road connections to the north-south parallel road. A patterned crosswalk shall also cross the parallel road to the proposed park/stormwater tract and cross the parallel road at the SE corner of the Commercial tract to the SW corner of the project site tract.
18. The color elevations indicate differentiating materials may be used on the buildings. In addition to the color schemes provided, the applicant shall provide material samples, material sample photos and material information, or weblinks to information on proposed differentiating material that is proposed.
19. The applicant shall submit rear elevations for buildings 4, 5, 7, and 8 on the construction plans for review and approval by the City.
20. The applicant shall install screening, composed of a free-standing wall or trellis and landscaping, in front of the electrical meters proposed for the end walls of buildings 1, 4, and 7 facing the proposed north-south public road per EMC 18.95.040 I.2.b.
21. The applicant shall install landscaping around the perimeter of the site per EMC 18.90.090. Type IV (25-foot solid barrier) landscaping shall be installed along the property boundaries with single family zoned properties (the east boundary of the site), and along the north and south property lines in the MR-2 zone section of the subject property. The applicant shall install Type I (15 foot Vegetative Buffer) landscaping along the property boundary of the Commercially zoned portion of the site.
22. The applicant shall install Type II Streetscape landscaping along all public and private road frontages in accordance with EMC 18.90.090.

STORMWATER RECOMMENDATIONS:

23. Compliance with EMC Chapters 13.05 (Stormwater Manual- Site Development Regulations) and 13.25 (Illicit Stormwater Discharges) is required during and following any site development activity.
24. Engineered storm water drainage facilities are required for all disturbed areas of the project site. The applicant shall provide a Stormwater Site Plan in accordance with EMC Chapter 13.05 and the 2005 DOE Stormwater Management Manual for Western Washington (SMMWW) at the time of site development. The plan shall include Stormwater Pollution Prevention Plan (SWPPP) addressing Minimum Requirement Two for all proposed

development. The applicant shall provide engineering plans for City approval prior to site development approval.

25. A Temporary Erosion and Sedimentation Control (TESC) plan must be submitted with the SWPPP prior to site development permit issuance, approved by the City Engineer, and implemented during site development and any future home construction. Said plan and SWPPP must adequately propose BMP measures to address the movement of 19,000 cubic yards of earth, as proposed. If removal of material is necessary, the applicant shall prepare a haul route plan for review and approval. Prior to approval of site development permits, the applicant shall prepare a haul route plan for review and approval for import of material from an approved off-site source.
26. As more than one (1) acre of land disturbance is expected, the applicant shall acquire a National Pollution Discharge Elimination System (NPDES) permit and provide a copy of the permit to the City of Edgewood prior to site development permit issuance. A Certified Erosion and Sediment Control Lead (CESCL) shall be present throughout the construction of site development improvements, implement and maintain the SWPPP, and provide regular reports to the City of Edgewood.
27. Any proposed surface water discharged from the project site (including areas bypassing proposed facilities) must meet all of the Minimum Requirements of the SMMWW, with any stormwater modeling of pre-development conditions assuming "forested" land coverage and using the "42 IN EAST" precip I evap station (or equivalent). Any dispersion facilities proposed for stormwater mitigation purposes (including overflows) must demonstrate adequate flowpath length on the project site and outside of any sensitive areas (EMC 13.05.170).
28. As discharge from the site is proposed and a potential capacity problem has been identified within one-quarter mile of the proposed improvements, a complete downstream analysis consistent with Volume I, Section 2.6.2 of the 2005 DOE SMMWW must be prepared and submitted with the site development application. This analysis must clearly identify existing drainage problems downstream (based on existing tributary flows), evaluate the capacity of the existing downstream conveyance, consider other tributary properties in the capacity analysis, and propose measure(s) to ensure downstream property will not be adversely impacted by the proposal.
29. If onsite retention is proposed, in-situ infiltration testing must be performed on the project site to determine the design infiltration rate, consistent with the 2005 DOE SMMWW, 2012 LID Manual, or the 2015 Pierce County Manual's Falling Head Test (Appendix IIIA). All applicable correction factors must be applied to the chosen infiltration test method. All retention facilities shall be modeled with an overflow riser, even if no overflow is provided or proposed, to properly simulate and identify any potential for overflow.
30. The applicant's geotechnical engineer shall verify and confirm soil conditions and design infiltration rates during and following construction of any proposed storm water retention BMPs, including facilities designed using Low Impact Development (LID) techniques. If conditions are different than design, the applicant's geotechnical engineer shall provide a

revised infiltration rate and the stormwater retention BMPs shall be redesigned accordingly. Revisions shall be submitted to the City of Edgewood and approved prior to implementation and final construction approval. Corrections and/or design errors may require revisions to the plat.

31. The applicant shall provide right of entry by the City of Edgewood for all storm water facilities prior to final site development approval. If constructed conditions are found to be different than those designed and approved, the applicant's engineer shall revise the stormwater system accordingly. Any revisions shall be provided to the City of Edgewood and approved prior to implementation and final site development construction approval. Corrections and/or design errors may require revisions to the plat.

Street/Road

32. The applicant shall submit street improvement construction plans for the proposed public parallel and onsite loop private roadways, for review and approval by the City Engineer, prior to final plat submittal. Improvements shall be designed in compliance with EMC Title 12 (Streets, Sidewalks and Public Places), which adopts Pierce County Code (PCC) Title 12 by reference. The specific cross section shall be in accordance with the "Manual on Design Guidelines and Specifications for Road and Bridge Construction in Pierce County," and Pierce County Standard Drawing PC.A3.2 and as described herein.
33. The public parallel road (104th Avenue East) shall be designed in accordance with Ordinance 07-0279, regarding the Meridian Corridor Roadway Network and meeting the City's Commercial Collector Cross Section, with cement concrete barrier curb and gutter, buffer and sidewalk with closed drainage. The public road right-of-way shall be 50-foot minimum, with a minimum 22-foot drive lane, 4.5-foot landscape buffers, 6-foot concrete sidewalks, 1.5-foot concrete barrier curb and gutter with storm drainage, and a minimum asphalt road surface thickness of 3 inches. The applicant may propose 8-foot concrete parallel parking strips on one or both sides of the road. The applicant shall dedicate the public road right-of-way to the City of Edgewood upon approval and acceptance of the construction and at the time of final plat approval.
34. Prior to final site development construction approval the applicant shall dedicate the public road (104th Avenue East) Right-of-Way and the approved public road system to the City of Edgewood.
35. The onsite private road shall include, at minimum, a 20-foot drive lane per City of Edgewood Local Street cross-section and PCC Section 17B.20.040, Table 17B.20.040-3, a minimum-1.5-foot curb and gutter section on both sides of the road, a stormwater management system per EMC 13.05, a 4-foot landscaping strip, and a 5-foot concrete sidewalk. Any dead-end segment of road with centerline length over 150 feet must have an EVA turnaround. The site development plans must be submitted to the City of Edgewood and be approved prior to site development commencement.

36. Tract 'C' (Private Road Tract) must include the entire width of the roadway improvements, from back-of-sidewalk to back-of-sidewalk, with a minimum width of 40 feet. This road improvement area may be designated as a separate tract and/or an easement over the individual lots.
37. The applicant shall submit street improvement construction plans for the new roadway intersections to the proposed private road from the public parallel road, for review and approval by the City Engineer, prior to final plat submittal. The intersections shall be constructed in accordance with EMC Title 12, which adopts by PCC Title 17B, including Section 17B.1 0.060, the "Manual on Design Guidelines and Specifications for Road and Bridge Construction in Pierce County." Details on the roadway intersection improvements may be found in Chapter 5: Access and Intersections.
38. The applicant shall submit offsite access improvement construction plans for 11th Street East, for review and approval by the City Engineer, prior to final plat submittal. Improvements shall include, at minimum, a 20-foot drive lane per City of Edgewood Local Street cross-section and PCC Section 17B.20.040, Table 17B.20.040-3, a minimum-1.5-foot curb and gutter section on both sides of the road, a stormwater management system per EMC 13.05, and a 5-foot gravel pathway for pedestrian access on the north side of the road, all designed in accordance with EMC Title 12. For ease of stormwater facility construction, the access may be sloped all to one side (north preferred).
39. The applicant shall submit lighting plans for the project site, consistent with City of Edgewood design standards, for review and approval by the City Engineer, prior to final short plat submittal. Vehicle-level street lighting shall be provided at the three proposed intersections and near the southeast corner of the project, per PCC 17B.20.005, Table 17B.20.005-2, as incorporated in EMC Title 12. Installation, utility charges, and ongoing maintenance of private roadway street lighting shall be the responsibility of the developer and future homeowner's association (HOA). Street lights in the parallel road (1041h Avenue East) ROW shall become City property upon dedication of the street to the City and the City will take responsibility for this street lighting in the public ROW.
40. The applicant shall submit a plan detailing all roadway signs (in and adjacent to public right-of-way) in accordance with Manual on Uniform Traffic Control Devices (MUTCD) standards, for review and approval by the City Engineer, prior to site development permit Issuance.
41. Patterned concrete crosswalks shall be installed at intersections with the private road system and 1041h Avenue East (north-south parallel road) on the east side of the 104th Avenue East providing a continuous pedestrian walkway along the east side of the 104th Avenue East from the south property line to the north property line of the development. Additional crosswalks shall be provided crossing 1 041 A venue East for access to the park/stormwater tract and to provide a continuous east-west pedestrian walkway on the north side of 11th Street East across 104th Avenue East. The patterned concrete crosswalks shall be installed per the City of Edgewood Roadway Design Standards, Roadway Detail Drawing "Detail C."

42. The design and construction of the new roadways and pedestrian improvements shall meet or exceed current Americans with Disabilities Act (ADA) requirements. This includes but is not limited to design of sidewalk transitions, curb ramps, street crossings, and lighting.
43. The applicant shall coordinate with the Puyallup School District regarding the location and construction of future bus stops within the project area prior to site development approval and shall provide a letter from the Puyallup School District providing location approval at the time of site development application.

Tree Retention:

44. Any significant trees to be retained that may be affected by grading activity shall incorporate tree wells in accordance EMC 18.90.180(2)(e)(i)(G). An area free of disturbance, corresponding to the dripline of the significant tree's canopy shall be identified and protected during the construction stage with a temporary three-foot-high chain-link or plastic net fence. No impervious surfaces, fill, excavation, storage of construction materials, operations or parking of vehicles shall be permitted within the area defined by such fencing or stakes.
45. The applicant shall ensure protection of off-site trees on adjacent properties that have tree root systems that encroach onto the project property.
46. Any installed plant material that dies shall be replaced within the spring or fall growing season following plant loss, but not to exceed three months from the time of loss. In order to guarantee performance of the landscaping requirements, cash bonds or other appropriate security (including letters of credit) in the amount of 125 percent of the estimated cost of the required landscaping shall be required if replacement landscaping is not installed prior to issuance of occupancy permits.

Other Requirements:

47. A Pre-Construction Meeting with the City of Edgewood shall be held prior to any site development activity and scheduled at least 72 hours in advance. All construction activity shall occur between 7 a.m. and 5 p.m., Monday through Friday. Special provisions to work beyond these hours may be permitted through written request to the Mayor (or designee) a minimum of 48 hours before the special hours or days requested.
48. The wetland and reduced wetland buffer shall be placed in a separate tract from the remainder of the site per EMC 14.30 – Wetlands.
49. The applicant shall place permanent, clearly visible, wetland boundary buffer signs at the edge of the buffer per EMC 14.30- Wetlands prior to any earth moving activities.
50. A Homeowners' Association (HOA) shall be created to address all private improvements within the proposed plat including storm/park tract and stormwater facilities, private streets, curbs and gutters, street lighting, landscaping, and irrigation. Associated Covenants, Conditions and Restrictions (CCRs) shall be submitted at the time of final plat for review and approval.

Staff Report and Recommendation
16-5633 Domus Homes PRD

Once approved by the City, the CCRs shall be recorded separately at the time of final plat recording and the recording number shall be handwritten on the face of the final plat and the final plat number hand-written on the cover sheet of the CCRs as cross-reference.

51. The applicant shall coordinate and receive approval from Mt. View-Edgewood Water Company (MTVE) prior to final site development approval. The applicant shall provide water service improvements in accordance with the MTVE requirements and provide MTVE approval to the City prior to final site development approval.
52. The applicant shall pay School Impact Fees to the Puyallup School District in accordance with EMC 4.1 0.
53. The applicant shall pay Park Impact Fees in accordance with EMC 4.20.
54. The applicant shall pay Traffic Impact fees in accordance with EMC 4.30.
55. If significant changes are made to the proposal, additional documentation and study will be required to be submitted to the City and supplemental SEP A environmental review will be required.

STAFF PREPARING THE REPORT:

Kirk Rappe
Signature

2/2/17
Date



CITY OF EDGEWOOD

NOTICE OF CLOSED RECORD HEARING

CLOSED RECORD REVIEW PROCEEDING FILE #16-5633 – DOMUS HOMES PRD

NOTICE IS HEREBY GIVEN that the City of Edgewood City Council will conduct a closed record public hearing to review the Hearing Examiner's report and recommendation regarding the proposed Planned Residential Development (PRD) known as City of Edgewood File 16-5633, Domus Homes PRD. The proposed PRD is located at 10413 11th Street East, Edgewood WA 98372 (Parcel No. 0420033084) and involves the proposed construction of 55 new residential single-family townhomes through the approval of a PRD in accordance with EMC 18.50.095. The procedures for the closed record hearing are set forth in EMC Section 18.40.100(X). The public may attend this closed record hearing, however no public comment and no additional testimony or evidence may be presented from the public. Within five days after issuance of the City Council decision, the City will mail a copy of the decision to any person who makes a written request to receive a copy. Copies of the file are available for review at City Hall. Rachel Pitzel, CMC – City Clerk. *Dated this 25th day of May, for publication on May 26, 2017.*

APPLICANT'S REPRESENTATIVE: Craig Peck, Craig A. Peck and Associates

DATE AND TIME OF HEARING: 7:00 p.m., Tuesday, June 13, 2017.

LOCATION: Edgewood City Hall Council Chambers 2224 104th Avenue East, Edgewood, WA 98372-1513

DECISION: The City Council shall consider the hearing examiner's report and recommendation in a closed record review proceeding without additional testimony or evidence. At the conclusion of the closed record review, the city council shall issue a final written decision approving or denying the proposed PRD. The city council may adopt the hearing examiner's findings and/or enter its own findings in support of the council's decision. The city council's decision shall be appealable to the Pierce County Superior Court in accordance with the standards and procedures set forth in Chapter 36.70C RCW. Any person may participate by submitting written comments prior to the hearing at the City Hall address below, or by providing oral or written testimony at the hearing. City Council policy limits the time for individual testimony to three (3) minutes in order to facilitate a timely and orderly hearing.

CONTACT: If you have any questions, please contact Associate Planner Kirk Rappe at (253) 952-3299. Copies of the proposed PRD Staff Report, and associated Exhibits including the project application materials, as well as the applicable decision criteria, are available under File #16-5633 for inspection at no cost at least five calendar days before the closed record review proceeding; and will be provided at the cost of reproduction at Edgewood City Hall, located at 2224 104th Avenue East, Edgewood, WA 98372-1513.

Posted: May 25, 2017

Published in TNT: May 26, 2017



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

Date: July 11, 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 Eiding, Mayor

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

Recommendation: Move to adopt Ordinance No. 17-0503, an Ordinance grant 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, judgments, and expenses (including, without limitation, court costs, reasonable attorney's fees, and costs of investigation, removal and remediation, and governmental oversight costs), environmental or otherwise (collectively "liabilities") of any nature, kind, or description, of any person or entity, directly or indirectly arising out of, resulting from, or related to (in whole or in part):

5.1.1.1 This franchise;

5.1.1.2 Any rights or interests granted pursuant to this franchise;

5.1.1.3 Franchisee's occupation and use of the public right of way;

5.1.1.4 Franchisee's operation of the utility;

5.1.1.5 The presence of the utility system within the public right of way;

5.1.1.6 The environmental condition and status of the public right of way caused by or contributed to, in whole or in part, by franchisee or its contractors, subcontractors, or agents;

5.1.1.7 Any act or omission of franchisee or franchisee's contractors, subcontractors, agents and servants, officers or employees in connection with work in the public right of way; or

The only liabilities with respect to which franchisee's obligation to indemnify the indemnitees does not apply are liabilities to the extent proximately caused by the negligence or intentional misconduct of an indemnitee or the liabilities that by law the indemnitees cannot be indemnified for.

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

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

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

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City.

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

5.1.4 Title 51 Waiver. Franchisee waives immunity under RCW Title 51 and affirms that the City and the Franchisee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or

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

5.3 Insurance Requirements. See Attached Exhibit “D”.

5.4 Financial Security. See Attached Exhibit “E”.

5.5 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 Franchisee, all billing will be itemized so as to specifically identify the Direct Costs and expenses for each project for which the City claims reimbursement. A reasonable charge for the actual cost incurred in preparing the billing may also be included in said billing.

5.7.5 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 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.

5.7.13 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 Franchisee with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated

reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

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

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

7.7 General Conditions.

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

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

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

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

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or

City-owned property, the City may reasonably require Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of City to inspect the Work, issue a stop work order, and order or make repairs or alterations, City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

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

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

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

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

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

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

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all

members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements, Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

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

7.8.2 Alternatives. If the City requires Franchisee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration, subject to RCW 35.99.060, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines, in its sole discretion, that there is no other reasonable alternative, the Franchisee shall promptly relocate its Facilities as otherwise provided in this Section at Franchisee's sole expense. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until Franchisee funds the additional costs to the City to complete its evaluation.

7.8.4 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than thirty (30) days, or such longer period as mutually agreed to

by the parties. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

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

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

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

7.8.8 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in RCW 35.99.060.

7.9 Movement of Facilities for Others.

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

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

7.10 Movement of Facilities During Emergencies.

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

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

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

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations

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

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

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all 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

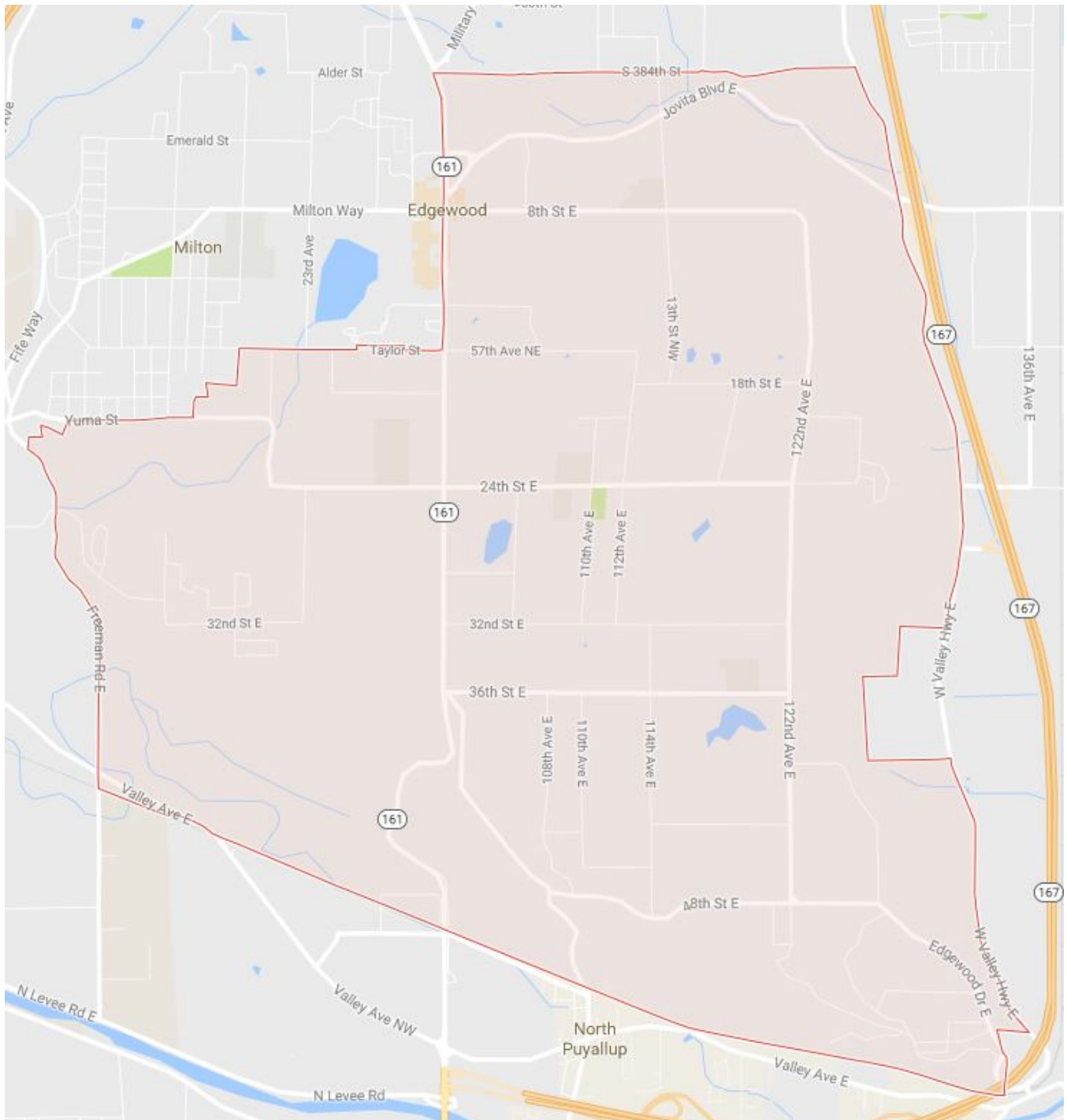
Date of Publication: **July 12, 2017**

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

CITY OF IRVING

ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

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

My appointment expires _____

EXHIBIT "B"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

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

DATED this _____ day of _____, 20____.

By _____ Robert McGee
Its _____ Executive Director-Ntwk Eng&Ops

Tax Payer ID# 52-2102063

STATE OF TEXAS

ss.

CITY OF IRVING

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

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

My appointment expires _____

EXHIBIT “D”

(Insurance Requirements)

1 General Requirement. Commencing upon issuance of the first Site Specific Permit under this Franchise, Franchisee must have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise or Site Specific Permit, or involve the Facilities, Franchisee, its agents, representatives, contractors, subcontractors and their employees. In addition, Franchisee’s contractors/subcontractors shall carry comparable insurance as set forth below when such contractors/subcontractors are doing work on behalf of Franchisee in the Public Rights-of-Way.

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

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate and shall provide coverage for losses and damages resulting from bodily injury (including death), property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage. Coverage must be written with the following limits of liability:

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

2.2 Commercial Automobile Liability: covering all owned, hired, and non-owned vehicles with a combined single limit of \$3,000,000 for bodily injury and property damage.

2.3 Workers Compensation Insurance: in compliance with the statutory requirements of the state of operation and Employer’s liability with a limit of \$1,000,000 each accident/disease/policy limit shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees.

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

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

3 Endorsements. Franchisee Commercial General Liability insurance policies shall contain, the following:

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

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

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

3.4 The Franchisee's insurance excluding workers compensation and employer's liability shall include the City as an additional insured as their interest may appear under this Agreement, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted.

3.6 Upon receipt of notice from its insurer(s) Licensee shall provide the City with thirty (30) days prior written notice of cancellation. It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew.

3.7 If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

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

5 Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a blanket additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

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

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

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

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

EXHIBIT “E”

(Financial Security)

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.